

## COMMUNIQUÉ REGARDING THE FULFILLMENT BY THE BRAZILIAN GOVERNMENT OF ILO CONVENTION 169 ADDRESSING INDIGENOUS AND TRIBAL PEOPLES

Convention 169 of the International Labor Organization (ILO), regarding Indigenous and Tribal Peoples, has been in effect in Brazil since 2003. In 2008, five years since the ratification of Convention 169, the Brazilian government is to send a report to the ILO regarding the application of the Convention. The aim of the present communiqué is to offer an independent evaluation of the application of this Convention regarding the *quilombola* communities in Brazil, in parallel to the Brazilian government's report.

This document analyzes the fulfillment of ILO Convention 169 from the following standpoints: self-identification, consultation and participation, territorial right and development. We then present our "Recommendations" to the Brazilian State for the effective fulfillment of ILO Convention 169.

### 1. APPLICABILITY OF ILO CONVENTION 169 TO THE *QUILOMBOLAS*

The *quilombola* communities are social groups whose ethnic identity distinguishes them from the rest of society. According to the definition of the Associação Brasileira de Antropologia (Brazilian Anthropology Association), *quilombola* communities "are groups who developed resistance practices in the maintenance and reproduction of their characteristic ways of life in a determined place."<sup>1</sup> The origin of such groups is related to the process of resistance to slavery, which subjugated blacks brought from Africa to Brazil for 300 years. The *quilombola* communities were formed from a wide variety of processes, both during the slavery regime and after the abolition of slavery in the 19<sup>th</sup> century, facing inequalities that are perpetuated through to the present day. Their identity is defined by "the experience and shared vision of their common past as well as their continuity as a group. Therefore, the *quilombolas* have a common historical reference constructed from shared experiences and values".<sup>2</sup> *Quilombola* communities are characterized by the common use of their territories, conceived by them as a collective and indivisible space occupied and utilized through consensual rules respected by the various family groups that make up the communities and based on solidarity and mutual assistance.

When considering the elements expressed in the definition of Article 1.1.a of ILO Convention 169, it is evident that the *quilombola* communities could be considered a "tribal

---

<sup>1</sup> ASSOCIAÇÃO BRASILEIRA DE ANTROPOLOGIA, Documento do Grupo de Trabalho sobre Comunidades Negras Rurais, Rio de Janeiro, 17/18 de outubro de 1994.

<sup>2</sup> Idem.

people” and, therefore, subject to the rights established in the Convention. The Brazilian Justice Department has endorsed the understanding that *quilombola* communities are specific groups to which Convention 169 is applicable.<sup>3</sup> The Brazilian government also shares this understanding, as demonstrated in the decision to assemble the *quilombola* communities for prior consultation in April 2008, in compliance with Convention 169.

## 2. QUILOMBOLA COMMUNITIES IN BRASIL

Due to the fact that Brazilian government does not have a national census on this population, there is no exact figure as to how many *quilombola* communities exist in Brazil. The “General Record of Remaining *Quilombo* Communities” – under the responsibility of the Fundação Cultural Palmares (Palmares Cultural Foundation), an organization affiliated to the Ministry of Culture – registers the existence of 1228 *quilombola* communities.<sup>4</sup> On the other hand, the Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas (National Coordination of Rural Black *Quilombola* Communities) suggests the existence of more than three thousand communities distributed throughout the country.

By June 2008, only 143 *quilombola* communities had received the property titles for their territories.<sup>5</sup> This number represents a mere 12% of the total communities catalogued by the Palmares Cultural Foundation up to the present moment and less than 5% estimated by the *Quilombola* Social Movement. This demonstrates that governmental action is still very slow in ensuring the right to land as envisioned in Articles 13 and 14 of ILO Convention 169.

Article 68 of the 1988 Brazilian Constitution ensures *quilombola* communities the right to ownership of their territories.<sup>6</sup> It recognizes the importance of these communities to Brazilian cultural heritage and ensures them full exercise of their cultural rights (Articles 215 and 216).<sup>7</sup> The procedure for the identification and granting titles for *quilombola* lands is found in Decree

<sup>3</sup> See: BRASIL. TRF-4ª Região. Agravo de Instrumento n.º 2008.04.00.010160-5/PR. Acórdão. Julgamento de 01 jul. 2008. and also: BRASIL. Justiça Federal de 1ª Instância, Seção Judiciária do Maranhão, 5ª Vara. Processo n.º 2006.37.00.005222-7. Sentença n.º 27/2007, de 13 fev. 2007

– Available at: [www.cpisp.org.br/acoes/html/i\\_jurisprudencia.html](http://www.cpisp.org.br/acoes/html/i_jurisprudencia.html)

<sup>4</sup> FUNDAÇÃO CULTURAL PALMARES, consultation carried out in 16/07/2008 in site: [www.palmares.gov.br](http://www.palmares.gov.br)

<sup>5</sup> COMISSÃO PRÓ-ÍNDIO DE SÃO PAULO: [www.cpisp.org.br/terras](http://www.cpisp.org.br/terras)

<sup>6</sup> This article establishes that “definitive ownership is recognized for the remnants of the *quilombola* communities that occupy lands and that the State must emit the respective titles”.

<sup>7</sup> The Brazilian Constitution, in § 1 of Article 215, states that “The State will protect the manifestations of grassroots, indigenous and afro-Brazilian cultures, as well as those of other groups that participated in the national civilization process”; and in Article 216, it establishes as Brazilian cultural heritage all goods of material and immaterial nature “that make reference to the identity, action and memory of all the different groups that make up Brazilian society”, determining that the State shall protect these goods through “inventories, records, vigilance and expropriation to assure their preservation (§ 1), by declaring “all documents and places that possess historical remnants of the old *quilombos*” National Cultural Heritage (§ 5).

4.887/2003 and in the Normative Directives of the Instituto Nacional de Colonização e Reforma Agrária – INCRA (National Institute of Colonization and Agrarian Reform) n° 20/2005<sup>8</sup>.

### 3. APPLICATION OF ILO CONVENTION 169 BY THE BRAZILIAN STATE

#### 3.1. Self-Identification [Article 1 of ILO Convention 169]

Decree 4887, November 23, 2003,<sup>9</sup> which regulates the titling procedures for *quilombola* territories, adopts self-identification as a criterion for characterizing a *quilombola* community. This demonstrates that the Brazilian State recognizes the “conscious identity” established in Article 1.2 of ILO Convention 169, as the defining factor of ethnic belonging.

Nonetheless, we currently see a regression by the State regarding the implementation of this right. Ordinance n. 98/2007 of the Palmares Cultural Foundation (November 2007),<sup>10</sup> states that the issuing of the “certification of the self-definition remnant of *quilombola* communities” and the registration of the community in the “General Record of Remaining Quilombola Communities” is restricted to procedures such as the presentation of “a concise report of the common history of the group” and the consignment of “documents or information, such as photos, reports, studies, etc. that tell the common history of the group and its cultural manifestations” (Article 3, III and IV). The new regulation requires that the community to justify and prove its condition as *quilombola*.

Other evidence of this regression is the statement of new INCRA norms<sup>11</sup> that suggest changes in the current title granting procedure for *quilombola* territories. The new norm (drafted by the Federal Government) requires the titling procedure to begin with the registration in the “General Record of Remaining *Quilombola* Communities” of the Palmares Cultural Foundation. When the new norm is approved, simple self-identification of a community as *quilombola* will cease to be sufficient for initiating the titling procedure. This is an important restriction to the right to self-identification ensured by Convention 169.

Although the Brazilian State does not adopt a public stance directly opposed to the right of self-identification, the facts stated above indicate it has been indirectly restricting this right. The violation of self-identification is exemplified in the conflict between the *quilombola*

---

<sup>8</sup> Some states have their own regulations for this matter (Espírito Santo, Pará, Paraíba, Piauí, Rio Grande do Norte, Rio Grande do Sul and São Paulo) In: [www.cpis.org.br/htm/leis](http://www.cpis.org.br/htm/leis)

<sup>9</sup> The Portuguese text from the decree can be found at: [www.planalto.gov.br/ccivil\\_03/Decreto/2003/D4887.htm](http://www.planalto.gov.br/ccivil_03/Decreto/2003/D4887.htm)

<sup>10</sup> The Portuguese text of the ordinance can be found at: [www.palmares.gov.br/temp/sites/000/2/download/portaria98.pdf](http://www.palmares.gov.br/temp/sites/000/2/download/portaria98.pdf)

<sup>11</sup> The Instituto Nacional de Colonização e Reforma Agrária (National Institute of Colonization and Agrarian Reform), institution affiliated to the Ministry of Agrarian Development, is the institution responsible for land regulation procedures for the *quilombola* territories. Today, its activities are regulated by IN/INCRA/n°20/2005, the text of which can be found at: [www.incra.gov.br/arquivos/0148600045.pdf](http://www.incra.gov.br/arquivos/0148600045.pdf)

community of Marambaia Island (Rio de Janeiro) and the Brazilian Navy.<sup>12</sup> The navy and other institutions of the Brazilian State do not hesitate to call into question the identity of this *quilombola* community, comparing their efforts to an act that would offend “public morality”.<sup>13</sup>

### 3.2. Consultation and participation [Article 6 of ILO Convention 169]

A mechanism of permanent consultation based on the ILO Convention 169 to ensure the effective participation and prior and informed consensus of the *quilombola* communities regarding subjects of interest is inexistent in Brazil. The Brazilian government carried out a prior consultation to fulfill Convention 169 only once. The aim of the event was to discuss the agenda of the new INCRA norm for regulating the titling procedure of the *quilombola* territories. As will be commented below, the adopted procedures were insufficient for the fulfillment of Article 6 of ILO Convention 169. There was no consultation for the approval of Ordinance n.º 98/2007 of Palmares Cultural Foundation. Other measures that demand prior consultation are the Legislative Projects 44/2007 and 326/2007, proposed by Congressman Valdir Colatto (PMDB/SC), and which are still on the agenda in the House of Representatives<sup>14</sup>. Up to the present moment, there has been no prior consultation with *quilombola* communities for agreement or consent with respect to the projects.

In Brazil, there has never been any prior consultation regarding administrative measures and projects that directly affected any *quilombola* community. Below we cite some examples of initiatives that should have been submitted to prior consultation, but were not:

- Concession of environmental licensing by the Instituto Brasileiro de Meio Ambiente (Brazilian Institute of the Environment) in 2002 and start of construction for the broadening of highway BR 101 (section Florianopolis/SC – Osorio/RS) by the Departamento Nacional de Infra-estrutura de Transportes (National Department of Transportation Infra-structure) in 2004 in a location that will affect the *quilombola* community of Morro Alto in the state of Rio Grande do Sul.<sup>15</sup>

---

<sup>12</sup> For more information, consult KOINONIA, “Dossiê Marambaia” available at: [www.koinonia.org.br/oq/dossies.asp](http://www.koinonia.org.br/oq/dossies.asp)

<sup>13</sup> Argumentation in a law suit by the Brazilian government reveals this perception: “it sustains that the attempt to defend the existence of this fictitious quilombolo community offends public morality, since it escapes the truth of the facts and the loyalty that must exist among the institutions of the Federal Administration (...) It should be made clear that there is no evidence which proves the existence of a quilombo community in the region (...)” (BRASIL. TRF-2ª Região. Suspensão de Segurança n.º 2007.02.01.009858-8/RJ. Decisão. 09 de agosto de 2007). More information at: [www.trf2.gov.br](http://www.trf2.gov.br)

<sup>14</sup> The Legislative Project is aimed at suspending the application of Decree 4.887/2003 and all administrative measures derived from it while Legislative Project 326/2007 looks at transferring competence to conduct administrative procedures involving titling of *quilombola* territories from Incra/Ministry of Agrarian Development to the Ministry of Culture.

<sup>15</sup> More information can be found in the section made available by the Federal Public Prosecutor Offices to convince the National Department of Transportation Infra-structure to carry out the necessary studies to evaluate the

- Construction of the Irape hydroelectric power plant (2004 to 2006), which flooded lands and implied the removal of the *quilombola* community of Porto Coris in the state of Minas Gerais.<sup>16</sup>
- Granting of license by the Instituto Brasileiro de Meio Ambiente (Brazilian Institute of the Environment)<sup>17</sup> in 2006 for the construction of the Cacimbas-Catu gas pipeline of the project Gasene (southeastern-northeastern gas pipeline) in an area that, along its 940 km, involves a number of *quilombola* communities spread throughout five different cities in the state of Espírito Santo and 47 cities in the state of Bahia.<sup>18</sup>
- Diversion of the Sao Francisco River, construction project initiated in July 2007, which will affect an area where 153 *quilombola* communities live in the states of Pernambuco and Bahia.<sup>19</sup>
- Forest concession for exploitation of the Saraca Taquera National Forest (July 2008) by the Serviço Florestal Brasileiro/Ministério do Meio Ambiente (Brazilian Forestry Service/Ministry of the Environment), in a territory where 12 *quilombola* communities live in the state of Pará.<sup>20</sup>

The only prior consultation that has ever been carried out – headed by the Federal Attorneys Office in April of 2008 to discuss the new INCRA norms – did not occur according to what is determined in Article 6 of ILO Convention 169, for the following reasons:

- They did not ensure conditions for the *quilombola* community to learn about the content of the new norm;
- Deliberations occurred in a hurry and under pressure at the same event in which the agenda was initially presented to the interested parties;
- The Brazilian State showed no interest in agreeing to a common proposal and restricted the discussion only to their own agenda, thereby limiting opportunities for more relevant alterations.

It is not reasonable for the government to inform the *quilombola* communities regarding the content of the proposal of the new norm at a single event, alleging urgency on the matter and demanding that these communities have a definitive position on the measure. A single meeting is

---

environmental impact of the project as well as propose the pertinent compensatory measures – available at: [http://ccr6.pgr.mpf.gov.br/atuacao-do-mpf/acao-civil-publica/docs\\_acao-civil-publica/morro\\_alto.pdf](http://ccr6.pgr.mpf.gov.br/atuacao-do-mpf/acao-civil-publica/docs_acao-civil-publica/morro_alto.pdf)

<sup>16</sup> Information at: [www.cpis.org.br/comunidades](http://www.cpis.org.br/comunidades)

<sup>17</sup> INSTITUTO BRASILEIRO DE MEIO AMBIENTE. Licença prévia n.º 243/2006.

<sup>18</sup> PETROBRÁS e BOURSCHIED S.A. Relatório de Impacto Ambiental: Cacimbas-Catu, janeiro 2005

<sup>19</sup> COMISSÃO PASTORAL DA TERRA NORDESTE, “Quilombolas dizem não à transposição do São Francisco”, 20 de agosto de 2007 (available in [www.cptpe.org.br](http://www.cptpe.org.br)).

<sup>20</sup> ASSOCIAÇÃO DAS COMUNIDADES REMANESCENTES DE QUILOMBOS DO MUNICÍPIO DE ORIXIMINÁ, “Concessão da Flona Saracá Taquera ameaça direitos das comunidades quilombolas Oriximiná – Pará”, julho de 2008.

insufficient for an effective discussion with the *quilombola* communities of the entire country. Instead, regional meetings should be held in order to have a genuine dialogue process.

Moreover, when there was consultation, the Brazilian government did not demonstrate willingness to construct a true agreement with respect to the norm. The main proposals presented by the *quilombola* communities were not observed. At the end of the “consultation”, the text originally presented by the government prevailed without any significant modification.

Along with the fact that a permanent consultation mechanism of the ILO Convention 169 does not exist, other complementary forms of participation in consultations are also insufficient. Thus, the *quilombola* communities participate neither in the definition nor in the monitoring of the “*Quilombola* Brazil Program” and the “*Quilombola* Social Agenda” of the federal government. The Federal Government Work Group created to draft the new INCRA norm for the granting of titles to *quilombola* territories did not have the participation of *quilombola* communities.

Governmental actions also go against Article 7 of the ILO Convention 169, which establishes the right of these people to choose priorities in the development process and participate in the development plans that affect them. As an example, in the project for the diversion of the Sao Francisco River, *quilombola* communities located in the region did not have the opportunity to participate in the studies regarding the potential impacts of the project<sup>21</sup> or the discussion on alternative resettlement plans.

### **3.3. Territorial rights [Articles 13 to 15 of the ILO Convention 169]**

In June 2008, 87 *quilombola* territories had acquired titles in Brazil, representing a total of 1,171,579 hectares and benefiting 143 communities.<sup>22</sup> From this total, 26 property titles were granted by the Federal Government, a mere 6 of which were granted by the current Luiz Inácio Lula da Silva Administration (2003-2008).

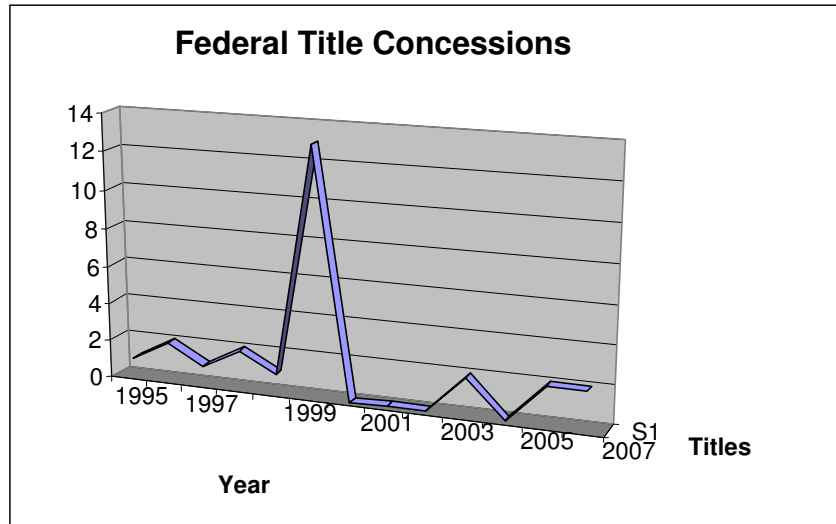
The graph below illustrates the enormous decline in titles granted to these communities in recent years<sup>23</sup>:

---

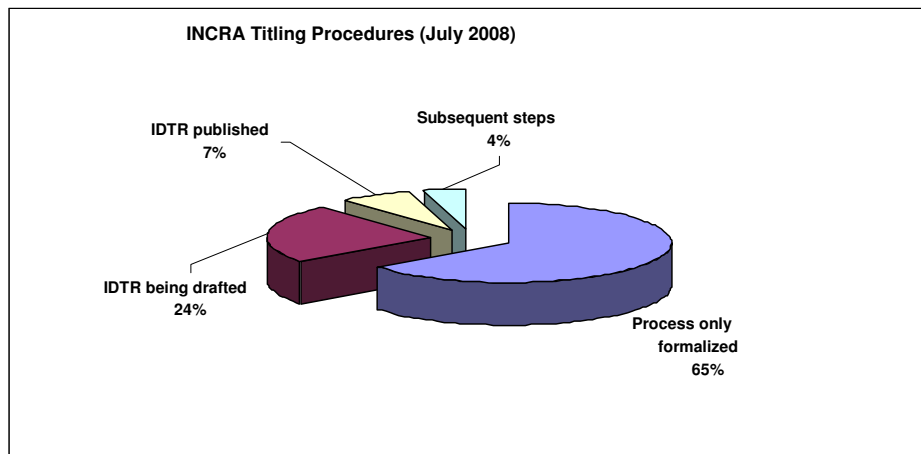
<sup>21</sup> PROCURADORIA GERAL DA REPÚBLICA, “Suspensas as obras do projeto de transposição do Rio São Francisco” (26/01/07), “Suspensa a transposição do São Francisco” (11/12/07) In: [www.pgr.mpf.gov.br/noticias](http://www.pgr.mpf.gov.br/noticias)

<sup>22</sup> COMISSÃO PRÓ-ÍNDIO DE SÃO PAULO: [www.cpisp.org.br/terras](http://www.cpisp.org.br/terras)

<sup>23</sup> Titles granted by INCRA, the Fundação Cultural Palmares (Palmares Cultural Foundation) and the Secretaria de Patrimônio da União (Secretary of National Heritage) are considered here. Other titles were granted by state governments.



In July 2008, 590 administrative title procedures were under way at INCRA. However, 65% of these procedures only received a protocol number and none of the intended steps had been executed. Among the effectively initiated procedures, only 11% had concluded the Identification and Delimitation Technical Report (IDTR), which identifies the territory to be titled.



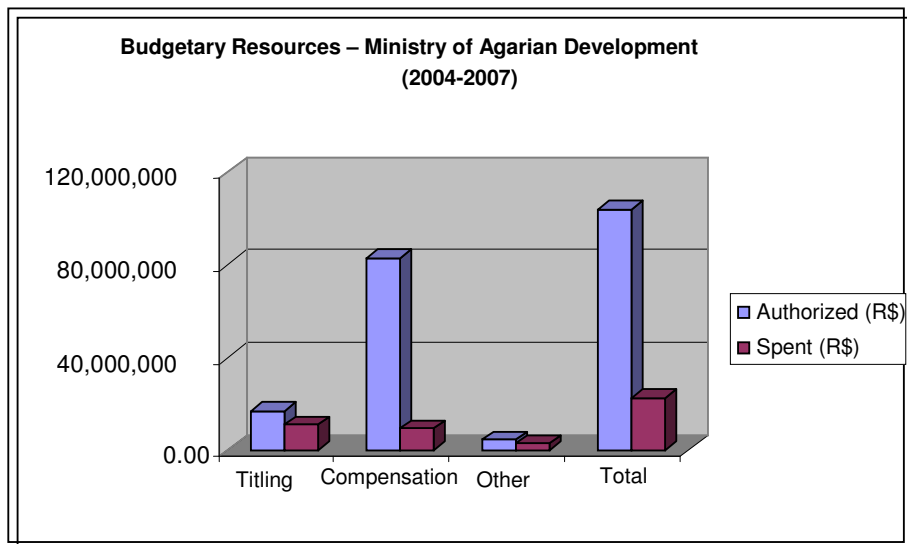
A chronological analysis demonstrates, however, that the quantity of IDTRs issued by INCRA has been in decline in recent years. While twenty-one identification reports of territories were published in 2006, only four reports were published between January and July 2008.

Year	2005	2006	2007	2008 <i>(January to July)</i>
IDTRs Published	7	21	18	4

These numbers demonstrate that there has been a decline both in the effective titling of *quilombola* land and in the progress of administrative regulation procedures for these areas, which goes against Article 14 of the ILO Convention 169.

An analysis of the use of available financial resources for titling shows the inefficiency of the Brazilian government regarding Article 14 of Convention 169. Between 2004 and 2006, only 21.75% of the budget for land regularization of the *quilombola* territories was effectively used by the government: of the 104.101 million Reals destined to this end, only 22.643 were spent.<sup>24</sup> This total includes 10.88 of the 16.82 million destined to the recognition, demarcation and titling of *quilombola* lands (64.68% of what was predetermined), and 9.108 of the 83.016 million (10.97%) destined to compensation payments to those occupying the demarcated and titled lands.<sup>25</sup>

The graph below illustrates the discrepancy between authorized resources (predetermined) and those liquidated (used).



To justify its inefficiency, the Brazilian State normally alleges that the Judiciary paralyzes or hinders the titling process.<sup>26</sup> A closer analysis of judicial actions involving *quilombola* territories<sup>27</sup> demonstrates, however, that such allegations do not correspond to the facts. Data from July 2008 indicate that among the 105 judicial actions in course, only five had the objective of questioning the processes of land regulation conducted by INCRA.<sup>28</sup> This number is extremely

<sup>24</sup> INSTITUTO NACIONAL DE ESTUDOS SOCIOECONÔMICOS. *Orçamento quilombola: entre o previsto e o gasto*, Brasília, 2008. [www.inesc.org.br/biblioteca/publicacoes/notas-tecnicas/NT.%20139%20-%20QUILOMBOLA.pdf](http://www.inesc.org.br/biblioteca/publicacoes/notas-tecnicas/NT.%20139%20-%20QUILOMBOLA.pdf)

<sup>25</sup> Idem.

<sup>26</sup> Communiqué from INCRA attorney Anne Cristiny dos Reis Henrique, in a hearing held by the Inter-American Human Rights Commission of the Organization of American States on October 10, 2007. Available at: <http://www.cidh.org/audiencias/130/ListEng.aspx>

<sup>27</sup> COMISSÃO PRÓ-ÍNDIO DE SÃO PAULO: [www.cpispp.org.br/acoes](http://www.cpispp.org.br/acoes)

<sup>28</sup> These five actions involved the communities of Cataúba (PI), Invernada do Paiol da Telha (PR), Linharinho (ES), Pedra do Sal (RJ) and São Francisco do Paraguaçu (BA). Only in the case of São Francisco do Paraguaçu, a group of



small when we consider the 590 processes opened by INCRA, representing only 1% of the cases. Therefore, we can affirm that legal processes and the negative interference on the part of the Judiciary are not the main reason for the non-concretization of the titling of *quilombola* territories.

In the INCRA norms, we find threats of possible regressions in ensuring *quilombola* territorial rights as guaranteed by Convention 169. The new INCRA norm for the titling procedures of *quilombola* territories that is ready for approval will add a series of steps and demands to the process, which, if approved, will make land regulation even more difficult, as has been announced on several occasions by the *quilombola* movement<sup>29</sup> and civil society.<sup>30</sup> Initiatives from the Legislative Body – the previously mentioned projects of Legislative Decree 44/2007 and 326/2007, proposed by Congressman Valdir Colatto (PMDB/SC) – also threaten *quilombola* territory rights ensured by ILO Convention 169. Moreover, there is a Direct Action of Unconstitutionality in the Supreme Court against Decree 4.887/2003 (ADIn 3239) proposed by the Democratic Party, still waiting judgment.

There are many examples of *quilombola* territorial rights violations regarding natural resources on their territories (Article 15 of Convention 169). As an example, we cite the case of the communities of Machandinho, Sao Domingos and Amaros in the city of Paracatu in the state of Minas Gerais, who are practically being expelled from their lands by the Rio Paracatu Mining Company, which extracts gold and silver from the region.<sup>31</sup>

The *quilombola* communities of Brazil also suffer the violation of their rights, as determined by Article 16 of Convention 169, when they are compulsorily removed from their home lands. This is what happened with the *quilombola* community in the city of Alcantara (state of Maranhao) in the 1980s. With the installation of the Spatial Launching Center of the Ministry of Aeronautics, 312 families from 31 *quilombola* villages were forced to move from their traditional lands and resettle in seven agro-villages.<sup>32</sup> Part of these villages do not have soil of equal fertility and quantity as the lands on which these families had previously lived.<sup>33</sup> These

private citizens obtained a decision from the 7<sup>th</sup> Federal Court in Salvador (BA) to suspend the titling process; the case has yet to be tried.

<sup>29</sup> CONAQ, “Movimento quilombola divulga nota contra mudanças na legislação”, 10/12/07.

<sup>30</sup> “Em defesa dos direitos quilombolas”, de 28 de março de 2008, e “Pela garantia dos direitos das comunidades remanescentes de quilombos”, de 6 de maio de 2008.

<sup>31</sup> CENTRO DE DOCUMENTAÇÃO ELOY FERREIRA DA SILVA, Comunidades quilombolas de Minas Gerais no séc. XXI - História e resistência. Editora Autêntica, Belo Horizonte, 2008. And: “Expansão de ouro ameaça Paracatu”, July 14, 2008 at:

[www.cedefes.org.br/new/index.php?conteudo=materias/index&secao=5&tema=&materia=4916](http://www.cedefes.org.br/new/index.php?conteudo=materias/index&secao=5&tema=&materia=4916)

<sup>32</sup> CENTER FOR THE RIGHT TO HOUSING, *Direito à moradia e territórios étnicos: proteção legal e violação de direitos das comunidades de quilombos no Brasil*. 2005.

<sup>33</sup> See Security Mandates petitioned by *quilombola* communities to carry out agriculture activities in an area outside the agro-village pertaining to the *Centro de Lançamentos* (BRASIL. Justiça Federal de 1ª Instância, Seção Judiciária do Maranhão, 5ª Vara. Processo n.º 2006.37.00.005222-7. Sentença n.º 27/2007, de 13 fev. 2007). Information available at: [www.cpis.org.br/acoes](http://www.cpis.org.br/acoes)

families never received rightful compensation for the painful removal from their lands and do not even possess a definitive title for the lands to which they were removed.

A more recent example was the removal of the *quilombola* community of Porto Coris (in the state of Minas Gerais) between 2004 and 2006, caused by the inundation of their territory due to the construction of the Irape hydroelectric plant. At the time, the community had already received the property title for their territory from the Brazilian State.<sup>34</sup> Currently, the community resides in a resettlement area with extremely different environmental conditions from the lands that they had previously occupied.

The violation of the rights expressed in ILO Convention 169 is also experienced by other *quilombola* communities as a consequence of acts on the part of the Judiciary Branch. In the dispute for *quilombola* territory, farmers, companies and private parties appeal to the Judiciary for the possessive protection of the lands.<sup>35</sup> There are a number of cases in which these possession actions proposed by private interests obtain favorable decisions that determine the expedition of ownership reintegration mandates contrary to the *quilombola* communities without considering their cultural and ethnic specificities or respective legislation, being entirely unaware of ILO Convention 169. There is also a prevalent hegemonic conception of property in the Brazilian government that comprehends the relationship with natural resources in an individual and patrimonial fashion, thereby hindering the recognition of collective identities such as the *quilombola* communities.

This is the violation that the communities of São Francisco do Paraguaçu (Bahia), Barra do Parateca (Bahia), Mata Cavalo (Mato Grosso) and Linharinho (Espírito Santo) have recently suffered. A number of judicial mandates have determined the use of police forces to remove *quilombolas* from these areas. Furthermore, the Judiciary has also been responsible for the criminalization process of *quilombola* leaders, which is yet another damaging dimension of the land conflicts these communities experience.

### **3.4. Development [Article 2 and 19 of ILO Convention 169]**

The performance of the Brazilian government regarding the protection of the social, economic and cultural rights of *quilombola* communities (Article 2 of ILO Convention 169), as well as the concession of the necessary means for the development of their lands (Article 19 of Convention 169) has not been sufficient in ensuring conditions of dignified survival nor correcting the situation of socioeconomic inequality experienced by this population.

---

<sup>34</sup> The title was granted by the Fundação Cultural Palmares (Palmares Cultural Foundation) in 2000.

<sup>35</sup> COMISSÃO PRÓ-ÍNDIO DE SÃO PAULO: [www.cpis.org.br/acoos](http://www.cpis.org.br/acoos)

The “*Quilombola* Brazil Program”, created in 2004 by the Secretaria Especial de Políticas de Promoção da Igualdade Racial da Presidência da República (Special Secretary of Policy for the Promotion of Racial Equality from the Executive Branch) with the aim of coordinating government actions regarding the remaining *quilombola* communities, has had extremely limited results. Only focused actions from different ministries are carried out, with no overall plan for public policies directed toward *quilombola* communities. Moreover, the number of communities the program benefits is very small. This limitation is evidenced by the fact that just 32.27% of the federal budget established for expenditures in the fulfillment of the program was effectively used between 2004 and 2007.<sup>36</sup> Only R\$ 48.494 of the R\$ 150.268 million made available for the Presidency of the Republic and the Ministries of Health, Education and Agrarian Development to use on actions of the program were actually employed, indicating that the ineffectiveness of the Brazilian government on this issue is not due to a lack of resources. Other government programs have also not been sufficient in ensuring the development of *quilombola* communities. The “Family Grant” – program of the Ministério de Desenvolvimento Social e Combate à Fome (Ministry of Social Development and Combat to Hunger) for the transference of income to families in situations of poverty and extreme poverty<sup>37</sup> – has only reached 150 *quilombola* communities.

A survey of the nutritional status of children under five years of age – carried out in 2006 by the Ministério de Desenvolvimento Social e Combate à Fome (Ministry of Social Development and Combat to Hunger) in 60 *quilombola* communities in 22 states – found that 11.6% of these children were short for their age, which is the main index used in determining malnutrition. Malnutrition affected 10.3% of children of mothers with low levels of schooling and 5.8% of children of mothers with at least four years of schooling.<sup>38</sup> The numbers on education are equally distressing: 15.8% of the heads of household interviewed and 7.3% of the mothers had never been to school. The vast majority only studied for a few years and just 11% of the heads of household and 15.7% of mothers had attended high school.<sup>39</sup> The study also revealed that just 30% of *quilombola* families are connected to the public water supply and just

---

<sup>36</sup>INSTITUTO NACIONAL DE ESTUDOS SOCIOECONÔMICOS. *Orçamento quilombola: entre o previsto e o gasto*, Brasília, 2008. [www.inesc.org.br/biblioteca/publicacoes/notas-tecnicas/NT.%20139%20-%20QUILOMBOLA.pdf](http://www.inesc.org.br/biblioteca/publicacoes/notas-tecnicas/NT.%20139%20-%20QUILOMBOLA.pdf)

<sup>37</sup> See: [www.mds.gov.br/bolsafamilia](http://www.mds.gov.br/bolsafamilia)

<sup>38</sup> BRASIL. Ministério de Desenvolvimento Social e Combate à Fome. Secretaria de Informação e Gestão da Informação. Departamento de Avaliação e Monitoramento. *Chamada Nutricional Quilombola 2006: Resumo Executivo*. Brasília, 2007. Available at: [www.mds.gov.br](http://www.mds.gov.br)

<sup>39</sup> Idem.

3.2% are connected to the sewage system. More than 70% of *quilombola* families use rudimentary septic tanks or toss their waste into open ditches. 20% of the families do not have electricity.<sup>40</sup>

Thus, *quilombola* communities continue living in situations of precariousness and poverty, with no respect given to their economic, social and cultural rights. Therefore, the Brazilian government is not fulfilling the determinations in Articles 2 and 19 of ILO Convention 169.

## **RECOMMENDATIONS TO THE BRAZILIAN GOVERNMENT**

- a) That the Brazilian government fully apply Article 1.2 of ILO Convention 169, considering self-identification as the criterion for defining groups to which ILO Convention 169 is applied and recognizing the role of *quilombola* organizations in the recognition and affirmation of the identity of such groups;
  
- b) That the Brazilian government abstain from revoking current norms (IN INCRA n.º 20/2005 and Decree n.º 4.887/2003) regarding the application of the self-identity criterion, as well as revise the norms that restrict this criterion (Ordinance n.º 98/2007 of the Palmares Cultural Foundation);
  
- c) That the Brazilian government fully apply Articles 6 and 15 of ILO Convention 169, establishing a permanent mechanism of consultation of interested peoples to be employed whenever legislative or administrative measures are envisaged that affect these peoples and prior to authorizing any exploitation program of natural resources on their lands or programs that affect their economic, social and cultural rights. This permanent consultation mechanism should be established in accordance with the perspectives of the *quilombola* people with regard to “effective participation” and “prior, informed consent”.
  
- d) That the Brazilian government fully apply Article 6 of ILO Convention 169 and ensure the participation of interested peoples at all decision-making levels in administrative agencies or agencies of any other nature that are responsible for policies and programs that affect these peoples;
  
- e) That the Brazilian government facilitate the title granting process of territories of the *quilombola* communities, ensuring all means necessary to land regularization and the totality of the habitat of

---

<sup>40</sup> “Apenas 30% das comunidades quilombolas têm acesso a água pela rede pública”. Radiobrás, 14 maio 2007. Available at [www.cedefes.org.br](http://www.cedefes.org.br).

the regions in which these peoples live, in compliance with Articles 13 and 14 of ILO Convention 169;

f) That the Brazilian government adopt measures to safeguard the integrality of the *quilombola* territories prior to and following the granting of the title in such a way as to avoid the intrusion of people and enterprises that are foreign to the group on their lands, as well as the transportation and resettlement of these peoples, in compliance with Articles 13, 14, 16 and 18 of ILO Convention 169;

g) That the Brazilian government abstain from approving and/or executing projects and developing actions that compromise the access of *quilombola* communities to their natural resources and territories without the prior consultation with the affected peoples and environmental, social, economic and cultural impact studies, in compliance with Articles 7 and 15 of ILO Convention 169;

h) That the Brazilian government promote the local development of *quilombola* communities, ensuring their full social, economic and cultural rights as well as respecting their social and cultural identity, customs and traditions, as stated in Articles 2 and 19 of ILO Convention 169. For such, the Brazilian government should progressively invest public budgetary resources in social, infrastructure and economic development actions.

i) That the Brazilian government observe the rights contained in ILO Convention 169 in judicial and legislative actions, especially in the judgment of ADIN 3239 on the Federal Supreme Court agenda, and in the procedures of Legislative Decree Bills n. 44/2007 and 326/2007 and the Racial Equality Statute bill in the House of Representatives;

j) That the Brazilian government invest in the formation of public agents, *quilombola* communities and their social organizations for the full applicability of ILO Convention 169.

**August 2008**

**Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas**

(National Coordination of the Black Rural Quilombola Community Network)

[jhonny.quilombola@gmail.com](mailto:jhonny.quilombola@gmail.com)

[www.conaq.org.br](http://www.conaq.org.br)

**Comissão Estadual das Comunidades Quilombolas do Espírito Santo - Zacimba Gaba**  
 (State Commission of the Quilombola Communities of Espírito Santo - Zacimba Gaba)  
[comissaoquilombola@yahoo.com.br](mailto:comissaoquilombola@yahoo.com.br)

**Coordenação Estadual das Comunidades Negras Rurais Quilombola de Mato Grosso do Sul**  
 (State Coordination of the Black Rural Quilombola Communities of Mato Grosso do Sul)  
[jhonny.quilombola@gmail.com](mailto:jhonny.quilombola@gmail.com)

**Comissão Estadual de Comunidades Quilombolas de Pernambuco**  
 (State Committee of the Quilombola Communities of Pernambuco)  
 Vila de Conceição das Crioulas, s/n • II Distrito de Salgueiro • Pernambuco • Brasil • 56.000-000  
[conceicao@conceicaodascrioulas.org.br](mailto:conceicao@conceicaodascrioulas.org.br)  
[marciaquilombola@yahoo.com.br](mailto:marciaquilombola@yahoo.com.br)

**Federação das Comunidades Quilombolas de MG - N'golo**  
 (Federation of the Quilombola Communities of Mato Grosso – N'golo)  
[ngolomg@yahoo.com.br](mailto:ngolomg@yahoo.com.br)

**Malungu – Coordenação das Associações das Comunidades Remanescentes de Quilombo do Pará**  
 (Malungu – Coordination of the Associations of Remaining Quilombo Communities of Pará)  
 Av. Senador Lemos n° 557 • Belém • Pará • Brasil • 66.050-000  
[malungu.pa@hotmail.com](mailto:malungu.pa@hotmail.com)

**Associação das Comunidades Remanescentes de Quilombos do Município de Oriximiná**  
 (Association of the Remaining Quilombo Communities of the Municipality of Oriximiná)  
 Av. 24 de Dezembro n° 3068 • Oriximiná • PA • Brasil • 68270-000

**Associação Quilombola de Conceição das Crioulas**  
 (Quilombola Association of Conceição das Crioulas)  
 Vila de Conceição das Crioulas, s/n • II Distrito de Salgueiro • Pernambuco • Brasil • 56.000-000  
[conceicao@conceicaodascrioulas.org.br](mailto:conceicao@conceicaodascrioulas.org.br)  
[adalquilombola@yahoo.com.br](mailto:adalquilombola@yahoo.com.br)

**Associação Rural Comunitária dos Quilombolas do Timbó e Adjacências**  
 (Association of Rural Quilombola Communities of Timbó and Surroundings)  
 Rua Estácio de Sá, 281 • Garanhuns • Pernambuco • Brasil • 55290-140  
[nostrupicamasnaocai2@yahoo.com.br](mailto:nostrupicamasnaocai2@yahoo.com.br)

**Comissão Quilombola do Sapê do Norte**  
 (Quilombola Commission of Sapê do Norte)  
[comissaoquilombola@yahoo.com.br](mailto:comissaoquilombola@yahoo.com.br)

**Associação de Advogados de Trabalhadores Rurais no Estado da Bahia**  
 (Association of Rural Workers' Lawyers in the State of Bahia)  
 Ladeira dos Barris, n° 145 • Salvador • Bahia • Brasil • 40.070-050  
[aatrba@terra.com.br](mailto:aatrba@terra.com.br)  
[www.aatr.org.br](http://www.aatr.org.br)

**Centro de Cultura Luiz Freire**

(Luiz Freire Culture Center)

Rua 27 de Janeiro n° 181 Olinda • Pernambuco • Brasil • 53020-020

[comunicacao@cclf.org.br](mailto:comunicacao@cclf.org.br)

[www.cclf.org.br](http://www.cclf.org.br)

### **Centro de Cultura Negra do Maranhão**

(Center for Black Culture of Maranhão)

Rua dos Guaranis, s/n° São Luís • Maranhão • Brasil • 65040.630

[ccnmaranhao@bol.com.br](mailto:ccnmaranhao@bol.com.br)

[www.ccnma.org.br](http://www.ccnma.org.br)

### **Centro de Documentação Eloy Ferreira da Silva**

(Eloy Ferreira da Silva Documentation Center)

Rua Padre Marinho n° 455 / 3° andar •

Belo Horizonte • MG • Brasil • 30140-040

[cedefes@cedefes.org.br](mailto:cedefes@cedefes.org.br)

[www.cedefes.org.br](http://www.cedefes.org.br)

### **Centro pelo Direito à Moradia contra Despejos**

(Center for Housing Rights and Evictions)

83 Rue de Montbrillant n° 1202 • Genebra • Suíça

[cohre@cohre.org](mailto:cohre@cohre.org)

[www.cohre.org](http://www.cohre.org)

### **Comissão Pró-Índio de São Paulo**

(Pró-Índio Commission of São Paulo)

Rua Padre Carvalho n.° 175

São Paulo • SP • Brasil • 05427-100

[cpisp@cpisp.org.br](mailto:cpisp@cpisp.org.br)

[www.cpisp.org.br](http://www.cpisp.org.br)

### **Instituto de Assessoria às Comunidades Remanescentes de Quilombos do Rio Grande do Sul**

(Advisory Institute for the Remaining Quilombo Communities of Rio Grande do Sul)

Av. Cavallhada n° 2044 sala 201 • Porto Alegre • RS • Brasil • 91740-000

[iacoreq@ig.com.br](mailto:iacoreq@ig.com.br)

### **Justiça Global**

(Global Justice)

Av. Beira Mar n° 406 - sala 1207 • Rio de Janeiro • RJ • Brasil • 20021-900

[global@global.org.br](mailto:global@global.org.br)

[www.global.org.br](http://www.global.org.br)

### **KOINONIA Presença Ecumênica e Serviço**

(KOINONIA Ecumenical Presence and Service)

Rua Santo Amaro 129 • Rio de Janeiro • RJ • Brasil • 22211-230

[territoriosnegros@koinonia.org.br](mailto:territoriosnegros@koinonia.org.br)

[www.koinonia.org.br](http://www.koinonia.org.br)

### **Movimento Negro Unificado - Seção RS**

(Unified Black Movement –Rio Grande do Sul Section)

Rua dos Andradas nº 943 - sala 811 • Porto Alegre • Rio Grande do Sul • Brasil

**Rede Social**

(Social Network)

Rua Castro Alves nº 945 • São Paulo • SP • Brasil • 01532-001

[redesocial@social.org.br](mailto:redesocial@social.org.br)

[www.social.org.br](http://www.social.org.br)

**Terra de Direitos**

(Land of Rights)

Rua Des. Ermelino de Leão nº 15 - conj. 72 • Curitiba • Paraná • Brasil • 80410-230

[www.terradedireitos.org.br](http://www.terradedireitos.org.br)