



WGIP 85 GOV/SAM.BRA/1

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of  
Discrimination and Protection of  
Minorities

Working Group on Indigenous Populations  
Fourth Session  
Geneva  
29 July - 2 August 1985

Items 4 and 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND  
PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF  
INDIGENOUS POPULATIONS

STANDARD-SETTING ACTIVITIES:

EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS  
POPULATIONS  
DRAFTING OF A BODY OF PRINCIPLES ON INDIGENOUS RIGHTS, BASED  
ON RELEVANT NATIONAL LEGISLATION, INTERNATIONAL INSTRUMENTS  
AND OTHER JURIDICAL CRITERIA

Material received from Governments

	<u>Page</u>
The Indian Statute of Brazil .....	2

B R A Z I L

The Indian Statute 1/

Law N.º 6 001 of December 19, 1973

The President of the Republic

Hereby makes known that the National Congress has enacted and he has duly sanctioned the following Law:

TITLE I

Principles and Definitions

Art. 1. This law regulates the juridical situation of the Indians or forest-dwellers and native communities for the purpose of preserving their culture and integrating them, progressively and harmoniously, in the national communion.

Sole Paragraph. The protection of the laws of the country is extended to the Indians and native communities in the same terms as it applies to other Brazilians, safeguarding native usages, customs and traditions, as well as the particular conditions recognized in this Law.

Art. 2. It is the duty of the Union, the States and the Counties (municipios), as well as the agencies of the respective indirect administrations, within the limits of their competence, for protection of the native communities and preservation of their rights, to:

I — Extend to the Indians the benefits of common legislation, whenever application thereof is possible.

II — Furnish assistance to the Indians and native communities, even though they are not integrated in the national communion.

III — Respect, while providing the Indians with means for their development, the peculiarities inherent to their condition.

---

1/ This Statute was attached to the Brazilian reply which is reproduced in document E/CN.4/Sub.2/AC.4/1985/WP.1/Add.1.

IV — Assure the Indians of free choice of their way of living and means of subsistence.

V — Guarantee the Indians the right to remain, if they so wish, permanently in their habitat, providing them with resources there for their development and progress.

VI — Respect, in the process of integrating the Indian in the national communion, the cohesion of the native communities, and their cultural values, traditions, usages and customs.

VII — Carry out, whenever possible with the cooperation of the Indians, programs and projects tending to benefit the native communities.

VIII — Utilize the cooperation, spirit of initiative and personal qualities of the Indian, with a view to improving his living conditions and integrating him in the development process.

IX — Guarantee the Indians and native communities, in the terms of the Constitution, permanent possession of the land they inhabit, recognizing their right to exclusive usufruct of the natural wealth and all the utilities existing on that land.

X — Guarantee the Indians full exercise of the civil and political rights to which they are entitled by law.

Sole paragraph. VETOED.

Art. 3. For all legal effects, the following definitions are hereby established:

I — Indian or Forest-dweller — Any individual of pre-Columbian origin or descent who identifies himself and is identified as belonging to an ethnic group, the cultural characteristics of which distinguish it from the national society.

II — Indigenous Population or Tribal Group — A cluster of Indian families or communities, living either in a state of complete isolation from other sectors of the national community, or in intermittent or permanent contact therewith, but not integrated therein.

Art. 4. The Indians are considered:

I — Isolated — When living in unknown groups, or groups of which only a little vague information is forthcoming from fortuitous contacts with elements of the national community.

II — Integrating — When in intermittent or permanent contact with alien groups, living to a greater or lesser extent in the conditions of their native existence, but accepting certain practices and ways of life common to the other sectors of the national community, of which they stand progressively more in need for their very subsistence.

III — integrated — When incorporated in the national community and recognizedly in full enjoyment of their civil rights, even while retaining practices, customs and traditions that are characteristic of their own culture.

## TITLE II

### Civil and Political Rights

#### CHAPTER I

##### Principles

Art. 5. The norms of Articles 145 and 146 of the Federal Constitution, relating to nationality and citizenship, apply to the Indians or forest-dwellers.

Sole paragraph. Enjoyment of civil and political rights by the Indian depends on verification of the special conditions established in this Law and in the pertinent legislation.

Art. 6. The usages, customs and traditions of native communities and their effects shall be respected as regards kinship, order of succession, distribution of property and deeds or business among Indians, unless they opt for application of common law.

Sole paragraph. Common law norms apply to relations between non-integrated Indians and persons alien to the native community, except insofar as they are less favorable to the former with due exception of the provisions of this Law.

#### CHAPTER II

##### Assistance or Tutelage

Art. 7. The Indians and native communities not yet integrated in the national communion are subject to the tutelary regime established by this Law.

§ 1. The principles and norms of common law tutelage apply, where appropriate, to the tutelary regime established by this law, irrespective,

however, of tutelage in the special branch of legally mortgaged real estate, as well as that of real or fidejussionary suretyship.

§ 2. Tutelage is assigned to the Union, which shall exercise it through the competent Federal agency of assistance to the forest-dwellers.

Art. 8. Acts practiced between the nonintegrated Indian and any person alien to the native community are null and void, when unassisted by the competent tutelary agency.

Sole paragraph. The ruling of this article does not apply to the case when the Indian shows an awareness and knowledge of the act practiced, so long as it is not detrimental to him, and of the extent of the effects thereof.

Art. 9. Any Indian can petition the competent Court of Justice to release him from the tutelage provided in this Law, vesting him with full civil capacity, so long as he fulfills the following requisites:

- I — Minimal age of 21 years.
- II — Knowledge of the Portuguese language.
- III — Possession of the necessary skill to perform a useful activity in the national communion.
- IV — Reasonable comprehension of the usages and customs of the national community.

Sole paragraph. The Court shall decide after summary investigation, in the light of the opinion of the agency of Indian assistance and the Public Prosecutor, and the sentence granting the petition be transcribed in the civil register.

Art. 10. Upon fulfillment of requirements of the preceding paragraph, and at the written request of the interested party, the assistance agency can recognize the Indian's integrated condition by formal declaration, all restrictions as to capacity being thereby removed, so long as, the decision being judicially ratified, it is entered in the civil register.

Art. 11. By decree of the President of the Republic, emancipation of the native community and its members from the tutelary regime established by law can be declared, when applied for by the majority of the members of the group and proof has been furnished, by an enquiry made by the competent Federal agency, of their full integration in the national communion.

Sole paragraph. For purposes of the provisions of this article, the requirements established in Article 9 must be met by the applicants.

### CHAPTER III

#### Civil Registry

Art. 12. The births, deaths and civil marriages of the nonintegrated Indians shall be registered in accordance with common legislation, taking into account the peculiarities of their condition as regards surname, given name and filiation.

Sole paragraph. Civil registry shall be made at the request of the interested party or the competent administrative authority.

Art. 13. There shall be suitable books available at the competent assistance agency for administrative registration of births and deaths of the Indians, cessation of their incapacity, and marriages performed according to tribal rites.

Sole paragraph. Administrative registration shall constitute, when appropriate, a sufficient document to justify civil registration of the corresponding act, admitted, in the lack of the latter, as subsidiary evidence.

### CHAPTER IV

#### Working Conditions

Art. 14. There shall be no discrimination between native workers and other workers, and the same rights and guarantees of the labor laws and social security shall apply in either case.

Sole paragraph. Adaptation of working conditions to the usages and customs of the community to which the Indian belongs shall be permitted.

Art. 15. Any contract for work or hire of services entered into with Indians covered by the provisions of Article 4, Item I, shall be declared null and void.

Art. 16. Contracts for work or hire of services entered into with natives in process of integration or inhabitants of parks or farming settlements

shall depend on prior approval of the Indian protection agency, and comply when necessary with special norms.

§ 1. The conclusion of contracts for levies of workers or home workers under the orientation of the competent agency is to be encouraged so as to favor continuity of community life.

§ 2. In any case of services rendered by non-integrated Indians, the Indian protection agency shall exert permanent control and supervision over the working conditions, denouncing abuses and taking steps to see that appropriate sanctions are applied.

### TITLE III

#### The Indians' Land

#### CHAPTER I

#### General Provisions

Art. 17. Native land is held to be:

I — The land occupied or inhabited by the forest-dwellers referred to in Articles 4, Item IV, and 198 of the Constitution.

II — The reserved areas dealt with in Chapter III of this Title.

III — The land belonging to native or forest-dweller communities.

Art. 18. Native land cannot be the object of leasing or renting or any juridical act or negotiation that restricts the full exercise of direct possession by the native community or the forest-dwellers.

§ 1. In these areas, any person foreign to the tribal groups or native communities is prohibited to practice hunting, fishing or fruit gathering, and to engage in any agricultural, pastoral or extractive activity.

§ 2. VETOED.

Art. 19. All native land, by initiative or under guidance of the Federal agency of assistance to the Indian, shall be delimited administratively, in accordance with the process established by decree of the Executive Power.

§ 1. The delimitation promoted in the terms of this article, homologated by the President of the Republic, shall be registered in a special book kept for the purpose by the Service of the Estate of the Union (Serviço do Patrimônio da União — SPU) and in the real estate register of the judicial district in which the land is located.

§ 2. Against the delimitation carried out in the terms of this article, there can be no grant of possessory interdiction, the interested parties having the right to resort to petitionary or delimitative action.

Art. 20. Exceptionally and for any of the motives hereinafter enumerated, the Union can intervene, if there is no alternative solution, in a native area, said measure to be determined by decree of the President of the Republic.

§ 1. Intervention may be decreed:

- (a) To put an end to fighting between tribal groups.
- (b) To combat serious outbreaks of epidemics that may lead to extermination of the native community or any disease that may endanger the integrity of the forest-dwellers or tribal group.
- (c) For the sake of national security.
- (d) To carry out public works of interest to national development.
- (e) To repress widespread disorder or deforcement.
- (f) To work valuable subsoil deposits of outstanding interest for national security and development.

§ 2. Intervention shall be effected in the conditions stipulated in the decree and always by persuasive methods, and therefrom, according to the gravity of the situation, one or more of the following measures may result:

- (a) Restraint of hostilities, avoiding the use of force against the Indians.
- (b) Temporary transfer of tribal groups from one area to another.
- (c) Removal of tribal groups from one area to another.

§ 3. The removal of a tribal group shall only be resorted to when it is quite impossible or inadvisable to allow it to remain in the area under intervention, in which case the native community, on removal, shall be assigned an area equivalent to the former one, ecological condition included.



§ 4. The native community so removed shall be integrally indemnified for any loss or damage arising from the removal.

§ 5. The act of intervention shall be supported by direct assistance from the Federal agency entrusted with tutelage of the Indian.

Art. 21. Land spontaneously and definitively abandoned by a native community or tribal group shall revert, by proposal of the Federal agency of assistance to the Indian and declaratory act of the Executive Power, to the possession and full ownership of the Union.

## CHAPTER II

### Occupied Land

Art. 22. Indians and forest-dwellers are fully entitled to permanent possession of the land they live on and to exclusive usufruct of the natural wealth and all the utilities existing on that land.

Sole paragraph. Land occupied by Indians in the terms of this article is the inalienable property of the Union (Articles 4, Item IV, and 198 of the Federal Constitution).

Art. 23. Possession by the Indian or forest-dweller is held to mean effective occupation of the land he holds in accordance with tribal usages, customs and traditions and on which he lives or exerts an activity indispensable to subsistence or economically useful.

Art. 24. The usufruct assured to Indians or forest-dwellers comprises the right to possess, use and receive the natural wealth and all the utilities existing on land occupied by them, and likewise the product of economic exploitation of said natural wealth and utilities.

§ 1. Usufruct, which covers accessories and additions thereto, includes the use of the springs and waters comprised in the stretches of inland waterways within the boundaries of occupied land.

§ 2. The Indian is guaranteed rights to the practice of hunting and fishing in the areas occupied by him, any police measures that may possibly have to be applied being carried out persuasively.

Art. 25. Recognition of the right of the Indians and tribal groups to permanent possession of the land they inhabit, in the terms of Article 198

of the Federal Constitution, shall be independent of the delimitation thereof, and shall be assured by the Federal agency of assistance to the forest-dwellers, taking into account the current situation and the historic consensus of opinion on the length of time they have been occupied, without detriment to the appropriate measures that the Powers of the Republic may take in the case of omission or error of the said agency.

### CHAPTER III

#### Reserved Areas

Art. 26. The Union may establish, in any part of the national territory, can live and obtain means of subsistence, with a right to the usufruct of the areas set aside for possession and occupation by the Indians, where they natural wealth and goods existing therein, and due respect of the legal restrictions applicable.

Sole paragraph. The areas reserved as prescribed in this article are not to be confused with those in immemorial possession of the native tribes, and may be organized in one of the following forms:

- (a) Indian reserve.
- (b) Indian park.
- (c) Indian farming settlement.
- (d) Indian Federal territory.

Art. 27. An Indian reserve is an area intended to serve as a habitat for a native group, with sufficient means for the subsistence thereof.

Art. 28. An Indian park is an area contained within land in the possession of Indians, whose degree of integration is sufficient to allow of economic, educational and sanitary assistance being supplied to them by the agencies of the Union, wherein the flora, fauna and natural scenery of the region are to be preserved.

§ 1. In the administration of the parks, the freedom, usages, customs and traditions of the Indians shall be respected.

§ 2. The police measures necessary to keep order and preserve the existing natural wealth in the area of the park must be taken with the use

of persuasive means and in accordance with the interests of the Indians living there.

§ 3. The subdivision of land in the Indian parks shall comply with the tribal regime of property, usages and customs, and likewise with the national norms of administration, which must be adapted to the interests of the native communities.

Art. 29. An Indian farming settlement is an area intended for crop and livestock farming, administered by the Indian assistance agency, where acculturated tribes and members of the national community live together.

Art. 30. An Indian Federal territory is an administrative unit subordinated to the Union, instituted in a region where at least one-third of the population is made up of Indians.

Art. 31. The provisions of this Chapter shall be applied, wherever fit, to the areas in which possession arises from application of Article 198 of the Federal Constitution.

#### CHAPTER IV

##### Land of Native Ownership

Art. 32. The Indian or the native community, as the case may be, shall have full ownership of land obtained by any of the ways of acquiring property in the terms of civil legislation.

Art. 33. The Indian, whether integrated or not, who occupies a plot of land, less than fifty hectares (123.6 acres in area, as his own for ten consecutive years, shall acquire full ownership thereof.

Sole paragraph. The provisions of this article do not apply to land of Union domain occupied by tribal groups, the reserved areas referred to in this Law, or land which is the collective property of the tribal group.

#### CHAPTER V

##### Defense of Native Land

Art. 34. The Federal agency of assistance to the Indian can call on the Armed and Auxiliary Forces and on the Federal Police to cooperate in

assuring the protection of the land occupied by the Indians and by the native communities.

Art. 35. It is the duty of the Federal agency of assistance to the Indian to assume judicial or extrajudicial defense of the rights of the forest-dwellers and native communities.

Art. 36. Without affecting the provisions of the preceding article, it is the duty of the Union to take suitable administrative measures or propose, by the Intermediary of the Federal Public Prosecutor, adequate judicial measures to protect the forest-dwellers' possession of the land they live on.

Sole paragraph. When the judicial measures provided in this article are proposed by the Federal assistance agency, or against it, the Union shall be an active or passive party to the suit.

Art. 37. The tribal groups or native community are legitimate parties for the defense of their rights in justice, and in this case they are entitled to assistance from the Federal Public Prosecutor or from the Indian protection agency.

Art. 38. Native land is not liable to usucapion (squatters' rights) and cannot be disappropriated, except as provided in Article 20.

#### TITLE IV

##### Assets and Income of the Indian Estate

Art. 39. The assets of the Indian Estate are as follows:

I — Land in the ownership of tribal groups or native communities.

II — The exclusive usufruct of the natural wealth and all the utilities existing on the land occupied by tribal groups or native communities and in the areas reserved for them.

III — Movables or real estate acquired on any good title.

Art. 40. Title to the Indian Estate is held by:

I — The native population of the country in respect of the assets or income belonging to or intended for the forest-dwellers, without discrimination in favor of persons or tribal groups.

II — The determinate tribal group or native community in respect of the possession and usufruct of the land exclusively occupied thereby or reserved therefor.

III — The native community or tribal group named in the title of acquisition of the property, in relation to the respective movables or real estate.

Art. 41. The following do not form an integral part of the Indian Estate:

I — Land in the exclusive possession or ownership of the Indian or forest-dweller, considered individually, and the usufruct of the respective natural wealth and utilities.

II — The dwellings, furniture and household utensils, objects of personal use, working tools and implements, and products of tilling, hunting, fishing and collecting, or work of the forest-dwellers in general.

Art. 42. It is the duty of the assistance agency to manage the Indian Estate giving the forest-dwellers and tribal groups a share, however, in the administration of their own assets, the entire charge of which is handed over to them when they show themselves effectively capable of exercising it.

Sole paragraph. The inventory of the assets of the Indian Estate shall be kept continuously up to date, with strict supervision and control of the management thereof so as to ensure effective responsibility of the administrators.

Art. 43. The native income is the result of the investment of assets and utilities forming an integral part of Indian Estate, under the responsibility of the Indian assistance agency.

§ 1. The native income shall be preferably reinvested in profitable activities or utilized in Indian assistance programs.

§ 2. The reinvestment provided in the preceding paragraph shall revert mainly in benefit of the community that produced the first economic results.

Art. 44. Ground wealth in the native areas can only be exploited by the forest-dwellers, who have the exclusive right to practice placer mining, panning and screening for nuggets, precious and semiprecious stones in the areas in question.

Art. 45. Exploitation of subsoil wealth in the areas belonging to the Indians, or to the domain of the Union, but in the possession of Indian communities, shall be effected in the terms of the legislation in force, with due observation of the provisions of this Law.

§ 1. The Ministry of the Interior, through the competent agency of assistance to the Indians, shall represent the interests of the Union, as owner of the soil, but the share in the results of exploitation, indemnities and royalties for the occupation of the land, shall revert to the benefit of the Indians and constitute a source of native income.

§ 2. In order to safeguard the interest of the Indian Estate and the well-being of the forest-dwellers the grant of authorization to third parties for prospecting or mining on tribal possessions shall be conditioned to prior understandings with the Indian assistance agency.

Art. 46. The felling of timber in the native forests considered to be under the regime of permanent preservation, in accordance with Item g and Paragraph 2 of Article 3 of the Forestry Code, is conditioned to the existence of programs or projects for developing the respective land by crop and stock farming, industry or reforestation.

## TITLE V

### Education, Culture and Health

Art. 47. Respect for the cultural heritage of the native communities, their artistic values and means of expression is hereby assured.

Art. 48. The current system of education throughout the country is extended to the native population, with the necessary adaptations.

Art. 49. The Indians shall be taught to read and write in the language of the group to which they belong, and in Portuguese, safeguarding the use of the former tongue.

Art. 50. The education of the Indian shall be oriented towards integration in the national communion by means of a process of gradual comprehension of the general problems and values of the national society, as well as development of their natural aptitudes.

Art. 51. Assistance for educational purposes shall be rendered to minors, as far as possible without alienating them from the family or tribal way of life.

Art. 52. The Indian shall be provided with adequate professional training in accordance with his degree of acculturation.

Art. 53. Handicrafts and rural industries are to be encouraged with a view to raising the Indian's standard of living by suitable adaptation to modern technical conditions.

Art. 54. The Indians have a right to the means of health protection provided for the national communion.

Sole paragraph. In infancy, in child-bearing, in sickness and in old age, the forest-dweller must be assured of special assistance from the public powers, in establishments specially designed for the purpose.

Art. 55. The general regime of social security shall be extended to the Indians, due attention being paid to the social, economic and cultural conditions in the communities so benefitted.

## TITLE VI

### Penal Norms

## CHAPTER I

### Principles

Art. 56. In the case of condemnation of the Indian for penal infraction, the penalty shall be attenuated and in application thereof the Court shall also bear in mind the degree of integration of the forest-dweller.

Sole paragraph. The sentences of preventive or penal imprisonment shall be served, if possible, under a special regime of semiliberty, on the premises of the Federal agency of assistance to the Indians, located nearest to the dwelling of the condemned person.

Art. 57. The application of penal or disciplinary sanctions by the tribal groups to their members in accordance with their own institutions shall be tolerated, so long as such sanctions are not of a cruel or degrading nature, the death sentence being prohibited in any case whatsoever.

## CHAPTER II

### Crimes Against the Indians

Art. 58. The following constitute crimes against the Indians and native culture:

I — To jeer at native cultural ceremonies, rites, usages, customs or traditions, or to revile or disturb in any way the practice thereof. Penalty: One to three months imprisonment.

II — To make use of the Indian or native community as an object of touristic propaganda or exhibition for lucrative purposes. Penalty: Two to six months imprisonment.

III — To foster by any means the use and spread of alcoholic drinks in tribal groups or among nonintegrated Indians. Penalty: Six months to two years imprisonment.

Sole paragraph. The penalties established in this article shall be increased by one-third when the crime is committed by an officer or employee of the Indian assistance agency.

Art. 59. In the case of a crime against the person, estate or customs where the injured party is a nonintegrated Indian or native community, the penalty shall be increased by one-third.

## TITLE VII

### General Provisions

Art. 60. The assets and income of the Indian Estate enjoy full exemption from taxation.

Art. 61. The privileges of the Public Treasury as regards the prohibition against pledging of goods, income and services, special actions, procedural time limits, interest and costs, extend to the interests of the Indian Estate.

Art. 62. The juridical effects of acts of any kind whose object it is to secure ownership, possession or occupation of the land inhabited by the Indians or native communities, are hereby declared null and void.



§ 1. The provisions of this article apply to land that has been vacated by the Indians or by native communities by virtue of an illegal act of the authorities or of private persons.

§ 2. None shall have a right to legal action or indemnity against the Union, the Indian assistance agency or the forest-dwellers, on the grounds of the nullification and voidance with which this article is concerned, or the economic consequences thereof.

§ 3. Exceptionally and at the exclusive discretion of the director of the Indian assistance agency, the effects of contracts of hire or tenancy in force on the date of issue of this Law shall be allowed to continue for a reasonable length of time, should extinction thereof bring about serious social consequences.

Art. 63. No preliminary judicial measures shall be granted in cases involving the interests of the forest-dwellers or the Indian Estate, without prior consultation of the Union and the Indian protection agency.

Art. 64. VETOED.

Sole paragraph. VETOED.

Art. 65. Within the limit of five years, the Executive Power shall effect the delimitation of all Indian land not yet delimited.

Art. 66. The agency of protection of the forest-dweller shall disseminate and respect the norms of Convention 107, promulgated by Decree n.º 58.824 of July 14, 1966.

Art. 67. Law n.º 5.371, of December 5, 1967, is hereby maintained.

Art. 68. This Law shall come into force on the date of publication, all provisions to the contrary being hereby revoked.