



THE SITUATION OF HUMAN RIGHTS DEFENDERS

BRAZIL

Submission to the UN Special Rapporteur
on Human Rights Defenders

May 2016

This document calls for **urgent attention** to be paid to the serious risks facing human rights defenders in Brazil, particularly those fighting for their right to land and traditional ways of living. Despite the fact that Brazil has created a National Protection Program for Human Rights Defenders, the public policy still lacks a legal framework and an effective national methodology.

The economic crisis has caused severe budget cuts in the sphere of human rights, which puts people and communities at grave risk. These cuts have also restricted the effectiveness of policies for land recognition and titling for indigenous peoples and traditional populations, leaving them vulnerable and exposed to various violations. What is more, attempts to make environmental laws more flexible to ease the development of large-scale infrastructure projects represent a new obstacle to human rights defence.

1) REAL RISKS REQUIRING URGENT ACTION - HUMAN RIGHTS DEFENDERS IN BRAZIL

A. Update – a worsening situation in 2016

- The current political crisis in Brazil has accentuated pre-existing levels of violence and institutional weaknesses, leaving human rights defenders even more exposed to threats, violence and murders.
- In 2016, 13 human rights defenders have already been murdered in Brazil in just three-and-a-half months.¹
- In March, the law to typify terrorist actions was approved by the Congress. This law represents an additional threat for defenders, as it makes it possible to criminalise social movements and activists. The negative consequence of such laws has already been seen in other Latin American countries.²
- Since the attacks assisted by the Military Police on the Dom Tomas Balduino camp occupied by rural workers and their families, calls from civil society for impartial investigations have been made whilst human rights violations continue to take place in the region.³

- Indigenous leaders Cacique Babau Tupinamba and his brother have been arrested for their advocacy against commercial exploitation of their territory. They were recently denied a custody hearing, further prolonging their imprisonment where they continue to suffer acts of violence.⁴

B. An overview of the risks facing human rights defenders in Brazil

- Human rights defenders in Brazil face **death threats, harassment, stigmatisation, the undue use of the judicial system** against them, **surveillance** and even murder.⁵
- According to Brazilian activists at the biannual Human Rights Colloquium held by NGO Conectas in São Paulo in 2015, there have been numerous abuses by the Brazilian police and security forces against those who protest for human rights protection.⁶ Furthermore, police responsible for **unlawful killings** enjoyed almost total **impunity**, as demonstrated by the 220 investigations opened five years ago that led to only one officer being charged as late as last year. Meanwhile 183 of the cases remain open.⁷
- **Attacks against and the risk of evictions of**

indigenous communities remain widespread and continue to grow. A recent amendment to the Constitution has been proposed which would effectively transfer responsibility for demarcating indigenous lands to the legislature⁸, which has been criticised for being unduly influenced by agribusiness.

- According to Human Rights Secretariat data, there are currently 197 people registered with the National Human Rights Defenders Protection Programme. 37 percent of cases relate to **land rights defence**, 20 percent are **indigenous** people, 13 percent of cases relate to **environmental** activism and 12 percent are **quilombolas** (afro-descent). The remaining cases relate to the fight for housing, the fight against corruption, child rights and the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people.⁹
- **LGBTI** rights defenders face a particularly heightened risk, as Brazil maintains the top position in the world ranking of homophobic murders, registering 44 percent of such killings worldwide.¹⁰
- In addition, alarming rates of murders of **journalists** have also been recorded. According to the Committee for the Protection of Journalists, Brazil recorded the highest number of homicides of journalists in the last 23 years. In 2015 alone six deaths were recorded nationally, making Brazil the third most dangerous country for journalism, after Syria (13 deaths) and France (nine cases owing to the Charlie Hebdo attack).¹¹
- It is important to take into consideration that the above data does not represent the totality of the problems of threats to human rights defenders in Brazil. With the National Human Rights Defenders Protection Programme failing to adequately record the demand it is faced with, it falls upon civil society to collect data on this issue. This is complicated given the size of the country and the lack of resources available with which to complete this task. One can therefore deduce that the scale of the problem is far greater than we are able to document.

C. Land and environmental rights defenders face heightened and specific risks

- Those who fight for land rights, the right to territory, and rights related to the environment face the highest incidence of attacks, threats and murders in Brazil. Between 2002 and 2013, documented deaths of these defenders increased threefold compared to the previous decade. Attacks against indigenous people and communities directly affected by mega-

projects have increased in particular.

- Brazil tops the rank of **killings** of land and environmental rights defenders, according to data produced by the NGO Global Witness. Of the 908 killings of environmentalists worldwide recorded between 2002 and 2013, 448 (49.33 percent) took place in Brazil.¹²
- According to data produced by the Land Pastoral Commission, between 2005 and 2014 Brazil there were 334 murders recorded in rural conflict contexts. 118 of them, or 35.3 percent, occurred in the state of Pará.¹³ In the second semester of 2015, 23 people were killed in conflicts relating to land and territory in Brazil. Of these, only one death occurred outside the Amazon region.¹⁴
- At the end of 2015, a series of seven murders of human rights defenders who had demanded rural workers' rights were recorded in the town of Anapu, in the state of Pará; the town where missionary Dorothy Stang was also murdered.¹⁵
- According to the Land Pastoral Commission, the same person who ordered the missionary to be killed, and who has not been tried in court, may well be responsible for these new deaths. This demonstrates that homicides take place within a scenario of considerable **impunity** for people who order human rights defenders to be murdered. Also according to the Land Pastoral Commission, over a period of 28 years, only 21 of the 428 cases of homicides in the rural area of the state of Pará have been judged in court.¹⁶
- According to a report published by the Indigenous Missionary Council, in 2014 alone, 138 native Indians were murdered in Brazil as a result of land conflicts and 29 percent of these deaths occurred in the state of Mato Grosso do Sul, with the Guarani-Kaiowá people particularly affected. The roots of many such land conflicts have their origins in soya bean and maize agribusiness projects.¹⁷

2) BRAZIL'S SOCIAL, ECONOMIC AND POLITICAL CONTEXT – EXACERBATING THE RISKS DEFENDERS FACE

A. An overview of the Brazilian context

- Recent economic policies have meant **more defenders facing more risks**. The Brazilian State has consolidated a **development model** focused on economic growth which civil society accuses of ignoring and violating human rights. Many NGOs have suggested that the neo-liberal economic model underway prioritises short-term gains in macroeconomic

indicators, leaving large parts of the Brazilian population suffering restrictions on their human rights. This context has necessarily created new communities of human rights defenders who find their rights threatened by State and non-State actors. What is more, the work of these defenders often brings them into conflict with big economic projects and vested political interests, meaning the level of threats they face is accentuated.

- It is this development model which has inevitably left land rights activists particularly vulnerable. Political decisions follow the logic of the international market, producing heavy pressure on occupied and/or claimed lands and territories and on common property for indigenous peoples, traditional communities and landless rural workers. Simultaneously, the Brazilian State has abandoned or cut back land democratisation policies and programmes used to guarantee territories for traditional peoples, manage natural resources and promote social policies.¹⁸
- The Amazon is a region where human rights defenders are particularly threatened due to its natural riches which, for the most part, are illegally exploited by ranchers, land grabbers, the timber industry, soya bean growers, and so on. Furthermore, there are large-scale mining projects in the Amazon region, especially those of the Vale company, as well as a considerable focus on building hydroelectric power stations, such as Belo Monte and São Luiz do Tapajós.
- The building of hydroelectric power stations in Brazil is associated with a history of serious human rights violations. This was demonstrated, for example, in a report in 2010 by the National People's Defence Council (now the National Human Rights Council), which documented multiple violations in the context of dam projects. According to the report, "the current pattern of imposing dams has repeatedly resulted in serious human rights violations, the consequences of which worsen severe social inequalities, resulting in situations of poverty and social, family and individual breakdown". This context has compelled communities to resist megaprojects and demand their rights, thus clashing with large economic interests.¹⁹
- The building of the Belo Monte power station is emblematic of this context, having been built without the free, prior and informed consent of indigenous peoples and traditional communities, in breach of ILO Convention 169. Human rights defenders have been instrumental in signalling the adverse effects of this project, thus threatening its implementation and consequently suffering from stigmatisation, harassments and threats.²⁰

- The Tapajós region of the Amazon is also the target of federal government plans. President Dilma Rousseff announced the public tender of the São Luiz do Tapajós Hydroelectric Power Station in the second semester of 2016. As in the case of Belo Monte - and other mega-projects in Brazil - indigenous and other traditional communities have not been properly consulted.²¹

- Impunity is another key factor in the Brazilian human rights defence context. In 2015 Brazil faced its biggest environmental disaster caused by the disruption of a mining dam from Samarco Company (owned by the Anglo-Australian BHP Billiton and the Brazilian Vale) in Minas Gerais. It is estimated that 62 million square meters of mining tailings were dumped into the Rio Doce basin, a water supply affecting 85 million people. At the time of writing, the company had not yet been charged or made accountable for the crime.²²

B. The legislative context – presenting particular challenges

- In 2015, Brazilian civil society demanded a series of legislative reforms that would represent the end of a significant backsliding with regard to human rights, and a worsening of the context for human rights defence.
- On 1 December 2015, the Special Commission on Development of the Senate voted in favor of the the Bill n. 654/2015 which aims to increase flexibility in Brazilian environmental law for mega-projects; potentially augmenting the potential for human rights abuses and worsening the context for human rights defence.
- As mentioned above, in March 2016, the Brazilian parliament approved a new 'anti-terror law', despite great opposition from civil society and social movements.
- There also exists in Brazil a legal instrument known as "stay of preliminary court orders and court rulings", which gives the State the right to petition the President of High Courts for the suspension of preliminary court orders or court rulings contrary to its interests, on the grounds of public interest. This instrument has been repeatedly used to ensure the undertaking of large-scale works in the Amazon, *in absentia* of human rights. Many social organisations and the Federal Public Prosecution service have claimed that this legal instrument is unconstitutional.²³
- The National Congress has approved Law no. 13.123/2015, which privatises nature and traditional knowledge²⁴;

proposed Constitutional Amendment 215/2000, which affects indigenous and quilombola peoples country-wide by transferring the responsibility for territory titling to the Legislative branch; Proposed Constitutional Amendment 171/1993, which threatens to reduce the age of criminal responsibility; and the undermining of labour rights through outsourcing intended by Bill of Law 4330/2004.

3) THE STATUS OF THE NATIONAL POLICY ON HUMAN RIGHTS DEFENDERS IN BRAZIL

A. Background to the National Protection Programme

- It is clearer than ever that the National Protection Programme is not working, at the same time that there is an increase in the number of human rights violations, threats, murders and intimidation of human rights defenders. The successive debilitation of the National Protection Programme demands urgent attention.
- In 2004, the Brazilian Government created its Human Rights Defenders Protection Programme (HRDPP), within the Special Human Rights Secretariat of the Office of the President of the Republic, which later brought into force the National Policy on Human Rights Defenders Protection in 2009.
- Since 2004, through the Brazilian Human Rights Defenders Committee, organised civil society has accompanied the public protection policy and produces an annual analysis of progress and challenges in its implementation. Based on this evaluation, it proposes recommendations for the Human Rights Secretariat with the aim of contributing to strengthening the HRDPP, given their recognition that this is an important initiative that seeks to make a culture of human rights in Brazil effective.
- However, despite the countless recommendations made by civil society to the HRDPP, little has been done by the Brazilian State to construct an effective protection policy. Many of the actions that should have been consolidated by the HRDPP have been abandoned by the Human Rights Secretariat. As such, the Programme has completed 11 years of existence without having become an effective protection policy – a situation exacerbated by the fact that it continues to lack a legal framework or a specific and unified working methodology.

B. The National Protection Programme in practise

- HRDPP continues to lack a legal framework. Bill of Law 4575/2009, which created the HRDPP, was approved by all the Commissions of the House of Deputies and has been waiting to be voted on in the plenary session since 2011. However, despite three requests to be voted urgently, the proposal has been abandoned by the Government. **Civil society considers the approval of this Bill of Law to be essential for strengthening the Programme.**
- Without the law, the HRDPP does not exist legally as a state policy, being supported only by Presidential Decree No. 6.044, dated 12 February 2007, and is at risk of being terminated at any time. Brazil is a federation, and member states have autonomy in managing public security and justice. Therefore, the consequence of the lack of legal provision is that state agencies and institutions, and even federal agencies from other branches of government, are not obliged to adhere to the policy. **After more than 10 years, only six out of the 26 Brazilian states have a protection program;** only four out of these six are operational (Pernambuco, Espírito Santo, Ceará and Minas Gerais), while the remaining two have signed agreements, but are not currently operational (Bahia and Maranhão).²⁵
- Besides, the Brazilian Human Rights Defenders Committee has pointed out the **need for a clear methodology** and improvement of how the program deals with the cases currently under its supervision. Many cases under the federal team are poorly monitored, as the communication is mainly by telephone or letters to local agencies. The program also lacks a gender perspective towards the women human rights defenders under protection. The lack of a more structured policy, with a clear methodology that encompasses the specificities of the different situations, can expose defenders and make them even more vulnerable.
- Despite its shortcomings, the HRDPP is a crucial instrument for ensuring and promoting human rights in Brazil. It is of great relevance for action and for dealing with conflicts and threats to which human rights defenders are exposed. It is therefore increasingly necessary to reinforce, structure and implement the HRDPP as a true State policy.

RECOMMENDATIONS TO THE GOVERNMENT OF BRAZIL

- Take urgent action to protect human rights defenders, in particular those facing immediate risks, including Cacique Babau and Teity and the families of the victims of the Dom Tomas Balduino camp massacre.
- Recognise the legitimacy of the work of human rights defenders, according to the 1998 Declaration on Human Rights Defenders.²⁶
- Immediately draft and pass a law on the protection of human rights defenders, with sufficient budget to guarantee effective protection and with a mandate to address the structural causes of threats to human rights defenders, including the demarcation of Indigenous Peoples' lands, land reform policies, and the cutting of resources to key government agencies.
- Promote a broad recognition campaign on the work of human rights defenders and their right to freedom of expression and assembly.
- Strengthen implementation of the Human Rights Defender Protection Programme, in line with civil society analysis and recommendations;
- Combat impunity by ensuring the prompt, thorough and impartial investigation of all violations against human rights defenders, the prosecution of perpetrators, and access to effective remedies for victims.
- Demonstrate strong, high-level political support for human rights defenders through public statements by State officials that recognise defenders' important and legitimate work.
- Declare unconstitutional Law 8.437/92, which governs the legal instrument of stay of preliminary court orders and court rulings.
- Refrain from using the anti-terrorism law to criminalise human rights defenders;
- Comply with obligations arising under ILO Convention 169, especially with regard to large infrastructure works, and hold free, prior and informed consultations with indigenous, traditional peoples and communities;
- Respect environmental legislation and demand compliance with the constraints and measures imposed by licences granted to companies that carry out large infrastructure projects;
- Refuse to comply with the World Bank's appeal to make environmental laws more flexible, including by rejecting Bill 654/2015.
- Extend an urgent invitation to the UN Special Rapporteur on human rights defenders.
- Comply with the UN Universal Periodic Review Second Cycle recommendations, especially those relating to the recognition of access to land by traditional people and communities, as well as the right to adequate housing by those affected by mega-projects, whether urban or rural. Brazil accepted 169 of these recommendations²⁷, such as:
 - 119.80. Pass legislation, without undue delay, to confirm the official status of the National Programme for the Protection of Human Rights Defenders, and give priority to its wide implementation (Norway) (A/HRC/21/11 – recommendations 119.31, 119.79, 119.81, 119.82, 119.83, 119.84, 119.86, 119.87);
 - 119.141. Improve the struggle against poverty, improve the fate of individuals and communities fighting for access to land in rural zones, and protect them against evictions, intimidations, threats and killings (Belgium);
 - 119.162. Strengthen the awareness campaigns on the rights of indigenous populations and persons of African descent, notably through the implementation of the provisions of the specific laws adopted in this domain (Morocco);
 - 119.164. Ensure the rights of indigenous peoples, in particular the rights to traditional lands, territories and resources, and their right to be consulted (Norway) (A/HRC/21/11 – recommendations 119.163, 119.164, 119.165, 119.166, 119.167, 119.168).

1. According to a joint report to the Special Rapporteur from the Brazilian Human Rights Defenders Committee on 13 April 2016.
2. This practice in Chile was condemned by UN experts: “Chile must stop using anti-terrorism law against Mapuche indigenous group – UN expert” www.un.org/apps/news/story.asp?NewsID=45538#.VxTzYDFAqC4.
3. <http://agenciabrasil.ebc.com.br/geral/noticia/2016-04/policia-federal-vai-investigar-morte-de-camponeses-em-confronto-com-pm-no-pr>.
4. http://www.cimi.org.br/site/pt-br/?system=news&conteudo_id=8648&action=read.
5. The role of businesses and States in violations against human rights defenders of the rights to land, territory and the environment Civil society organisations joint report - October 2015, available at www.ishr.ch/sites/default/files/article/files/reportcoalitionbusinesslandishr.pdf.
6. www.ishr.ch/news/brazil-protect-human-rights-defenders-working-corporate-accountability.
7. www.amnesty.org/en/countries/americas/brazil/report-brazil/.
8. Ibid.
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20. <http://terradedireitos.org.br/2015/09/03/belo-monte-cndh-recomenda-garantia-de-direitos-dos-atingidos-como-requisito-para-concessao-de-licenca-de-operacao/>.
21. <http://www.cimi.org.br/site/pt-br/?system=news&action=read&id=7830>.
22. <http://odia.ig.com.br/noticia/brasil/2015-11-28/tragedia-ambiental-em-mariana-impunidade-a-vista.html>.
23. <http://terradedireitos.org.br/2016/02/01/mab-audiencia-alerta-para-riscos-de-barragens-no-tapajos/>.
24. This information is developed from the experiences of communities; observing phenomena (e.g., a plant has healing properties); the exchange of knowledge with other communities; religious practices; and the need to adapt to the living environment over time.
25. Comitê Brasileiro de Defensores e defensoras de Direitos Humanos.
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27. www.sdh.gov.br/importacao/2012/09/19-set-2012-nota-publica-brasil-acolhe-recomendacoes-do-mecanismo-de-revisao-periodica-universal-do-conselho-de-direitos-humanos-das-nacoes-unidas.

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