



ARTICULAÇÃO DOS POVOS INDÍGENAS DO BRASIL

APOINME – ARPIN SUDESTE – ARPINSUL – COMISSÃO GUARANI YVYRUPA - CONSELHO
DO POVO TERENA - ATY GUASU - COIAB

Assessoria Jurídica

International Criminal Court

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

Submitted on August 9, 2021

International Indigenous Peoples' Day

by the

Articulation of the Indigenous Peoples of Brazil (APIB)

Brazil



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1. EXECUTIVE SUMMARY

This Communication gathers together facts and statements that prove the planning and implementation of an explicit, systematic and intentional anti-indigenous policy headed up by President Jair Bolsonaro, since January 1, 2019, the first day of his Presidential term of office.

As will be demonstrated throughout this Communication, the implementation of this anti-indigenous policy by President Jair Bolsonaro is characterised by the dismantling of public structures that provide protection for the environment and the indigenous peoples. Government entities and public policies that previously demonstrated respect and protection for the indigenous peoples have been reshaped into tools for persecuting them.

The dismantling of public structures providing protection for society, the environment and the indigenous peoples has paved the way for raids, incursions and trespassing on indigenous lands, together with deforestation, burn-offs and wildfires in Brazilian biomes, with an upsurge in wildcat mining and industrial mining on indigenous lands. Attacks on indigenous lands and their people are proven through multiple facts that range from the explicit refusal to demarcate new lands through to draft bills, decrees and edicts attempting to legalize invasive activities, triggering disputes and conflicts. The reports and data mentioned in this Communication will clearly demonstrate the consequences of this dismantling of the public infrastructure underpinning indigenous, social and environmental rights: raids, incursions, trespassing, disseisin and adverse possession of indigenous lands, deforestation, criminal wildfires and burn-offs, wildcat mining and industrial mining on these lands.

The COVID-19 pandemic appears as an opportunity for President Jair Bolsonaro to forge ahead with his anti-indigenous policy. In addition to the intentionality of President Jair Bolsonaro to spread the virus throughout Brazil, specific acts are particularly affecting



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the indigenous peoples. The systematic refusal to set up protective sanitary barriers stopping the disease from reaching the villages, hurdles raised against vaccinating indigenous persons, and the permissive attitude adopted towards successive incursions by missionaries approaching isolated or recently-contacted peoples, are some of the facts reported in this Communication, which are stepping up attacks on the indigenous peoples and causing deaths and diseases. Added to these appalling facts is the tragic report of the COVID-19 death of the last male representative of the Juma people.

The presence of invading outsiders has speeded up environmental degradation to a significant extent, thus undermining the feasibility of indigenous ways of life, with the physical existence and lifestyles of these people depending on the forests, the land and the rivers in material, social and symbolic terms. Entire tribes have been poisoned by mercury used by illegal wildcat mining activities. Incursions trespassing on indigenous lands have also spread the COVID-19 pandemic among indigenous peoples. And with these invasive raids on indigenous lands being allowed and encouraged by President Jair Bolsonaro, disputes and conflicts have also sprung up, with leaders being assassinated, as well as violent actions and intimidation. Specific reports will be presented of these impacts on isolated or recently-contacted peoples, including the Munduruku people, and tribespeople living on the Yanomami, Guarani-Mbya and Kaingang, Guarani-Kaiowá, Tikuna, Guajajara and Terena lands.

The anti-indigenous policy currently underway in Brazil is deliberately malicious. These are carefully planned acts that have been perpetrated consistently over the past two years, steered by the clear intention of producing a Brazilian nation with no indigenous peoples, to be achieved through the destruction of these people, dying from disease, homicide, or the annihilation of their cultures, overwhelmed by assimilation processes. This Communication claims that these facts constitute the crime of genocide, which is addressed in Article 6 of the Rome Statute: these are acts committed with the intention of destroying an ethnic national group, either fully or partially, through either severe



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damage to the physical or mental integrity of group members (Article 6.b of the Rome Statute); or through the deliberate subjection of the group to living conditions designed to cause their full or partial physical destruction (Article 6.c of the Rome Statute).

The facts presented herein on the situation of indigenous peoples are added to the previous Communication presented in November 2019 by the Human Rights Advocacy Collective (CADHu) and the Arns Commission, which is currently under analysis at this Prosecutor's Office under Reference N° OTP-CR-537/19.

The Office of the Prosecutor at the International Criminal Court is hereby notified by the APIB that genocide and crimes against humanity are under way at this time, against indigenous peoples of Brazil, for justifying an investigation to examine crimes falling within the sphere of competence of the International Criminal Court.

2. INTEREST AND EXPERTISE OF THE ARTICULATION OF THE INDIGENOUS PEOPLES OF BRAZIL

The Articulation of the Indigenous Peoples of Brazil (APIB) is a representative indigenous organisation protecting the Rights of the Indigenous Peoples of Brazil. It was set up in 2005 by the Free Land Camp-Out (ATL – *Acampamento Terra Livre*) indigenous movement. Held since 2004, this nationwide mobilisation drive is held every year to spotlight the situation of indigenous persons in Brazil, highlighting violations of their rights and presenting them for discussion, while also calling upon the Brazilian State to respond to their demands, complaints and claims.

A national benchmark for the indigenous movement in Brazil, this grassroots Association was built from the bottom up. Gathering regional indigenous organisations together, its core purpose is to strengthen union among these peoples, building up links among different parts of Brazil and their indigenous organisations, in addition to mobilising



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these people and their organisations against aggressive threats jeopardising indigenous rights.

At the moment, the APIB consists of the following regional indigenous organisations:¹

- Articulation of the Indigenous peoples of the Northeast, Minas Gerais and Espírito Santo States (*APOINME – Articulação dos Povos Indígenas do Nordeste, Minas Gerais e Espírito Santo*);
- Council of the Terena People (*Conselho do Povo Terena*);
- Articulation of the Indigenous peoples of the Southeast (*ARPINSUDESTE – Articulação dos Povos Indígenas do Sudeste*);
- Articulation of the Indigenous peoples of the South (*ARPINSUL –*); *Articulação dos Povos Indígenas do Sul*
- Grand Assembly of the Guarani Kaiowá Peoples (*ATY GUASU – Grande Assembleia do Povos Guarani Kaiowá*);
- Coordination of the Indigenous Organisations of Brazilian Amazonia (*COIAB – Coordenação das Organizações Indígenas da Amazônia Brasileira*);
- Guarani Yvyrupa Commission (*Comissão Guarani Yvyrupa*).

The organic structure of the APIB gathers together indigenous leaders representing every region in Brazil, encompassing the immeasurable ethnic diversity of the nation's indigenous peoples. Each of the seven grassroots organisations belonging to this Association, listed above, appoints a leader to represent it on the APIB Executive Coordination Council. Policy decisions are taken by this Council, with the support of the

¹ Each of the grassroots organizations belonging to the APIB operates in a regional area representing specific peoples, without necessarily matching the official geographical boundaries of Brazilian States or regions. The definitions are based mainly on the biomes where these peoples are located. For more information on grassroots organizations belonging to the APIB, see: <https://apiboficial.org/sobre/>.



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APIB Technical Coordination Units. It is important to underscore the capillarity of the APIB among regional organisations, which in turn represent local indigenous organisations.

Data from the last Census, conducted in 2010 by the Brazilian Institute for Geography and Statistics (IBGE),² indicate that the indigenous Brazilian population consisted of 817,963 Native Brazilians, of which 502,783 live in rural areas and 315,180 live in urban zones. This contingent of the Brazilian population encompasses 305 indigenous peoples, speaking 274 indigenous languages.

According to data released by the National Indian Foundation (FUNAI), there are currently some 114 records of the presence of isolated indigenous peoples throughout Brazilian Amazonia. Among them, there are: i) "isolated indigenous groups", with whom FUNAI had engaged in systematic geographical localisation efforts allowing not only evidence of their existence, but also obtaining more detailed information on their territories and their social and cultural characteristics; ii) "references to isolated indigenous groups", that are records with strong evidence of the existence of a specific isolated indigenous group, duly included and verified in the database but with no systematised efforts undertaken by the General Coordination Unit for isolated indigenous groups at FUNAI proving it; and iii) "information on isolated indigenous groups", which is information on the existence of isolated indigenous groups duly registered at FUNAI, meaning that they have gone through a screening process but have not been addressed by a qualification study.³

According to data released by the IBGE, "the indigenous peoples are present in all five regions of Brazil, with the North having the largest number of individuals at 305,873,000, accounting for some 37.4% of the total. In the North region, the State with

² The Brazilian Institute for Geography and Statistics (IBGE – *Instituto Brasileiro de Geografia e Estatística*) is the entity that officially prepares Brazil's demographic Census. Data on the indigenous peoples of Brazil may be accessed in the 2010 Census Report, which is the last time this was conducted in Brazil, at: <https://indigenas.ibge.gov.br/images/indigenas/estudos/indigena_censo2010.pdf>.

³ Available at: <<http://www.funai.gov.br/index.php/nossas-acoess/povos-indigenas-isolados-e-de-recente-contato>>.



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the largest number of indigenous persons is Amazonas, accounting for 55% of the total in this region. The Northeast is home to around 25.5% of this population, with the largest concentration of indigenous persons living in Bahia State. The region with the third largest concentration of indigenous persons in the Centre-West, with Mato Grosso do Sul State being home to 56% of the population of that region.”⁴

Since colonial times, back in the XVI century, Brazil's indigenous peoples have fought and struggled to survive, initially as a Portuguese colony, and then the implementation of a State – as a type of political organisation that is foreign to indigenous societies – in their territories. Colonial policies and the formation of the Brazilian State led to the extermination of entire peoples, together with their enslavement, domination and subjection to guardianship due to their legal incompetence. In response to these historically violent practices, Brazil's indigenous peoples have organised in order to claim their right to exist and uphold their ancestral cultures. Benefitting from the experience built up by the indigenous movement in the Constituent Assembly during the 1980s, Native Brazilian leaders are once again gathered together under the aegis of the APIB to defend their rights at the national and international levels.

The purpose of the APIB is to encourage mobilisation and permanent networking among indigenous movements in different regions and at the national level. This means drawing up and implementing training programmes for indigenous leaders and organisations, assessing government actions and influencing the construction and implementation of specific policies responding to the needs of the indigenous peoples.

Consequently, the APIB has been monitoring indigenous policies in Brazil in terms of different areas, particularly healthcare, education, land, environment, legislation, sustainability, human rights, participation and social control. It has also battled against

⁴ Data on the indigenous peoples of Brazil may be accessed in the 2010 Census Report, which is the last time this was conducted in Brazil: <https://indigenas.ibge.gov.br/images/indigenas/estudos/indigena_censo2010.pdf>.



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the persecution and criminalisation of indigenous leaders, while also striving to ensure the participation of Native Brazilians in State decision-making entities.

Under the Administration headed by President Jair Bolsonaro, Brazil's indigenous peoples have been subjected to severe and systematic attacks against their way of life and even their existence as Native Brazilians. Since the very first day of the Bolsonaro Administration, Brazil's indigenous peoples have been persecuted and subjected to violence, incitement to hate and deep-rooted discrimination. Overall, the steps taken systematically and deliberately by President Jair Bolsonaro constitute the international crimes listed in this Communication.

Several strategies have been adopted by President Jair Bolsonaro to perpetrate the acts constituting such crimes. However, all of them are based on destroying the links between indigenous peoples and their lands, in one way or another, their cultural, social and physical deaths. For Native Brazilians, the land is vital to their lives, taken as a whole with everything found there, including rivers and non-human life forms. It is here that Native Brazilians hunt, fish, gather and grow their crops. For many of these peoples, the construction of their tribal identities is grounded on the symbolisation of their relationship to their lands. This may also be a type of mediator between human beings and the collectivity, and may be important in the ritual economy.⁵

As may be noted, each of the indigenous peoples has specific relationships with their lands, but the lands where they live are fundamental to all of them. Within the framework of a national State, they sustain the bodies and underpin the ethnicity of Native Brazilians.

Over the past few years, the Articulation of the Indigenous Peoples of Brazil has battled against the policy introduced by President Jair Bolsonaro, which is striving to

⁵ Seeger, Anthony; Viveiros de Castro, Eduardo. *Terras e territórios indígenas no Brasil*. In: *Cinco enfoques sobre a situação indígena*. Rio de Janeiro: Biblioteca Digital Curt Nimuendajú, p. 101-114; Pacheco de Oliveira, João. *Uma etnologia dos "índios misturados"? Situação colonial, territorialização e fluxos culturais*. *Mana* 4(1):47-77, 1998.



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produce a Brazilian nation with no place for the differences inherent to its indigenous peoples. In this idealised nation, there is room for Native Brazilians only if assimilated, meaning the destruction of their differences, or if they are physically destroyed. Under any hypothesis, and not by chance, the production of the nation idealised by President Jair Bolsonaro is deemed pursued at the cost of indigenous lives. Raids, Raids, incursions, and trespassing, exploitation, contamination and destruction of lands, waters, forests and wilderness areas block the continuation of their ways of life.

Brazil's President is systematically encouraging and promoting these acts, through producing indigenous caricatures and destroying government institutions and public policies focused on protecting indigenous territorial rights or implemented by President Jair Bolsonaro. The disappearance of entire tribes and ways of life, assassinations and murders, are some of the consequences of the acts perpetrated by President Jair Bolsonaro in his conduct of these criminal policies, steering the Brazilian State machine against its indigenous peoples.

This is why the APIB is notifying this Prosecutor's Office of the crimes against humanity and genocide perpetrated by President Jair Bolsonaro against the indigenous peoples of Brazil.

3. PURPOSE AND SCOPE OF THIS COMMUNICATION

The Communication presented by the APIB gathers together acts perpetrated by President Jair Bolsonaro between January 1, 2019 (the first day of his presidential term of office) and June 30, 2021, the closing date of the research project providing input for this Communication.

Pertinent to the situation of Brazil's indigenous peoples, the facts presented herein are additional to the previous Communication submitted by the Human Rights Advocacy



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Collective (CADHu) and the Arns Commission, in November 2019, currently under analysis at this Office of the Prosecutor under Reference N° OTP-CR-537/19.

4. FACTS: INDIGENOUS PEOPLES AND THEIR LANDS UNDER ATTACK BY PRESIDENT JAIR BOLSONARO

Brazil is a vast country, with many different peoples, communities and ethnicities constituting its population. This is why, whenever talking about social dynamics in Brazil, it is vital to pay close attention to inter-sectional aspects that have contributed to its territorial formation. Colonisation was a political process that disseminated centuries of violence against the native peoples of this land, not perpetuated through discriminatory and exclusionary state policies that are leading to a progressive loss of ancestral territories for these indigenous peoples, together with the breakdown of communities and denial of even the most basic rights.

Having survived 500 years of colonisation and exploitation that culminated in the disappearance and extermination of many peoples, there are currently 305 indigenous peoples in Brazil, speaking more than 274 languages, and 114 isolated and recently-contacted indigenous peoples. They live on some 1300 indigenous lands, of which only 408 are ratified,⁶ meaning they have been legalised and formally recognised by the Brazilian State.⁷

⁶ According to the Report on Violence against the Indigenous Peoples (2020) by the Indigenist Missionary Council (CIMI) – an entity acknowledged internationally for protecting the rights of indigenous peoples - 829 (63%) of the 1,298 lands in Brazil have some type of matter pending on the part of the State for completing their demarcation procedures and registration as traditional indigenous territories with the Federal Heritage Bureau (SPU). Of these 829 lands, no steps have yet been taken by the State for 536 (64%) of the. Available at <https://cimi.org.br/wp-content/uploads/2020/10/relatorio-violencia-contra-os-povos-indigenas-brasil-2019-cimi.pdf>

⁷ The process of recognising indigenous lands in Brazil is divided into three stages: i) identification, where studies are performed as required to provide input for the demarcation of the indigenous lands by FUNAI; ii) declaration, which consists of issuing an Edict declaring traditional indigenous possession by the Ministry of Justice; and iii) ratification of the demarcation by the Brazilian President's Office.

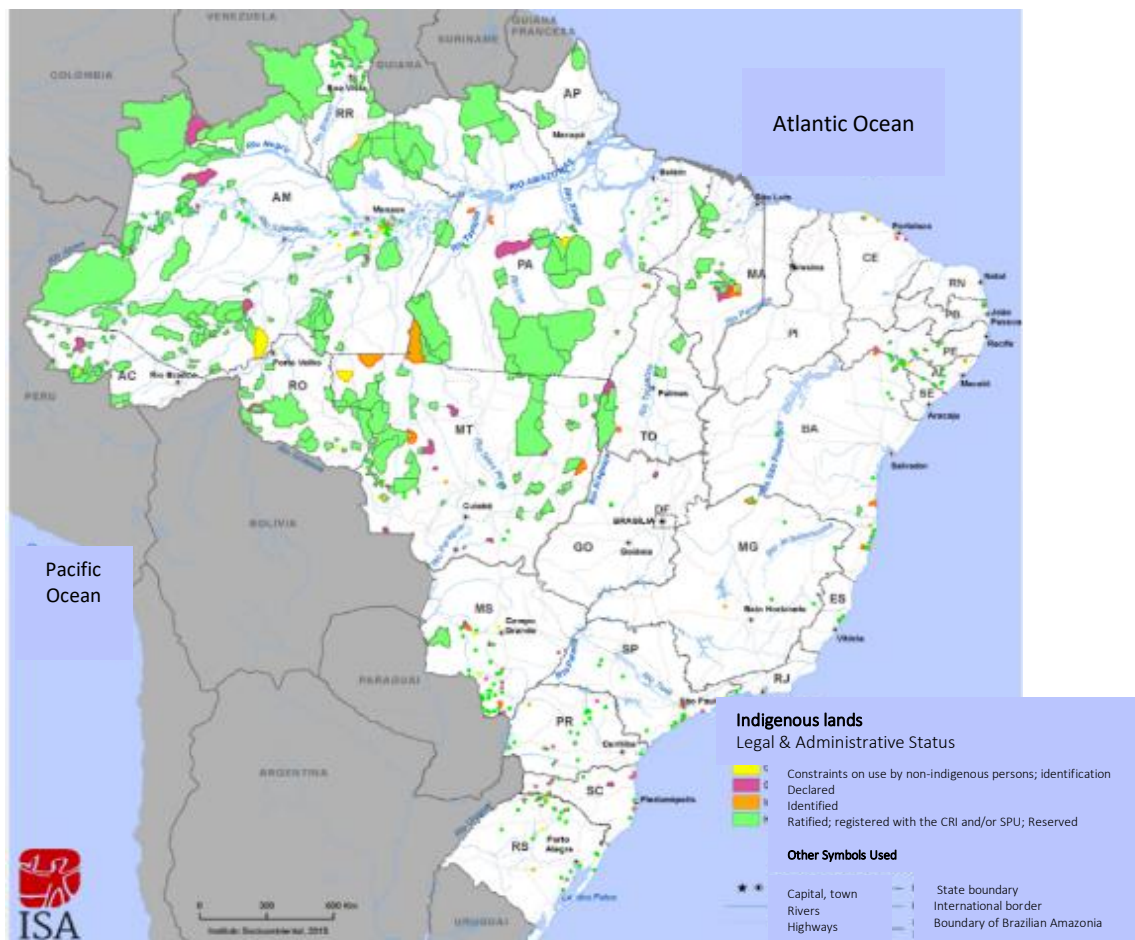


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Illustration 1. Indigenous lands in Brazil⁸



Source: Instituto Socioambiental Institute

Promulgated in 1988 and grounded on the paradigm of plurality and ethnic diversity, the Constitution of the Federative Republic of Brazil acknowledged a set of political, social, territorial and cultural rights for its indigenous peoples. These rights are essential for them to live decently. The Brazilian Constitution that ensured legal

⁸ Legal and administrative cases of indigenous lands in Brazil in 2021. Key: yellow – lands with constraints on use by non-indigenous persons (under identification); pink – declared as indigenous land; orange - identified as indigenous land; green - ratified as indigenous land. In order to browse through the indigenous lands mentioned in this Communication, access: <https://terrasindigenas.org.br/pt-br/brasil>.



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recognition for indigenous social organisations, as well as the customs, languages, beliefs and traditions of these peoples. It also acknowledged the basic right of these peoples to the lands where they have traditionally lived, assigning the Brazilian government the duty of demarcating and protecting them, while ensuring respect for their integrity (Article 231, Brazilian Constitution, 1988).

For Native Brazilians, land is a fundamental right, tightly bound to their dignity, and life, as well as the physical, social and cultural survival of their peoples. The Brazilian State has built up an unenviable track-record of delays and omissions in terms of demarcating indigenous lands. And it is in the light of this history of violence against the potentially radical differences that Native Brazilians might represent within the context of a colonialist national state that the Constitutional guarantee of their rights should be viewed, together with the international obligation of the Brazilian State to guarantee the rights of its indigenous peoples, and the construction of an entire institutional architecture for their implementation, monitoring and oversight of compliance with the law.

Within the framework of a colonialist national state, constructing this architecture is, on the one hand, strengthening mediation between government bureaucracy, mainstream society and the indigenous peoples; on the other, it means raising barriers against incursions against them, as they may have radically different social organisations, political hierarchy and types of production. However, the relationship between the Brazilian State and its indigenous peoples has been transformed over the past few years, through the policy implemented by President Jair Bolsonaro that governs them. Under the Bolsonaro Administration, a type of policy has come to the fore that not only breaches the Rights of the Indigenous Peoples, but above all challenges them and systematically builds up a mindset day by day that presents their implementation as an injustice against Brazilians.

This is consequently an anti-indigenous policy that consistently and deliberately refuses to acknowledge or protect indigenous lands, through calling for the assimilation



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of these peoples and their adaptation to the culturally hegemonic standards that prevail in Brazilian society. Pursuing these key goals, the Brazilian President became an agent who is encouraging and fostering disrespect for the territorial rights of Native Brazilians.

The public policies and government entities set up to protect indigenous, social and environmental rights have been – and still are – wielded by President Jair Bolsonaro in systematic attacks on Brazil's indigenous peoples and their lands. The public infrastructure set up to protect these rights has either been dismantled or turned into places of persecution against indigenous peoples.

A report on an investigation conducted by the Native Brazilians Development and Rights Research and Extension Centre (DPI), accredited by the Culture and Extension Commission at the Law School, University of São Paulo (FD-USP), that providing input for this Communication, drew up an exhaustive inventory of the acts, omissions and speeches of President Jair Bolsonaro seeking the destruction of public infrastructure underpinning indigenous, social and environmental rights, perpetrated between October 2019 and November 2020. This inventory supplements the facts presented to this Office of the Prosecutor on an earlier occasion in an earlier Communication drawn up by the Human Rights Advocacy Collective (CADHu) and Arns Commission, in November 2019, currently being analysed under Reference N° OTP-CR-537/19.

This process of destroying public policies and government entities set up to protect indigenous, social and environmental rights is particularly noteworthy in terms of the National Indian Foundation (FUNAI), which is a federal entity in charge of protecting and promoting the rights of Brazil's indigenous peoples and assigned responsibility for implementing the essential steps in territorial demarcation procedures.⁹

Under constant attack, significant structural changes have been made to this entity (lacking human, technical and financial resources and subject to political

⁹ See Note 6



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interference), with adverse effects on compliance with its institutional objectives and commitments to Native Brazilians, especially in terms of demarcating their lands. As though failing to ensure the implementation of their rights was not enough, FUNAI has recently begun to turn against their defenders, particularly the Articulation of the Indigenous Peoples of Brazil (APIB). Its Coordinator, Sônia Guajajara, was recently summoned for questioning by the Federal Police, because of the Maracá web series, which has been circulating under the aegis of a campaign showing Brazilian society the international crimes committed by its President.

Throughout the entire period when the acts were undertaken that are now classified as crimes against humanity and genocide, President Jair Bolsonaro has reiterated violent and discriminatory discourses and acts against Brazil's indigenous peoples; through a string of legal and administrative acts, he has also undermined the integrity of demarcated territories and the continuity of territorial demarcation procedures. This is not merely a land ownership dispute: Native Brazilians exist through their relationship with their lands, which is the place where they can project and engage in their ways of life, together with their own social, political and cultural organisations. Attacking their lands is directly attacking the existence of these indigenous peoples.

In parallel to dismantling Brazil's social and environmental rights policy, in parallel to dismantling Brazil's social and environmental rights policy, these attacks on indigenous lands and acts discriminating against indigenous peoples have serious consequences. Native Brazilians are suffering physically from the effects of the destructive public policy implemented by President Jair Bolsonaro, with extremely high levels of raids, incursions and trespassing on their land by land-grabbers, loggers and illegal wildcat miners; criminal wildfires and burn-offs; rivers contaminated by mercury run-offs from illegal wildcat mining activities; infection of Native Brazilians by COVID-19, the absence of healthcare and education for the indigenous peoples; high infant mortality rates; and systematic persecution of men and women protecting indigenous land rights.



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The facts presented in this Communication are organised as follows:

- A timeline of the acts of President Jair Bolsonaro attacking the indigenous peoples and destroying public infrastructure underpinning indigenous, social and environmental rights (item 4.1), that compile the main administrative and regulatory acts, speeches and discourses, meetings and projects perpetrated either directly or indirectly perpetrated by President Jair Bolsonaro;
- The description of the main consequences of the destruction of public infrastructure underpinning indigenous, social and environmental rights: incursions, trespassing and disseisin or adverse possession of indigenous lands; deforestation; wildcat mining and industrial mining on areas in indigenous territories; and the impacts of the COVID-19 pandemic on the indigenous peoples (item 4.2), with surveys, reports and data.
- The report on the impacts of incursions, trespassing and disseisin or adverse possession of indigenous lands, deforestation, wildcat mining and industrial mining on areas in indigenous territories; and the spread of the COVID-19 pandemic on isolated or recently-contacted indigenous peoples and the Munduruku people, as well as Native Brazilians living on the TI Yanomami, Guarani-Mbya and Kaingang, Guarani-Kaiowá, Tikuna, Guajajara and Terena lands (item 4.3).

Taken together, the acts of President Jair Bolsonaro disclose the existence of a systematic policy of attacking Brazil's indigenous peoples, whose consequences include death, disease and suffering for the indigenous peoples of Brazil, as well as the destruction of their ways of life.



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4.1 Timeline of the acts of President Jair Bolsonaro attacking Native Brazilians and destroying public infrastructure underpinning social and environmental

It is symbolic that anti-indigenous acts took place on the very first day of the Bolsonaro Administration: January 1, 2019. On that date, the Brazilian Government presented Provisional Measure N° 870¹⁰ to the Brazilian Congress, which withdrew responsibility for demarcating indigenous lands from the National Indian Foundation (FUNAI), transferring it to the Ministry of Agriculture, Livestock and Supply (MAPA), as well as removing FUNAI, which is an indigenous entity, from under the wing of the Ministry of Justice. The feasibility of this latter act was assured through Decree N° 9,673/19, as well as the transfer of responsibility for legalising ownership and issuing titles to indigenous lands through Decree N°9,667/19. The demarcation of indigenous lands is a condition for the existence of Brazil's indigenous peoples, and the Brazilian President is well aware of this.

This same act undertaken by President Jair Bolsonaro transferred FUNAI to the Ministry of Women, the Family and Human Rights (MMFDH), headed by Minister Damares Alves, with an openly assimilationist stance.¹¹ Under Brazilian law, Ministers of State act

¹⁰ Provisional Measure N° 870 defined the jurisdiction of the Ministry of Agriculture, Livestock and Supply as encompassing “agrarian reform, rural land ownership legalization, Legal Amazonia, indigenous lands and *quilombolas*. Within the physical structure of the Brazilian State, this is the same ministry that safeguards agribusiness interests, which are in direct conflict with social, environmental and indigenous rights. Heading it up, President Jair Bolsonaro appointed Tereza Cristina Corrêa da Costa Dias, the former head of the right-wing large-scale rural property owners party in the Brazilian Congress. The appointed head of the large-scale land ownership legalization department, Nabhan Garcia, was the former president of the *União Democrática Ruralista* party, a declared enemy of the indigenous peoples and their rights, particularly their territorial rights. The Brazilian Congress altered the wording of Provisional Measure 870, upholding the demarcation of lands with FUNAI and the Ministry of Justice. After his political defeat in Congress, President Jair Bolsonaro issued a new Provisional Measure (866/2019), once again seeking approval of land demarcation by the Ministry of Agriculture, Livestock and Supply. Once again, he was prevented of doing to by the Federal Supreme Court. The full text may be read at: https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/57510830 and also available at <https://www12.senado.leg.br/noticias/materias/2019/06/19/mp-volta-a-transferir-demarcacao-de-terras-indigenas-para-o-ministerio-da-agricultura>.

¹¹ The profile and positions held by Minister Damares Alves were headlined in articles by the Brazilian press. Available at: https://brasil.elpais.com/brasil/2019/01/31/politica/1548946667_235014.html.



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under the orders of the Brazilian President and solely at the will thereof.¹² As already mentioned, the National Indian Foundation (FUNAI) was transformed from an entity protecting indigenous rights to a department persecuting the indigenous peoples, playing a key role in the implementation of the anti-indigenous policy adopted by President Jair Bolsonaro¹³.

The first acts undertaken by President Jair Bolsonaro thus focused on reshaping the sphere of competence of government entities related to the demarcation of lands and the protection of indigenous rights.

Even while running for office, the then candidate Jair Bolsonaro was already using hate speech urge discrimination and violence against the indigenous peoples, even before taking office. He even openly affirmed his intention of integrating the indigenous peoples¹⁴. This means incorporating them into mainstream Brazilian society, stripping away their indigenous identity. It is illustrative that on January 2 – his second day in office – the President posted on social media: “more than 15% of Brazilian territory is demarcated as indigenous lands and old runaway slave settlements known as *quilombolas*. Less than a million people actually live in these isolated parts of Brazil, exploited and manipulated by NGOs. We will work together to integrate these citizens and enhance the value of all Brazilians”¹⁵.

It is clear from his own words that there is really only one Brazil, from which the indigenous peoples are separate, and with which the President intends to integrate them.

¹² Article 84 of the 1988 Constitution of the Federative Republic of Brazil.

¹³ Likewise, the National Security Force, aimed at defending the Brazilian legal order, was used as an instrument of the anti-indigenous policy promoted by Jair Bolsonaro’s government. It has served to confront the *Acampamento Terra Livre* (<https://cimi.org.br/2019/04/nota-da-apib-sobre-o-uso-de-forca-contr-o-at/>), an indigenous peoples of Brazil gathering. It also refused to defend indigenous peoples that were at risk, as will be reported in the chapter referring to Yanomami and Mundurucu Indigenous Land.

¹⁴ The speech given by President Jair Bolsonaro was widely reported in the Brazilian Press. Available at: <https://g1.globo.com/politica/noticia/2019/01/02/bolsonaro-diz-que-vai-integrar-indios-e-quilombolas.ghtml>.

¹⁵ The post is available in the official account of President Jair Bolsonaro on the Twitter social network: https://twitter.com/jairbolsonaro/status/1080468589298229253?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1080468589298229253%7Ctwgr%5E%7Ctwcon%5Es1_%ref_url=https%3A%2F%2Fd-23590768213677234327.ampproject.net%2F2106030132000%2Fframe.html.>



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However, the integration of Native Brazilians is in fact the policy that has led to the disappearance of traditional communities and indigenous peoples. This radically anti-pluralistic practice runs counter to international laws protecting human rights, as well as the Brazilian Constitution, as it severely undermines the plurality of humankind.

The assimilationist post uploaded by the president right at the start of his term of office was not an isolated act. It was merely the start. Presidential discourses against indigenous peoples are reiterated, constituting a systematic attack. On January 23, 2020 – just over two years after that inaugural declaration at the start of his Administration, Brazil's President declared during one of his weekly broadcasts that “the Indian [*sic*] has changed, he is evolving. To an increasing extent, the Indian is a human being, just like us. This means that the Indian is yielding to society to an increasing extent, and is steadily more the owner of his indigenous land.”

As shown by his speech on January 2 and others in the course of his term of office, the President believes that being “the owner of his indigenous land” means running counter to the collective nature of indigenous territories. Evidence of his long-lasting commitment to a vision of Brazil that does not support his indigenous peoples is a speech he gave as a Federal Congressman in 1998, when he stated: “the Brazilian cavalry was very incompetent. Who was really competent was the US cavalry, which decimated their Indians [*sic*] in the past, and today they don't have this problem in their country – and although I don't urge that they should do the same thing with Brazilian Indians [*sic*], I merely do recommend what was conceptualised some years ago, that indigenous reserves should be demarcated at sizes compatible with this population.”¹⁶

This is so to the extent that, immediately after Provisional Measure N° 870 was promulgated, President Jair Bolsonaro appointed a team to take over the management

¹⁶ Speech available at <<http://imagem.camara.gov.br/Imagem/d/pdf/DCD16ABR1998.pdf#page=33>>. As shown in the article published in the *Piauí* magazine, the words of (current President Jair Bolsonaro to the Lower House while he was still a Representative had widespread repercussions in the Brazilian press). May be seen in: <<https://piaui.folha.uol.com.br/lupa/2018/12/06/verificamos-bolsonaro-cavalaria/>>.



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of FUNAI, announcing that he was drafting a decree making flexible agribusiness activities on indigenous lands.¹⁷ These acts undermined protection for these lands, jeopardising the lives of indigenous peoples and the preservation of the environment.

The escalating verbal violence perpetrated by the head of the Brazilian State, resulting in violation of rights and armed violence authorised by him against the indigenous peoples prompted the APIB to launch a campaign in January 2019: Indigenous Blood, Not a Drop More.¹⁸

There are monthly demonstrations of the institutional violence imposed on the indigenous peoples, at the command of President Bolsonaro. In February 2019, his official spokesperson announced that high-voltage power lines would be strung through the Waimiri Atroari territory.¹⁹ A hundred kilometres long, the start-up of work on this project was announced for June 2019, with no Consultation and Prior Free Informed Consent procedure, while also disregarding the fact that Native Brazilians in this region were opposed to this project.²⁰ On the one hand, this State enterprise would bring no direct benefit to the land that it affected, in the view of its Native Brazilian residents, while on the other it would have immediate harmful effects on several indigenous peoples. It is estimated that raids on indigenous lands rose by 150% over the previous period.²¹

The Brazilian President operated on more than one front when implementing his anti-indigenous policy. In March 2019, indigenous healthcare policies were targeted. Since the early XXI century, special public policies have focused on providing indigenous peoples with healthcare. The Indigenous Healthcare Sub-System (SASI/SUS) is one of

¹⁷ The speech given by President Jair Bolsonaro was widely reported in the Brazilian Press. Available at: <<https://noticias.uol.com.br/meio-ambiente/ultimas-noticias/redacao/2019/01/06/ideia-de-bolsonaro-de-explorar-terras-indigenas-preocupa-estudiosos.htm>>.

¹⁸ Available at: <<https://apiboficial.org/2019/01/10/sangue-indigena-nenhuma-gota-a-mais/>>.

¹⁹ The speech given by President Jair Bolsonaro's spokesperson was widely reported in the Brazilian Press. Available at: <<https://www.poder360.com.br/governo/obras-de-linhao-de-tucuruui-devem-comecar-em-30-de-junho/>>.

²⁰ Available at: <<https://survivalbrasil.org/artigos/3592-100diasdebolsonaro>>.

²¹ Available at: <<https://noticias.uol.com.br/ultimas-noticias/reuters/2019/03/05/enfoque-terras-indigenas-sofrem-com-invasoes-sob-diretriz-de-bolsonaro.htm>>.



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the ramifications of Brazil's Unified National Health System (SUS), under the responsibility of the Special Indigenous Healthcare Bureau (SESAI). Complying with orders issued by President Jair Bolsonaro, this Bureau attempted to dismantle the National Healthcare Policy for the indigenous peoples (PNASPI).²² After months of mobilisation among Native Brazilians, indigenous healthcare policies were kept in place, although with gaps and shortfalls in the care offered to the indigenous peoples, whose consequences would soon become apparent in the Government's chaotic response to the COVID-19 pandemic.

That same month, President Jair Bolsonaro threatened to withdraw from Convention N° 169 issued by the International Labour Organisation (ILO).²³ This threat was issued in response to a proposed plan to step up ILO participation in the interpretation of this Convention in Brazil. However, the President saw this Convention as a hurdle hampering Brazilian Government plans to facilitate the possibilities for the economic exploitation of indigenous lands.

Following its usual political practice, the APIB attempted to enter into dialogue with the Brazilian Government. In April 2019, it organised the Free Land Camp-Out (ATL), which is the main nationwide indigenous demonstration that has been organised each year since 2014. As already mentioned, the purpose of this initiative is to serve as a meeting place for Brazil's indigenous peoples, presenting the main indigenous topics for attention to representatives of the Brazilian State. However, in 2019, President Jair Bolsonaro did not meet with any indigenous leaders during this event, and neither did any other member of the Brazilian Government.²⁴

²² Available at: <<https://apiboficial.org/2019/03/24/governo-bolsonaro-e-sua-politica-genocida/>>; <<https://www.dw.com/pt-br/sa%C3%BAde-%C3%A9-novo-conflito-entre-ind%C3%ADgenas-e-governo-bolsonaro/a-48086879>>.

²³ The speech given by President Jair Bolsonaro was widely reported in the Brazilian Press. Available at: <<https://valor.globo.com/brasil/coluna/brasil-e-voto-isolado-na-oit-e-ameaca-deixar-convencao-sobre-povos-indigenas.ghtml>>.

²⁴ The position of the APIB was aired by the Brazilian press. Available at: <<https://www1.folha.uol.com.br/poder/2019/04/governo-bolsonaro-quer-dividir-movimento-indigena-dizem-lideres.shtml>>.



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During the early months of his Administration, President Jair Bolsonaro i) rhetorically attacked the indigenous peoples in different speeches, portraying them either as less than human or as outsiders excluded from the “real Brazil”, or even as potential enemies of Brazil, as allies of foreign NGOs; ii) he contrasted the Rights of the Indigenous Peoples to their lands with the economic interests of the nation, represented in his discourse as large-scale land-holders, wildcat miners and loggers; iii) he began to break down the entire institutional architecture set up to implement the fundamental rights of Brazil’s indigenous peoples; iv) he directly and indirectly encouraged violence against Native Brazilians.

Catastrophic wildfires in Amazonia, the Pantanal wetlands and the Cerrado savannas – three major Brazilian biomes that are of global importance for the world’s climate – are the outcomes of the discourses and steps adopted by President Jair Bolsonaro, despite his repeated affirmations that the data – deforestation and fire records and historical datasets – were not really that serious.²⁵ However, the truth will out, and there are several Brazilian and international research centres monitoring deforestation and wildfires in Brazil, providing solid grounds for rebutting the President’s lies. Unfortunately, since he took office on January 1, 2019, Brazil has attracted the attention of the international community through the catastrophic dimension of the wildfires searing through its main biomes: the Amazon rainforest, the Cerrado savannas and the Pantanal wetlands. A horrified world is bearing witness to the destruction of priceless natural heritage assets that underpin life on the planet in all its forms. All of them are threatened by the flames and the policies implemented by President Jair Bolsonaro, who is guided

²⁵ The speech given by President Jair Bolsonaro was widely reported in the Brazilian Press. Available at: https://brasil.elpais.com/brasil/2020/01/09/politica/1578582797_478364.html; <https://oglobo.globo.com/sociedade/incendios-florestais-existem-em-todo-mundo-diz-bolsonaro-em-pronunciamento-23900387>.



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by climate denial, which he disseminates among Brazilians in his attempts to ratchet up support for his environmental policy.²⁶

As wildfires flared over Amazonia, President Jair Bolsonaro met with State Governors on August 27, 2019, once again indicating that the demarcation of indigenous lands was the problem hindering the nation's development.²⁷

President: Roughly what percent of your State – Acre – is taken up by the indigenous reserve?

So, you can do nothing in 86% of your State. In 86%, you can't ... – so none of our human activities can be performed there?

State Governor: We have environmental constraints. (.)

President: This land blocked even for sustainable exploitation is unacceptable (.)

Many reserves have strategic aspects, which somebody planned. Indians don't lobby, they don't speak our language, and today they manage to hold 14% of the nation's territory. I will close with a brief historical overview of that. But the intention is, one of the intentions is to undermine our feasibility (.)

Today, if wildcat mining is illegal, we want to legalise it. What is legalising? It is listening to Parliament. I will not make any decision using a ballpoint, or a Bic pen, right? And this here is fairly far advanced at the Ministry of Mines and Energy, we intend to present this proposal soon (.)

in Brazil Our feelings here, our decisions so far, but we will listen to the (State) Governors, and this will no longer be demarcated because, on the bottom line, this real psychosis has already gone too far, in terms of demarcations and expansion of lands here in Brazil. (.)

Aligned with this eagerness to violate the Rights of the Indigenous Peoples, accepting the risk of destroying them, the President publicly affirmed in August 2019, that he would not demarcate any indigenous lands during his term of office.²⁸ In his own words:

²⁶ Facts related to deforestation and fires in Amazonia during 2019 are described in the Communication drawn up by the (CADHu) and the Arns Commission in November 2019, currently under analysis (reference OTP-CR-537/19).

²⁷ Speech reproduced in part on the official website of the Brazilian Presidency: <https://www.gov.br/planalto/pt-br/acompanhe-o-planalto/discursos/2019/fala-do-presidente-da-republica-jair-bolsonaro-durante-reuniao-com-os-governadores-dos-estados-da-amazonia-legal-palacio-do-planalto>.

²⁸ As already said in Note 6, the procedure for demarcating indigenous lands involved three stages: identification, by FUNAI, declaration by the Ministry of Justice and ratification by the President of the Republic.



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“as long as I am President, there is no demarcation of indigenous lands”.²⁹ Since then, he has kept his promise.

Illustration 2. Timeline: Demarcation of indigenous lands since 1985, by Administration

Demarcation of indigenous lands in Brazil				
President (term of office)	Declared		Ratified	
	Nº	Hectares	Nº	Hectares
Jair Bolsonaro (January 2019 – present)	0	0	0	0
Michel Temer (May 2016 – April 2018)	3	3,397,569	1	19,216
Dilma Rousseff (January 2015 – May 2016)	15	932,665	10	1,243,549
Dilma Rousseff (January 2011 – December 2014)	11	1,096,007	11	2,025,406
Luiz Inácio Lula da Silva (January 2007 – December 2010)	51	3,008,845	21	7,726,053
Luiz Inácio Lula da Silva (January 2003 – December 2006)	30	10,282,816	66	11,059,713
Fernando Henrique Cardoso (January 1999 – December 2002)	60	9,033,67	31	9,699,936
Fernando Henrique Cardoso (January 1995 – December 1998)	58	26,922,172	114	31,526,966
Itamar Franco (October 1992 – December 1994)	39	7,241,711	16	5,432,437
Fernando Collor (March 1990 – September 1992)	58	25,794,263	112	26,405,219
José Sarney (April 1985 – March 1990)	39	9,786,170	67	14,370,486

Source: Instituto Socioambiental (Socioambiental Institute)

In October 2019, President Jair Bolsonaro gave a speech at the opening ceremony of the 74th General Assembly of the United Nations. Amazonia had been devastated by fires encouraged by the President, and the indigenous peoples figured largely in his speech. To everyone at the UN Headquarters in New York and National Societies all over the globe, including Brazil, the President affirmed: “I want to make it clear: Brazil will not increase the area already demarcated as indigenous land to 20%, as

²⁹ Available at: <<https://agenciabrasil.ebc.com.br/politica/noticia/2019-08/bolsonaro-diz-que-nao-fara-demarcacao-de-terras-indigenas>>.



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some Heads of State would wish”.³⁰ The Articulation of the Indigenous Peoples reacted to this statement.³¹

The speeches given by President Jair Bolsonaro against the indigenous peoples and the demarcation of their land had immediate consequences: from January through September 2019, the Indigenist Council recorded 160 attacks on indigenous lands, 51 more than for the whole of 2018.³²

In November 2019, raiding trespassers shot at the Ethno-Environmental Protection Base (BAPE) at Ituí/Itaguaí in the Javari Valley in Amazonas State (the region with the world’s largest numbers of isolated indigenous peoples). The fragility of this segment of the Javari Valley Ethno-Environmental Protection front jeopardised the lives of the Marubo, Mayoruna (Matsés), Matis, Kanamary, Kulina (Pano), Korubo and Tsohom Djapá peoples, who live on indigenous lands along the Javari Valley – as noted in Technical Information N° 2/2019/SEPE I – CFPE – VJCFPE –VALE DO JAVARI – FUNAI dated November 4, 2019.³³ Several types of court orders were unable to avoid or make reparations for damages to the indigenous peoples.³⁴

In 2019, the year ended with symbolic and material facts with marked impacts on the indigenous peoples of Brazil. Forest Guardian Paulino Guajajara, was shot and killed.³⁵ The job of this indigenous leader was precisely to keep an eye out for raiders trespassing on Guajajara territory in the Araribóia indigenous land, in Maranhão State, as well as combating illegal deforestation activities.³⁶ The National Indian Foundation

³⁰ The speech given by President Jair Bolsonaro was widely reported in the Brazilian Press. Available at: <<https://agenciabrasil.ebc.com.br/politica/noticia/2019-09/presidente-jair-bolsonaro-discursa-na-assembleia-geral-da-onu>>.

³¹ Available at: <<https://apib.info/2019/09/24/nota-de-repudio-contra-a-declaracao-de-bolsonaro-na-onu/>>.

³² Report on Violence against the Indigenous Peoples (2020) by the Indigenist Missionary Council (CIMI). Available at <https://cimi.org.br/wp-content/uploads/2020/10/relatorio-violencia-contra-os-povos-indigenas-brasil-2019-cimi.pdf>.

³³ Available at: <<https://www.conjur.com.br/dl/oficio-dpu-indigenas-isolados.pdf>>.

³⁴ Available at: <<https://amazoniareal.com.br/justica-federal-determina-que-governo-bolsonaro-preste-seguranca-as-bases-do-vale-do-javari-no-amazonas/>>.

³⁵ Available at: <https://brasil.elpais.com/brasil/2019/11/02/politica/1572726281_632337.html>.

³⁶ Available at: <<https://noticias.uol.com.br/politica/ultimas-noticias/2019/11/28/bolsonaro-e-denunciado-a-tribunal-internacional-por-ataques-contra-indios.htm>>.



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(FUNAI) issued a regulatory guideline³⁷ forbidding its staff from working on unlegalised indigenous lands, precisely those that Brazilian President Jair Bolsonaro categorically affirmed that he will not be demarcating – and that have not been really demarcated. This rule jeopardised thousands of lives of extremely vulnerable Native Brazilians lacking welfare or social assistance, including the risk of food insecurity.³⁸

As already mentioned, presidential candidate Jair Bolsonaro was elected on his promise of “not demarcating a single centimetre of indigenous land and old runaway slave settlements known as *quilombolas*”. He was elected while openly supporting a policy breaching the Brazilian Constitution and international human rights obligations accepted by the Brazilian State. Once in office, he transformed his promises into a terrible reality. During the last week of January 2020, Justice Minister Sergio Moro – appointed by President Jair Bolsonaro – ordered seventeen demarcation administrative procedures returned to FUNAI.³⁹ which had long been awaiting the signature of the Declaratory Decree. Returning this paperwork was intended to slot these proceedings to the restrictive understanding imposed by the Government that only land settled by the indigenous peoples when Brazil’s 1988 Constitution was promulgated, should be demarcated. In other words, this was an attempt at practical validation of the approach known as the “time framework”,⁴⁰ which is hotly challenged by the indigenous movement, as well as technical experts and researchers.

³⁷ Office SEAV/COGAB/PRES/2019, November 25, 2019, issued by the office of the FUNAI Presidency.

³⁸ Office SEAV/COGAB/PRES/2019, November 25, 2019, issued by the office of the FUNAI Presidency was challenged by the Federal Prosecutor’s Office and the Federal Defenders Office. Available at: <http://www.mpf.mp.br/atuacao-tematica/ccr6/documentos-e-publicacoes/recomendacoes-2017/recomendacoes-6ccr/recomendacao-conjunta-no-01_2019_6ccr_dpu-pgr-00544301-2019.pdf>.

³⁹ Recalling, the procedures for demarcating indigenous lands are divided into three phases: identification by FUNAI, issue of a declaratory Edict by the Ministry of Justice and ratification by the Brazilian President. The 17 procedures that were returned to FUNAI are: Vista Alegre (Amazonas State); Tuwa Apekuokawera, Marú and Cobra Grande (all in Pará State); Pindory/Araçá-Mirim and Guaviraty (both in São Paulo State); Barra Velha do Monte Pascoal and Tupinambá de Olivença (both in Bahia State); Sambaqui (Paraná State); Kanela Memortumré (Maranhão State); Wassú-Cocal (Alagoas State); and Paukalirajausu (Mato Grosso State).

⁴⁰ On May 31, 2021, the Federal Supreme Court suspended judgment on extraordinary appeal RE 1.017.365, which will define the constitutionality (or not) of the so-called “time-framework” thesis.



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Turned into a tool for persecuting Native Brazilians and implementing the anti-indigenous policy introduced by President Jair Bolsonaro, FUNAI has been adopting a stance of withdrawing the lawsuits that it filed and abandoning its defence of indigenous communities. Providing legal representation in court for the indigenous peoples is one of the attributes of this entity.⁴¹

During the first year of the Bolsonaro Administration, an open defence of the positive aspects of breaching the Brazilian Constitution built up force, as well as the international rights obligations related to human rights accepted by the Brazilian State, with the intention of stripping the indigenous peoples of the lands and thus decimating them. President Jair Bolsonaro authorised government departments in his Administration to introduce policies ratcheting up disputes between raiders trespassing on indigenous lands and the Native Brazilians whose ancestors lived there.

The contours of his anti-indigenous policy became even clearer during the second year of the Bolsonaro Administration. The non-execution of the public budget destined to the implementation of indigenous and socio-environmental rights is a perfect example to concretely explain Jair Bolsonaro's anti-indigenous policy, showing in numbers the process of administrative dismantling of policies to protect indigenous peoples. The regions with the greatest conflicts are exactly those that had the lowest budget execution.⁴²

On February 3, 2020, he presented the Leaders of the Lower House and the Federal Senate with his list of legislative priorities to be approved, including several anti-indigenous steps.

⁴¹ Research project conducted by the Getúlio Vargas Foundation under a partnership with WWF Brazil, examining all social and environmental litigations – including the demarcation of indigenous lands – submitted to the Federal Supreme Court, which highlights the key role played by FUNAI. The indigenous lands demarcation procedures are being challenged through the Courts by the trespassers at all three stages (identification, declaration, and ratification) and the lack of any defense presented by FUNAI be a determining factor. The social and environmental rights agenda at the Federal Supreme Court, full text available at <http://bibliotecadigital.fgv.br/dspace/handle/10438/29798>

⁴² As evidenced by the Institute for Socioeconomic Studies (INESC) report that is attached.



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On February 6, 2020, President Jair Bolsonaro presented Draft Bill N° 191/2020,⁴³ which was intended to regulate prospecting and extraction activities for ores and hydrocarbons on indigenous lands, in addition to the use of water resources for generating electricity, despite protests from indigenous organisations that did not want these economic activities on their lands.

Together with other acknowledged indigenous leaders, like Chief Raoni Metuktire, the APIB requested the Leader of the Lower House, Rodrigo Maia to block the progress of this Draft Bill, with its negative impacts on the traditional lifestyles of the indigenous peoples. However, President Jair Bolsonaro ignored the protest clearly expressing the wishes of the indigenous peoples (who are evidently the main victims of this Bill), while also failing to comply with international directives regulating the issue of Prior, Informed and Free Consultation.

On April 22, 2020, FUNAI⁴⁴ published its Normative Instruction N°09/2020, ruling on the request, analysis and issue of the “Declaration of Acknowledgment of Limits Related to Private Properties”. This directive revoked Normative Instruction N° 03, dated April 20, 2012, introducing significant administrative changes and directly affecting the lives and Rights of the Indigenous Peoples of Brazil.

Paragraph 1 of Article 1 of Normative Instruction N°09/2020 states that the “Declaration of Recognition of Limits” (DRL) is intended to provide landowners or private possessors with certification that the boundaries of their properties comply with borders of ratified indigenous lands, indigenous reserves and fully legalised indigenous domain lands.

Thus, as FUNAI began to consider all land in possession (with no deed or titles) or property domain lands open to the issue of a Declaration of Recognition of Limits (DRL) – a document attesting to the fact that the property is not encompassed by indigenous

⁴³ <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2236765>

⁴⁴ <https://www.in.gov.br/web/dou/-/instrucao-normativa-n-9-de-16-de-abril-de-2020-253343033>



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land – it began to release all the lands under study for purchase, sale and settlement, included those demarcated by FUNAI, once declared by the Ministry of Justice areas covered by edicts imposing constraints on their use. Furthermore, this allowed DRLs to be issued for areas where studies were forbidden due to the presence of isolated indigenous persons. There are at least 246 indigenous lands still awaiting ratification. Land-grabbers raiding indigenous lands may apply to FUNAI for a DRL, and may then request the legalisation of these invaded areas with this document in hand, applying to the National Institute for Rural Settlement and Agrarian Reform (INCRA) through a self-declaratory registry.

These rules officially encouraged conflicts on indigenous lands, with deforestation and wildfires. In 2019, 10,129 km² of Brazilian Amazon rainforest was cleared; in 2020, this figure rose to 10,851 km², which is the highest for the past twelve years, according to data from PRODES/INPE.⁴⁵

Furthermore, 2020 was a public health emergency year of international importance, declared due to the novel coronavirus pandemic. Despite their evident vulnerability, no plans were drawn up for protecting the indigenous peoples against this pandemic. To the contrary, COVID-19 proved an opportunity for President Jair Bolsonaro to continue forging ahead with his anti-indigenous policy. Meanwhile, by June 30, 2021, 56,174 Native Brazilians had been infected, and 1,126 had died, according to data provided by APIB, with the virus infecting 163 different indigenous peoples.⁴⁶

Still under attack, the physical and cultural survival of Brazil's indigenous peoples are at risk, particularly those that have been recently contacted and others still living in

⁴⁵ The PRODES project run by the National Space Research Institute (INPE), which is a Brazilian Government entity, uses satellites to monitor deforestation through clear cutting in Brazilian Amazonia. Since 1988, it has been releasing the annual deforestation rates in this region, which are used by the Brazilian Government to establish public policies. Available at <http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>.

⁴⁶ In partnerships with other organizations supporting indigenous rights, APIB, set up an observatory to monitor the impacts of COVID-19 on the indigenous peoples, which may be accessed at the following address: <https://emergenciaindigena.apiboficial.org/>.



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isolation from mainstream society. In February 2021, with new Leaders elected to the Lower House and the Federal Senate, the Brazilian Government – headed by President Jair Bolsonaro – presented a new package of high-priority topics for government approval. This included, already mentioned previously. As the pandemic surged, this assigned top priority to opening up indigenous lands to exploitation through mining activities Draft Bill Nº 191/20.⁴⁷

The problem of industrial and wildcat mining activities on indigenous lands (which bring all sorts of repercussions with them, including environmental pollution and violence) already exists, although not regulated by law. Nevertheless, President Jair Bolsonaro is insisting on seeking this legislative authorisation, subverting the hierarchy of values set forth under Brazilian constitutional law and international law. With this priority on his economic agenda, and disregarding the expressed wishes of the affected peoples,⁴⁸ the situation is being built up where indigenous rights feature as hurdles hampering the economic prosperity of Brazilians. This is turning Brazilian society against the indigenous peoples, providing a clear institutional encouragement for raiding and trespassing on their lands, which is consequently ratcheting up disputes.

An example of this occurred on March 25, 2021, when the Munduruku Wakoborum Women’s Association was attacked by wildcat miners and their allies,⁴⁹ setting fire to their headquarters and wrecking the building in the Jacareacanga municipality, Pará State. There are also frequent raids by illegal wildcat miners

⁴⁷ The proposals of President Jair Bolsonaro were widely headlined by the Brazilian press. Available at: <<https://www1.folha.uol.com.br/mercado/2021/02/prioridades-de-bolsonaro-para-o-congresso-incluem-reformas-economicas-e-privatizacao-da-eletronica.shtml>>.

⁴⁸ Available at: <<https://www.brasildefato.com.br/2020/02/07/projeto-de-morte-diz-apib-sobre-pl-que-autoriza-mineracao-em-terras-indigenas>>; <<https://apiboficial.org/2020/02/12/nota-de-repudio-contra-o-projeto-de-lei-no-19120-que-regulamenta-exploracao-de-bens-naturais-nas-terras-indigenas/>>.

⁴⁹ Available at: <<http://www.mpf.mp.br/pa/sala-de-imprensa/documentos/2021/ataque-garimpeiro-sede-associacao-mulheres-munduruku-jacareacanga-pa-25-03-2021/>>.



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trespassing on the Yanomami indigenous lands, with appalling numbers of over 20,000 wildcat miners devastating an area the size of 500 soccer pitches.⁵⁰

Destroying biomes, raiding and trespassing on indigenous lands, and contaminating their soils and rivers are undertaken above all as a project that will eliminate the indigenous peoples. Common to nationalistic and populist governments, this is a mindset that imposes a homogeneous and exclusionary view of who must be considered as the “Brazilian people”, with anyone else being eliminated or destroyed.⁵¹ More than once, President Jair Bolsonaro said⁵² that the indigenous peoples will have rights only when “assimilated”, meaning that their indigenous identity has been destroyed.⁵³

Another illustration of this intention is that, running counter to international discussions, the National Indian Foundation (FUNAI) issued Resolution Nº 4/2021 in 2021, for the purpose of “defining specific new hetero-identification criteria that will be complied with by FUNAI, in order to improve the protection of indigenous peoples and persons, for the implementation of public policies.” The “definition of specific new hetero-

⁵⁰ Report: Scars of the Forest: Expansion of illegal wildcat mining on the Yanomami indigenous lands in 2020. Available at: <<https://acervo.socioambiental.org/acervo/documentos/cicatrizes-na-floresta-evolucao-do-garimpo-ilegal-na-ti-yanomami-em-2020>>.

⁵¹ “§8. In its most dangerous variants, populism deploys a monolithic exclusionary vision of who qualifies as ‘the people’. Those groups and individuals depicted as excluded from forming a part of ‘the people’ then also become targets of populist antagonism, even if those groups and individuals have no elite status [...] §11. [...] The strategy, then, is not just to target elites, but also to target multiculturalism, members of minority races, ethnicities, religions as all part of the problem. Racial, ethnic, religious minorities are relegated to the status of illegitimate interlopers whose interests are characterised as oppositional to those of the group exclusively designated as constituting ‘the people’. Thus, when nationalist populists appropriate the language of democratic legitimacy and representation of ‘the people’, this language masks exclusionary and typically racialised conceptions of the nation that are odds with liberal conceptions of democracy”. UN, A/73/305 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, related intolerance, 2018, paragraphs 8 and 11.

⁵² “Let's integrate them into society. What a great job the Army is doing with this, incorporating Indians [sic], into the Armed Forces”. Globo News, August 3, 2018. “The Indian [sic] has undoubtedly changed and is evolving. To an increasing extent, the Indian [sic] is a human being, just like us.” UOL Notícias, January 23, 2020.

⁵³ Public policies for the protection of indigenous rights, socio-environmental rights, and indigenous health were not the only targets of Jair Bolsonaro’s government. Since the beginning of his term, indigenous education policies, designed to promote respect for indigenous diversity, have been attacked. In April 2019, President Jair Bolsonaro issued a Decree (n. 9759/19) extinguishing the National Council for Indigenous Policy (CNPJ), the National Indigenous School Education Commission (CNEEI) (At <https://cimi.org.br/2019/04/extincao-conselhos-sociais-ressalta-vies-autoritario-antidemocratico-governo-bolsonaro/>). Also in 2019, the Secretariat for Continuing Education, Literacy, Diversity and Inclusion (SECADI) was dissolved and, in 2020, indigenous peoples were excluded from the National Education Council (At <https://cimi.org.br/2020/07/nota-repudio-exclusao-povos-indigenas-conselho-nacional-educacao/>).



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identification criteria” pursued by FUNAI contradicts the pluralism and rights established in the Brazilian Constitution as well as international treaties on human rights. This paves the way for the Brazilian State, headed by President Jair Bolsonaro, to eliminate its indigenous peoples under the homogeneous unity pursued through its nationalistic populist rhetoric. This is why the APIB reacted,⁵⁴ and this Resolution was suspended.

With regard to the environmental issue, the Brazilian Government issued Joint Normative Instruction N°1/2021 through FUNAI and the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA).⁵⁵ Its content “rules on the procedures to be adopted during environmental licensing proceedings for enterprises or activities located on or developed within indigenous lands, when the entrepreneur is an indigenous organisation.” This addresses the possibility of engaging in agribusiness on indigenous lands. Undermining environmental protection, this paves the way for non-Native Brazilians to engage in activities of economic interest within these territories.⁵⁶

In June and July, the allied bases supporting President Jair Bolsonaro in the Legislative Assembly began to analyse Draft Bill N° 490/2007. Attempting to alter the rules for demarcating indigenous lands, it adopts the time framework thesis as a legislator parameter, not acknowledging indigenous lands not settled by indigenous peoples on the promulgation date of Brazil’s 1988 Constitution, forbidding the expansion of indigenous lands that have already been demarcated, flexibilising the possibilities of contact for isolated or recently-contacted indigenous peoples, and allowing the exploitation of indigenous lands by wildcat miners.⁵⁷ In response, the APIB organised protests against

⁵⁴ Available at: <<https://apiboficial.org/2021/02/09/apib-aciona-mpf-contra-resolucao-n-4-da-funai/>>.

⁵⁵ <https://www.in.gov.br/en/web/dou/-/instrucao-normativa-conjunta-n-1-de-22-de-fevereiro-de-2021-304921201>

⁵⁶ The Socio-Environmental Institute (ISA – *Instituto Socioambiental*) produced an updated Technical Report (March 2021). In this report, it recorded the advances of trespassers on indigenous lands in Brazil, particularly some high-case episodes that include the Araribóia lands belonging to the Guajajara people in Maranhão State; the Munduruku indigenous lands in Pará State and the Yanomami lands in Roraima State. The update shows that deforestation and incursions progressed during the pandemic. OVIEDO, Antônio; BATISTA, Juliana de Paula; LIMA, Michelle Araújo. Updated Technical Report (March 2021) on Deforestation and Incursions on Seven Indigenous Lands in Brazilian Amazonia. Brasília: ISA, 2021.

⁵⁷ Detailed information at: <https://cimi.org.br/2021/06/pl-490-sai-pauta-pedido-vista-veja-quals-parlamentares-posicionaram-projeto-anti-indigena/>



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the vote on Draft Bill N° 490/2007, which were violently repressed by the police in Brasília, with injured Native Brazilians.⁵⁸

The promiscuous relationships between the Brazilian Government and economic interests – which are favoured, fostered and encouraged by the anti-indigenous policy pursued by President Jair Bolsonaro – are so extensive that criminal charges were filed against Environment Minister Ricardo Salles for illegally selling timber felled through deforestation and raids trespassing on indigenous lands. Like every member of the Bolsonaro Administration, Ricardo Salles also took advantage of this anti-indigenous policy. After his resignation on June 23, 2021, his environmental crimes made headlines in the international press.⁵⁹

What is very apparent in the timeline of the acts undertaken by President Jair Bolsonaro during the past two years is the destruction of policies designed to protect the indigenous peoples and their lands, weakening entities set up to protect indigenous, social and environmental rights, encouragement for raids, incursions and trespassing on their lands, together with deforestation, wildcat mining and the spread of the COVID-19 pandemic. The consequences of the acts undertaken by President Jair Bolsonaro are death, disease, suffering, persecution and the destruction of ways of life that are intrinsically linked to the land.

4.2 Consequences of the destruction of public infrastructure underpinning indigenous, social and environmental rights: incursions, trespassing, and disseisin or adverse possession of indigenous lands; deforestation; wildcat mining; industrial mining on indigenous lands; and the spread of the COVID-19 pandemic among the indigenous peoples

⁵⁸ Available at <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2021/06/22/protesto-indigenas-pl-490-congresso-nacional.htm>

⁵⁹ Available at <https://www.dw.com/pt-br/imprensa-europeia-destaca-queda-de-ricardo-salles/a-58031717>



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The anti-indigenous acts and policies implemented by President Jair Bolsonaro⁶⁰ resulted directly or indirectly upsurges in deforestation, incursions and trespassing activities, disseisin or adverse possession, and industrial mining on indigenous lands. In turn, all are factors leading to disease, death and the destruction of indigenous ways of life. The acts and omissions of President Jair Bolsonaro in response to the COVID-19 pandemic and indigenous health and healthcare, worsening a situation that was already extremely serious.

For Native Brazilians, the land is a place of symbolic exchanges that upholds indigenous collective life. Without it, the collective lives of the indigenous peoples collapse. This is why it is an essential element underpinning the acknowledged Rights of the Indigenous Peoples through domestic and international legislation.

The initial impacts of the systematic dismantling of Brazil's indigenist policies and the environmental control and oversight policies implemented by President Jair Bolsonaro have been a dizzying expansion of disseisin or adverse possession, with the destruction of indigenous lands. These land-grabbing and destructive activities have been expressed in several different ways: the expropriation of indigenous lands through raids and trespassing, illegal title transfers and sub-divisions; deforestation and uncontrolled forest fires in these areas and elsewhere; silting up of rivers and inlets; and their contamination by mercury, which is used indiscriminately in illegal wildcat mining activities, among others.

These phenomena are interrelated, overlapping and sometimes merging. Deforestation often spreads jointly with illegal title transfers and subdivisions on indigenous lands, sometimes making way for them, and at others firming up their position.

⁶⁰ See in Research Report drawn up by the Indigenous Peoples Development and Law Extension and Research Centre (DPI – *Relatório de Pesquisa do Núcleo de Extensão e Pesquisa, Desenvolvimento e Direito dos Povos Indígenas*), accredited by the Culture and Extension Commission, Law School, University of São Paulo (FDUSP).



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Presented below are some data on the systematic destruction of indigenous lands and the resulting impacts on the rights of indigenous people throughout Brazil.

a) General data on raids, incursions, trespassing, disseisin and adverse possession and attacks on indigenous lands

The anti-indigenous discourse of President Jair Bolsonaro has had nationwide repercussions, with even heavier impacts in Amazonia, which is an area on the mining and agricultural frontier. As already explained in this Communication, encouragement for incursions and trespassing extends back to the speeches given by presidential candidate Jair Bolsonaro. After his election, they became even more frequent, together with administrative steps that he adopted: he has not demarcated any indigenous lands, while hampering the expansion of demarcation procedures and weakening actions intended to protect and oversee public areas, including conservation units and indigenous lands. There has been significant shrinkage in these actions, with explicit constraints on punishing raiders.⁶¹ This is coherent with the project focused on eliminating Native Brazilians adopted by the Bolsonaro Administration: encouraging impunity and weakening institutions able to curtail crimes against the indigenous peoples and their lands.

The report on Violence against the Indigenous Peoples of Brazil: 2019 Data, which is published each year by the Missionary Indigenist Council (CIMI), shows that incursions and raids trespassing on indigenous lands have expanded quickly and aggressively throughout Brazil, causing inestimable destruction. Violating indigenous lands, these incursions pave the way for land-grabbers eager to claim possession and exploit them through extractivist activities. As already mentioned, practices such as these lead to the destruction of indigenous ways of life, by removing the conditions needed for their

⁶¹ CIMI, Violence against the Indigenous Peoples of Brazil, 2019 data, pages 78, available at: <https://cimi.org.br/wp-content/uploads/2020/10/relatorio-violencia-contra-os-povos-indigenas-brasil-2019-cimi.pdf>



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existence. Furthermore, they also open up the possibility of land-grabbers remaining on indigenous lands due to the absence of oversight and effective protection of rights, while also hampering their demarcation. These hurdles are becoming even more daunting, as they constitute a new reality.

Specifically, this Report notes that there was an increase in incidents during 2019, in sixteen of the nineteen categories of violence systematised by this publication. Particularly noteworthy was an increase in the Land-Grabbing Incursions, Illegal Exploitation of Resources, and Damage to Heritage Assets categories. The 109 cases recorded in 2018 soared to 256 in 2019 – up 135%.⁶² In 2019, these cases affected at least 151 indigenous lands held by 143 peoples in 23 States, disclosing their systematic foundation.

A more detailed analysis of each of these 256 cases shows that more than one type of damage was caused during most of these incursions and raids, with a total of 544 occurrences. Consequently, these 256 cases can be broken out into the following occurrences:⁶³

- 208 occurrences of incursions and trespassing;
- 89 occurrences of illegal logging/deforestation;
- 39 occurrences of wildcat mining and mineral exploitation;
- 37 occurrences of farms, ranches and plantations (cattle, soybeans and maize);
- 31 occurrences of fires;
- 31 occurrences of predatory fishing;

⁶² Report available at: <https://cimi.org.br/wp-content/uploads/2020/10/relatorio-violencia-contra-os-povos-indigenas-brasil-2019-cimi.pdf>

⁶³ CIMI data available at: <https://cimi.org.br/2020/09/em-2019-terras-indigenas-invadidas-modo-ostensivo-brasil/>



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- 30 occurrences of land-grabbing/illegal sub-divisions;
- 25 occurrences of predatory hunting and poaching;
- 25 occurrences of infrastructure enterprises (road, rail, electricity);
- 14 occurrences of illegal exploitation of resources (sand, marble, slate, hearts of palm);
- 7 occurrences of contamination of water and/or foodstuffs by pesticides;
- 5 occurrences of tourism ventures;
- 3 occurrences of drug trafficking routes being set up.

A Report by the *Comissão Pastoral da Terra Commission*, which focuses on recording disputes over land and water in Brazil, indicates that incursions and trespassing, land-grabbing and illegal deforestation activities victimised 15,329 indigenous families in 2020. Events involving land-grabbers rose by 48% during the Bolsonaro Administration (between 2019 and 2020, compared to 2011 and 2016). Furthermore, this Report notes that agents representing the Bolsonaro Administration were identified as the main causes of land disputes.⁶⁴ All the data in this Report indicate surging violence against the indigenous peoples, with expanding conflicts on indigenous lands, under the government headed by President Jair Bolsonaro.

Some indigenous lands have suffered enormous impacts from these processes, including the Ituna-Itatá indigenous land in Pará State. Set aside as a reserve to protect a cluster of isolated indigenous groups, this land has been targeted by land-grabber gangs. According to data released by the National Space Research Institute (INPE) – which is a government research Institute – that was compiled by Greenpeace, there was

⁶⁴ Comissão Pastoral da Terra (CPT). *Conflitos no Campo Brasil 2020* (Conflicts in the Countryside), Brazil 2020, Documentation Centre Dom Tomás Balduino (CPT), available at: <https://www.cptnacional.org.br/publicacao?task=download.send&id=14242&catid=41&m=0>



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almost no deforestation on this indigenous land before 2016. That year, clear-cutting rose from 2 km² to 13 km² in 2017, 16 km² in 2018 and exploded to 119 km² in 2019.

Thus, based on official public data released by a research Institute under the Ministry of Science and Technology (meaning the Brazilian Government itself), there was a 650% increase in rates and trespassing on the Ituna-Itatá indigenous land (which is home to isolated indigenous groups) during the first year of the Administration headed by President Jacob Bolsonaro. Still according to the INPE data compiled by Greenpeace, 94% of the Ituna-Itatá indigenous land had been subdivided out among private owners by 2020, through fake statements filed with the Rural Environmental Registry, constituting a kind of pre-emptive land-grabbing.⁶⁵

Still in Pará State, where 41 cases of incursions and trespassing activities were recorded during the period, the Munduruku indigenous land (which is awaiting the publication of its Declaratory Edict), is subject to an evident increase in violations by wildcat miners, palm-leaf gatherers and loggers, encouraged by President Jair Bolsonaro, as will be shown below.

As indicated in the research Report prepared by the Extension and Research Centre for the Development and Rights of the Indigenous Peoples (DPI) at FAD-USP:

[...] it may be noted that there may be a link between acts and omissions with the former leading to the latter, assuring State inertia for protecting the rights of the indigenous peoples. In turn, speeches stir up the political environment and disturb relationships between indigenous and non-indigenous people. Incursions and trespassing activities are encouraged, becoming increasingly more numerous with less retaliation, due to the acts and omissions that assure inaction from the apparatus intended to curtail these violations. All together, these facts form a system that is totally against the indigenous peoples, who are becoming increasingly more threatened.⁶⁶

⁶⁵ Survey available at <https://www.greenpeace.org/brasil/ituna-itata-uma-terra-indigena-da-amazonia-tomada-por-ganancia-e-destruicao/>

⁶⁶ Research Report drawn up by the Indigenous Peoples Development and Law Extension and Research Centre (DPI – *Relatório de Pesquisa do Núcleo de Extensão e Pesquisa, Desenvolvimento e Direito dos Povos Indígenas*), accredited by the Culture and Extension Commission, Law School, University of São Paulo (FDUSP), p. 43.



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b) Deforestation, wildfires, burn-offs and destruction of the environment

During the first three years of the Bolsonaro Administration (2019, 2020, and 2021), there was an unparalleled increase in deforestation throughout the Amazon region. This led to inestimable losses of biodiversity, and brought death to the indigenous peoples, together with the destruction of their lands, preventing them from continuing with their ways of life and cultural practices.

Destroying the environment and indigenous territories, there can be no doubt that the development model adopted by the Brazilian State ignores the Rights of the Indigenous Peoples and the need to protect their societies and biodiversity. However, the dizzying increase in forest devastation – which the President has attempted to hide by clashing with the INPE – is a watershed in the history of Brazil, whose significance involves far more than mere figures.

It must be taken for exactly what it is: an indicator of a radical and qualitative shift in the Brazilian State policy towards its indigenous peoples. This change is materialising through a string of acts focused on i) the deliberate dismantling the entire institutional apparatus that has been built up over the past few decades in order to handle relationships between Native Brazilians and the Brazilian State, ensuring that national unity is not established at the cost of plurality within Brazilian society, of which its indigenous multi-ethnicity is a powerful expression; ii) constructed violations of international and constitutional standards established to protect the differences characterising indigenous peoples as a positive value, a fair act, which is revealing the anti-indigenous nature of the policy adopted by President Jair Bolsonaro; iii) believing in climate denial constructions presented to Brazilian society, thus making it easier for Brazilians to support extractivist policies of all kinds. Furthermore, dismantling government entities set up to promote human rights and overseeing the environment for



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these communities have been determining factors in the steadily more severe wave of social and environmental destruction in Brazil during the past few years.⁶⁷

Deforestation is one of the most visible forms of the destruction of indigenous lands and the indigenous lives that depend on them. Indeed, deforestation in Amazonia is not a recent phenomenon. It has assailed this region, particularly since the second half of the XX century, when Brazil's military dictatorship invested heavily in the settlement of what were then known as "unpeopled lands" by landless people from the rest of Brazil, in an attempt to ease pressures urging agrarian reform. However, land in Amazonia was not "unpeopled": it was fully inhabited by indigenous peoples and other traditional communities that built their lives in the forest. These peoples and communities were the main victims of what is called developmentalism, implemented by Brazil's military dictatorship and even by subsequent Administrations, after democracy returned to Brazil.

During the early 2000s, the Brazilian State began to take the problem of deforestation more seriously, investing in the implementation of public policies that could slow the destruction of Amazonia. These policies included the demarcation of indigenous lands and conservation units, in addition to beefing up territorial and environmental control and oversight entities, mainly the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA), through introducing incentives for sustainable economic production, among other approaches. What President Jair Bolsonaro has done is to encourage the complete tear-down of these policies, ending Brazil's engagement in the fight against deforestation and environmental degradation.

⁶⁷ To understand how President Jair Bolsonaro dismantled in two years government entities handling environmental, indigenous, and agrarian issues, see: <https://original123.com.br/em-dois-anos-bolsonaro-esvaziou-orgaos-que-cuidam-de-questoes-ambientais-indigenas-e-agrarias/> - Accessed on February 21, 2021. Along these lines see also the Report (216 pages) presented by CIMI at an international meeting, which describes in detail the practices that are threatening indigenous peoples, available at: <https://www.brasildefato.com.br/2020/12/12/governo-bolsonaro-e-o-maior-desafio-para-os-indigenas-since-colonizacao-afirma-cimi> Accessed on February 21, 2021.



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Data on forest degradation and deforestation in Amazonia supplied by the PRODES⁶⁸ and the Real Time Deforestation Detection System (DETER),⁶⁹ run by Brazil's National Space Research Institute (INPE),⁷⁰ offered efficient indicators of the integrity of lands held by the Brazilian Government such as indigenous territories and conservation units. The information provided by the PRODES system represents the official data on annual deforestation rates in Amazonia, according to a specific calendar that runs from August the previous year through to July in the current year.

Official PRODES data for 2019 (covering the period between August 2018 to July 2019) show that 10,129 km² of Amazon rainforest was clear-cut during the first year of the Bolsonaro Administration, up 30% over the previous year, when 7,536 km² were cleared.⁷¹

This uptrend in Amazon deforestation rates continued in 2020, when the clear-cut area reached 10,851 km², which is the highest figure since 2008, still according to PRODES data for August 2019 to July 2020. This measurement period for the 2020 PRODES data (August 2019 to July 2020) is fully encompassed by the Bolsonaro Administration, reflecting the effects of its environmental policies.

Based on average figures for the ten years prior to the current Administration, the Climate Observatory estimated that deforestation in Amazonia rose by 70% under the Bolsonaro Administration: between 2009 and 2018, Brazil's National Space Research

⁶⁸ The PRODES project run by the National Space Research Institute (INPE), which is a Brazilian Government entity, uses satellites to monitor deforestation through clear cutting in Brazilian Amazonia. The annual rates are estimated since 1988 through deforestation increments identified in each satellite image covering Brazilian Amazonia. The first presentations of the data are scheduled for December each year, as estimates. The consolidated data are presented during the first half of the following year. For more information about the PRODES run by the INPE, see BRASIL. *Monitoramento do Desmatamento da Floresta Amazônica Brasileira por Satélite*. Available at: <<http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>>. Accessed on: 20.03.2021.

⁶⁹ For further information on the PRODES and DETER systems run by the INPE, see: *Metodologia Utilizada nos Projetos PRODES e DETER*. Available at: <http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes/pdfs/Metodologia_Prodes_Deter_revisada.pdf>. Accessed on: 20.03.2021.

⁷⁰ The INPE is linked to the Ministry of Science, Technology, Innovation and Communication. For more information, see: <<http://www.inpe.br/>>.

⁷¹ <http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>



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Institute (INPE) recorded an average of 650,000 hectares of deforestation a year, compared to an average of 1,060,850 hectares a year during the Bolsonaro Administration.⁷²

According to the Brazilian Amazonia Deforestation Bulletin issued by Institute of Man and the Environment in Amazonia (IMAZON), Deforestation Alert System (SAD) (SAD) detected 810 km² of deforestation in Brazilian Amazonia in March 2021 alone, an up 216% over March 2020.

During the following months, more record deforestation rates were detected, according to IMAZON data: 778 km² of deforestation in Brazilian Amazonia in April, followed by 1,125 km² of deforestation in May, which is the highest figure in the historic dataset for this month during the past ten years; March and April also saw the worse figures since 2012.⁷³ Deforestation is a type of attack on indigenous lands: traditionally the places that best preserve the environment, when deforestation sweeps through indigenous lands it is a sign of incursions and trespassing, land-grabbing and illegal wildcat mining. Data issued by IMAZON showed that the Yanomami and Munduruku indigenous lands came under the heaviest deforestation pressures in 2021; not by chance, these are the territories where disputes are flaring as asserted below in this Communication, where the indigenous peoples have been poisoned by mercury, falling sick and dying.

“Between February and April, the three indigenous lands under the heaviest pressures were the Yanomami (in Amazonas and Roraima States), Upper Rio Negro (in Amazonas State) and Munduruku (in Pará State). The data are drawn from the Threat and Pressure quarterly monitoring bulletin published this Tuesday (June 8). Both the Yanomami and the Munduruku territories have been attacked recently by illegal wildcat miners, prompting protective court orders. In the February to April last year Threat and

⁷² See <https://www.oc.eco.br/plano-de-bolsonaro-funciona-e-desmatamento-tem-nova-alta/>. The Climate Observatory is a network set up in 2002, consisting of 56 non-governmental organisation and social movements. Its purpose is to encourage progress and dialogue, public policies and decision-making processes on climate change in Brazil and globally.

⁷³ This information comes from the Deforestation Warning System (SAD), which monitors Brazilian Amazonia through satellites. Available at <https://imazon.org.br/imprensa/desmatamento-na-amazonia-foi-o-maior-em-10-anos-pelo-terceiro-mes-consecutivo-divulga-imazon/>



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Pressure bulletin, both indigenous lands also ranked among those that fell under the heaviest pressure, ranked first and sixth, respectively.”⁷⁴

It is not only the Amazon rainforest biome that is suffering the perverse effects of the policy implemented by President Jair Bolsonaro. Sheltering 22% of Brazil’s biodiversity and home to many types of human existence, the Cerrado Savannah has been swept by wildfires and burn-offs that have caused devastation, often set by cattle ranchers. Data released by the Brazilian Institute for Geography and Statistics (IBGE) show that Brazil has already lost half of the original plantlife in this biome, with destruction moving ahead at a rapid pace.⁷⁵ Furthermore, data released by the National Space Research Institute (INPE) show that the Cerrado savannahs have been swept by record wildfires and burn-offs, with 93,900 outbreaks of fire during the period between January 2019 and September 2020.⁷⁶

The devastation of the Pantanal wetlands has also speeded up dramatically under President Jair Bolsonaro. On October 20, 2011, 2,835 outbreaks of fire were recorded. As a result, some 23% of these wetlands⁷⁷ have been destroyed, with devastating consequences for indigenous peoples living in this region.⁷⁸

However, President Jacob Bolsonaro invariably accuses the indigenous peoples themselves – whose very existence is threatened by environmental degradation – of being to blame for these fires. Traditionally, Native Brazilians have managed fire on their lands

⁷⁴ Available at <https://amazon.org.br/imprensa/terras-indigenas-yanomami-alto-rio-negro-e-munduruku-sao-as-mais-pressionadas-pelo-desmatamento-na-amazonia/>

⁷⁵ BARRETO, Marcelo Menna. Brasil já perdeu 50% do Cerrado. Extra Classe, October 5, 2020. Available at: <https://www.extraclassa.org.br/ambiente/2020/10/brasil-ja-perdeu-50-do-cerrado/>. Accessed on October 28, 2020.

⁷⁶ Indigenist Missionary Council (CIMI). “*Agro e fogo: queimadas criminosas*”. Available at: <https://cimi.org.br/2020/10/agro-e-fogo-queimadas-criminosas/>. Accessed on October 29, 2020.

⁷⁷ BRASIL, G1 Notícias. *Fogo destruiu 23 por cento do pantanal entre janeiro e setembro*. Available at <https://g1.globo.com/natureza/noticia/2020/09/29/fogo-destruiu-23percent-do-pantanal-entre-janeiro-e-setembro-aponta-monitoramento-da-ufrj.ghtml>. Accessed on October 29, 2020.

⁷⁸ Information available at: <https://www.wwf.org.br/informacoes/english/?77075/Brazil-in-flames-Pantanal-sets-record-fires-while-the-government-denies-the-evidences>



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as an ancestral technique for preserving their output and the biome. This is completely different from the criminal fires that follow deforestation.

In his first speech to the UN General assembly in 2019, President Jacob Bolsonaro suggested that indigenous stewardship by fire and the devastating criminal wildfires subsequent to deforestation are equivalent. He mentioned data on deforestation and fires on indigenous lands that in fact indicate raids, trespassing, displacing and adverse possession, in order to confirm credibility on government rhetoric that portrays the interests of the indigenous peoples as antagonistic to those of mainstream Brazilian society, with Native Brazilians wishing to preserve their differences tagged as enemies of the nation.

Deforestation in protected areas (indigenous lands, and federal and state conservation units) reflects an even heavier impact from the acts of President Jair Bolsonaro. The average deforestation rate in protected areas over the past ten years prior to the Bolsonaro administration was 109,166 hectares a year, compared to the average deforestation rate in protected areas in 2019 and 2020, of 194,000, and 84 hectares a year. This reflects a 78% increase during the Bolsonaro Administration.⁷⁹

During the first year of the Bolsonaro Administration, 497 km² of deforestation on indigenous lands was recorded by PRODES in 2019, in Brazilian Amazonia alone, up 90% over 2018. This situation grew even worse in 2020, when 381 km² of clear-cut areas were recorded on indigenous lands, in step with the upward trend in rates and surging incursions and trespassing on these territories.⁸⁰

This means that the implementation of his anti-indigenous policy by President Jair Bolsonaro is being handled successfully, causing irreversible damage to Native Brazilians

⁷⁹ Data from INPE, analysed by the Socio-Environmental Institute (ISA – *Instituto Socioambiental*), available at: <https://www.socioambiental.org/pt-br/noticias-socioambientais/em-meio-a-desmonte-de-protecao-ambiental-adote-um-parque-tem-cara-de-greenwashing>

⁸⁰ Pivetta, Marcos, *A volta do desmatamento*. Revista Pesquisa Fapesp, edition 293, July 2020, available at <https://revistapesquisa.fapesp.br/a-volta-do-desmatamento/>



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and Brazilian society. The significant loss of plant life on indigenous lands during the past two years is a serious indicator of raids and trespassing for the purpose of illegally exploiting natural resources and land-grabbing.

The expansion of deforestation on indigenous lands in 2019 and 2020 is quite clear: the pace of this destruction rose by 42.5%. Of the 382 indigenous lands analysed by Brazil's National Space Research Institute (INPE), 174 of them had deforested areas. The twenty indigenous lands with the longest track-records of pressures and disputes with wildcat miners, land-grabbers and loggers rose by an average of 534% in deforestation during the first two years of the Bolsonaro Administration.⁸¹

Selective logging or the degradation of indigenous lands is another problem that demands attention. The stage before clear-cutting, degradation is an important indicator for identifying incursions, trespassing and illegal activities on indigenous lands. Warnings about forest degradation for the period after the last PRODES estimate in 2020 (August 2022 March 2021) have already recorded a further 10,123.9 hectares. These findings by the DETER system show that the intensity of raids, trespassing and deforestation still remains extremely high on indigenous lands.

The Annual Report on Deforestation in Brazil⁸² prepared by MapBiomas presents a significant finding: deforestation rates in the Cerrado savannahs mainly affected indigenous lands and old runaway slave settlements known as quilombolas, conservation units and settlements during the first year of the Bolsonaro Administration.⁸³

Deforestation, fire and degradation – signs of impatience and trespassing on indigenous lands – have drastically affected the way of life of their indigenous peoples:

[...] the month of September 2019 was a particularly difficult one for the Apiãwa (Tapirape) on the Urubu Branco indigenous land in Mato Grosso State, in any transition zone between Cerrado savannah and Amazon rainforest. During 2019, a total of 416

⁸¹ Instituto Socioambiental, *Desmatamento na Amazônia bate recorde em 12 anos e afeta Unidades de Conservação e Terras Indígenas*, available at: <https://www.socioambiental.org/pt-br/noticias-socioambientais/desmatamento-na-amazonia-bate-recorde-em-12-anos-e-afeta-unidades-de-conservacao-e-terras-indigenas>

⁸² MapBiomas is an organization set up by NGOs, universities and technology firms that coordinates biomes and cross-related topics.

⁸³ AZEVEDO, Tasso Rezende de, et al. *Relatório Anual do Desmatamento no Brasil*. São Paulo: MapBiomas, 2020. Available at: <https://s3.amazonaws.com/alerta.mapbiomas.org/relatorios/MBI-relatorio-desmatamento-2019-FINAL5.pdf>. Accessed on October 28, 2020.



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hotspots were recorded on this land by the Aqua satellite, with 365 outbreaks in September alone. Furthermore, 167,400 hectares of the Urubu Branco indigenous land was destroyed by fire, an area equivalent to clear-cut over the thirty previous years.⁸⁴ The High Chief of the Tapirape people, Elber Kamoriwa'i, notes that “ranchers continue to burn-off grazing land, and with this, they are burning much of our territory. The fire comes mainly from the ranches in the northern part [of the indigenous lands] and the flames spread. This is hard for us to control.”⁸⁵

For isolated or recently-contacted indigenous people, the deforestation of their indigenous lands has even more dire consequences, because the survival of these peoples in their voluntary isolation depends solely and exclusively on forest resources, for maintaining their living conditions. A bulletin issued by the Indigenous Land Deforestation Warning System produced by the Instituto Socioambiental (ISA) with confirmed records of isolated peoples, mapped out 2295 hectares of deforested areas scattered over 15 indigenous lands, between April and December 2020. According to this Bulletin: “the data identified through this system for isolated peoples strengthens a trend analysed on other indigenous lands monitored by this Institute, with actions on the political stage having direct impacts on the expansion of deforestation in these territories.”⁸⁶

c) Wildcat mining and industrial mining on indigenous lands

Industrial mining and wildcat mining are affecting indigenous lands to an increasing extent, with adverse effects on the health of their inhabitants and indigenous ways of life. Approval of industrial and wildcat mining activities on indigenous lands is one of the stated political priorities of President Jair Bolsonaro. As noted in an official document signed by

⁸⁴ Data released by the General Land Observation Coordination Office (PRODES), run by the INPE system. Information available at: BRASIL. INPE. *Banco de Dados de Queimadas*. Available at: <http://queimadas.dgi.inpe.br/queimadas/bdqueimadas/>.

⁸⁵ *Relatório de Pesquisa do Núcleo de Extensão e Pesquisa, Desenvolvimento e Direito dos Povos Indígenas - DPI* (Research Report drawn up by the Indigenous Peoples Development and Law Extension and Research Centre), accredited by the Culture and Extension Commission, Law School, University of São Paulo (FDUSP), p. 54.

⁸⁶ *Instituto Socioambiental* –ISA (Socio-Environmental Institute), *Boletim Sirad-Isolados* (Sirad-Isolados bulletin), January 2021, available at: https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/si_pg_af02_desktop.pdf#overlay-context=pt-br/noticias-socioambientais/desmatamento-avanca-no-territorio-dos-ultimos-indigenas-piripkura.



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this President, approval of Draft Bill N° 191/2000 – which opens up indigenous lands for industrial mining activities – tops the list of legislative priorities for this Administration.

Moreover, President Jair Bolsonaro has shown his solid support for illegal wildcat mining on indigenous lands, in other ways. For example, he has been halting or suspending oversight operations and actions curtailing wildcat mining on indigenous lands. In an utterly aberrant case,⁸⁷ the government that he heads up actually offered an official aircraft of the Brazilian Air Force as transportation to Brasília for representatives of wildcat miners operating illegally on Munduruku lands in Jacareacanga, Pará State, for talks with Environment Minister Ricardo Salles. Although this episode made headlines in Brazil, its disclosure had no legal effects, showing that this institutional restructuring policy has been implemented successfully through underfunding, dismissals and appointments to key positions, and is already producing results by hobbling government control institutions.

None of these acts or steps must be understood on stand-alone bases. Together, they form an important aspect of the anti-indigenous Administration headed by President Jair Bolsonaro, which is encouraging the destruction of indigenous lands and the lives of Native Brazilians through incentives for industrial and wildcat mining on indigenous lands.

As already mentioned, President Jair Bolsonaro has been successful with this policy. According to warnings issued by the DETER system run by Brazil's National Space Research Institute (INPE), 72% of all wildcat mining activities in Amazonia between January and April 2020 took place in areas that should be “protected”: indigenous lands and conservation units. During the first four months of 2020, the area deforested by wildcat mining expanded by 13.44% on indigenous lands in Brazilian Amazonia,

⁸⁷ For example, this occurred with the *Operação Verde Brasil 2* operation in the Jacareacanga region of southwest Pará State, which was halted and weakened during the second half of 2020. Cf: <https://oglobo.globo.com/sociedade/governo-suspende-operacao-de-combate-garimpos-ilegais-em-terra-indigena-no-para-24570846>.



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compared to the same period the previous year, rising from 383.3 hectares in 2019 to 434.9 hectares in 2020.⁸⁸

Still according to the DETER system operated by the INPE, deforestation caused by industrial mining reached record levels, expanding particularly onto indigenous lands and conservation units. The DETER dataset compiled by the INPE since 2015 indicates that the months with the greatest devastation caused by industrial mining activities during this period was May 2019, with 34.47 km² cleared. Next comes July 2019, with 23.98 km². Moreover, 2020 was the worst year with the worst historical dataset: June (21.85 km²); August (15.93 km²); and September (7.2 km²).

A survey conducted by the Instituto Escolhas institute that was completed in February 2021 showed that there are currently more than six million hectares of indigenous lands and conservation units under threat from industrial mining activities. This study analysed prospecting applications (requests and licenses) for gold, filed with the National Mining Agency (AMM), which indicate interest in industrial mining activities in these areas. The outcome is that there were already 6.2 million hectares threatened by gold mining in protected parts of Brazilian Amazonia by year-end 2020, covering an area equivalent to twice the size of Belgium. Of these 6.2 million hectares threatened only by the search for gold, 3.8 million hectares are located in conservation units, with 2.4 million hectares on indigenous lands. This study also showed that there has been a progressive increase in industrial mining applications for indigenous lands, rising steadily since 2018 and reaching a record figure of 31 applications in 2020.⁸⁹

Industrial mining activities usher in a series of disastrous consequences and ways of eliminating Native Brazilians. Already widely known and documented, they are addressed below.

⁸⁸ <https://www.greenpeace.org/brasil/blog/em-meio-a-COVID-72-do-garimpo-na-amazonia-foi-em-areas-protegidas/>

⁸⁹ See <https://www.escolhas.org/wp-content/uploads/%C3%81reas-protegidas-ou-%C3%A1reas-amea%C3%A7adas-A-incessante-busca-pelo-ouro-em-Terras-Ind%C3%ADgenas-e-Unidades-de-Conserva%C3%A7%C3%A3o-na-Amaz%C3%B4nia.pdf>



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d) Spread of the COVID-19 pandemic among the indigenous peoples

A tumultuous year, 2020 will always be remembered for the untrammelled spread of COVID-19 across the globe, and the different ways in which countries and their respective governments handled this pandemic. Although the gravity of the harm caused by this virus has affected every country in the world, there can be no denying that Brazil is a glaring example of the catastrophic outcomes of an anti-scientific government in full denial, whose acts reflect a policy – meaning a set of deliberate acts focused on implementing its approach to handling the pandemic – of building up natural collective immunity against the virus, known as “herd immunity”. These acts consist mainly of: i) downplaying the need for public health steps that would slow the spread of the virus; ii) spreading false narratives about treatment for the disease, encouraging non-compliance with preventive public health steps; iii) spreading misinformation and unreliable Communications; iv) not providing hospitals with the necessary medications and materials for treating patients; v) not providing Brazilians with immunisation, particularly indigenous peoples and other groups within society shown to be particularly affected by COVID-19.

President Jair Bolsonaro deliberately created feelings of insecurity about the pandemic, repeatedly adopting a stance against social distancing and urging medications ineffective for treating COVID-19, while delaying the acquisition of vaccines. As a result, Brazil’s performance is acknowledged to be among the world’s worst in dealing with the COVID-19 pandemic, with the nation becoming a global public health risk.

As attacking Native Brazilians through an anti-indigenous policy is a core goal of President Jair Bolsonaro, there was no difference in his approach to actions, omissions, speeches and discourses on COVID-19 and its effects on indigenous peoples. Weakening government entities and undermining the indigenous healthcare policy – starting back in 2019 – produced material effects during the pandemic.



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On this issue, important elements may be noted in a broad-ranging research project conducted by the Public Health Law Research and Studies Centre (CEPEDISA) at the University of São Paulo (USP). Through a detailed timeline of the discursive actions and steps adopted by the Brazilian Government during the pandemic, this study disclosed the existence of an institutional strategy for spreading the virus, backed by the Brazilian Government under the leadership of the President of Brazil.⁹⁰ Briefly, this research project showed that there is a common direction in the regulations and discourse presented by the Brazilian Presidency that fosters the spread of COVID-19.⁹¹

The deliberate dissemination of the virus by President Jair Bolsonaro and the Brazilian Government is grounded on their support of the theory of herd immunity through infection or transmission; constant encouragement for exposure; banalisation of death and the after-effects of this disease; systematic obstruction of steps designed to curtail the pandemic taken by local governments; and awareness of the legal, epidemiological and public-health irregularity of their conduct. In fact, President Jair Bolsonaro implemented a policy of deliberate infection by COVID-19, as a systematic attack on all Brazilians, with disproportionately severe effects on the members of some specific groups, such as Native Brazilians.

The outcome of this virus-spreading policy is that Brazil became the country with the world's worst mortality rate, topping 500,000 pandemic deaths in June 2021. Among Native Brazilians, the lethality rate of COVID-19 is 50% higher, compared to the non-indigenous population.

The spread of the pandemic through the communities of 305 indigenous peoples has been brutal. According to data released by the National Committee for Indigenous Heritage and Life, run by the Articulation of the Indigenous Peoples of Brazil (APIB), Brazil

⁹⁰ Public Health Law Research and Study Centre (CEPEDISA), São Paulo University (USP). The timeline for the Federal strategy for disseminating COVID-19, May 2021, available at https://cepedisa.org.br/wp-content/uploads/2021/06/CEPEDISA-USP-Linha-do-Tempo-Maio-2021_v2.pdf

⁹¹ Idem.



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recorded 1,126 indigenous deaths by June 30, 2021, with 56,174 infections and 163 indigenous peoples affected by this virus. The States with the largest number of deaths are Amazonas, Pará, Roraima, Maranhão, Mato Grosso, Pernambuco and Ceará.

It is noted that the virus spread rapidly among Native Brazilians. Based on a PIB data, the lethality rate among the indigenous peoples reaches 9.6%, compared to 5.6% for the Brazilian population in general. In other words, the data show that infections among the indigenous peoples are almost twice as lethal, compared to the mainstream population.

On this issue, specialists in this field note that:

(.) the disease has already reached a mortality rate that is 50% higher for indigenous peoples, than for the population in general, with a mortality rate of 24:100,000. A survey conducted by Fiocruz shows that 48% of Native Brazilians seeking hospital care nevertheless died, which is the highest proportion in Brazil (Fiocruz).

The new UN Rapporteur for Indigenous Rights, José Francisco Cali Tzay feels that the challenge of handling the pandemic in the indigenous peoples extends well beyond simply treating the disease. Above all, it means preventing what it potentiates.

“The indigenous peoples who lose their lands and means of subsistence are forced into deeper poverty, with higher malnutrition rates, less access to clean drinking water and sanitation, as well as exclusion from medical services, which in turn leaves them particularly vulnerable to diseases.”⁹²

The pandemic has revealed the weaknesses faced every day for many years by primary healthcare teams in Brazil’s Unified National Health System (SUS) and, to a greater extent, those working in the Indigenous Healthcare Sub-System (SASI/SUS). They include: the lack of adequate infrastructure; insufficient personal protection equipment (PPE); limited inventories of medications and other materials; high turnover of practitioners; difficulties in ensuring adequate training and implementing on-going education for staff; integration problems with the healthcare network; and the unhealthy ramshackle premises of the Casas de Saúde do Índio (CASAI) indigenous clinics.

⁹² Available at: <https://cimi.org.br/2020/06/com- apenas-002-orcamento-uniao-valor-gasto-funai-junho-mais-baixo-dez- anos/#:~:text=O%20or%C3%A7amento%20total%20da%20Fundac%C3%A7%C3%A3o,R%24%203%20C6%20trilh%C3%B5es.&ext=O%20valor%20gasto%20pela%20Funai,plataforma%20Siga%20Brasil%2C%20do%20Senado>. Accessed on March 20, 2021.



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The reality of remote areas and Special Indigenous Public Health Districts (DSEI) scattered throughout the heartlands of Brazil is also fraught with other difficulties. They include: constraints on communications (only radio communications are available in some areas); difficulties in access and logistics problems caused by geographical remoteness (some of these Districts can be accessed only by river or air); the complexity of care for indigenous communities within inter-cultural contexts.

There is circumstantial evidence indicating that the virus was carried in by State healthcare agents all through activities organised by the Bolsonaro Administration. The first confirmed case of COVID-19 infection among Native Brazilians was recorded on March 25, 2020, in the Santo Antônio do Içá municipality in Amazonas State. A young man (20 years old) belonging to the Kokama people was infected by a physician who travelled from São Paulo, working for the Special Indigenous Healthcare Bureau (SESAI) and already infected with the virus. Today, the Kokama have the second-highest number of deaths caused by COVID-19 in Brazil, behind only the Xavante peoples.

The same occurred with SESAI in the Upper Rio Purus river region of Acre State, in an area with peoples living in voluntary isolation, as well as in the Javari Valley in the Amazonas State, which has the largest diversity of peoples living in voluntary isolation on the planet, in addition to other areas in the Upper Rio Solimões river area of Amazonas State. In a location with some of the most difficult access in Brazil, in the Parque Tumucumaqui park on the boundary between the Pará and Amapá States, indigenous peoples were infected by Brazilian army troops.

Similar to what occurred with incursions and trespassing, deforestation and wildcat mining, the spread of the COVID-19 pandemic Native Brazilians is the outcome of dismantling policies providing protection for indigenous peoples, while government entities to engage in attacks on their communities, headed by President Jair Bolsonaro. While implementing the anti-indigenous policy introduced by President Jair Bolsonaro, SESAI exposed Brazil's indigenous peoples to this virus by, for example: recommending



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that infected Native Brazilians should quarantine at home, in contact with other members of their communities; refusing medical care for indigenous people living in cities; and ignoring the importance of testing. Meanwhile, FUNAI also helped spread infection by failing to remove trespassers and raiders from indigenous lands.⁹³

[...]the acts undertaken by the Brazilian Government headed by President Jair Bolsonaro have helped disseminate and worsen the coronavirus in Brazil's indigenous communities. These actions include not only spreading death, but also reiterated lack of respect for the dead and funeral traditions of the indigenous peoples.⁹⁴

The Brazilian Court system has acknowledged the criminal omission of the Brazilian State by failing to adopt effective measures for curtailing the spread of infection and death through COVID-19 among the indigenous peoples,⁹⁵ ordering the State to adopt an urgent public health barriers plan. This court decision has been systematically ignored. Prompted by information indicating that the pandemic has been growing worse, together with conflicts in the region, particularly involving Native Brazilians living in the Yanomami (item 4.3.3) and Munduruku (item 4.3.2), indigenous lands, a request was filed to remove trespassers from these areas. However, this request was denied by the Courts.

4.3. Impacts of raids incursions, trespassing, disseisin and adverse possession, wildcat mining, deforestation, and the spread of the COVID-19 pandemic on the indigenous peoples of Brazil

⁹³ Information on the activities of SESAI and FUNAI during the COVID-19 pandemic may be found at: <https://COVID19.socioambiental.org/> and also in the Research Report drawn up by the Indigenous Peoples Development and Law Extension and Research Centre (DPI – *Relatório de Pesquisa do Núcleo de Extensão e Pesquisa, Desenvolvimento e Direito dos Povos Indígenas*), accredited by the Culture and Extension Commission, Law School, University of São Paulo (FDUSP), p. 5 to 29.

⁹⁴ Research Report drawn up by the Indigenous Peoples Development and Law Extension and Research Centre (DPI – *Relatório de Pesquisa do Núcleo de Extensão e Pesquisa, Desenvolvimento e Direito dos Povos Indígenas*). accredited by the Culture and Extension Commission, Law School, University of São Paulo (FDUSP), p. 10.

⁹⁵ Federal Supreme Court, Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709/2020, Reporting Justice Luis Roberto Barroso.



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The anti-indigenous policy implemented by President Jair Bolsonaro has directly encouraged raids, incursions, trespassing, disseisin and adverse possession, deforestation and the spread of the COVID-19 pandemic on indigenous lands. There are countless acts, omissions, discourses and speeches by President Jair Bolsonaro that form a context of real destruction of Brazil's indigenous peoples, with the potential disappearance of their multiple ethnicities, overwhelmed by systematic attacks against them that lead to disease, suffering and death among them. The policy adopted by President Jair Bolsonaro through all federal civil service entities in Brazil is focused on weakening indigenous, social and environmental rights, with the intention⁹⁶ of taking over their lands and doing away with the indigenous peoples *per se*.

As already stated, Brazil has a population of 817,963 Native Brazilians in 305 indigenous peoples, speaking 274 indigenous languages, scattered throughout the country. The attacks encouraged by President Jair Bolsonaro affect all of them, in different contexts and at different times. The consequences of this anti-indigenous policy are described below, for some of Brazil's indigenous peoples, whose current situation is extremely serious.

4.3.1 Persecution, deaths, assassinations and murders of Native Brazilians in Brazil

In addition to death and disease among the indigenous peoples caused by trespassing, land-grabbing and the destruction of their lands, as well as COVID-19 – all supported and potentiated by the policies implemented by President Jair Bolsonaro – Native Brazilians are also victimised by threats, assassinations, murders and other kinds of violence. Targeting indigenous communities and their leaders, these acts of violence have been rising over the past few years.

⁹⁶ Prosecutor v. Popovic et al (IT IT-05-88-T), Judgment, June 10, 2010, paragraph 830.



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Disputes over indigenous lands are the sociological foundations of the violence directed against indigenous peoples and their leaders. Its regulatory aspect lies in the intention of making Brazilian society homogeneous, modelled on what the President calls the “well-meaning citizen” and “correct human being”. Data collected by the Missionary Indigenist Council (CIMI)⁹⁷ reflect the gravity of this violence and its systematised deployment, showing that the indigenous peoples are subject to attacks of many kinds of discrimination, authorised by President Jair Bolsonaro. The Report entitled *Violence against the indigenous peoples* presents annual data on the many different kinds of violence imposed on Native Brazilians.⁹⁸ One of the categories of violent systematised categories in this Report is violence against individuals, which includes crimes such as homicide, attempted homicide, threats, racism, discrimination and bodily injury.

During 2019, at least 277 cases of violence against Native Brazilians were recorded across Brazil. Collected by CIMI, these allegations include 133 cases of homicide and 25 attempted murders of Native Brazilians. The data also indicate many (33) death threats and sixteen acts of severe discrimination.

Some areas that are the most severely affected by the untrammelled expansion of migrant settlements in Brazil, headed up by illegal loggers, wildcat miners and land-grabbers, are becoming real battlefields against the indigenous peoples. A good example is found in Mato Grosso State, with forty murders and ten attempted murders against Native Brazilians. In other words, this State alone accounts for more than 30% and 40% of these cases, nationwide. Furthermore, the States encompassed by Brazilian Amazonia

⁹⁷ CIMI, *Violence against the Indigenous Peoples of Brazil – 2019 data*, with the full text available at: <https://cimi.org.br/wp-content/uploads/2020/10/relatorio-violencia-contra-os-povos-indigenas-brasil-2019-cimi.pdf>.

⁹⁸ It should be noted that these data, except the data related to cases of homicide are well-known to be under-notified and be under-represented. Due to institutional racism embedded in public security institutions, many cases involving violence are not even notified by Native Brazilians to the authorities. No matter how much civil society seeks information on crimes perpetrated against the indigenous peoples from different sources (newspapers, networks, official records), there are so many blind spots. This is particularly true in a context where indigenous peoples feel increasingly more vulnerable and threatened, which is a situation that may turn them into crime victims who are more likely to hide than report the occurrence.



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post the highest number of situations involving extreme violence and violations of human rights.

Indigenous deaths are also caused by the absence of adequate healthcare facilities. Data in this Report show that at least 31 Native Brazilian died during 2019 due to the absence of adequate healthcare. The most alarming data refer to the situation of indigenous children: 825 underage deaths were recorded, mainly in three States: Amazonas with 248 child deaths; Roraima with 133 and Mato Grosso with 100.

In 2020, out of eighteen assassinated social movement leaders calling for access to land, seven were Native Brazilians, according to a mapping exercise conducted by the Land Pastoral Commission.⁹⁹

- Josimar Moraes Lopes, 26 years old, murdered on August 7, 2020, during clashes over the Abacaxis Extractivist Settlement Project in Amazonas State;
- Zezico Rodrigues Guajajara, 32 years old, murdered on March 31, 2020, during clashes over the Araribóia/Barreira Sanitária indigenous lands in Maranhão State;
- Kwaxipuru Kaapor, 32 years old, murdered on August 3, 2020, during clashes over the Upper Turiaçu indigenous lands in Maranhão State;
- Virgínio Tupã Rero Jevy Benites, 24 years old, murdered on March 8, 2020, during clashes over the Ava Guarani/Aldeia Tekoha Itamarã indigenous lands in Paraná State;
- Ari Uru Eu Wau, 32 years old, murdered on April 18, 2020, during clashes over the Uru-Eu-Wau-Wau/Barreira Sanitária indigenous lands in Rondônia State;
- Original Yanomami, 24 years old, murdered on June 12, 2020, during clashes over the Yanomami/Apiuí/Papiu/Yawaripé, indigenous lands in Roraima State;

⁹⁹ Comissão Pastoral da Terra (CPT) *Conflitos no Campo Brasil 2020* (Conflicts in the Countryside, Brazil 2020), Centro de Documentação Dom Tomás Balduino – CPT (Documentation Centre), available at: <https://www.cptnacional.org.br/publicacao?task=download.send&id=14242&catid=41&m=0>, p. 200



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- Marcos Arokona, 20 years old, murdered on June 12, 2020, during clashes over the Yanomami/Apiauí/Papiu/Yawaripé indigenous lands in Roraima State.

Other indigenous leaders survived assassination attempts in 2020 during land disputes in the Javari Valley, Amazonas State; and the Ava Guarani, Guarani Mbya and Kaingang Guarani indigenous lands.¹⁰⁰

Threats, persecution and attempts at criminalisation have also been wielded against Brazil's indigenous peoples. Finally, in order to demonstrate the gravity of the facts reported here, for the purposes of underpinning the acceptability of this Communication, details are provided of attempts to criminalise indigenous leaders during 2021.

4.3.2 Attacks on isolated and recently-contacted indigenous peoples

Isolated indigenous peoples are peoples or segments of indigenous peoples that are not in close and/constant contact with the mainstream population, avoiding meeting with people outside their groups. So according to the Brazilian State, recently-contacted indigenous peoples are indigenous groups of peoples in occasional, intermittent or permanent contact with segments of Brazilian society, but with little knowledge of mainstream social codes and limited absorption of mainstream uses and customs, conserving their social and cultural autonomy to a significant extent.¹⁰¹

The act undertaken by President Jair Bolsonaro are particularly heinous, when targeting isolated and recently-contacted indigenous peoples. Although the entire indigenous population is more vulnerable to COVID-19 than the average Brazilian citizen, the social and epidemiological vulnerability of these communities make their situation

¹⁰⁰ Comissão Pastoral da Terra (CPT) *Conflitos no Campo Brasil 2020* (Conflicts in the Countryside, Brazil 2020), Centro de Documentação Dom Tomás Balduino – CPT (Documentation Centre), available at: <https://www.cptnacional.org.br/publicacao?task=download.send&id=14242&catid=41&m=0>, p. 211

¹⁰¹ BRASIL. (2018). Joint Edict Nº 4,094, dated December 20, 2018. Available at: <http://138.68.60.75/images/portarias/dezembro2018/dia28/portconj4094.pdf>. Accessed on May 26, 2020.



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even more critical. This is because the isolated and recently-contacted indigenous peoples are subject to a broad range of vulnerability vectors in very particular ways, which may materialise in different forms:

- immunological vulnerability, deriving from low immunological defences in their bodies, for coping with everyday diseases brought in from outside;
- social and cultural vulnerability, deriving from the death of the weakest (such as children and seniors) through epidemics, often triggered by contacts with non-indigenous individuals. The death of the elders deprives the group of political leaders, advisers and spiritual guides, while the death of children can weaken the ability of these societies to renew themselves over the medium term, and may even alter cultural standards for establishing couples;
- territorial vulnerability, resulting from ongoing pressures imposed by non-indigenous society on their lands, and threats to significant elements in these territories that are vital for the cosmologies of recently-contacted indigenous groups;
- political vulnerability, deriving from the impossibility of these peoples expressing their wishes through the representation mechanisms commonly accepted by the State, as well as the absence of dissemination and implementation of laws addressing these aspects;
- demographic vulnerability, as these settlements of recently-contacted indigenous peoples have generally experienced massacres.¹⁰²

It is important to recall that Brazil is the country with the largest number of isolated peoples on the planet. At the moment, the Brazilian State acknowledges the existence of

¹⁰² AMORIM, F.; MATOS, B.; OLIVEIRA, L.; PEREIRA, B.; SANTANA, C.; (2021) Santos, L. *Violações dos direitos à saúde dos povos indígenas isolados e de recente contato no contexto da pandemia de COVID-19 no Brasil*. *Mundo Amazônico*, vol. 12 n. 1. Available at: <https://revistas.unal.edu.co/index.php/imanimundo/issue/view/5527>



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114 records of isolated peoples, of whom 28 are confirmed,¹⁰³ with a further 86 awaiting confirmation of information on the presence of these communities. Furthermore, acknowledgement has been issued for at least eighteen recently-contacted indigenous peoples.¹⁰⁴

Of the 86 records of isolated peoples that have not yet been confirmed, seventeen of them are unprotected, not living on demarcated lands, and in areas with high deforestation rates, according to the last survey conducted by the National Human Rights Council, which underpinned Resolution N° 44/2020.¹⁰⁵

In fact, there are several dramatic reports on isolated or recently-contacted indigenous peoples that have been decimated by infectious and contagious diseases, with these epidemics caused by contacts with outside groups. It is generally agreed among historiographers that diseases were the fastest and most fatal factors behind the disappearance of native populations on the Americas, far more lethal than European weapons.

The act perpetrated by President Jair Bolsonaro during the COVID-19 pandemic had deliberately threatened the existence of isolated indigenous peoples. They were undertaken in order to seize the opportunity offered by the pandemic to implement his anti-indigenous policy, by focusing public attention on the public health issue. They can be organised and identified on three fronts:

- opening up the lands of isolated peoples to entry by third parties;
- dismantling specialised government entities providing protection for isolated peoples;
- government attacks on the lands of isolated indigenous peoples.

¹⁰³ This information is found in the FUNAI Directive, Technical Information N° 16/2018/COPLII/CGIIRC/DPT-FUNAI,

¹⁰⁴ Information based on: i) the Workshop addressing "Guidelines for dealing recently- contacted indigenous peoples: new experiences, old challenges" – FUNAI; ii) the First Meeting of the Policy Council for the Protection and Promotion of Rights for Isolated and Recently-Contacted Indigenous Peoples (CGIIRC); iii) FUNAI Edict N° 1,821 /2011.

¹⁰⁵ Available at: <<https://www.gov.br/participamaibrasil/resolucao-n-44-de-10-de-dezembro-de-2020-2>>



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a) Opening up the lands of isolated or recently-contacted indigenous peoples to outsiders

The manner in which these peoples keep their distance is the way that they express their wishes to have greater control over the relationships that they establish with groups or peoples around them.¹⁰⁶ This is why keeping outsiders away from areas where the confirmed presence of isolated indigenous peoples has been a guideline for the indigenist policy implemented by the Brazilian State since 1987, as a way of ensuring their autonomy and physical integrity.

However, President Jair Bolsonaro recently altered this policy, and began to allow outsiders to move on to the lands that are home to these peoples, as the COVID-19 pandemic was reaching its peak.

Issued by the National Indian Foundation (FUNAI), Edict N° 419/PRES/2020 the possibility of regional administrative units authorising contacts with isolated indigenous groups, thus altering the exclusive prerogative held by the General Coordination Unit for Isolated and Recently-Contacted Indigenous Groups (CGIIRC), which is a unit that was developed, set up and fine tuned over the past 33 years, in order to assess situations of this type. Due to the gravity of this step and widespread opposition from indigenous organisations, meaning after strong rejection by civil society, this Foundation backstepped on this proposal. Immediately afterwards, President Jair Bolsonaro sanctioned Law N° 14,021/20, allowing religious missions to enter indigenous lands that were home to isolated peoples.

From the epidemiological standpoint, these communities are subject to a set of individual and collective factors when contact occurs, and also during the post-contact period. This leaves them more susceptible to disease and death, due mainly to infectious diseases, as they have no immunological memory that protects them against the

¹⁰⁶ AMORIM, F.; YAMADA, E. (2016). *Povos indígenas isolados: autonomia e aplicação do direito de consulta*. *Revista Brasileira de Linguística Antropológica*. Volume 8, Número 2, December. P. 41-60.



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infectious agents found commonly in the mainstream population, with no access to active immunisations from vaccines.¹⁰⁷

b) Dismantling entities specialising in the protection of isolated or recently contacted indigenous peoples

President Jair Bolsonaro developed his indigenous policy eager to exploit indigenous lands and convert their inhabitants to Christianity. A good example of this is the appointment of Ricardo Lopes Dias as head of the General Coordination Unit for Isolated and Recently-Contacted Indigenous Groups (CGIIRC); he is a missionary linked to the Novas Tribos do Brasil (MNTB) religious mission that is seeking contact with isolated peoples.

There are countless cases of missionaries engaging in harassment on indigenous lands that are home to isolated indigenous peoples, such as in the Javari Valley in Amazonas State. Since September 2019, the leaders of the indigenous peoples of the Javari Valley (UNIVAJA) movement have been denouncing missionary activities focused on isolated indigenous peoples. On that occasion, three missionaries – including Andrew Tonkin, who had already attempted to trespass on indigenous lands on other occasions – travelled on an exposition up a river inlet to the home of an isolated group.¹⁰⁸

In late March 2020, indigenous leaders reported that Andrew Tonkin and Josiah McIntyre were holding meetings in the town of Atalaia do Norte, luring indigenous youngsters and buying equipment for invading the Javari Valley indigenous land, in search

¹⁰⁷ Furthermore, in addition to epidemiological aspects, all the impacts cannot be forgotten that derive from a contact process. RODRIGUES, D. (2014). *Proteção e Assistência à Saúde dos Povos Indígenas Isolados e de Recente Contato no Brasil*. OTCA: São Paulo. p. 80. Available at: <https://boletimisolados.trabalhoindigenista.org.br/wp-content/uploads/sites/3/2017/08/Saude_PIIIRC_-Douglas-Rodrigues.pdf>.

¹⁰⁸ Indigenist Missionary Council (CIMI). *Univaja divulga nota denunciando invasões, assassinato, ameaças e proselitismo evangélico no Vale do Javari*. Available at <https://cimi.org.br/2019/09/univaja-divulga-nota-denunciando-invasoes-assassinato-ameacas-e-proselitismo-evangelico-no-vale-do-javari/>.



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of isolated peoples.¹⁰⁹ When the movement refused to allow the missionaries to enter the territory, Pastor Josiah McIntyre broke into the association offices and threatened to set fire to its headquarters.¹¹⁰

In 2019, technical experts at FUNAI – career civil servants not included among the political appointees of President Jair Bolsonaro—published a document¹¹¹ that records the upsurge in violence against isolated or recently-contacted indigenous peoples:

Particular concern is stressed with the upsurge in violence against civil servants, especially in the Javari Valley region, where the Ituí-Itaquai Ethno-Environmental Protection Base had been attacked five times by trespassers since December 2018. Similarly, murder of staffer Maxciel Pereira dos Santos jeopardises all the work carried out for more than three decades by the Brazilian State by the Brazilian State through the Javari Valley Ethno-Environmental Protection Front (FPEVJ). More recently, an attack by loggers led to the death of Native Brazilian Paulo Paulino Guajajara on the Araribóia indigenous land, within an area that is home to isolated indigenous groups in Maranhão State. Due to this situation, several civil servants have resigned, for safety reasons.

There is thus no lack of willingness and alerts from civil servants, scientists and the indigenous peoples themselves, highlighting the extremely severe situation of isolated peoples, and the harm caused by the anti-indigenous policy urged by President Jair Bolsonaro from 2019 onwards.

c) Attacks on the lands of isolated or recently-contacted indigenous peoples

A denunciation issued by the Isolated and Recently-Contacted indigenous peoples Human Rights Observatory (OPI) on November 27, 2020,¹¹² shows that President Jair Bolsonaro decided to shrink the boundaries of the Ituna-Itatá indigenous land that is home

¹⁰⁹ O GLOBO. *Missionário americano prepara invasão a terras indígenas com povos isolados na Amazônia, dizem lideranças*. Available at <https://oglobo.globo.com/brasil/missionario-americano-prepara-invasao-terras-indigenas-com-povos-isolados-na-amazonia-dizem-liderancas-24325032>

¹¹⁰ Socio-Environmental Institute (ISA – *Instituto Socioambiental*). *Em meio a pandemia, indígenas do Javari denunciam ameaça de missionários a isolados*. Available at <https://www.socioambiental.org/pt-br/noticias-socioambientais/em-meio-a-pandemia-indigenas-do-javari-denunciam-ameaca-de-missionarios-a-isolados>

¹¹¹ Open letter from civil servants allocated to ethno-environmental front protection activities / FUNAI to Brazilian society and the competent authorities. available at: https://www.socioambiental.org/sites/blog.socioambiental.org/files/blog/pdfs/carta_fpes.pdf.

¹¹² Whistle-Blowing Report by indigenists, Native Brazilians, anthropologists and researchers with the Isolated and Recently-Contacted Indigenous Peoples Human Rights Observatory (OPI), entitled: Report in Defence of Isolated Indigenous Peoples in the Area between the Xingu and Bacajá Rivers. Available at: <https://povosisolados.com/2020/11/27/relatorio-em-defesa-dos-povos-indigenas-isolados-no-interfluvio-xingu-bacaja/>.



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to isolated peoples, through the Minister heading up the Presidential Government Bureau, with no technical justification.

The Ituna/Itatá indigenous land was the most severely affected by clearcutting in Brazil during 2019, with 13% of the total devastation recorded in indigenous areas by the National Space Research Institute (INPE) through the PRODES system. During the past year alone, 23% of the forest was devastated. That year, an increase of 656% in deforestation was noted over 2018, resulting from systematic trespassing and raids by squatters and land-grabbers.

During an IBAMA inspection (which was backed up by the Federal Police and the National Force) of wildcat mining activities near the Ituna/Itatá indigenous land, agents were shot at on August 29,¹¹³ and the machines used by the wildcat miners were burned. During an inspection operation conducted in January 2020, IBAMA found some 5,000 litres of fuel that was intended to start fires in municipalities close to the Ituna/Itatá indigenous land.

After all this devastation was permitted, together with other absurdities, the protection of the Ituna/Itatá indigenous land was altered, on the grounds that “as the other parts of the polygon are very degraded, the presence of isolated indigenous groups in these regions is fairly improbable, as it seems unlikely that recent traces of inhabitation by isolated indigenous groups will be found in the centre-north part of the indigenous land.”¹¹⁴

According to the OPI Observatory, this reduction in their lands may result in the “physical destruction of all part of the population,” for isolated indigenous groups,

¹¹³ TERRA. *Equipe do Ibama é alvo de tiros em operação perto de área indígena no Pará*. Available at: <https://www.terra.com.br/noticias/brasil/equipe-do-ibama-e-alvo-de-tiros-em-operacao-perto-de-area-indigena-no-para,3692e3c2f218d2ae9513007d3074d8d2vsxrj125.html>. Accessed on June 15, 2020.

¹¹⁴ Whistle-Blowing Report by indigenists, Native Brazilians, anthropologists and researchers with the Isolated and Recently-Contacted Indigenous Peoples Human Rights Observatory (OPI), entitled: Report in defence of isolated indigenous peoples in the area between the Xingu and Bacajá Rivers. Available at: <<https://povosisolados.com/2020/11/27/relatorio-em-defesa-dos-povos-indigenas-isolados-no-interfluvio-xingu-bacaja/>>.



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“exposing them to violent attacks intended to eliminate their existence” and causing “damage to the mental integrity of the members”, as well as resulting in their forced displacement from the areas in which they are legally located, through expulsion or some other coercive act.”

The presence of trespassers on indigenous lands that are home to isolated indigenous groups is extremely serious in the context of a pandemic. Indeed, President Jair Bolsonaro is encouraging a speed-up in the deforestation of Brazilian Amazonia, including indigenous lands, with severe impacts on isolated peoples.

According to data released by Brazil’s National Space Research Institute (INPE),¹¹⁵ deforestation in Brazilian Amazonia rose 30% during 2019, compared to the previous year. The INPE survey indicated the indigenous lands that were most heavily logged were: Ituna/Itatá, Apyterewa, Cachoeira Seca, Trincheira Bacajá, and Kayapó, all in Pará State; Munduruku in Amazonas and Pará States; Karipuna and Uru-Eu-Wau-Wau in Rondônia State; Yanomami in Roraima and Amazonas States; Manoki, Menkü, and Zoró in Mato Grosso State; and Sete de Setembro in Rondônia and Mato Grosso States.

Among them, the Ituna/Itatá (restricted use) Munduruku (ratified), Kayapó (ratified) and Zoró (ratified) all offer evidence of isolated peoples that are under study by FUNAI, while the Uru-Eu-Wau-Wau (ratified) and Yanomami (ratified), have both evidence of isolated peoples, and their confirmed presence.¹¹⁶

The indigenous movement has systematically reported on the situation of the Uru-Eu-Wau-Wau indigenous land, which has been subject to raids and trespassing activities by land-grabbers and illegal loggers, as well as the Araribóia indigenous land in Maranhão State, which is home to the Awa-Guaja isolated people. On both, their indigenous

¹¹⁵ INSTITUTO NACIONAL DE PESQUISAS ESPECIAIS (INPE) (National Space Research Institute- INPE). *A estimativa da taxa de desmatamento por corte raso Pará a Amazônia Legal em 2019 é de 9.762 km²*. Available at: http://www.inpe.br/noticias/noticia.php?Cod_Noticia=5294

¹¹⁶ Socio-Environmental Institute (ISA – *Instituto Socioambiental*). ISA Report denouncing the high risk of genocide for isolated indigenous peoples. Available at <https://www.socioambiental.org/pt-br/noticias-socioambientais/relatorio-do-isa-denuncia-na-onu-risco-elevado-de-genocidio-de-povos-indigenas-isolados>.



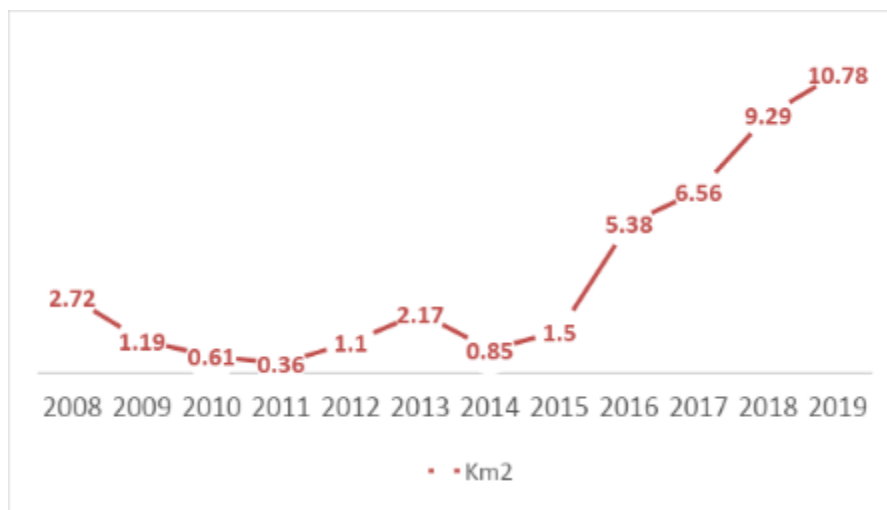
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inhabitants have taken steps to guard and protect their lands, denouncing raiders, trespassers, and logging on indigenous lands, which has triggered disputes with outsiders.

Graph 1 – Deforestation on the Uru Eu Wau Indigenous Land – 2008-2019 (km²)



Source: Instituto Nacional de Pesquisas Espaciais –INPE (National Space Research Institute)

During just the past six months, these tensions have resulted in the murders of three members of indigenous protection groups and leaders: Ari Uru-Eu-Wau-Wau, on April 18, 2020, Paulinho Guajarara, on November 1, 2019, and Zezico Guajajara, on March 31, 2020.¹¹⁷

With regard to the Yanomami and Munduruku indigenous lands, their peoples have been reporting the expansion of illegal wildcat gold mining activities for years. As mentioned previously, in this Communication, on the Yanomami indigenous land alone, more than 20,000 wildcat miners are believed to be engaged in illegal activities, which

¹¹⁷ EL PAÍS. *Assassinato de líder Guajajara abala comunidade indígena e Moro garante que PF vai investigar*. Available at: https://brasil.elpais.com/brasil/2019/11/02/politica/1572726281_632337.html.



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are expanding rapidly. In 2020, a new wildcat mining was identified, only 5 km away from a cropland used by the isolated Moxihatetea people.¹¹⁸

In addition to concern over violent raiders and trespassers, together with the risk of COVID-19 infections introduced by these activities within the context of the pandemic, studies have shown high levels of mercury poisoning throughout the invaded areas.¹¹⁹ On the Munduruku indigenous land in Pará State, Native Brazilians have been working together to prevent illegal industrial and wildcat mining activities (particularly when using heavy machinery like back-hoses), while issuing a string of notifications complaining about their gradual increase in raids, trespassing and destruction on these lands.¹²⁰ In 2019, the area around the headwaters of the Rio Cabitutu river was invaded and destroyed by wildcat mining machinery, in a region acknowledged by the Munduruku as home to a people in voluntary isolation.

In early March 2020, IBAMA began another set of inspection activities on indigenous lands close to the Ituna/Itatá area. This was intended to repress raids and trespassing on the Apyterewa, Trincheira-Bacaja and Arawaté lands by wildcat miners and squatters, intended mainly to block the spread of COVID-19 among indigenous communities. The following week, the Environmental Protection Director of this entity in Brasilia, Olivaldi Borges Azevedo was fired from his position, with other senior civil servants also placed under pressure.¹²¹

¹¹⁸ BBC NEWS BRASIL. *Em meio à COVID--19, garimpo avança e se aproxima de índios isolados em Roraima*. Available at: <https://www.bbc.com/portuguese/brasil-52225713>. Accessed on June 15, 2020.

¹¹⁹ FIOCRUZ. *Contaminação por mercúrio se alastra na população Yanomami*. Available at: <http://www.ensp.fiocruz.br/portal-ensp/informe/site/materia/detalhe/46979>.

¹²⁰ Communiqués released by the Munduruku indigenous people may be read at: <https://movimentomundurukuperegayuii.wordpress.com/blog/>

¹²¹ UOL NOTÍCIAS. *Diretor do Ibama é exonerado após operação contra garimpos ilegais*. Available at: [https://noticias.uol.com.br/colunas/rubens-valente/2020/04/14/ibama-conoravirus-crise.htm?cmpid=copiaecola](https://noticias.uol.com.br/colunas/rubens-valente/2020/04/14/ibama-conoravirus-crise.htm?cmpid=copiaecola;).; G1 NOTÍCIAS. *Áudios e vídeos revelam detalhes de esquema de grilagem dentro de terras indígenas*. Available at: <https://g1.globo.com/fantastico/noticia/2020/04/19/audios-e-videos-revelam-detalhes-de-esquema-de-grilagem-dentro-de-terras-indigenas.ghtml>.



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This string of actions and omissions either perpetrated or authorised by President Jair Bolsonaro over the past two years has caused irreversible damage to the lands that are home to these peoples, undermining the continuation of their ways of life.

An example of the extermination encouraged by President Jair Bolsonaro is the death of warrior Aruka Juma, who died of COVID-19 in Porto Velho, Roraima State on February 17, 2021. He was the last man of the Juma people, which is an ethnic group that once had between 12,000 and 15,000 members. The death of Aruka Juma is extremely serious and “we all die a little with him”. He symbolises the devastating effects of the policy currently in place in Brazil, introduced by President Jair Bolsonaro on January 1, 2019, which has wrecked the non-contact policy, by adopting active and passive steps at the level of discourse, legislation and the civil service that significantly worsen the possibilities for continuing with indigenous ways of life on these lands.

4.3.3 Raids, incursions, and trespassing, contamination, poisoning, infections and deaths among the Munduruku people

Wildcat mining is a type of trespassing that causes the environmental destruction of indigenous lands. It is thus a clear violation of the territorial Rights of the Indigenous Peoples. In order to access wildcat mining areas, railway lines and roads are often laid that contribute to deforestation, while also paving the way for logging and subdivisions of affected areas.

Mercury contamination caused by wildcat mining has severe impacts on the environment, with serious effects on the health of indigenous peoples. This heavy metal is widely used during gold panning operations, in order to separate this precious metal from sediments. Once released into the environment, mercury undergoes several chemical transformations and is included in the food chain, where it reaches human beings, possibly causing neurological problems with movements and senses, as well as



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other serious diseases. In Amazonia, where wildcat mining has spread rapidly, mercury poisoning is causing direct damage to the health of the indigenous peoples, as fish is a vital element in their diet.

With more than 16,000 people living in the region around the Tapajós River in southwest Pará State, the Munduruku¹²² are among the indigenous people who are most severely impacted by wildcat mining in Brazil. With no oversight and recent encouragement for wild Mining activities on and around their lands, a situation of environmental calamity and public health disaster is affecting these communities.

A survey conducted between 2019 and 2020 by the Fundação Oswaldo Cruz Foundation (FIOCRUZ) in partnership with the World Wildlife Fund (WWF) assessed the impacts of mercury poisoning on people living on three Munduruku lands: Sawré Muybu, Poxo Muybu and Sawré Aboy. The findings of the survey revealed the severity of the mercury poisoning in these villages, and the serious neurological diseases that are already appearing. According from the final report on this survey:

The finds indicate clear evidence of the harmful effects of the mercury poisoning in the three Munduruku villages – and indicate that while such mining activities have been introducing large scale alterations in land use throughout traditional territories in Amazonia, with direct and indirect social and environmental impacts on local populations, that include undermining food security, undermining local economies, harming human health and weakening ecosystem services.

Mercury levels were detected in hair samples among all the participants in this study, including children, adults, the elderly, men and women, without exception. Some 57.9% presented mercury levels of more than $6\mu\text{g.g}^{-1}$ – which is the safe ceiling established by internationally acknowledged healthcare agencies. The data also demonstrate that contamination levels are higher in regions more severely impacted by wildcat mining activities. (.)

In the three villages, 111 indigenous people were assessed aged more than 12 years old. Using the main neurological parameters proposed for this study, 4.5% of the participants presented amyotrophy of the toes. Alterations to the Achilles tendon reflex were found in 17.9% of the participants. Distal nociception deficits were recorded in 12.7% of the participants, indicating alterations to the signs reaching the central nervous central system through activating specialised sensory receptors called

¹²² For further information, see: <https://pib.socioambiental.org/pt/Povo:Munduruku>



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nociceptors, which provide information on tissue damages translated into feelings of pain.¹²³

There can be no doubt that wildcat mining activities are gradually bringing disease and death to the Munduruku people. This constitutes an entire population contaminated by heavy metal found in rivers, foods and bodies.

It is also appropriate to note the high level of mercury poisoning among children. According to the findings of this survey:

Using the Denver II test, 57 children were screened for neurodevelopment assessment. Among them nine (15.8%) presented problems. Six had difficulties with the language component. One child had problems with the language component and with the fine motor test. In a child only eleven months old with problems in the gross motor component, a mercury level of 19.6 $\mu\text{g.g}^{-1}$ was detected, rated at least 3 times higher than the safety limits established in this study. A child with problems in the language, fine motor and gross motor test component as well as personal and social aspects, had cerebral palsy, with a mercury level of 6.2 $\mu\text{g.g}^{-1}$.¹²⁴

This study concluded that the mercury poisoning levels in the Rio Tapajos river have increase significantly over the past few years, as earlier surveys conducted in this region indicated mercury levels that were 2.6 times lower (Malm et al., 1995) and 26.3% lower (Dórea et al., 2005) than those noted in the samples that were examined. This investigation proposed a set of clear recommendations directed to government authorities, including an immediate halt to wildcat mining activities and the complete removal of intruders from the indigenous lands affected by illegal industrial mining activities.

¹²³ WWF Brazil and Fiocruz, Technical Note: Impact of mercury on the health of the Munduruku indigenous people, dated November 2020, https://wwfbr.awsassets.panda.org/downloads/wwfbr_2020_nt_impacto_mercurio_saude_povo_indigena_munduruku_v2_2_1.pdf, pages 2-3.

¹²⁴ WWF Brazil and Fiocruz, Technical Note: Impact of mercury on the health of the Munduruku indigenous people, dated November 2020, https://wwfbr.awsassets.panda.org/downloads/wwfbr_2020_nt_impacto_mercurio_saude_povo_indigena_munduruku_v2_2_1.pdf, pages 5-6.



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In December 2020, urged to issue a statement by the indigenous movement, the Inter-American Human Rights Commission (IAHRC) acknowledged that wildcat mining was the main vector carrying COVID-19 onto the Munduruku lands, requesting the Brazilian government to take the steps needed to protect their rights to health, life and personal integrity of the members of the Munduruku indigenous people.¹²⁵ This decision handed down by the Inter-American Human Rights Commission was not complied with. As it is quite clear, there is a close connection between the deliberate destruction of the social, environmental and indigenist policy brought up during the past few decades of democracy in Brazil, attacks on indigenous lands, encouragement for raids and trespassing, environmental destruction reflected in deforestation and fires, and disease and death among the indigenous peoples. A policy is being implemented that is composed of deliberate, widespread and amply-disseminated acts, implemented directly by President Jair Bolsonaro through several government entities under his command.

Wildcat mining is also destroying indigenous lives in another way: by fuelling territorial disputes that trigger attacks on the lives of the men and women defending indigenous territorial rights, and above all those who are on the front line. From late 2020 onwards, raids, trespassing and tensions involving wildcat miners on the Munduruku indigenous land built up to unparalleled levels. This upsurge in skirmishes has been widely recorded and disclosed, in letters and notes signed by associations of the Munduruku people, as well as through public statements issued by government entities requesting the Bolsonaro Administration to take steps that would bring the situation under control. This expansion of disputes has also been headlined in the international press, with coverage of an imminent armed conflict on the Munduruku indigenous land and the permissive stance adopted by the Brazilian government. Despite all this, President Jair Bolsonaro has done nothing.

¹²⁵ IAHRC, Press Release. Available at <http://www.oas.org/pt/cidh/prensa/notas/2020/302.asp>



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These omissions have fostered the expansion and strengthened a network that insistently downgrades indigenous territories, which is structured into a criminal organisation. On March 25, 2021, this passive approach resulted in raids, trespassing and depredation of the headquarters of the Wakoborun Association of Munduruku Women by illegal groups linked to wildcat mining. The Administration headed by President Jair Bolsonaro did nothing in response to this crime, once again showing that it encourages and supports violence against indigenous peoples.

By not implementing any protective measures and failing to ratify the Munduruku lands, which are most severely affected by wildcat mining, while assigning top priority of approvals for this type of activity, issuing statements in support of wildcat mining on indigenous lands and supporting wildcat miners, President Jair Bolsonaro shows that disease and death for these communities as part of his nationalistic and populist political project.

Incursions trespassing on indigenous lands and illegal wildcat mining activities have stepped up significantly over the past few months, driving the expansion of mercury poisoning and COVID-19 infections.

The Inter-American Human Rights Commission and the Regional Office of the UN High Commission for Human Rights issued a press release¹²⁶ on May 19, 2021, demonstrating concern for with recent conflicts on the Munduruku and Yanomami indigenous lands, where armed wildcat miners had been victimising indigenous children, cheered on by President Jair Bolsonaro. The link between these acts and the discourse of President Jair Bolsonaro encouraging attacks on indigenous lands through deforestation, industrial mining and wildcat mining together with severe violations of human Rights of the Indigenous Peoples, have been acknowledged by IAHR and UNHCHR:

¹²⁶ The entire document may be read in full at <https://www.oas.org/pt/cidh/jsForm/?File=/pt/cidh/prensa/notas/2021/129.asp>



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[...] In addition to this serious context, the Commission and the UNHCHR Regional Office noted with concern the Lower House approved Draft Bill N° 3.729/2004 on May 13, which eases environmental requirements for agricultural and energy enterprises. Should a law of this scope be promulgated, the human Rights of the Indigenous Peoples and their territories, including the Yanomami and Munduruku peoples, would be impacted even more severely. Similarly, both these institutions are watching Draft Legislative Decree N° 177/2021, dated April 27, 2021, which would authorise the Brazilian President to withdraw from Convention N° 169 issued by the International Labour Organisation (ILO), as well as Draft Bill N° 191/2020, which attempts to approve industrial mining activities on indigenous lands.

The IAHR and UNHCHR Regional Office remind the State that the unique connection of existence between tribal and indigenous peoples and their territories has been widely acknowledged through international laws on human rights, as reflected in the American Convention on Human Rights, the ILO Convention N° 169, and the Declaration issued by the United Nations Organisation and the Organisation of American States on the Rights of the Indigenous Peoples. Furthermore, the right to self-determination by the indigenous peoples, which is acknowledged under international law, is closely related to the use and arrangement of lands and territories giving rise to specific obligations for States in terms of protection, whereby special measures are required to acknowledge, respect, protect and ensure common property rights. In this context, it is recalled that both the Yanomami and Munduruku indigenous peoples are the beneficiaries of injunctive relief orders issued by the IAHR, in support of their protection.

On May 29, the Munduruku people published a statement calling for help:

Statement issued by the Munduruku People

The entire Munduruku People are disturbed by the cancellation of the Federal Police operation in our region. This operation cannot halt now, when wildcat miners are attacking our leaders. We are unable to understand how this operation has left our territory, at a time like this that is so dangerous for us. We are screaming for help!

We demand that this operation continue, against illegal wildcat mining on Munduruku land, calling for the return of security forces, in order to expel all the wildcat miners who are still within our area, thus ensuring the safety of our people. Wildcat mining operations have not been shut down, and our villagers and leaders are still being attacked and threatened. On 26th, the Fazenda Tapajós village was invaded by these criminals, with shots fired and houses set ablaze.

Other villages and leaders are also being threatened. If those who are threatening us are not arrested, we will die, with the Brazilian Government to blame, as well as all those who encouraged violence. We are dying, poisoned by mercury and at risk of being murdered by wildcat miners.

These wildcat miners protested and attacked the National Security Forces, but after this operation drew to a close, all the soldiers left our region. The operation that should have done away with illegal wildcat mining ended up by obeying wildcat miners who operate illegally and halted the military operation. Meanwhile, we leaders who are protecting our territories are living in constant fear that the worst will occur. We have no more peace for our families on our own land and in our homes.



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With the operation halted and the departure of the security forces who promised to protect us, we are now left to our own devices, in the depths of this conflict. The *pariwat* (white men) continue to pit us against each other, with no concern for respecting our territories, our culture, our lives and the future of our children. Once again, the government has engaged in a premeditated ploy that is intended to kill us on our own lands. An evident farce to protect criminals, which did not shut down wildcat mining operations on the Munduruku indigenous land, and was not even able to contain and prevent attacks on our leaders, living under pressure from the criminal roles and thus legitimising all these illegal practices, while supporting the trespassers. We no longer want this type of inefficient operation that leaves us even more unprotected. We want the long-lasting and effective presence of the State, fulfilling its constitutional duty of protecting indigenous lands, complying with court decisions and recommendations issued by the Federal Prosecutor's Office (MPF) for removing illegal wildcat mining operations from our lands, while also protecting the lives of our people.¹²⁷

These conflicts were brought to the attention of the Federal Supreme Court, and the APIB requested that the Brazilian Courts provide injunctive relief through orders protecting the health and lands of the indigenous peoples, forbidding raids and trespassing activities, shutting down illegal wildcat mining operations, and taking steps to remove trespassers – all measures that would help ease the effects of mercury poisoning and COVID-19 infections. The Courts accepted only the first request, ordering law enforcement, backed by the Brazilian Army, to take steps designed to avoid conflicts and prevent further raids and trespassing.¹²⁸

This decision was not complied with by law enforcement or the army, both of which are subordinate to President Jair Bolsonaro. When the Reporting Justice for the lawsuit filed by the APIB learned that this decision had not been complied with, “he was disappointed to record the fact that the Brazilian Armed Forces lacked the resources to

¹²⁷ Available at <https://movimentomundurukuiperegayuii.wordpress.com/2021/05/28/exigimos-que-sejam-expulsos-os-invasores-de-nosso-territorio/>

¹²⁸ Federal Supreme Court, Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709 MC. decision rendered on May 24, 2021.



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support an operation ordered by the Courts in order to prevent the massacre of indigenous peoples.”¹²⁹

Native Brazilians belonging to the Munduruku People issued a further communiqué on June 9, 2021, noting that access roads were blocked, with no police protection for the indigenous peoples and their lands.

We are still being attacked. Public services are not working, and Jacareacanga is an outlaw town.

The Chiefs must be respected for their decision. The criminals may not be sovereign, outranking the Chiefs.

We want to denounce what we are experiencing; we are going to Brasília to denounce all the threats that we are experiencing. We are unable to get out. Our chiefs are trapped in the municipality.

On the morning of June 9, the bus that was going to pick up our committee from the Upper Tapajós region in the Jacareacanga municipality for the trip to Brasília was attacked, with its tyres punctured and the driver threatened, told that the bus would be burned if he did not get out of town. There was nobody on the bus.

Our delegation from the Upper Tapajós region is forbidden to continue with this trip.

We hold the Brazilian State responsible, should anything happen to everyone. We have not been protected while under constant threats, with no increased police presence assured in the Jacareacanga municipality. No additional law enforcement has ever been sent to this town, and we continue to be attacked, despite announcing this, requesting police forces and asking for support.

We want to continue our journey, to present our denunciations and talk to Ministers and Justices. We are a large group from our Ipereg Ayu resistance movement, subjected to threats in areas around Jacareacanga. We know that they are armed, and we are not. We are telling everyone about what we are living through, so they can help us.¹³⁰

Notwithstanding the existence of Court orders and injunctive relief granted to the Munduruku People, the statement issued by the UNHCHR, and the decisions handed down by the Brazilian Courts, Federal Police operations protecting the indigenous

¹²⁹ Federal Supreme Court, Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709 MC, decision rendered on June 1, 2021.

¹³⁰ Taken from: <<https://movimentomundurukuperegayuii.wordpress.com/2021/06/09/ii-comunicado-alianca-das-organizacoes-do-movimento-ipereg-ayu/>>.



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peoples were cancelled, while violence continues to rise: crimes against humanity and genocide are underway against the Munduruku People.

4.3.4 Wildcat mining, death and destruction on the Yanomami indigenous land

Wildcat mining activities are also downgrading the lives of indigenous peoples living on the Yanomami lands in Roraima and Amazonas States, on the border with Venezuela. These Yanomami indigenous lands are home to the Yanomami,¹³¹ Yek'wana¹³² and the Moxihatëtëma indigenous peoples, who are classified as isolated groups. There is also evidence of groups living in voluntary isolation, which are still under study. Estimated at 27,398 people, the indigenous population is divided into around 331 communities. The Yanomami indigenous lands cover 9.6 million hectares, and was ratified through an unnumbered Decree, promulgated on May 26, 1992.

Illegal industrial mining activities on the Yanomami indigenous lands is not new. During the 1980s and 1990s, there was a massive upsurge in rates and wildcat miners trespassing on this region, with some estimates putting these inflows at 40,000 wildcat miners operating in this territory. At that time, chaos sprang up within the Yanomami: violence, hunger and the spread of diseases (like malaria) assailed the indigenous peoples, with reports that between 15% and 20% of this population was exterminated during that time.¹³³ In areas where wildcat mining was intensive, entire communities practically vanished, or saw their demographic structure weakened.¹³⁴ A report by a physician practising in the Yanomami area in 1992 describes a situation of crisis in human and public health terms, that is being reproduced once again today:

¹³¹ For further information, see: <https://pib.socioambiental.org/pt/Povo:Yanomami>.

¹³² For further information, see: <https://pib.socioambiental.org/pt/Povo:Ye'kwana>.

¹³³ PITHAN, Oneron A.; CONFALONIERI, Ulisses EC; MORGADO, Anastácio F. The health status of Yanomami Indians: diagnosis from the Casa do Índio, Boa Vista, Roraima, 1987—1989. *Cadernos de saude publica*, v. 7, n. 4, p. 563-580, 1991.

¹³⁴ CONFALONIERI, UEC. Saúde, pp 29-33 IN: *Yanomami: a todos os povos da terra*. 1990.



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The Yesinabetheri are down to thirteen [people]; until yesterday there were fourteen of them. The middle brother (nickamed *Fraquinho*, the weakling), died last night. We do not know whether this was because of malaria or the medication. In addition to his pregnant wife, the deceased left a four-year-old son. These are the Yesinabetheri, says old Arabi Theriyoma (a woman of the place with many macaws), who was nicknamed *Magnata* when meeting the wildcat miners. She also said that in addition to the wives of Kobaxi and Xiquinho – and their many children – an older brother had died as well, together with his entire family, since the wildcat miners arrived some four years ago. There are steadily fewer of them to weep and eat the ashes of the dead. Fewer and fewer. less than half of who they were. Only one man, one woman and a child were not ill with malaria last July. Among them, 39 cases of malaria have been recorded this year. They threw their homes away, due to the sadness of these deaths. The rough cropland cultivated between acute attacks of the disease is not yet productive. When the deceased met the *nabe' be'* (wildcat miners) for the first time, he fell ill, lost weight and was nicknamed of Weakling (*Fraquinho*). Including this, now is the fourth time that this name is recorded with a diagnosis with malaria in the healthcare team notes. He died anaemic, with signs of hepatitis – possibly caused by primaquine – and his spleen reaching the iliac fossa. He needed a blood transfusion. None of the Yanomami were in a position to serve as a donor, due to the after-effects of malaria and hunger. We also have no radio for communications, since we arrived here twenty days ago. The aircraft that we have been waiting for during the past three days has not yet arrived. Without hope, we are building up data for the genocide map”. (physician, August 7, 1992).¹³⁵

It was only after a sustained and intensive mobilisation process by the Yanomami and allied organisations that the Brazilian Government took steps to bring this crisis under control. In 1992, the Yanomami indigenous lands were formally demarcated, with the government implementing a string of operations during the next few years, removing wildcat miners. After an initial throttle operation that tightened up on their logistics by blocking rivers and airspace that supplied wildcat mining operations with resources and feedstock, routine operations followed, designed to eliminate these illegal activities. Overall, territorial protection actions blocked the expansion of wildcat mining, which nevertheless still persisted as a residual issue on these indigenous lands. Thus, by the 2000s, inspection and control actions ensured that wildcat mining was no longer a territorial, social and public health emergency, as it had been until then.

¹³⁵ Technical Note issued by the Indigenous Health Working Group, Brazilian Collective Health Association (ABRASCO) presented to the Articulation of the Indigenous Peoples of Brazil (APIB) under the aegis of Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709, dated May 17, 2021, available at <https://www.abrasco.org.br/site/wp-content/uploads/2021/05/Nota-Tecnica-Abrasco-17-05-final-corrigida-1-1.pdf>, p. 18.



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As described above, this context has changed radically during the past few years. Specifically with relation to the Yanomami indigenous lands, there has been a structural shift in the territorial protection policies which has weakened the ability of government entities to curtail raids and trespassing. Launched in April 2021 by the Yanomami Hutukara Association and the Wanasseduume Ye'kwana Association (SEDUUME), the report entitled Scars in the Forest describe some of these changes:

Noteworthy among these steps [introducing structural policy changes], are the shut-down of the official infrastructure blocking rates and trespassing (meaning the Ethno-Environmental Protection Bases – BAPES) on the Yanomami indigenous lands, with less frequent field activities undertaken by the command and control entities.

At the same time, political pressures favouring wildcat mining activities – even when flagrantly disregarding the Brazilian Constitution – have the effect of encouraging investments in wildcat mining activities on indigenous lands, through inciting beliefs that they are backed by a set from the powers that be, and eventually might even be deemed legal.

The Brazilian Government has recently adopted an official stance, whereby the State is unable to curtail these activities, failing to act in a coordinated and structured manner that would ensure permanent possession of these areas for indigenous communities, while preventing the continuation of illegal acts in these areas that are also harmful to the environment. In parallel, political pressures have been building up, calling for the legalisation of wildcat mining activities on indigenous lands.¹³⁶

The policies of destruction implemented by President Jair Bolsonaro have fuelled an upsurge in raids, trespassing and illegal exploitation through wildcat mining on the Yanomami indigenous lands. According to the PRODES, 2019 was the year with the highest deforestation rate for the Yanomami indigenous land during the past thirteen years, covering a total of 3,463 hectares. In all, more than 30,000 hectares have already been affected by the deforestation of these indigenous lands. During the past two years, total deforestation (3,679 hectares) accounted for 12.2% of the accumulated deforestation in this territory. According to the Illegal Wildcat Mining Monitoring System (SMGI) on the Yanomami indigenous lands, the total area degraded by wildcat mining in this area through to December 2020 reached some 2,400 hectares, with 500 hectares degraded just between January and December that year.

¹³⁶ Report: Scars of the Forest: Expansion of illegal wildcat mining on the Yanomami indigenous lands in 2020, pages 47-48. Available at: <<https://acervo.socioambiental.org/acervo/documentos/cicatrizes-na-floresta-evolucao-do-garimpo-ilegal-na-ti-yanomami-em-2020>>.



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The expansion of wildcat mining has led to the destruction of the lands, bodies and lives of the Yanomami people. As indicated by the Brazilian Collective Health Association (ABRASCO),¹³⁷ we are returning to a situation similar to that of the 1980s, with this territory abandoned by the government through weakening public health and territorial policies, in parallel to pandemics and the balance introduced by wildcat mining activities.

Like the Munduruku, the Yanomami are also severely affected by mercury poisoning. In a cooperative study conducted by several entities – National Public Health School (ENSO/FIOCRUZ); Pontifical Catholic University in Rio de Janeiro (PUC-RJ); Instituto Socioambiental Institute (ISA); Yanomami Hutukara Association (HAY); Wanasseduume Ye'kwana Association (SEDUUME) – that assess mercury poisoning (at levels of $\geq 6.0 \mu\text{g.g}^{-1}$) in nineteen villages scattered throughout the Yanomami indigenous land, clustered into three regions (Paapiú, Waikás Ye'kwana and Waikás Aracaça), in Roraima State during 2014, they also disclosed that mercury poisoning rates ranged from 6.7% in Paapiú to 27.7% in the Waikás Ye'kwana region, and reaching 92.3% for people in the Waikás Aracaça. region.¹³⁸ It is worth recalling that Paapiú was affected by wildcat mining activities during the first gold rush in the 1980s; some thirty years later, around 7% of these people still have high mercury poisoning levels. In turn, the Waikas Ye'kwana and Waikás Aracaça areas are currently under pressure by wildcat mining activities, as the data were being collected.

The increase in the number of cases of malaria is closely associated with raids, trespassing, wildcat mining and environmental degradation, as open areas encourage the proliferation of mosquitoes carrying this disease. It is not by chance that there are

¹³⁷ Technical Note issued by the Indigenous Health Working Group, Brazilian Collective Health Association (ABRASCO) presented to the Articulation of the Indigenous Peoples of Brazil (APIB) under the aegis of Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709, dated May 17, 2021, available at <https://www.abrasco.org.br/site/wp-content/uploads/2021/05/Nota-Tecnica-Abrasco-17-05-final-corrigida-1-1.pdf>.

¹³⁸ Technical Note issued by the Indigenous Health Working Group, Brazilian Collective Health Association (ABRASCO) presented to the Articulation of the Indigenous Peoples of Brazil (APIB) under the aegis of Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709, dated May 17, 2021, available at: <https://www.abrasco.org.br/site/wp-content/uploads/2021/05/Nota-Tecnica-Abrasco-17-05-final-corrigida-1-1.pdf>.



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extremely high rates of this disease on the Yanomami indigenous lands. According to the Yanomami Indigenous Health District Council (CONDISI), which is an entity under the Ministry of Health, 13,733 cases of malaria were notified in this territory between January 1 and August 12, 2020, with nine deaths. The Technical Note Issued by ABRASCO provides detailed data on the malaria pandemic:¹³⁹

The introduction of malaria into the Yanomami territory is fairly well documented, particularly through the inflow of wildcat miners from the late 1980s onwards, which prompted its dissemination and triggered severe outbreaks and epidemics, with high morbidity and mortality rates. After the demarcation of the Yanomami territory and the establishment of the Yanomami Public Health District in this region, malaria transmission was brought under control. However, as control measures have become lax over the past few years, as wildcat mining activities expand, the situation is worsening again. Between 2005 and 2014, 41,689 cases of malaria were reported in Yanomami territory during these nine years (Sánchez Ribas, 2015), with only 17,981 cases notified in 2019; 19,030 in 2020; and 5159 through 2 May 12, 2021, at the SIVEP-Malaria Epidemiological Notification System for this disease. As the population of the Yanomami Special Indigenous Public Health District (DSEI) is estimated at 28,141 people in 2021 by SESAI, it is reasonable to estimate that malaria has affected some 64% of the population in 2019 and 67% in 2020, without including re-infection of the same people. Between 2019 and 2020, there was a 15.2% increase in malaria notifications in this indigenous area, fuelled mainly by a 56.2% rise in cases associated with wildcat mining (SVS Bulletin, April 2021). This increase remained under observation during the first few months of 2021.

In 2020 and 2021, Yanomami associations requested government entities to take steps, in response to their reports of steady increases in intimidation and violence by wildcat miners threatening the indigenous peoples. However, nothing was done.

On June 14, 2020, two Yanomami leaders were assassinated in the Xaruna community, Serra do Parima (Upper Alegre) area, during disputes with wildcat miners.¹⁴⁰ This attack was denounced by the Yanomami Hutukara Association. In reply, the Défense

¹³⁹ Technical Note issued by the Indigenous Health Working Group, Brazilian Collective Health Association (ABRASCO) presented to the Articulation of the Indigenous Peoples of Brazil (APIB) under the aegis of Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709, dated May 17, 2021, available at: <https://www.abrasco.org.br/site/wp-content/uploads/2021/05/Nota-Tecnica-Abrasco-17-05-final-corrigida-1-1.pdf>, p. 10-11.

¹⁴⁰ G1. By Valéria Oliveira. *Jovens indígenas são mortos por garimpeiros em conflito na Terra Yanomami em Roraima*. News item published on 26.06.2020. Available at: <<https://g1.globo.com/rr/roraima/noticia/2020/06/26/jovens-indigenas-sao-mortos-por-garimpeiros-em-conflito-na-terra-yanomami-em-roraima.ghtml>>. Accessed on: May 15, 2021.



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Minister minimised the tensions between indigenous communities and wildcat miners on Yanomami lands, saying that these disputes “are not commonplace.”¹⁴¹

During the past few months, several Brazilian and international institutions have adopted stances, demanding that the Bolsonaro Administration take steps to safeguard the lives and health of the Yanomami people. On July 20, 2020, the Inter-American Human Rights Commission (IAHRC) granted the request for injunctive relief submitted by the Yanomami Hutukara Association, jointly with the National Human Rights Council (CNDH), acknowledging that there are severe risks of irreparable harm to the health, life and personal integrity of indigenous peoples on Yanomami lands, demanding that urgent steps be taken by the Brazilian State, such as removing the wildcat miners.¹⁴² In a Public Civil Action filed by the Federal Prosecutor's Office (MPF) and the Yanomami Hutukara Association, Federal Regional Court – First Region (TRF1) handed down a preliminary injunction ordering the Brazilian Government, IBAMA, FUNAI, ICMBIO and the Federal Police to present a plan and undertake the removal of wildcat miners from Yanomami land, as an efficacious way of preventing the spread of COVID-19 through the villages.¹⁴³ These decisions have been systematically ignored.

In December 2020, a Yanomami girl was kidnapped by wildcat miners in Surucuru, revealing the upsurge in violence in the community. Cases like this are exposing the tensions and violence driven by the presence of wildcat miners in indigenous areas.

Although addressed by the injunctive relief granted by the Inter-American Human Rights Commission, the Yanomami people remain at risk. These steps have not been

¹⁴¹ G1 RORAIMA. By Fabrício Araújo e Valéria Oliveira. *Ministro da Defesa minimiza tensão entre índios e garimpeiros na Terra Yanomami e diz que conflitos 'não são corriqueiros'*. Article published on July 1, 2020. Available at: <<https://g1.globo.com/rr/roraima/noticia/2020/07/01/ministro-da-defesa-minimiza-tensao-entre-indios-e-garimpeiros-na-terra-yanomami-e-diz-que-conflitos-nao-sao-corriqueiros.gh>>. Accessed on: May 15, 2021.

¹⁴² <https://www.oas.org/pt/cidh/prensa/notas/2020/168.asp>

¹⁴³ Available at <<http://www.mpf.mp.br/regiao1/sala-de-imprensa/noticias-r1/COVID-19-trf1-determina-a-retirada-imediata-de-garimpeiros-da-terra-indigena-yanomami>>.



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complied with by the Bolsonaro Administration. Similar to the Munduruku lands, attacks against Native Brazilians increased during the first few months of 2021.

In March 2021, wildcat miners attacked the Helepe community, with a shoot-out that resulted in one person dead and one injured. In an official note issued by the Yanomami Hutukara Association, the competent entities were warned that conflicts between wildcat miners and Native Brazilians were on the rise, as well as possible retaliation is by wildcat miners, who had taken over control of access and movement of people along the Uraricoera river. On occasion, no steps were taken to return this area to a secure state and ensure the free movement of indigenous peoples on their own lands.

Due to complete omission by the Bolsonaro Administration, conflicts have continued to rise since then. On April 30, 2021, shots were exchanged in the Palimiu community, after disagreements with wildcat miners travelling along the Uraricoera river. Fearing retaliation, the community sought support from the government in order to remain safe. On February 18, community leaders had already filed an official notification with the Federal Police, warning about the threats to the health and lives of their peoples resulting from intensive wildcat mining activities imposed on communities in this region and requesting support for the removal of these trespassers.

On May 10, 2021, the Yanomami Hutukara Association received reports that wildcat miners had attacked the Palimiu community with four of them shot and one injured. That day, the indigenous peoples were threatened with further retaliation, and at the end of the day, the President of the Yanomami Indigenous Health District Council visited the community and confirmed that the skirmish had taken place, with four deaths.

On May 11, 2021, the Federal Police conducted an investigation in the Palimiu community. Received by shots from wildcat miners, this triggered another skirmish in the Palimiu community. At the end of the investigation, the government representatives withdrew from the site, leaving the Yanomami people vulnerable to further retaliation. On



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May 12, 2021, an Army team went to the Palimiu community, but remained there for only two hours. Once again, government forces withdrew, leaving the Yanomami people vulnerable to further attacks: at 10:45 p.m. that night, the wildcat miners attacked the community yet again.¹⁴⁴

Faced by the inertia of local Government entities in charge of keeping them safe and left to defend themselves alone against this string of armed attacks, the Yanomami and Ye'kwana peoples have repeatedly asked that their calls for help be heard, at all levels of government. Just as they did for the Munduruku people, the IAHRC and the UNHCHR expressed their views in a press release, calling on Brazil to comply with its international commitments.

[...]. exhort the State of Brazil to comply with its duty of protecting the life, personal integrity, territories and natural resources of the Yanomami and Munduruku indigenous peoples. This is necessary and urgent in order to eliminate the serious effects of the actions of raiders whose intentions are to seize their natural resources in their territories. Furthermore, these situations are causing deaths among the indigenous peoples, while poisoning their sources of subsistence, causing the deforestation of huge tracts of their territories and destroying a significant part of their lands, with permanent risks to their cultural and economic survival as peoples.¹⁴⁵

So far, the response of the Bolsonaro Administration to these decisions and the ongoing complaints of the Yanomami people has been non-existent. President Jair Bolsonaro continues to encourage mining activities, raids and trespassing on indigenous lands; he has not taken any material steps towards doing so. He thus continues to systematically and continually promote and support the destruction of the lives and ways of life of the Yanomami people and other Native Brazilians living on these Yanomami indigenous lands.

¹⁴⁴ GI RORAIMA. By Valéria Oliveira and Juliana Dama. *Exército deixa região de conflito e garimpeiros atiram mais uma vez contra comunidade na Terra Yanomami, diz associação*. News item published on May 13, 2021. Available at: < <https://g1.globo.com/rr/roraima/noticia/2021/05/13/exercito-deixa-regiao-de-conflito-e-garimpeiros-atiram-mais-uma-vez-contra-comunidade-na-terra-yanomami.ghtml> >. Accessed on: May 16, 2021.

¹⁴⁵ The entire document may be read in full at <https://www.oas.org/pt/cidh/jsForm/?File=/pt/cidh/prensa/notas/2021/129.asp>



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On May 16, 2021, there was another armed attack by wildcat miners against the Palimiu community,¹⁴⁶ this time using bombs as well as more than a dozen boats. These illegal wildcat miners are engaging in illegal activities that are openly encouraged by President Jair Bolsonaro.

Bringing disease, death and violence in its wake, wildcat mining is destroying the feasibility of indigenous ways of life. Environmental destruction means that water can no longer be drunk from the inlets, fish cannot be, and the rivers are no longer an option for building.

These cornerstones of the ways of life of the forest peoples, the social organisations and their cultures, which are being violently annihilated. A Yanomami shaman which is acknowledged internationally, Davi Kopenawa issues a warning:

The forest is alive. It will die only **end up by dying**. if the white people insist on destroying it. If they succeed, the rivers will vanish under the land, the ground will crumble, the trees will wilt, and the stones will crack in the heat. The dried-out land will be empty and silent. The *xapiri* spirits that descend from the mountains to play in the forest and its mirrors, will flee far away. Their parents, the shamans, will no longer be able to call them and make them dance to protect us. They will not be able to wave away the fumes of the epidemic that is devouring us. We will no longer be able to control the harmful beings who will transform the forest into chaos. Then we will die, one after the other, both the white men and ourselves. All the shamans will end up dying. When there are no more of them alive to support the sky, it will collapse.¹⁴⁷

4.3.5 Disease among the Guarani-Mbya and Kaingang indigenous peoples

Living in southern Brazil, the Guarani-Mbya¹⁴⁸ and Kaingang¹⁴⁹ peoples appeared as witnesses at the 65th Regular Meeting of the Rio Grande do Sul State Human Rights Council (CEDH-RS), held on October 22, 2020, explaining the impacts of State policy on

¹⁴⁶ Information accepted by the Federal Supreme Court, in a decision rendered on May 24, 2021, by the minister Luis Roberto Barroso - Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709, Federal Supreme Court - <http://portal.stf.jus.br/processos/detalhe.asp?incidente=5952986>

¹⁴⁷ KOPENAWA, Davi; ALBERT, Bruce. *A queda do céu: palavras de um xamã yanomami*. 1ª ed. São Paulo: Companhia das Letras, 2015.

¹⁴⁸ For further information, see: https://pib.socioambiental.org/pt/Povo:Guarani_Mbya

¹⁴⁹ For further information, see: <https://pib.socioambiental.org/pt/Povo:Kaingang>



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the indigenous peoples during the COVID-19 pandemic. Even before the pandemic, the Guarani-Mbya and Kaingang peoples were threatened by death and aggression, duly reported to the competent entities, and offering further circumstantial evidence that the COVID-19 pandemic is actually being used as an opportunity to extend the anti-indigenous policy of President Jair Bolsonaro.¹⁵⁰

During the specific meeting on COVID-19, several complaints were presented against the negligent approach adopted towards the indigenous peoples by the Administration headed by President Jair Bolsonaro, as the head of the Brazilian State.

The violations reported by indigenous leaders include water and food shortages. The Guarani-mbya and Kaingang indigenous peoples have been deprived of goods that are essential for their survival, particularly during a pandemic. These are the direct consequences – known and deliberate – of the structuring policy and government entities intended to protect indigenous, social and environmental rights.

The reports of several indigenous leaders are summarised below, presented live at the meeting.

- Chief Deoclides de Paula (Kandoia land and Kaingang coordinator for the State indigenous peoples Council (CEPI) reported that communities had been abandoned by the various indigenist entities. He stressed the dismantling of SESAI, particularly through the withdrawal of engineers, with this situation worsened by constant water shortages in indigenous communities. For example, SESAI had not undertaken any improvement in their villages for 89 families and, when goods are brought in (such as masks and 70% alcohol), their quantities are not enough for more than 300 Native Brazilians.

¹⁵⁰ The threats were addressed by recommendations issued on October 1, 2019 by the Rio Grande do Sul State Human Rights Commission, available at: <https://comin.org.br/2019/manifestos/conselho-estadual-de-direitos-humanos-do-rs-recomenda-puracao-das-denuncias-contra-as-comunidades-mbya-guarani/>



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- Chief Joel (Mato Preto indigenous lands and Guarani Coordinator of the CEPI) reported the absence of suitable and sufficient food in Guarani villages. In his view, there is a lack of articulation among FUNAI, SESAI and Rio Grande do Sul State. He said that SESAI provides vitamins for children and seniors, but food is in short supply (distribution of baskets of staples).
- Ms Susana Belfort (Kaingang Institute, Serrinha indigenous lands), mentioned that the situation of the villages is a matter of concern for several reasons: access to water and food, as well as handcraft sales. She called on the government to present more efficient responses to indigenous problems. During the pandemic the receipt of these baskets and staples has been assured through projects implemented by associations and institutes by private and public tenders (such as FIOCRUZ and the Brazil Human Rights Fund), as Executive Branch entities – that should provide baskets and staples and ensure food security for the indigenous peoples – are underperforming.
- Chief Santiago (Ivy Poty village and Guarani People Articulation Council (CAPG) mentioned his concern over health, water shortages, housing, sanitation, and economic and financial sustainability, resulting from the halt in activities such as the handcrafts sale.
- Mr. Robert Liebgott (CIMI South Coordinator) recalled that the Federal Public Prosecutors Office had to file a public civil action in order to ensure the distribution of foods to indigenous communities, as what was being provided by the Government was not enough to meet the nutritional needs of the indigenous peoples. He confirmed reports of water shortages in several communities and reported that there are several outbreaks of COVID-19 in the metropolitan region with no care and effective plan of action drawn up by the Government, nor any specific and efficient steps for slowing the spread of the virus among indigenous populations.



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- Mr. Sandro Luckmann (FLD-COMIN) confirmed the previous narratives, reporting on some cases where indigenous communities have recorded more than ten deaths caused by COVID-19, but with data and justifications for these cases, which confirms the absence of transparency on the part of the Government. He mentioned the efforts being made by the communities themselves and their partners to cope with the pandemic, stressing that there is no testing or any information policies in place that could slow the spread of the virus among the indigenous peoples.
- Ms Joana Bassi (CEPI) reported that requests for food and housing are sent to the CEPI/Government each week, with little response with talks with Government entities in charge of these aspects. No budget was allocated to the CEPI for dealing with these situations. The resources that have been obtained are brought in through supportive networks, as the Brazilian Government has not allocated the funds needed to effectively implement policies designed to eliminate hunger and malnutrition among the indigenous peoples.

All these complaints have been forwarded to federal government entities set up to protect indigenous, social, and environmental rights, which have been weaponised and dismantled by the anti-indigenous policy of President Jair Bolsonaro. No steps have been taken.

Although these reports and denunciations have come from peoples living in southern Brazil, the fact that they report and condemn are not occurring only in one part of Brazil, or under specific, regional situations. This is a nationwide problem that is closely linked to the persecutory political path being pursued by President Jair Bolsonaro over the past two years, against the indigenous peoples.



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4.3.6 Conflicts, attacks and deaths among the Guarani-Kaiowá indigenous people

Since May 2020, the APIB has been receiving, systematising and analysing complaints about the impacts of indigenous communities resulting from the anti-indigenous policy implemented by President Jair Bolsonaro. These reports are presented directly by indigenous leaders and community members, with information on outbreaks of violence, disease, death and persecution promoted and encouraged by President Jair Bolsonaro.

So far, fifty reports have been assessed. They underscore the gravity of the situations reported by the victims, and the severe risk to life and the continuation of their ways of existence on their lands.

Information received by the APIB proves that there are significant elements that could characterise crimes encompassed by the jurisdiction of the International Criminal Court (ICC), which could be classified as crimes against humanity and genocide.

One of these cases involves the Guarani Kaiowá people¹⁵¹ in Mato Grosso do Sul State. The complainant Adrieli (video attached) lives in the Dourados municipality in this State. She stated that during the COVID-19 pandemic, public services refused to provide transportation for sick people from the Jaguapiru community, so that community members were forced to take sick people to hospital in their own vehicles in search of treatment. This speeded up the spread of the virus among community members, who were forced to try and save their relatives with no support from the State Government entities in charge of providing healthcare to the indigenous peoples.

Along these lines, Chief Isael Morales reported situations with severe omissions of assistance, with a lack of adequate medical care for responding to indigenous community demands. He underscored the practice of institutional racism against Native Brazilians

¹⁵¹ For further information, see: https://pib.socioambiental.org/pt/Povo:Guarani_Kaiow%C3%A1



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infected with COVID-19 by government entities in charge of providing healthcare services:

“(.) Our State is firmly controlled by huge rural landowners; it was also during the last few years that we were attacked as we tried to take back our lands, in our villages, where people used bulldozers. They fitted out bulldozers to kill our people. So I believe that each of us has a role in this society, and my role here today is to present this denunciation so that you can hear our voice, because we are lacking assistance in our region. We have nowhere to turn, the issue of the ambulance was solved by a vehicle, but only after months. (...) Moreover, there has to be more care, a mobile ICU (SAMU) the fire department should help us the way that they help people in urban areas there, and this does not happen here in our village. So this is a petition, an appeal that I make to you. I am certain that this is happening within a wider context, which consists of offensive and discriminatory speeches and attacks by our President.

The situation is not happening only with the Guarani Kaiowá people in Mato Grosso State. The APIB has received dozens of complaints from many indigenous peoples all over Brazil, confirming that Native Brazilians are recurrently suffering from the omission of help during the COVID-19 pandemic, with a lack of adequate healthcare, and Native Brazilians being infected through contacts with infected civil servants who fail to comply with the appropriate quarantine steps needed to enter our indigenous lands, as well as shortages of medications and discriminatory actions that, furthermore, are constant in the relationships between the Government and the indigenous peoples.

In other words, these victim reports confirm that this is not a matter of site-specific difficulties, but rather a real political decision taken by the Administration headed by President Jair Bolsonaro, which has been weakening, dismantling and recognising the entities in charge of preserving the health of these indigenous communities.

In addition to the specific context of violations during the COVID-19 pandemic, the violation of human Rights of the Indigenous Peoples, and particularly those deriving from looting their territories, has led to irreversible harm that is undermining the continuation of their ways of life and cultural practices.

Among many instances, the case of the Guarani Kaiowá people is paradigmatic, as the expansion of the agricultural frontier and large-scale land ownership over their



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ancestral lands is making the disputes experienced by this people extremely violent and bloody.

The anti-indigenous policy being implemented by President Jair Bolsonaro affects at least 748 land demarcation procedures underway at FUNAI which, instead of playing its institutional role of protecting the indigenous people, has instead begun to attack them. This Foundation is no longer lodging appeals against decisions handed down by Lower Court judges that are annulling demarcations, after noting the absence of the digital's occupancy of the area in 1988.¹⁵²

The Guarani Kaiowá people have had to appeal to the Inter-American Human Rights Commission (IAHRC), seeking injunctive relief against the imminent risk of being evicted from their lands.

On September 29, 2019, the IAHRC published Resolution N° 47/19 – MC 458-19 – Members of the Guyaroká community of the Guarani Kaiowá indigenous people, Brazil,¹⁵³ granting injunctive relief through temporary restraining orders and acknowledging systematic attacks on the indigenous peoples:

[...] The Commission noted that the community is still outside much of its territory, currently occupying less than 5% of the 11,401 hectares identified. The IAHRC was also advised that as a result of the timeframe application, the communities are running the imminent risk of being evicted.

69. In turn, the IAHRC was able to ascertain that the severe humanitarian situation of the Guarani and Kaiowá peoples results largely from violations of their territorial rights. During a visit to the Dourados-Amambaieguá indigenous land, it received abundant information on the victims of what is known as the Caarapó Massacre, during which Clodiodi de Souza was killed and six other Native Brazilians were injured, including a twelve-years-old-boy. It also learned about the frequent attacks carried out by armed shakedown gangs of vigilantes (known as *milicias*) that had caused several deaths and disappearances. (.)

¹⁵² The Time Framework thesis is being applied in several Court decisions handed down by the Brazilian Courts, triggering violent land disputes. For example, mention may be made of the Limão Verde land demarcation procedures in Buritim for the Terena people and Guyaroká for the Guarani-Kaiowá people, all in Mato Grosso do Sul State. The latter has become a notable paradigm, because the II Panel of the Federal Supreme Court adopted this thesis and consequently annulled the demarcation procedure whose identification and demarcation report had had been published in 2004.

¹⁵³ Available at: <https://www.oas.org/es/cidh/decisiones/pdf/2019/47-19mc458-19-br.pdf> Accessed on 24 de mar. de 2021.



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70. Similarly, the IAHRRC received a complaint about the territorial confinement situation of the Guarani and Kaiowá peoples that, although constituting the second largest indigenous community in Brazil, 80% of them are living on less than 27,000 hectares for more than a hundred years. The Commission also advised of several homicides and suicides involving members of these indigenous peoples. On this aspect, the IAHRRC believes that the overpopulated reserves and the disputes resulting from this type of confinement give rise to conditions that are depriving the Guarani and Kaiowá peoples of a decent life.

71. According to information, one of the severe consequences of violating the right to land has been the removal of indigenous children from their families. At Caarapó, the Commission visited the Centro Educacional Maria Ariane (CEMA) education centre, where seventeen of the nineteen children boarding there were indigenous. (.)

72. Regarding the implications on the right to land, the Commission issued a warning on the restrictive interpretation that is being pursued for the right to free, prior and informed consultation on steps that might affect the indigenous peoples.¹⁵⁴

Consequently, the Guarani Kaiowá people are experiencing a process of full denial of their rights, suffering directly from the violence ushered in by the anti-indigenous policy of President Jair Bolsonaro, which encourages initiatives such as raids, trespassing, disseisin and adverse possession of their ancestral lands.

Furthermore, the water sources used by the Guarani Kaiowá people have been poisoned, with serious health problems caused by contamination and poisoning resulting from the indiscriminate use of pesticides on plantations in this region:

In addition to little space, the community is surrounded by huge plantations growing single crops such as soybeans, maize and sugarcane. This proximity has prompted threats against leaders and even the contamination of children and adults through poisons sprayed on the crops, which are separated from the village by only wire fences.¹⁵⁵

According to an article in the *El País* newspaper,¹⁵⁶ the incidents occurred between May 6 and 11, 2019, resulting from herbicides sprayed just a few metres away from the village. As a result, several Native Brazilians – mainly children and elders –

¹⁵⁴ Inter-American Human Rights Commission (IAHRRC). Status of Human Rights in Brazil: Approved by the Inter-American Human Rights Commission on February 12, 2021, p. 35. Available at: <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>. Accessed on March 25, 2021.

¹⁵⁵ Available at: <https://cimi.org.br/2021/03/stf-julga-caso-terra-indigena-guyraroka-anulada-marco-temporal-sem-comunidade-fosse-ouvida/>. Accessed on March 25, 2021.

¹⁵⁶ Available at: https://brasil.elpais.com/brasil/2019/08/02/politica/1564773673_055738.html. Accessed on March 25, 2021.



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developed symptoms of pesticide poisoning, such as skin irritation, nausea, diarrhoea and headaches. In this area, it is important to quote the following excerpt from this article:

The family of Marlinho Guarani Kaiowá was also affected by the poison. This Native Brazilian is the son of Ambrósio Vilhalva, one of the main leaders of this ethnicity, who was murdered in 2013. “Today, we live here surrounded by sugarcane and maize. They have done away with our forests. It is hard to find game. And our water and food are poisoned by these products. They fence us in as though we were pigs, but the Guarani Kaiowá are warriors, and as long there is as there is one of us alive, we will fight for our land and our rights,” says Marlinho, becoming emotional as he recalls his father’s struggles.¹⁵⁷

These problems are not happening only with the Guarani Kaiowá people. In northern Brazil, several reports indicate similar issues.

4.3.7 Disease among the Tikuna people

Addressing the crimes committed during the COVID-19 pandemic – lack of care, and omission of help in the town of Tabatinga in Amazonas State – the complainant is Mislene Tikuna, a member of the Tikuna people¹⁵⁸ living in the Umariáçu indigenous land, reported infections and deaths among Native Brazilians in the Upper Solimões region, which have not been notified to government authorities. She stated that these infections were caused by government agents who failed to comply with the necessary protective measures required for entering indigenous lands.

She also reported that the regional hospital did not provide adequate care for indigenous patients, as the staff were very discriminatory and did not provide information to the relatives of patients, and also failed to isolate possibly infected patients, who had to wait days until discovering whether or not they were infected in their own villages, making them into real vectors spreading the virus. She also mentioned the refusals by healthcare services to transfer patients to hospitals in Manaus, the State capital, where they could be treated in intensive care units (ICU) which was required to save their lives.

¹⁵⁷ Idem.

¹⁵⁸ For further information see: <https://pib.socioambiental.org/pt/Povo:Tikuna>



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In 2020, the Tikuna people posted some of the highest number of deaths per inhabitant, with complaints continuing to underscore the situation of abandonment and lack of medical care, that still persists today.

4.3.8 Persecution, assassination, murder and disease among the Guajajara indigenous people

In Maranhão State, outbreaks of violence against the Guajajara people offer tragic illustrations of the dynamic underpinning lethal violence against indigenous peoples and the impunity of the perpetrators of these crimes. Although the Guajajara community has historically suffered raids by loggers trespassing on its territory, violence against these Native Brazilians has increased significantly during the past few years. The upsurge in violence against the Guajajara people has expanded significantly over the past few years. Between year-end 2019 and early 2020, at least four Guajajara members were killed in battles defending their traditional lands.

The first of these murder victims was Paulo Paulino Guajajara, who was killed on November 1, 2019 in an ambush, shot through the side of his head. He belonged to the Forest Guardians group, an indigenous organisation on the Araribóia lands that took on the task of overseeing and protecting this territory, filling the gap left by State omission. The Forest Guardians patrol the land and evict trespassers, particularly loggers.

Less than a week later, two other Guajajara leaders – Raimundo Guajajara and Firmino Guajajara – were killed on December 7, 2019. They were shot with revolvers while riding on motorcycles along a segment of the BR-226 road close to the El Betel village on the Cana Brava indigenous land in Jenipapo dos Vieiras, Maranhão State. Both were leaders who fought against land-grabbers and squatters on Guajajara lands. They were murdered as they were returning from a meeting in the Coquinho village, where they met with directors of the Eletronorte Energia power utility. Attended by sixty Guajajara chiefs



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and leaders, this meeting explored issues related to compensation for environmental impacts caused by stringing high-voltage transmission lines across these lands.

Shortly afterwards, another Guajajara leader – Zezico Rodrigues Guajajara – was shot to death on the morning of March 31, 2020 while riding his motorcycle near the Zutuia village on the Araribóia indigenous land in Maranhão State. He had already received death threats because of his stance against logging on indigenous lands, and had even announced this, seeking help and protection from the National Indian Foundation (FUNAI). However, this help did not arrive in a timely fashion, culminating in this barbarous killing.

Living on the Bacurizinho indigenous land in Grajaú, Maranhão State, complainant Sulane Guajajara, who is a member of the Guajajara people,¹⁵⁹ mentioned the lack of adequate healthcare, with little information or steps for curbing the spread of the COVID-19 virus. She also said that the indigenous peoples themselves have had to take the initiative in order to remain isolated, and that indigenous health care teams were unprepared and lacked adequate equipment. She also mentioned the failure to keep COVID-19 patients separate from other people living in the village, with this information repeated in several statements, and accepted as a SESAI policy.¹⁶⁰

She reported acts of violence against her people by neighbouring landowners with shared boundaries, as well as contamination of nearby water sources and the river that supplies her community. They are under threat and attack from loggers on their lands. In her statement, she said: (video appended)

“I am here to give a report, under this maladministration called the Bolsonaro Administration. We have faced discrimination and violence against our people. Our lands are under invasion, and we can get no response, and have nowhere to seek help! This is a situation where we live, how we are living. There are countless laws

¹⁵⁹ For further information see: <https://pib.socioambiental.org/pt/Povo:Guajajara>

¹⁶⁰ Technical report produced by SESAI recommended that Native Brazilians suspected with COVID-19 infections should remain in their villages, alongside other non-infected indigenous peoples. The full text of the SESAI recommendation may be seen at: <https://saude.es.gov.br/Media/sesa/Publica%C3%A7%C3%B5es%20em%20PDF/Secretaria%20Especial%20de%20Sa%C3%BAde%20Ind%C3%ADgena%20-%20Informe%20T%C3%A9cnico%2001.pdf>



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promulgated by this government that talk about leasing indigenous lands, leasing our lands, bringing large companies onto our lands, which we don't need. These huge businesses on our lands will wipe out our nature! They will end our lives! Our being free, our being a people! Being a people born on our land! Under this Administration, we have faced battles and barriers in healthcare, education and our institution, in FUNAI!

We see that the government is wanting to eliminate, that it is gradually eliminating the ways that we are assisted. The laws that help us, our law, our rights are not being respected! This law was promulgated at a different time, by these people who saw our colourful differences, our difference, our way of being! Of being indigenous! Of being and having this knowledge separate from the non-indigenous peoples. Of having our way of being and living on our own land! We have no need to continuously degrade the land, to poison the land! Wiping out our nature! Under this government that is wanting to introduce massive contamination to our land! Because it wants to downgrade our nature, which is our greatest asset, our nature, our motherland!"

This situation is repeated with other indigenous peoples. As an example, we mention the situation of the Kokama and Xingu peoples, as well as the Xavante peoples (with 68 deaths recorded), who all report poor medical care for Native Brazilians. Witnesses support widespread risks of infection, due to the lack of physicians, testing or examinations, reflecting total abandonment. In brief, the complaints received from the APIB indicate that the Xavantes, Kokama, Kambeba, Guarani Kaiowá, Yawalapiti,¹⁶¹ Guajajara, Terenas, Kaingang and other isolated people are embroiled in particularly vulnerable circumstances, especially those living in the Javari Valley.

4.3.9 Disease, contamination, poisoning and infection among the Terena indigenous people

Similar situations have also been denounced by other indigenous peoples elsewhere in Brazil. A symptomatic case of this type of action may be noted in reports received by the APIB on the Terena people,¹⁶² particularly during 2020. Today, the

¹⁶¹ For further information see: <https://pib.socioambiental.org/pt/Povo:Yawalapiti>

¹⁶² For further information see: <https://pib.socioambiental.org/pt/Povo:Terena>



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Terena people are the indigenous group with the third-highest number of deaths resulting from COVID-19 in Brazil, with more than sixty confirmed deaths.¹⁶³

Since the start of the public health crisis, the Terena Council has been monitoring COVID-19 cases on its lands, which avoided the deadly expansion of the virus over its territory through to June 2020. In addition to overseeing cases, this Council has set up and maintains *cordons sanitaires*, and the Government failed to take any steps of this type. Particularly noteworthy are the efforts of the Mato Grosso do Sul State Council since March 2020, which set up and maintained some 29 *cordons sanitaires*, 25 of them around villages and four in urban areas. These barriers are protecting 57 communities on six indigenous lands in the Dois Irmãos do Buriti, Miranda, Nioque and Sidrolândia municipalities.¹⁶⁴

Despite efforts to control possible disease vectors, the first death among the Terena people occurred on July 14, 2020. From then on, COVID-19 spread throughout their land. Neither SESAI nor any other Brazilian Government organ supported or advised the Council on how to slow the spread of the virus, with no structures provided for isolating the sick providing information on isolation and care protocols. In other words, government entities simply turned a blind eye and failed to take the public health measures needed to protect the indigenous population.

Faced with this public health implosion and lack of care, the Terena Council reached out to the Doctors Without Borders international humanitarian organisation, as a way of dealing with a pandemic on their lands.

¹⁶³ It is also stressed to investigate the official SESAI data on deaths, the data collected by the APIB and the reports received in the complaints, as an under-notification of deaths during 2020 is noted, with no possibility of identifying the Native Brazilians to which the peoples who died during the pandemic belonged. On this aspect, it is recalled that around 377 deaths of Native Brazilians do not identify their peoples, meaning some 37% of the Native Brazilians who died of COVID-19 are not properly identified.

¹⁶⁴ National Committee for Indigenous Heritage and Life (CNVMI – *Comitê Nacional pela Vida e Memória Indígena*). Report on Our Struggle is for Life, COVID-19 and the indigenous peoples – facing violence during the pandemic. November 2020. Full text available at: <https://emergenciaindigena.apiboficial.org/files/2020/12/APIB_nossalutaepelavida_v7PT.pdf>. Accessed on: March 25, 2021.



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The Doctors without Borders group was already in the Aquidauanã municipality, with practitioners from all over Brazil and elsewhere in the world, endowed with global experience in emergency actions and extreme situations of public health collapse. The support of this medical organisation was requested from July 24, 2020 onwards by the Terena Council together with the Federal Public Defender's Office and the Mato Grosso do Sul State Defender's Office.

However, in August 2020 the Special Indigenous Health Bureau (SESAI) banned this humanitarian help for the Terena people on the Taunay Ipegue indigenous land in the Aquidauanã municipality, at a time when the villagers were assailed by a public health disaster, with deaths up by more than 500%.

At that time, there were only two SESAI physicians and three others from the Municipal Health Bureau for the eleven villages in this area, meaning that there were five physicians covering all the communities in Aquidauanã.¹⁶⁵

This ban was issued by the SESAI National Secretary, Robson Santos da Silva. The Articulation of the Indigenous Peoples of Brazil (APIB) notified the Federal Office of the Prosecutor on August 24, 2020, requesting that this Secretary be investigated for administrative misconduct for forbidding humanitarian aid to the Terena people.¹⁶⁶

It was only in September 2020, after much time was lost, that the Doctors without Borders organisation was authorised to begin assisting Native Brazilians in Mato Grosso do Sul State. The Ministry of Health back stepped and approved the work plan of this NGO, which outlined the care to be provided in the eleven villages in Aquidauanã and

¹⁶⁵ Midiamax. *Mesmo só com 5 profissionais Para 11 aldeias, Sesai barra Médicos Sem Fronteiras em MS*. August 19, 2020. Available at: <<https://www.midiamax.com.br/cotidiano/2020/mesmo-so-com-5-profissionais-para-atender-11-aldeias-sesai-barra-medicos-sem-fronteiras-em-ms>>. Accessed on March 25, 2021. .

¹⁶⁶ Communiqué Nº 58/2020 – AJUR/APIB. Re: Impediment hampering the activities of Doctors Without Borders on the Taunay-Ipegue indigenous lands at Aquidauanã, Mato Grosso do Sul State, by the Special Indigenous Health Bureau. August 24, 2020. Available at: <<https://apiboficial.org/files/2020/08/Of.-58-Impedimento-da-atuac%CC%A7a%CC%83o-dos-Me%CC%81dicos-Sem-Fronteiras-na-Terra-Indi%CC%81gena-Taunay-Ipegue-em-Aquidauanã-MS-pelo-Secreta%CC%81rio-Especial-de-Sau%CC%81de-Indi%CC%81gena-.pdf>>. Accessed on: March 25, 2021.



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Anastácio.¹⁶⁷ However, authorisation to provide medical care was issued to Doctors without Borders only after strong indigenous mobilisation.

In terms of the vaccination of Native Brazilians in Mato Grosso do Sul State, its Special Indigenous Public Health District (DSEI) vaccinated 23,881 Native Brazilians, out of a total of 45,693 planned under the vaccination programme. However, the COVID-19 vaccination plan drawn up by SESAI excluded indigenous peoples living on lands that have not yet been ratified, like the Taunay indigenous land, whose demarcation is already at an advanced stage, but is not included under this immunisation plan.¹⁶⁸

As a result, the APIB and the Terena Council requested the Federal Office of the Prosecutor in Mato Grosso do Sul State to undertake a civil inquiry in order to examine the reasons why Native Brazilians belonging to the Terena people living in the Taunay district were not included in the priority vaccination drives against COVID-19.¹⁶⁹ This discrimination between indigenous people settled in villages and those who were not has no legal justification whatsoever and reflects a veiled assimilationist logic in Brazil's juridical arrangements and international treaties on human rights.

However, as already mentioned, the Court decisions were not complied with.¹⁷⁰

¹⁶⁷ G1. *Organização Médicos Sem Fronteiras começa a atender indígenas em Mato Grosso do Sul*. September 4, 2020. Available at: <<https://g1.globo.com/jornal-nacional/noticia/2020/09/04/organizacao-medicos-sem-fronteiras-comeca-a-atender-indigenas-em-mato-grosso-do-sul.ghtml>>. Accessed on: March 25, 2021. .

¹⁶⁸ APIB and Terena Council notify the Office of the Federal Prosecutors to vaccinate the Terena peoples in the Taunay district, Mato Grosso do Sul State. March 23, 2021. Available at: <<https://apiboficial.org/2021/03/23/apib-e-conselho-terena-acionam-mpf-para-vacinacao-do-povo-terena-no-distrito-de-taunay-ms/>>. Accessed on: March 25, 2021.

¹⁶⁹ Comunicado Nº 17/2021 – AJUR/APIB. Re: Priority for vaccinating indigenous peoples in the Taunay district, Taunay-Ipegue indigenous land, Aquidauanã municipality – Mato Grosso do Sul State. March 23, 2021. Available at: <<https://apiboficial.org/files/2021/03/Ofi%CC%81cio-17-apib-Prioridade-na-vacinac%CC%A7a%CC%83o-dos-indi%CC%81genas-localizados-no-Distrito-de-Taunay.pdf>>. Accessed on: March 25, 2021.

¹⁷⁰ In response to Federal Government omissions in dealing with the COVID-19 pandemic, the APIB presented a Petition for Certiorari alleging Non-Compliance with a Fundamental Precept (ADPF) Nº 709 together with six opposition political parties, to the Federal Supreme Court. The decision on the preliminary injunction ordered the Federal Government to take steps to protect the indigenous peoples from the COVID-19 pandemic. However, although important decision may be noted in favour of the indigenous peoples in this adverse context, there are emerging claims that they still lack immediate actions, and that indigenous lives are being put at risk. The withdrawal of trespassers from their lands, whether land-grabbers, loggers, industrial mining companies, wildcat miners, poachers, fishermen or any other expropriators on these lands illegally. On this aspect, the Yanomami, Kariyuna, Uru-Eu-Wau-Wau, Kayapó, Araribóia, Munduruku and Trinchira Bacajá indigenous lands indigenous lands are noteworthy. Furthermore, the Bolsonaro Administration has systematically failed to comply with Court decisions. This meant that four versions of a plan for dealing with COVID-19 had to be presented, which was partially ratified, due to its ongoing lack of definition. Several documents in this lawsuit provide input for this Communication, and are available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=5952986>



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5. CLASSIFICATION OF A CRIME SUGGESTED BY THE APIB IN THIS COMMUNICATION

Item 4 of this Communication presents a timeline of the acts of President Jair Bolsonaro proving the destruction of public infrastructure underpinning indigenous, social and environmental rights and the description of the raids, incursions and trespassing on indigenous lands, deforestation, wildcat mining and the spread of COVID-19 among indigenous peoples and on their lands as a consequence on this destruction of public infrastructure. The policy promoted by President Jair Bolsonaro since the first day of his term of office, consisting of speeches, regulatory and administrative acts and omissions, characterises what this Communication has called an anti-indigenous policy. This policy consists of systematic attacks on the indigenous peoples, either directly on their bodies or on their lands, leading to their physical disappearance and the extermination of their ways of life, pursuing their destruction in some specific cases.

This Communication describes how this anti-indigenous policy has incited, facilitated and failed to counter raids trespassing on indigenous lands, illegal wildcat mining, deforestation, ore pollution, mercury poisoning and COVID-19 infections, that are affecting the lives, health, integrity and existence of the indigenous peoples of Brazil. The office of the Prosecutor is requested to pay particular attention to the practices perpetrated by the President of Brazil against isolated or recently-contacted indigenous peoples, the Munduruku people living on the Yanomami indigenous land, as well as the Guarani-Mbya and Kaingang, Guarani-Kaiowá, Tikuna, Guajajara and Terena indigenous peoples.

The Articulation of the Indigenous Peoples of Brazil believe that these acts may be characterised as crimes of genocide and crimes against humanity, under Articles 6 and 7 of the Rome Statute, as argued below:



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5.1 Genocide ascribed to President Jair Bolsonaro

The actions, omissions and discourses presented in this Communication show that the destruction of the indigenous peoples of Brazil by the Administration headed by President Jair Messias Bolsonaro is a deliberate and malicious policy. Consequently, it also falls under the aegis of Article 6 of the Treaty of Rome

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:

- (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;

In order to classify the crime of genocide as defined in the above terms, it is necessary to confirm: i) the perpetration of typical act(s), meaning the intentional and knowing practice of one the acts listed in Article 6 by the accused; and ii) the special attention to fully or partially destroy a national, ethnic, racial or religious group *per se*.

With regard to typical acts constituting the crime of genocide, the actions of President Jair Bolsonaro against indigenous peoples may be validly classified as severe offences against their physical and mental integrity (Article 6.b) and intentional subjection to living conditions designed to cause their full or partial destruction (Article 6.c).

The Elements of Crimes underpinning the interpretation and application of the Statute by the ICC clarify that genocide by severe offences against physical or mental integrity (Article 6.b) is established when: i) the perpetrator causes severe bodily or mental harm to one or more persons; ii) the person or persons affected thereby belonged to a specific national, ethnic, racial or religious group; iii) the perpetrator acted with the intention of partially or fully destroying a national, ethnic, racial or religious group *per se*; iv) the act was perpetrated within the context of a similar pattern of conduct directed against the group, in order to destroy it.



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The Statute does not define what is meant by “bodily harm” for its purposes and the Elements of Crimes required for the ICC to clarify the term, in a note, mentioning torture, rape, sexual violence and inhumane or degrading treatment. However, the statute does not define what is meant by “inhumane or degrading” for either the crime of genocide or crimes against humanity.

For crimes against humanity, the Elements explain that they are established when “inhumane or degrading acts” are perpetrated, provided that severe bodily or mental harm is inflicted, and the act is similar to some other listed in Paragraph 1 of Article 7. In brief, the term “severe bodily or mental harm” proves vague, to some extent.

Due to the vagueness of this term, it is necessary to turn to international criminal jurisprudence, which has established its meaning and the parameters analysing specific situations. Under the aegis of the International Criminal Tribunal for Rwanda (ICTR), for example: “[t]he Appeals Chamber recalls that “serious bodily or mental harm” is not defined in the Statute, and that the Appeals Chamber has not squarely addressed the definition of such harm. The quintessential examples of serious bodily harm are torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs.¹⁷¹

Following the same line of interpretation, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) understood in the decision of the Tolimir case, that “[w]hile the term “serious bodily or mental harm” is not defined in the Statute, the phrase is understood to mean, inter alia, acts of torture, inhumane or degrading treatment, sexual violence including rape, beatings, threats of death, and generally harm that seriously damages health, causes disfigurement, or causes serious injury to members of the group.”¹⁷² This understanding was corroborated by the Appeals Chamber of this Tribunal in a decision handed down in 2015.

¹⁷¹ ICTR, Seromba (Appeals Chamber judgment), paragraph 46.

¹⁷² ICTY, Tolimir (Trial Chamber Judgment), paragraph 737.



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With regard to the classification of the actions of President Jair Bolsonaro, the crime of genocide is of interest, because of subjection to conditions intended to lead to physical destruction (Article 6.c).

The elements of this crime are: i) the perpetrator inflicted certain living conditions on one or more person(s); ii) this person or persons belonged or belongs to a particular national, ethnic, racial or religious group; iii) the perpetrator acted with the intention of fully or partially destroying a national, ethnic, racial or religious group per se; iv) the living conditions – which may include but are not limited to deliberate deprivation of the resources necessary for survival, such as water, food and medical services – were affected in a manner calculated to lead the group to destruction; and iv) the acts took place in the context of a similar pattern of conduct directed against the group, or the conduct was such that it could in itself cause such destruction.

The crime of genocide through subjection to conditions calculated to lead to physical destruction has a specific characteristic, on the one hand that it does not require material damage for the physical destruction of all or part of the group. On the other, in order to establish this crime, it is necessary that the act be calculated to cause the physical or biological destruction of the group deliberately. Along these lines, the Trial Chamber ¹⁷³ of the International Criminal Tribunal for the former Yugoslavia (ICTY) stated that “[u]nlike Articles 4(2)(a) and (b), Article 4(2)(c) does not require proof of a result such as the ultimate physical destruction of the group in whole or in part. However, Article 4(2)(c) applies only to acts calculated to cause a group’s physical or biological destruction deliberately and, as such, these acts must be clearly distinguished from those acts designed to bring about the mere dissolution of the group.”

In a 2012 decision, the Appeals Chamber ¹⁷⁴ of the International Criminal Tribunal for the former Yugoslavia (ICTY) confirmed this understanding of the Trial Chamber,

¹⁷³ ICTY, Tolimir (Trial Chamber Judgment), paragraph 741.

¹⁷⁴ ICTY, Tolimir (Appeals Chamber Judgment), paragraphs 225-6.



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dismissing the hypothesis that the crime of genocide is configured by the dissolution of the group. This entity also clarified that the methods of destruction need not lead to the immediate death of members of the group: deliberate acts resulting in the slow death of individuals belonging to a national, ethnic, racial, or religious group in order to destroy it either fully or partially also constitute the crime of genocide.

The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) listed some punishable acts as the crime of genocide through subjection to living conditions calculated to cause the full or partial destruction of the group when deliberate perpetrated. These acts include subjection to a subsistence diet, lack of adequate medical care, and the creation of circumstances leading to death, even if slowly, such as a shortage of food, water and shelter. In the world of the Appeals Chamber: “[e]xamples of such acts punishable under Article 4(2)(c) include, inter alia, subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion.” (internal notes omitted).¹⁷⁵ On this aspect, the Appeals Chamber once again stressed a construction that has been reiterated in its practice and also that of the International Criminal Tribunal for Rwanda (ICTR), whereby “[t]he Chamber holds that the means of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part, include subjecting a group of people to a subsistence diet, systematic expulsion from their homes and deprivation of essential medical supplies below a minimum vital standard”¹⁷⁶

¹⁷⁵ ICTY, Tolimir (Appeals Chamber Judgment), paragraphs 225-6 (internal notes omitted)

¹⁷⁶ ICTR, Musema (Trial Chamber Judgment), paragraph 157. See also ICTR, Akayesu (Trial Chamber Judgment), paragraph 505, and Rutaganda (Trial Chamber Judgment), paragraph 57.



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As narrated in detail in the facts presented in this Communication, President Jair Bolsonaro is:

- i. encouraging wildcat miners and loggers to raid and trespass on indigenous lands, whether demarcated or simply settled by indigenous peoples;
- ii. presenting wildcat mining and logging as contributions to the Brazilian economy and contrasting them with indigenous ways of life that he rates as non-productive;
- iii. on the one hand approving and legalising wildcat mining activities and not applying Brazilian environmental law to loggers, for example by not imposing environmental fines or seizing equipment, while on the other he is not demarcating or ratifying demarcations of indigenous lands.

To do so, he is presenting draft bills on industrial mining activities and dismantling the entire institutional framework intended to implement a policy protecting the biomes of Brazil and its indigenous peoples. In brief, he is working through proposing changes to the law as well as encouraging and facilitating breaches of the law.

The President is fully aware that the activities he intends to approve are actually illegal: to the extent that he has insisted on altering legislation. These activities are illegal because they destroy biomes, as well as the human and non-human forms of life that they shelter. As is well known to the President of Brazil, their destruction strips the indigenous peoples of their material means of production and social reproduction, meaning their lands and everything that they shelter. Aligned with his genocidal purpose and as explained in detail in the facts set forth in this Communication, President Jair Bolsonaro made no effort to provide adequate medical care to Brazil's indigenous peoples during the COVID-19 pandemic, despite their pleas to the Brazilian Government, and as repeatedly ordered by the Federal Supreme Court.

The crime of genocide for severe offences and subjection to living conditions that lead to the destruction of the group share as a common characteristic the need for such



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conduct to be perpetrated against a national, ethnic, racial or religious group *per se*. This is a very specific listing, and the indigenous peoples are a political totality that is nevertheless plural, meaning that the anti-indigenous policy of President Jair Bolsonaro targets the indigenous peoples as an ethnic group, with the group encompassing multiple ethnicities. In counterpart, Article 6 of the Statute does not stipulate the criteria for defining the group and belonging to the group. This is why it is necessary to consider that the perpetrator of the crime himself may define who belongs to which group, using this as a means to materialise his genocidal intentions. This may occur when the perpetrator of the crime stirs up stigmas through repeated discriminatory acts, turning part of society against a specific group, when assigning persons to membership or non-membership of a group.

As set forth in the description of the facts for the indigenous peoples of Brazil, this objective was explicit: FUNAI was attempting to establish the hetero-identification for belonging to indigenous ethnicities, while President Jair Bolsonaro was attempting to underpin the feasibility of withdrawing from ILO Convention N° 169, which rates self-identification as a key element for acknowledging indigenous identity. With this redefinition, the Present is trying to pave the way for direct action, through either reconfiguring the indigenous peoples or eliminating their ethnic differences in the nationality with which he is eager to integrate them.

Like other crimes of genocide defined in International Criminal Law, Article 6 of the Statute mentions the destruction of a group “either fully or partially”, but does not establish the parameters that allow an assessment of what is a “part” for its purposes. In general, decisions handed down by the International Criminal Court¹⁷⁷ indicate that the intention to destroy a group either fully or partially addresses a substantial portion thereof. However, the Court does not stipulate a parameter as a basis for judging the part of the

¹⁷⁷ See ICTY, Jelisić (Trial Chamber Judgment), paragraph 82; Tolimir (Trial Chamber Judgment), paragraph 749; ICTR, Seromba (Trial Chamber Judgment), paragraph 319.



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affected group. In a decision handed down on the Jelusic and Tolimir cases,¹⁷⁸ the International Criminal Tribunal for the former Yugoslavia (ICTY) understood that, should no qualitative threshold to be established, it may define this substantial portion through comparing the number of victims with the total number of members in the group, as well as per the status of the victims in the group, based on the impacts of their disappearances on the survival of the group.

In the words of the Tribunal in a decision handed down on the Tolimir case: “[a]lthough the numerosity of the targeted portion in absolute terms is relevant to its substantiality, this is not dispositive; other relevant factors include the numerosity of the targeted portion in relation to the group as a whole, the prominence of the targeted portion, and whether the targeted portion of the group is “emblematic of the overall group, or is essential to its survival”, as well as the area of the perpetrators’ activity, control, and reach.”¹⁷⁹ (internal notes omitted). Finally, as understood by the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR), there is no need for genocidal acts to cause this, but it is necessary that they undermine the survival of the group over a fairly brief length of time.

As mentioned above, in order to configure genocide, it is necessary that, in addition to the elements already described and analysed: i) the perpetrator engage deliberately in the forbidden act; and ii) in addition to the intention of perpetrating such act, the perpetrator has a specific intention of fully or partially destroying a national, ethnic, racial or religious group, and is seeking their destruction through one of these four types of status.

The specific intention – or *dolus specialis* – is an element that helps distinguish between the mass murder of civilians (whether classifying extermination as a crime

¹⁷⁸ See ICTY, Jelusic (Trial Chamber Judgment), paragraph 82; Tolimir (Trial Chamber Judgment), paragraph 749.

¹⁷⁹ See ICTY, Tolimir (Trial Chamber Judgment), paragraph 749.



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against humanity or a common crime) as well as persecution ¹⁸⁰ as a crime against humanity for the crime of genocide.

It is known that *dolus specialis* may hamper the production of evidence against the perpetrator. But, achieving that, it is seen in practice, the International Criminal Tribunals for the former Yugoslavia and Rwanda found that genocidal intent may be established through inference, based on circumstances. Along these lines, the Trial Chamber of the International Criminal Tribunal for Rwanda affirms that:

[t]he jurisprudence accepts that, in most cases, genocidal intent will be proved by circumstantial evidence. Such intent may be inferred from a number of facts and circumstances, including the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of the atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts. Evidence of limited and selective assistance towards a few individuals does not generally preclude a reasonable finding of the requisite intent to commit genocide. ¹⁸¹

In other words, specific intent is understood from the facts and circumstances at which the scale of the practices is viewed, the repetition of discriminatory acts of destruction, and the context of other acts perpetrated against the same group, seeing whether they are perpetrated systematically. Evidence of genocidal intent may include the existence of a plan or policy, which is why it is relevant to establish whether the perpetrator of the crime was aware of such plan or policy.¹⁸²

In contrast to crimes against humanity, its existence is not an element in the crime of genocide.¹⁸³ Instead, the International Criminal Tribunal for the former Yugoslavia (ICTY) found that it may facilitate proof.¹⁸⁴ Another important aspect in the construction of jurisprudence is that it also establishes the fact that limited and selective assistance to

¹⁸⁰ See ICTR, Nahimana (Appeals Chamber Judgment), paragraphs 1034-5.

¹⁸¹ ICTR, Nyiramashuhuko (Trial Chamber Judgment), paragraph 5732. Similarly, see also Seromba, (Trial Chamber Judgment), paragraph 320 e ICTY, Jelusic (Appeals Chamber Judgment), paragraph 47 (internal notes omitted).

¹⁸² ICC, Prosecutor v. Bashir (ICC-02/05-01/09), Decision on the Prosecution's Application for a warrant of arrest against Omar Hassan Ahmad al-Bashir, March 4, 2009, paragraphs 139 – 154.

¹⁸³ See ICTY, Popovic, (Appeals Chamber Judgment), paragraph 430.

¹⁸⁴ See ICTY, Jelusic (Trial Chamber Judgment), paragraph 48.



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individuals in the group at large does not prevent the intention of committing genocide from being ascertained. In brief, selective assistance does not disfigure the characterisation of *dolus specialis*.

Since the start of his term of office in 2019, President Jair Bolsonaro has been implementing an anti-indigenous policy in Brazil, of which he is aware, and for which he is directly responsible. As set forth in detail in the description of the facts in this Communication, his anti-indigenous policy encompasses:

- i) “institutional dismantling”; acts that disassemble, underfund and undermine the authority of institutions monitoring, overseeing and promoting the rights of indigenous peoples, which may be designated as institutional dismantling;
- ii) rejection of the fundamental Rights of the Indigenous Peoples and transforming their defenders – including people advocating the human rights – into enemies of the Brazilian people, through either speeches given since taking office or through the operations of control institutions, such as the Federal Police, that persecute indigenous leaders;
- iii) transformation into the right of the indigenous peoples to their lands into an unfair situation, expressed through his open refusal to ratify demarcations and demarcate new indigenous lands;
- iv) encouragement for loggers and wildcat miners to trespass on indigenous lands in order to engage in industrial mining and logging activities, resulting in forest devastation, rivers contaminated by mercury, exponential increases in skirmishes, and the death of indigenous leaders;
- v) rejection of self-identification as the criterion defining whether or not a person belongs to an indigenous group, as shown by the FUNAI act and the Government’s statement of its intent to withdraw from ILO Convention N° 169;



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- vi) during the pandemic, facilitating contacts with non-indigenous persons through either encouraging raids and trespassing activities on indigenous lands or through mainstream Christian missionaries contacting indigenous peoples living in voluntary isolation, who have opted for limited contacts with people outside their own groups.

Presented in detail in item 4 of this Communication, all these acts disclose the genocidal intent of President Jair Bolsonaro. These are acts interconnected with each other by the President and undertaken consistently during more than two years of his Administration, steered by a clear purpose, which the President himself has stated: the production of a Brazilian nation with no indigenous peoples, produced throughout the destruction of these peoples, particularly for isolated and newly-contacted groups, or through assimilation for other indigenous peoples, who are being targeted by crimes against humanity.

It is thus pertinent to take the acts of the President as a systematic attack against Brazil's indigenous peoples, bearing in mind that, when he does not engage directly in these acts, he uses the nation's civil service machinery to pursue his genocidal intent. As explained above, the elements of the crime of genocide do not include either the existence of a policy or even any systematic attack. However, the Articulation of the Indigenous Peoples of Brazil (APIB) clearly displays its existence in Brazil through spotlighting the genocidal intent of the Brazilian President, in addition to his crimes against humanity perpetrated against the bodies of indigenous peoples.

The harm to the Native Brazilians and the threat of their destruction in Brazil are real and are speeding up rapidly: disease, death and suffering are being imposed at this moment on the indigenous peoples. As reported in this Communication, leaders and elders of the Yanomami and Guajajara peoples have been killed and persecuted, taking with them the history, knowledge and wisdom of entire peoples. Due to their status and



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the anti-indigenous policy of the President, their disappearance constitutes a threat of destruction for the group.

The anti-indigenous policy developed and perpetrated by President Jair Bolsonaro has been under way since 2019. However, the COVID-19 pandemic offered an opportunity for achieving his purpose of destroying the indigenous peoples of Brazil. Throughout the entire pandemic, the President has pushed ahead with a policy based on the production of natural collective immunity (herd immunity) despite advice from scientists in Brazil and elsewhere in the world, civil servants and international organisations such as the World Health Organisation (WHO). It is his adoption of this policy that makes sense of the following:

- i) his rejection of steps that are known to be efficient, including wearing masks, distancing and quarantine;
- ii) his rejection of the need and safety of vaccinations;
- iii) his promotion of medications whose efficacy has not been proven for treating COVID-19, investing government funds in their production;
- iv) his refusal to provide means through which Brazilians could comply with the protective measures that Mayors and State Governors have tried to implement in the face of Federal Government omissions, and the rejection of quarantine measures by the Brazilian president;
- v) misinformation campaigns on this disease in Brazil, spread through the use of the Communications Bureau, and the failure to run informative campaigns reaching out to Brazilian society.

In order to implement his policy pursuing herd immunity, in contrast to the public health policy based on quarantine measures and other steps, the President mobilised Government entities and several Ministries. This is thus a State policy targeting Brazilian society, despite full awareness that its implementation would lead to the deaths of Brazilians and people of other nationalities throughout the nation. Within the context of



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the pandemic and with this herd immunity policy in place, it was through acts directly linked to President Jair Bolsonaro that indigenous healthcare programmes were changed and dismantled. Together, this anti-indigenous policy and the deliberate spread of the COVID-19 pandemic are destroying Brazil's indigenous peoples, particularly the Terena (item 4.3.9) and Tikuna (item 4.3.7) peoples.

As explained in the previous Communication already under analysis by this Office of the Prosecutor and effects reported in this Communication, wildfires, burn-offs and deforestation are jeopardising the survival of the indigenous peoples, who depend on their lands and rivers to support the lives of people and their communities.

A study conducted by the Oswaldo Cruz Foundation (FIOCRUZ), which is a public health entity connected to the Brazilian Government, shows that the Munduruku and other indigenous peoples living on the Yanomami indigenous lands in particular are physically suffering the consequences of mercury contaminating the rivers, released by wildcat mining activities. The physical harm is severe, including neurological damage that is extended or irreversible.

At the same time, raids, trespassing, widespread deforestation, wildfires, burn-offs and encouragement for illegal wildcat mining on indigenous lands has helped spread COVID-19 infections among the indigenous peoples. As explained in the facts, the Terena people have been severely affected by this disease.

Among isolated and recently-contact indigenous peoples, infection was brought in by Brazilian Government agents, after the attack by the government itself (headed by President Jair Bolsonaro) on the protective domestic directives that have been laid down during the past few decades in order to curtail attempts by the Brazilian State and economic agents to encroach on the rights and lands of the indigenous peoples, as well as controlling the relationships between them, creating space for non-violent ways of dealing with the differences represented by the indigenous peoples and a State entity.



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Due to their low immunological vulnerability, an epidemic raises the threat of eliminating an entire people, particularly when bearing in mind that the spread of COVID-19 among the indigenous peoples has led to an extremely high mortality rate, with 50% lethality for COVID-19 infections among Native Brazilians.

As described in this Communication, speaking of the indigenous peoples means referring to ethnically distinct groups that are few in number, compared to the Brazilian population as a whole. The diversity and plurality of the indigenous peoples of Brazil is presented as particularly vulnerable. Their small population and ethnic plurality justify the status of these peoples as groups protected by International Criminal Law: some peoples with only a few thousand or even just hundreds of members might vanish.

The Brazilian President has repeatedly challenged the right of the indigenous peoples to the lands where they live, comparing what he views as the low productivity of Native Brazilians with the purported productivity of extractivist activities. As this draws wildcat miners and loggers into the indigenous lands, it puts indigenous leaders on the front line for protecting their lands, stirring up disputes within a context of passively inoperative control institutions that have been dismantled, undermined and financially throttled by the President himself.

This institutional dismantling process and the disregard of the law – particularly obligations under international law accepted by the Brazilian State systematically implemented by the Brazilian President during the first two years of his Administration – were slanted towards establishing conditions propitious for his anti-indigenous policy.



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5.2 Crimes against humanity ascribed to President Jair Bolsonaro

The second set of criminal practices warranting the attention of the ICC Office of the Prosecutor are crimes against humanity, as defined in Article 7 of the ICC Statute:

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:

(.)

(b) Extermination;

(.)

(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 recognised 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.

For the purpose of paragraph 1:

"Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack (...).

As already stressed, the wording of this Communication and its appended documents are the evidence of the anti-indigenous policy perpetrated by President Jair Bolsonaro. Through the destruction of public infrastructure underpinning indigenous, social and environmental rights, incursions and trespassing on indigenous lands, deforestation, wildcat mining and the spread of the COVID-19 pandemic between peoples and indigenous lands, this policy headed by President Jair Bolsonaro affects the lives, health, integrity and existence of the indigenous peoples of Brazil, particularly among isolated or recently-contacted indigenous peoples, the Munduruku living on the Yanomami indigenous land, the Guarani-Mbya and Kaingang, the Guarani-Kaiowá, the Tikuna, the Guajajara and the Terena peoples.

The classification of practices consisting of environmental destruction and the expropriation of land as crimes against humanity, as proposed in this Communication, is



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possible because this ICC Office of the Prosecutor published a Policy Paper ¹⁸⁵ in 2016, explaining its policy on case selection. Without expanding the sphere of competence of the ICC, this paves the way for a new interpretation of existing crimes within the legal classification system found in the Rome Statute.

One of the interpretations proposed in this Policy Paper consists of the priority confirmed on the criminalisation of land expropriations that result, for example, in forced resettlement and offences against the environment, classified as crimes against humanity, when perpetrated under the aegis of a policy adopted by a State or organisation pursuing its implementation. As may be seen in this document, these practices do not constitute crimes against humanity *per se*, but they are classified as such because they are means for implementing the types of conduct already listed in Article 7 of the Tribunal Statute

This shift in stance by the Office of the Prosecutor allows criminal prosecution of acts that already might be classified as war crimes under Article 8 of the Statute, when perpetrated during international or non-international armed conflicts. Article 8.b.IV of the Statute typifies “Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated”. With this shift in stance by the Office of the Prosecutor in 2016, the possibility of criminal prosecution is extended to encompass social and environmental crimes in times of peace, provided that they are perpetrated under the aegis of a State or organisation policy for the purpose of its implementation, under Article 7 of the Statute.

¹⁸⁵ ICC, The Office of the Prosecutor. Policy paper on case selection and prioritisation. The Hague, September 15, 2016, p. 5



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5.2.1 Elements of crimes against humanity or generalised attacks against the civilian population; extermination, persecution and other inhumane acts

a) Objective elements

In the wording used in the ICC Statute, crimes against humanity encompass a contextual element, namely, “act(s) constituting an attack directed against any civilian population”, an objective element, namely, the act(s) constituting the attack, or *actus reus*; or the subjective element, or *mens rea*.

The “attack directed against any civilian population” is a key element in crimes against humanity. This allows the Tribunal to outline its sphere of action. Under Article 7 of the Statute, these attacks consist of “any conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population pursuant to or in furtherance of a State or organisational policy to commit such an attack” (Article 7.2.a). According to the Elements of Crime that steer the interpretations handed down by the Tribunal, there is no need for the acts to consist of a military attack, meaning that the attacks need not involve the armed forces or be perpetrated within a context of hostilities.¹⁸⁶ In the Kunarac and Stakic cases, the International Criminal Tribunal for the former Yugoslavia (ICTY) understood that the acts constituting an attack under International Criminal Law might involve, for example, a policy of mistreatment for a specific civilian population.¹⁸⁷

Also according to the Elements of Crimes, the term “policy of a State or organisation” means that the State or organisation promotes or encourages an attack or a generalised attack against a civilian population, which may be socially demarcated by, for example, religion, race, ethnicity or gender. The ICC understands that this policy of a

¹⁸⁶ See ICC, Situation in Kenya (Authorisation Decision), paragraph 80.

¹⁸⁷ See ICTY, Kunarac (Trial Chamber Judgment), paragraph 416; ICTY, Stakic, No. IT-97-24-T, Judgment, Trial Chamber, July 31, 2003, paragraph 623.



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State or organisation need not be formally expressed and, according to the Elements of Crimes, in exceptional cases it may derive from a deliberate absence of action by the State that consciously encourages such attack. In terms of the Elements of Crimes, “such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organisational action.”

The requirement of committing the act(s) within an attack or a generalised attack against any civilian population does not imply the need for each act enumerated in Paragraph 1 of the Article to be committed in a generalised or systematic manner. The requirement of being systematic or generalised is related to the actual attack – which is mentioned above – is not limited to a military attack and must target any civilian population – rather than the act taken individually.¹⁸⁸

The Court Statute includes a definition of how individual acts are related to each other, for an “attack” to be established in the sense used by the Court for this term, while International criminal jurisprudence provides elements that facilitate this analysis. For example, this case law clearly states that engaging in a single type of conduct does not constitute an “attack” in the sense used in the Statute, meaning that the term does not designate the identity of some acts with others, and also understands that it does not necessarily refer to acts involving weapons, or even violent acts. In a decision on the Akayesu case, the International Criminal Tribunal for Rwanda (ICTR) specifically established that acts constituting an “attack” need not be perpetrated through armed force or during disputes. “The concept of ‘attack’ may be defined as an unlawful act of the kind enumerated in Article 3(a) to (l) of the Statute, like assassination, extermination, enslavement etc. An attack may also be non-violent in nature, like imposing a system of

¹⁸⁸ See ICTY, Mrksic (Vukovar Hospital Decision), Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, April 3, 1996 (PURL: <http://www.legal-tools.org/doc/9d99b6/>), paragraph 30.



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apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may fall under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.”¹⁸⁹

The ICC Statute rules that an “attack” is configured through the perpetration of any of the multiple acts enumerated in Article 7, which allows an understanding to be constructed that an attack – for the purposes of this jurisdiction – may also be established through “the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population”, as set forth in the definition of “extermination” established in the Statute. The important point is that the multiple acts constitute a course of conduct, as understood by the Tribunal, that there is a certain standard of behaviour reflecting some planning, direction or organisation.

In a decision on the Gbagbo case,¹⁹⁰ the Pre-Trial Chamber decided that:

The expression “course of conduct” already embodies a systemic aspect as it describes a series or overall flow of events as opposed to a mere aggregate of random acts. As already recognised by the jurisprudence of the Court, it implies the existence of a certain pattern as the “attack” refers to a “campaign or operation carried out against the civilian population”, which involves the multiple commission of acts referred to in article 7(1) of the Statute directed against any group distinguishable by nationality, ethnicity or other distinguishing features,⁵⁰⁶ including (perceived) political affiliation.

Therefore, while a course of conduct must involve multiple acts, the occurrence of those acts is not the only evidence that may be relevant to prove its existence. On the contrary, since the course of conduct requires a certain pattern” of behaviour, evidence relevant to proving the degree of planning, direction or organisation by a group or organisation is also relevant to assessing the links and commonality of features between individual acts that demonstrate the existence of a “course of conduct” within the meaning of Article 7(2)(a) of the Statute.

¹⁸⁹ See ICTR, Akayesu (Trial Chamber Judgment), paragraph 581.

¹⁹⁰ See Gbagbo (Confirmation Decision) paragraphs 209-210.



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In addition to its interpretation of the term “attack”, the Tribunal has also developed the concepts of “systematic” and “generalised” in its jurisprudence, under the aegis of crimes against humanity.

Aligned with Article 7 of the Statute, “generalised” thus addresses the scale of the attack or the number of people affected footnote.¹⁹¹ In the Tadic case, the International Criminal Tribunal for the former Yugoslavia understood that this referred to a “massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims”.¹⁹²

In turn “systematic” addresses a qualitative aspect of the attack against a civilian population, and was defined by the UN International Law Commission as: “pursuant to a preconceived plan or policy. The implementation of this plan or policy could result in the repeated or continuous commission of inhumane acts. The thrust of this requirement is to exclude a random act which was not committed as part of a broader plan or policy”.¹⁹³

Notwithstanding this definition, criminal courts have applied this category in a lighter and more elastic manner. In the jurisprudence established by the International Criminal Tribunals for the former Yugoslavia and Rwanda, for example, “systematic” describes the organised nature of the acts, thus dismissing their random occurrence.¹⁹⁴ The ICC presents a similar interpretation in its decision on the situation in Kenya¹⁹⁵, and a decision in the Gbagbo case. Here, it affirms that “the alternative requirement that the attack be “systematic” has been consistently understood in the jurisprudence of the Court as pertaining to the organised nature of the acts of violence and the improbability of their random occurrence. Further, according to the jurisprudence of the Court, the systematic

¹⁹¹ See ICTY, Tadic (Trial Chamber Judgment), paragraph 648; ICTY, Kayishema and Ruzindana (Trial Chamber Judgment), note 30, paragraph 123; Blaskic (Trial Chamber Judgment), paragraph 206.

¹⁹² See ICTY, Tadic, (Trial Chamber judgment), paragraph 648.

¹⁹³ International Law Commission, 1 YbILC 47 (1996).

¹⁹⁴ See ICTY, Kordic (Appeals Chamber Judgment), paragraph 94; ICTY, Blaskic (Appeals Chamber Judgment), paragraph 101; ICTY, Kunarac (Appeals Chamber Judgment), paragraph 94. ICTR, Muvunyi (Trial Chamber Judgment), paragraph 512.

¹⁹⁵ See ICC, Situation in Kenya (Authorisation Decision), paragraph 96; Gbagbo (Confirmation Decision), paragraph 223.



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nature of an attack can “often be expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis”.¹⁹⁶

In view of this, and also considering the matter set forth in the previous paragraphs, a systematic attack may be constituted, for example, when individual criminal acts are similar to each other and are repeated within a specific space and time. Their similarity and repetition negate the hypothesis that they are random or accidental acts.

In brief, the “systematic” element, in contrast to the “generalised” type, is significant as it negates the random or accidental nature of individual acts. As it is clear in the above quotation taken from the decision on the Gbagbo case, in the construction of case law on crimes against humanity, the term “systematic” is thus confounded with “policy of a state or organisation” or also with “attack”, of which it is necessary that the perpetrator(s) are aware.

Article 7 of the Statute also states that “in any civilian population”. This category extends back to the appearance of crimes against humanity after World War II, related to the intention of responding to attacks by the German State initially against its own population, and then against the nationals of other countries unrelated to war efforts. Some five decades later, in 1997, the International Criminal Tribunal for the former Yugoslavia specified in the Tadic case that “the inclusion of the word ‘any’ makes it clear that crimes against humanity can be committed against civilians of the same nationality as the perpetrator or those who are stateless, as well as those of a different nationality.”¹⁹⁷

As this Tribunal subsequently affirmed in the Kunarac case, an attack need not be directed against an entire population at a specific location, but it is necessary that it be directed against a population, rather than a limited number of individuals, selected at random. In the words of the Trial Chamber of the International Criminal Tribunal for the

¹⁹⁶ See Gbagbo (Confirmation Decision), paragraph 223 (internal notes omitted).

¹⁹⁷ See ICTY, Tadić, (Trial Chamber judgment), paragraph 635.



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former Yugoslavia (ICTY)¹⁹⁸ "[t]he expression “population” does not mean that the entire population of the geographical entity in which the attack is taking place (a state, a municipality or another circumscribed area) must be subject to the attack.”

With regard to the objective element of crimes against humanity, Article 7 of the ICC Statute enumerates eleven acts that, perpetrated in generalised or systematic manner against a civilian population under the aegis of a policy of a State or organisation, may constitute crimes against humanity.

Three of the acts enumerated in this Article are particularly relevant for crimes against humanity resulting from the anti-indigenous policy that led to environmental crimes, in addition to the actions of President Jair Bolsonaro being intended to spread the COVID-19 pandemic: extermination (Article 7.1.b), persecution (Article 7.1.h) and “other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health” (Article 7.1.k).

THE ICC Statute defines “extermination” as “the intentional infliction of conditions of life *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population” (Article 7.2.b). It is thus necessary that the civilian population be deliberately subjected to living conditions that could lead to its destruction or a part thereof, within the context of a *systematic or generalised* attack.

In the Elements of Crimes, the conduct encompasses the following elements i) that the perpetrator has killed one or more people; ii) that the conduct has consisted or partially consisted of killing members of the civilian population; iii) that it has been committed as part of a systematised or generalised attack against the civilian population; iv) that the perpetrator knows that the conduct was part of a generalised or systematic attack directed against a civilian population or had the intention of the conduct being part of an attack of this type.

¹⁹⁸ See Kunarac (Trial Chamber Judgment) paragraph 1097 (internal notes omitted).



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It is important to note that assassination, murder or the perpetration of an act that is part of the killing of members of the civilian population includes imposing living conditions intended to cause the destruction of part of the population. As an example of this type of conduct, the Statute mentions deprivation of access to food or medication which, as indicated in the description of the facts in this Communication, has been imposed on Brazilians in general by President Jair Bolsonaro, with particularly devastating effects on the indigenous peoples.

In the Seromba case,¹⁹⁹ the Appeal Chamber of the International Criminal Tribunal for Rwanda has thus understood that, for the crime of extermination, crimes against humanity through extermination are “[...] in the jurisprudence of both *ad hoc* Tribunals, the necessary *actus reus* underlying the crime of extermination consists of any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals. Therefore, as the Appeals Chamber has previously considered in the Ndindabahizi Appeal Judgement, for the *actus reus* of extermination to be fulfilled, it is sufficient that the accused participated in measures indirectly causing death” (internal notes omitted). According to the International Criminal Tribunal for Rwanda, the jurisprudence of the *ad hoc* Tribunals has thus understood that, for the crime of extermination, crimes against humanity through extermination are configured when acts, omissions or the combination of acts and omissions contribute directly or indirectly to the intentional death of a large number of individuals.

With regard to the crime of persecution, the ICC Statute establishes that “persecution means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity” (Article 7.2.g). These motivations for persecutory conducts include the ethnicity of the persecuted group, as is the case with the indigenous peoples.

¹⁹⁹ See Seromba (Appeal Chamber judgement), paragraph 189.



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The Elements of Crimes establish that persecution is configured as a crime against humanity if: i) the perpetrator deprived one or more persons of their fundamental rights, breaching international law; ii) the perpetrator directed such conduct towards such person or persons due to the identity of a group or collectivity, or against the group or collectivity as such; iii) if the conduct was directed against such persons for political, racial, national, ethnic, cultural, religious or gender-related reasons, according to the definition set forth in Paragraph 3 of article 7 of the ICC Statute, both for motives universally acknowledged as unacceptable under international law; iv) if the conduct was committed in relation to any act mentioned in article 7, Paragraph 1 of that Statute, or any crime falling within the sphere of competence of the Tribunal.

In addition to these Elements, and as occurs for all types of conduct described in Article 7 of the Statute, it is necessary that the conduct had been committed as part of a systematic or generalised direct attack against the civilian population, and that the perpetrator knows that the conduct was part of a generalised or systematic attack directed against a civilian population, that such person had the intention that the conduct should be part of an attack of this type.

In a decision handed down on the Popovic case,²⁰⁰ the Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia established that there was no need for the deprivation to be perpetrated through acts or omissions criminalised by international law. For the crime of persecution, the use of derogatory language towards a particular group may even be a relevant aspect of the behaviour of the accused, for determining the discriminatory intent thereof, regardless of whether such use is recurrent in the context meaning whether it is shared. In the words of the Tribunal, “[t]he Appeals Chamber observes that when considering whether an accused has the required intent for the crime of persecution, trial chambers are allowed to consider “the general attitude of the alleged perpetrator as demonstrated by his behaviour”. The use of derogatory

²⁰⁰ See Popovic (Appeal Chamber Judgment), paragraph 713.



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language in relation to a particular group – even where such usage is commonplace – is one aspect of an accused’s behaviour that may be taken into account, together with other evidence, to determine the existence of discriminatory intent” (Internal notes omitted). Also, “[t]he Appeals Chamber reiterates that persecution as a crime against humanity does not require that the underlying acts are crimes under international law. A trial chamber does not need to establish the elements of the underlying acts, including the *mens rea*, even when the underlying act also constitutes a crime under international law.”²⁰¹

Finally, line k) addresses the possibility that a crime against humanity may be configured through the “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”. This is a type of residual clause that keeps the International Criminal Court *pari passu* with the circumstances under which International Criminal Law will be applied, having the Statute as reference, and without having to legislate. Its interpretation must be conservative and may not acritically extend the scope of crimes against humanity.²⁰² The parameter for the interpretation and application of the International Criminal Law by the Tribunal under these circumstances is the similarity *not foreseen* in the Statute and one of the acts typified in Article 7.

The Elements of Crimes explain that a crime against humanity through other inhumane acts is configured when, in addition to the Elements common to the other types, the perpetrator inflicts severe suffering or mental or physical harm or severe damage to health through an inhumane act, and when such act is of a nature similar to any other act addressed in the Article. In a note, the Element specifies that the similarities established as a function of gravity, which, as understood by the Pre-Trial Chamber of the ICC in the

²⁰¹ See Popovic (Appeal Chamber Judgment), paragraph 738.

²⁰² See ICC, Kenyatta (Decision on the Confirmation of Charges), paragraph 269. .



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Ongwen case, makes the establishment of a crime against humanity through another inhumane act an issue of fact as much as a matter of law.²⁰³

b. Subjective elements

As mentioned above, in order to configure crimes against humanity, the following subjective elements are required, in addition to the contextual element and the act(s) of the defendant: i) the intent of the typical conduct; and ii) knowledge of the systematic generalised attack against a civilian population. The intent of the typical conduct encompasses (a) the awareness that by acting in a certain manner or failing to act, a specific outcome is obtained; and (b) the wish to obtain this outcome for the awareness that this will be the outcome, should everything happen normally.

With regard to the first subjective element, it is necessary that the perpetrator be aware of the nexus between his conduct and the systematic or generalised attack against a civilian population. In the Tadic case, the International Criminal Tribunal for the former Yugoslavia understood that the perpetrator of the crime must be aware that there is an attack underway against a civilian population, and that his act is part of this attack. In the Blaskic case, this same Tribunal adopted a milder interpretation of the subjective element by understanding that, in order to configure the crime, it is sufficient for the risk of such act to be part of an attack, and with this risk being accepted by the perpetrator.

In turn, the Elements of Crimes of the ICC explained that the last two Elements of the Head Paragraph of Article 7 – that the act must be committed as part of a generalised or systematic attack addressed against the civilian population, and that is undertaken with knowledge of the attack – “clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all

²⁰³ See ICC, Ongwen (Pre-Trial Chamber Judgment), paragraph 88.



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characteristics of the attack or the precise details of the plan or policy of the State or organisation. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.”

Aligned with the Elements of Crimes, the Trial Chamber of the ICC decided in the Katanga case, for example that on the one hand, there is a crime against humanity only if the perpetrator is aware of such participation in an attack against a civilian population and, on the other hand, that “this stipulation should not be interpreted as a requirement of proof that the perpetrator had knowledge of all of the characteristics of the attack or the precise details of the plan or policy of the State or organisation. Nor is it required that the perpetrator of the act subscribed to the State or the organisation’s criminal design, any more than it must be shown that the perpetrator deliberately intended his or her act to form part of the attack against the civilian population, even though the Elements of Crimes mention this scenario. The perpetrator’s motive is hence irrelevant to such proof and for his or her act to be characterised as a crime against humanity, it suffices to establish, in view of the context, knowledge of the particular fact that his or her act formed part of the attack.” (internal notes omitted).

With this interpretation, the Trial Chamber specified that, in addition to the Elements of Crimes that steer the ICC practice, there is no need for the perpetrator to agree with all consent to the policy of the State or organisation. It affirms that his or her motivation is irrelevant for the configuration of the crime, with all that is necessary to do so is for the perpetrator to be aware that their act is part of an attack against a specific civilian population.

In a Dissenting Opinion in the Gbagbo case, Judge Herrera Carbuccia proposes that, when a hierarchical superior is involved, knowledge is ascertained when there are



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sufficient elements to know that his or her subordinates committed a crime and even so took no action to detain them.²⁰⁴

With regard to the crime of persecution, this is perpetrated against a specific social group and, according to the *Ad hoc* Tribunals and the ICC, this requires discriminatory intent, as mentioned in some paragraphs above. Regarding this intent, the Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia decision on the Popovic case ruled²⁰⁵ that “[...] all that is required is establishing that the underlying act was deliberately carried out with discriminatory intent.”

Also according to the Elements of Crimes, it is necessary that the group(s) should be attacked for political, racial, national, ethnic, cultural, religious, gender-related or some other reason universally acknowledged under international law. In terms of the Statute, it is necessary that the “intentional privation and severe violation of fundamental rights in violation of international rights” must be motivated by “the identity of the group or the collectivity in question”; but with no intention of destroying all or part of this group.

5.2.2. Crimes against humanity in the context of attacks against the indigenous peoples of Brazil

The fundamental Rights of the Indigenous Peoples are established in the United Nations Declaration on the Rights of indigenous peoples (2007), which together with the Brazilian Constitution, scale the actions of the Articulation of the Indigenous peoples of Brazil (APIB). Noteworthy among them are: i) the right to not being culturally assimilated or ethnically destroyed (Article 8);²⁰⁶ ii) the right to decide on the terms of their own

²⁰⁴ See ICC, Laurent Gbagbo and Charles Blé Goudé, Dissenting Opinion of Judge Herrera Carbuca, ICC-02/11-01/15-1263-AnxC-Red, paragraph 514.

²⁰⁵ See Popovic (Appeal Chamber Judgment), paragraph 738.

²⁰⁶ United Nations Declaration on the Rights of Indigenous Peoples. Article 8. 1 Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. States shall provide effective mechanisms for prevention of, and redress for: Any action which has the aim or effect of depriving them of their integrity as distinct peoples, as well as their cultural values or ethnic identities; Any action which has the aim or effect of dispossessing them of their lands,



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development (Article 23);²⁰⁷ iii) the right to the lands, with the State having a duty of protection (Article 26);²⁰⁸ iv) the right to uphold their sacred relationships with the lands and waters where they live (Article 25).²⁰⁹

It is known that the Declaration, being a legal international milestone, describes common aspects in the ways of living of many indigenous peoples. It lists the elements on which the lives of indigenous people depend in material and social terms, within the political framework of the Nation State. As is clear from the facts described at the start of this Communication, one of these elements consists of the land and everything on it, including water and non-human types of existence. Their lands are fundamental for the existence of indigenous *per se*; it is from their land that the indigenous peoples draw their livelihood through farming, hunting and fishing; as they are mediators of individual and collective lives; and because their outcomes are important for the relationships among different tribes or ethnicities, through rituals, for example.

By ensuring the right of peoples to select how they develop, if and how to join national development projects and processes and enshrine the intrinsic nature of the relationship between indigenous life and grounds, the Declaration repudiates assimilation as a structuring factor for the policies of national States. Societies claiming to be democratic confer on themselves to the same obligations under constitutional and

territories or resources; Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; Any form of forced assimilation or integration; Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

²⁰⁷ United Nations Declaration on the Rights of Indigenous Peoples. Article 23. Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

²⁰⁸ United Nations Declaration on the Rights of Indigenous Peoples. 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. 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. 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.

²⁰⁹ United Nations Declaration on the Rights of Indigenous Peoples. Article 25. Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.



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international law, related to plurality and including ethnic multiplicity. Brazilian society conferred obligations of this type on itself, not only by drawing up a constitution grounded on pluralism, but also by accepting obligations under international law and submitting to international jurisdictions – with the potential to assign criminal liability to individuals who are their citizens, including the ICC – and by validating the gradual construction of an institutional architecture designed to curtail any overstepping on indigenous societies by the Brazilian State or private individuals.

The demarcation of indigenous lands and conservation units is a way found by the indigenous peoples and the Brazilian State to rein in what is a colonial dynamic, for all purposes. Within this context, the destruction of public infrastructure underpinning indigenous, social and environmental rights by President Jair Bolsonaro as described in this Communication, constitute a removal of barriers under the aegis of an anti-indigenous policy. In order to implement his anti-indigenous policy, it is necessary that native Brazilians be assimilated or eliminated.

The Brazilian President has acted in different ways to assimilate and eliminate indigenous peoples and individuals. On the one hand, he is encouraging loggers, wildcat miners and land-grabbers of all kinds to trespass on indigenous lands which, as indicated by the facts, has led to an exponential upsurge in clashes between indigenous and non-indigenous individuals, within a context of deliberate omission by control institutions, and the dismantling of the institutional architecture set up to protect the indigenous peoples. This situation leads to the death of Native Brazilians belonging to different ethnicities, as described in this Communication, during skirmishes with non-indigenous trespasses against whom they are defending their lands.

Next, because these lands are vital for the production and reproduction of indigenous life of the individual and collective levels, encouragement and support for raids and trespassing by economic agents engaged in extractivist activities using environmentally-destructive techniques, also imply the subjection of the indigenous



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peoples to conditions that will cause their destruction. If their lands are a type of material support for indigenous ethnicity, encouraging and urging raids and trespassing on indigenous lands may – together with the non-demarcation policy pursued by President Jair Bolsonaro – destroy them, constituting the crime of extermination, in the meaning set forth in the Statute. On a third front of action, the President is adopting a policy that is openly committed to not demarcating indigenous lands. This policy constitutes a breach of the fundamental Rights of the Indigenous Peoples, motivated by their indigenous status, which constitutes a crime of persecution against humanity, in the meaning set forth in the Court Statute.

The facts narrated in this Communication show that the head of the Brazilian State has issued reiterated declarations against the indigenous peoples of Brazil, ever since his election. When portraying the indigenous peoples to Brazilian society, he usually presents them as backward, due either to their own choices, or because they have been trapped in backwardness, held hostage by the State policies of previous Administrations, environmentalists and other defenders of human rights. He also portrays them as shiftless holders of huge tracts of land that they do not farm or ranch, and which should thus be exploited for the greater benefit – according to him – of Brazilian society.

He has thus built up a discourse portraying the indigenous peoples as parasites living off their fellow citizens: in the Brazil portrayed by its President, the indigenous peoples are not workers and, although forming only a small part of the Brazilian population in figures, they hold large and wealthy tracts of the nation's land. In brief, the ways of life are surviving to the detriment of the Brazilian people. In this concept of the Brazilian people²¹⁰ constructed and underscored by the nationalist and populist Administration of President Jair Bolsonaro, Native Brazilians should cease to be indigenous peoples.

²¹⁰ See Note 44



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It is important to stress that this discourse has been uttered repeatedly by the Brazilian Presidency. These speeches mobilise the nation's imagination to construct indigenous ways of existence as harmful to the nation, conveying a Presidential willingness to organise groups that have long been clashing with indigenous peoples over their lands, to i) protect acts breaching the law; ii) disguise these acts – such as raids and trespassing by loggers, land-grabbers and wildcat miners on lands that have even been demarcated – is acceptable behaviour; ii) allied to material steps destroying public infrastructure setup to protect indigenous, social and environmental rights, this discourse is causing severe material consequences.

One of them is that, with the ongoing breakdown of institutional architecture designed for monitoring and inspection purposes, subverting the functions of FUNAI and omission on the part of the Government, the indigenous peoples have been risking their own lives to defend their lands. This is the direct report from the Munduruku indigenous people: wildcat miners, trespassers and raiders are attacking communities and indigenous lands, encouraged by the policies and discourse of the Bolsonaro Administration, with no steps being taken to suppress these attacks, even when orders to do so are issued by the Courts.

The Presidential policy for the indigenous peoples is precisely this: stirring up conflicts, persecution and destruction

So strongly does this constitute a policy – meaning the attacks perpetrated systematically against indigenous peoples – that the President has the Armed Forces, under his command, with the nation's intelligence services and indigenist policy under his responsibility, but has not deployed them to protect the indigenous peoples. As an example, recent reports (May 2021) coming directly from the Munduruku people and other communities living on the Yanomami indigenous lands, mentioned that the Armed Forces are not obeying orders handed down by the highest Court in Brazil, requiring protection for indigenous peoples who are being threatened and attacked by wildcat



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miners.²¹¹ To the contrary, when he brought indigenist entities into action during the pandemic, the President actually encouraged the infection of indigenous persons by COVID-19, particularly for isolated peoples, by forcing contact on them.

As explained in the Communication already under analysis by the Office of the Prosecutor of the Court, the crimes of persecution and extermination have been perpetrated against the bodies of Native Brazilians since 2019, before the COVID-19 pandemic began to spread nationwide. However, as the matters presented by the Articulation of the Indigenous peoples of Brazil (APIB) to the Office of the Prosecutor clearly indicate, the pandemic represented an opportunity for the Brazilian President to forge ahead with his anti-indigenous policy.

It was widely known in Brazil, and President Jair Bolsonaro was particularly aware that COVID-19 was a severe public health problem and a lethal disease among Native Brazilians. The APIB has been striving to keep him informed through all possible means. Knowing the lethality of the disease and its specific effects on the indigenous peoples, the President nevertheless failed to shield these peoples from his policy of pursuing natural collective immunity (herd immunity) that he implemented in Brazilian society. To the contrary. He encouraged and supported contacts between Native-Brazilians and non-indigenous individuals, aware of the outcomes of his practices in Brazilian society in general, and on the indigenous peoples in particular. It is thus not surprising that depriving the indigenous peoples of access to medications and the means to ensure that they did not come into contact with non-indigenous individuals as imposed by the President – disobeying decisions handed down by the Federal Supreme Court addressed to the Federal Executive Branch – to the outcome that he was well aware would occur, and that he had ample means of learning about in advance: the higher lethality rate of COVID-19 among indigenous people, compared to other groups of the Brazilian population.

²¹¹ See Items 4.3.3 and 4.3.4 of this Communication.



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6. GRAVITY

This Communication presents facts related to the status of the indigenous peoples of Brazil and is added to the previous Communication that is already under analysis at the Office of the Prosecutor, under Reference N° OTP-CR-537/19 – Human Rights Advocacy Collective (CADHu) and the Arms Commission.

The facts of this Communication – similar to the others – describes the creation and implementation of an anti-indigenous policy by President Jair Bolsonaro, that encouraged the destruction of public infrastructure underpinning indigenous, social and environmental rights, either directly or using the government structure that developed it (Brazilian Government). The anti-indigenous policy of President Jair Bolsonaro is part of a populist and nationalistic project pursuing the destruction of the indigenous peoples or their disappearance.

This policy has been implemented since the first day on which President Jair Bolsonaro took office on January 1, 2019, and has produced real, material effects since then. This Communication provides information on how the destruction of public infrastructure underpinning indigenous, social and environmental rights triggered waves of incursions and trespassing, deforestation, wildcat mining and industrial mining on indigenous lands. It also prompted a report on how the COVID-19 pandemic has been wielded by this anti-indigenous policy in support of the project seeking to destroy the indigenous peoples or pursuing their disappearance, through a policy of deliberately spreading the virus in Brazilian society, and particularly among the indigenous population.

The indigenous peoples have thus been subjected to an explicit, systematic and intentional anti-indigenous policy since January 1, 2019, leading to assassinations and murders of their leaders, poisoning by mercury and other ores, COVID-19, disease and suffering.



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The Articulation of the Indigenous Peoples of Brazil (APIB) claims that the indigenous peoples of Brazil are the victims of genocide, as well as persecution, extermination and other crimes against humanity perpetrated by President Jair Bolsonaro, calling for attention from this Office of the Prosecutor and the International Criminal Court.

As mentioned above, the indigenous peoples of Brazil constitute a population of approximately 820,000 individuals, grouped into 305 indigenous people speaking 274 indigenous languages. Scattered all over Brazil, they live in both urban and rural settings, on indigenous lands that have already been acknowledged or are being claimed for recognition. Due to the characteristics of the indigenous peoples, whose population is relatively small compared to the Brazilian population as a whole, even a small number of victims may mean their destruction or extermination, particularly when we consider Native Brazilians within their respective ethnicities.

The scale of this anti-indigenous policy encompasses all indigenous peoples within Brazil, although this Communication has gathered together data on only isolated or recently-contacted peoples: the Munduruku and others living on the Yanomami indigenous land, the Guarani-Mbya and Kaingang, the Guarani-Kaiowá, Tikuna, Guajajara and Terena. The information presented in this Communication on the status of the indigenous peoples of Brazil may give rise to one or more potential cases for investigation.

The nature of the criminal conducts described in this Communication is that assigned to the most serious crimes that can be committed, over which the International Criminal Court has jurisdiction: i) the deliberate full or partial destruction of the indigenous peoples of Brazil, through committing severe offences against their physical and mental integrity, and deliberately subjecting them to living conditions that lead to their physical or biological destruction; ii) the extermination persecution of indigenous peoples through generalised and systematic attacks against Native Brazilians, as well as imposing



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countless other acts typified respectively as genocide and crimes against humanity by the Rome Statute.

These acts are committed under an anti-indigenous policy created and implemented by President Jair Bolsonaro, either directly or through the use of government machinery, including massive systematic destruction of the environment and the elements that are essential for the survival of the indigenous peoples. Moreover, the manner in which these acts are committed discloses aggravating circumstances: the acts ascribed to the highest public authority in Brazil – the president of the Federative Republic of Brazil, President Jair Bolsonaro, with the crimes having been committed and are still being committed at this moment.²¹²

The scale, nature and manner in which these crimes against indigenous peoples are being committed indicate a level of gravity that is sufficient to prompt an investigation, through a preliminary analysis of admissibility, under the Rome Statute.

7. JURISDICTION AND COMPETENCE:

The facts set forth in this Communication comply with the requirements listed in the Rome Statute, and fall within the scope of the jurisdiction held by the International Criminal Court.

Similarly, the following requirements are complied with: i) timeliness, which requires that the reported criminal facts occurred after the entry into force of the Rome Statute (July 1, 2002; ii) territoriality or individuality, implying that the crime was or is being committed in the territory or by a citizen of a State Party; and iii) materiality, determining that the matter addressed by the Communication is pertinent to the International Criminal Court, as will be demonstrated below:

²¹² Prosecutor v. Bahar Idriss Abu Garda, “Decision on the Confirmation of Charges”, February 8, 2010, ICC-02/05-02/09-243-red paragraph 62-188.



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a) Jurisdiction *ratione temporis*:

Article 11 – Jurisdiction *ratione temporis*

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

With regard to the jurisdiction *ratione temporis* established by Article 11.1 of the Rome Statute, the International Criminal Court is competent to judge crimes that occurred after its entry into force in 2002. The communication presents criminal facts committed and being committed by President Jair Bolsonaro in Brazil between January 2019 and April 2021, continuing through to the present day.

Article 5, §4 of the Constitution of the Federative Republic of Brazil clearly establishes that “Brazil submits to the jurisdiction of the International Criminal Court, for the creation of which it has expressed adhesion”. Brazil was the 69th State to ratify the Rome Statute, filing its deed of ratification on June 14, 2002. On the domestic side, the Rome Statute was promulgated on September 25, 2002, through Decree N° 4.388.

This Communication thus complies with the criteria set forth in Article 11.1 of the Rome Statute which refers to the jurisdiction *ratione temporis* for the activities of the International Criminal Court.

b) Personal and/or territorial competence:

Article 12. Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in Article 5.
2. [...] the Court may exercise its jurisdiction if one or more of the States Parties are [...]:
 - (b) The State of which the person accused of the crime is a national.

Pursuant to Articles 12.1 and 12.2.c of the Rome Statute, the International Criminal Court shall have competence *ratione loci* if the criminal facts have been



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committed within the territory of a Party State, and *ratione personae* if the facts ascribe criminal practices to a citizen of a Party State of the Rome Statute.

The facts narrated in this Communication were perpetrated throughout Brazil, in different regions of Brazil, and ascribed criminal practices to a Brazilian-born citizen. President Jair Bolsonaro, complying with the requirements of territorial and personal competence set forth in Article 12 of the Rome Statute.

c) Material competence:

Article 13. Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Grounded on Article 15 of the Rome Statute, this Communication relates facts that theoretically characterise the perpetration of crimes like genocide and crimes against humanity as set forth in Articles 5, 6 and 7 of the Rome Statute.

This matter thus complies with the *ratione materiae* requirements for examination by this International Criminal Court, as set forth in Chapters 4 and 5 of this Communication.

Furthermore, the facts narrated on this occasion together with others conveyed by the Human Rights Advocacy Collective (CADHu) and the Arms Commission which are under analysis by the Court, ²¹³ as well as by indigenous leader Raoni, all address a situation consisting of attacks on the indigenous peoples of Brazil, for which the crimes of committing and perpetuating the committing of crimes of incitement to genocide, genocide and other crimes against humanity, against indigenous people of Brazil, firming

²¹³ OTP-CR-537/19



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the grounds for ascribing the commitment and perpetuation perpetrated by President Jair Bolsonaro.

8. COMPLEMENTARITY: NECESSARY AMBIT OF INTERNATIONAL CRIMINAL COURT JURISDICTION

This Communication refers to a crisis situation in Brazil, where crimes have been and are still being committed against the indigenous peoples by President Jair Bolsonaro. The facts describe the measures adopted by President Jair Bolsonaro, either directly, or indirectly through his subordinates since the first day on which he took office as the President of Brazil on January 1, through to April 2021, the date on which this Communication was written.

The timeline of the facts provides a detailed description of acts under the anti-indigenous policy adopted by President Jair Bolsonaro, which has been implemented in a systematic and intentional manner since his first day in office as President of Brazil. The anti-indigenous policy of President Jair Bolsonaro destroyed public policies and entities set up to protect indigenous, social and environmental rights; attacked indigenous lands through either weakening legal protections or encouraging raids and trespassing on indigenous lands by outsiders; failed to provide healthcare for the indigenous peoples, promoting and tolerating the contamination of the indigenous peoples (by mercury in the case of the Munduruku people) or COVID-19 infections, for the Yanomami people and isolated or recently-contacted peoples.

The reported facts describe a generalised and systematic attack against the indigenous peoples (Article 7.1; 7.2.a of the Rome Statute) promoted by President Jair Bolsonaro, with a clear intention of extermination of the indigenous peoples, meaning the “intentional infliction of conditions of life, *inter alia* the deprivation of access to food and



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medicine, calculated to bring about the destruction of part of a population;” (Articles 7.1.b and 7.2.b of the Rome Statute).

Through his anti-indigenous policy, President Jair Bolsonaro is promoting “Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender”, depriving the indigenous peoples of their fundamental rights, in a severe and intentional manner (Article 7.1.h; 7.2.g of the Rome Statute). The consequences of the anti-indigenous policy promoted and implemented by President Jair Bolsonaro, who is “intentionally causing great suffering, or serious injury to body or to mental or physical health” (Article 7.1.k of the Rome Statute).

Moreover, by promoting the destruction of the territorial right of the indigenous peoples, through either inciting raids or trespassing activities on their land, or widespread environmental destruction, President Jair Bolsonaro is deliberately trying to destroy all or part of the indigenous peoples *per se* (Article 6.1 of the Rome Statute): as peoples with their own cultural identities and unique ways of life are dependent on and bound to their lands. When torn away from their original ancestral homes, the indigenous peoples become subject to living conditions that lead to their destruction and end their existence as peoples. The isolated or recently-contacted indigenous peoples, the attacks on their land and massive environmental devastation are forms of physical destruction (Article 6.1.c of the Rome Statute). This Communication presents reports of severe offenses against the physical and mental integrity of the indigenous peoples: assassinated indigenous leaders, sick and infected Native Brazilians, and indigenous children dying as a result of deliberately withholding care (Article 6.1. b and c of the Rome Statute).

The facts of this Communication prove that President Jair Messias Bolsonaro has engaged in these acts by taking advantage of his position as the Brazilian President, either directly or through provisional measures and decrees, or indirectly through his subordinate ministers in order to, i) destroy public policies and entities set up to protect indigenous, social and environmental rights, while attacking the integrity of indigenous



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lands, to either weakening legal protection for these lands, or encouraging raids and trespassing on indigenous lands by outsiders; ii) failing to provide healthcare for indigenous people, promoting and tolerating their poisoning and infection; iii) encouraging violence, suffering and death among indigenous peoples; iv) actively pursuing the disappearance of the indigenous peoples, through implementing a nationalistic and populist project of a nation that does not tolerate diversity.

The absence of investigations underway examining the liabilities of President Jair Bolsonaro for such events and the political slant that President Jair Bolsonaro has given to the procedures investigating other matters that have been instated, comply with the requirements of complementarity of jurisdiction established by this International Criminal Court.

a) Absence of investigation by the Brazilian Justice System or other States-Parties – 17.1.a and c.

Article 17 – Issues of admissibility

1. 1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, paragraph 3;

There is no investigation or criminal procedure filed by the Brazilian Justice System against President Jair Bolsonaro for the crimes against humanity and genocide reported in this Communication.

Similarly, there are no criminal investigations filed by any other jurisdiction that is a signatory of this Corte, against the Brazil's President Jair Messias Bolsonaro for crimes against humanity or genocide.



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Thus, the rule establishing non-acceptability for *ne bis in idem* requirement is not applicable, as set forth in Article 17.1.a and c of the Rome Statute.

There is a request²¹⁴ to open an investigation against President Jair Bolsonaro for genocide, prompted by the veto issued by President Jair Bolsonaro on legal provisions addressing universal access to drinking water for Native Brazilians.²¹⁵ This consists of information of a crime,²¹⁶ a petition drawn up by a Brazilian citizen. Under the ordinary rules, the petition was forwarded to the Federal Prosecutor-General, who ordered it shelved, on the understanding that the petition did not address any criminal practice.²¹⁷ The citizen appealed against this shelving and the appeal was denied by a judge in the Brazilian Constitutional Court.²¹⁸ A further appeal has been lodged that has not been replied as yet.

For the purpose of determining complementarity, the term investigation – as defined by the Appeal Chamber of the ICC – must be directed to the same person indicated as the perpetrator of a crime against humanity and the same facts ascribed thereto, identifying such person as a suspect and taking direct steps to examine their responsibility, such as witnesses and other evidence. It is stressed that the mere

²¹⁴ Petition Nº 9,020, Federal Supreme Court.

²¹⁵ Presidential Message of Veto Nº 378, dated July 7, 2020, which vetoes provisions on Draft Bill Nº 1,142/2020 that preceded the above-mentioned Law Nº 14,021/2020, including the Directive requiring universal access to drinking water.

²¹⁶ Any citizen may report the perpetration of crimes to the authorities. However, this does not mean that an investigation will be undertaken, as this may occur – for the hypothesis of crimes committed by the President of Brazil – through the Federal Prosecutor-General.

²¹⁷ According to the Federal Prosecutor-General: “the entire legislative purpose that creates or alters mandatory expenditures must be accompanied by an estimate of the impact thereof in budgetary and financial terms. However, what the person in question [the President of Brazil] has done, was to comply with his duty of partially vetoing a Draft Bill with an unconstitutional provision. There is thus no way of concluding that the President of Brazil, when issuing the veto within his power, duly grounded on a constitutional provision, was prompted by specific malice to commit the crime of genocide, reflected in the intention of exterminating human group(s). There is no circumstance that leads to this unparalleled. conclusion” (Petition 9,020, Federal Supreme Court).

²¹⁸ Petition 9,020, Federal Supreme Court, decision handed down by Justice Cármen Lúcia, on November 5, 2020: “The decision to shelve reached by the Federal Prosecutor-General presents the judgment on the non-feasibility of the criminal prosecution of a person who legitimately and exclusively holds the *opinio delicti* on whether or not it is possible, or not, to find grounds for such prosecution in Court. For the matter under consideration, a decision to shelve must be accepted. According to the Federal Prosecutor-General, there is not the slightest demonstration of the typicality of genocidal conduct. For the Federal Prosecutor-General, this type of crime would require the intention to exterminate a specific human group, which in this case lacks any circumstantial evidence or likelihood of the allegations of the petitioner”.



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preparation of an investigation of other suspects is not sufficient reason to annul the jurisdiction of the International Criminal Court. For admissibility to be dismissed, the State must provide tangible evidence that disclosing the existence of investigations at a sufficient specific level.²¹⁹

This unusual and random questioning of the Brazilian Justice System is unable to hamper the acknowledgement of the complementarity of action by the International Criminal Court, due to either not representing an investigation underway, or because it refers to a single fact that does not correspond to the facts and crimes ascribed²²⁰ to President Jair Bolsonaro in this Communication, and thus, without exhausting any potential cases brought to the knowledge of the Office of the Prosecutor in the situation regarding the indigenous peoples of Brazil.²²¹

b) The Brazilian Justice System lacks the conditions needed to undertake an effective investigation into the acts of President Jair Messias Bolsonaro – 17.1.b and 17.2.a and c and 17.3.

Article 17 Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

²¹⁹ Prosecutor's Office v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", ICC-01 / 09-01 / 11-307 OA, August 30, 2011, paragraph 41.

²²⁰ Prosecutor's Office v. William Samoei Ruto, Henry Kiprono Kosgey e Joshua Arap Sang, "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", ICC-01 / 09-01 / 11-307 OA, August 30, 2011, paragraph 40.

²²¹ Situation in the Republic of Kenya, "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, March 31, 2010, ICC-01/09-19, paragraph 48.



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2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognised by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Although it may seem precipitate ²²² – in view of the absence of investigations underway, such as in this case – to proceed with an examination of incapability or absence of the wish to act for the Brazilian Justice System, it is important to stress how the Brazilian Justice System has been tolerant of the crimes committed by President Jair Bolsonaro.

Initially, the Brazilian Justice System is not showing any eagerness to act with the necessary independence needed to investigate, try and sentence President Jair Bolsonaro, due to improper interference in these entities encouraged by the President of Brazil, particularly at the investigation levels.

The Federal Police – which is the entity in charge of engaging in investigations – is under the direct influence of President Jair Bolsonaro. In addition to episodes of intervening in the Federal Police to protect his sons ²²³ – who were accused by the press

²²² Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, “Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber I of 12 June 2009 on the Admissibility of the Case”, September 25, 2009, ICC-01/04-01/07-1497, paragraph 79.

²²³ The National Association of Federal Police Inspectors published a public letter (known as the Salvador Letter) alleging attempt to interfere in the work. The full text of the Salvador Letter issued by the National Association of Federal Police Inspectors, was consulted on August 31, 2019, and is available at: <https://adpf.org.br/v2/wp-content/uploads/2019/08/carta-de-Salvador-converted.pdf>.



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of engaging in unlawful acts – the Brazilian president recently removed the Federal Police Superintendent from his position in Amazonas State, in retaliation, lashing back against a criminal accusation of setting up an illegal organisation and favouritism to the benefit of loggers ²²⁴ laid against his Environment Minister Ricardo Salles, ²²⁵ who resigned a few months later. This political interference in institutions is an accurate example of the absence of the wish to act or the like of independence of the Brazilian Justice System for the purposes of admissibility:

“Independence in the proceedings at hand may be assessed in light of such indicators as, inter alia, the alleged involvement of the State apparatus, including those department responsible for law and order, in the commission of the alleged crimes; the constitutional role and powers vested in the different institutions of the criminal justice system; the extent to which appointment and dismissal of investigators, prosecutors and judges affect due process in the case; the application of a regime of immunity and jurisdictional privileges for alleged perpetrators belonging to governmental institutions; political interference in the investigation, prosecution or trial; recourse to extra-judicial bodies; and corruption of investigators, prosecutors and judges.” ²²⁶

In addition to the Federal Police, the independence of the accusation entity is also undermined. The Federal Prosecutor’s Office is headed by the Federal Prosecutor-General (Articles 127 and 128, §1), which is endowed with specific competence to undertake investigations and file criminal lawsuits with the Federal Supreme Court against the Brazilian President. However, the Federal Prosecutor-General is appointed by the Brazilian President (Article 84, XIV) ²²⁷. This Federal Prosecutor-General has not undertaken investigations of the criminal facts reported here.

Indeed, the only Police Inquiry open to investigate the acts of Brazilian President Jair Bolsonaro addresses his interference in the General Management of the Federal

²²⁴ Petition 9595, Federal Supreme Court.

²²⁵ The removal of the Federal Police Superintendent in retaliation for the accusations raised against Environment Minister Ricardo Salles was widely headlined in the Brazilian press. See: <https://www.correiobraziliense.com.br/politica/2021/04/4918582-acusacao-contra-salles-provoca-demissao-na-pf-no-amazonas.html>

²²⁶ Policy Paper on Preliminary Examinations, ICC-OTP, November 2013, paragraph 53.

²²⁷ Brazilian Constitution, 1988. Article 84. The President of the Republic has the exclusive powers to: XIV – appoint, after approval by the Federal Senate, the Justices of the Federal Supreme Court and Higher Courts, the Governors of the Territories, the Prosecutor-General of the Republic, the President and Officers of the Central Bank and other civil servants, as defined by law;



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Police, in order to protect his sons, with the whistle blown on this episode by the Minister of Justice at that time, Sérgio Moro. Although underway since April 2020, more than a year has passed, with no conclusion.²²⁸ These facts demonstrate the absence of impartiality for the Brazilian Justice System, when addressing the issue, in terms of this Office of the Prosecutor:

“Impartiality in the proceedings at hand may be assessed in light of such indicators as, inter alia, connections between the suspected perpetrators and the competent authorities responsible for investigation, prosecution or adjudication of the crimes as well as public statements, awards, sanctions, promotions or demotions, deployments, dismissals or reprisals in relation to investigative, prosecutorial or judicial personnel concerned.²²⁹

Even a possible criminal complaint filed against a Brazilian President has slim chances of success, due to the set of immunities under criminal law conferred on the Brazilian President by the Constitution of the Federative Republic of Brazil in 1988. Article 86²³⁰ of the Brazilian Constitution subordinates the authority of the Federal Supreme Court – which is the judiciary tier endowed with jurisdiction to hear and pass sentence on common crimes committed by Brazilian Presidents (Article 102, I, b)²³¹ – to the political control of the Lower House, which can authorise a criminal investigation of a Brazilian President only through a two-thirds majority of its members. Furthermore, it offers full immunity against crimes committed but that are unrelated to Presidential functions (Article 86, §4).

²²⁸ Inquiry N° 4831, Federal Supreme Court.

²²⁹ Policy Paper on Preliminary Examinations, ICC-OTP, November 2013, paragraph 54.

²³⁰ Brazilian Constitution, 1988. Article 86. If two-thirds of the Chamber of Deputies accept an accusation against the President of the Republic, he shall be tried before the Supreme Federal Tribunal for common criminal offenses or before the Federal Senate for impeachable offenses. §1. The President shall be suspended from his duties: I. in common criminal offenses, if the accusation or criminal complaint is received by the Supreme Federal Tribunal; II. in impeachable offenses, after proceedings are instituted by the Federal Senate. §2. If, after a period of one hundred eighty days, the trial has not been concluded, the President's suspension shall end, without prejudice to normal progress of the proceedings. §3. The President of the Republic shall not be subject to arrest for common offenses until after a judgment of criminal conviction. §4. During his term of office, the President of the Republic may not be held liable for acts unrelated to the performance of his duties.

²³¹ Brazilian Constitution, Article 102. The Supreme Federal Tribunal has primary responsibility for safeguarding the Constitution, with the power: I. to try and to decide, as matters of original jurisdiction: b. charges of common criminal offenses filed against the President of the Republic, the Vice-President, members of the National Congress, the Tribunal's own Ministers, and the Prosecutor-General of the Republic.



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9. INTEREST OF THE INTERNATIONAL CRIMINAL COURT

For the purpose of initiating an investigation into the facts, under the supervision of the Office of the Prosecutor of the International Criminal Court, Article 53 of the Rome Statute requires that the gravity of the facts be taken into consideration, as well as the interests of the victims, compliant with the institutional mission of the International Criminal Court, directed towards the prevention of serious crimes against humanity and combating impunity.

Article 53

Initiation of an investigation

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:

- (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
- (b) the case is or would be admissible under Article 17; and
- (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

This Communication presents a set of acts, discourses and omissions that constitute the anti-indigenous policy of President Jair Bolsonaro.

The facts (item 4) present a timeline of the attacks perpetrated by President Jair Bolsonaro against the indigenous peoples, beginning with the destruction of public infrastructure (public policies and entities) providing protection for indigenous, social and environmental rights. Raiding and trespassing on indigenous lands, deforestation, wildcat mining and industrial mining on indigenous lands are the most direct consequences of the anti-indigenous policy, which is severely affecting the way of life of many indigenous peoples throughout Brazil. The COVID-19 pandemic has served as a tool for the anti-indigenous policy of the Administration headed by President Jair Bolsonaro in order to produce disease, death and suffering.



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Information is presented to this Office of the Prosecutor on Brazil's indigenous peoples: the Munduruku, living on Yanomami indigenous land, as well as the Guarani-Mbya and Kaingang, Guarani Kaiowá, Tikuna, Guajajara and Terena peoples, together with ample data on isolated or recently-contacted peoples and many other Native Brazilians who have been affected by the acts of the Administration headed by President Jair Bolsonaro. The impacts on indigenous peoples have been destructive: death, persecution, assassination, murder, contamination, poisoning and diseases are today part of the reality of the indigenous peoples of Brazil.

The APIB affirms: a policy of genocide against the indigenous peoples of Brazil is underway, together with the perpetration of different crimes against humanity. These are crimes that are being committed at this very moment.

The APIB has been strongly attacked by President Jair Bolsonaro, in retaliation for blowing the whistle and exposing his criminal acts to Brazilian society. On April 26, 2021, one of the APIB Executive Coordinators, Sônia Guajajara – who is an indigenous leader acknowledged internationally for her struggle to protect indigenous rights – was notified to attend a deposition with the Federal Police. The reason was a series of documentary videos (entitled *Maracá – Emergência Indígena*) produced by the APIB in 2020 on the indigenous emergency, with accusations of violations breaching the right to health of the indigenous peoples, by the Administration headed by President Jair Bolsonaro. On April 30, 2021, leader Almir Surui – who is a renowned defender of the rights of indigenous peoples and a joint signatory (with Chief Raoni) of a Notification forwarded to this Office of the Prosecutor – was also notified to issue a statement to the Federal Police.

Whistleblowing and revealing crimes against the indigenous peoples, particularly the genocide currently underway, has triggered retaliation by President Jair Bolsonaro, who is using the public apparatus of the Brazilian State to commit crimes and persecute his critics. When Brazilian influencer Felipe Neto and former Presidential candidate Guilherme Boulos publicly exposed the genocidal purposes and intentions of President



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Jair Bolsonaro, police enquiries were opened against them for crimes addressed in the National Security Act, which is a regulatory tool drawn up during Brazil's military dictatorship (1964 – 1985) and used at that time to persecute critics of this dictatorial regime. This context reflects a systematic violation of the fundamental right to freedom of expression, which is a cornerstone corollary of modern democracies.

The justification for bringing Sônia Guajajara in for questioning was the initiation of Police Inquiry N° 2020.0104862, which accuses the APIB of defaming the Brazilian Government and committing the crime of fraudulent larceny through its campaigns raising funds to deal with the harm caused to the indigenous peoples by COVID-19.

As this Police Inquiry is enveloped in a legal aspects, such as i) investigation without cause of behaviours not categorised as crimes; ii) withdrawal of the Office of the Prosecutor as the external watchdog overseeing law enforcement activities; and iii) the absence of threshold hearability criteria for the investigation into defamation and fraudulent larceny, in compliance with the American Convention on Human Rights, the Brazilian Constitution and Brazilian Law, the APIB filed a request for *habeas corpus* on behalf of Sônia Guajajara, requesting that the Police Inquiry be terminated. When hearing the request for *habeas corpus*, the judge issued the order and suspended the Police Inquiry immediately.

Similarly, Chief Almir Suruí was formally accused by FUNAI – an outstanding example of entities set up to protect indigenous rights be transformed into agencies persecuting Native Brazilians – as a result of his public criticisms of this entity and the Bolsonaro Administration, under the aegis of the Forest Peoples against COVID-19 campaign. Part of a strategy to subdue the pandemic, this mobilisation was urged in September 2020 by the Instituto Wãwã Ixoth Association and the Metareilá Association of the Suruí indigenous people, represented by Almir Suruí. In a note, he affirmed:

The stance adopted by the Brazilian Government and the President of FUNAI causes us deep sadness but does not surprise us. For a long time, FUNAI has no longer been an entity that defends, assists and protects indigenous peoples and their territories.



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FUNAI and the Bolsonaro Administration have been engaging in persecutions in order to impose constraints on indigenous leaders, undermining the legitimacy of our struggles and reaffirming their despicable and genocidal policy of environmental destruction and the extermination of our peoples. They are trying to silence our voices, but they are unable to do so. Our voices echo throughout the world. We remain standing and struggling against this genocidal government.²³²

Attempts of criminalisation have also targeted civil servants working at FUNAI who are opposed to this persecution of the indigenous peoples. During the operation straining the high-voltage power lines for the Tucuruí hydropower complex that run through the Waimiri Atroari indigenous lands, civil servants working at FUNAI who were opposed to this project being implemented without respecting the rights of indigenous peoples, have been accused by the FUNAI president of crimes constituting malfeasance²³³. In turn, indigenous leaders have been accused of opposing this project, as well as demanding bribes and seeking enrichment by claiming the need to consult the affected peoples, thus “hampering the development of the nation”.²³⁴

Presenting the indigenous peoples as enemies, in the particular view of a nation constructed by President Jair Bolsonaro (in addition to all the crimes reported here) has encouraged the political persecution of indigenous leaders.

We issue a warning to the International Criminal Court on the rising levels of authoritarianism underway in Brazil. The democratic context is at risk. In no Democratic and Republican State may the government apparatus be used arbitrarily, at the whim of its governors. Underpinned by constitutional and legal principles and buttressed by international conventions, freedom of thought and expression may not be criminalised. Civil society organisations are vital for Brazilian democracy, and the consolidation of

²³² Note from Almir Suruí, released to the Brazilian press: <https://revistaforum.com.br/politica/apib-entra-com-habeas-corporis-para-barrar-perseguiçao-da-funai-a-sonia-guajajara-e-almir-suruí/>

²³³ IPL Edict Nº 2021.0023945, Federal Police.

²³⁴ The report that the indigenous peoples are hampering the process of stringing the Tucuruí high-voltage powerline and thus delaying the progress of Brazil, was presented at a public hearing in the Lower House on April 21, 2021. Report available at: <https://agenciabrasil.ebc.com.br/economia/noticia/2021-04/obra-do-linhao-de-tucuruí-deve-começar-neste-ano-diz-diretor-da-aneel>



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human rights. The indigenous peoples remain vigilant, as they have always done throughout history. It is the duty of the Brazilian government to respect them, as a fundamental expression of a Constitutional State of Law.

The specific context of crimes against humanity committed in countries where democratisation is recent or still engaged in democratisation processes, warrants particular attention from the International Criminal Court. These countries are endowed with reasonable respect for political opponents, are not coping with armed conflicts, and have justice systems. However, in certain context – such as the rise over nationalistic and populist governments such as that headed by President Jair Bolsonaro – the nation’s legal system ceases to function, and institutions are quickly and deeply corrupted, allowing the gravest crimes to be committed against minority groups. It is vital that the International Criminal Court issue a statement on crimes of responsibility in such contexts, encouraging countries to strengthen and enhance their justice systems.

Furthermore, there are other factors warranting the interest of this Court. As crimes against humanity are involved, perpetrated through massive destruction of the environment, this Office of the Prosecutor may support progress in the interpretation of ecocide, which has long been designed by the international community.

10. REQUESTS

The APIB requests this Office of the Prosecutor at the International Criminal Court to consider this Communication, in terms of Article 15 of the Rome Statute:

- a) In view of the absence of domestic jurisdictional proceedings able to prevent the perpetration of such crimes or assign responsibility to Brazilian President Jair Messias Bolsonaro, this Communication, should be deemed admissible in terms of Article 17 of the Rome Statute;



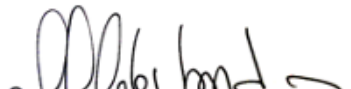
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- b) In view of the presentation of grounds and reasonable information for believing that crimes falling under the jurisdiction of the International Criminal Court have been and are being committed, a preliminary examination is justified, in terms of Article 53 of the Rome Statute;
- c) Due to the gravity of the narrated facts, their extent and continuation, as well as the interest of the victims, which fulfils the purpose of the Court for proceeding with this investigation.

This communication was made with the support of Human Rights Advocacy Collective (CADHU) and ARNS Comission, petitioners under registration OTP-CR-537/19.



Luiz Henrique Eloy Amado
Advogado indígena Terena



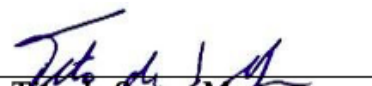
Samara Carvalho Santos
Advogada indígena Pataxó



Eloísa Machado de Almeida



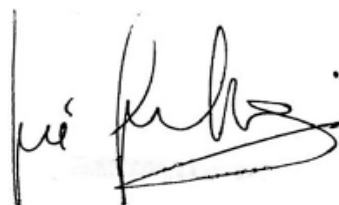
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ⁱⁱ Eloísa Machado de Almeida. Lawyer. Professor at FGV Direito/SP. PhD in Human Rights (University of São Paulo Law School - USP). Master in Social Sciences (PUCSP). Founder of the Human Rights Advocacy Collective – CADHu. Winner of Outstanding International Woman Lawyer Award, granted by the International Bar Association (IBA) 2018-2019.

ⁱⁱⁱ Juliana Vieira dos Santos. Lawyer specialized in strategic litigation. Legal Coordinator of Rede Liberdade. Master of Laws from Harvard Law School (2004) and Ph.D. in State Law from the University of São Paulo Law School (USP) (2010). Center for the Analysis of Liberty and Authoritarianism (LAUT) board member.

^{iv} Renata Nagamine. PhD in public international law from University of São Paulo (USP), scholarship holder in the Postgraduate Program in International Relations at UFBA and researcher at the Brazilian Center for Analysis and Planning - Cebrap.

^v José Carlos Dias ARNS Commission President. Former Board Member of the Brazilian Bar Association/SP, former President of the Justice and Peace Commission of the Archdiocese of São Paulo (1969-1970), former Minister of Justice, during the Fernando Henrique Cardoso's administration.

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