

**University of Oklahoma College of Law International Human Rights Clinic**

**The United States of America**

**“Submission - General discussion on GRIWAG**"

Prepared by

Student Professor

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The rights of indigenous women and girls"

Equality and non-discrimination with a focus on indigenous women and girls and intersecting forms of discrimination”

1. **Women’s Access to Justice**
2. *Background on Women’s Access to Justice*
3. Women in Brazil, specifically Indigenous women, are victims of gender-based violence at an alarming rate.[[1]](#footnote-1) Sadly, most women who have been victims of violence are finding it difficult to have access to justice due to racial, political, and cultural restrictions.
4. In 2010, the CEDAW report for Brazil detailed the implementation of the Maria da Penha Law. This law, also known as 11,340/2006, was a “major historical achievement . . . of women’s human rights.”[[2]](#footnote-2) This law criminalizes violence, in all forms, and proposed the creation of special courts to handle domestic and family violence against women.[[3]](#footnote-3)
5. In 2012, CEDAW urges Brazil to strengthen their judicial system to ensure that women, specifically women in disadvantaged groups, have access to justice by increasing the number of courts dealing with domestic and family.[[4]](#footnote-4) In the 2012 CEDAW report, the Committee recognized that the Supreme Court ruled on the “legal controversies . . . of the Maria da Penha law.”[[5]](#footnote-5) However, there has been a huge resistance to this law leading to concern that there will be a lack of compliance by judges at the local level.[[6]](#footnote-6) The Committee is also concerned that there is a lack of expertise on domestic and family violence cases and the lack of accurate data on violence against women.[[7]](#footnote-7) The committee suggests better training to legal actors on women’s rights and violence against women and improve collection of statistical date on monitoring the impact of the Maria da Penha Law.[[8]](#footnote-8)
6. In the 2016, the Special Rapporteur on the rights of indigenous peoples highlighted the use of “security suspension” within the judiciary system.[[9]](#footnote-9) Security suspensions allow certain rights to be suspended if favor of other interests.[[10]](#footnote-10) This is a concern for indigenous people due to encroaching development projects taking precedent and resulting in serious violations of indigenous people’s rights.
7. Furthermore, judicial decisions, including those of land development concerns, continue to refer to indigenous people in a “pejorative and discriminatory manger” and that legal actors are “unable to relate to the reality of indigenous peoples” meaning that they lack sympathy to the plight of indigenous people and the effects of security suspensions on their rights.[[11]](#footnote-11) When indigenous people attempt to assert their rights to their land on their own, it results in attacks and killings.[[12]](#footnote-12) With the lack of judicial institutions responding to these killings and taking of indigenous land, indigenous peoples right to justice falls on deaf ears. The report has concluded that indigenous people lack access to justice due “lack of resources, cultural and linguistic barriers, institutional racism and ignorance of cultures . . . on the part of the judiciary and law enforcement forces.”[[13]](#footnote-13) By denying rights, such as the security suspension, and the lack of consult regarding land rights are also compounded in the lack of justice given to indigenous peoples. Failure to act by the Brazilian government sends a message that there will be no repercussion if they were to commit crimes against indigenous communities and that “law enforcement and justice systems lack . . . any genuine concern about their plight.”[[14]](#footnote-14) It is also important to note that the report only focuses on indigenous people in general and makes no mention of women as individuals and their lack of justice as well.
8. Furthermore, the Special Rapporteur is concerned with racially based violence against indigenous peoples, specifically in Mato Grosso do Sul, Para, Bahia, Maranhao, Rio Grande do Sul, Santa Catarina, and Parana.[[15]](#footnote-15) This report is concerned that there are no protections of human rights, which is contributing to high rates of murders in the area. There was one incident where there was a series of armed attacks in Kurussu Amba, Dourados and Taquara in Mato Grosso do Sul, which no State authority ever followed up on.[[16]](#footnote-16) The report calls for Brazil to investigate these violent attacks and hold those responsible. The State of Brazil responded to this report by stating that “12 criminal inquiries” have already been carried out in the affected areas of these attacks.[[17]](#footnote-17) They also claim to have arrested five individuals who were accused in participating in the attacks.[[18]](#footnote-18) Additionally, large security forces have been mobilized in areas where conflict has broken out between indigenous peoples and local farmers. Furthermore, Brazil has established the National Program for the Protection of Human Rights Defenders, who currently protect “101 indigenous leaders.”[[19]](#footnote-19) There is no mention to violence or domestic violence related incidents regarding women and the specific actions taken to address the violence against this group.
9. In 2019, the Universal Periodic Review Mid-Term Report, Brazil has created the Mulher viver sem Violencia Program, which has increased its units of Casa da Mulher Brasileira in the last couple of years.[[20]](#footnote-20) Through fund transfer agreements, in 2018, new regulations aiming to improve access to resources for the Mulher Viver sem Violencia Program was enacted.[[21]](#footnote-21) This program has proposed the construction of four building through Brazil to meet the needs of Brazilian cities.[[22]](#footnote-22) However, construction of these buildings will be dependent on budgetary means.[[23]](#footnote-23) The National Office for Policies for Women publishes the Women Socio-Economic Annual Report, which provides “a comprehensive perspective of women’s conditions with a cross-sectional and multidimensional approach.”[[24]](#footnote-24)
10. In the list of issues and question prior to the submission of the State report (CEDAW/C/BRA/QPR/8-9), the committee is concerned about achievement and challenges faced while attempting to ensure women’s access to justice, especially women who belong to disadvantaged and marginalized groups, such as the indigenous women. The CEDAW Committee wants to know the efforts to increase access for women to free legal aid, shift the burden of proof, provide judicial remedies, and measures taken to combat the fear of potential stigmatization and victimization for affected women.[[25]](#footnote-25) Additionally, the CEDAW Committee wants information on the progress taken to allow women to invoke their rights to equality by being able to lodge legal complaints and seek remedies for violations committed against them.[[26]](#footnote-26)
11. Moreover, in 2020, the CEDAW committee is concerned about the progress made while combatting violence against women, specifically, the measures taken to combat the root cause of gender-based violence. Additionally, the CEDAW committee wants to know the progress on changing discriminatory stereotypes and social norms to prevent resources from being allocated to women to find justice against their abusers. Furthermore, there is a push for access to adequate support systems, such as shelters and rehabilitation services that will provide women with legal support among other things.[[27]](#footnote-27)
12. In the 2020 State report, it discusses the role of the Ministry of Women and Family and Human Rights, who compromise the Office of the Ombudsman, who is responsible for receiving complaints and forwarding them to authorities at the federal, state, and local level.[[28]](#footnote-28) However, this Office has no decision-making authority to address the complaints and cannot be involved in the police investigation, instead they can only forward the complaints to authorities.[[29]](#footnote-29) The Office does act in conflict resolution and remedying human rights violations in Brazil.[[30]](#footnote-30) But its effectivety is not clear.
13. *Recommendations Received* ***in 2016, 2017, 2018***
14. The Special Rapporteur on the rights of indigenous peoples on her mission to Brazil in 2016, has recommended that the Government of Brazil takes immediate measure to protect the safety of indigenous leaders.[[31]](#footnote-31) The Special Rapporteur recommends that the Government of Brazil create culturally appropriate protection programs and to conduct investigations into all attacks and killings of indigenous people and bring perpetrators to justice.[[32]](#footnote-32) Brazil must pay particular attention to situations of Indigenous women and the increasing violence against indigenous women.[[33]](#footnote-33) Lastly, the Special Rapporteur recommends that the Brazilian government collaborates with Indigenous representatives to eliminate barriers that prevent indigenous right to justice.[[34]](#footnote-34)
15. Working Group on the UPR. Brazil examined the recommendations of strengthen measures to prevent and punish racism, discrimination, and violence against indigenous peoples.[[35]](#footnote-35) Take further efforts in combating violence against women, such as enhancing the trust in the judicial system.[[36]](#footnote-36) Continue the efforts to implement the “Women Living without Violence program” and to continue efforts to combat violence against women.[[37]](#footnote-37) Lastly, strengthen capacity building programs for judges and legal personnel on women’s rights and violence against women.[[38]](#footnote-38)
16. Preliminary Observations of IACHR’s in Loco Visit to Brazil (2018) recommended that Brazil adopts concrete strategies and goals to reduce the number of murder and violent crimes and to monitor investigations and criminal proceedings.[[39]](#footnote-39) These concrete strategies should practice due diligence with the aim of identifying and punishing anyone responsible to deter future violent acts in the future.[[40]](#footnote-40)
17. **Suggestions of theUniversity of Oklahoma College of Law International Human Rights Clinic**
* In addition to the Maria da Penha law, Brazil should add an additional provision specifically addressing violent crimes against Indigenous women.
* Brazil should continue to report on measures taken for access to justice for victims of violence by strengthening police, prosecutors, and judges and gender training to respond to violent encounters.
* Brazil should take efforts to reach rural Indigenous communities and aid in providing low-income individuals access to justice.
* Brazil should train responding officers on better techniques to handle domestic violent cases and be knowledgeable on legal services to provide to women to seek redress.
* By the next report to CEDAW, Brazil should report concrete measures taken and results obtained relating to Maria da Penha law, and the protection to the indigenous women.
* Brazil should extend a standing invitation to Special Rapporteur on Violence Against Women.
* Provide information on the financial resources for Monitoring the Implementation and Enforcement of the Maria da Penha law.
* Submit all overdue reports to the Committee on the Elimination of Discrimination Against Women since 2012.
* Where Brazil continues to not implement ICERD obligations, Brazil should provide a critical, candid assessment explaining barriers to implements. This will provide the basis for future, constructive recommendations.
1. Universal Periodic Review Mid-Term Report 3rd Cycle. Brazil-2019, para 230. [↑](#footnote-ref-1)
2. CEDAW/C/BRA/7. para 34. 31 August 2010. [↑](#footnote-ref-2)
3. *Id.*  [↑](#footnote-ref-3)
4. CEDAW/C/BRA/CO/7. para 18. 23 March 2012. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* at para 19(a). [↑](#footnote-ref-8)
9. A/HRC/33/42/Add.1., para 28. 8 August, 2016 [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id.* at para 29. [↑](#footnote-ref-11)
12. *Id.* at para 31. [↑](#footnote-ref-12)
13. *Id.* at para 79. [↑](#footnote-ref-13)
14. *Id.* at para 80. [↑](#footnote-ref-14)
15. *Id.* at para 60. [↑](#footnote-ref-15)
16. *Id.* at para 61. [↑](#footnote-ref-16)
17. A/HRC/33/42/ Add. 5., para 24, 19 Sept. 2016. [↑](#footnote-ref-17)
18. *Id*. at para 15. [↑](#footnote-ref-18)
19. *Id.* at para 26. [↑](#footnote-ref-19)
20. Universal Periodic Review Mid-Term Report 3rd Cycle, Brazil – 2019, para 285. [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. *Id.* at para 286. [↑](#footnote-ref-24)
25. CEDAW/C/BRA/QPR/8-9. para 5. 17 November 2020. [↑](#footnote-ref-25)
26. *Id.* [↑](#footnote-ref-26)
27. *Id.* at para. 9. [↑](#footnote-ref-27)
28. CERD/C/BRA/18-20. para 191. 15 September 2020. [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *Id.* at para. 192. [↑](#footnote-ref-30)
31. A/HRC/33/42/Add.1., para 96, August 8, 2016. [↑](#footnote-ref-31)
32. *Id.* [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. *Id.* at para 100. [↑](#footnote-ref-34)
35. A/HRC/36/11., para 136.46, 18 July, 2017. [↑](#footnote-ref-35)
36. *Id.* at para 136.119. [↑](#footnote-ref-36)
37. *Id.* at para 136.178-136.179. [↑](#footnote-ref-37)
38. *Id.* at para 136.189. [↑](#footnote-ref-38)
39. Preliminary Observations of IACHR’s In Loco Visit to Brazil November 5-12, 2018, page 49 (8). [↑](#footnote-ref-39)
40. *Id.* page 60 *(8).* [↑](#footnote-ref-40)