



Franciscans International
A voice at the United Nations



March 27, 2014

To: Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, James Anaya

CC: Second Secretary Bruno Santos de Oliveira
Permanent Mission of Brazil to the United Nations

Re: The Rights of the Tupinambá People
Location: Serra do Paradeiro
Tupinambá de Olivença indigenous territory
Municipalities of Buerarema, Una and Ilhéus
Bahia State (Brazil)

The Conselho Indigenista Missionário (CIMI) and the Inter-Franciscan Service for Justice, Peace and Ecology (Sinfrajupe), with the support of Franciscans International and VIVAT International, are deeply concerned at the grave omission of the Brazilian authorities in failing to demarcate and register the lands of the Tupinambá Indigenous Community in the south of Bahia, Brazil. This omission is preventing Tupinambá members as individuals and as a collective to enjoy their human rights, including the human right to life. This omission has a direct causal link to security threats in the region.

The Tupinambá indigenous people were one of the first peoples to have contact with the Portuguese in 1500 and to this day they do not have their lands demarcated. For over 500 years, the Tupinambá community has been resisting and struggling to remain on their sacred lands. This resistance has been marked by numerous cases of violence, criminalization and persecution against them, as the Brazilian historical registries testify.

National context

The Brazilian Constitution of 1988 consolidated the rights of indigenous peoples that have been asserted for five centuries. The Constitution overturned the genocidal policy of the military governments, according to which indigenous people had to be integrated into the national community. Significant improvements were made in the democratic transition, including, for example, the regularization and return of approximately 1/3 of indigenous land, resulting in an increase in the indigenous population.

However, there currently are a number of draft bills and proposed amendments to the Constitution aimed at withdrawing the rights of indigenous people are being discussed in the National Congress. Meanwhile, the Executive Branch has halted all administrative proceedings to demarcate indigenous lands and has proposed changes in the procedure to make that process even more difficult.

The Tupinambá Situation

The formalization and recognition of the Tupinambá territory is a concrete step that would contribute to ending the conflict in the South of Bahia and it would allow for proper indemnity to the private, small-scale landowners living in the indigenous lands as part their order to abandon these lands.

On April 20, 2009 FUNAI (Fundação Nacional Do Índio) published its report¹ on the delimitation of the Tupinambá Indigenous Land in the official gazette (*Diario oficial da União*). This followed a long process launched after FUNAI officially recognized the Tupinambá community as an indigenous group in 2002. The 2009 report on the “Identification and Demarcation of the *Tupinambá de Olivença* Indigenous Lands” is conclusive and leaves no room for detain the traditional indigenous occupation of these lands.

The process that resulted in the 2009 report actually started in 2004. So 10 years after the formal process began, and five years after the definitive report, the demarcation of the Tupinambá Land has still not been made effective. The Ministry of Justice José Eduardo Cardoso has refused to sign the declaratory act regarding the demarcation (*Portaria Declaratoria*). This is a key step in the administrative process and it falls to the exclusive competence of the Ministry of Justice. As a result of the omissions in this step, the entire administrative process of demarcation is being delayed and the tension in the region is growing.

Moreover, while the process is held up in the Ministry, we are observing new instances of violence against the indigenous groups. Under the pretext of complying with orders to return possession, the Federal Police and National Armed Forces established a military base in the Serra do Padeiro, with the support of the Bahia Military Police. Following several reports of police violence, the police force was removed from the territory. Soon after, the Brazilian Government sent a large number of troops from the Brazilian Army into the region. These troops continue to operate in the Tupinambá de Olivença Indigenous Lands to promote the “restitution of possession”.

These measures shows that the Brazilian Government is unwilling to comply with the Federal Constitution and conclude the demarcation of Tupinambá Indigenous Land. This results in violations of international law and increased the level of violence in the region. The Tupinambá are being stigmatized through a discrimination campaign in the media and have been persecuted by the Brazilian Army, Federal Police, and landowners. During the last six months, five Tupinambá and one peasant were killed inside indigenous land.

Given this context, we denounce the situation and emphasize that the Government must prioritize the social use of the land and the rights of indigenous peoples as guaranteed in federal and international law.² This must prevail over political convenience. The government has conducted its policies in disregard for the human right to life and the long-standing rights of indigenous communities related to self-determination, in disrespect of both domestic and international legislation.

¹ Fundação Nacional do Índio, Ministério da Justiça, *Relatório Final Circunstanciado de Identificação e Delimitação da Terra Indígena Tupinambá de Olivença*. Viegas, S. de M., Luiz de Paula, Jorge (eds.). (2009).

² Brazil is a part to the ILO Convention 169, see Decree N° 5.051 (April 19. 2004) .

Pacifying the south of Bahia must be an urgent priority and this should be promoted by guaranteeing the rights of indigenous people and peasants. In the aims of peace and justice, the Government must abide by its constitutional duty to delimitate the indigenous lands.

Recommendations:

We reiterate our concerns for the rights of the Tupinambá and urge the Brazilian Government to:

- Take immediate and concrete measure to move forward with the administrative proceeding to demarcate and register the Tupinambá territories;
- Cease the militarization of the area;
- Guarantee indigenous people's rights as established in the federal Constitution and ensure the national legal and policy framework is in accordance with international law.

We thank you for your considerations and await your urgent reply. We hope that your mandate and the UN mechanisms can support us to guarantee the human rights of indigenous people and clarify and stop the crimes that are being perpetrated against the communities. After so long we find it unbearable that these people continue to suffer these violations of their rights in the 21st century.

Sincerely,

Conselho Indigenista Missionário – CIMI

With the support of:

Sinfrajupe (Serviço Interfrancicano de Justiça, Paz e Ecologia)

Franciscans International

VIVAT International

For more information, please see:

CNBB: Nota sobre o conflito no Sul da Bahia

<http://www.cimi.org.br/site/pt-br/?system=news&action=read&id=7252>

Nota de apoio do Movimento dos Trabalhadores Rurais Sem Terra à luta do Povo Tupinambá de Olivença – Fevereiro de 2014.

<http://cimi.org.br/site/pt-br/?system=news&action=read&id=7369>

Nota em Solidariedade aos Tupinambá e aos Pequenos Agricultores no sul da Bahia

<http://www.cimi.org.br/site/pt-br/?system=news&action=read&id=7375>

Relevant national law and legislation:

CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1988 -
Capítulo VIII – Dos índios (arts. 231 e 232)

Criação da Fundação Nacional do Índio - LEI Nº 5.371, DE 5 DE DEZEMBRO DE 1967.

DECRETO Nº 1.775, DE 8 DE JANEIRO DE 1996. Dispõe sobre o procedimento administrativo de demarcação das terras indígenas e dá outras providências.

DECRETO Nº 6.861, DE 27 DE MAIO DE 2009. Dispõe sobre a Educação Escolar Indígena, define sua organização em territórios etnoeducacionais, e dá outras providências.

Portaria do Ministério da Saúde nº 254, de 31 de janeiro de 2002 - POLÍTICA NACIONAL DE ATENÇÃO À SAÚDE DOS POVOS INDÍGENAS

Noteworthy legal actions:

Administrative proceeding (nº 08620.001523/2008-43) on the demarcation of the Tupinambá de Olivença Indigenous Lands. FUNAI finalized and approved the studies in 2009 and approximately 2 years ago the findings were sent to the Ministry of Justice. According to Decree 1.775/1996 the minister has 30 days to decide: declaring the limits of the indigenous lands and determining its demarcation; dictate additional steps to be taken; or deny the identification based on a reasoned decision. However, the Minister of Justice has taken no action on this case.

Suspensão de Liminar 758 – STF. The President of the Supreme Court decided in favor of the Tupinambá in 7 cases. Another 80 possession cases are being processed in lower courts. However, the position of the highest court of the country is a favorable sign.

Proceeding n.º0001825-23.2010.4.01.3311, Justiça Federal de Itabuna/BA. Action for reparations for torture inflicted on 5 Tupinambá by members of the Federal Police in 2009.

Proceeding n.º 0003186-70.2013.4.01.3311, Justiça Federal de Itabuna/BA. Action against the Minister of Justice calling for a conclusion in the administrative proceeding regarding the demarcation of the Tupinambá de Olivença indigenous lands.