Michel Temer’s government acts to violate indigenous peoples’ territorial rights

Dear Madam and Sirs,

UN Special Rapporteur on the Rights of Indigenous Peoples, **Victoria Tauli-Corpuz**

Ambassador President of the UN Human Rights Council, **Joaquín Alexander Maza Martelli**

High Commissioner for Human Rights, **Zeid Ra'ad Al Hussein**

Representative of the South America UN Office of the High Commissioner for Human Rights, **Amerigo Incalterra**

President of the Inter-American Commission on Human Rights and Rapporteur on the Rights of Indigenous Peoples, **Francisco José Eguiguren Praeli**
Following the March 2017 communication sent by a coalition of indigenous and civil society NGOs regarding an alarming backsliding on human rights for indigenous peoples in Brazil, illustrated in 13 topics which addressed, among other things, the weakening of Fundação Nacional do Índio - Funai; the denial to demarcate and protect indigenous lands; and the complete absence of dialogue with indigenous representatives, we would like to inform you on the most recent events which worsen the alarming situation as it further violates indigenous peoples’ rights in Brazil.

After more than one year of the visit of the UN Special Rapporteur on the Rights of Indigenous Peoples to Brazil, no progress has been demonstrated on the part of the government. On the contrary, violent attacks continue to take place against indigenous communities, revealing an elevated level of racism, such as in the most recent cases of the Gamelas in Maranhão and Guarani Kaiowá in Mato Grosso do Sul.

Moreover, the few commitments publicly made by the Brazilian government before the UN Human Rights Council, such as to strengthen Funai (both through contracting newly recruited staff and additional measures) were simply forgotten by the three Ministers of Justice who have sat in cabinet for the past four months. On the other hand, President Michel Temer and all of his short-term Ministers of Justice have acted to change the demarcation procedure for indigenous lands in favor of the agribusiness interests, harming indigenous peoples’ land rights. Indeed, the government is doing so by various unlawful administrative acts or political maneuvers aimed to overrule or suppress constitutional rights for indigenous peoples.

In 2015, the UN Special Rapporteur on the Rights of Indigenous Peoples had identified that in the "political context (of presidential impeachment), the threats facing indigenous peoples may be exacerbated and the long-standing protections of their human rights may be at risk." She referred to the political and economic crisis being used to justify institutional changes that disfavored indigenous peoples. Indeed, rapid changes have taken place in the government and continue to occur amidst charges of corruption and calls for impeachment leveled against the current President, Michel Temer. As alerted by the Special Rapporteur, in this context of crisis, the imbalance of power has not been addressed to benefit indigenous peoples. To the contrary, the ongoing crisis is worsening even more a continuously denounced situation of human rights violations affecting

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5. https://oglobo.globo.com/brasil/governo-promete-mutirao-de-demarcacoes-de-terras-indigenas-21288365
8. A/HRC/33/42/Add.1
indigenous peoples especially over the past decade.\textsuperscript{7} In Santa Catarina and Rio Grande do Sul, where the most vocal politicians against indigenous rights are based, sexual and moral harassment and abuse against indigenous women by employees of the National Secretariat of Indigenous Health (SESAI) have been recently denounced, with no investigation and punishment established.\textsuperscript{8} Particular attention must be paid to the racist speeches by national politicians and large-scale land owners who advocate against indigenous peoples and their land rights, thus reinforcing both the government determination to halt demarcations and the overall hike in the criminalization of indigenous leaders and other human rights defenders.

It is not a coincidence that in the Third Universal Periodic Review Cycle (2017), Brazil received over 30 recommendations\textsuperscript{9} regarding the situation of indigenous peoples' human rights.\textsuperscript{10} The country has also been subjected to a number of calls for action from indigenous organizations, human rights and environmentalist organizations as well as international human rights bodies with respect to the decline of legal and political protection and promotion of land rights, environment and of human rights in the most remote areas. For instance, through ‘provisional measures’ signed in June 2017 (\textit{Medidas Provisórias} 756, 758 and 759), the President has undermined programs of agrarian reform\textsuperscript{11} and conservation units (\textit{Unidades de Conservação}) protection, diminished conservation units areas in the state of Pará,\textsuperscript{12} considered one of the most violent in the country, and paved the way for further illegal grabbing of public lands\textsuperscript{13} to benefit agribusiness and natural resources exploitation interests, without any regard to the affected local populations, including indigenous peoples.

In July 2017, three new provisional measures were approved by the President Temer without any consultation with indigenous peoples that weaken socioenvironmental safeguards for mining activities in Brazil (\textit{Medidas Provisórias} 789, 790 and 791) with serious consequences for indigenous lands and their natural resources, therefore affecting their economic, social and cultural rights.

With regard to large infrastructure projects, the current federal administration has worsened an existing pattern of systematically ignoring indigenous rights.\textsuperscript{14} On July 7\textsuperscript{th}, a

\begin{itemize}
\item \textsuperscript{7} \url{http://apib.info/2017/04/10/representantes-indigenas-alertam-paises-na-onu-sobre-retrocessos-brasileiros/} \url{http://rca.org.br/2017/05/governo-temer-sera-mais-uma-vez-questionado-internacionalmente-sobre-violacao-de-direitos-indigenas-dessa-vez-e-na-oea/}
\item \textsuperscript{8} \url{http://midianinja.org/news/mulheres-indigenas-do-sul-denunciam-assedio-sexual-de-servidores-publicos-no-senado-federal/}
\item \textsuperscript{9} \url{https://nacoesunidas.org/revisao-periodica-universal-brasil-recebe-mais-de-240-recomendacoes-de-direitos-humanos-na-onu/}
\item \textsuperscript{10} \url{http://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2017/05/ou-cobra-medidas-mais-eficazes-no-combate-violacoes-de-direitos}
\item \textsuperscript{11} \url{https://www.brasildefato.com.br/2017/05/25/mp-759-expropria-a-populacao-pobre-do-campo-explica-sergio-sauer/}
\item \textsuperscript{12} \url{https://www.brasildefato.com.br/2016/12/26/governo-publica-mp-que-reduz-limites-de-unidades-de-conservacao-no-para/}
\item \textsuperscript{13} \url{https://www.socioambiental.org/pt-br/noticias-socioambientais/michel-temer-sanciona-mp-da-grilagem}
\item \textsuperscript{14} A program to promote priority infrastructure projects through public-private partnerships (PPI), established by \textit{MedidaProvisória} no. 727 (converted into Law 13,334/2016) includes a clause (article 17) that
\end{itemize}
new ten-year energy plan (PDE 2026) was announced by the Ministry of Mines and Energy (MME) that calls for the construction of two additional large dams in the Amazon – UHE Castanheira on the Arinos River, and UHE Tabajara on the Machado River – in disregard for the right of local indigenous peoples, including free, prior and informed consent. The new plan also maintains the possibility of constructing the highly controversial São Luiz do Tapajós dam that would directly flood the Sawré Muybu territory of the Munduruku indigenous people. Meanwhile, the adverse consequences on indigenous peoples of recent dams in the Amazon, such as Belo Monte and a cascade of four dams on the Teles Pires River continue unabated, undermining livelihoods and under protests of indigenous peoples. Legal decisions to address violations of indigenous rights continue to be undermined by the use of an authoritarian instrument originating from the military dictatorship, known as Security Suspension (Suspensão de Segurança), which ultimately allows chief justices to authorize any business initiative in the name of ‘national security’.

Thus, in addition to our previous document, we would like to draw your attention to the most recent facts which reveal that it is no longer a matter of omission from the part of the government, but an intentional and declared position of dealing with indigenous issues in a discriminatory basis, breaching laws and international commitments, without any space for good-faith dialogue nor participation of indigenous peoples. The current government has been adopting aggressive old fashioned military strategies: to divide groups and peoples; to quickly and undemocratically alter the constitution and other legislation regarding demarcation; to attempt to intervene in the indigenous social forms of organizations; to block the access to justice for indigenous peoples; but overall to bring back policies of cultural assimilation aimed at justifying the lack of demarcation and taking over of indigenous peoples lands, or exploiting these lands for so-called development projects which promote the expansion of the agricultural frontiers, mining and infrastructure construction (dams, harbors, roads, etc.) without any kind of prior consultation with indigenous peoples.

We understand that as a member of the UN Human Rights Council, Brazil should be doing more and taking more seriously its obligations and commitments to international human rights law and particularly the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention 169. Therefore, considering the next September 2017 session of the
UN Human Rights Council, we request your attention so, by all possible means, the government of Brazil is pressured to take immediate action to protect and promote indigenous peoples lives and rights, cultures, lands and overall human rights of these peoples, according to international human rights standards. We consider particularly important the following recommendations to the Brazilian government, considering the latest events described below:

1) REFRAIN FROM CRIMINALIZING INDIGENOUS LEADERS, COMMUNITIES AND PARTNERS AND STRENGTHEN PROGRAMS AND STRATEGIES TO PROTECT HUMAN RIGHTS DEFENDERS

In May 2017, a parliamentary inquiry commission – Comissão Parlamentar de Inquérito (CPI) – installed to investigate possible frauds in demarcation procedures of indigenous, quilombolas and agrarian reform lands carried by Funai and INCRA (Instituto Nacional de Colonização e Reforma Agrária), presented and voted its final report that discussed, among other things, the extinction of Funai. The report recommended to the Federal Police and to the Federal Public Prosecutors’ Office (Ministério Público Federal) an investigation of 114 people, encompassing indigenous leaders and others who work to defend indigenous peoples’ territorial rights, such as Funai and INCRA employees, federal prosecutors, church leaders and anthropologists, in addition to quilombolas and others who are struggling for agrarian reform in Brazil. No proof was presented to justify opening this investigation and the outcome of this CPI is seen as an attempt to criminalize indigenous peoples and human rights defenders. In fact, at least six indigenous leaders criminalized by the CPI are under protection of the undermined National Program of Protection of Human Rights Defenders. In a country with the highest rates of murders of human rights defenders and environmentalists, indigenous leaders are at risk and continue to demand the attention of UN Special Rapporteurs and the Inter-American Human Rights system.

2) RE-ESTABLISH DEMOCRATIC CHANNELS OF DIALOGUE WITH INDIGENOUS PEOPLES AND REFRAIN FROM MILITARY AND/OR INTEGRATIONISM APPROACH TOWARDS INDIGENOUS PEOPLES AND CULTURES

Since May 2017, when the former President of Funai, Mr. Antonio Fernandes Toninho Costa resigned from his position, accusing the former Minister of Justice, Osmar Serraglio, and the government’s leader in the Chamber of Deputies, André Moura, of acting in favor of a conservative lobby of large landholders and other agribusiness interests, known as ruralistas, and imposing political nominations within Funai, the agency has been directed by a military general. Despite the protests of the indigenous national movement, General Franklimberg Ribeiro de Freitas has been confirmed by the

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23 http://agenciabrasil.ebc.com.br/geral/noticia/2017-05/cpi-da-funai-aprova-relatorio-com-pedido-de-indiciamento-de-liderancas
24 See Annex I (List of individuals recommended to be investigated by CPI)
27 http://g1.globo.com/politica/noticia/ex-presidente-da-funai-diz-que-foi-demitido-por-discordar-de-indicacoes-politicas.shtml
current Minister of Justice as the president of the federal body for indigenous issues. As such, Mr. Freitas has signed a number of acts that are highly controversial, particularly with regard to his views regarding assimilation of indigenous peoples, cloaked within an argument of economic development. There has also been an increasing predominance of controversial individuals without field experience - including some who have previously argued against indigenous peoples rights - in occupying important positions within Funai’s regional and local offices. The most recent appointment involves a federal police officer, Marcelo Augusto Xavier da Silva, as the Funai’s ombudsman. This situation has led to manifestations of indigenous peoples from the southern region of Brazil, Fortaleza, Rio Grande do Sul and in Roraima. Meanwhile, the Conselho Nacional de Política Indigenista (National Council on Indigenous Affairs) has continued to be inoperative for almost a year, due to lack of interest within the Ministry of Justice to establish a respectful dialogue with indigenous peoples.

3) REVOKE ADMINISTRATIVE ACTS THAT VIOLATE THE RIGHT TO LAND, FREE, PRIOR AND INFORMED CONSULTATION AND THE RIGHT TO CULTURE FOR INDIGENOUS PEOPLES

In July 2017, the Ministry of Justice established a working group (Portaria MJ 541/2017), with several representatives of security forces to elaborate measures to promote the “integration” of indigenous communities. After major criticism from indigenous and civil society organizations, the act was substituted by an even worse measure (Portaria MJ 546/2017) claiming that the purpose was not assimilation but to organize indigenous peoples – as if indigenous peoples possessed no social organization. The Federal Public

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See Annex II (List of Funai Acts)
http://fnenei.org/2017/05/03/manifesto-de-repudio-dos-povos-indigenas-do-sul-a-indicacao-de-azelene-inacio/
http://www.cimi.org.br/site/pt-br/?system=news&conteudo_id=9398&action=read
http://www1.folha.uol.com.br/poder/2017/07/1900795-ministerio-recua-de-portaria-que-fala-de-integracao-de-vidros-e-quilombolas.shtml
Prosecutors’ Office presented a number of questions considering that such intent also breaches the constitutional right of indigenous peoples to define their own forms of social organization, according to their cultures and traditions. Any act aimed at assimilation and imposition of values and cultures on indigenous peoples should be revoked.

Also in July 2017, the President Michel Temer formally endorsed a legal opinion (parecer) that seeks to bind all federal agencies to illegal restrictions on the protection and legal defense of indigenous peoples’ land rights, particularly in cases where indigenous peoples have been removed from their lands - as well as their right to free, prior and informed consultation and consent - through application of the Raposa Serra do Sol case as a general rule to all indigenous lands in Brazil. Numerous manifestations from well-known legal experts, from academia and civil society highlight how indigenous rights are being violated by such an act and how access to justice and reparation will be denied if its provisions are implemented. By doing so, the presidential act puts pressure to restrict Funai and the Attorney General’s Office (Advocacia Geral da União - AGU) in fulfilling their responsibilities in accordance with the Constitution; it also intends to influence Supreme Court decisions. As such, President Temer’s decision should be immediately revoked.

In addition, due to lack of prior consultations with indigenous peoples concerning Presidential acts that affect indigenous peoples and their lands, as in the case of Provisional Measures 756, 758, 759, 789, 790 and 791 that stimulate illegal grabbing of public lands, reduce protected areas and weaken socio-environmental safeguards for mining activities in the country, it is urgent to signal to the current government that due process should be given urgent attention in all cases.

4) ENSURE ACCESS TO JUSTICE FOR INDIGENOUS PEOPLES WITHOUT ANY DISCRIMINATION

Considering the current and worsening political scenario, including the grave consequences of the above-mentioned presidential endorsement of a legal opinion issued by Attorney General Grace Mendonça (Parecer nº 001/2017/GAB/CGU/AGU, dated July 19th, 2017), it is imperative that indigenous peoples have their right to lands guaranteed. It is important to note that the AGU, through its specialized Federal Attorneys (Procuradoria Federal) is responsible for the defense of collective land rights in legal cases. However, when dealing with the demarcation of indigenous lands, such attorneys, acting within Funai, Ministry of Justice, and the central office of the AGU are required to follow this misguided decision, adopting the thesis known as Marco Temporal

42See Annex III (translation of the Opinion)
43See Annex IV (civil society positions)
and denying indigenous peoples of their access to justice in a variety of ways.⁴⁴ According to the Marco Temporal thesis, indigenous peoples who were not occupying their lands on the date the Brazilian Constitution was promulgated (October 5, 1988) would lose their right to their traditional lands⁴⁵; indigenous peoples who have been evicted from their lands during the assimilationist regime would not be entitled to have their territorial demarcation reviewed to protect their land as such, pushing aside any attempt of reparation and recognition of indigenous peoples rights. Military bases and development projects would be implemented inside indigenous lands without any consultation with indigenous peoples; moreover, the right of indigenous peoples to manage and use their lands and natural resources could be restricted in cases of overlapping with conservation units, among others.

As an administrative measure, the AGU opinion endorsed by President Temer illegally diminishes constitutional rights for indigenous peoples as if it were a legislative act, passed without any kind of dialogue or transparent procedure, nor free and prior consultations. Moreover, it strengthens the anti-indigenous platform of politicians that often incite hate and violence against indigenous peoples. The presidential act is already impacting indigenous lives throughout the country, particularly in the south and northeast states of Brazil. Such political influence is even more critical when considering that President Temer’s previous Ministry of Justice, Alexandre Moraes, who advocated for an unconstitutional uniformization to restrict indigenous land rights, now sits as a newly-appointed justice on the Federal Supreme Court. That court will be deciding on three indigenous land rights cases on August 16th, 2017. The court may approve, on the same day, the ‘Marco Temporal’ thesis. There is a fear that the artificial construction of unconstitutional arguments will become the norm, even at the Supreme Court level, leaving indigenous peoples without remedy at the federal level with regard to their fundamental territorial rights.

For the above reasons, the organizations co-signed below request the UN and OAS human rights mechanisms to communicate with the Brazilian government demanding that its international commitments are respected and fulfilled at the national level to protect indigenous peoples’ human rights, and also to stop the various acts and measures adopted that jeopardize the future, dignity and physical and cultural integrity of indigenous peoples. Indigenous peoples’ rights deserve the maximum protection from the Brazilian State, in accordance with progress achieved in international law.

APIB – Associação dos Povos Indígenas do Brasil
APOINME – Articulação dos Povos e Organizações Indígenas do Nordeste, Minas Gerais e Espírito Santo
Conselho Terena
Comissão Guarani Yvyrupá
ARPINSUDESTE – Articulação dos Povos Indígenas do Sudeste
ARPINSUL – Articulação dos Povos Indígenas do Sul

ATY GUASSU – Grande Assembleia do Povo Guaraní
COIAB – Coordenação das Organizações Indígenas da Amazônia Brasileira
ATIX – Associação Terra Indígena Xingu
AMAAIC – Associação do Movimento dos Agentes Agroflorestais Indígenas do Acre
APINA – Conselho das Aldeias Wajápi
FOIRN – Federação das Organizações Indígenas do Rio Negro
HAY – Associação Yanomami
CIR – Conselho Indígena de Roraima
OPIAC – Organização dos Professores Indígenas do Acre
UMIAB – União das Mulheres Indígenas da Amazônia Brasileira
Wyty-Catë – Associação Wyty-Catë dos Povos Indígenas Timbira do Maranhão e Tocantins
OGM – Organização Geral Mayuruna

ABA – Associação Brasileira de Antropologia
AJD – Associação Juízes para a Democracia
ANAÍ – Associação Nacional de Ação Indigenista
ANA – Articulação Nacional de Agroecologia
APD – Advogadas e Advogados Públicos para a Democracia
CIMI – Conselho Indigenista Missionário
Conectas Direitos Humanos
CTI – Centro de Trabalho Indígena
CPI-AC – Comissão Pró-Índio do Acre
CPI-SP – Comissão Pró-Índio de São Paulo
FASE - Federação de Órgãos para Assistência Social e Educacional
FAOR – Fórum da Amazônia Oriental
IDDDH – Instituto de Desenvolvimento e Direitos Humanos
IEB – Instituto Internacional de Educação do Brasil
Iepé – Instituto de Pesquisa e Formação Indígena
International Rivers – Brasil
Fian Brasil - Organização pelo Direito Humano à Alimentação e à Nutrição Adequadas
ISA – Instituto Socioambiental
ISPN – Instituto Sociedade, População e Natureza
Greenpeace
MAB – Movimento de Atingidos por Barragens
MMC Brasil – Movimento de Mulheres Campesinas
MNDH – Movimento Nacional de Direitos Humanos
OPAN – Operação Amazônia Nativa
Plataforma de Direitos Humanos - DHeśca Brasil
RCA – Rede de Cooperação Amazônica
Rede ODS Brasil
Rede Social de Justiça e Direitos Humanos
Terra de Direitos
Unisol – Central de Cooperativas e Empreendimento Solidários