

**GEGENSTRÖMUNG**



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Dear Mr. Joe Kaeser,

As requested at the Siemens shareholder meeting that took place on 28 January 2014, we herewith send you an overview of the human rights violations associated with the planning, licensing and implementation of the Belo Monte Dam Complex, currently under construction on the Xingu River in the Brazilian Amazon, in which Siemens is involved with Voith-Hydro, Andritz, and Alstom as a turbine supplier.

Helena Palmquist, the spokeswoman for the office of Brazil's Federal Prosecutors (MPF) in the state of Pará, stated that Belo Monte was "an attack on the Brazilian Constitution" when she visited Munich on April 25<sup>th</sup>, 2013.<sup>1</sup> In her statement, Ms. Palmquist refers to multiple human rights violations caused by the approval and construction of the Belo Monte dam.

As a result of this project, the human rights of several population groups located in this region have been severely violated. The Xingu basin is home to at least 25,000 members of 24 different indigenous ethnic groups, whose lands, cultures, and ways of life are specifically protected by Brazilian and international law. Additionally, the ways of life of traditional non-indigenous riverine communities - known as *ribeirinhos*, including farmers, fisherfolk, and extrativist gatherers - must also be preserved under law. The status of these areas is ruled in accordance with article 225 of the Brazilian Constitution<sup>2</sup>. Furthermore, more than 20,000 residents of the city of Altamira are being displaced without adequate resettlement, whose neighborhoods will be flooded by the dam. Several laws on both the national and international levels also protect the rights of Altamira's urban population.

In this letter we demonstrate how Belo Monte violates the Brazilian Constitution and international human rights conventions that were ratified by Brazil, such as **International Labor Organization Convention 169 (ILO 169)**, the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**, the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, the **American Convention on Human Rights (ACHR)** and the **International Covenant on Civil and Political Rights (ICCPR)**.

Belo Monte's questionable legal status is further illustrated by the 22 lawsuits (as of mid-2014) against Belo Monte, which have been filed by MPF. In its lawsuits, MPF prosecutors demand that construction be halted as a result of numerous rights violations. The following sections specifically address past and ongoing the human rights violations have resulted from the approval and construction of the Belo Monte dam project.

<sup>1</sup> <http://www.lateinamerikanachrichten.de/index.php?artikel/4530.html>

<sup>2</sup> Brazilian Constitution Article 225: "All have the right to an ecologically balanced environment, for common use that is essential to a healthy quality of life; the duty to defend and preserve [a balanced environment] for present and future generations is imposed upon Government and society."

## 1. Violation of indigenous right to Free Prior and Informed Consultation and Consent

One of the most serious legal issues with Belo Monte is the fact that the dam's affected indigenous people<sup>3</sup> have never been consulted, as determined by the Brazilian Constitution and international human rights agreements to which Brazil is party. While Eletrobras organized four meetings with members of affected communities, these events by no means complied with the internationally established minimum legal standards for consultations, as observed by several independent observers and experts.<sup>4</sup> The ILO, the Inter-American Commission on Human Rights (IACHR) and the UN Special Rapporteur on the Rights of Indigenous Peoples all criticized the meetings organized by Eletrobras as being insufficient, while the IACHR requested that the dam's construction be paralyzed until indigenous peoples were lawfully consulted<sup>5</sup>. These institutions refer to **articles 6<sup>6</sup> and 15 § 2<sup>7</sup> of ILO Convention no.169** as well as **article 15 and 19<sup>8</sup> of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**. **Article 231 § 3<sup>9</sup>** of the Brazilian Constitution also requires prior consultations with affected indigenous people before the National Congress decides on authorizing projects that affects the use of water and mining resources in indigenous territories. Decree 788/2005, in which the Brazilian Congress voted in favor of the construction of Belo Monte, was passed before a consultation of indigenous peoples took place and is therefore legally invalid.<sup>10</sup>

## 2. Infringement of indigenous land rights

The construction of Belo Monte has myriad demonstrable negative impacts on indigenous lands that constitute a breach of indigenous land rights. These impacts are a result of both the dam's construction, including diversion of 80% of the Xingu River's flow from the 100km stretch of the "Big Bend", and uncontrolled labor migration to the region, which provoke the destruction of forest areas, as well as the loss of fauna and flora and the deterioration of water quality in the Xingu River. The social and environmental impacts that stem from the construction of Belo Monte plainly violate the right of indigenous peoples and other traditional communities to conserved and environmentally sound territories.

Indigenous peoples' land rights are rigorously protected under the Brazilian Constitution and international conventions. **Article 231** of the Brazilian Constitution guarantees that indigenous peoples "shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy." Additionally, these lands are considered "indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions."<sup>11</sup> **Article 14** of the **ILO 169** determines that "rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized" and the government has to "guarantee effective protection of their rights of ownership and possession."<sup>12</sup> According to **UNDRIP article 26**, "the indigenous population has the right to own, utilize, develop, and control the land, territories and resources they traditionally inhabit and use".

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3 The A'Ukre, Arara, Araweté, Assurini, Gorotire, Juruna (Yudjá), Kararaô, Kayapó- Kuben Kran Ken, Kayapó-Mekrangnoti, Kikretum, Kokraimoro, Moikarakô, Panará, Parakanã, Pituiaro, Pu'ro, Xikrín, Xipaia e Kuruiaia peoples.

4 Palmquist (2013), Khatri (2013), Jaichand/Sampaio (2013), Diamond/ Poirier (2010) et al.

5 <http://amazonwatch.org/news/2011/0405-oas-requests-immediate-suspension-of-belo-monte-dam-in-the-brazilian-amazon>

6 "the affected peoples by suitable procedures and particularly representative installations, whenever legal or administrative measures which could directly affect them are being considered"

7 "the government has to put in place and maintain procedures with the help of which they have to consult the affected peoples in order to determine whether and to what extent their interests are affected before they conduct or approve of programs for the exploration or exploitation of such resources on their lands"

8 "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

9 "Hydric resources, including energetic potentials, may only be exploited, and mineral riches in Indian land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law."

<sup>10</sup> This lawsuit awaits ruling by the Brazilian Supreme Court

<sup>11</sup> <http://www.jusbrasil.com.br/topicos/10643688/artigo-231-da-constituicao-federal-de-1988>

<sup>12</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169#A14](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169#A14)

### 3. Infringements of cultural rights

The construction of the Belo Monte dam has provoked profound changes to the environment of indigenous communities on the Xingu River, which in turn endangers their cultural survival. Within indigenous worldviews, culture and the land are not considered to be separate, but rather are seen as unified spiritual entities. Forced changes on natural habitats coupled with degradation of indigenous territories provoke the loss of cultural identity. According to international human rights standards, the cultural integrity of indigenous groups is protected in addition to the guaranteed right to their land. **ILO 169 article 4 §1** commits governments to taking “special measures...adopted as appropriate for safeguarding the persons, institutions, property, labor, cultures and environment”<sup>13</sup> of indigenous peoples. According to **UNDRIP article 8**, the government must assure the protection of indigenous peoples from measures “which would result in losing their cultural values or ethnic identity”. Additional articles of UNDRIP address and determine the right to cultural integrity. Article 215 § 1 of the **Brazilian Constitution** guarantees the protection of cultural rights, and **article 216** protects the way of life of the indigenous population.

The indigenous communities at the Xingu are culturally and existentially dependent on the river. In their languages, Xingu means “House of God”. The construction of the Belo Monte hydroelectric dam changes the velocity of the river’s flow, profoundly lowers the its water level on the river’s Big Bend (where Juruna and Arara territories are based), reduces the diversity of species, and menaces the ecological balance of the Xingu. A legal action from the MPF against decree 788/2005<sup>14</sup> states that the cultural integrity of the indigenous population of the Xingu River is threatened due to the irreversible damage to the natural habitat that the construction of Belo Monte would cause.

### 4. Right to life, food, and health

Ecosystem damage provoked by the Belo Monte dam not only threatens the cultural integrity of the indigenous population, but also the food security and health of traditional riverine communities. The Xingu provides riverside dwellers with water, food, and transportation, which are the backbone of these communities’ health and livelihood. The damming, transposition, drying, and flooding of the Xingu River caused by the construction of Belo Monte drastically alters the natural course of the river and its ecological flows, which in turns causes the river to cease to provide its natural livelihood benefits for the traditional peoples that depend on the Xingu. Furthermore, the uncontrolled influx of working migrants increases the competition for natural resources, to the detriment of traditional communities.

The decrease of drinking water, and its marked deterioration in quality, the spreading of water-related diseases such as malaria, as well as poor and overstretched local healthcare services result in increased health risks for traditional peoples. For example, according to the Special Indigenous Sanitary District (DSEI), between 2011 and 2012 when Belo Monte’s construction was initiated, the number of seriously underweight indigenous children grew 53%. In 2012, 92.2% of indigenous children under 5 suffered from acute diarrhea, while cases of intestinal parasites jumped 244% between 2011 and 2013.<sup>15</sup>

The right to food and health is enshrined in international human rights agreements. **Article 11 of ICESCR** guarantees the right to food, and **article 12** guarantees the right to health. **Article 10 and 12** of the **AMRK** also include these rights. **Article 7 of ILO Convention 169** and **articles 21 and 29** of the **UNDRIP** determine that the government has to guarantee food resources and the right to health. **Articles 6, 196, and 226** of the **Brazilian Constitution** guarantee food and health for its population. As illustrated above, the Belo Monte construction project violates these human rights in multiple ways.

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<sup>13</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169#A4](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169#A4)

<sup>14</sup> Lawsuit no. 2006.39.03.000711-8

<sup>15</sup> <http://jornalgnn.com.br/blog/mpaiva/saude-indigena-piora-muito-em-belo-monte-conforme-dados-do-distrito-sanitario-especial-indigena>

## 5. Violation of the Right to Due Process

The Belo Monte dam has been the object of 22 federal lawsuits since its inception in 2001.<sup>16</sup> Filed by Federal Prosecutors (MPF), these lawsuits have targeted the legality of its various environmental and operational licenses, the government's failure to consult indigenous and traditional communities, as well as dam consortium *Norte Energia's* (NESA) lack of adherence to mandated socio-environmental mitigation and compensation measures.

While Brazilian court rulings on MPF lawsuits have succeeded paralyzing the project on numerous occasions, while fining NESA for its failure to meet its socio-environmental obligations, key rulings related to the legality of the project's irregular licensing process, its failure to consult affected communities, and the very constitutionality of Belo Monte's impacts on indigenous water resources have been overruled in an arbitrary and monocratic fashion by high-level Brazilian judges through the use of the "Security Suspension" or "*Suspensão de Segurança*".

Security Suspension is a legal artifice dating back to Brazil's military dictatorship<sup>17</sup> that permits the heads of courts, upon request from the central government, to unilaterally suspend judicial decisions, without analysis of merit, based on alleged threats to national security and the country's "social and economic order". The repeated use of this device to suspend legal decisions on violations of human rights and environmental law, has allowed the construction of Belo Monte to proceed in violation of the Brazilian Constitution and international conventions, as cited above. Decisions based on "Security Suspension" may not be overturned until the final phase of court appeals, effectively **blocking due process of the law** and paving the way for controversial mega-projects to proceed as *fait accompli*.

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The purpose of our statement is to illustrate how the Brazilian government's construction of the Belo Monte hydroelectric dam violates multiple human rights. Companies that are directly participating in this project, as is Voith-Siemens, cannot use the infringements of the aforementioned rights by the Brazilian government as an excuse to avoid their own responsibility to uphold said rights.

According to the **UN Guiding Principles on Business and Human Rights**, companies have the responsibility to respect and maintain all established human rights everywhere they operate.<sup>18</sup> The UN guidelines define responsible behavior in a way so that companies comply with their respective due diligence<sup>19</sup> and develop processes to detect, prevent, and mitigate negative impact on their business activities or the business activities of their business partners.<sup>20</sup>

Until now, Voith-Siemens has not fulfilled this obligation as regards its involvement in the Belo Monte dam. The UN guidelines furthermore stipulate that prior consultations with affected populations threatened by planned projects are not only the responsibility of the government, but also of the participating companies.<sup>21</sup> The non-implementation of the legally prescribed consultation process in the Belo Monte case is therefore not only the responsibility of the Brazilian officials, but also of participating companies such as Voith-Siemens.

Given the above considerations, we conclude that the company should take the following urgent measures:

1. Contract an independent audit conducted by an interdisciplinary team of specialists, regarding human rights violations associated with the planning and implementation of the Belo Monte Dam Complex. The audit, to be completed within 6-8 months, should assess the degree of responsibility of various government and private sector parties involved; including Voith-

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<sup>16</sup> Dossier of lawsuits filed by the MPF against Belo Monte, updated March 2014:

[http://www.prpa.mpf.mp.br/news/2014/arquivos/Tabela\\_de\\_acompanhamento\\_atualizada\\_Mar\\_2014.pdf](http://www.prpa.mpf.mp.br/news/2014/arquivos/Tabela_de_acompanhamento_atualizada_Mar_2014.pdf)

<sup>17</sup> See: <http://amazonwatch.org/news/2014/0331-brazilian-judicial-abuses-questioned-on-anniversary-of-military-coup>

<sup>18</sup> UN-Guiding Principles on Business and Human Right Art. 11 und Art. 12

<sup>19</sup> same Art. 17

<sup>20</sup> same Art. 13b

<sup>21</sup> same Art. 18b

Siemens, in light of the **UN Guiding Principles on Business and Human Rights**. The independent audit should also present concrete recommendations to effectively address human rights violations identified. Implementation of the independent audit should involve adequate consultations with affected communities and relevant civil society organizations in Brazil engaged in human rights and environmental organizations in Brazil.

2. Present the results of the independent audit to the Board of Directors for deliberation on concrete actions to be taken in the Belo Monte case, including potential indemnification of damage caused to local inhabitants as a result of demonstrated negligence on the part of the company.

Further, we propose that the lessons of the Belo Monte case be applied to future business activities, in terms of:

1. Creation of mechanisms to ensure that management decisions regarding participation in projects is informed by a prior, comprehensive, objective, and transparent due diligence analysis of socio-environmental risks, including compliance with human rights and environmental legislation, and that project approval is made conditional upon clear evidence that national and international human rights standards and best practices have been, and will be, effectively upheld, including adherence to the rights-based standards enshrined by the World Commission on Dams (WCD);
2. Creation of a complaint mechanism accessible to threatened and/or affected local communities in project areas, regarding violations of human rights, pursuant to **article 22** of the UN Guiding Principles on Business and Human Rights;
3. Commitment to exclude projects that exhibit marked human rights irregularities from the company's future business portfolio.

Thank you for your consideration,

David Vollrath, **GegenStrömung**  
Christian Poirier, **Amazon Watch**  
Brent Millikan, **International Rivers**