



**DEFORESTATION
OF THE AMAZON**
AND THE INTERNATIONAL NORMS
VIOLATED BY BRAZIL
BETWEEN 2019 AND 2022

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INTRODUCTION

The destruction of the environment and the violation of human rights in Brazil, especially of indigenous and black people, are as old as the process of colonization of the country. In 500 years, there has not been any government that effectively preserved the Brazilian environment and respected the indigenous peoples. The Brazilian history begins with the extermination and enslavement of many native peoples and the deforestation of the Atlantic Forest. Later, the country adopted institutional forced assimilationist policies towards the indigenous and occupied the Amazon territory without any environmental concern during the military dictatorship (1964-1985). Contemporarily, despite the existence of a democratic regime with a Constitution that has express provisions on the rights of original peoples and significant adherence to international environment treaties, the country tests daily the capacity of survival of these populations and the nature.

Even though the history of Brazil reveals that there has never been any truce in this fight for survival, we are going through a particularly tough period when it comes to preserving the environment and respecting the indigenous rights during the present democratic regime (1985 – 2022). The current federal administration (2019 – 2022), under Jair Bolsonaro's presidency, has adopted unprecedented policies considering the democratic regime, jeopardizing not only the maintenance of the democracy, but also the existence of the indigenous peoples that still resist and of entire ecosystems.

In this context, the Amazon stands out for several reasons. The territory called legal Amazon (Law 1806/1953) not only is home for approximately 77% of the Brazilian indigenous peoples¹, but also has the largest rainforest in the world. In addition, the planet faces a challenging time with climate emergency and

¹CARVALHO, Priscila D.; HECK, Egon; LOEBENS, Francisco. *Amazônia indígena: conquistas e desafios*. Dossiê Amazônia Brasileira I, Estud. av. 19 (53), Abr. 2005, <https://www.scielo.br/ea/a/5RnftMKtzRwmyTMrKpqX63S/?lang=pt>

the scientists anticipate catastrophes with the rising global temperature, which put in evidence the vital importance of preserving biomes like rainforests. Therefore, the Amazon has never played such a fundamental role for the entire planet as it does now. If geopolitical interests towards the Amazon could be noticed long before global warming became a relevant issue in the international agenda, now they are much clearer.

Members of both international and Brazilian communities have questioned the visibly irresponsible management of the Amazonian territory by the current federal administration. When it comes to formal resistance, the most significant ones up to this day are the charges against the country's president, Jair Bolsonaro, before the International Criminal Court (ICC), which accuse him of committing crimes against humanity and incitement to genocide in the Brazilian Amazon. The first complaint², although it is still at a rather initial stage, has reached an unprecedented phase³ considering the charges against Bolsonaro before the ICC that do not relate to the Amazon.

Despite the fact that the environmental degradation and the indigenous peoples' persecution could have been more intense in the past, the world has changed. Nowadays, there are principles, laws, moral values and scientific facts that fiercely condemn the destruction of the environment and the extermination of populations. The Human Rights and Environmental International Regimes are quite consolidated in most countries and Brazil is not an exception to this rule, as it has ratified the main conventions on the subjects from the 1990's.

² CADHu; COMISSÃO ARNS. Informative Note to the Prosecutor, Incitement to Genocide and Widespread Systematic Attacks Against Indigenous Peoples by President Jair Messias Bolsonaro in Brazil. November 2019, <https://apublica.org/wp-content/uploads/2019/11/e-muito-triste-levar-um-brasileiro-para-o-tribunal-penal-internacional-diz-co-autora-da-peticao.pdf>

³ GALVANI, Giovanna. Em situação inédita, Tribunal de Haia analisa denúncia contra Bolsonaro, Carta Capital. 15 December 2020, <https://www.cartacapital.com.br/mundo/em-situacao-inedita-tribunal-de-haia-analisa-denuncia-contra-bolsonaro/>

In this context, the Research Group on International Law and the Amazon, created in 2020 and registered in CNPq's⁴⁵ Directory of Research Groups, set out to study what would be the possible international legal consequences of what is happening to the forest and its original peoples during the current federal administration (2019 - 2022). This report reveals only part of the results found, concerning the main international norms violated/possibly violated by Brazil regarding directly or indirectly the deforestation of the Brazilian Amazon. Based on scientific and journalistic information about the situation in the Amazon, we analyzed the content of 22 international norms of which Brazil is part to assess if there are breaches and their legal consequences. After the legal analysis, we conclude with the indigenous perspective on the subject, through a text written by one of their representatives.

We thank Ibmec-RJ for supporting the activities of the International Law and Amazon Research Group. We also address our thanks to Professor Almiros Martins Machado for having accepted to participate in the project with his text "On Stones and Thorns". And finally, our thanks to the students of Ibmec-RJ who are members of the Research Group, whose commitment was fundamental for the conclusion of this report.

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METHODOLOGY

This report aims at analyzing whether Brazil is complying with the international norms it adhered concerning directly or indirectly the Amazonian territory, especially those related to the Amazon's deforestation. Whilst the facts were gathered from several scientific, journalistic and documental sources, the selection of norms requires further explanation. However, before addressing the criteria used, it is important to highlight that the facts presented in the report are merely illustrative and sufficient to show the causal nexus between the norm and the violation/potential violation. The Brazilian Amazon is so enormous that it would not be feasible to find out and bring an exhaustive list of facts concerning environmental issues and the indigenous peoples from the region.

In Public International Law (PIL), there are some types of norms recognized both by the doctrine and jurisprudence. Among the traditional sources of PIL we find treaties/conventions, international customary law and general principles of law, although unilateral acts of states and mandatory decisions of International Organizations are also recognized as sources contemporarily. From all of the aforementioned sources, only the most relevant treaties/conventions that relate directly or indirectly with the Amazonian territory and that were ratified⁶ by Brazil were subject to study. Therefore, the report does not include all the treaties or international sources on the subject.

Apart from the aforementioned sources, there is an enormous amount of international legal texts created by the countries, although they are not originally legally binding for the parties. These texts are frequently called 'declaration', 'recommendation', 'memoranda', and 'agenda', among others, and are known as soft laws. According to MAZUOLI, they can be defined as:

⁶ Two environmental treaties signed and not ratified by Brazil were included because, although compliance with their content cannot be demanded, the country has the obligation not to frustrate their objects.

“All of those rules whose normative force is less constringent than the one of traditional legal norms, which happens either because their instruments do not have the status of legal norms or because their provisions, despite being part of a legally binding instrument, do not create positive law obligations for the states or only create weaker obligations”.⁷

Although they are not formally recognized as sources, soft laws are quite important for the development and creation of PIL, for they can eventually become customary international laws or treaties. Furthermore, even if they lack a legally coercive power, they demonstrate that the states agreed to the content of the document, which creates a moral expectation of fulfillment of the provisions. Given that some of these documents are extremely relevant in the international system and that they have a connection with the current situation in the Amazon, like the Universal Declaration of Human Rights and the Declaration on the Rights of Indigenous Peoples, we have included the analysis of soft laws that are pertinent to the research.

Even though some scholars classify framework conventions as soft laws, as they are generally quite vague and do not create immediate positive obligations, on this report they were analyzed in the same section as the treaties because they fulfill the formal pre-requisites to be considered as such. Therefore, in the soft law section there are only documents that had this legal nature from their inception and two treaties already signed but not yet ratified by Brazil. In the second situation, the lack of ratification means that Brazil is not legally bound to the agreements' texts. Nevertheless, since every state that signs a convention has the 'obligation not to defeat the object and purpose of a treaty prior to its entrance into force'⁸, the aforementioned agreements were included because of their relevance for the contemporary context of the Amazon and because of Brazil's negative obligation not to act against the object of the signed treaties.

⁷ Free translation of the authors. MAZZUOLI, Valerio. Curso de direito internacional público. 7. ed. São Paulo: Revista dos Tribunais, 2013, p. 175.

⁸ UNITED NATIONS. Vienna Convention on the Law of Treaties. 1969. art. 18, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

The destruction of the Amazon has a direct impact on two major areas of PIL: the environment and human rights. Thus, in organizational terms, the analysis of the norms was divided into two themes: international protection of the environment and international protection of human rights, with a focus on indigenous people's rights, although aspects concerning the general population have also been addressed. Within the two main topics, treaties and conventions will be analyzed first and soft laws will follow next.

This report uses the inductive approach to analyze the set of information and facts, which are organized and evaluated based on bibliographic and documentary research. Moreover, the research has a qualitative nature. It seeks to describe and to understand the collected data, in order to support the hypothesis that there is a connection between President Bolsonaro's agenda and the recent violations against international obligations undertaken by Brazil relating directly or indirectly to the preservation of the Amazon, including environmental protection and human rights norms.

1. INTERNATIONAL PROTECTION OF THE ENVIRONMENT

Environmental matters are increasingly frequent in the global agenda and in contemporary international laws. Although international environmental regulations exist since the end of the 19th century⁹, the concern with the environment as an autonomous subject in the international scene only started in the 1970s, with the UN Stockholm Conference in 1972 being a landmark. Notwithstanding the fact that the Conference remained completely marginal in every country's agenda – only two heads of states were present¹⁰ –, the event not only was essential for the creation of the United Nations Environment Programme, but also served as the starting point for considering the environment as a matter of global concern.

In the following decade, the international debate on environment developed even more and the Brundtland report¹¹ was responsible for bringing one of the most used concepts in this area: sustainable development. Apart from international legislative initiatives¹² about the ozone layer, in the 1980s we have witnessed the theoretical consolidation of the International Regimes, which comprises the international rules and institutions governing the environmental topic contemporarily. According to Krasner, International Regimes are “sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations”¹³. Therefore, one can notice that international environmental issues have been regulated by something that is much more complex than only laws,

⁹ DAILLIER, Patrick; DINH, Nguyen; PELLET, Alain. *Direito internacional público*. Lisboa: Fundação Calouste Gulbenkian, 2003, p. 1327. According to the authors, until that time there were arbitrations, bilateral treaties, the Paris Convention of 1902 on the protection of birds useful to agriculture. Usually, the international norms had as their object some species threatened by abusive hunting.

¹⁰ Sweden's Prime Minister, Olof Palme, and India's Prime Minister, Indira Gandhi.

¹¹ Report published in 1987 that proposed the adoption of a series of measures to promote the planet's sustainable development.

¹² The Montreal Protocol is an international treaty that aimed to protect the Ozone layer by eliminating the production and consumption of substances responsible for its destruction. The agreement was a consequence of the Vienna Convention for the Protection of the Ozone Layer; Brazil is one of the signatory countries.

¹³ KRASNER, Stephen. *International Regimes*. Ithaca: Cornell University Press, 1983, p. 2.

since they are under the influence of institutions, conferences, diplomatic decisions, soft laws and treaties.

In the 1990s, there were other milestones strengthening this International Regime worldwide and in Brazil, who started adopting a more proactive attitude towards the subject. Internationally, the decade started with the United Nations Conference on Environment and Development (UNCED), also popularly known as Eco-92, hosted by Rio de Janeiro in 1992. Even though no legally binding agreement with immediate effect was reached, some facts demonstrate that the consolidation of the Environmental International Regime was irreversible. Firstly, there was the significant presence of 178 heads of states, which visibly contrasts with the participation of only two in the Stockholm Conference two decades before. In 20 years, the international environmental agenda grew to the point of generating articulation on the highest political levels.

In second place, we must highlight some documents produced during the conference: Rio Declaration on Environment and Development; United Nations Framework Convention on Climate Change (UNFCCC); and Convention on Biological Diversity (CBD). Although the Conventions are legally considered as treaties, they had quite vague provisions, so they did not create specific legal obligations, which were supposed to be defined in future treaties. Regardless of the lack of specific obligations, it is possible to clearly identify a milestone not only in the more effective inclusion of the environment in the global agenda, but also when it comes to addressing a topic that is central concerning the environment: climate change. The UNFCCC established the annual Conference of the Parties (COP) to stimulate the debate and create effective laws on the topic. In the end of the 1990s, a treaty on climate change with concrete goals was drafted and many countries signed it. Its name was Kyoto Protocol¹⁴ and it entered into force in 2005.

¹⁴ The Kyoto Protocol was not included among the analyzed treaties because it is no longer valid.

Since Eco-92, the environmental debate has become increasingly intense in the international system and, from the moment when extremely alarming scientific data about the consequences of climate change became public, the topic gained outstanding relevance in the main environmental forums. The climate governance has always attempted to create more objective and quantifiable mechanisms to deal with the problem and the urgency in curbing greenhouse gas emissions found temporary support in the Kyoto Protocol, a treaty that had expressive adherence from the states. Nevertheless, in addition to the fact that the Protocol was set to expire in 2012, the negotiations of norms on climate change generated a clash between developed and developing countries from the beginning. The representatives of the latter category have always been reticent to accept the imposition of greenhouse gas emissions goals, as the well-succeeded economic growth models up to the present days are inevitably polluting. This dilemma set the tone for years at all the other COPs aimed at drafting a new treaty to replace Kyoto's Protocol. The Paris Agreement was concluded only in 2015, establishing goals through the National Determined Contributions (NDC) and with the participation of most countries of the world, including the United States that were not part of Kyoto's Protocol.

In spite of global warming being the main topic among contemporary global environmental issues, it is undeniable that the environment as a whole has been playing a much more central role in the international agenda than it used to do until recently. There are many normative and institutional initiatives – bilateral, regional or multilateral – concerning many other sub-topics, such as biodiversity, desertification, illegal trade of fauna and flora, among others. With relation to the most recent legislative trends, we shall highlight the attempt to criminalize the act of ecocide in the international sphere.

According to Polly Higgins¹⁵, the crime of ecocide should have been the fifth typified by the Rome Statute, which is the treaty that established the International Criminal Court (ICC) and is in force since 2002. Among the 54 states that negotiated the treaty, 50 were in favor of adding the crime of ecocide in the statute. However, the text that contained the definition of the crime was removed a little before the conclusion of the treaty, which was adopted without the provision. The movement to include the act as a crime punishable before the ICC has never ceased and, in June 2021, the Independent Expert Panel for the Legal Definition of Ecocide drafted a concept that should be taken to the States Party Assembly for voting as an amendment proposal to the Rome Statute. The proposal, apart from adding the item 'e' to Article 5 of the Statute foreseeing the crime of ecocide, defines the term as following:

Article 8, ter 1: "For the purpose of this Statute, "ecocide" means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts".¹⁶

It is worth mentioning that the concept proposed and the relevance and utility of protecting the environment through international criminal law are quite disputed matters among scholars, including Ambos and Heller¹⁷. Kai Ambos¹⁸ argues that really serious environmental crimes could fit in already typified acts by the Rome Statute, such as crimes against humanity. Furthermore, he questions whether the criminalization of the act would have the capacity to effectively protect the planet from serious environmental damages. Finally, he

¹⁵ HIGGINS, Polly et al. The Ecocide Project 'Ecocide is the missing 5th Crime Against Peace'. Human Rights Consortium. University of London. 2012, https://sas-space.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf

¹⁶ STOP ECOCIDE FOUNDATION. Independent Expert Panel for the Legal Definition of Ecocide commentary and core text. June 2021, <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+%281%29.pdf>

¹⁷ HELLER, Kevin. Skeptical Thoughts on the Proposed Crime of "Ecocide" (That Isn't). *Opinio Juris*. 23 June 2021, <https://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/>

¹⁸ AMBOS, Kai. Protecting the Environment through International Criminal Law? *EJIL: Talk*. 20 June 2021, <https://www.ejiltalk.org/protecting-the-environment-through-international-criminal-law/>

ponders about the ICC's current work overload. Considering that the Court has jurisdiction over four crimes and is already overloaded with work, broadening its jurisdiction could even institutionally weaken the Court.

Despite of the skepticism among some scholars, the increasing legal standardization of environmental issues is apparently an irreversible trend. This comes with a growing understanding that the environment is not only vital for human existence, but also an individual entity entitled to rights regardless its essential importance for human life. Countries like New Zealand, Equator and Bolivia, for instance, already have domestic legislations recognizing legal personality to rivers, mountains, parks or to the nature as a whole¹⁹. Although this is not common when it comes to domestic laws nor is it possible to find similar provisions in PIL, it is a remarkable movement that confirms the trend of giving more space to environmental matters.

In this context, the initiative of creating an exclusive criminal typification for crimes against the environment reflects this contemporary moment in which there seem to be an expansion of awareness concerning the role of the environment in the planet. Even if we assume that the existing crimes could hypothetically be enough for the ICC to be able to try a case involving environmental destruction, this would have to be done through the impact of the destruction in human lives and not for the destruction itself. According to Sands²⁰, the amendment to the Statute would be a milestone because the crime of ecocide does not have an anthropocentric foundation as all of the other four crimes in the Statute do. It would rather be an international legal recognition of the importance of the environment, regardless its vital relevance for human life. As explained by the Independent Panel,

¹⁹ BRANQUINHO, R. H. Eu sou o rio, o rio sou eu: a atribuição de personalidade jurídica aos bens naturais ambientais. *Revista de la Facultad de Derecho y Ciencias Políticas*, 49 (131), 2019, pp. 255-277, <http://www.scielo.org.co/pdf/rfdcp/v49n131/0120-3886-rfdcp-49-131-255.pdf>

²⁰ INSTITUTE FOR INTERNATIONAL LAW OF PEACE AND ARMED CONFLICT. Jan-Phillip Graf, Romina Pezzot, Philippe Sands, Paola Gaeta, Kai Ambos & Jorge E. Viñuales. Livestream: Ecocide – Legal Revolution or Symbolism? Webinar on 23 September 2021 at 16:00 CEST. Ruhr University Bochum. *Völkerrechtsblog*. 23 September 2021, <https://www.youtube.com/watch?v=UFdcEYB8QYc>

“Proceeding to agree a crime of ecocide could contribute to a change of consciousness, in support of a new direction, one that enhances the protection of the environment and supports a more collaborative and effective legal framework for our common future on a shared planet”.²¹

With respect to the debate on the relevance of creating the crime of ecocide, we shall draw a parallel with genocide, which was proscribed in the 1940s. Up until today some people question not only the adopted definition of the crime, but also if the typification of the act has helped preventing any genocide or turned the world into a safer place and less inclined to the commitment of the crime. In 1942, when Raphael Lemkin created the term genocide amidst the holocaust and helped later with the drafting of the Genocide Convention, there were a number of criticisms, as there are nowadays about ecocide.

Despite the relevance and logic behind many of the criticisms, the idea of creating a new term and forbidding a certain conduct at the international level relates much more to the fact that humankind reached a new level of consciousness concerning a certain matter, consolidating values and principles that become non-negotiable, than to the drafting of an ideal law. Therefore, whether the Genocide Convention is effective or not might be less important than the international society’s initiative to establish, by several means including the normative, that this type of act is unacceptable no matter the political, cultural or religious contexts or any other circumstance. The same logic could apply to the contemporary environmental issue and the emergence of the concept of ecocide.

We do not ignore the fact that laws frequently reflect more a power relation than justice or the evolution of the collective consciousness. This was the case, for instance, of Britain’s engagement with the end of slave trafficking in the XIX century, which was rhetorically motivated by the respect for human rights but

²¹ STOP ECOCIDE FOUNDATION. Independent Expert Panel for the Legal Definition of Ecocide commentary and core text. June 2021, <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+%281%29.pdf>

was justified in fact by the interests of a capitalist power that needed the expansion of the consumer market. Similarly, some argue that the strengthening of the international environmental regime only serves the interests of the richer countries, as they have developed destroying most of their ecosystems and now, they supposedly want to impose measures that will impede poorer states to develop, for they would not be able to use their natural resources the way they want.

However, although power relations are inseparable from topics like environment, it is absolutely necessary to be able to distinguish what is right and ethical from what is not, regardless the political interests around the theme. Slavery, human trafficking and genocide are morally heinous in spite of the loss of the countries that had to stop committing those crimes. When it comes to the environment, the increasing awareness of the international society is visible and the debate about ecocide mirror much more the understanding that catastrophic consequences will harshly affect the planet and humankind as a whole than a strategy to delay the development of poorer countries. We are possibly witnessing the emergence of the understanding that destroying whole ecosystems is inherently wrong. Moreover, one should not forget that the necessary measures to curb greenhouse gas emissions also require great efforts from developed countries.

Irrespective of the inclusion of ecocide in the Rome Statute, there are other evidence that environmental concerns have already reached the international criminal sphere. In 2016, the ICC's Office of the Prosecutor published a document entitled 'Policy Paper on case selections and prioritization', which, among other criteria, expressly included environmental damage:

"The impact of the crimes may be assessed in light of, inter alia, the increased vulnerability of victims, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities. In this context, the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the

destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land”.²²

It should be noted that, admitting that the proposed amendment is adopted by the ICC’s state parties and included in the Rome Statute, it does not apply immediately to all countries. The amendments that add new crimes to the Statute only bind the countries that adhere to them, which requires, in most cases, domestic approval by national parliaments. Furthermore, according to ICC’s temporal jurisdiction, the Court only has jurisdiction over crimes committed after the ratification of the treaty or the amendment, in this particular case. Therefore, in the situation of the Brazilian Amazon, any of the acts/facts presented on this report and that fit in the description of ecocide would not fall under the jurisdiction of the ICC if we take into consideration the new crime, as they would have happened before the hypothetical inclusion of the ecocide in the Statute and Brazil’s ratification of the amendment.

In addition to the International Criminal Law area, environmental issues have also been playing increasingly relevant roles in other areas of PIL and international politics, such as the International Human Rights Law (IHRL). When it comes to international politics, the topic has been openly discussed in the United Nations Security Council (UNSC). The organ has, in practice, the highest hierarchy in the institution, as it is the only one able to adopt legally binding resolutions for the states, based on Chapter VII of the UN Charter, which addresses threats to international peace and security. It is worth mentioning that these decisions constitute sources of PIL, binding the states as much as international treaties and international customary law. According to the UN General Secretary²³, Antonio Guterres, climate change is a crisis multiplier with deep implications to international peace and stability. Therefore,

²² INTERNATIONAL CRIMINAL COURT. Office of the Prosecutor. Policy paper on case selection. 2016. p. 14, https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

²³ UNITED NATION SECURITY COUNCIL. Climate Change ‘Biggest Threat Modern Humans Have Ever Faced’. World-Renowned Naturalist Tells Security Council. Calls for Greater Global Cooperation. 23 February 2021, <https://www.un.org/press/en/2021/sc14445.doc.htm>

the UNSC may adopt a decision in the near future, even a binding one, on specific situations that threaten the environmental security of the planet.

With respect to the relation between environment and IHRL, despite the fact that both topics have always been directly related concerning autochthonous populations, only recently the regional human rights systems have recognized the connection between the topics in a general way. Nevertheless, we will discuss it in detail on the second part of this report, which addresses the international laws on human rights related to the Amazonian territory that Brazil has potentially been violating.

1.1 BRAZIL AND THE ENVIRONMENT

For the most part of humankind history, the environment has never been an issue with which governors and legislators were concerned. As aforementioned, only in the 20th century we have begun to witness organized initiatives in benefit of the environment. In Brazil, this logic applies as well, and we can notice a significant legislative evolution only from the 1960s on. According to Benjamin²⁴, there are three phases characterizing the development of the Brazilian environmental legal protection. The first phase was the one of disorderly exploitation, which consisted of legislative omission and lasted until the second half of the 20th Century. The second one is called fragmentary. On the one hand, the environment was not regarded as a whole, but on the other hand, lawmakers were already concerned about the protections of many categories natural resources. By this time, law such as the Forest (1965) and Fishing (1967) Codes, among others, were created. Lastly, the third phase was the holistic one, in which the integral protection of the environment becomes a goal. Its main legislative milestone was the Law on National Policy for the Environment (1981).

²⁴ BENJAMIN, Antonio. Introdução ao direito ambiental brasileiro, pp. 41-91. In: MACHADO, Paulo Affonso; MILARÉ, Édís (Orgs). Doutrinas Essenciais de Direito Ambiental. v. I. São Paulo: Revista dos Tribunais, 2011, p. 45.

With respect to Brazil in the international system, the 1990s was a reference for the participation of the country in areas largely ignored before, with an emphasis on environment and human rights. The military dictatorship used to adopt a rather defensive behavior towards these topics, but the return of democracy, with the promulgation of the Constitution of 1988, served as a landmark for the beginning of a more cooperative attitude in multilateral forums that addressed the subjects. In the realm of the Brazilian foreign policy, this is known as the period of “credentials’ renovation”²⁵, when Brazil adhered to several international treaties on human rights and environment, hosted the UN conference aforementioned (Eco-92) and accepted the jurisdiction of the Inter-American Court of Human Rights (1998). All of this helped strengthening these international regimes domestically in Brazil.

The development of the global agenda on climate change placed the tropical forests in the center of the environmental debate, including the Amazon, which is the world’s largest rainforest. Its devastation became a matter of global interest and the biome gained unparalleled visibility. Diplomatically speaking, Brazil has always been rather pragmatic concerning the defense of his right to development in multilateral forums. However, it has never meant being unwilling to contribute to the regime by reducing the deforestation, but only a resistance to accept that developing countries had to comply with compulsory goals established in international conventions. The country’s commitment to curbing the deforestation became clear with the significant reduction of the devastation from 2004. Some Brazilian policies, such as the Amazonian Fund, received non-refundable funds to finance projects aiming at preserving the forest.

With regard to the conservation of the Amazon throughout history, as the first and second phases proposed by Benjamin²⁶ suggest, the complete lack of control of the deforestation of the Amazon was dominant during most of the

²⁵ FONSECA Jr, Gelson. A legitimidade e outras questões internacionais. São Paulo: Paz e Terra, 1998.

²⁶ BENJAMIN, Antonio. . Introdução ao direito ambiental brasileiro, pp. 41-91. In: MACHADO, Paulo Affonso; MILARÉ, Édis (Orgs). Doutrinas Essenciais de Direito Ambiental. v. I. São Paulo: Revista dos Tribunais, 2011, p. 45.

time. In the 1990s, despite the democratic regime and the so called “credentials’ renovation”, the debate on climate change was not yet consolidated and the deforestation rates were very high still. According to the consolidated historical series of the Legal Amazon Deforestation Monitoring Project (PRODES), a significant and steady reduction²⁷ on deforestation can only be noticed from 2004, in line with the greater relevance of global warming in the international agenda. Although the deforestation rates increased from 2013, they never reached pre-2004 levels or had a strong annual variation.

This scenario, however, started to change after the inauguration of the current president, Jair Bolsonaro, and the appointment of Ricardo Salles as environment minister. In the first year of an administration whose first minister of foreign affairs, Ernesto Araújo, denied global warming, the deforestation annual rate increased at a record high level of 84%²⁸ according to *Instituto Nacional de Pesquisas Espaciais* (INPE)²⁹. Furthermore, the environmental management as a whole has been going through major setbacks, such as the deterioration of environmental surveillance bodies³⁰. It did not take long until the current Administration’s environmental management started being challenged both internationally and domestically. Some examples are the declaration of the French president, Macron, defending the internationalization of the Amazon³¹, the fact that Norway and Germany blocked the resources directed to the Amazon Fund³² and the repercussions of the deforestation published in the main communication vehicles worldwide, including the analysis of a study that suggests that the Amazon might be nearing a tipping

²⁷ INPE; PRODES; Terra Brasilis. Taxas de desmatamento – Amazônia Legal – Estados. 3 June 2022, http://terrabrasilis.dpi.inpe.br/app/dashboard/deforestation/biomes/legal_amazon/rates

²⁸ DEUTSCHE WELLE. Desmatamento na Amazônia cresce 104% em novembro. 14 December 2019, <https://www.dw.com/pt-br/desmatamento-na-amaz%C3%B4nia-cresce-104-em-novembro/a-51667077>

²⁹ National Institute for Space Research.

³⁰ See section C.2 of the United Nations Framework Convention on Climate Change.

³¹ COLETTA, Ricardo; FERNANDES, Talita; NEVES, Lucas. Macron diz que discutir status internacional da Amazônia é ‘questão que se impõe’. FOLHA DE SÃO PAULO. 26 August 2019, <https://www1.folha.uol.com.br/ambiente/2019/08/macron-diz-que-discutir-estatuto-internacional-da-amazonia-e-questao-que-se-impoe.shtml>

³² NEGRÃO, Heloisa. Após Alemanha, Noruega também bloqueia repasses para Amazônia. EL PAÍS. 15 August 2019, https://brasil.elpais.com/brasil/2019/08/15/politica/1565898219_277747.html

point of switching from rainforest to a savannah³³. This dire contemporary context is the main reason behind the conduction of the present research and one of its results is the analysis of the violations of international laws bellow presented.

³³ BOERS, N.; BOULTON, C.A., LENTON, T.M. Pronounced loss of Amazon rainforest resilience since the early 2000s. *Nature Climate Change*. n. 12. pp. 271–278. 2022, <https://www.nature.com/articles/s41558-022-01287-8.pdf>

2. INTERNATIONAL CONVENTIONS THAT PROTECT DIRECTLY OR INDIRECTLY THE ENVIRONMENT IN THE BRAZILIAN AMAZON

2.1 PARIS AGREEMENT

A – Scope and main goals of the Convention

Treaty adopted in December 2015. It entered into force in Brazil in June 2017, approved by the legislative Decree 9.073/17.

According to Article 2, the Agreement “aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty”. To do so, the treaty includes the following goals: “holding the increase in the global average temperature”; “increasing the ability to adapt to the adverse impacts of climate change”; and “making finance flows consistent with a pathway towards low greenhouse gas emissions”.

B – Articles violated or possibly violated

Article 3:

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13

with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

Article 4:

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing

its level of ambition, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

Article 5:

1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1 (d), of the Convention, including forests.

2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as

joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

C – Facts that show or suggest the treaty’s violation

1) In potential violation of Articles 3 and 4, the following fact is presented:

* 07/04/2022³⁴: Reduction of Brazil’s new National Determined Contribution (NDC) due to a methodological update on the emissions accounting of the base year. In the “New First NDC”³⁵ presented, Brazil confirmed the target presented previously: reducing 37% of greenhouse gas emissions until 2025 and 43% until 2030. However, since there was a change in the emission calculation basis concerning the base year (2005), Emilio la Rovere (2021)³⁶ explains that the targets confirmed and presented allow Brazil to emit

³⁴ UNFCCC. Paris Agreement Brazil’s Nationally Determined Contribution (NDC). 2022, [www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Brazil%20First/Brazil%20First%20NDC%20\(Updated%20submission\).pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Brazil%20First/Brazil%20First%20NDC%20(Updated%20submission).pdf). Paris Agreement Brazil’s Nationally Determined Contribution (NDC). 2022, <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Brazil%20First/NdcBrasilEN%2020201208.pdf>. BRAZIL. Third National Communication of Brazil to the United Nations Framework Convention on Climate Change. v. III. Brasília: Ministério da Ciência, Tecnologia e Inovação, 2016, p. 333, <https://unfccc.int/resource/docs/natc/branc3es.pdf>

³⁵ It is important to highlight that all the other countries that presented a second NDC had the year of 2030 as reference. Thus, they did not present a second first NDC, repeating the base year of 2025, like Brazil did. Formally speaking, this could also constitute a violation, since the

Agreement has no provision allowing re-edition of already presented NDC, especially if they reduce the emission goals, violating the principle of retrocession prohibition, which is implicit in the Agreement. See BORGES, Caio et al. Análise Científica e Jurídica da nova Contribuição Nacionalmente Determinada (NDC) Brasileira ao Acordo de Paris. Organizado por Instituto Clima e Sociedade. Rio de Janeiro: Instituto Clima e Sociedade. 2021. p. 29, https://59de6b5d-88bf-463a-bc1c-d07bfd5afa7e.filesusr.com/ugd/d19c5c_9bc29d5e06a14fd0af3d38c042ac0cb7.pdf

³⁶ BORGES, Caio et al. Análise Científica e Jurídica da nova Contribuição Nacionalmente Determinada (NDC) Brasileira ao Acordo de Paris. Organizado por Instituto Clima e Sociedade. Rio de Janeiro: Instituto Clima e Sociedade. 2021, https://59de6b5d-88bf-463a-bc1c-d07bfd5afa7e.filesusr.com/ugd/d19c5c_9bc29d5e06a14fd0af3d38c042ac0cb7.pdf

approximately 400 Mton/CO₂-eq more between 2025 and 2030, if compared to the original first NDC. The provisions of Articles 3 and 4 are clear when they state that new NDCs should represent a progression over time and not a regression. Changes in the NDCs can be made at any time only to enhance the level of ambition in curbing emissions. Therefore, when the Brazilian federal administration presents a NDC that, in practice, reduces the country's contribution, it is breaching the Agreement. It should be mentioned that on 28 November 2021 Brazil updated³⁷ its long-run target for neutralizing emissions from 2060 to 2050, but the document did not mention anything about the goals aforementioned that represent a setback in terms of emissions. In addition, during the COP 26, the Brazilian administration increased the target of reducing emissions to 50% until 2030³⁸. Yet, experts affirm that it only represents a return to the level of the first NDC, which would mean stagnation and, thus, the continuation of the Agreement's breach.

2) In potential violation of the main goal of the agreement and its article 5, the following facts are presented:

³⁷ UNFCCC. Paris Agreement Brazil's Nationally Determined Contribution (NDC). 2022, <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Brazil%20First/2021%20-%20Carta%20MRE.pdf>

³⁸ G1. Brasil anuncia meta de reduzir em 50% emissão de gases poluentes até 2030. 1 November 2021, <https://g1.globo.com/jornal-nacional/noticia/2021/11/01/brasil-anuncia-meta-de-reduzir-em-50percent-emissao-de-gases-poluentes-ate-2030.ghtml>

³⁹ INPE. Monitoramento do desmatamento da Floresta Amazônica brasileira por satélite, 2022, <http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>. INPE. Estimativa de desmatamento por corte raso na Amazônia

* 18/11/2021³⁹: According to Instituto Nacional de Pesquisas Espaciais (INPE), the year of 2020 witnessed the highest deforestation rate of Legal Amazon in 15 years. There was a loss of 13.235 Km².

* 19/11/2021⁴⁰: According to the historical track record of deforestation, also made available by INPE, it is possible to notice an average increase of 52,9% in the Amazonian deforestation during three years of Bolsonaro's administration (average of 11.405 km² between 2019 and 2021), in comparison with the three previous years.

* 01/07/2022⁴¹: Amazon has first half of 2022 with the largest area under deforestation alert in 7 years. The area under deforestation alert in the Legal Amazon during the first semester of 2022 is the largest in seven years, according to the monitoring system of the National Institute for Space Research (INPE). It was 3,750 km² between January 1st and June 24th (the equivalent of more than two cities of São Paulo), a rate higher than in previous years even without taking into account the last 6 days of the month.

Legal para 2021 é de 13.235 km². 2021, <https://www.gov.br/inpe/pt-br/assuntos/ultimas-noticias/divulgacao-de-dados-prodes.pdf>

⁴⁰ #Colabora. Inpe: desmatamento na Amazônia cresceu 22% em um ano. 19 November 2021, <https://projecolabora.com.br/ods13/inpe-desmatamento-na-amazonia-cresceu-22-em-um-ano/>

⁴¹ GARCIA, Mariana. Amazônia tem 1º semestre de 2022 com maior área sob alerta de desmate em 7 anos. G1. 1 July 2022, <https://g1.globo.com/meio-ambiente/noticia/2022/07/01/amazonia-tem-1o-semester-de-2021-com-maior-area-sob-alerta-de-desmate-em-7-anos.ghtml>

* Weakening of the main deforestation monitoring institution of Brazil – INPE – , which can be confirmed by the following facts:

- 05/08/2019⁴²: Dismissal of INPE’s director, Ricardo Galvão, and appointment of the military Darcton Policarpo Damião as provisional Director.

- 13/07/2020⁴³: Publication of a letter written by INPE’s technical staff members denouncing the existence of a parallel structure inside the institution, which would be effectively in charge, despite the fact that it does not exist formally. According to the letter, “it is important to mention that this parallel management follows a vertical military command structure, which clearly goes against the contemporary trends of research with collaborative networks, academic freedom and scientific autonomy”.

- 19/07/2021⁴⁴: INPE’s duty to monitor the Amazon deforestation was transferred to Sistema Nacional de Meteorologia (SNM) and Instituto Nacional de Meteorologia (Inmet), which do not have INPE’s expertise to

carry out the task. According to Gilberto Camara, INPE’s ex-director, the institution is vulnerable since Ricardo Galvão was dismissed for defending it from Bolsonaro’s attacks. He was temporarily replaced by a military (Darcton Policarpo) and now by a civilian who is as weak as the minister (of Science and Technology, Marcos Pontes). They do not defend INPE and other governmental bodies are taking advantage and taking over the duties that have been carried out by INPE for decades. Inmet wants to disclose data about the fires, but what does it know about it? Nothing. It is a total shame”.

D – Treaty monitoring bodies and/or imposition of sanction

Although Article 15 of the Agreement has a provision on a mechanism to facilitate implementation, composed of an expert-based committee, it has no contentious legal nature. Therefore, there is no organ created by the Agreement that is capable of imposing countermeasures or sanctions against countries that violate the treaty.

2.2 UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

⁴² AMARAL, Luciana. Após físico demitido, ministro aponta militar como diretor interino do Inpe. UOL. 5 August 2019, <https://noticias.uol.com.br/meio-ambiente/ultimas-noticias/redacao/2019/08/05/apos-fisico-demitido-ministro-aponta-militar-como-diretor-interino-do-inpe.htm>

⁴³ G1. Técnicos do Inpe dizem em carta que há ‘estrutura paralela’ no órgão. 13 July 2020, <https://g1.globo.com/politica/noticia/2020/07/>

[13/tecnicos-do-inpe-dizem-em-carta-que-ha-estrutura-paralela-no-orgao.ghtml](https://g1.globo.com/politica/noticia/2020/07/13/tecnicos-do-inpe-dizem-em-carta-que-ha-estrutura-paralela-no-orgao.ghtml)

⁴⁴ GRANDELLE, Renato. Governo Bolsonaro quer amordacar o Inpe, acusa ex-diretor do órgão. O GLOBO. 19 July 2021, https://oglobo.globo.com/sociedade/meio-ambiente/governo-bolsonaro-quer-amordacar-inpe-acusa-ex-diretor-do-orgao-25114491?utm_source=globo.com&utm_medium=oglobo

A – Scope and main goals of the Convention

The United Nations Framework Convention was adopted on March 21, 1994. It entered into force in Brazil in July 1998, approved by the legislative Decree N° 2.652.

Article 2 of the Convention has as its ultimate objective to achieve, in accordance with the relevant provisions of the Convention, the stabilization of greenhouse gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to continue in a sustainable way.

B – Articles violated or possibly violated

Article 3

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account

different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

Article 4

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

(d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all 11 greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally,

with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;

Article 6

In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall:

(b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:

(ii) The development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.

⁴⁵ For other facts besides the ones mentioned bellow, see the items C..1 and C.2 on Paris Agreement and C.2 on San Salvador Protocol.

⁴⁶ INPE. Estudo liderado por pesquisadora do INPE/MCTI mostra que a Amazônia passou a ser fonte de carbono devido às queimadas, ao desmatamento e às mudanças climáticas. 14 July 2021, <http://www.ccst.inpe.br/estudo-liderado-por-pesquisadora-do-inpe-mcti-mostra-que-a-amazonia-passou-a-ser-fonte-de-carbono-devido-as-queimadas-ao-desmatamento-e-as-mudancas-climaticas/>

C – Facts that show or suggest the treaty’s violation⁴⁵

1) In potential violation of articles 3 and 4, in addition to the facts mentioned in item C.2 of the Paris Agreement, the following facts are also presented:

* 14/07/2021 - Study led by INPE/MCTI researcher shows that the Amazon became a source of carbon due to fires, deforestation and climate change⁴⁶. The study showed that the deforestation of the Amazon contributes to the reduction of the forest's capacity to be a carbon sink. Regions with deforestation above 30% cause the dry season to intensify and the forest to emit ten times more carbon than in areas where deforestation is below 20%. This is due to the increasing emission of greenhouse gases from fires and, as a result, a lower absorption of carbon dioxide by the forest. The region that generates the greatest concern for specialists is the southeastern Amazon, located in the south of Pará and north of Mato Grosso, due to the greater extension of burnt areas.

* 01/10/2020 – “Pushing the cattle through”⁴⁷: 5 moments in which Ricardo Salles loosened environmental rules⁴⁸. Ricardo Salles, since he took

⁴⁷ This is a Brazilian expression used by the former Minister of the Environment during an official meeting. It meant that the government should have taken the opportunity to push through and change all the environmental protection rules, as the media was mainly covering the covid pandemic and had left aside the environmental problems.

⁴⁸ SHALDERS, André. Passando a Boiada: 5 momentos nos quais Ricardo Salles afrouxou regras ambientais. BBC. 1 October 2020, <https://www.bbc.com/portuguese/brasil-54364652>

over the Ministry of Environment, has been adopting measures that are being criticized for relaxing Brazilian environmental policies and legislation. As a result, a group of prosecutors from Ministério Público Federal (MPF) has filed a lawsuit of administrative improbity against the Minister, asking the Federal Court to remove him from office. They claim that the Minister is sponsoring "the weakening of (environmental) policies, which has repercussions in the violations (of rights) and illegalities that are being discussed in the lawsuit". Among the attempts to loosen environmental protection in the country are: (a) In mid-May 2020, the President Jair Bolsonaro and Ricardo Salles signed a decree transferring from the Ministry of Environment to the Ministry of Agriculture the power to grant concession of national forests; b) In April 2020, Salles published an order forcing federal government environmental agencies to adopt the more lenient Forest Code understanding instead of the more restrictive Atlantic Forest Law; c) In April 2019, Ricardo Salles and Jair Bolsonaro signed a decree creating the need for a "conciliation hearing" between inspectors and violators whenever an environmental fine is imposed. In practice, such hearings create one more obstacle to the enforcement of environmental fines; d) In May 2019 there was a change in the composition of the National Council of the Environment, Conama, by decree. The number of members fell from 96 to 23, and the proportion of federal government representatives increased

in relation to those appointed by state governments and environmental NGOs; e) At the end of April 2020, Ricardo Salles decided to exonerate civil servants from top positions in Ibama's environmental enforcement area. The decision was criticized because it was taken soon after Ibama had conducted successful operations against illegal miners on indigenous lands in Pará.

* 21/09/2021 - Bolsonaro lied 5 times and distorted another 7 times in a speech at the UN⁴⁹. During the event, which took place in September 2021 in New York, the President declared that the country has 66% of forest areas intact from the time of colonization and that the demarcation of indigenous lands is sufficient for the native peoples. However, the currently demarcated indigenous lands add up to only 13.8% of the Brazilian territory and deforestation in the Amazon has hit successive records during his mandate. The forest area in the Brazilian territory is less than 60% of the total, which also includes planted forests. He also stated that according to data from INPE's DETER system, this is the third consecutive year in which deforestation was above 6,000 km in the period from January to August.

2) In potential violation of Article 6 (b)(II) of the Convention, especially the part that refers to strengthening national institutions, the following facts are presented:

⁴⁹ ARREGUY, Juliana. "Bolsonaro mentiu 5 vezes e distorceu outras 7 em discurso da ONU. UOL. 21 September 2021,

<https://noticias.uol.com.br/confere/ultimas-noticias/2021/09/21/mentiras-bolsonaro-discurso-na-onu.htm>

* 19/05/2021 – Eduardo Bim is the 1st Ibama president removed from office⁵⁰. Eduardo Bim and Ricardo Salles, Minister of the Environment, are suspected of being part of a "serious criminal scheme of a transnational nature", since the former revoked the Normative Instruction of 2015, even with broad resistance from Ibama's technical area, and issued an order authorizing the export of wood without inspecting the cargo and benefiting logging companies. After the order, which had retroactive effect, only the Forest Origin Document (DOF) would be necessary for exporting wood, which consequently legalized thousands of loads of wood that had been previously exported. It should be noted that this act was tacitly authorized by Ricardo Salles, Minister of the Environment and Bim's boss.

* 05/02/2021 - With Bolsonaro, the government's environmental department has already lost 10% of its employees⁵¹. The reduction occurred both in the Ministry of Environment (MMA) and in the main monitoring agencies, the Brazilian Institute of Environment and Renewable Natural Resources (Ibama) and the Chico Mendes Institute for Biodiversity Conservation (ICMBio). As of 1 January 2019, the three agencies had a total of 5,794 active employees. Today, that number is 5,216 - a reduction of 9.97%, or 578 fewer civil servants. As the staff was already reduced before the beginning of the Bolsonaro

government, the new reduction contributed to further hinder the application of Brazilian environmental policy, according to civil servants and experts heard by the report.

* 27/05/2020⁵² - Bolsonaro Government weakens environmental agencies and militarizes the sector. The President of the Republic, Jair Bolsonaro, by issuing a decree of Law-and-Order Guarantee (GLO), creates the so-called "Operation Green Brazil 2", determining that the Armed Forces would protect the Amazon from May 11 to June 10, 2020. The amount spent for the operation is around R\$ 60 million and will include 3,815 military personnel, 110 land vehicles, 20 vessels and 12 aircraft. It is worth noting that the annual budget used by Ibama for environmental control and inspection actions throughout the country is R\$ 76 million. This fact shows the option of the Bolsonaro administration to weaken environmental enforcement agencies such as Ibama and ICMBio with budget cuts in favor of militarizing the environmental protection policy sector.

D – Treaty monitoring bodies and/or imposition of sanction

The Convention provides that the Conference of the Parties shall keep its implementation under regular review.

⁵⁰ OBSERVATÓRIO DO CLIMA. Eduardo Bim é o 1º presidente do Ibama afastado no cargo. 19 May 2021, <https://www.oc.eco.br/eduardo-bim-e-1o-presidente-do-ibama-afastado-no-cargo/>

⁵¹ SHALDERS, André. Com Bolsonaro, área ambiental do governo já perdeu 10% dos servidores. BBC. 5 February 2021,

<https://www.bbc.com/portuguese/brasil-55849937>

⁵² BRASIL NORTE COMUNICAÇÃO. Governo Bolsonaro enfraquece órgãos ambientais e militariza setor. 27 May 2020, <https://bncamazonas.com.br/municipios/governo-bolsonaro-enfraquece-orgaos-ambientais-e-militariza-setor/>

In addition, it will periodically review the obligations of the Parties, promote and facilitate the exchange of information on measures adopted by the Parties, and evaluate the implementation by the Parties of the measures adopted (Article 7). Despite monitoring, the Convention does not provide for the imposition of sanctions

or a complaint mechanism among States parties.

2.3 CONVENTION ON BIOLOGICAL DIVERSITY

A – Scope and main goals of the Convention

Treaty adopted on 5 June 1992. In Brazil, it was approved by the legislative Decree 2.519/1998 and entered into force in March 1998.

According to Article 1 of the Convention, “[t]he objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity. The sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding”.

B – Articles violated or possibly violated

Article 3: Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Article 6: General Measures for Conservation and Sustainable Use

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

- (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned; and
- (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 8: In-situ conservation

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations.

C – Facts that show or suggest the treaty’s violation

1) In potential violation of the main goal of the agreement and its articles 3 and 6, the following facts are presented:

* 11/2021 – Amazon Assessment Report 2021⁵³. The biodiversity of terrestrial and freshwater ecosystems is under threat due to deforestation, habitat fragmentation, overexploitation, pollution, and climate change, both in the tropical Andes and lowland Amazon. Anthropogenic disturbances have put plants and animals, both terrestrial and aquatic, at high risk of extinction, particularly those with restricted geographical

ranges. It is also changing the functioning of forests and other ecosystems, impacting carbon storage and sequestration, decreasing its productivity and resilience to disturbance, and disrupting the natural hydrological cycle, affecting the capacity of the Amazon Basin to supply goods and services essential to humanity.

* 11/2021 – Amazon Assessment Report 2021⁵⁴. Of the more than 15,000 Amazonian tree species, 36%-57% are likely to qualify as globally threatened under the International Union for Conservation of Nature (IUCN)’s extinction risk criteria.

* 14/07/2021 – More than 10,000 species are at risk of extinction in the Amazon, says report⁵⁵. More than 10 thousand species of plants and animals are at risk of extinction due to the destruction of the Amazon forest - 35% of which has already been deforested or degraded, according to a draft scientific report released on Wednesday (14). Produced by the Scientific Panel for the Amazon (SPA), the 33-chapter report gathers research on the world's largest tropical forest from 200 scientists around the globe. It is the most detailed assessment of the state of the forest to date and makes clear both the Amazon's vital role in the world's climate and the profound risk it is under.

⁵³ SCIENCE PANEL FOR THE AMAZON. Amazon Assessment Report 2021, p. 30, <https://www.theamazonwewant.org/wp-content/uploads/2022/06/220717-SPA-Executive-Summary-2021-EN.pdf>

⁵⁴ SCIENCE PANEL FOR THE AMAZON. Amazon Assessment Report 2021, p. 30, [https://www.theamazonwewant.org/wp-](https://www.theamazonwewant.org/wp-content/uploads/2022/06/220717-SPA-Executive-Summary-2021-EN.pdf)

[content/uploads/2022/06/220717-SPA-Executive-Summary-2021-EN.pdf](https://www.theamazonwewant.org/wp-content/uploads/2022/06/220717-SPA-Executive-Summary-2021-EN.pdf)

⁵⁵ EISENHAMMER, Stephen; GRIFFIN, Oliver. Mais de 10 mil espécies correm risco de extinção na Amazônia, diz relatório. CNN. 14 July 2021, <https://www.cnnbrasil.com.br/nacional/mais-de-10000-especies-correm-risco-de-extincao-na-amazonia-diz-relatorio/>

* 31/03/2022 – How Amazon Deforestation Impacts Earth⁵⁶. The Amazon is a major player in determining global climate. It transpires water which creates clouds and transports moisture around the globe. It provides most of the world's biodiversity, with 1 in 10 species living there. However, scientists have revealed that climate change, deforestation and forest fires mean that the Amazon has reached a tipping point. It is drying out, so unless action is taken quickly, the situation will become irreversible, and mitigating actions will be futile. If the Amazon dries out, it could begin to contribute more to climate change than it currently prevents. The carbon that rainforests store is released when trees are cut down, die, or burned, usually because of deforestation.

* 04/09/2021 – Illegal wood exploitation in the Amazon takes place in areas as big as three times the size of the city of São Paulo⁵⁷. For the first time researches point where the illegal exploitation of wood happened and the consequences: 464.759 acres have been used for the activity, which is three times bigger than the city of São Paulo in terms of deforestation.

2) In potential violation of Article 8(a)(d)(k), the following facts are presented:

* 10/05/2019 – The Federal Administration will proceed to a general revision of the environmentally protected areas of the country⁵⁸. The former Minister of Environment Ricardo Salles affirmed, while in office, that part of the environmentally protected areas was created without any technical criteria and the revision would assess which areas needed the protection. The 334 protected areas represent 9.1% of the national territory and 24.4% of the country's coastline. These unities are distributed in 12 different categories, five of which being of integral protection. The latter are under stricter rules concerning access and use. The seven remaining allow different levels of exploitation as long as it is sustainable. The Ministry of Environment considers altering the environmental category of each region, transforming the restricted areas in places open to tourism and extractivism.

* 19/07/2021 – The number of fines paid due to environmental crimes decreased in 93%⁵⁹. Changes in the regulations of the Ministry of the Environment turned inspections and

⁵⁶ LYNG, Georgie. How Amazon Deforestation Impacts Earth. Azo Cleantech. 31 March 2022, <https://www.azocleantech.com/article.aspx?ArticleID=1491>

⁵⁷ WATANABE, Phillippe. Amazônia tem área de madeira explorada do tamanho de três cidades de São Paulo. 4 September 2021, <https://www1.folha.uol.com.br/ambiente/2021/09/amazonia-tem-area-de-madeira-explorada-do-tamanho-de-tres-cidades-de-sao-paulo.shtml>

⁵⁸ BORGES, André. Governo fará revisão geral das 334 áreas de proteção ambiental no País. ESTADÃO. 10 May 2019, <https://sustentabilidade.estadao.com.br/notici>

as/geral.governo-fara-revisao-geral-das-334-areas-de-protecao-ambiental-no-pais.70002822999#:~:text=O%20ministro%20Ricardo%20Salles%20afirmou.da%20faixa%20marinha%20do%20Pa%C3%ADs. Therefore, there is no organ created by the Agreement that is capable of imposing countermeasures or sanctions against countries that violate the treaty.

⁵⁹ VERENICZ, Marina. Número de multas pagas por crimes ambientais na Amazônia cai 93%. CARTA CAPITAL. 19 July 2021, <https://www.cartacapital.com.br/sustentabilidade/numero-de-multas-pagas-por-crimes-ambientais-na-amazonia-cai-93/>

trials more difficult, as investigations of environmental infractions became more bureaucratic.

D – Treaty monitoring bodies and/or imposition of sanction

The Conference of the Parties is supposed to oversee the implantation of the treaty through a list of measures foreseen in Article 23(4). It includes, for instance, examining periodic reports presented by each State Party about the measures they have adopted

(Article 26). However, the body does not have any power to impose countermeasures or sanctions, nor is it possible for States Parties to file complaints against each other.

2.4 NAGOYA PROTOCOL

A – Scope and main goals of the Convention

Treaty adopted in October 2010. In Brazil, it was approved by the legislative Decree 136/2020 and entered into force on 4 March 2021.

The Nagoya Protocol is an international instrument that aims at enhancing the least developed pillar of the Convention on Biological Diversity (CBD): the access to genetic resources and the fair and equitable sharing of benefits arising from their utilization.

B – Articles violated or possibly violated⁶⁰:

Article 8: Special Considerations

a. In the development and implementation of its access and benefit-sharing legislation or regulatory requirements, each Party shall: (a) Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research.

C – Facts that show or suggest the treaty’s violation⁶¹

⁶⁰ DIAS, Bráulio Ferreira de Souza; SILVA, Manuela da; MARINELLO, Luiz Ricardo. Comentários e recomendações para regulamentar o Protocolo de Nagoya no Brasil. Revista da ABPI, 171, March/April 2021,

https://portal.fiocruz.br/sites/portal.fiocruz.br/files/documentos/revista_abpi_-_171_-_recomendacoes_regulamentar_protocolo_de_nagoia_1_0.pdf

⁶¹ DIAS; SILVA; MARINELLO, 2021.

1) In potential violation of Article 8 (a), the following fact is presented:

* Decrease in science funding in Brazil⁶²: In the last 10 years, the main research institutions in Brazil lost approximately 51% of the funding to finance projects of institutes and universities. This situation is likely to worsen due to the budgetary cuts announced by Bolsonaro's administration in 2021. In particular, the Ministry of Education, the one to which most research entities are related, had its budget reduced in the amount of R\$ 802,6 million. The deterioration of Brazilian science is unprecedented mainly because the budgetary cuts affect public institutes and universities, which account for more than 95% of the national scientific research.⁶³ In regard to the Amazon more specifically, the budgetary cuts directly affect the Instituto Nacional de Pesquisa da Amazônia (INPA)⁶⁴, which is one of the main institutions responsible for carrying out scientific research in many areas concerning the rainforest.

The Protocol provides that the Conference of the Parties, serving as the meeting of the Parties, is responsible for promoting compliance with the provisions of this Protocol and to address cases of non-compliance (Article 30). Among the measures the Conference may adopt, there are the following: make recommendations on any matters necessary for the implementation of this Protocol; establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol; seek and utilize [...] the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies (article 26). Despite the provisions about monitoring, procedures and mechanisms of compliance, the Protocol did not give the Conference any power to impose sanctions nor is there the possibility of complaints between states.

D – Treaty monitoring bodies and/or imposition of sanction

⁶² FERNANDES, Samuel. Cortes diminuem bolsas de pesquisa e prejudicam publicações científicas. Folha de São Paulo. 24 January 2022, <https://www1.folha.uol.com.br/ciencia/2022/01/cortes-diminuem-bolsas-de-pesquisa-e-e-prejudicam-publicacoes-cientificas.shtml?origin=folha>. LIMA, Eudes. Apagão na Ciência. ISTOÉ. 16 April 2021, <https://istoe.com.br/apagao-na-ciencia/>

⁶³ MOURA, Mariluce. Universidades Públicas respondem por mais de 95% da produção científica do Brasil. Academia Brasileira de Ciências. 15 April 2019,

<https://www.abc.org.br/2019/04/15/universidades-publicas-respondem-por-mais-de-95-da-producao-cientifica-do-brasil/>

⁶⁴ INPA. Missão, Áreas de atuação e Contribuição social, 2022, <https://www.gov.br/mcti/pt-br/composicao/rede-mcti/instituto-nacional-de-pesquisas-da-amazonia>. SANTOS, Izabel. Inpe recebe “abraço” em ato contra cortes de Bolsonaro e diretora chama a polícia. Amazônia Real. 5 September 2019, <https://amazoniareal.com.br/inpa-recebe-abraco-em-ato-contra-cortes-de-bolsonaro-e-diretora-chama-a-policia/>

2.5 CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY

A – Scope and main goals of the Convention

The Protocol, which is part of the Convention on Biological Diversity, entered into force internationally in 2003, and was approved in Brazil by the legislative Decree N° 5.705 in 2006.

According to Article 1 of the Protocol, its objective “is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements”.

B – Articles violated or possibly violated

Article 1: Objective

In accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of

biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

Article 2: General provisions

1. Each Party shall take necessary and appropriate legal, administrative and other measures to implement its obligations under this Protocol.

2. The Parties shall ensure that the development, handling, transport, use, transfer and release of any living modified organisms are undertaken in a manner that prevents or reduces the risks to biological diversity, taking also into account risks to human health.

5. The Parties are encouraged to take into account, as appropriate, available expertise, instruments and work undertaken in international forums with competence in the area of risks to human health.

Article 16: Risk Management

2. Measures based on risk assessment shall be imposed to the extent necessary to prevent adverse effects of the living modified organism on the conservation and sustainable use of biological diversity, taking also into account risks to human health, within the territory of the Party of import.

C – Facts that show or suggest the treaty’s violation⁶⁵

1) In potential violation of Articles 1, 2 and 16 (2) of the Protocol, the following facts are presented:

* 28/10/2019 – Genetic Modified Organisms (GMO) approval more than doubled during Bolsonaro’s administration⁶⁶. The approval of GMO in Brazil rocketed in the first year of Jair Bolsonaro’s administration. Until September, the Comissão Técnica Nacional de Biossegurança (CTNBio) had allowed 22 new GMOs, according to the data of Conselho de Informações sobre Biotecnologia (CIB), which is a NGO of scientific nature that works with biotechnology issues. The number of approvals is big compared to the previous periods. The plant variant GM, with the total of 107 allowed in the country, is the most controversial one. They are developed by multinational companies for the crops of soybeans, corn, cotton, eucalyptus and sugarcane in large plantations.

* 21/02/2020 – The “Devastation Law Project” threatens indigenous’ food as it allows the growing of transgenic food in indigenous lands⁶⁷. The law Project

191/2020, whose author is the President of the Republic, intends to allow the growing of transgenic plants in indigenous lands and the research with genetically modified organisms (GMO) in the Conservation Unities. The idea of growing transgenic plants in indigenous lands has serious implications. Firstly, it has a direct connection with these peoples’ food safety, as it can lead to the contamination of the seeds they use traditionally. As a consequence, the indigenous would not only lose their seeds, but they would also become dependent on “technological packages” that link the growing of the seeds to the use of pesticides and other expensive and inadequate products to their feeding habits. The second implication refers to global food safety. The traditional seeds have enormous genetic diversity, which allows the plants to be resistant against plagues and diseases, as well as adaptable to climate change. The decrease in diversity weakens the world’s food safety.

3) 15/02/2019 – Minister of the Environment visits indigenous lands and defends the use of GMO in the region⁶⁸.

⁶⁵ For other facts besides the ones mentioned bellow, see the itens C.1, C.2 and C.3 in the Convention on Biological Diversity.

⁶⁶ OLIVEIRA, Cida de. Aprovação de organismos transgênicos mais do que duplica no governo de Jair Bolsonaro. Rede Brasil Atual. 28 October 2019, <https://www.redebrasilatual.com.br/ambiente/2019/10/aprovacao-de-organismos-transgenicos-mais-do-que-duplica-no-governo-de-jair-bolsonaro/>

⁶⁷ BENSUSAN, Nurit. PL da devastação ameaça alimentação dos índios ao liberar transgênicos em terras indígenas. Instituto Socioambiental.

21 February 2020, <https://www.socioambiental.org/pt-br/blog/blog-do-isa/pl-da-devastacao-ameaca-alimentacao-dos-indios-ao-liberar-transgenicos-em-terras-indigenas>

⁶⁸ KAPA, Raphael. Ministro do Meio Ambiente visita território indígena e defende uso de transgênicos na região. O Globo. 15 February 2019, <https://oglobo.globo.com/brasil/sustentabilidade/ministro-do-meio-ambiente-visita-territorio-indigena-defende-uso-de-transgenicos-na-regiao-23454117>

After being criticized for affirming that he had never been to the Amazon, the Minister of the Environment, Ricardo Salles, visited the indigenous land Paresi in Mato Grosso, within the Legal Amazon area. The use of GMO, despite being forbidden, is already a reality in the region. In 2018, IBAMA issued a fine of R\$ 2,7 million against indigenous and indigenous associations that grew transgenic corn and soybeans in 4 indigenous lands. The agreement was supposedly made with farmers for the use of the land, although the law 11.460 forbids GMOs. Bolsonaro's Administration is expressly in favor of using GMO in indigenous lands even though the discussions about the use these lands are complex. Whilst is allowed to use the lands for growing crops, there are limitations concerning trade and the use of GMO.

D – Treaty monitoring bodies and/or imposition of sanction

According to Article 29, “The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this

Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall: (a) Make recommendations on any matters necessary for the implementation of this Protocol; (b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol”;

In addition, Article 33 states that “Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol”.

Despite these provisions, the Protocol did not establish any organ with power to impose countermeasures or sanctions, nor is it possible for States Parties to file complaints against each other.

2.6 FRAMEWORK AGREEMENT ON THE ENVIRONMENT OF MERCOSUR

A – Scope and main goals of the Convention

The Agreement entered into force in Brazil in June 2004, approved by the legislative Decree N° 5.208.

From the principles enshrined in the Rio Declaration on Environment and Development of 1992, Article 4 of the Agreement “has as its goal the sustainable development and the protection of the environment through the articulation of economic, social and environmental dimensions,

contributing to a better quality of the environment and the populations' lives".

B – Articles violated or possibly violated

Article 5: Cooperation in environmental matters

The States Parties shall cooperate in the fulfillment of the international environmental agreements to which they are party. Such cooperation may include, as appropriate, the adoption of common policies for the protection of the environment, the conservation of natural resources, the promotion of sustainable development, the issuance of joint communications on topics of common interest and the exchange of information on national positions in international environmental forums.

Article 6: Environmental Cooperation

The States Parties shall deepen the analysis of environmental problems in the sub-region with the participation of the relevant national agencies and organizations of civil society. They shall carry out, inter alia, the following actions:

(a) Increase exchanges of information on environmental laws, regulations, procedures, policies and practices, as well as their social, cultural, economic and health aspects, in particular, those

which may affect trade or competitive positions within MERCOSUR;

(b) Encourage national environmental policies and instruments with a view to optimizing environmental management;

C – Facts that show or suggest the treaty's violation

1) In potential violation of Articles 5 and 6 (a)(b) of the Agreement, the following facts are presented⁶⁹:

* 23/04/2021 - Bolsonaro issues record-high number of environmental decrees and experts say that 'cattle' are being pushed through⁷⁰. President Jair Bolsonaro has issued more environmental decrees in two years of government than all predecessors in the last three decades, considering the same period of office. A study by the Observatory of the Brazilian Legislative, of the State University of Rio de Janeiro (UERJ), shows that, besides the increase in the number of acts, Bolsonaro has a different approach concerning the content of the acts, which prioritize the military management of the Amazon and the advance of economic activities in protected areas. The decrees have allowed the president to change conservation norms without first going through Congress. Congressmen and

⁶⁹ For other facts besides the ones mentioned below, see the following items: C.1-C.3 in Convenção da Diversidade Biológica; C.3 and C.6 a C.8 in Convenção-Quadro da ONU sobre Mudança do Clima; C.2 in Protocolo de Nagoya; C.4, C.8 -C.10 in Protocolo de San Salvador.

⁷⁰ WETERMAN, Daniel; TURTELLI, Camila. Bolsonaro bate recorde de decretos ambientais

e especialistas afirmam que 'boiada' está passando. Terra. 23 April 2021, <https://www.terra.com.br/noticias/ciencia/sustentabilidade/bolsonaro-bate-recorde-de-decretos-ambientais-e-especialistas-afirmam-que-boiada-esta-passando,3ef70680a122650d0dfff4b3aa11a0e75m630h2d.html>

environmentalists accuse the Executive of "passing the cattle", as suggested by the Minister of the Environment, Ricardo Salles, in April 2020, during a ministerial meeting. At it, Salles stated that the federal administration should take advantage of the press' focus on the covid-19 pandemic to "push through the cattle" and change the environmental sector's regulations.

* 15/12/2020 - Brazilian environmental policy is blocking the Mercosur-EU agreement, says European ambassador in Brazil⁷¹. The Mercosur-EU agreement, the world's largest free trade treaty, has as its main point the reduction of import tariffs, which can reach zero. The text of the agreement was closed on June 28, 2019, after 20 years of discussions. According to the EU ambassador in Brazil, Ignacio Ybáñez, the negotiations are "in a 'stand-by' situation" until the Brazilian government commits to adopt public policies to control deforestation in the Amazon. In 2019 and 2020, deforestation in the rainforest grew at record-high rates and environmental tragedies happened in other biomes, such as the fires in the Pantanal. Recently, the European Parliament approved a resolution that obliges Brazilian companies to guarantee that there is no deforestation in their production chains. For the negotiations to resume, says the ambassador, the next step is the signing of a political declaration in which Brazil and the

other countries of the agreement commit to public policies to reduce deforestation in the region. Only after this the schedule can move forward: the next steps are the signing of the agreement; its ratification by the European Council and then by the member states; and its voting in the European Parliament. Likewise, the agreement will need to be approved by the parliaments of the four countries of Mercosur: Brazil, Argentina, Paraguay, and Uruguay.

* 06/02/2020 - Bolsonaro excludes civil society from participating in the National Environment Fund council⁷². President Jair Bolsonaro has issued a decree on 6 February 2020, excluding civil society from the deliberative council of the National Environment Fund (FNMA). The fund, managed by the Ministry of Environment, was created in 1989 to support projects on rational and sustainable use of natural resources. FNMA manages the resources that are analyzed by the Council, which is responsible for approving the projects that will receive the contributions. In the 2020 budget, R\$33.687,88 have been allocated for the Fund's activities. Last year, out of the budget of over R\$50 million, R\$289,000 were invested in the administration of the Fund. However, nothing was allocated in projects, and more than R\$ 49 million went to the contingency reserve. It is not the first time that the Bolsonaro administration reduces the participation of civil

⁷¹ SHALDERS, André. Política ambiental brasileira está travando acordo Mercosul-UE, diz embaixador europeu no Brasil. BBC. 15 December 2020, <https://www.bbc.com/portuguese/brasil-55320832>

⁷² MANZANO, Fabio. Bolsonaro exclui participação da sociedade civil de conselho do

Fundo Nacional do Meio Ambiente. O Globo. 6 February 2020, <https://g1.globo.com/natureza/noticia/2020/02/06/bolsonaro-exclui-participacao-da-sociedade-civil-de-conselho-do-fundo-nacional-do-meio-ambiente.ghtml>

society in councils related to environmental policy. He had already decreased the total number of civil society members on the National Environment Council (Conama) from 22 to 4 in May 2019.

D – Treaty monitoring bodies and/or imposition of sanction

The Framework Convention does not stipulate any sanctions for States Parties in case of breach. However, its article 8 states that "disputes arising among the States Parties with respect to the application, interpretation, or non-compliance with the provisions contemplated in this Agreement shall be settled by means of the dispute settlement system in force in Mercosur.

2.7 CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

A – Scope and main goals of the Convention

The Convention was adopted in March 1973 and entered into force in Brazil in November 1975, through the Legislative Decree No. 54.

The convention aims to protect certain species of flora and fauna internationally against overexploitation in international trade.

B – Articles violated or possibly violated

Article VIII

The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof.

C – Facts that show or suggest the treaty's violation

1) In potential violation of Article VIII of the Convention, the following facts are presented:

* 27/11/2020: Ipê, the symbol tree of Brazil, was withdrawn from the international list of endangered species protection ⁷³ : Because of growing exploitation and illegal sale, the Ipê was on a list of endangered species of the Convention on International Trade in Fauna and Flora Species. In August last year, the Brazilian government asked the Convention to remove the species from the list, despite warnings from technicians to preserve the Ipê. With this, it can be sold as a common species, without restrictions and

⁷³ UOL. Ipê árvore símbolo do Brasil, sai de lista internacional de proteção de espécies ameaçadas. 27 November 2020, https://cultura.uol.com.br/noticias/14350_ipe-

[arvore-simbolo-do-brasil-sai-de-lista-internacional-de-protecao-de-especies-ameacadas.html](https://cultura.uol.com.br/noticias/14350_ipe-arvore-simbolo-do-brasil-sai-de-lista-internacional-de-protecao-de-especies-ameacadas.html)

without protection. Before, this native wood could only be exported with an authorization issued by Ibama (Brazilian Institute of Environment and Renewable Natural Resources) according to a normative instruction from 2011, a measure to combat illegal exploitation.

* 17/09/2019: Rainforest Mafias: How Violence and Impunity fuel deforestation in Brazil's Amazon⁷⁴. For Brazil to meet its Paris Agreement commitment, it will need to rein in the criminal groups that are driving much of the deforestation. And that, in turn, will require protecting the people who are struggling to defend the forest from their onslaught. During this first year in office, President Jair Bolsonaro has shown little interest in doing either. On the contrary, he has scaled back environmental laws, weakened federal environmental agencies, and harshly criticized organizations and individuals working to preserve the rainforest. His words and actions have effectively given the green light to criminal networks involved in illegal logging, according to environmental officials and local residents interviewed by Human Rights Watch. By doing so, he is putting both the Amazon and the people who live there at great risk – and he is undercutting Brazil's ability to fulfill its commitment to reduce its greenhouse gas emissions and help mitigate global warming.

* 03/2022: Demand for luxury decks in Europe and North America is pushing ipê to the Brink of extinction across the amazon Basin & threatening the forest frontier⁷⁵: The amount of Ipê trees has severely declined over the past 30 years and may disappear from the Amazon, warns a report by Forest Trends. The balance sheet shows that 96% (451,000 cubic meters out of 470,000) of the Ipê trees exported from the Pan-Amazon between 2017 and 2021 came from Brazil. In those 5 years, sales grew 76% compared to the 2010-2016 period.

D – Treaty monitoring bodies and/or imposition of sanction

The Conference of the Parties established by the Convention may make recommendations it deems appropriate, but they are not legally binding. Moreover, the Convention also provides that any disputes between state parties shall be resolved through negotiations or submitted to arbitration, upon mutual consent. The articles read as follows:

Article XIII

3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may

⁷⁴ HUMAN RIGHTS WATCH. Máfias do Ipê: Como a Violência e a Impunidade Impulsionam o Desmatamento na Amazônia Brasileira. 17 September 2019, <https://www.hrw.org/pt/report/2019/09/17/333519>

⁷⁵ NORMAN, Marigold; ZUNINO, Alfredo Rodriguez. Forest Policy Trade and Finance Initiative: Demand for luxury decks in Europe

and North America is pushing Ipê to the Brink of extinction across the amazon Basin & threatening the forest frontier. Forest Trends. Report. March 2022, <https://www.forest-trends.org/wp-content/uploads/2022/03/Demand-for-Luxury-Decks-in-Europe-and-NA-is-Pushing-Ipe-to-the-Brink-of-Extinction.pdf>

make whatever recommendations it deems appropriate.

Article XVIII

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to

negotiation between the Parties involved in the dispute. 2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

2.8 CONVENTION ON NATURE PROTECTION AND WILDLIFE PRESERVATION IN THE WESTERN HEMISPHERE

A – Scope and main goals of the Convention

The Convention entered into force in August 1948, approved in Brazil by the legislative Decree N° 3.

The Convention for the Protection of Flora, Fauna, and Natural Scenic Beauties of the Countries of the Americas, in its preamble, mentions the objectives of protecting and conserving in the natural environment of the countries of the Americas "specimens of all species and genera of indigenous flora and fauna, including migratory birds, in sufficient numbers and in places large enough to prevent their extinction by all human means; and [...] conserve landscapes of great beauty, extraordinary geological formations, regions and natural objects of aesthetic interest or historical or scientific value, and places characterized by primitive conditions."

B – Articles violated or possibly violated

Article III

The Contracting Governments agree to prohibit hunting, killing and capturing of members of the fauna and destruction or collection of representatives of the flora in national parks except by or under the direction or, control of the park authorities, or for duly authorized scientific investigations.

Article IV

The Contracting Governments agree to maintain the strict wilderness reserves inviolate, as far as practicable, except for duly authorized scientific investigations or government inspection, or such uses as are consistent with the purposes for which the area was established.

C – Facts that show or suggest the treaty's violation⁷⁶

1) In potential violation of article III of the Convention, the following facts are presented:

* 12/02/2021⁷⁷: Presidential Decree 10.627 changed the rules for the use of guns in Brazil, benefiting collectors, sport shooters and hunters⁷⁸.

* 12/16/2020⁷⁹: The bill 5544/2020 regulating sport hunting, with government support. The project has been criticized for several reasons, among which the possibility of stimulating indiscriminate hunting of the Brazilian fauna. The Decree and this project potentially violate Article III of the Convention, which provides for the prohibition of hunting.

2) In potential violation of article IV of the Convention, the following fact is presented⁸⁰:

* 2/06/2020 and 31/03/2021: Brazil accounted for one-third of the world's virgin (primary) forest loss in 2019⁸¹ and 2020⁸²: "Once again, Brazil tops the annual list of primary forest loss, with a total of 1.7 million acres lost in 2020, more than three times than the second place. Primary forest loss in Brazil increased by 25 percent in 2020 compared to the previous year. Most of the wet primary forest loss in the country occurred in the Amazon, which experienced a 15% increase from the previous year, totaling 1.5 million hectares. The data also show a number of fire scars. The Brazilian Amazon suffered a greater number of fires in 2020 than in 2019. This is worrying, as large fires rarely occur in humid tropical forests such as the Amazon. In 2019,

⁷⁶ BRASIL. Quarta Comunicação Nacional do Brasil à Convenção Quadro das Nações Unidas sobre Mudança do Clima. Brasília: Ministério da Ciência, Tecnologia e Inovações, 2021, https://www.gov.br/mcti/pt-br/acompanhe-o-mcti/sirene/publicacoes/comunicacoes-nacionais-do-brasil-a-unfccc/arquivos/4comunicacao/sumario_executivo_4cn_brasil_web.pdf. Brazil, 2020. Paris Agreement Brazil's Nationally Determined Contribution (NDC) (<https://www4.unfccc.int/sites/ndcstaging/PublicDocuments/Brazil%20First/NdcBrasilEN%2020201208.pdf>). BRAZIL. Third National Communication of Brazil to the United Nations Framework Convention on Climate Change. v. III. Brasília: Ministério da Ciência, Tecnologia e Inovação, 2016, p. 333, <https://unfccc.int/resource/docs/natc/branc3es.pdf>

⁷⁷ BRASIL. Decreto Nº 10.627, de 12 de fevereiro de 2021, <https://www.in.gov.br/en/web/dou/-/decreto-n-10.627-de-12-de-fevereiro-de-2021-303712257>

⁷⁸ BBC. Novo decreto de armas: quem são os 'CACs', beneficiados por medida de Bolsonaro. 8 May 2019,

<https://www.bbc.com/portuguese/brasil-48196755>

⁷⁹ BRASIL. Câmara de Deputados. Projeto de Lei 5544/2020, dispõe sobre a autorização para caça desportiva de animais no território nacional, <https://www.camara.leg.br/propostas-legislativas/2267350>

⁸⁰ For other facts, see also item C.2 of Paris Agreement and C.1 of Convention on international trade in endangered species of wild fauna and flora.

⁸¹ COSTA, Camilla. Brasil foi responsável por um terço da perda de florestas virgens no mundo em 2019, diz relatório. BBC. 2 June 2020, <https://www.bbc.com/portuguese/brasil-52887285>. WEISSE, Mikaela; GOLDMAN, Liz. Perda de florestas tropicais primárias aumenta em 12% de 2019 a 2020 no mundo. WRI BRASIL. 31 March 2021, <https://wribrasil.org.br/noticias/perda-de-florestas-tropicais-primarias-aumenta-em-12-de-2019-2020-no-mundo>

⁸² WEISSE, Mikaela; GOLDMAN, Liz. A destruição das florestas tropicais primárias aumentou em 12% de 2019 a 2020. Global Forest Watch. 31 March 2021, <https://www.globalforestwatch.org/blog/pt/data-and-research/dados-globais-de-perda-de-cobertura-de-arvore-2020/>

most fires occurred in areas that had already been deforested, as ranchers prepared the land for agriculture and pasture." In 2021, more than 40% of the primary tropical forest loss happened in Brazil⁸³. These data reveal a clear violation of Article IV of the Convention, which demands the preservation of virgin forests.

D – Treaty monitoring bodies and/or imposition of sanction

The Convention does not provide for monitoring bodies or sanctions in case of violations of its norms.

2.9 AMAZON COOPERATION TREATY

A – Scope and main goals of the Convention

Treaty adopted in July 1978. It entered into force in Brazil in August 1980, approved by the legislative Decree 85.050.

According to Article 1, the treaty aims at promoting “the harmonious development of their respective Amazonian territories in such a way that these joint actions produce equitable and mutually beneficial results and achieve also the preservation of the environment, and the conservation and rational utilization of the natural resources of those territories”.

B – Articles violated or possibly violated

Article IV: “The Contracting Parties declare that the exclusive use and utilization of natural resources within their respective territories is a right inherent in the sovereignty of each state and that the exercise of this right shall not be subject to any restrictions

other than those arising from International Law”.

C – Facts that show or suggest the treaty’s violation

The probable violations of several treaties concerning the Amazonian territory, as demonstrated before, are the facts that show the violation of Amazon Cooperation Treaty. Despite the fact that Article IV has a provision about sovereignty over the Amazonian territory and its natural resources, the same article is clear when it states that sovereignty is limited by the obligations arising from Public International Law. Therefore, when there are clear signs showing the violation of many international conventions related to Amazonian natural resources, there is a breach of Article IV of the ACT as well. As an example, the reader could check the analysis of the following conventions: Paris Agreement and Convention on International Trade in Endangered Species of Wild Fauna and Flora.

⁸³ WEISSE, Mikaela; GOLDMAN, Liz. Perda florestal permanece resistentemente alta em 2021. Global Forest Watch. 28 April 2022,

<https://www.globalforestwatch.org/blog/pt/data-and-research/dados-globais-de-perda-de-cobertura-de-arvore-2021/>

**D – Treaty monitoring bodies
and/or imposition of
sanction**

The treaty did not create any monitoring body, nor does it have any provision on sanctions in case of violations.

SOFT LAWS AND NOT RATIFIED TREATIES THAT PROTECT DIRECTLY OR INDIRECTLY THE ENVIRONMENT IN THE BRAZILIAN AMAZON

I. RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT

A – Scope and main goals of the declaration

It was adopted on 12 August 1992.

It has the goal of working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system, recognizing the integral and interdependent nature of the Earth.

B – Articles violated or possibly violated

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and

developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

C – Facts that show or suggest the violation of the declaration

In all the treaties analyzed above, there are facts that reveal potential violation of the main goal of the declaration and/or the principles aforementioned. Exemplifying, the following conventions can be listed:

- Paris Agreement (item C.2)
- Convention for the Protection of the Flora, Fauna, and Natural Scenic Beauties of the Countries of the Americas (item C.1)
- Convention on International Trade in Endangered Species of Wild Flora and Fauna (item C.1)
- United Nations Framework Convention on Climate Change (item C.2)

II. ESCAZU AGREEMENT

A – Scope and main goals of the Convention

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters In Latin America And The Caribbean (Escazú Agreement) was adopted on 4 March 2018 and entered in force 22 April 2021. Brazil signed the Agreement in September 2018 but has not yet ratified it. This means that compliance with the treaty cannot be demanded from the country, but at the same time Brazil has an obligation not to frustrate its purpose.

According to Article 1, its main goal is to “guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and

the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development”.

D – Treaty monitoring bodies and/or imposition of sanction

Article 18 provides that a “Committee to Support Implementation and Compliance is hereby established as a subsidiary body of the Conference of the Parties to promote the implementation of the present Agreement and to support the Parties in that regard”. However, this Committee has a consultative nature, and it is non-adversarial, non-judicial and non-punitive.

III. LETICIA’S PACT

A – Scope and main goals of the Pact

This Pact was adopted on 6 September 2019 after meetings among Bolivia, Brazil, Ecuador, Colombia,

Guiana, Peru and Suriname that took place in Leticia, Colombia. The Pact's main goal is to "strengthen the coordinated action to value the forests and the biodiversity, as well as to fight against the deforestation and forest degradation" (Article 1). Furthermore, the Pact aims at "establishing regional cooperation mechanisms and the exchange of information that will allow combating the illegal activities that put

in jeopardy the Amazon's conservation" (Article 2).

D – Treaty monitoring bodies and/or imposition of sanction

The Pact did not create any monitoring body, nor does it have any provision on sanctions in case of violations.

3. INTERNATIONAL PROTECTION OF HUMAN RIGHTS AND INDIGENOUS PEOPLES

Although international laws protecting human rights can be found as early as in the 19th century, the International Human Rights Law (IHRL) only developed effectively after the end of World War II. Even after the holocaust, it took decades for the topic to be systematically addressed. Despite the fact that the subject was included in the San Francisco Charter, which is the treaty that created the UN, the document only mentioned human rights in a vague and superficial manner, making it legally impossible to claim and/or enforce these rights only based on the Charter. One year after the UN's foundation, in 1946, the Commission on Human Rights was established. Two years later, in 1948, the UN's General Assembly adopted the Universal Declaration of Human Rights. The Commission, however, was a weak body that lacked binding powers and was deeply influenced by political interests. The Declaration, on its turn, was also a non-legally binding document, as it did not have the legal nature of a treaty.

Binding universal conventions on human rights only entered into force in the 1970s. With the Soviet Union's collapse, human rights, with their inherently liberal nature, became increasingly far-reaching and widespread in terms of countries adhering to international norms. The 1990s are a landmark for the strengthening of human rights in the international system, and in the following decades the topic gained even more space⁸⁴. Contemporarily, IHRL is quite complex, including regional and global systems, composed of dozens of treaties, conventions, customary norms and declarations in addition to human rights courts, which demonstrates that this area has become unquestionably part of international law and of international relations, constituting an International Regime, just like the environmental one.

⁸⁴ NORMAND, Roger; ZAIDI, Sarah. Human Rights at the UN The Political History of Universal Justice. Bloomington and Indianapolis: Indiana University Press, 2008.

In Brazil's case, the same process aforementioned in the environmental field of "credentials' renovation" during the 1990s happened in the human rights area. The country's ratification, in 1989, of the UN Convention Against Torture was followed by several other ratifications: the UN Convention on the Rights of the Child (1990); International Covenant on Civil and Political Rights (1992); the American Convention on Human Rights (1992); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1995). Furthermore, in 1998 Brazil accepted the contentious jurisdiction of the Inter-American Court of Human Rights.

When we analyze the current situation of the Amazon, several human rights violations can be noticed. Nevertheless, the connection between environment and human rights has rarely been direct and only recently it has been gaining more visibility, with scholarly and jurisprudential development of the topic. Notwithstanding the fact that the main conventions on human rights do not enshrine any explicit right to a healthy and/or preserved environment, only the European Court of Human Rights already has over 300 precedents⁸⁵ on the matter, including topics such as pollution, dumping of toxic waste and natural disasters, amongst others. In the Inter-American Court, the precedents are significantly less voluminous and are generally related to cases involving indigenous peoples, which some analysts consider to be an oblique or transversal path to address environmental issues⁸⁶.

In spite of the low development of environmental issues in the Inter-American system, it should be mentioned that the Consultative Opinion OC-23/17⁸⁷ made it clear that the right to a healthy environment is a fundamental right and that States have several obligations when it comes to ensuring that their actions do not put in jeopardy these rights. According to the IACHR, 'This

⁸⁵ EUROPEAN COURT OF HUMAN RIGHTS. Environment and the European Convention on Human Rights. July 2022, https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf

⁸⁶ BECKER, Gécica AB. A proteção reflexa do meio ambiente na jurisprudência da Corte Interamericana dos Direitos Humanos. Revista IIDH, v. 60. 2014, <https://www.corteidh.or.cr/tablas/r34017.pdf#page=28>

⁸⁷ CORTE INTERAMERICANA DE DERECHOS HUMANOS. Opinión Consultiva OC-23/17. 15 November 2017, https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf

Opinion constitutes one of the first opportunities that the Court has had to refer extensively to the State obligations arising from the need to protect the environment under the American Convention⁸⁸.

Although there is a growing trend to recognize the inescapable interconnection between environment and human rights, it is undeniable that the impact of environmental degradations on indigenous peoples is much more direct and significant. Whilst the environmental destruction could cause rather serious damage to most peoples' health, when it comes to indigenous peoples it is about threatening their own existence as such. Therefore, below we will address the main landmarks concerning the indigenous peoples' rights in the context of the International Regime of Human Rights and the potential consequences of the destruction of the Amazon for them.

3.1 INDIGENOUS PEOPLES' RIGHTS IN THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Around the world there are between 350 and 500 million indigenous peoples. They live in over 90 countries and represent more than 5 thousand different cultures. Their lands occupy approximately 20% of the Earth's surface, where we can find around 80% of the planet's biodiversity. Although these peoples amount to 6% of the world's population, they are 15% of those who face extreme poverty⁸⁹. In Latin America and Brazil, the facts are even harsher. According to *Instituto Brasileiro de Geografia e Estatística* (IBGE)⁹⁰, there are almost 900 thousand indigenous peoples in the country, which means 0,47% of the total population. However, 49% of them were among the 20% poorest in Brazil⁹¹. In Latin America, as reported by the International Labor

⁸⁸ CORTE INTERAMERICANA DE DERECHOS HUMANOS. Opinión Consultiva OC-23/17. 15 November 2017, p. 20, https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf

⁸⁹ WORLD BANK, 14/04/2022. Available at <https://www.worldbank.org/en/topic/indigenouspeoples#1>

⁹⁰ Brazilian Institute of Geography and Statistics.

⁹¹ FIOCRUZ. Indígenas, negros e mulheres são mais afetados por pobreza e desemprego no Brasil, diz CEPAL. 4 November 2016, <https://dssbr.ensp.fiocruz.br/indigenas-negros-e-mulheres-sao-mais-afetados-por-pobreza-e-desemprego-no-brasil-diz->

Organizations (ILO), indigenous peoples represent around 30% of those in extreme poverty.⁹²

When it comes to the inclusion of indigenous rights in the international human rights system, it is possible to identify two main periods: 1945 – 1993 and 1994 – to present. The first period (1945 – 1993) was characterized by the creation and development of the international normative framework on indigenous rights. The first relevant international law on the topic was the ILO Convention 107, from 1957. It regulated the protection and integration of indigenous and tribal peoples from independent countries. This convention, however, was later considered assimilationist by indigenous peoples, thus being modified and turned into ILO Convention 169, which is the single international treaty on indigenous peoples rights up to this day. All the other international documents concerning autochthones peoples do not have the legal nature of a treaty, which means that they are more fragile in terms of legal protection. With respect to the ILO Convention 169, only 23 countries have ratified it, including Brazil.

The ILO Convention 169 welcomes the pluralist perspective and makes the respect for the culture, institutions and ways of life of the indigenous peoples internationally mandatory to the State parties. For this purpose, article 2 of the Convention prescribes the governments' duty to assure the effective participation of the peoples on any matter that concerns them. Furthermore, article 2.2 provides that the State parties shall promote “the full realization of the social, economic and cultural rights of the peoples” located within their respective territory “with respect for their social and cultural identity, their customs and traditions and their institutions”.

The second period (1994 – present) has been characterized by the establishment of international monitoring policies and institutional protection

[cepal/#:~:text=As%20disparidades%20atravessam%20outros%20n%C3%ADveis,parte%20mais%20pobre%20da%20popula%C3%A7%C3%A3o](#)

⁹² ONU. OIT quer ações urgentes contra pobreza e desigualdades entre povos indígenas. 3 February 2020, <https://news.un.org/pt/story/2020/02/1702812>

programs. In this second phase there was the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. Although the Declaration is a soft law and thus not legally binding, it is considered a rather relevant milestone for the indigenous peoples, who actively participated in the negotiations of the Declaration text.

The Declaration has three pillars: right to self-determination; right to land and resources; and cultural rights. Many rights that did not use to be accepted as human rights were recognized as such in the Declaration, like the right to land as a collective human right, the right to self-determination through free, prior and informed consent, spiritual rights and spiritual relation to the land and cultural rights as a response to ethnocide. Stamatopoulou⁹³, an expert in indigenous peoples and human rights, affirms that, in her opinion, the greatest contribution of indigenous peoples to the development of human rights was the recognition of collective rights as human rights, which broke the dominant taboo based on western tradition that considered human rights only as something individual. She states that UNDRIP constitutes the boldest recognition of collective rights as human rights.

The Inter-American Court of Human Rights (IACHR) has a set of relevant decisions regarding human rights violations of indigenous peoples. In particular, there is the Case of Plan de Sánchez Massacre v. Guatemala, which can be used as an interesting precedent with respect to the recognition of genocidal policy of a State perpetrated against an indigenous community inside its national territory.

This Case concerns the international responsibility of the State of Guatemala for the massacre of 268 people, in 1982, at the village of Plan de Sánchez, which was inhabited mostly by members of the indigenous Mayan people. It has been confirmed that the State has failed to investigate the facts and punish the perpetrators. According to the Inter-American Commission on Human

⁹³ COLUMBIA UNIVERSITY. Course on Indigenous Peoples' Rights. Stamatopoulou's lecture on significance of collective land ownership. 2022, <https://www.edx.org/course/indigenous-peoples-rights>

Rights “the massacre was carried out within the framework of a genocidal policy of the Guatemalan State carried out with the intention of totally or partially destroying the Mayan indigenous people”⁹⁴.

In the decision, the Court clarified that the crime of genocide is not the subject matter of the American Convention on Human Rights and, therefore, it lacks jurisdiction to determine violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Nevertheless, it “does not mean that the Court cannot take into account acts that this Convention classifies as genocide, as aggravating circumstances of violations of the rights protected by the American Convention on Human Rights (with a direct effect on the determination of reparations)”⁹⁵.

Another important IACHR decision, in the context of the protection of indigenous peoples’ land rights, was the judgment of February 5, 2018, of the Case of the Xucuru Indigenous People and its members v. Brazil. The Court has decided that Brazil has violated the right to collective property established in article 21 of the American Convention of Human Rights, because of the delay in the demarcation process of the Xucuru people’s indigenous territory, located in the region of Pernambuco.

Despite these advances, barriers remain against the effective realization of indigenous land demarcation in Brazil, notably the so called “time frame” thesis. According to this thesis, indigenous peoples would only be entitled to their traditional lands if they were occupying them on October 5, 1988, or if they can prove the existence of a legal or factual dispute over the lands at this time. The “time frame” of October 5, 1988, is the date of the promulgation of the Federal Constitution. This matter deserves careful attention of the Federal Supreme Court, because once adopted this thesis would restrict the

⁹⁴ CORTE INTERAMERICANA DE DIREITOS HUMANOS. Caso Masacre Plan de Sánchez vs. Guatemala. 29 April 2004. para 2, corteidh.or.cr/docs/casos/articulos/seriec_105_esp.pdf

⁹⁵ CORTE INTERAMERICANA DE DIREITOS HUMANOS. Caso Masacre Plan de Sánchez vs. Guatemala. 29 April 2004. para 24, corteidh.or.cr/docs/casos/articulos/seriec_105_esp.pdf

constitutional rights of indigenous peoples and wrongly legitimize removals from their traditional lands.

When we analyze the current situation of the Amazon bearing in mind the general international laws on human rights and the specific ones on indigenous people's rights, the violations are unquestionable. Nonetheless, we should stress that systematic attacks against indigenous peoples in Brazil have happened before and, hence, it is not a situation that is pertinent only to the current federal administration. As mentioned in the introduction, these peoples have been fighting for survival since the beginning of the Portuguese colonization and, in many periods of the Brazilian history, there have been systematic and institutionalized attacks against them. One example was the military dictatorship (1964-1985). The Figueiredo Report from 1967, an over 7-thousand-page document produced by the military administration, contains evidence revealing "killings of entire communities, tortures and all sorts of cruelties inflicted towards indigenous all over the country" (MPF)⁹⁶. According to MPF, the text drafted by the prosecutor at the time, Jader de Figueiredo, shows that there were "complaints of human hunting using machine guns and dynamite thrown from airplanes, deliberately inoculation of smallpox in isolated groups and the donation of sugar mixed with strychnine poison."

Although many of the attacks against indigenous peoples since the beginning of the colonization may be considered more serious than what has been happening since 2019, the contemporary world is subject to a legal and public order much different from the ones in the past. In Brazil's case, since 1988, with the inauguration of the constitutional democratic regime still in place today, there are minimum standards of human rights, including indigenous peoples' rights that are directly addressed in the Constitution and in many human rights conventions that the country ratified. Therefore, taking the current democratic regime as reference, even though there have been

⁹⁶ MINISTÉRIO PÚBLICO FEDERAL. Relatório Figueiredo, <http://www.mpf.mp.br/atuacao-tematica/ccr6/dados-da-atuacao/grupos-de-trabalho/violacao-dos-direitos-dos-povos-indigenas-e-registro-militar/relatorio-figueiredo>

violations in every administration, nothing compares to what is happening now. In this context, two situations should be highlighted: the deforestation and the specific attacks against indigenous peoples.

The current destruction of the Amazon at an alarming rate constitutes on its own an attack against the survival of indigenous peoples from this Brazilian region. Although the deforestation is mainly explained by economic reasons – increasing the area destined to agriculture and livestock, illegal exploitation of wood, mining, among others – the indigenous face a growing pressure against their territories and suffer directly with the changes in the ecosystems, the decrease of natural resources, the pollution and the greater susceptibility to diseases and poverty. A healthy and preserved environment is the very foundation for many, if not most, of the indigenous peoples' human rights, such as subsistence, education, health, culture, survival/existence as a group, self-determination and development. It should be mentioned that 100% of isolated indigenous peoples from Brazil live in the Legal Amazon territory and the destruction of the forest would take an exceptionally tragic toll on them. Furthermore, indigenous peoples in general are particularly vulnerable to climate change, as their lifestyle is heavily nature-based.

Apart from the deforestation that has immediate consequences for the native peoples of the Amazonian region, there are also the attacks specifically targeted at these peoples, which are either carried out or supported by the current administration. The weakening of public institutions that should protect the indigenous rights⁹⁷, such as FUNAI, the National Indian Foundation, and the legislative proposal that allows the exploitation of water resources and mining in indigenous lands are only two examples among many that reveal the significant deterioration of the indigenous' current situation in the Brazilian Amazon.

⁹⁷ IN; INESC. Dossiê Fundação anti-indígena: Um retrato da FUNAI sob o governo Bolsonaro. 2002, https://www.inesc.org.br/wp-content/uploads/2022/07/Fundacao-anti-indigena_Inesc_INA.pdf

The escalation of violence and environmental degradation relates to PIL in several ways. Although indigenous peoples and their rights have always been generally neglected worldwide, there are many international laws that protect them directly or indirectly. Notwithstanding the fact that their implementation is often difficult, the current situation of the Amazon has had repercussions all around the world, including in the most powerful countries. Despite this being a political element, and not a legal one, it can play an outstanding role when it comes to international accountability. And since there are more international laws with clear accountability mechanisms in the areas of human rights and international criminal law than in the environmental one, the attacks against the indigenous peoples may serve as a better foundation to international responsibility than the deforestation alone.

With respect to international criminal law, as previously seen, the Rome Statute of the International Criminal Court has no provisions on environmental crimes, unless in cases of war crime, which does not apply to Brazil's case. The situation of the indigenous peoples could, however, be investigated under the provisions of crimes against humanity and genocide and the environmental degradation would be a key element, for the protection of their lands is essential for their physical, cultural and spiritual existence. There are already some charges about this situation before the ICC. If, on the one hand, the international criminal justice is unquestionably known for its selectivity, on the other hand, it is also characterized by the symbolic effect of the cases it tries. Even though environmental issues have become more prominent than the indigenous situation, the systematic attacks against the latter could be a way for the ICC to send the world the message that mass environmental destruction and the massacre of native peoples cannot no longer be tolerated.

Concerning the field of human rights, the Inter-American Court has already passed many sentences on cases involving indigenous peoples so a hypothetical decision condemning Brazil in this matter would not be unprecedented. However, it would be an innovation if the Court recognized in a sentence that the deforestation has serious impacts not only on indigenous

peoples, but also on the whole population, constituting a human rights violation.

Another possible legal repercussion, although not a judicial one, would be in the realm of self-determination of peoples. In spite of the fact that this is a rather sensitive matter for all countries in general, we shall not ignore the theoretical possibility of state succession. Peoples that are deprived of internal self-determination – oppressed, excluded, discriminated or prevented from taking part in the country's society in equal terms as the general population – may be entitled to become independent according to PIL. Therefore, in a context of mass violence, growing oppression and institutional policies restricting fundamental rights, the indigenous peoples affected could theoretically claim for emancipation.

We should stress that countries are always extremely cautious about this possibility because, when they support this kind of initiative, they might become more vulnerable in case there are similar future claims in their own territories. Sovereignty and territorial integrity are the main – if not the most important – pillars of the international system. Nevertheless, when we analyze the contemporary geopolitical context in which the relevance of the Amazon has significantly increased, including declarations in favor of its internationalization, the support of powerful countries for specific state secession initiatives can become a reality. It would certainly not be the first time they would support a separatist movement that is aligned with their interests.

The success or failure of this kind of movement and the external support - genuine or fake – to the indigenous rights are out of the legal realm and would demand a specific political analysis. What matters is that, depending on the intensity of the attacks, specific separatist movements may be legal according to public international law. Below, the international norms on human rights, including those related to indigenous peoples, will be analyzed in light of contemporary facts regarding the Brazilian Amazon. It should be noted that

only violations directly or indirectly related to forest destruction will be addressed, so there are possibly other violations of the same conventions that will not be analyzed due to lack of connection with the central topic of this report.

4. CONVENTIONAL NORMS THAT PROTECT DIRECTLY OR INDIRECTLY HUMAN AND INDIGENOUS RIGHTS APPLICABLE TO THE BRAZILIAN AMAZON

4.1 AMERICAN CONVENTION ON HUMAN RIGHTS (PACT OF SAN JOSE)

A – Scope and main goals of the Convention

Treaty adopted in November 1969. It entered into force in Brazil in November 1992, approved by the legislative Decree 678.

According to Article 1, “the States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition”.

B – Articles violated or possibly violated

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be

protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

Article 21. Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and property except upon payment of just compensation, for reasons of public enjoyment to the interest of society.

2. No one shall be deprived of his property or social interest, and in the cases and according to the forms established by law.

3. Usury and any other form of exploitation of man by man shall be prohibited by law.

C – Facts that show or suggest the treaty’s violation

1) In potential violation of articles 4 and 5 of the Convention, the following facts are presented:

* 04/2020⁹⁸: “CPT data shows that 2019 was another violent year in the countryside, with 32 murders, which is 14% more than in 2018. We highlight that in 2019 there was an increase in the number of indigenous leaders killed in conflicts on the countryside, which is the biggest in 10 years. There were 7 killings in the states of Amapá (1), Amazonas (3) and Maranhão (3). By analyzing the data, it is possible to conclude that a considerable part of the people murdered in the countryside in 2019 were leaders of rural and indigenous movements who fought tirelessly for land reform and made complaints about land grabbing, illegal extraction of wood, invasions of miners”.

* 05/2021⁹⁹: “In 2020, among the 18 murders registered by Comissão Pastoral da Terra (CPT) in the context of conflicts in the countryside 7 were indigenous, which represents 39% of the victims. Among the 35 people victims of attempt murder, 12 were indigenous, 34% of the victims. When it comes to death threats, among the 159 people threatened, 25 were indigenous, 16% of the victims. These

data reveal that indigenous leaders are subject to a violence perpetrated in a context in which the government encourages invasions and the land exploitation

* 05/2021¹⁰⁰: “In 2019, violence against indigenous increased exponentially in Brazil. In Rondonia, Kaporuna people are at risk of genocide, exposed to invaders in the middle of a pandemic. The indigenous land where Uru-Eu-Wau-Wau people live has been subject to invasions and organized criminal acts that aim at allotting part of the territory. In this context of conflict and threats Ari Uru-Eu-Wau-Wau was found dead on the road of Tarilândia District on 18 April 2020. In 2019, 9 conflicts involving indigenous lands were registered by CPT in Rondonia. 4 of those related to invasions of Uru-Eu-Wau-Wau’s territory.

2) In potential violation of article 21 of the Convention, the following facts are presented:

* 05/2021¹⁰¹: “The main types of violence committed by them [agents] in 2020: ‘invasion’, ‘land grabbing’, ‘illegal deforestation’. 81.225 families were victims of invasion, among which are 58.327 indigenous (72%); 19.489 were subject to land grabbing (37% indigenous); and 25.559 were affected by illegal deforestation (60% indigenous)”. The report of 2019 had

⁹⁸ COMISSÃO PASTORAL DA TERRA. Conflitos no Campo Brasil 2019. 2020. p. 173, <https://www.cptnacional.org.br/publicacoes-2/destaque/5167-conflitos-no-campo-brasil-2019>

⁹⁹ COMISSÃO PASTORAL DA TERRA. Conflitos no Campo Brasil 2020, 2021, p. 154, <https://www.cptnacional.org.br/downlods?task=download.send&id=14242&catid=41&m=0>.

¹⁰⁰ COMISSÃO PASTORAL DA TERRA. Conflitos no Campo Brasil 2020, 2021, p. 248, <https://www.cptnacional.org.br/downlods?task=download.send&id=14242&catid=41&m=0>.

¹⁰¹ COMISSÃO PASTORAL DA TERRA. Conflitos no Campo Brasil 2020, 2021. p. 9, <https://www.cptnacional.org.br/downlods?task=download.send&id=14242&catid=41&m=0>

shown that 26621 indigenous families had been affected.

* 06/02/20¹⁰²: Federal Administration presented the Law Project (PL) 191/2020, which aims at regulating the exploitation of indigenous lands.

* 14/12/2020¹⁰³: Federal administration supported the presentation of the Law Project 5518/2020, which aims at allowing concessions for private agents to explore the forests.

* 08/2021: Amongst the indigenous lands, Yanomami's territory is the one that is under the strongest pressure¹⁰⁴. Among the indigenous lands, Yanomami's one, located in the states of Amazonas and Roraima, was the one that faced the highest number of occurrences, which means it was the most pressured between August 2020 and July 2021. This year, the territory was attacked by miners, which engendered lawsuits seeking protection. Out of the other nine territories most pressured by the deforestation, seven are located in the state of Pará. These indigenous lands are respectively: Apyterewa, Munduruku, Cachoeira Seca do Iriri, Trincheira/Bacajá, Andirá/Marau, Kayapó and Alto Rio Guamá. Tapajós APA is the one that is under the highest

pressure in the whole Amazonian territory”.

* 30/09/2019¹⁰⁵: During the first year of Bolsonaro's administration, the number of invasions of indigenous lands more than doubled in comparison with 2018. The claims went from 109 cases to 256, which is an increase of 134,9%.

D – Treaty monitoring bodies and/or imposition of sanctions

Pacto de San Jose established two competent bodies to analyze cases of violation of the Convention: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. While the Commission is a weak body that cannot pass judgment or adopt legally binding decisions, the Court is a strong organ, with jurisdictional power and, thus, the ability to impose legally binding sentences. The Court only has jurisdiction over States Parties who formally accept it. Brazil recognized the Court's jurisdiction in December 1998, concerning facts that took place from this date on. Therefore, the Court can try cases involving alleged violations of the Convention by Brazil,

¹⁰² BRASIL. Câmara dos Deputados. Projeto de Lei 191/2020, <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2236765>

¹⁰³ BRASIL. Câmara dos Deputados. Projeto de Lei 5518/2020, <https://www.camara.leg.br/propostas-legislativas/2267073>

¹⁰⁴ IMAZON. Ocorrências de desmatamento dentro e no entorno das áreas protegidas aumentaram 13% em um ano na Amazônia. 16 September 2021, [https://imazon.org.br/imprensa/ocorrencias-de-desmatamento-dentro-e-no-entorno-das-](https://imazon.org.br/imprensa/ocorrencias-de-desmatamento-dentro-e-no-entorno-das-areas-protegidas-aumentaram-13-em-um-ano-na-amazonia/)

[areas-protegidas-aumentaram-13-em-um-ano-na-amazonia/](https://imazon.org.br/publicacoes/ameaca-e-pressao-de-desmatamento-em-areas-protegidas-sad-de-agosto-2020-a-julho-2021); FONSECA, A. et al. Ameaças e pressão de desmatamento em áreas protegidas: SAD de agosto 2020 a julho 2021. IMAZON. 16 September 2021, <https://imazon.org.br/publicacoes/ameaca-e-pressao-de-desmatamento-em-areas-protegidas-sad-de-agosto-2020-a-julho-2021>

¹⁰⁵ CIMI. Relatório Violência contra os Povos Indígenas no Brasil. Dados de 2019, <https://cimi.org.br/wp-content/uploads/2020/10/relatorio-violencia-contra-os-povos-indigenas-brasil-2019-cimi.pdf>

as it has already happened several times in the past 23 years.

4.2 PROTOCOL OF SAN SALVADOR

A – Scope and main goals of the Convention

Treaty adopted in November 1988. In Brazil, it was approved by the legislative Decree 3.321/1999 and entered into force in December 1999.

Article 1 determines that The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through cooperation among states, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.

B – Articles violated or possibly violated

Article 3: Obligation of non-discrimination

The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition

Article 10: Right to health

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
 - a. Primary health care, that is, essential health care made available to all individuals and families in the community;
 - b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;
 - c. Universal immunization against the principal infectious diseases;
 - d. Prevention and treatment of endemic, occupational and other diseases;
 - e. Education of the population on the prevention and treatment of health problems, and
 - f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

Article 11: Right to a healthy environment

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.

2. The States Parties shall promote the protection, preservation, and improvement of the environment.

Article 12: Right to food

1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.

2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies

C – Facts that show or suggest the Protocol’s violation

1) In potential violation of articles 3 and 10 of the Protocol, the following facts are presented:

* 08/2020: Hospitalizations attributable to fires associated with deforestation in 2019¹⁰⁶. The study estimated that in 2019, there were 2,195 hospitalizations due to respiratory illnesses attributable to deforestation-associated fires in the Brazilian Amazon. Seventy percent of the hospitalizations involved infants or elderly people: 467 were infants aged 0 to 12 months; 1,080 were people aged 60 years or older. The 2,195

admissions resulted in a total of 6,698 days in the hospital for the patients. These hospitalizations represent only a portion of the overall impact of deforestation-associated wildfires on health in the Amazon in 2019. The total number of hospitalizations resulting from the burnings may be higher, as the data used in the study only include those reported by facilities that are part of the Unified Health System (SUS). The data do not include hospitalizations in private institutions not funded by SUS, where patients may also have sought care due to respiratory diseases associated with smoke from the fires. Twenty-four percent of Brazilians have private health insurance and tend to seek private services. Indigenous peoples' access to health care is sometimes even more restricted, falling below the average for the Amazon region.

* 30/06/2022: In an unprecedented study, Fiocruz warns that new pandemics may arise from viruses and bacteria from the Amazon¹⁰⁷. "This is the first time that solid statistical models have been used to analyze the risk of emergence of zoonoses. From an evaluation model that identifies different interactions between the elements we investigate, we observed the processes that shape the emergence of zoonoses in each Brazilian state. It is clear that deforestation and hunting are serious problems for public health. To conserve the forest is to protect health.

¹⁰⁶ HUMAN RIGHTS WATCH; IPAN; IEPS. "O Ar é Insuportável". Os impactos das queimadas associadas ao desmatamento da Amazônia brasileira na saúde. August 2020. pp. 21-23, https://ipam.org.br/wp-content/uploads/2020/08/brazil0820pt_web.pdf

¹⁰⁷ JORNAL DO BRASIL. Em estudo inédito, Fiocruz alerta que novas pandemias podem surgir de vírus e bactérias da Amazônia. 30 June 2022, <https://www.jb.com.br/ciencia-e-tecnologia/2022/06/1038323-em-estudo-inedito-fiocruz-alerta-que-novas-pandemias-podem-surgir-de-virus-e-bacterias-da-amazonia.html>

Nobody is immune to what happens in the Amazon", said Winck.

* 05/05/2020 – The budget for indigenous health was cut by 16% last year¹⁰⁸. Indigenous health was one of the areas that lost the most resources among the public policies aimed at the rights of these peoples last year. Between 2018 and 2019, there was a 5% reduction in the amount authorized by the federal government in the program "Promotion, Protection and Recovery of Indigenous Health". Considering the amounts actually spent by the Union, the decrease reached 16% - from R\$1.76 billion to R\$1.48 billion. The reduction in investments in indigenous health has left these peoples vulnerable to the effects of the Covid-19 pandemic, bringing even more harmful consequences if compared to the situation of urban victims of the new coronavirus, who already cannot find vacancies in ICUs in several regions of the country. Between January and September 2019, the mortality of indigenous babies up to one year old rose 12% compared to the same period in 2018, there were 530 babies. With the end of the Mais Médicos program [in 2019], which accounted for almost 56% of the service positions for this populations, they slowed down the provision of services, and the substitute program, Doctors for Brazil, was not able to supply the vacancies to normalize the service. The 2019 budget was executed as part of the 2016-2019 Multi-Year Plan (PPA), which listed a series of objectives and goals that dialogued with challenges

and commitments of the indigenous policy conducted by the previous government, with participation and pressure from indigenous peoples. But in the PPA 2020-2023, prepared by the government of Jair Bolsonaro, detailed and more complex public policies have ended. Only a few generalist programs remained, without goals, objectives, and priorities for the protection and promotion of the rights of indigenous peoples.

* 31/05/2019 – Bolsonaro's decree with changes in indigenous health triggers alert in the indigenous movement¹⁰⁹. Recent changes in the management model for indigenous health policies made by President Bolsonaro have triggered an alert in the Brazilian indigenous movement. Although the government has backed away from the decision to extinguish the National Secretariat of Indigenous Health (Sesai), as it had initially planned, and to accommodate its functions in the new Secretariat of Basic Attention, a decree published last week (and in effect since Friday) indicates the closing of positions and the extinction or alteration of some departments. The Indigenous Health Districts (DSEIs), which have already been facing difficulties in finding doctors since the Cubans left the Mais Médicos program. In addition, the decree extinguishes the Indigenous Health Management Department, which until then had the responsibility of guaranteeing the necessary conditions for managing the subsystem, programming the

¹⁰⁸ INESC. Orçamento para saúde indígena teve corte de 16% no ano passado. 5 May 2020, <https://www.inesc.org.br/orcamento-para-saude-indigena-teve-corte-de-16-no-ano-passado/>

¹⁰⁹ JUCÁ, Beatriz. Decreto de Bolsonaro com mudanças na saúde indígena dispara alerta no movimento indigenista. EL PAÍS. 31 May 2019, https://brasil.elpais.com/brasil/2019/05/30/politica/1559238132_162541.html

acquisition of inputs and coordinating the care units. Last April, leaders already complained that the president would not be willing to listen to them, when the government extinguished the National Commission on Indigenous Policy, a platform for dialogue between the ethnic groups and the federal administration, which played a fundamental role in the creation of the Sesai.

* 25/03/2021 – “Bolsonaro administration is promoting the discrimination of the Brazilian indigenous”, CIMI denounces in the UN¹¹⁰. The President of Conselho Indigenista Missionário (CIMI), dom Roque Paloschi, denounced in the UN the publication of the resolution No 04 in January 2021 by Fundação Nacional do Índio (FUNAI), as it violates international treaties ratified by Brazil about social rights of indigenous peoples. Under the pretext of providing the process of indigenous self-declaration with legal certainty, the document poses obstacles when it establishes “hetero identification criteria” to assess the self-declaration on indigenous peoples in Brazil.

* 24/11/2021 – Government spending with indigenous health decreased or did not change¹¹¹. Since the beginning

of Bolsonaro’s administration there has been a significant reduction in financial resources, as Secretaria Especial de Saúde Indígena (SESAI) argues. It highlights that the decrease was even more intense during the Covid-19 pandemic. The president of Conselho Distrital de Saúde Indígena (CONDISI) Yanomami, Júnior Hekurari Yanomami, denounces the death of children in the region with malaria and pneumonia symptoms. According to him, “the Yanomami are suffering with the lack of resources and the abandonment by the public management. Júnior also complains about the scarce dialog with the government and accuses the current administration of being negligent”.

2) In potential violation of article 11 of the Protocol, the following facts are presented¹¹²:

* 16/12/2021 – Bolsonaro promotes predatory mining¹¹³. The predatory exploitation of minerals increased drastically since the beginning of Bolsonaro’s term as President, as he personally encourages the practice in interviews and lives. The Brazilian Constitution allows the regulation of concession of rights to research and extraction of minerals in indigenous lands. However, Bolsonaro used this

¹¹⁰ CIMI. “O governo de Bolsonaro está promovendo a discriminação dos indígenas brasileiros”, denuncia CIMI à ONU. 25 March 2021, <https://cimi.org.br/2021/03/o-governo-de-bolsonaro-esta-promovendo-a-discriminacao-dos-indigenas-brasileiros-denuncia-cimi-a-onu/>

¹¹¹ LINDNER, Julia. Gastos do governo com saúde indígena diminuíram ou ficaram estagnados. O GLOBO. 24 November 2021, <https://oglobo.globo.com/brasil/meio-ambiente/gastos-do-governo-com-saude-indigena-diminuiram-ou-ficaram-estagnados-25289406>

¹¹² For Other facts that suggest the violation of article 11, see the following treaties: Paris Agreement (item C.2); Convention On Nature Protection and Wildlife Preservation in The Western Hemisphere (item C.1); Convention On International Trade in Endangered Species of Wild Fauna and Flora (item C.1); UN Convention on Climate Change (item C.2).

¹¹³ INSTITUTO SOCIOAMBIENTAL. Bolsonaro promove a mineração predatória. 16 December 2021, <https://site-antigo.socioambiental.org/pt-br/blog/blog-do-isa/bolsonaro-promove-a-mineracao-predatoria>

provision to file the Law project 191/2019 that intends to legalize the past and current invasions of indigenous lands by companies, which is expressly forbidden by the Constitution. The Law project should be analyzed by the Parliament and is considered one of the main topics in the government's legislative agenda in 2022.

* 04/2022: Yanomami under attack¹¹⁴: This report aims to describe the evolution of illegal mining in the Yanomami Indigenous Territory (TIY) in 2021. This is the worst moment of invasion since the TIY was demarcated thirty years ago. It will show how the presence of mining in the TIY is the cause of systematic human rights violations in the communities that live there. In addition to the deforestation and destruction of water bodies, the illegal extraction of gold (and cassiterite) in Yanomami territory has led to an explosion in the cases of malaria and other infectious and contagious diseases, with serious consequences for the health and economy of the families, and a scary increase in violence against the indigenous people.

* 03/09/2019 – Inter-American Commission on Human Rights and REDESCA expressed deep concern about the deforestation and fires in the

Amazon¹¹⁵. The Inter-American Commission on Human Rights is worried about NASA's data that show a record high increase in fires in the Amazon in 2019, which could lead to an irreversible deforestation of the Brazilian portion of the rainforest.

3) In potential violation of article 12 of the Protocol, the following facts are presented:

* 04/2022: Yanomami under attack¹¹⁶: According to the investigations of the Federal Police, on the surrounding farms, besides the landing tracks, one of the groups associated with the miners even kept a fuel storage tank on land bordering the National Forest of Roraima. It is also known that in the same area, in Vila Samaúma, there are hotels dedicated to people who work in mining logistics (especially pilots) and gas stations specialized in providing fuel for the machinery used in the activity. This scheme fueled the destruction of more than 200 hectares of forest in 2021, most of it concentrated in the Kayanau base camp, where some of the most moving accounts of the impacts of mining on Yanomami territory are recorded. There, the enormous pressure that mining places on communities has left a terrible trail of hunger, death, and sexual exploitation of indigenous women.

¹¹⁴ INSTITUTO SOCIOAMBIENTAL. Yanomami sob ataque: garimpo ilegal na Terra indígena Yanomami e proposta para combatê-lo. Abril 2022, <https://acervo.socioambiental.org/acervo/documentos/yanomami-sob-ataque-garimpo-ilegal-na-terra-indigena-yanomami-e-propostas-para>

¹¹⁵ ORGANIZAÇÃO DOS ESTADOS AMERICANOS. CIDH e sua REDESCA expressam profunda preocupação diante do desmatamento e das queimadas na Amazônia.

3 September 2019, <https://www.oas.org/pt/cidh/prensa/notas/2019/215.asp>

¹¹⁶ INSTITUTO SOCIOAMBIENTAL. Yanomami sob ataque: garimpo ilegal na Terra indígena Yanomami e proposta para combatê-lo. Abril 2022, <https://acervo.socioambiental.org/acervo/documentos/yanomami-sob-ataque-garimpo-ilegal-na-terra-indigena-yanomami-e-propostas-para>

* 17/05/2021 – 8 years old and 12 kilos, the child with malaria and malnutrition that symbolizes the neglect with the Yanomami in Brazil¹¹⁷. The yanomami and other indigenous peoples from the Amazonian region have been facing multiple crises. Apart from the sanitary crisis of coronavirus, there is also the escalation of violence in illegal mining, the hunger and the lack of access to health care services. The result is the death of children because of diseases and malnutrition. The problem is more serious in the isolated indigenous communities.

D – Treaty monitoring bodies and/or imposition of sanction

Article 19 of the Protocol provides the means to protect the provisions and goals. It determines that the State Parties “undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol” (item 1).

All reports shall be submitted to the Secretary General of the OAS, who shall transmit them to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture so that they may examine them in accordance with the provisions of this article. The Secretary General shall send a copy of such reports to the Inter-American Commission on Human Rights (item 2).

Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights (item 6).

Without prejudice to the provisions of the preceding paragraph, the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the present Protocol in all or some of the States Parties. The organ may include it in its Annual Report to the General Assembly or in a special report, whichever it considers more appropriate (item 7).

To summarize, although there is an explicit provision on environment, its violation cannot be questioned through the Individual Petition System of the IACHR. This happens because, according to Article 19 of the Protocol, only rights related to education and unions can be pleaded using the aforementioned system. The rest of the rights in the Protocol, including the environmental one, can only be demanded when they are connected to other rights in the Pact of San Jose.

¹¹⁷ JUCÁ, Beatriz. 8 anos e 12 quilos, a criança com malária e desnutrição que simboliza o descaso com os Yanomami no Brasil. EL PAÍS. 17 May 2021,

<https://brasil.elpais.com/brasil/2021-05-17/8-anos-e-12-quilos-a-crianca-com-malaria-e-desnutricao-que-simboliza-o-descaso-com-os-yanomami-no-brasil.html>

4.3 ILO INDIGENOUS AND TRIBAL PEOPLES CONVENTION (No 169)

A – Scope and main goals of the Convention

Convention No. 169 on Indigenous and Tribal Peoples is an international treaty adopted by the International Labor Conference of the International Labor Organization (ILO) in 1989. The Convention was adopted in Geneva on 27 June 1989 and entered into force internationally on September 5, 1991. In Brazil, this Convention was approved by Legislative Decree no. 143, dated June 20, 2002, and became effective on July 25, 2003, when the country sent the ratification instrument to the ILO Executive Director.

It is based on the respect for the cultures and ways of life of indigenous peoples and recognizes their rights to land and natural resources, and to define their own priorities for development.

B – Articles violated or possibly violated

Article 6:

1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

Article 7:

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 14:

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

Article 25:

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

Article 33:

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:
- (a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;
 - (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

C – Facts that show or suggest the treaty’s violation

1) In potential violation of article 6 of the Convention, the following facts are presented:

* 11/02/2020 - Bill allowing mining on indigenous lands has inconsistencies.¹¹⁸ Constitutional inconsistency and non-compliance with Convention 169 of the International Labor Organization (ILO) will be the two main challenges of the bill signed by President Jair Bolsonaro last week, which proposes the permission for mining and producing hydroelectric power on indigenous lands, as well as other activities such as oil and gas extraction. It turns out that the federal government did not carry out the consultation [in violation of Article 6 of the Convention], as

stated in a statement by the main entities representing indigenous communities: Association of Indigenous Peoples in Brazil (Apib) and Coordination of Indigenous Organizations of the Brazilian Amazon (Coiab), which repudiated the project. For many years, mining in indigenous lands has been on the agenda and there have been several attempts, which never reached a consensus. It is controversial because it is a project that will affect the lives of indigenous peoples. Every time, it has been proposed in an inappropriate way. We cannot move forward, because there is no respect for constitutional rights, and the ILO Convention, which is the basis for the beginning of dialogue, is not respected.

* 16/07/2021 - Brazilian Government systematically violates Convention 169, denounce social organizations to the ILO.¹¹⁹ One example is the Bill No. 490/2007, which threatens the demarcation of indigenous lands and thus opens the doors of these territories to agricultural, hydroelectric, mining, road and mining enterprises. In a scenario of intense police violence against indigenous people in the surroundings of the House of Representatives and absence of dialogue with those who will be impacted by the measure, the Bill was approved by the Constitution and Justice Commission (CCJ) of the House on June 23, 2021. This

¹¹⁸ PORTAL ADMINISTRAÇÃO MINERAL. Projeto de lei que libera mineração em terras indígenas tem inconsistências. 11 February 2020, <https://administracaomineral.com.br/projeto-de-lei-que-libera-mineracao-em-terras-indigenas-tem-inconsistencias/>

¹¹⁹ TERRA DE DIREITOS. Governo brasileiro viola sistematicamente a Convenção 169,

denunciam organizações sociais à OIT. 16 July 2021, <https://terradedireitos.org.br/noticias/noticias/governo-brasileiro-viola-sistematicamente-a-convencao-169-denunciam-organizacoes-sociais-a-oit/23624>

happened in the middle of the pandemic. Moreover, the Legislative Decree Project (PDL) No. 177/2021 seeks to directly violate the Convention No. 169. Authored by the federal deputy and member of the Parliamentary Agriculture and Livestock Front (FPA), Alceu Moreira (MDB-RS), the bill, filed in April 2021, aims to authorize the president to denounce ILO Convention 169, that is, if approved, the Legislative Decree would allow Bolsonaro to withdraw Brazil from the Convention, a procedure called "denunciation", representing a huge setback to the rights won. The legislative matter has already been distributed to committees.

2) In potential violation of articles 7 (4) e 14 (2) of the Convention, the following facts are presented¹²⁰:

* 08/05/2020: Deforestation on indigenous lands increases 64% in the first months of 2020¹²¹. An analysis of data from the Deter system, of the National Institute for Space Research (Inpe), shows that in the first four months of 2020, deforestation alerts in indigenous lands in the Brazilian Amazon increased 64%, compared to the same period last year. This is the highest rate in the last four years. These data reinforce the warning that loggers, land grabbers, and miners do not do home office and, worse, these

invasions can be the gateway for the coronavirus to reach the indigenous communities. In the opposite direction of the search for solutions, the government, which so far has not taken effective actions to protect the indigenous peoples, nor the Brazilian forests, weakens even further the environmental supervision, with the exoneration of professionals of the Brazilian Institute of Environment and Renewable Natural Resources (Ibama), responsible for recent and important operations against illegal miners and loggers in the Amazon. In addition, it encourages the invasion of indigenous lands still in the demarcation process, through Normative Instruction 09 of the National Indian Foundation (FUNAI) and Provisional Measure (MP) 910/2019, better known as the "MP of Land grabbing" - which promises the regularization of public lands that were invaded until 2018.

* 06/04/2022: Increase in deforestation on indigenous lands could prevent Brazil from meeting climate targets¹²². Under constant pressure, indigenous lands (IT) in the Amazon have registered an acceleration of deforestation rates in recent years. Some of them, like the Apyterewa IT, in Pará, are especially affected, threatening the international goals assumed by Brazil to combat deforestation and mitigate the impacts of climate change. In order to protect

¹²⁰ The facts presented at the session on the environment that show record deforestation, such as item C.2 of the Paris Agreement, also constitute evidence of potential violation of this convention.

¹²¹ GREENPEACE BRASIL. Desmatamento em terras indígenas aumenta 64% nos primeiros meses de 2020. 8 May 2020, <https://www.greenpeace.org/brasil/blog/desm>

[desmatamento-em-terras-indigenas-aumenta-64-nos-primeiros-meses-de-2020/](https://www.greenpeace.org/brasil/blog/desmatamento-em-terras-indigenas-aumenta-64-nos-primeiros-meses-de-2020/)

¹²² CONSTANTINO, Luciana. Aumento do desmatamento em terras indígenas pode impedir o Brasil de cumprir metas climáticas. FAPESP. 6 April 2022, <https://agencia.fapesp.br/aumento-do-desmatamento-em-terras-indigenas-pode-impedir-o-brasil-de-cumprir-metas-climaticas/38317/>

the Amazon frontiers that remain preserved, it is necessary to apply effective actions based on environmental legislation. This alert is in the letter Protect Indigenous Lands of the Amazon, published in Science magazine.

* 30/08/2021 - Federal Court declares null the rule that allows land grabbing on indigenous lands, at the request of the MPF.¹²³ In a public civil action filed by the Ministério Público Federal (MPF) against the National Indian Foundation (FUNAI) and the National Institute for Colonization and Agrarian Reform (Incra), the Federal Court recognized the nullity of FUNAI's Normative Instruction 09, of April 16, 2020. According to MPF, the rule causes several violations, such as the original character of the indigenous people's right to their lands and the declaratory nature of the demarcation act; of ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples and the decisions of the Inter-American Court of Human Rights; of the process of prior, free and informed consent with the indigenous peoples concerned. The rule also represents an undue priority of private property over indigenous lands, in violation of Article 231, § 6 of the Constitution, whose applicability is imposed even to territories not

demarcated. In addition, it encourages land grabbing and land conflicts.

3) In potential violation of the article 25 of the Convention, see the facts presented in item C.1 of San Salvador Protocol.

4) In potential violation of article 33 of the Convention, the following facts are presented:

* 06/2022: Dossier Anti-Indigenous Foundation¹²⁴: "Under the Bolsonaro government, the National Indian Foundation (FUNAI) has implemented a policy that can be called anti-indigenist. The dossier reveals the ways in which FUNAI has been working against the very reason for its existence, which is to protect and promote indigenous rights. In 9 chapters and 162 pages, it details administrative, bureaucratic, and legal aspects of the complete dismantling of the institution that should protect and promote indigenous rights.

* 23/06/2020¹²⁵: "In the opposite direction of protecting the territories, the amount of money spent by Fundação Nacional do Índio (FUNAI) in the first five months of 2020 was the lowest in the last ten years, in real value: R\$ 189 million according to the Senate's Siga Brasil Platform. The money should have been invested in

¹²³ MINISTÉRIO PÚBLICO FEDERAL. IN 09/20: Justiça Federal declara nula a normativa que permite grilagem em terras indígenas, a pedido do MPF. 30 August 2021, <http://www.mpf.mp.br/mt/sala-de-imprensa/noticias-mt/in-09-20-justica-federal-declara-nula-a-normativa-que-permite-grilagem-em-terras-indigenas-a-pedido-do-mpf>

¹²⁴ INESC; INA. Dossiê Fundação anti-indígena: um retrato da FUNAI sob o governo Bolsonaro. 2022, <https://www.inesc.org.br/wp->

content/uploads/2022/07/Fundacao-anti-indigena_Inesc_INA.pdf

¹²⁵ SANTANA, Renato; MIOTTO, Tiago. Com apenas 0,02% do orçamento da União, valor gasto pela Funai até junho é o mais baixo em dez anos. CIMI. 23 June 2020, <https://cimi.org.br/2020/06/com-apenas-002-orcamento-uniao-valor-gasto-funai-junho-mais-baixo-dez-anos/#:~:text=O%20valor%20gasto%20pela%20Funai,plataforma%20Siga%20Brasil%2C%20do%20Senado>

the surveillance and protection of the territories, but it was not. The survey carried out by CIMI also revealed that FUNAI's authorized budget for last year was R\$ 640 million for all the expenses - staff payment, social security and actions such as land demarcation and protection of indigenous rights - which means that 451 million have not been used".

* 13/05/2021¹²⁶: Government does not collect data about invasions of indigenous lands, says research. According to a research, the Federal Administration does not collect data about invasions of indigenous lands. The research reveals the government neither collects nor keeps data about illegal activities in indigenous lands, such as mining, cattle ranching and invasions. The report shows that FUNAI acknowledges not having any organized data about the monitoring and surveillance of indigenous lands, which constitutes one of its duties/responsibilities.

30/03/2022¹²⁷: FUNAI's coordinator appointed by Bolsonaro is arrested for leasing indigenous lands to farmers. FUNAI's coordinator of Ribeirão Cascalheira unit, Jussielson Gonçalves Silva, as well as two policemen, Gerrard Maxmiliano Rodrigues and

Enoque Bento de Souza were arrested in Res Capta operation, conducted by the Federal Police on 17 March. They are suspected of involvement in a millionaire scheme of illegal indigenous' land leasing for cattle ranchers in the countryside of Mato Grosso.

D – Treaty monitoring bodies and/or imposition of sanction

There is no provision for sanctions in case of non-compliance, but every year, the ILO member states are obliged to submit a report on the implementation of the conventions ratified by the Organization.

In early July 2022, several companies and entities sent a letter to Jair Bolsonaro, requesting that the current government withdraw Brazil from ILO Convention 169¹²⁸. Although this is potentially unconstitutional¹²⁹, the denunciation of the convention is possible according to the text of the treaty itself. In the current context of glaring violations of indigenous peoples' rights - both related and unrelated to the destruction of the Amazon - an eventual denunciation by the Bolsonaro administration would not be surprising.

¹²⁶ ABRAJI et al. Área Socioambiental: império da opacidade. May 2021, <https://static.poder360.com.br/2021/05/Relatorio-Area-Socioambiental-Imperio-da-Opacidade-Achados-13mai2021.pdf>

¹²⁷ PAJOLLA, Murilo. Coordenador da FUNAI indicado por Bolsonaro é preso por arrendar terra indígena para fazendeiros. PRAGMATISMO POLÍTICO. 30 March 2020, https://www.pragmatismopolitico.com.br/2022/03/coordenador-funai-indicado-bolsonaro-preso-arrendar-terra-indigena-fazendeiros.html?fbclid=IwAR2sLasDMD848oZpRICHXbc6XqWRnsWA3oaHmPiWEudlfk5DeLLD_Uz5el#1kfdxa3o54qc37hnlc

¹²⁸ ANGELO, Maurício. Empresários pedem fim de consulta prévia a indígenas, sociedade pressionada e mineradoras recuam. OBSERVATÓRIO DA MINERAÇÃO. 4 August 2022, <https://observatoriodamineracao.com.br/empresarios-pedem-fim-de-consulta-previa-a-indigenas-sociedade-pressionada-e-mineradoras-recuam/>

¹²⁹ MINISTÉRIO PÚBLICO FEDERAL. Nota Técnica – Projeto de Decreto Legislativo 177/2021 (Denúncia da Convenção 169 da OIT). 12 November 2021, http://www.mpf.mp.br/pg/documentos/Nota_Tecnica_Convencao169.pdf

4.4 CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE

A – Scope and main goals of the Convention

Treaty adopted in October 2003. It entered into force in Brazil in February 2006, approved by the legislative Decree 22.

According to Article 1 of the Convention, it has the following purposes: “(a) to safeguard the intangible cultural heritage; (b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned; (c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof; (d) to provide for international cooperation and assistance”.

B – Articles violated or possibly violated

Article 11: Role of State Parties

Each State Party shall:
(a) take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory;

(b) among the safeguarding measures referred to in Article 2, paragraph 3, identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non-governmental organizations.

Article 2(3) provides that “‘Safeguarding’ means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage”.

C – Facts that show or suggest the treaty’s violation

1) In potential violation of article 11, the following facts are presented:

* 02/02/2020¹³⁰ – Appointment of the evangelical pastor Ricardo Lopes Dias as Coordinator of Policies for Uncontacted Peoples, which is a body of FUNAI responsible for ensuring the

¹³⁰ VALENTE, Rubens. Governo Bolsonaro nomeia evangelizador de indígenas para chefiar setor de índios isolados. FOLHA DE SÃO PAULO. 5 February 2020, <https://www1.folha.uol.com.br/poder/2020/02/governo-bolsonaro-nomeia-evangelizador-de-indigenas-para-chefiar-setor-de-indios->

[isolados.shtml](#); LISBOA, Sílvia; MILANEZ, Felipe. Áudios comprovam que pastor assumiu área sensível da FUNAI para converter índios isolados. THE INTERCEPT BRASIL. 13 February 2020, <https://theintercept.com/2020/02/13/audios-missionarios-converter-indios-amazonia/>

right of those peoples to remain isolated. The pastor has worked for more than 10 years at Missão Novas Tribos Brasil (MNTB), which is an organization that has been focusing on the evangelization of indigenous from the Amazon since the 1950s. Changing the religious identity of indigenous peoples can directly affect the preservation and these peoples' ability to pass on their intangible cultural heritage. It is estimated that there are at least 100 isolated indigenous groups in the Brazilian Amazon¹³¹, which means that the territory is home to the largest number of isolated indigenous peoples on the planet¹³². In a Public Civil Action, the Federal Prosecution (Ministério Público Federal) affirms that the disrespect for the self-determination of the isolated indigenous peoples can lead to ethnocide and genocide of these populations (MPF, 2020)¹³³.

* 11/05/2020¹³⁴: Attempt to appoint Larissa Rodrigues Peixoto Dutra as President of Instituto do Patrimônio Histórico e Artístico Nacional (IPHAN); changes of sub-national leaderships of the institution; and appointment of pastor Tassos Lycurgo as director of

the body Intangible Heritage. The appointment of people without any academic or professional qualifications related to the job and the deliberate weakening of the institution that is supposed to protect the Brazilian cultural heritage constitute a potential breach to domestic and international norms concerning the subject. Although the two facts aforementioned do not relate directly with the current situation in the Amazon, all Brazilian cultural heritage becomes more vulnerable, including the intangible cultural heritage of indigenous peoples from the Amazonian region. With respect to the appointment of the pastor, since it concerns a body that is responsible for ensuring “the preservation and dissemination of knowledge, celebrations, ways of expression and places related to the identity, action and memory of the different groups composing the Brazilian society”¹³⁵, the indigenous peoples could be directly affected.

D – Treaty monitoring bodies and/or imposition of sanction

¹³¹ INSTITUTO SOCIOAMBIENTAL. Cercos e Resistências. Povos indígenas isolados na Amazônia brasileira. 2019, <https://acervo.socioambiental.org/acervo/publicacoes-isa/cercos-e-resistencia-povos-indigenas-isolados-na-amazonia-brasileira>

¹³² PAJOLLA, Murilo. Quem são os grupos indígenas isolados brasileiros e quais são os direitos deles. BRASIL DE FATO. 6 February 2022, <https://www.brasildefato.com.br/2022/02/06/quem-sao-os-grupos-indigenas-isolados-brasileiros-e-quais-sao-os-direitos-deles#:~:text=A%20Amaz%C3%B4nia%20brasileira%20abriga%20o,no%20pa%C3%ADs%20de%20deles%20confirmados>

¹³³ MINISTÉRIO PÚBLICO FEDERAL. Inquérito Civil no 1.16.000.000332/2020-21. 2020,

<https://drive.google.com/file/d/1quvK9BWz9RJwz-kiRZnWuVUetjppJ9Z3/view>

¹³⁴ LIMA, Juliana Domingos de. Os desafios atuais e históricos para preservar o patrimônio nacional. NEXO JORNAL. 22 May 2020, <https://www.nexojornal.com.br/entrevista/2020/05/22/Os-desafios-atuais-e-hist%C3%B3ricos-para-preservar-o-patrim%C3%B4nio-nacional>; RODRIGUES, Maria Fernanda. Pastor Tassos Lycurgo é nomeado diretor do IPHAN. TERRA. 8 December 2020, <https://www.terra.com.br/diversao/pastor-tassos-lycurgo-e-nomeado-diretor-do-iphan.3bdc47554339677b0b13e15ff78ee7860cm148gs.html>

¹³⁵ IPHAN. Departamento de Patrimônio Imaterial. 2022, <http://portal.iphan.gov.br/pagina/detalhes/701/>

Article 5 of the Convention provides that an Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, composed of representatives of 18 States Parties, is established. Among its functions, the Committee should monitor the

implementations of the Convention. However, the body does not have any power to impose counter-measures or sanctions, nor is it possible for States Parties to file complaints against each other.

4.5 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A – Scope and main goals of the Convention

The International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly, came into force internationally in January 1976. In Brazil, it was approved by the Legislative Decree No. 591 of July 1992.

The Covenant is composed of 31 articles, with the main objective of ensuring the inherent dignity and equality of the human person, creating conditions for everyone to enjoy their economic, social, and cultural rights, as well as their civil and political rights.

B – Articles violated or possibly violated

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The

States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

C – Facts that show or suggest the treaty's violation

1) In potential violation of Article 11, see item C.3 of the Protocol of San Salvador, about hunger and malnutrition of the Yanomami indigenous people.

D – Treaty monitoring bodies and/or imposition of sanction

The Covenant's monitoring mechanisms are provided for in Articles 19 to 22 of the Covenant. States parties must submit reports concerning human rights under their jurisdiction. If it deems it appropriate, the UN Economic and Social Council may refer such reports to the Commission on Human Rights for study and general recommendation or for information (article 19). States parties and interested specialized agencies may submit comments to the Economic and Social Council on any

recommendations made by the Commission on Human Rights in its report (article 20). The Economic and Social Council may bring matters raised in these reports to the attention of other organs of the UN system, so that they may comment on the advisability of international measures that could contribute to the effective and progressive implementation of the Covenant, such as conventions, recommendations, technical assistance, studies and regional meetings (articles 22 and 23).

4.6 ROME STATUTE

A – Scope and main goals of the Convention

The Rome Statute of the International Criminal Court (ICC) entered into force internationally in July 2002. In Brazil, it was approved by the Legislative Decree No. 4.388 in September 2002. The Statute created the International Criminal Court and governs its jurisdiction and operation. The Court exercises jurisdiction over persons responsible for the most serious international crimes committed in the territory of any State Party. The jurisdiction is complementary to the national ones and, under special circumstances, the ICC may have jurisdiction concerning the territory of non-State parties as well.

B – Articles violated or possibly violated

Article 6: For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

[...]

Article 7: For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy,

enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

C – Facts that show or suggest the treaty’s violation¹³⁶

1) In potential violations of article 6 (a)(b)(c) of the Rome Statute, the following facts are presented¹³⁷:

* 26/11/2019: Debaters point to risk of genocide of the Yanomami¹³⁸. Illegal mining, violence, disease and poor infrastructure characterize the Yanomami Indigenous Land in Roraima, according to experts heard on Tuesday (26) in a joint public hearing of three committees of the House of Representatives. "The villages have no drinking water, no solid waste management plan, and no sewage system. There are studies that show high levels of child malnutrition and high prevalence of respiratory

diseases such as pneumonia and tuberculosis, and other diseases such as malaria and tungiasis. This whole scenario - with the addition of another risk factor, which is exposure to mercury in all its chemical forms - may indeed lead to the disappearance of the Yanomami people in some time," explained the researcher. Studies led by Fiocruz and other research institutes have already shown mercury levels in the blood and hair of the Yanomami above acceptable limits. Furthermore, 92% of the indigenous people would be exposed to contamination.

* 25/05/2022: Federal judge warns about risk of genocide on Yanomami land: 'nothing short of worst-case scenarios'¹³⁹. The determination is for Jair Bolsonaro’s administration to present a new plan, on an emergency basis, for the withdrawal of miners due to noncompliance with previous court orders. There are 20,000 miners in the traditional territory, according to estimates by indigenous associations. Bolsonaro encourages mining, does not oppose the presence of invaders, and tries to advance mining on indigenous lands. Since his election in October 2018, the number of miners in search of minerals, especially gold, has soared.

* 11/05/2022: Scientific entities warn of the risk of genocide in the

¹³⁶ For other facts besides the ones mentioned below, see the itens C.1 to C.6 and C.8 in San Salvador Protocol.

¹³⁷ For other facts that may corroborate the violation of this article, see items C.2 and C.3 of the Protocol of San Salvador.

¹³⁸ BRASIL. Câmara dos Deputados. Debatedores apontam risco de genocídio dos Yanomami. 26 November 2019, <https://www.camara.leg.br/noticias/618192->

[debatedores-apontam-risco-de-genocidio-dos-yanomami/](#)

¹³⁹ SASSINE, Vinícius. Juiz federal aponta risco de genocídio na terra Yanomami: ‘nada falta para pior dos cenários’. FOLHA DE SÃO PAULO. 25 May 2022, <https://www1.folha.uol.com.br/cotidiano/2022/05/juiz-federal-aponta-risco-de-genocidio-na-terra-yanomami-nada-falta-para-pior-dos-cenarios.shtml>

Yanomami and Ye'kuana Indigenous Land¹⁴⁰. Scientific organizations are publicly calling attention to the humanitarian, environmental and health crisis that has threatened the Yanomami and Ye'kuana peoples in recent years. The growing and accelerated invasion of their demarcated lands (Yanomami and Ye'kuana Indigenous Land - TIYY), particularly by illegal mining, has led to the destruction and contamination of their rivers and streams by mercury, and, consequently, to the contamination of the indigenous population itself, which has been shown by researchers from Fiocruz. The environmental destruction caused by the invaders disrupts the conditions for food production, hunting, and fishing, generating food insecurity and causing alarming rates of chronic malnutrition in children. The invaders' entry has also led to an explosion of malaria cases and the spread of Covid-19, and the surveillance and control of these diseases is hampered, including by threats to the health professionals themselves. In early 2021, the intensification of violence led indigenous leaders to denounce the situation before the Inter-American Commission on Human Rights and the Federal Supreme Court, and it was determined that the Brazilian government should guarantee the full protection of the Yanomami people and the withdrawal of the invaders. In November 2021, after several deaths of Yanomami children, Ministério

Público Federal recommended the restructuring of the health care provided at TIYY. However, all these recommendations and judicial measures have not been fully complied with, on the contrary, we observe government authorities supporting Bills such as PL 490/2007, 191/2020 and 2633/2020 that violate the constitutional rights of indigenous peoples.

* 24/09/2021: Indigenous genocide: understand the risks and concerns that Brazil's native population faces¹⁴¹. Since its inception, the administration of President Jair Bolsonaro has given reasons for the indigenous peoples to be increasingly worried. The head of state keeps being openly contrary to the interests of these peoples, in addition to making several prejudiced and offensive statements and implementing measures that threaten or harm them. At the end of his campaign for the presidency, in 2018, he declared: "We cannot have shiite (sic) environmentalism in Brazil. We will end the industry of demarcation of indigenous lands." Thus, Jair Bolsonaro is the first Brazilian president in the last 35 years not to institute even a single indigenous land or ecological reserve, paralyzing in the last three years all the processes, in which indigenous people claim the right to enjoy the lands they inhabit or were inhabited by their ancestors. In addition, Bolsonaro advocates that indigenous lands be opened up for

¹⁴⁰ SOCIEDADE BRASILEIRA PARA O PROGRESSO DA CIÊNCIA. Entidades científicas alertam para risco de genocídio na Terra Indígena Yanomami e Ye'kuana. 11 May 2022, <http://portal.sbpcnet.org.br/noticias/entidades-cientificas-alertam-para-risco-de-genocidio-na-terra-indigena-yanomami-e-yekuana/>

¹⁴¹ GUAZZELLI, Mariana. Genocídio indígena: entenda os riscos e preocupações que a população nativa do Brasil enfrenta. Humanista. 24 September 2021, <https://www.ufrgs.br/humanista/2021/09/24/genocidio-indigena-entenda-os-riscos-e-preocupacoes-que-a-populacao-nativa-do-brasil-enfrenta/>

large-scale economic activities, such as mining and agribusiness. On several occasions, he has stated that indigenous people cannot "continue to be poor on rich lands," referring mainly to the mineral deposits present in indigenous territories in the Amazon. On August 9th, 2021, the International Criminal Court in The Hague (ICC) received a complaint from the Articulation of Indigenous Peoples of Brazil (Apib), against Bolsonaro, accusing the leader of committing crimes against humanity and genocide for having encouraged the invasion of indigenous lands by miners.

* 09/08/2021: APIB denounces Bolsonaro, in The Hague, for indigenous genocide¹⁴². The violation of indigenous peoples' rights is centuries old, as are the risks of deforestation and exploitation of the Amazon. But the construction of a systematic and intentional anti-indigenous policy is unprecedented. It is the first time that we have seen the dismantling of the infrastructure for protecting indigenous rights and socio-environmental rights. FUNAI, for example, has been transformed from an organ for guaranteeing indigenous rights into an organ of persecution. It is also the first time that one sees a president that is personally against the demarcation of indigenous lands and that encourages illegal activities of gold miners and land grabbers. Associated with the anti-indigenous policy there is a

discriminatory and violent discourse against the indigenous peoples, which is having concrete effects. These are not just speeches, but concrete and concatenated actions, all indicated in the Communication.

* 12/11/2019: Cimi note on the extermination of isolated peoples: at least 21 indigenous lands are invaded¹⁴³. The planned extermination of free indigenous peoples or who are in voluntary isolation in Brazil is underway. It is not only the omission of the federal government, but its deliberate action to allow these peoples to be massacred. Part of this criminal and genocidal plan is the deconstruction of the whole system of protection of the National Indian Foundation (FUNAI), at the same time that, sometimes veiled and sometimes explicitly, it supports the invaders of their territories.

2) In potential violation of article 7 (1)(a)(b)(f)(g)(h)(k) of the Rome Statute, the following facts are presented¹⁴⁴: The Indigenous Missionary Council (CIMI) publishes its Report on Violence against Indigenous Peoples in Brazil annually.¹⁴⁵ From a comparative analysis of the available data referring to the last 5 years (Table 1 at the end of the text), it is evident the growth of violence and violation of indigenous peoples' rights under the Bolsonaro's administration (2019 and 2021).

¹⁴² APIB. Inédito: APIB denuncia Bolsonaro, em Haia, por genocídio. 9 August 2021, <https://apiboficial.org/2021/08/09/inedito-apib-denuncia-bolsonaro-em-haia-por-genocidio-indigena/>

¹⁴³ BRASIL DE FATO. Em nota, CIMI denuncia o extermínio programado dos povos isolados. 13 November 2019, <https://www.brasildefatores.com.br/2019/11/13>

[/em-nota-cimi-denuncia-o-extermínio-programado-dos-povos-isolados](#)

¹⁴⁴ For other facts that may corroborate the violation of this article, see items C.2 and C.3 of the Protocol of San Salvador.

¹⁴⁵ The complete reports since 2003 are available at <https://cimi.org.br/observatorio-da-violencia/edicoes-antiores/>

* 08/2022: Violation of the territorial rights of isolated indigenous peoples¹⁴⁶. In 2021, we identified that 28 of the 54 Indigenous Lands inhabited by isolated peoples - according to the records of Cimi - had cases of possessory invasions, illegal exploitation of natural resources, and damage to the patrimony. These Indigenous Lands concentrate a total of 53 records of isolated indigenous peoples - almost half of the total of 117 records of peoples in voluntary isolation that exist in Brazil, according to the EAPIL database. Of these, 11 ITs were affected by cases of illegal mining, at least seven by the activities of hunters and fishermen, 12 by illegal loggers, and the same number of ITs, 12, registered cases of deforestation. The cases also include illegal occupation, fires, tourism, and pollution of waters and rivers, among others. In addition to the records of free or isolated peoples who are in demarcated indigenous lands, in the process of demarcation or in areas with a restriction decree issued by FUNAI, Cimi also identified the existence of at least 37 other peoples in voluntary isolation who live in areas without FUNAI's protection. Therefore, they are even more vulnerable to the actions of ranchers, landowners, and miners, among others.

* 12/04/2022 – Mining exploitation brings sexual abuse and fear to Yanomami land¹⁴⁷. The report

produced by the Hutukara Associação Yanomami and the Associação Wanasseduume Ye'kwana, with technical advice from ISA (Socio-environmental Institute) denounces the destruction caused by mining exploitation within the Yanomami's indigenous land. There are indications of cases of sexual abuse, harassment and the offering of alcoholic beverages. In 2021, the destruction of the forest associated with mining increased 46% in the indigenous land in comparison with 2020. The devastation reached 3,272 acres. The monitoring has been done since 2018 and this was the largest increase ever recorded. The report also cites the health crisis in the indigenous land, such as the increase in malaria cases and child malnutrition, as well as the serious case that occurred in 2021 of Yanomami children who were swallowed and expelled by mining dredges while swimming in a river. Both died.

* 30/09/2020: Violence against indigenous peoples increased 150% in the first year of the Bolsonaro government¹⁴⁸. "The biggest aggressor is the Brazilian government," denounces president of the Indigenous Missionary Council during presentation of report. Escalation of violence against indigenous people can be compared to the invasion of colonizers, says study.

¹⁴⁶ CIMI. Relatório Violência Contra os Povos Indígenas no Brasil. Dados de 2021. August 2022. p. 256, <https://cimi.org.br/wp-content/uploads/2022/08/relatorio-violencia-povos-indigenas-2021-cimi.pdf>

¹⁴⁷ WATANABE, Phillippe. Garimpo leva abuso sexual e medo à terra yanomami. FOLHA DE SÃO PAULO. 12 April 2022, [https://www1.folha.uol.com.br/ambiente/2022/](https://www1.folha.uol.com.br/ambiente/2022/04/mineracao-leva-abuso-sexual-e-medo-a-terra-yanomami-diz-relatorio.shtml)

[04/mineracao-leva-abuso-sexual-e-medo-a-terra-yanomami-diz-relatorio.shtml](https://www1.folha.uol.com.br/ambiente/2022/04/mineracao-leva-abuso-sexual-e-medo-a-terra-yanomami-diz-relatorio.shtml)

¹⁴⁸ GOMES, Luís. Casos de violência contra indígenas aumentam 150% no primeiro ano de Bolsonaro. SUL21. 30 September 2020, <https://sul21.com.br/noticias/geral/2020/09/casos-de-violencia-contra-indigenas-aumentam-150-no-primeiro-ano-de-bolsonaro/>

* 24/08/2020: Politics and Indigenous Victimization: The Case of Brazil¹⁴⁹. In addition to the symbolic violence in his rhetoric, Bolsonaro engages in direct violence against Indigenous peoples. In April 2019, he authorized the use of police force against those parading to commemorate International Indigenous Day in the Federal District. Due to numerous conflicts between the executive branch and environmentalists in 2019, media referenced an 'institutional war' against Indigenous peoples. Bolsonaro also reinforced Brazil's structural violence through a range of public policy decisions. During his first week in office, he transferred the responsibility of establishing Indigenous zones from FUNAI to the Ministry of Agriculture, thereby curtailing the expansion of Indigenous territory. In May 2019, he legalized the ownership of heavy weaponry, enabling rural inhabitants to defend their land from Indigenous 'threats'.

* 20/10/2020: 1,000 days of Bolsonaro and Brazil's grave human rights crisis¹⁵⁰. Meanwhile, by encouraging deforestation and the extraction of natural resources in the Amazon, the president has exacerbated the impact of the climate crisis on Indigenous peoples' lands and territories, leaving a legacy of environmental destruction. Bolsonaro's government has further

relaxed protections and preservation mechanisms, exposing entire communities to disasters, violence and abandonment.

* 14/06/2022: Disappearance of Dom and Bruno exposes persecution of employees and indigenous people¹⁵¹. The disappearance of Bruno Pereira, a licensed employee of the National Indian Foundation (FUNAI), and of journalist Dom Phillips has drawn attention to a situation that is being experienced by employees of the institution and by indigenous people. Considered the leading expert on isolated Indians, Bruno Pereira requested leave from FUNAI in January 2020, shortly after he was removed from his position as general coordinator of Isolated Indians and Recent Contact in 2019. His departure was signed by the number two at the Ministry of Justice, still in Sergio Moro's administration, soon after Bolsonaro assumed the presidency. At the time, the exoneration was attributed to pressure from ruralists. According to the Union of Indigenous Peoples of Vale do Javari (Univaja), the persecution began to occur after he acted in an operation that destroyed more than 60 rafts of illegal mining in the Vale do Javari Indigenous Land in 2019.

* 02/04/2022 – Bolsonaro's administration uses the Attorney

¹⁴⁹ CARVALHO, Salo de et al. Politics and Indigenous victimization: The case of Brazil. *The British Journal of Criminology* 61 (1): 251-271. 2021, <https://academic.oup.com/bjc/article/61/1/251/5896392>

¹⁵⁰ WERNECK, Jurema; ROSA, Erika Guevara. 1,000 days of Bolsonaro and Brazil's grave human rights crisis. AMNESTY INTERNATIONAL. 20 October 2021, <https://www.amnesty.org/en/latest/news/2021>

[/10/mil-dias-bolsonaro-grave-crisis-derechos-humanos-brasil/](https://www.correiobraziliense.com.br/brasil/2022/06/5015278-desaparecimento-de-dom-e-bruno-expoe-perseguiacao-a-servidores-e-indigenas.html)

¹⁵¹ MARTINS, Thays. Desaparecimento de Dom e Bruno expõe perseguição a servidores e indígenas. CORREIO BRAZILIENSE. 14 June 2022, <https://www.correiobraziliense.com.br/brasil/2022/06/5015278-desaparecimento-de-dom-e-bruno-expoe-perseguiacao-a-servidores-e-indigenas.html>

General Office (AGU) to defend mining on indigenous lands even without law ¹⁵². The government of Jair Bolsonaro has been making use of opinions issued by AGU to allow mining on indigenous lands that have not yet been demarcated. Such documents also serve to justify mining in lands close to those already approved, despite the direct negative impact of the exploration activity on indigenous communities. These opinions validate the existence of mining titles on indigenous lands; deny the omission of agencies given the illegal presence of 20,000 miners on Yanomami lands; and reject the possibility of providing security for Yanomami communities attacked by groups of armed miners. In summary, these opinions defend mining activities or titles on indigenous lands, in spite of the inexistence of a law allowing such practice on these territories.

* 30/042021 - Federal Police summons indigenous leader because of a documentary criticizing the government's policies during the pandemic ¹⁵³. The Federal Police summoned the indigenous leader Sonia Guajajara, of the Articulation of Indigenous Peoples of Brazil (Apib), to testify in an investigation opened because of a documentary released on the Internet. According to FUNAI, the film disseminates "lies" against the

government. "The persecution of this government is unacceptable and absurd! They will not silence us!", wrote Sonia Guajajara on a social network. In a statement, Apib said that the summons was a way to "criminalize the indigenous movement": "The government seeks to intimidate indigenous peoples in a clear attempt to curtail our freedom of expression, which is the most important tool for denouncing human rights violations. Currently, more than half of the indigenous peoples have been directly affected by Covid-19, with more than 53,000 confirmed cases and 1,059 deaths."

* 18/11/2021 - By obeying Bolsonaro, FUNAI's president becomes a defendant, and the institution accumulates lawsuits¹⁵⁴. After 2 years and four months in office, the president of FUNAI, Marcelo Xavier, reached an unprecedented milestone since the end of the civil-military regime, which is the total lack of demarcation of new indigenous land. The proceedings that were in the final stages of demarcation are at a standstill. According to Ministério Público Federal (MPF), they amount to 27 indigenous lands totaling about 832,000 acres. FUNAI has also started to encourage mining and agricultural monoculture in indigenous lands. The prestige with President Bolsonaro guaranteed stability to the

¹⁵² SASSINE, Vinicius. Governo Bolsonaro utiliza AGU para defender mineração em terras indígenas mesmo sem lei. FOLHA DE SÃO PAULO. 2 April 2022, <https://www1.folha.uol.com.br/ambiente/2022/04/governo-bolsonaro-utiliza-agu-para-defender-mineracao-em-terras-indigenas-mesmo-sem-lei.shtml>

¹⁵³ HANNA, Wellington. PF intima líder indígena por documentário que critica ação do governo na pandemia. G1. 30 April 2021, <https://g1.globo.com/politica/noticia/2021/04/>

[30/pf-intima-lider-indigena-por-documentario-que-critica-acao-do-governo-na-pandemia.ghtml](https://oglobo.globo.com/brasil/pela-obediencia-bolsonaro-presidente-da-funai-se-torna-reu-fundacao-acumula-processos-25281298)

¹⁵⁴ GONÇALVES, Eduardo. Pela obediência a Bolsonaro, presidente da FUNAI se torna réu, e fundação acumula processos. O GLOBO. 18 November 2021, <https://oglobo.globo.com/brasil/pela-obediencia-bolsonaro-presidente-da-funai-se-torna-reu-fundacao-acumula-processos-25281298>

institution but turned Xavier into a defendant in the courts. MPF, the Public Defender's Office, and indigenous associations have filed more than 40 lawsuits to revoke ordinances, review appointments and advance demarcations. Xavier is a defendant in Pará for failing to comply with a court order requiring him to proceed with the demarcation of Munduruku territory.

* 30/07/2020 - Human trafficking on the Amazon's riverbanks¹⁵⁵. 12 photos show the situation of extreme economic and social vulnerability of the Amazon populations, especially the indigenous populations that become the main targets of human trafficking networks. In Atalaia do Norte, in the Brazilian Amazon, the Kulina, Marubos, Kanamarí and Mayoruna indigenous peoples live in the Javari valley and experience medical emergencies. In the villages, increasingly affected by isolation and lack of protection, with continual cuts in health and education by the government, they have only primary health care, with no assistance when they need more specific treatment. In the region there are the so-called "brothels" where chiefs and heads of illegal mining companies, drug traffickers and loggers gather, bringing teenage girls from nearby towns, deceived with promises, to become prostitutes.

* 29/01/2020 - The 5 main points of conflict between Bolsonaro's administration and indigenous¹⁵⁶. In

January 2020, members of 45 indigenous ethnic groups gathered in a village in Mato Grosso to protest against the government. At the meeting, they stated in a manifesto "that a political project of the Brazilian government of genocide, ethnocide and ecocide is underway." They denounced that the current administration's manifestations of hate are fueling violence against indigenous peoples, the assassination of their leaders and the invasion of their lands. The main points of conflict between Bolsonaro and the indigenous peoples who are critical of his government are the following: the halting of the demarcation of indigenous lands; the government's support for the legalization of activities such as mining and agribusiness on indigenous lands; the outdated and discriminatory assimilationist discourse; and the weakening of bodies that are supposed to protect indigenous rights, such as the National Indian Foundation (FUNAI) and the Special Secretariat for Indigenous Health (Sesai), by appointing leaders and chiefs without representativeness and experience in the indigenous rights agenda.

* 04/2022: Area destroyed by mining in the Yanomami Indigenous Land (TIY) more than doubled from October 2018 to October 2021¹⁵⁷: Data from Mapbiomas indicate that since 2016 the mining destruction curve has assumed an upward trajectory and since then has accumulated increasing

¹⁵⁵ PALACIOS, Ana. O tráfico de pessoas, nas margens do Amazonas. El PAÍS. 30 July 2020, https://brasil.elpais.com/brasil/2020/07/27/alb-um/1595860411_290399.html#foto_gal_1

¹⁵⁶ FELLETT, João. Os 5 principais pontos de conflito entre governo Bolsonaro e indígenas. BBC. 29 January 2020,

<https://www.bbc.com/portuguese/brasil-51229884>

¹⁵⁷ INSTITUTO SOCIOAMBIENTAL. Yanomami sob ataque: garimpo ilegal na Terra Indígena Yanomami e proposta para combatê-lo. April 2022, <https://acervo.socioambiental.org/sites/default/files/documents/prov0491.pdf>

rates. In the platform's calculations, from 2016 to 2020 mining in the TIY grew by no less than 3350%. When our monitoring began in October 2018, the total area destroyed by mining in the TIY amounted to just over 1,200 hectares [...]. Since then, the impacted area has more than doubled, reaching a total of 3,272 hectares by December 2021. [...] This is possibly the highest annual rate since the demarcation of the TIY in 1992.

D – Treaty monitoring bodies and/or imposition of sanction

The Rome Statute established the International Criminal Court that shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern. The Court may exercise its jurisdiction over any of the crimes listed in Article 5 upon: the denunciation of a State Party to the Prosecutor; the denunciation of the UN Security Council under Chapter VII of the UN Charter to the Prosecutor; or the initiation of a criminal investigation by the Prosecutor (Article 13).

According to Article 25.2 " A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for

punishment in accordance with this Statute".

Article 77 of the Statute sets out the penalties that the Court may impose on a person convicted of committing one of the crimes referred to in Article 5, namely: " a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. In addition to imprisonment, the Court may order: (a) A fine under the criteria provided for in the Rules of Procedure and Evidence; (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties". Therefore, an individual shall face the consequences of the treaty violation, and not the state, as it usually happens when it comes to international law.

There are currently seven complaints against the Brazilian president before the International Criminal Court. Three of them refer to the situation of indigenous peoples and the Amazon. In November 2019, the complaint was filed by CADHu¹⁵⁸. In August 2021, APIB denounced the Brazilian president¹⁵⁹. Finally, in October 2021, the Austrian NGO All Rise made the third complaint¹⁶⁰. It should be noted

¹⁵⁸ COMISSÃO ARNS; CADHu. Incitement to Genocide and Widespread Systematic Attacks Against Indigenous Peoples by President Jair Messias Bolsonaro in Brazil. November 2019, <https://apublica.org/wp-content/uploads/2019/11/e-muito-triste-levar-um-brasileiro-para-o-tribunal-penal-internacional-diz-co-autora-da-peticao.pdf>

¹⁵⁹ APIB. Communication to the Prosecutor requesting a Preliminary Examination of Genocide and Crimes against Humanity perpetrated against the Indigenous Peoples of

Brazil Committed by President Jair Messias Bolsonaro. 9 August 2021, <https://acervo.socioambiental.org/sites/default/files/documents/g4d00018.pdf>

¹⁶⁰ ALLRISE. Commission of Crimes Against Humanity against Environmental Dependents and Defenders in the Brazilian Legal Amazon from January 2019 to present, perpetrated by Brazilian President Jair Messias Bolsonaro and principal actors of his former or current administration. 12 October 2021,

that NGOs have no competence to formally denounce individuals before the ICC. Only state parties of the Court, the Prosecutor, and the UN Security Council can refer a situation. However, such communications by members of civil society may be reviewed by the

prosecutor. In this case, if the prosecutor considers that there is reasonable basis to proceed, s/he will do so by submitting to the Pre-Trial Chamber a request for authorization of an investigation.

TABLE 1

YEAR	Violence against property	Violence against individuals	Violence due to omission of public power	Infant mortality	Suicides
2021	1.294	355	221	744	148
2020	1.191	304	177	776	110
2019	1.120	277	267	825	133
2018	941	245	142	591	101
2017	963	242	143	702	128

Authors' own elaboration on the basis of data from the Reports Violence Against Indigenous Peoples in Brazil, published by the Indigenist Missionary Council (CIMI), available at <https://cimi.org.br/observatorio-da-violencia/o-relatorio/>. The figures refer to the total number of cases per year.

4.7 CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

A – Scope and main goals of the Convention

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly in December 1948, was approved in Brazil by Decree N° 30.822 in May 1952.

The Convention states its purpose in article 1: “The Contracting Parties confirm that genocide, whether

committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”.

B – Articles violated or possibly violated:

Article II

In the present Convention, genocide means any of the following acts

<https://static.poder360.com.br/2021/10/Bolso-naro-Haia-crimes-ambientais-out-2021.pdf>

committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

Article III

The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

C – Facts that show or suggest the treaty’s violation

1) In potential violation of articles II and III of the Convention, see the facts presented in item C.1 of the Rome Statute.

Since the beginning, Jair Bolsonaro’s administration has sponsored the dismantling of the National Indian Foundation (FUNAI), the body responsible for protecting the rights of indigenous peoples in Brazil, in particular the demarcation of indigenous lands. Demarcation is an essential process for the fulfillment of the right of existence of indigenous peoples. Whether due to the lack of resources or lack of personnel,

demarcation processes are paralyzed: 620 demarcation processes have been halted in the first stage and 117 territories are only awaiting the signature of the President of the Republic to be demarcated. Since 2019 there has been a 40% reduction in FUNAI's budget. Almost half of its positions are vacant. Only 2 of FUNAI's 39 regional coordinations are headed by public servants. The vast majority are headed by members of the Armed Forces, military police, federal police, or people without any connection to the Public Administration. Even the current president of FUNAI, Marcelo Xavier, is a police chief of the Federal Police. In effect, the Bolsonaro government promotes an anti-demarcation policy: there was no demarcation of any indigenous land in 2019, the first year of its mandate, and in the Pluriannual Plan 2020-2023 there is no provision for the delimitation of indigenous lands¹⁶¹.

D – Treaty monitoring bodies and/or imposition of sanction

The Convention provides in its Article VI that: Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction

¹⁶¹ INESC; INA. Dossiê Fundação anti-indígena: um retrato da FUNAI sob o governo Bolsonaro. 2022, https://www.inesc.org.br/wp-content/uploads/2022/07/Fundacao-anti-indigena_Inesc_INA.pdf; FOLHA DE SÃO

PAULO. Como a gestão Bolsonaro esvaziou a Funai. Café da Manhã. Podcast, 22 June 2022, https://open.spotify.com/episode/1i8m6Vg6div efCT2LVAwue?si=g3UfNQ-sTCir4Z5XTysidg&utm_source=whatsapp

4.8 INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

A – Scope and main goals of the Convention

The Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN, entered into force internationally in January 1969. In Brazil, it was approved by the Legislative Decree No. 65.810 of December 1969.

The Convention reflects the United Nations' opposition to any doctrine of superiority based on race, since it is morally reprehensible, socially unjust, and dangerous. The objectives, stated in its preamble are: " to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination".

B – Articles violated or possibly violated

Article 5

In compliance with the fundamental obligations laid down in article 2 of this

Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

[...]

(e) Economic, social and cultural rights, in particular:

[...]

(iv) The right to public health, medical care, social security and social services;

C – Facts that show or suggest the treaty's violation¹⁶²

1) In potential violation of article 5(b) of the convention, see the facts presented in items C.1 and C.2 of the Rome Statute.

¹⁶² For facts other than those listed below see items C.1 a C.8 in San Salvador Protocol; and item C in Rome Statute.

2) In potential violation of Article 5(e)(iv), see the facts listed in item C.1 of San Salvador Protocol. In addition, the following fact is presented:

* Covid-19 and indigenous peoples.¹⁶³

This is a platform for monitoring the indigenous situation during the Covid-19 pandemic in Brazil. Given the underreporting of indigenous cases by official data, the Articulation of Indigenous Peoples of Brazil (Apib) has been conducting an independent survey of cases. The numbers are higher than those reported by the Special Secretariat of Indigenous Health (Sesai), linked to the Ministry of Health, which has accounted for cases only in registered indigenous lands. By June 26, 2022, there are 72,037 confirmed cases, 1312 indigenous people were killed by Covid-19, and 162 peoples affected by the pandemic. Different studies attest that indigenous people are more vulnerable to epidemics due to worse social, economic, and health conditions than non-indigenous people, which amplifies the potential for disease dissemination. Particular conditions affect these populations, such as difficulty in accessing health services, either due to geographical distance or the unavailability or insufficiency of health teams. In addition, the Unified Health System subsystem created to provide health care to indigenous suffers from a lack of structure and resources for the treatment of more severe complications such as Covid-19.

¹⁶³ YANOMAMI, Davi Kopenawa. Covid-19 e os povos indígenas. 2022, <https://covid19.socioambiental.org/>. Available also in English.

¹⁶⁴ COSTA, Solange Maria Gayoso da. Violência, Discriminação, Racismo e Conflitos envolvendo os Povos Indígenas do Baixo Tapajós. *Temporalis*, Brasília, ano 19, n. 38, p. 87-100,

This discrimination in the area of health or in other areas, such as education and land demarcation, as seen in the analysis of other treaties, is known as institutional racism¹⁶⁴, since it comes from the State itself. And the deforestation of the Amazon ends up forcing a growing number of indigenous people to migrate to urban centers, where discrimination and prejudice against these peoples, besides continuing to be committed by the State, are also perpetrated by the general society¹⁶⁵.

D – Treaty monitoring bodies and/or imposition of sanction

There is no provision for sanctions in case of noncompliance, but only suggestions and recommendations, as well as a mechanism for settling disputes between States Parties through the Committee on the Elimination of Racial Discrimination.

States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted, and which give effect to the provisions of this Convention.

The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general

jul./dez. 2019, <http://orcid.org/0000-0002-5542-3663>

¹⁶⁵ MONGABAY. ‘Somos invisibilizados’: Indígenas denunciam preconceito nas cidades brasileiras. 12 April 2021, <https://brasil.mongabay.com/2021/04/somos-invisibilizados-indigenas-denunciam-preconceito-nas-cidades-brasileiras/>

recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties (article IX).

If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. 2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State (article XI.I).

When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the

recommendations contained in the report of the Commission. (Article XIII).

Furthermore, A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration (article XIV).

SOFT LAWS THAT PROTECT DIRECTLY OR INDIRECTLY HUMAN AND INDIGENOUS RIGHTS APPLICABLE TO THE BRAZILIAN AMAZON

I. UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

A – Scope and main goals of the Declaration

It was adopted by a majority of 144 States by the UN General Assembly on 13 September 2007. Brazil voted in favor of adopting it.

Its main goal is to establish a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world. Therefore, it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

B – Articles violated or possibly violated

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. 2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or

ethnic discrimination directed against them.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. 3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. 2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

C – Facts that show or suggest the treaty’s violation

The analyses of all the above treaties include facts that represent a direct or indirect violation of the mentioned

articles of the Declaration on the Rights of Indigenous Peoples. For direct

violations, see ILO Convention 169 and the Rome Statute.

II. UN UNIVERSAL DECLARATION ON HUMAN RIGHTS

A – Scope and main goals of the Declaration

It was adopted by a majority of 48 States by the UN General Assembly in December of 1948. Brazil voted in favor of adopting it.

Its main goal was to establish universally recognized human rights that would enable every individual to live their lives freely, equally and in dignity.

B – Articles violated or possibly violated

Article 3

Everyone has the right to life, liberty and security of person.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each

State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25

1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

C – Facts that show or suggest the treaty's violation

The analyses of all the above treaties include facts that represent direct or indirect breaches of the mentioned articles of the Universal Declaration of Human Rights. For direct violations, see ILO Convention 169, the Protocol of San Salvador and the Rome Statute.

5. FINAL REMARKS

After the analysis of the selected international norms, it is possible to draw some conclusions. Firstly, one can note that there is significant indication that all the analyzed norms are being, to some extent, violated by the current Brazilian administration. Although all the governments since the beginning of the latest democratic regime (1988) have also violated some international norms, the dozens of facts compiled in this report show that there is a deliberate policy of destruction of the forest and extermination of its indigenous peoples. The annihilating of these peoples has even been denounced in the 49th session of the UN Human Rights Council¹⁶⁶ and before the International Criminal Court.

In second place, we should draw attention to the fact that the vast majority of the analyzed norms do not have any mechanism of implementation or imposition, which is rather common in the public international law (PIL) field. In general, PIL does not count on centralized hierarchical institutions capable of demanding and imposing the implementation of international norms, differently from the domestic legal systems. Therefore, although the current situation of the Amazon and its original peoples could engender lawsuits against Brazil or Brazilians before the Inter-American Court of Human Rights and the International Criminal Court, the breach of most of the analyzed norms cannot have similar repercussion/consequence.

A mechanism that is often used in public international law in case of violations are retaliatory acts. Among them is retortion, which is a legal measure that can be taken against a country that violates some international norm and its main goal is to stop the violation. The political component in the implementation of this type of measure is quite significant, and the more relevant a certain issue is for the global agenda, the greater the chances that a country that breaches

¹⁶⁶ CIMI. Cimi denuncia à ONU o “extermínio programado” de povos isolados no Brasil. 28 March 2022, <https://cimi.org.br/2022/03/cimi-denuncia-a-onu-o-extermínio-programado-de-povos-isolados-na-brasil/>

related international norms will suffer retaliation. As previously analyzed, environmental issues, especially global warming, have been gaining increasing visibility and Brazil, with its huge portion of Amazon territory, tends to be at the epicenter of situations involving the matter. Thus, the possibilities of Brazil being subject to retaliation by various countries in the world that condemn the national management of the Amazon are high. In fact, these acts have been occurring since the beginning of the Bolsonaro administration and they tend to increase significantly if federal policies towards the rainforest do not change.

Leaving aside the legal domain and approaching the theme from a holistic perspective, which includes anthropological, sociological, ethical, biological, and environmental considerations, among others, the destruction of the Amazon is an unjustifiable absurdity that is only supported by the economic interests of a few individuals. Even if we consider exclusively the economic perspective, this is a limited and anachronistic view, because the economic potential of the standing, preserved forest is incalculably greater than its predatory exploitation through deforestation. The world is making great strides towards the consolidation of the understanding that there is an inescapable interdependence between nature and human beings. This awareness of interdependence is only the first step toward a broad recognition of nature as a subject of law in the future, regardless of its essentiality to human life.

Although this future may still be relatively distant, we have already reached an evolutionary stage where there should be no more room in the world for political leaders who disregard the environmental and climate emergency that we are experiencing, denying scientific evidence and endangering human survival on planet Earth. We live in a context where environmental consciousness reverberates in the most diverse areas of society, politics, and science. This also applies to international law, and its operators have the potential to play a relevant and decisive role if they dare to demand the implementation of existing norms.

INDIGENOUS PEOPLES' PERSPECTIVE ON THE CONTEMPORARY UPSURGE OF ATTACKS ON THE ENVIRONMENT AND AGAINST NATIVE PEOPLES – BY ALMIRES MARTINS MACHADO¹⁶⁷

ON STONES AND THORNS

"Dear friends, to conclude, our intention and Mario Juruna's intention is that the Brazilian people get organized. We have the right to organize, to take advantage of those elements that love their brothers. You want the survival of your people, of your race, that those who are responsible for us give us freedom. Have the freedom to sit down with all the indigenous chiefs of Brazil, in congresses and symposiums, in seminars, whoever, to discuss together, because it's no use telling the doctor that the cut on your foot hurts. The doctor can give medicine, according to my complaint, but he is not feeling the pain, the pain he doesn't feel. Our situation, a white man will never understand. The moral and spiritual suffering of the Indian, and we ourselves are faced with the impossibility of white people feeling our problem, the Indian's problem".¹⁶⁸

With the advent of the Brazilian Federal Constitution of 1988, the Brazilian State, at least in theory, should deal with the indigenous issue taking into consideration equality, legal plurality, cultural diversity and international provisions on the rights of indigenous peoples. Despite all the advances made

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¹⁶⁸ SOUZA, Marçal de. Relatório do I Seminário de Estudos Indigenistas. Campo Grande: Arquivo do Centro Documentação Regional da Universidade Federal da Grande Dourados (UFGD), 1980, pp. 14-15.

in legislation, we cannot be under any illusion that all is well. Cultural diversity is being attacked, considering that the State is one of the promoters of this violence; the recognition of rights implies the implementation and application of these norms by the courts and national legal bodies. Indigenous peoples have been subjected to ethnocide because, among other things, land demarcations have been paralyzed during the last government. The implementation and recognition of collective, ethnic and territorial rights are achievements that still need to be fulfilled.

The agreements, conventions and international treaties to which Brazil is a signatory have not been properly applied. When it comes to indigenous matters, the law continues to be a tool for domination and not for resolving conflicts. For indigenous peoples and traditional communities, with specific identities and a singular way of life, these laws should guarantee their control over their own institutions and ways of life, economic development, self-sustainability, self-identification, autonomy, maintenance and strengthening of their identities, languages, ways of believing, cosmologies and territorial rights. However, this is not the reality.

In the last two years, the Covid-19 pandemic turned visible and public the structural problems related to indigenous peoples and traditional communities in our country. Claims regarding territorial protection, demarcation and health, whether in the urban context or not, have taken the path of judicialization, enforcing the provisions of domestic law and accessing international bodies. The lack of political will on the part of the national congress and the Federal Government with regard to the indigenous cause is blatant; the indigenous policy adopted by the current Federal Government is omissive to the point of being denounced before the International Criminal Court (ICC). Contextualizing who they are and where they are, the Brazilian Institute of Geography and Statistics¹⁶⁹ estimates that 1,108,970 (one million, one hundred and eight

¹⁶⁹ IBGE. Instituto Brasileiro de Geografia e Estatística. Dimensionamento Emergencial de População Residente em Áreas Indígenas e Quilombolas para Ações de Enfrentamento à Pandemia Provocada pelo Coronavírus. 2020. Rio de Janeiro: IBGE, 2021, p. 17, <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101859.pdf>

thousand, nine hundred and seventy) people live in indigenous communities. The states with the largest estimated population in indigenous areas are Amazonas (284.5 thousand), Mato Grosso (145.3 thousand), Pará (105.3 thousand) and Roraima (83.8 thousand). Together, they make up 55.8% of the total indigenous population. These indigenous territories are the places where conflicts are most acute, regarding mining, logging, environmental conflicts, invasions and all kinds of violence, including the omission of the Federal Government.

According to IBGE data¹⁷⁰ there are more than 305 indigenous peoples, 274 languages spoken, approximately 114 isolated or recently contacted peoples. An expressive ethnic and cultural diversity, but they are invisible, politically disadvantaged, erased in the field of law and with a president of the republic who is openly anti-indigenous.

With Covid-19, the situation worsened considerably, and an apocalyptic scenario was drawn up that, considering the situation of indigenous people in a state of vulnerability, they were abandoned to their fate. In this context, the Administrative Ruling 419/2020 of the National Indian Foundation (FUNAI) aggravated the situation by allowing contact with isolated Indians, altering the exclusive prerogative of the General Co-ordination of Isolated and Recently Contacted Indians (CGIIRC). Due to the strong manifestation of indigenous organizations and civil society rejecting such permission, FUNAI reconsidered the decision. However, soon afterwards the President of the Republic sanctioned Law No. 14.021/20 to allow the entry of religious missions into Indigenous Lands inhabited by isolated peoples, leaving these native peoples vulnerable to infections that could be brought by the religious groups.

To make the problem even worse, FUNAI made it possible, by means of the Normative Instruction no. 09, of 22 April 2020, to issue a Boundary Recognition Declaration (DRL). This document proves that the property respects the

¹⁷⁰ IBGE. Instituto Brasileiro de Geografia e Estatística. O Brasil Indígena. Rio de Janeiro: IBGE, 2010, https://indigenas.ibge.gov.br/images/pdf/indigenas/folder_indigenas_web.pdf

boundary with Indigenous Lands, Indigenous Reserve or Indigenous Dominal Land. With this, speculation in the real estate market and the legalization of land grabbing increased. The entry of medical personnel into some indigenous lands was forbidden, thus the competent authorities promoted the crime of genocide. According to data collected by the Indigenous Missionary Council (Cimi)¹⁷¹, in 2020 almost 50 thousand indigenous people were contaminated by covid-19 and 900 died because of this disease. Furthermore, the document points out that more than three thousand indigenous children have died in the country in the last four years.

The indigenous peoples are the biggest victims of violence and brutality, living and experiencing the bitterness of deep mourning for the deaths caused by policies that deny the right to land, health, education, the right to live according to their cultural heritage and also suffering from the impacts caused by the construction of hydroelectric plants. These, among other consequences, promote the forced removal of entire communities. As an ethnic minority, although indigenous rights and the duty to respect them have been exhaustively discussed, despite the existence of protective normative instruments, it can be noticed that indigenous peoples do not live in a situation of equality or that the mantle of justice covers their bodies violated by necropolitics.

The observation is that all this brutal violence, ethnocide and indigenous genocide seem to be a subject relegated to heated debate in the Academia. The issues still receive a timid and scarce legal treatment and are scattered in publications, articles, judicial decisions and opinions. The attention of researchers is focused on self-determination, demarcation, health, education, identity, culture and traditional knowledge associated with biodiversity. Genocide under international law is still a slow process.

¹⁷¹ CIMI. Conselho Indigenista Missionário. Relatório Violência contra os Povos Indígenas no Brasil. 2020, <https://cimi.org.br/wp-content/uploads/2021/11/relatorio-violencia-povos-indigenas-2020-cimi.pdf>

AN ANTICIPATED GENOCIDE

The traces left by the violence demonstrate the causes that are generating an announced genocide, a situation that the indigenous populations of the country are going through. Among the reasons is the predatory process of decolonization, whose pages were written at the cost of indigenous blood that supported the economic model in place. Today the agribusiness caucus in the national congress acts in an institutional manner, legalizing the actions of its militias that assassinate leaders and stimulate structural, institutional racism against the indigenous peoples. The certainty of impunity with perpetrators not being condemned, even though the crimes are heinous, happens because the power of the capital prevails. Politicians against indigenous peoples increasingly propose bills with the intention of restricting these peoples' rights. Some examples of institutional initiatives are the proposal of the PEC 215; the Ordinance 303 of the AGU; the Temporal Milestone that is being judged by the Federal Supreme Court (STF) to decide on the future of indigenous lands and, if accepted by the court, it will be the beginning of the end. What weapons and diseases have not achieved over 522 years, a pen will achieve. In short, a range of initiatives by the Brazilian State that are contrary to the constitutional rights of indigenous peoples are in progress.

If there was political will, there would be ample conditions to solve these problems, but the Brazilian authorities prefer conflict, confrontation, as the indigenous issue is not a priority. The Brazilian state behaves and acts as if there were no constitutional provisions protecting these rights. It seems to want war, to continue what the pioneers started, considering that State policy takes sides with mining, mega-projects and agribusiness, instead of guaranteeing the rights of indigenous peoples, as if the Federal Constitution were a dead letter.

The rural landowners have the property titles granted by the Public Power and, in many cases, it was on indigenous lands. Thus, the Temporal Milestone is also a result of the unequal distribution of land and property, which did not

consider the fact that those lands were already occupied and inhabited by indigenous peoples who were later expelled from their ancestral lands.

The Brazilian State, when it is not complicit, is negligent in violating the rights of indigenous peoples. It has been negligent in the demarcation of land and supports political positions that are contrary to indigenous rights. In the judiciary, there is a glaring imbalance in the investigation/judgment of crimes supposedly committed by indigenous people and those committed against indigenous people, especially leaders: criminal prosecution is swift, hypersonic in the first situation. In relation to the second, it walks as if it were an old and powerless tortoise. It should be remembered that recent interpretations by the Supreme Federal Court have been more in the direction of restricting the territorial rights of indigenous peoples. It is enough to analyze the 19 conditions in the case of “*Raposa serra do sol*”, which paved the way for the temporal milestone.

The indigenous lands, especially those in the north of the country, are the target of the *bandeirantes* and Jesuits of the 21st century, which can be exemplified by the explicit harassment of religious missionaries in indigenous lands where the isolated communities live, in the Javari valley in the state of Amazonas. The escalation of violence against isolated or recently contacted indigenous peoples, as well as the onslaught of wood loggers and miners on other indigenous lands are warnings, cries for help from those who live in a very serious situation, fomented by the anti-indigenous policy promoted by the Federal Government. In the 20th century, indigenous peoples were removed from their lands, crowded into reserves created by the State. Others were taken to concentration camps, as was the case of the Guarani farm in Minas Gerais. The goal was very clear, to hand over their lands to farmers, wood loggers, miners, companies that would build roads, railways, hydroelectric plants, throughout the country.

As an example of necropolitics or rehearsals of an ethnocide, there is the complaint made by the Observatory of Human Rights (OPI) of the Isolated and

Recently Contacted Indigenous Peoples, on 27 November 2020, in which the Federal Government, without any technical justification, decided to diminish the boundaries of the indigenous land Ituna-Itatá, in the state of Pará, inhabited by isolated indigenous peoples. It is considered the most deforested Indigenous land in 2019 in Brazil, with 13% of the total devastation registered in Brazilian indigenous areas by the Prodes system, of the National Institute for Space Research (Inpe).

All the devastation registered is related to the lack of protection, since the bodies that used to carry out this task have been dismantled. As a result, there is a risk of new attacks, violent onslaughts by invaders, land-grabbers, loggers and miners, putting isolated indigenous peoples at risk of disappearing, an anticipated genocide. Evidence shows that there are still many isolated indigenous peoples in the forests and indigenous lands of the Brazilian Amazon.

Although indigenous leaders and the indigenous movement have denounced such violations, very little has been done, because the deaths, assassinations, invasions and all sorts of violence are met with impunity. Another example occurs on Yanomami land, where it is estimated that there are around 20,000 miners digging on the land in search of gold and the number is only increasing. The problem is not only related to the violence, but also the contamination of the waters through the intensive use of mercury, in addition to environmental destruction.

A research conducted between 2019 and 2020 by Fiocruz, in partnership with WWF, assessed the impacts of mercury contamination on inhabitants of three *Munduruku* lands: *Sawré Muybu*, *Poxo Muybu* and *Sawré Aboy*. The results of the research reveal the severity of the ongoing contamination and the serious neurological diseases that are already manifesting in indigenous bodies. The serious violations of the human rights of indigenous peoples are getting worse every day, because in recent years there has been a significant increase in

invasions, fires and deforestation, and consequently, violence has increased, especially against indigenous women and children¹⁷².

According to data gathered by the Indigenous Missionary Council (Cimi), in 2020 Brazil had 182 indigenous people murdered. In 19 states 201 indigenous lands were targeted by 263 invasions and illegal exploitation of natural resources. Almost 50 thousand indigenous people were contaminated by covid-19 and 900 died because of this disease. Furthermore, the document points out that more than three thousand indigenous children have died in the country, in the last four years.

The practice of such violence has never ceased; on the contrary, it has increased and has not provoked a national commotion; after all, these are indigenous bodies that people really want to get rid of once and for all. For a long time now, the resistance and resilience of the indigenous peoples have begun to be seen by the State as obstacles to development. This worsened with the implementation of the Growth Acceleration Program (PAC), which ran roughshod over everything, imploding the pillars of law, in the name of development. Those who resist this "progress" are now seen as obstacles to it. In this way, indigenous peoples, riverbank dwellers, *quilombolas* and social movements, among others, are seen as mere obstacles to be overcome.

The case of *Belo Monte* is emblematic because it exposes this "*modus operandis*", violating the Federal Constitution, international conventions and agreements ratified by Brazil and which guarantee the prior, free and informed consultation of traditional peoples who inhabit these territories. The Brazilian State is not, and never has been, interested in understanding or resolving the issues of indigenous or other traditional communities.

¹⁷² FIOCRUZ. Fundação Oswaldo Cruz. WWF-Brasil. Impacto do mercúrio na saúde do povo indígena Munduruku, na Bacia do Tapajós, 2020, https://www.greenpeace.org/static/planet4-brasil-stateless/9ec86ba8-wwfbr_2020_nt_impacto-merc%C3%A9rio-sa%C3%Bade-povo-ind%C3%ADgena-munduruku_v2.pdf

The indigenous realities in our ethnic Brazil are numerous and diverse. There is, therefore, a tendency to simplify and disregard indigenous human rights, given that international normative provisions make use of general principles to be observed in their implementation in signatory countries. And Convention 169 of the International Labor Organization (ILO) is the one that best seeks to respond to the legal demands of indigenous peoples around the world.

If it were only up to the national legal system, as is the case in Brazil, where we are living through an announced genocide and a flagrant socio-environmental conflict, which is the most serious in recent times, we would be close to the end of everything, as shown by the intensification of the fires in 2019, when the forest was literally burning and turning into ashes and smoke. Asymmetries are accentuated in all indigenous lands, for this reason prior consultation is emblematic to say the least, since it invokes the sacred value of the cosmology(s) of the peoples to be consulted and the native concepts of territory, nature, social and political organization, forms of representation, ways of life, among others.

Another example of state necropolitics is *Belo Monte* (beautiful monster), which shows how the power of capital, of large enterprises, disrespects and undermines the rules of environmental licensing, as well as the way of life of the 9 ethnic groups affected by the impacts of the construction. Building this hydroelectric dam undermined Article 231 of the Federal Constitution of 1988 and made clear the adoption of colonizing policies of elimination of dissenting voices. Once again, the "obstacle" to the construction of the dam has been overcome.

I

INDIGENOUS TERRITORIES: THE TARGET

The case that receives more media coverage is the one of the *Guarani* and *Kaiowa* in Mato Grosso do Sul, which is different from the confrontations that happen in the northern region. In Mato Grosso, the Guarani people had their land expropriated, being expelled from their ancestral land, confined to reserves similar to a concentration camp and their leaders were systematically murdered. Despite these events, they are still alive, fighting, claiming their lands, carrying out the retaking of territories, living their way of life. They are protagonists, examples of resistance and resilience, despite being systematically attacked by ranchers, gunmen, assassinated, run over on the highways when they travel on them, opposing the interests of agribusiness, in a confrontation that seems like a declared war. They continue to exist, letting out a scream that renews the hope that tomorrow may be different.

For the Guarani, the land has to do with their existential space, where the environment helps to create their identity, their social relations, where they live or try to live their culture fully, developing their politics and their economic, cultural and religious means. It is not only a place to live, plant fields, hunt and fish. It is also the space where networks and family ties are built. It is also where their ancestors have been buried, representing socio-cultural power. It is the place where each plant, animal and stone have a meaning. It is the environment where they develop ways of thinking, acting and seeing the world. The territory encompasses a whole set of beings, spirits, goods, knowledge, uses and traditions¹⁷³.

Everything indicates that the colonial's war of conquest has reinvented itself in the present century in Mato Grosso do Sul; the wings of the shadow of death fly fast carrying viral epidemics. The denial of rights in this imposition of the civilizing process is reduced to dominate, subjugate, exclude and destroy. Economic and political interests prevail, plotting the threads of hate networks, of structural racism, opening deep wounds in the last 522 years. According to the reports of the Indigenous Missionary Council (CIMI), from 2003 to 2014

¹⁷³ MACHADO, Almiros Martins. Exá raú mboguatá guassú mohekauka yvy marãe'y. Tese de Doutorado. Programa de Pós-Graduação em Antropologia, Universidade Federal do Pará, 2015, p. 42.

there were 390 murders of indigenous people, 707 suicides between 2000 to 2014¹⁷⁴.

What we see today is only the prolongation of the historical process of dispossession, whose strategies have varied according to the political context without any truce. In 1967, the public prosecutor Jader Figueiredo published the so-called Figueiredo report, which scandalized the public opinion by vehemently declaring that the indigenous peoples were victims of massacres and genocide. The report exposes the usual practice since the invasion by the Portuguese, from the exploitation of indigenous labor to the complete destruction of villages.

By being considered an obstacle to the model of economic expansion, from the cultivation of sugar cane in the Northeast, rubber extraction in the Amazon, extensive cattle breeding to the monoculture of soybeans, timber extraction and now mining on an industrial scale, closing the picture with the construction of dams and hydroelectric plants. Indigenous lands were the goal to be achieved, the target of big capital.

Whilst at the beginning of colonization indigenous were considered as animals, soulless, hostile, savages, brutes, insensitive, mentally incapable, nowadays they suffer subtle and sometimes open violence in social networks. Despite being marginalized, suffering racist, judgmental and discriminatory attacks, a growing number of indigenous people are leaving their villages to study in universities, taking up places at undergraduate, master's, doctoral and post-doctoral levels. The search for academic knowledge, the appropriation of scientific knowledge has a greater purpose, to use them as tools in the defense of their rights. It is the reaffirmation of their existence, as indigenous people, as humans, because they have been denied it since the beginning of colonization.

¹⁷⁴ The previous CIMI reports are available at <https://cimi.org.br/observatorio-da-violencia/edicoes-anteriores/>

Throughout millennia, indigenous peoples have learned to live without the presence of the State. They teach that there are options to wild capitalism, contrary to what is preached that the only possible way is to follow the path of development and economic growth. Other worlds are possible or other ways of life exist and are real, they can coexist. The indigenous peoples have already shown that they know how to live without the State. We don't need it to continue existing, if necessary, we can coexist with it, as long as we are respected as people and subjects of rights as guaranteed in the Federal Constitution. However, there is a lack of political will, which prevents us from enjoying full citizenship, since our journey on this earth is with the intention of a good life.

What are the thoughts of a modern indigenous? How to produce a discourse with one's own words, in which one can see his own reflection in this discourse to express our epistemologies, philosophies of life and thus organize, process data, debate and from the point of view of the technique that will highlight a "modus vivendi", which has allowed us to arrive at the present day, despite the massacres and all kinds of violence we have suffered.

Therefore, new reflections must be made, which increasingly indicate the need to reconsider the way of thinking, the vision that non-indigenous society has of indigenous societies. The old stigmas must be overcome in order to have new frameworks for how to conceptualize the other. The assumptions for thinking about indigenous issues go beyond the oppositions between winners or losers, dominant and dominated, which end up leaving indigenous societies with only two roles in principle: victims of annihilation and culturally conservative martyrs¹⁷⁵. If alterity implies putting yourself in the other's place, hearing the other as your equal, recognizing him/her as different, this has not happened yet.

¹⁷⁵ PACHECO, Rosely A. Stefanos. Direito Indígena: da pluralidade cultural a pluralidade jurídica. Revista Tellus. Núcleos de Estudos e Pesquisas das Populações Indígenas (NEPPI), year 6, n. 11, October 2006, Campo Grande: UCDB, 2006, pp. 121-144.

For this, it is necessary to broaden the paths that promote human rights, identities and citizenship and the right to be different. It is necessary to keep in mind that even the historical indigenous peoples have always been an active subject. They have always been able to make decisions in defense of their rights, even if it was necessary to take up arms. They have never ceased to forge alliances, to form networks of knowledge that have enabled them not to be mere victims, but have always opposed oppression, enslavement and exploitation and sought the threshold of their rights. Today, more indigenous people are becoming qualified and presenting themselves on the national and international scene as protagonists of their rights and their history. They continue to negotiate, claim, resist and propose solutions to the historic problems they have experienced, when they are not the ones denouncing the express disrespect for indigenous human rights promoted by the Brazilian State and its agents.

The old and the new coexist in the indigenous lands, the web of meanings becomes entangled in the local knowledge¹⁷⁶, giving shape, fluidity, porosity, permeability, flexibility to the cultural boundaries, reinterpreting, re-signifying, re-elaborating their culture, social network, way of thinking, seeing and acting, as the situation demands, legitimating it. The indigenous are not passive, accepting the role of victims, the paradigm of acculturation, of stereotyped views, of second-class subjects, of incapability. The 21st century allows us to go far beyond the imagined, so much so that the "real Indian" today is in universities, is part of the social networks of the internet, tweeting and exchanging information via Facebook, WhatsApp, Instagram, telegram, holding web conferences for villages that have internet connection and for all interested public, indicating the paths of law and the judiciary, to format a *jus esperniandi*.

Information arrives practically in real time, especially in the current conjuncture of the covid-19 pandemic and when everything seems to have lost its meaning,

¹⁷⁶ GEERTZ, Clifford. "O saber local: fatos e leis em uma perspectiva comparativa". In: O saber local: novos ensaios de Antropologia interpretativa. Rio de Janeiro: Vozes, 1998, pp. 249-356.

our cosmologies remind us by explaining the current moment of misfortunes, which the whole planet is facing. We react by reinventing ourselves, reinterpreting our cosmological narratives and territorializing the digital world, just as we are advancing over the areas of academia and the judiciary.

Our elders explained to us how in the past they faced the risk of extermination due to diseases brought by the Europeans, unknown in the lands of the new world, how we managed to be alive today and claim for basic human rights, that the lesson must be learnt. We have arrived at the contemporary age as protagonists, more present and active than ever. We reiterate that we were not helpless victims of a genocidal process, that many survived because they learned to camouflage their identity and today claim their denied rights at the top of their voices and in court.

At the turn of the millennium, we entered the university. We were not many at first, but the path was opened and today we are thousands, trying to tame the university, designing an indigenous intellectuality. The universities are not prepared to receive us, much less our knowledge. Therefore, we face the risks and swim against the current, showing that we will not swim just to die on the beach, upon arrival, as many would think. The intercultural dialogue is there, waiting patiently and if before they wanted to transform us into whites, civilized, today we show that our way of life can save humanity, that our "wild" way of being can be the way out of the end of the world that is being announced.

"We exist!" is the cry; the indigenous peoples react by occupying the National Congress, taking back ancestral lands, organizing the *Acampamento Terra Livre* (ATL); demonstrating in front of the Supreme Federal Court (STF), making films, documentaries, writing books, filing lawsuits in the Brazilian judiciary and in international courts, travelling around the world denouncing the atrocities they have suffered, organizing themselves more and more in the form of legal entities. This is the manifest response of self-determination to the current political context.

What demands reflection and dialectical and hermeneutic effort is the clash between the new (modern) and the old (traditions) or what remains and what changes? Perhaps in the future there will be nothing left to share with the children but the heritage of hope, so that they can be true men, if not according to custom and tradition, at least they will not have hearts of stone and will have human solidarity. Tomorrow is uncertain and the indigenous peoples do not focus on the future, because the struggle is today, the combat is now, the reaction is now, hence the slogan: indigenous blood, not a drop more. Many skills are being improved, such as the following: knowing how to listen, how to speak, whether in formal or colloquial language, and how to see, scrutinize, interpret, giving meaning to the world in which we live and the world of the other, establishing the primordial difference between the virtue of self-perception, thinking/reflecting and judging/evaluating, in order to be sure of the ground on which our indigenous feet are standing, whether it is the ground of hope or the shifting sands of the political game of the new old colonizer,.

The words spoken by the indigenous leader Ailton Krenak sum up this article:

"All over the world there are still traditional peoples, in Africa, in Asia, Northern Europe, North America, no matter how far we are from the big urban centers, we have to answer so many questions that include everything from schooling, health, land administration, business with third parties.... This list is enough to exemplify how much we are being summoned to create new answers to many not so new questions".¹⁷⁷

New responses are demanded at every moment when indigenous peoples rise up and challenge the situations that have been established, without, however, being so new, as Krenak attests. Multiculturalism and legal pluralism will continue to provoke disquiet, while relativism is not a practice, considering that legal universalism has been and continues to be an imposition. The

¹⁷⁷ BRASIL. Ministério da Educação e do Desporto. Secretaria de Educação Fundamental. Referencial Curricular Nacional para as Escolas Indígenas. Brasília: MEC, 1998, p. 23.

indigenous peoples continue with their march towards the conquest of rights, even if intolerance intensifies, it will not be different from the old times. However, new weapons are being handled and they are much more powerful than the old shotgun or the bow arrow. Let the social media say so and who knows, maybe an indigenous spring is in the offing.

The indigenous spirit is imbued with resistance, manifesting a living resilience and increasingly convinced that it must take possession of and empower itself with all possible resources and knowledge.

Up to this point there have been many victories and defeats, a learning process that has made it possible for the indigenous to gain the maturity to reorganize themselves, desiring efficiency, results, representativeness, mobilization and articulation, with the intention of achieving national representation, in an attempt to encompass the existing ethnic diversity and empower the interests of the indigenous peoples. The probably most eloquent Guarani leader, Marçal de Souza Tupã, announced it in 1977: "Our path will no longer be strewn with roses. Perhaps many of us will have to write our history with blood, as has happened to our brothers. We have the sacred duty to defend what is ours".

Since then, much indigenous blood has been spilled and today, there is no social movement more active and demanding than the indigenous movement, as there is a significant reaction to the advance of agribusiness, with a position contrary to state and multinational enterprises that affect indigenous territories. They denounce the slowness of the demarcation processes and the attempts of the farmer, the Bible and the Bullet caucuses, in the National Congress, together with the executive, to open up indigenous lands to mining and agribusiness.

The new technologies have made communication much faster and more comprehensive, formatting new alliances, partnerships with environmental activists, NGOs and others sympathetic to the indigenous cause. So, if asked

what is the perspective of indigenous peoples on the contemporary upsurge of environmental and human rights attacks? The answer is outlined in the resistance, resilience and the uprising of indigenous peoples, in search of enforcing the constitutionally provided rights described above.

That is why we end with this sentence: DEMARCATION NOW.