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Joint written statement* submitted by France Libertes : Fondation Danielle Mitterrand, American Association of Jurists, Cultural Survival, Emmaus International Association, Netherlands Centre for Indigenous Peoples (NCIV), Stichting Forest Peoples Programme, non-governmental organizations in special consultative status, Indian Council of South America (CISA), Mouvement contre le racisme et pour l'amitié entre les peuples, non-governmental organizations on the roster¹

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

¹ See list of 68 NGOs and social movements that signed this declaration on page 5.

Hydroelectric dams and violations of indigenous peoples' right to free, prior and informed consent in the Brazilian Amazon

In its rush to build an unprecedented number of hydroelectric dams on major Amazon rivers, the Brazilian government has repeatedly violated international human rights agreements to which the country is party, such as ILO Convention 169 and the UN Declaration on Rights of Indigenous Peoples (UNDRIP) concerning the right of indigenous and tribal peoples to previous consultation and Free, Prior and Informed Consent (FPIC). As such violations intensified, the devastating human and environmental consequences of these dam projects have become increasingly visible. This statement provides a brief update on violations of indigenous peoples' right to previous consultation and FPIC regarding dam projects in the Brazilian Amazon, highlighting the Belo Monte dam complex on the Xingu River and a series of large dams, planned and under construction, in the Tapajós basin.²

In Brazil, systematic violations of indigenous peoples' rights to FPIC in the planning, licensing and construction of Amazonian dams are largely the result of: 1) the lack of a consistent position of the Brazilian government regarding how the rights of indigenous peoples to consultation and FPIC, as determined by ILO Convention 169 (ratified in 2002), UNDRIP, the Inter-American System on Human Rights, and the Brazilian Constitution must be applied to hydroelectric dams and similar projects that directly impact indigenous territories and livelihoods;³ and 2) the willingness of the Brazilian government to undermine the rule of law and democratic institutions, catering to powerful interests of a longstanding alliance between the Ministry of Mines and Energy (MME), political parties and private construction companies. As demonstrated in recent investigations by the Federal Police and Public Prosecutors, this alliance is closely linked to massive corruption schemes.⁴

The planning and licensing of hydroelectric dams in the Brazilian Amazon has been characterized by: a) the use of basin inventory studies conducted by MME and private companies that focus narrowly on identification of sites with maximum potential for energy generation - regardless of social and environmental consequences of individual projects and dam cascades - as a basis for political decisions on dam construction, with no FPIC process; b) incomplete environmental impact and economic viability studies carried out by dam proponents without independent and objective analysis, and thus, results, c) denial of the existence of downstream and other impacts, largely as a means to justify the absence of FPIC; d) political strong-arming of institutions responsible for environmental protection to approve environmental licenses, and e) lack of independent monitoring of dam impacts and implementation of required mitigation and compensation measures.

A striking example of disregard for indigenous rights in the planning, licensing and construction of dam projects is the repeated use of a legal tool known as "Security Suspension" (*Suspensão de Segurança*) that allows chief justices, upon request from the federal government, to unilaterally suspend legal decisions in favor of indigenous peoples' rights, based on vaguely-alleged threats to national security and the country's "social and economic order". According to current legislation, a "Security Suspension" remains in effect until the last possible phase of appeals, allowing dam construction to become a *fait accompli*, while gross violations of human rights continue. As denounced by civil society

² See joint statement A/HRC/25/NGO/43 (14 February 2014): http://ap.ohchr.org/documents/alldocs.aspx?doc_id=22780

³ See: Memorando no. 244/2013/FUNAI-MJ, from ex-President Maria Augusta Assirati of the Federal Indian Agency (FUNAI) to Minister of Justice José Eduardo Cardozo, which never received a response. Within this context of ambiguity, a particular problem has been the Rousseff administration's refusal to acknowledge situations in which the *consent* of indigenous peoples should be a prerequisite for project approval.

⁴ See: <http://www.bloomberg.com/news/features/2015-05-08/brazil-s-massive-corruption-scandal-has-bitterness-replacing-hope>
<http://g1.globo.com/bom-dia-brasil/noticia/2014/12/costa-diz-que-esquema-de-propina-e-superfaturamento-funciona-sempre.html> See also: <http://www.internationalrivers.org/resources/8595>

organizations and legal experts in Brazil, the *Suspensão de Segurança* constitutes an obstacle to Brazil's compliance with international human rights agreements, such as ILO Convention 169 and UNDRIP.⁵

Belo Monte

The Belo Monte Hydroelectric Complex, under construction since mid-2011 on the Xingu River, one of the Amazon's major tributaries, is arguably the world's most notorious example of a mega-dam project that involves blatant disregard for both national and international human rights and environment law. Since 2001, Belo Monte has been the object of at least twenty Civil Action Lawsuits filed by the Federal Public Prosecutors' Office (MPF).

In 2006, MPF filed a lawsuit questioning approval by Brazil's National Congress of Legislative Decree no. 788/2005 that authorized construction of Belo Monte despite a lack of prior consultations with affected indigenous peoples, as mandated by article 231 of the Federal Constitution and ILO Convention 169. In August 2012, a federal appeals court (TRF-1) ruled on the merits of the case, suspending Decree 788 and the construction of Belo Monte. In a matter of days, outgoing Chief Justice of the Supreme Court (STF), Carlos Ayres Britto, upon request from the Attorney General's Office (AGU), unilaterally suspended the court decision, via *Suspensão de Segurança*, ignoring arguments concerning the case's merits and postponing a final judgment. Subsequently, STF has neglected to consider appeals from the Federal Public Prosecutor's office to reconsider Britto's decision.⁶

In November 2010, a coalition of Brazilian and international organizations filed a petition with the IACHR on behalf of affected indigenous communities from the Xingu, calling attention to the absence of FPIC among indigenous peoples threatened by Belo Monte, and threats to groups in voluntary isolation. In April 2011, the Commission issued precautionary measures (PM 382-2010), requesting the Brazilian government, among others, to suspend licensing and construction of Belo Monte prior to conducting a process of FPIC among local indigenous peoples, while taking special actions to ensure the physical integrity of tribes in voluntary isolation. The response of the Brazilian government was an aggressive denial of any violations of indigenous rights and a refusal to implement the precautionary measures. While questioning the authority of the IACHR, the Brazilian government withheld its financial contributions to the OAS, and candidates to the Inter-American Commission in retaliation.⁷ The IACHR subsequently issued an amended version of the precautionary measures in July 2011 (still in place).⁸

Tapajós

The Tapajós basin is currently the main focus of the Brazilian government's ambitious dam-building plans for the Amazon, which is on a collision course with indigenous territories and other protected areas. In the case of the São Luiz do Tapajós dam, the largest of the planned hydro-projects in the basin, the Federal Public Prosecutors Office in the state of Pará (MPF-PA) filed a Civil Action Lawsuit in September 2012, demanding a process of FPIC with threatened indigenous peoples, prior to granting a first phase environmental license for the project. The lawsuit also demanded an evaluation of cumulative impacts of the São Luiz do Tapajós dam, together with other projects slated for construction in dam cascades on the Tapajós and a major tributary, the Jamanxim. Following a favorable decision from a federal judge in November 2012, the Secretary General of the Presidential office announced that it would coordinate consultations with the Mundurucu people, directly threatened by São Luiz do Tapajós and other planned dam projects on the Tapajós main stem. Paradoxically, the Secretary General, Minister Gilberto Carvalho, simultaneously declared that the process

⁵ See: http://www.icjp.pt/sites/default/files/papers/o_terror_juridico_completo.pdf

⁶ At least six other lawsuits on Belo Monte have been similarly undermined via "Security Suspension": http://www.prpa.mpf.mp.br/news/2014/arquivos/Tabela_de_acompanhamento_atualizada_Mar_2014.pdf/at_download/file

⁷ <http://economia.estadao.com.br/noticias/geral,brasil-nao-paga-oea-por-causa-de-belo-monte-imp-,787892>

⁸ <http://www.oas.org/en/iachr/decisions/precautionary.asp>

of consultation with the Munduruku would not deter the government's plans for constructing São Luiz do Tapajós and other dam projects.⁹

Meanwhile, as foreseen in relevant legislation, the Munduruku people prepared a "protocol" on procedures for ensuring a culturally-appropriate process of FPIC.¹⁰ In January 2015, the protocol was personally delivered to incoming Secretary General of the President's office, Miguel Rosseto, but has yet to receive a formal response from the government.¹¹ In April 2015, incoming Minister of Mines and Energy, Eduardo Braga, declared that the auction for São Luiz do Tapajós will take place in November 2015, while ignoring pending needs for FPIC.¹²

On the Teles Pires River, a major tributary of the Tapajós, the construction of a cascade of four large dams, with no process of FPIC, has already provoked major social and environmental consequences. In April 2015, an alliance of four indigenous tribes denounced the Brazilian government for initiating a process of cultural and physical genocide.¹³

We urge the Brazilian government to:

- Observe international commitments to human rights and implement a culturally appropriate process of prior consultations and FPIC;
- Respect the independence of the Judiciary and eliminate the use of the "Security Suspension" to undermine legal decisions in favor of indigenous rights to FPIC.

We call upon the Human Rights Council to request information to the State and closely monitor violations of indigenous rights associated with hydroelectric dams in the Brazilian Amazon, through the applicable mechanisms, including field visits to meet with affected communities and the Federal Public Prosecutors, involving the following relevant special procedures:

- Special Rapporteur on rights of indigenous peoples
- Special Rapporteur on human right to safe drinking water and sanitation
- Special Rapporteur on independence of judges and lawyers
- Working group on business and human rights

⁹ See: <http://racismoambiental.net.br/2014/11/12/ele-e-um-canalha-lideranca-munduruku-responde-entrevista-de-gilberto-carvalho/>

¹⁰ <http://amazonwatch.org/assets/files/2014-12-14-munduruku-consultation-protocol.pdf>

¹¹ <http://www.prpa.mpf.mp.br/news/2015/indios-e-ribeirinhos-entregam-ao-governo-federal-protocolo-para-consulta-previa-da-usina-sao-luiz-do-tapajos>

¹² <http://www.xinguvivo.org.br/2015/04/17/munduruku-desmentem-eduardo-braga-sobre-dialogo-com-indigenas-e-exigem-consulta-e-demarcacao/>

¹³ http://www.internationalrivers.org/files/attached-files/manifesto_da_alianca_dos_povos_indigenas-protocolos-assinaturas.pdf
http://www.internationalrivers.org/files/attached-files/manifesto_indigenous_alliance_teles_pires_24abril2015.pdf

BRAZIL/LATIN AMERICA:

1. Articulação dos Povos Indígenas do Brasil - APIB
2. Articulação Antinuclear Brasileira
3. Articulação de Mulheres Brasileiras - AMB
4. Asociación Ambiente y Sociedad – Colombia
5. Asociación Interamericana para la Defensa del Ambiente - AIDA
6. Associação Movimento Paulo Jackson - Ética, Justiça, Cidadania
7. Coletivo de Mulheres – Altamira (PA)
8. Comissão Justiça e Paz da Diocese de Santarém
9. Conselho Pastoral dos Pescadores (CPP)
10. Comissão Pró-Índio (São Paulo)
11. Consejo Indio de Sud América – CISA
12. Conselho Indigenista Missionário - CIMI
13. Fórum de Mulheres da Amazônia Paraense – FMAP
14. Fórum da Amazônia Oriental – FAOR
15. Fórum Mudanças Climáticas e Justiça Social - FMCJS
16. Fórum em Defesa de Altamira
17. Fundação Tocaia
18. Fundación M'Biguá, Ciudadanía y Justicia Ambiental. Paraná, Entre Ríos, Argentina.
19. Greenpeace Brasil
20. Grupo Sementes
21. Instituto Amazônia Solidária – IAMAS
22. Instituto Brasileiro de Análises Sociais e Econômicas – IBASE
23. Instituto IEPÉ
24. Instituto Madeira Vivo – IMV
25. Instituto Pan Americano do Ambiente e Sustentabilidade - IPAN
26. Instituto Socioambiental - ISA
27. Instituto Transformance: Cultura e Educação (Pará)
28. Movimento Articulado de Mulheres da Amazônia – MAMA
29. Movimento Negro
30. Movimento Tapajós Vivo
31. Movimento Xingu Vivo Para Sempre
32. Mutirão Pela Cidadania
33. Operação Amazônia Nativa – OPAN
34. REBRIPP
35. Rede Brasileira de Arteducadores - ABRA
36. Rede de Cooperação Amazônica - RCA
37. Rede de Mulheres Empreendedoras Rurais da Amazônia - RMERA
38. Terra de Direitos
39. Uma Gota no Oceano

INTERNATIONAL:

1. Amazon Dams Network, Tropical Conservation and Development Program, UF Gainesville
2. Amazon Watch, USA
3. CounterCurrent, Germany
4. CSF - Conservation Strategy Fund
5. DKA – Hilfswerk der Katholischen Jungschar, Austria
6. ECA Watch, Austria
7. FDCL - Forschungs- und Dokumentationszentrum Chile-Lateinamerika, Germany
8. GITPA, France
9. Infoe (Institut für Ökologie und Aktionsethnologie e.V.), Germany
10. Interamerican Association for Environmental Defense - AIDA
11. International Rivers, USA
12. Kooperation Brasilien e.V., Germany
13. Planète Amazone, France
14. Pro REGENWALD, Germany
15. Rainforest Foundation, USA
16. River Watch, Austria
17. Saka Mese Nusa AlifURU Foundation, Holland
18. Society for Threatened Peoples, Switzerland
19. Welthaus, Austria

NGO(s) without consultative status, also share the views expressed in this statement.