



*Permanent Mission of Brazil to the United Nations Office
and other International Organizations in Geneva*

Ch. Louis-Dunant, 15

1202 – Geneva / Switzerland

Phone: (+41) (0)22 332 50 00 / Fax: (+41) (0)22 910 07 51

E-mail: mission.brazil@delbrasgen.org

**Human Rights Council
12th Session – Item 5
Geneva, 28 September 2009**

INTERVENTION BY BRAZIL

Thank you Mr. President,

Brazil welcomes the report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya, on his visit to Brazil, from 14 to 25 August 2008. Our approach is based on the spirit of dialogue and cooperation that underlines Brazil's relationship with the United Nations human rights system and our standing invitation to UN Special Rapporteurs.

In his visit to Brazil, the government provided broad, extensive, and direct contact with various aspects of Brazilian indigenous reality. The Special Rapporteur's visit included meetings with high-ranking federal officials as well as field visits. The Special Rapporteur had the opportunity to clarify questions, in an open and cooperative spirit, regarding any issues related to the activities of the respective agencies. He was assured direct and unimpeded access to all communities.

The decision of the Federal Supreme Court (STF) on 19th march, 2009, concerning the Raposa Serra do Sol Indigenous Territory marked a historic victory for the

indigenous movement and the Brazilian State in their committed effort to protect the rights of indigenous peoples as provided for in the Constitution and international instruments. The actions of the State and application of the law based on the High Court's rulings, notwithstanding the forces arrayed against the continuous demarcation of the Raposa Serra do Sol Indigenous Territory, strengthens the legal status of every other indigenous territory recognized by the Brazilian State, discouraging land invasions and legal challenges. The withdrawal of the area was accomplished in a peaceful and negotiated way.

The Raposa Serra do Sol Territory, of 1.74 million hectares, remains intact. In their deliberations, to ensure the preservation of Brazilian national sovereignty over the demarcated land, a total of 19 qualifications were established by the STF, but they do not replace the existing legislation on indigenous matters, nor will they be incorporated to the new Indigenous Peoples Statute.

Although the sole property of the Union, the possession and use of indigenous lands is reserved on a permanent, exclusive, and indefeasible basis to the indigenous peoples occupying those lands. Indigenous lands may not be freely transferred by indigenous peoples or the Union, and are, in this way linked permanently to the guaranteed cultural and material reproduction of native peoples.

According to the National Indian Foundation (FUNAI) there are 611 Indigenous Lands at different stages of registration process: 398 have been registered, 27 approved for registration, 30 reported, 33 delimited, and 123 under review. The surface area covered by the 488 indigenous lands that reached, at minimum, the delimitation stage totals 105,673,003 hectares, or 12.41% of Brazil's national territory. Another 123 lands have yet to be identified.

As mentioned by the Rapporteur, Brazil developed an advanced methodology to demarcate and register indigenous lands with full participation of indigenous peoples in all stages of the process.

The duty to consult indigenous peoples on matters affecting their rights as a distinct ethnic group has been clearly incorporated in Brazilian legislation, in particular following enactment of ILO Convention 169. In addition to the provision prescribed in ILO Convention 169, the Indigenous Peoples Statute bill provides for mandatory and thorough consultation. The 1988 Federal Constitution also provides for the need to consult with indigenous peoples in case of, for instance, mining activities and the exploitation of the potential energy sources derived from water courses running through indigenous lands. Moreover, by law these communities are guaranteed participation in the results from the corresponding projects.

With regard to possible impacts stemming from mining activities on indigenous lands and hydroelectric generation, the law requires consultation with FUNAI. Despite its non-binding nature, FUNAI has pursued efforts through the participation of indigenous peoples in the environmental licensing process.

The case of the Belo Monte Hydroelectric Power Plant (HPP) shows how this has been happening. Indigenous mobilizations against the initial project plan contributed to its abandonment in the 1980s. The new project plan has incorporated technical innovations directed towards mitigating the associated impacts and reducing the flood area by eight times. Another example is the BR 158 highway in Mato Grosso. The opposition of Xavantes communities to the roadway's construction was taken under consideration, reflected in the ultimate decision to reroute the enterprise and adopt compensatory measures. For the proposed widening of the BR 222 highway in Ceará, consultations with local indigenous populations led to the rejection of a stretch that would have directly impacted the

indigenous land and to the establishment of compensatory measures. The Estreito Hydroelectric Plant in Tocantins is currently on hold by court order, following the opposition of indigenous populations.

The projects executed under the Accelerated Growth Program (Programa de Aceleração do Crescimento - PAC) have been subject to prior consultation. In fact, some of these projects were rejected – decisions that transcend the guarantees established in ILO Convention 169.

Mr. President,

Surveys conducted by FUNAI since 2006 identify 64 isolated indigenous groups and six others were only recently contacted.' Brazil has pursued specific public policies over the past 20 years aimed at isolated indigenous groups. In addition to respecting the decision of isolated indigenous groups to opt against establishing contact or maintaining an ongoing relationship with the national society, we commit to reverse or mitigate the serious consequences stemming from undesirable contact, including disease, depopulation, socio-cultural de-characterization, and even extinction.

Brazil's indigenous policies on the protection of isolated indigenous groups have become a recognized best practice. FUNAI has participated in international forums devoted to safeguarding isolated or recently contacted indigenous peoples.

On health matters, given the importance of nutritional well-being as a determining factor of overall health conditions, we are dedicated to nutritional monitoring in indigenous communities, with special attention to mothers and children as they represent the most vulnerable population segments to adverse socioeconomic conditions.

The 1988 Constitution affirms the right of indigenous peoples to learn in their native languages and their own methods of learning. To that end, the Government started in 1991 a program of "indigenous education" as a new model for intercultural and bilingual education with full respect for cultural specificities. The challenge now is to expand indigenous schools and number of enrolled students.

We remain firmly committed to tackle the challenge of poverty and the right to food. The "Bolsa Família" Stipend and "Carteira Indígena" projects are also dedicated to the indigenous peoples. Nearly 56,000 indigenous families are covered by "Bolsa-Família", and we are aiming at increasing the number of beneficiary families. The major challenge facing the government lies, however, in adapting the program to the socio-cultural realities of the various ethnic groups who benefit from the initiative.

The "Indigenous Portfolio" ("Carteira Indígena) initiative, implemented in partnership by the Ministry of Social Development, the Ministry of Environment, and FUNAI, supports food security, income generation, and cultural enhancement projects proposed and implemented by indigenous communities themselves, fostering self-determination. More than 80% of the projects were submitted directly by indigenous organizations, and every project involves direct community participation.

On the Situation in Mato Grosso do Sul, the demarcation of Guarani Kaiowá and Nhandeva indigenous lands in small islands of the territory, some of which date to the 1920s, was detrimental to indigenous peoples. The reversal of this process and improving the living conditions of the Guarani are today priorities of the federal government. We are providing distribution of 8,000 monthly food baskets, while fostering sustainable food production in the villages. In conjunction with the health

care services, these initiatives have succeeded in reducing malnutrition rates, and no child deaths from malnutrition have been reported since 2006.

Mr. President,

We have concrete examples of advancement and still great challenges to overcome. We firmly believe that the continued dialogue with the Special Rapporteur will enable Brazil to further develop its policies to fully guarantee the rights of indigenous people in the country. We remain open for a fruitful exchange of views and experience on this matter.

I thank you Mr. President.