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THE GREAT GUARANI AND KAIOWÁ PEOPLES AND THEIR STRUGGLE FOR RIGHTS AND FOR LIFE IN BRAZIL

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“Our lands are being invaded, our lands are being taken, our territories are being invaded ... They say that Brazil was discovered; Brazil was not discovered, no, Holy Father. Brazil was invaded and taken from the indigenous peoples of Brazil.”

Marçal Tupã'i, Guarani-Nhandeva leader assassinated in 1983

The history of indigenous peoples in Brazil is marked by serious material and immaterial losses. The Figueiredo Report² and the Final Report of the National Truth Commission (CNV)³ have recorded systemic violations resulting from actions or omissions by the Brazilian State. The brutal extermination of the indigenous population is one of the facts that back up this claim. Several historians estimate that when the Portuguese arrived in Brazil in 1500, there were 5 to 6 million indigenous peoples living here. According to the 2010 census by the Brazilian Institute of Geography and Statistics (IBGE), there were 896,917 indigenous people in total, which is 0.4% of Brazil's population.⁴

Given the fact that their right to territory and cultural identity is neither respected, protected nor promoted, all other rights are violated and/or threatened, including the human right to adequate food and nutrition. For this reason, indigenous peoples fare worse in living conditions indicators than the total population. For example, the food and nutrition insecurity of three Guarani and Kaiowá communities, which were the subject of research⁵ by FIAN Brazil, stands at 100%,⁶ compared to 22.6%⁷ for the Brazilian population and 18.2% for Mato Grosso do Sul (MS).⁸ In MS, a state in the Centre-West region of Brazil, bordering Paraguay and Bolivia, this is the context that the Guarani and Kaiowá people find themselves in. The geopolitical occupation of this border region and the economic exploitation of the state of MS, intertwined with actions and omissions by the State of Brazil, led to serious violations of rights. A case in point is the process of agricultural settlements in the state of MS.⁹ It is worth highlighting that it is here in MS, that the second largest indigenous population and one of the worst indices (1.8%) of demarcated Indigenous Territories can be found.¹⁰ Demarcation is the administrative process that identifies and signals the limits of the territories that were traditionally inhabited by indigenous peoples.¹¹

The Guarani and Kaiowá currently make up a group of over 45,000 people in MS.¹² Some live in urban centers, but in general, they find themselves in one of the following three situations. First, a minority lives on demarcated land. Second, a large majority lives in reserves, where violence, malnutrition and suicide indicators are the

- 2 Brazil—Ministry of Home Affairs. *Figueiredo Report*. Brasília: Ministry of Home Affairs, 1967. Available in Portuguese at: www.janetecapiberibe.com.br/component/content/article/53-relatorio-figueiredo/20-relat%C3%B3rio-figueiredo.html.
- 3 The National Truth Commission (CNV) was created to examine and clarify the serious violations of human rights between 1946 and 1988.
- 4 Brazilian Institute of Geography and Statistics (IBGE). *Censo Demográfico 1991/2010*. Brasília: IBGE, 2010. Available in Portuguese at: indigenas.ibge.gov.br/graficos-e-tabelas-2.html.
- 5 In 2013, FIAN Brazil undertook socio-economic and nutritional research in three emblematic communities: Guaiviry, Ypo'i and Kurusu Ambá. The research was coordinated by Célia Varela (former Secretary General of FIAN Brazil) and CIMI in MS. Ana Maria Segall Corrêa coordinated the team of experts, consultants and partners responsible for the fieldwork and the systematization of data.
- 6 FIAN Brazil, FIAN International and CIMI. *Diagnóstico da Situação de Segurança Alimentar e Nutricional dos Guarani e Kaiowá*. Brasília: FIAN Brazil, 2016. Available at: www.fianbrasil.org.br/noticia/visualizar/10.

- 7 National Council on Food and Nutrition Security (CONSEA). "IBGE divulga PNAD sobre segurança alimentar no Brasil." *CONSEA*, December 18, 2014. Available in Portuguese at: www4.planalto.gov.br/consea/comunicacao/noticias/2014/ibge-divulga-pnad-sobre-seguranca-alimentar-no-brasil.
- 8 Rezende, Graziela. "81,8% do sul-mato-grossenses vivem com segurança alimentar, diz IBGE." *G1 Globo*, December 18, 2014. Available in Portuguese at: g1.globo.com/mato-grosso-do-sul/noticia/2014/12/818-do-sul-mato-grossenses-vivem-com-seguranca-alimentar-diz-ibge.html.
- 9 Cunha, Manuela C. da. "O STF e os índios, por Manuela Carneiro da Cunha." *Racismo Ambiental*, November 19, 2014. Available in Portuguese at: racismoambiental.net.br/?p=165517.
- 10 National Indian Foundation (FUNAI). "Terras indígenas: o que é?" Available in Portuguese at: www.funai.gov.br/index.php/nossas-acoas/demarcacao-de-terras-indigenas.
- 11 The administrative process for demarcating land, ruled by Decree 1775, 1996, sets forth the following steps: i) carry out Identification Studies; ii) approve the report that results from Identification Studies by the National Indian Foundation (FUNAI); iii) presentation of appeals; iv) statements on limits of Indigenous Territory (TI); physical demarcation by FUNAI; vi) approval by *Presidential Decree*, and lastly; vii) up to 30 days after approval, registration at the land registry office in the corresponding district and at the Federal Properties Management Office (SPU).
- 12 There is divergence on the information provided by researchers. Figures vary between approximately 45,000 and 60,000.
- 13 Regarding suicide among the Guarani and Kaiowá, ensuing from deterritorialization and precarious living conditions, official data from the Special Secretariat of Indigenous Health (SESAI), disseminated by CIMI in May 2014, show that there was, on average, one suicide every five days in the state of Mato Grosso do Sul (MS), making up 75 cases in 2013. This index is the highest in 28 years, according to CIMI's records. From the 75 indigenous fatalities, 72 were from the Guarani and Kaiowá people and most were aged between 15 and 30. For more information, please see: CIMI. *Relatório Violência contra os Povos indígenas – Dados de 2013*. Brasília: CIMI, 2014. Available in Portuguese at: www.cimi.org.br/site/pt-br/?system=publicacoes&cid=30. Please also see: CIMI. *Relatório Violência contra os Povos indígenas – Dados de 2014*. Brasília: CIMI, 2015. Available in Portuguese at: cimi.org.br/pub/Arquivos/Relat.pdf.
- 14 Mota, Juliana G. B. and Levi M. Pereira. "O Movimento Étnico-socioterritorial Guarani e Kaiowa em Mato Grosso do Sul: Atuação do Estado, Impasses e Dilemas para Demarcação de Terras Indígenas." *Boletim DATALUTA* 58 (2012). Available in Portuguese at: www2.fct.unesp.br/nera/artigosdomes/10artigosdomes_2012.pdf.
- 15 Moncau, Joana and Spensy Pimentel. "O genocídio surreal dos Guarani-Kaiowá." *Instituto Humanitas Unisinos*, October 14, 2010. Available in Portuguese at: www.ihu.unisinos.br/noticias/noticias-arquivadas/37265-o-genocidio-surreal-dos-guarani-kaiowa.

worst. To illustrate this, from 2003 to 2010 there were 250 homicides and 176 cases of suicide.¹³ During the same period, 4,000 children suffered from malnutrition.¹⁴ In this regard, it is worth noting that in certain years the suicide rate in MS may even exceed 100 per 100,000 inhabitants, compared to the national average of 5.7 per 100,000, according to the National Foundation of Health.¹⁵ Finally, the rest live in camps on the sides of the roads or in areas that they have retaken by occupying parts of farms that overlap with their traditional territories and are thus in a situation of conflict. This is a reaction to the omissions by the state, which does not guarantee the right to territory, and a way of not having to submit to the precarious living conditions in the reserves. They are surrounded by sugar cane and grain monocultures that require intensive use of agrochemicals. Many complaints have been filed regarding the contamination of water.¹⁶ There have also been complaints about communities being intentionally targeted and sprayed with agrochemicals.¹⁷

These peoples use the term *tekohá* for their territory. Pereira and Mota make it clear that this term reflects the deep connection between cultural identity and ancestral territory. They state that the prefix *teko* represents a series of norms and customs, while the suffix *ho* has a connotation of place. Without *teko* there is no *tekohá* and without *tekohá* there is no *teko*.¹⁸

There are major conflicts between representatives from the agribusiness sectors and indigenous communities. As a reaction to the struggle over *tekohá*, the murder of leaders and evictions are ongoing.¹⁹ Ever since Marçal was murdered in 1983, ten leaders have been killed. In some cases—such as with Nísio Gomes of the Tekohá Guaiviry people—their bodies were never found. Apart from the murder of leaders, conflicts over land lead to hundreds of deaths. MS accounts for 54.8% of criminal acts of murder against indigenous peoples in the country—the fourth cause of these assassinations is land conflicts.²⁰

The local context is a reflection of violations of the laws, which the State of Brazil is responsible for, given the three spheres of power conferred upon it.

The executive power has backed actions that go against the rights of indigenous peoples, such as the promotion of agribusiness in areas where there are indigenous lands, and has failed to fulfill its obligation to demarcate indigenous land. The interim government—resulting from an impeachment process devoid of legitimacy—puts the rights of indigenous peoples at an even higher risk.²¹

Regarding the legislative power, the initiatives that violate the rights of indigenous peoples are countless. The Proposed Constitutional Amendment (PEC) 215 is one of the most serious attacks against indigenous rights.²² Furthermore, Parliamentary Commissions of Inquiry (CPI) have been established with the purpose of criminalizing the indigenous struggle and its supporters. An example of this is the CPI against the Missionary Council for Indigenous Peoples (CIMI), established by the legislative powers of MS. In a final report, the CPI requests, among other things, that all crimes and illicit acts committed by CIMI members be investigated with the upmost rigor and severity by competent authorities.²³

The judiciary power, in turn, has failed to guarantee the indigenous peoples' condition as rights-holders in proceedings over land tenure concerning ethnic dignity. From the outset, the judiciary has opted for measures that affect their right to territory. There are inefficiencies in reaching the final ruling on actions that have an impact on indigenous rights. Therefore, they are being denied access to justice. Therefore, they are being denied access to justice. The controversial 'Marco Temporal' theory

- 16 Glass, Verena. *Em terras alheias – a produção de soja e cana em áreas Guarani no Mato Grosso do Sul*. São Paulo: Repórter Brasil, CIMI and Centro de Monitoramento de Agrocombustíveis, 2012. Available in Portuguese at: reporterbrasil.org.br/documentos/emterrasalheias.pdf.
- 17 Sousa, Neimar M. de. "Arquitetura da destruição." *GELEDÉS – Instituto do Mulher Negra*, January 14, 2016. Available in Portuguese at: www.geledes.org.br/arquitetura-da-destruicao-por-neimar-machado-de-sousa.
- 18 Mota, Juliana G. B. and Levi M Pereira. *Supra* note 14.
- 19 Kintschner, Fernanda. "Em CPI, depoente diz que MS registra 54.8% das mortes de indígenas do país." *Assembleia Legislativa do Mato Grosso do Sul*, April 7, 2016. Available in Portuguese at: www.al.ms.gov.br/Default.aspx?Tabid=56&ItemID=45833.
- 20 Information provided by the historian Marcelo Zelic, in a statement on behalf of the Parliamentary Commission of Inquiry (CPI), which investigated actions and omissions by the state of Brazil in cases of violence against indigenous peoples between 2000 and 2015. Available in Portuguese at: www.al.ms.gov.br/Default.aspx?Tabid=56&ItemID=45833. For more information on cases of violence, please also see: CIMI. *Relatório Violência contra os Povos Indígenas – Dados de 2014*. Brasília: CIMI, 2015. Available in Portuguese at: cimi.org.br/pub/Arquivos/Relac.pdf.
- 21 Barros, Ciro. "A tensão indígena com a gestão Temer." *El País*, May 22, 2016. Available in Portuguese at: brasil.elpais.com/brasil/2016/05/21/politica/1463864670_350401.html.
- 22 This Proposed Constitutional Amendment (PEC) defines the 'exclusive competence' of National Congress as being to approve the demarcation of lands traditionally occupied by indigenous peoples. If PEC 2015 were to be approved, the right to indigenous land would be fully conditioned by the will of a parliamentary political majority, usually dominated by interests of the 'ruralist contingent'.
- 23 For more information, please see CPI final report on CIMI. Available in Portuguese at: www.al.ms.gov.br/LinkClick.aspx?fileticket=WVDmOfjz9Uk%5d&tabid=621.
- 24 This theory was discussed in the context of the 2009 judgment of Petition 3.388/RR on the demarcation of the indigenous land named Raposa Serra do Sol. The rapporteur was Minister Carlos Britto. In the final judgment, the STF established that the indigenous peoples had the right to the whole territory concerned. One of the arguments used in the judgement was that these lands were being occupied by these indigenous peoples at the time when the Federal Constitution—in which indigenous peoples' original rights are recognized—was promulgated, i.e. October 5, 1988. Some STF members have stressed that non-occupied lands in 1988 do not lose their traditional status as a result of actions undertaken by non-indigenous persons. However, other courts and some STF members have interpreted the theory in a restrictive manner, claiming that in order to have the right to their lands guaranteed, indigenous peoples should prove that they were occupying those territories in 1988. This fails to consider the violent process that removed several indigenous communities from their lands, as well as the historical and structural injustice they faced.

arising from a 2009 land demarcation judgement by the Brazilian Supreme Federal Court (STF)²⁴ is one of the major threats to indigenous peoples' original rights.

This is the context in which FIAN has supported CIMI and indigenous communities in their struggle for their rights. In notes and documents that aim to denounce the situation, FIAN has highlighted that the causes of these violations stem not only from the denial of their right to territories and ensuing disputes, but also from discrimination. The violations that affect the Guarani and Kaiowá not only reflect a violation of their cultural identity, the violations of indigenous peoples' rights generally take place because of their cultural identity. They are discriminated against because they are 'different', living in poverty and victims of violence. It is because they are 'different' and use their land for traditional customs and not to accumulate material wealth that they are considered 'lazy' or 'criminals'. It is because they are different that public policies that should realize their rights either do not exist or are not adequate. Therefore, the lack of respect, protection and promotion of their cultural identity is the structural cause of all the violations of rights that the Guarani and Kaiowá people suffer from; starting with the violation of their territorial rights, paving the way towards the denial of other rights, including the human right to adequate food and nutrition and the right to life.

In this context, one of the strategies adopted to support the struggle for rights is a complaint to be lodged against the Brazilian State with the Inter-American Commission on Human Rights (IACHR). The international complaint is of particular relevance first and foremost because Aty Guasu, the Assembly that brings together the Guarani and Kaiowá of MS, is taking this action. Moreover, it is an important strategy for the enforcement of rights, as it records and highlights omissions and actions that violate the rights of the Guarani and Kaiowá peoples in Brazil. FIAN, together with CIMI and indigenous leaders have also been seeking to influence the international arena such as political bodies of the European Union and its member states and United Nations human rights bodies. Another strategy is to concentrate all efforts against the ongoing process of criminalizing CIMI.

Despite the huge efforts, the struggle on the ground is and always will be guided by courage, faith, huge resistance to and contestation of the cowardly historical violations that have been affecting Guarani and Kaiowá children, men and women for centuries.