

## Committee on the Application of Standards

Date: 22 May 2023

**Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 22 May 2023.**

### ► Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

#### Brazil

##### Indigenous and Tribal Peoples Convention, 1989 (No. 169)

The Government has provided the following written information.

A great evidence of the importance that the Government attaches to the rights of indigenous and tribal peoples, including *Quilombolas*, was the creation, by President Lula, of the Ministry of Indigenous Peoples, headed by Minister Sonia Guajajara. The Ministry will also be responsible for the activities of the National Foundation of Indigenous Peoples (FUNAI).

President Lula and the Minister of Indigenous Peoples, Sonia Guajajara, announced in April 2023 the conclusion of the demarcation of six indigenous lands: Arara do Rio Amônia (AC), Kariri-Xocó (AL), Rio dos Índios (RS), Tremembé of Barra do Mundaú (CE), Avá-Canoeiro (GO) and Uneiuxi (AM).) and the recreation of the National Council of Indigenous Policy (CNPI), both of which were made extinct by the previous government, and the acquisition of inputs, tools, and equipment for flour houses, an important resource in indigenous villages, aimed at recovering the productive capacity of the *Yanomami* indigenous communities, in the amount of 12.3 million Brazilian reais.

These are the first indigenous lands demarcated since 2018. The demarcation of indigenous lands represents not only the protection of people, customs, and traditions, but also the preservation of the environment, thus being Brazil's main resource in confronting the climate emergency. Studies prove that indigenous people are responsible for the preservation of more than 80 per cent of the planet's biodiversity, and that indigenous lands in the "Legal Amazon", for example, absorb a quarter of the pollution caused by forest fires in Brazil, helping to reduce the cost of the Single Health System (SUS) – the Brazilian public health system – related to respiratory diseases.

Besides the demarcation of indigenous lands, President Lula and Minister Guajajara also signed the resumption of the Management Committee of the National Policy for Territorial and Environmental Management in Indigenous Lands (PNGATI), whose main objective is to monitor the actions of protection, recovery, conservation and sustainable use of natural

resources in indigenous territories. The Committee guarantees the social control of public policy by indigenous peoples, a fundamental participatory democracy mechanism for the improvement of the quality of life of indigenous peoples with full conditions for the physical and cultural reproduction of current and future generations. It also guarantees the integrity of the material and immaterial heritage of these peoples.

The Federal Government also reactivated the National Council of Indigenous Policy, responsible for presenting proposals and monitoring the implementation of public policies aimed at indigenous peoples. It will be a space with parity participation of representatives of the indigenous peoples and the Federal Government.

A hearing convened by the Inter-American Court of Human Rights was held in Santiago in April 2023, to discuss the status of the application of provisional measures decreed by the Court on the situation of *Quilombola* communities in Alcântara, due to the alleged non-compliance with rights guaranteed in the American Convention on Human Rights.

In the case *Quilombola Communities of Alcântara v. Brazil*, representatives of 152 *Quilombola* communities of Alcântara allege that Brazil has violated internationally protected human rights. In particular, they allege violations caused by the lack of collective titling of property over traditionally occupied lands; absence of free, prior and informed consultation with the communities regarding the installation of the Alcântara Launching Center; violations of economic, social, cultural and environmental rights; as well as inefficiency of judicial and administrative remedies to improve the situation. The Brazilian State recognizes the 152 communities represented in this case as being remaining *Quilombos*, according to an official certification conferred by Administrative Rule 35, of 2004, issued by the Palmares Cultural Foundation. The *Quilombola* communities are governed by strong traditional landmarks, endowed with their own cultural identity, resulting from a historical process of resistance to unjustifiable forms of domination, with a strong connection to a trajectory of struggles and conquests arising from family ties and ancestry.

In comparing the facts of this case with the proper understanding of those rights, it can be concluded that the Brazilian State violated the rights to property and to judicial protection of the 152 *Quilombola* communities of Alcântara. There was a state violation of the right to property in this case because Brazil has not promoted the titling of the territory traditionally occupied by the communities until now. There was also a violation of judicial protection as a result of the procedural delay and inefficiency of the judicial and administrative instances to allow the Alcântara *Quilombola* communities to exercise their right to collective ownership of the lands they occupy. The process of titling these territories, although complex and multiphased, took too long and to this day has not concluded the necessary procedures for effective territorial titling.

All this reality reveals that Brazil has not been able to provide the communities with fast and effective internal resources. Because of this, considering the proper legal nature of reparation measures for violations of international law by States, the Brazilian State has publicly expressed its apology to the remaining *Quilombola* communities of Alcântara.

The Minister of the General Attorney Office (AGU), Jorge Messias, who participated in the hearing, affirmed that “the recognition of the violation is a historical change in the position of the Brazilian State”. This declaration will be published on the official website for one year after the hearing of the Inter-American Court of Human Rights, which took place on 26–27 April 2023, or until six months after the Court’s judgment, whichever is later. The AGU will also communicate the issuing of this declaration in all judicial and administrative proceedings in progress in Brazil and related to property rights and judicial protection.

Finally, Brazil expressed its commitment to hold an official apology ceremony within four months after the aforementioned hearing, at a date and place to be agreed upon with representatives of the communities.

With regard to the reparation measures arising from the violations recognized herein, on 25 April 2023, the President of the Republic issued Decree No. 11.502, through which he determined that progressive titling of the *Quilombola* territory of Alcântara must take place within two years after publication of the decree of territorial recognition, at least with regard to the area that already belongs to the Union. This ordinance must be issued immediately after the decision by the Minister of State of the Civil House of the Presidency of the Republic on whether or not to accept alternatives to the solutions for the territorial titling of those communities, according to a report that will be presented by an Interministerial Work Group within one year.

Finally, the Federal Government is committed to making viable the allocation of financial resources as compensation for the violations. These resources will be directed for the adoption of public policies that directly benefit the communities, in understanding with their representatives. The objective is to make possible a financial amount equivalent to the full amount requested by the communities as collective reparation in this case. As soon as this budget allocation is confirmed, the Brazilian State expects the communities to acknowledge before the Inter-American Court that their request has been fully met.

In conclusion, during the hearing, the Government delegation publicly acknowledged the responsibility of the Brazilian State for violations inflicted on the communities; issued an apology; presented proposals for mitigating the damage caused by these violations, as well as for preventing future violations; and also proposed a mechanism that will be created to oversee the effective implementation of these commitments.

This realization was considered a milestone in the dialogue with bodies of the Inter-American human rights system, and marks decompression in the relationship between the Government and the *Quilombola* communities.