



**THE GUARANI AND KAIOWÁ  
PEOPLES' HUMAN RIGHT  
TO ADEQUATE FOOD  
AND NUTRITION**

**A HOLISTIC APPROACH** | Executive Summary





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Support:



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# 1. Introduction









1.1

# Objectives of the Executive Summary

The Guarani and Kaiowá people in the state of Mato Grosso do Sul (MS) have been the victim of historic and systemic human rights violations. Various civil society, national and international organisations and networks have recorded and come forward with complaints to that effect. The severity of those violations have even been recorded in official documents published by the State of Brazil, for example the Final Report by the CNV (Comissão Nacional da Verdade: National Truth Commission)<sup>2</sup> and the Figueiredo Report<sup>3</sup>.

With a view to bringing together concrete data on the violations against the Guarani and Kaiowá in MS and the severity of the damage caused by those violations, in 2013, FIAN Brazil and CIMI-MS carried out socio-economic and nutritional research in three representative communities: Guaiviry, Ypo'i and Kurusu Ambá. This research confirmed how severely all the communities' human rights had been violated. It was conducted with the technical support of consultants and FIAN International's Secretariat, in cooperation with the Council of the *Aty Guasu*<sup>4</sup> and local indigenous leaders, with support from HEKS/EPER.

With the results of the 2013 research, FIAN Brazil and FIAN International supported the drafting of the report "The Guarani and Kaiowá Peoples' Human Right to Adequate Food and Nutrition – A Holistic Approach", which offers an interpretation of this research from a human rights perspective, with a view to joining the efforts to expose the violations suffered by the Guarani and Kaiowá in MS and support actions demanding their human rights guaranteed under national and international laws.

2. The CNV was created by Law 12.528/2011 and established on 16 May 2012 under the framework of the Presidency of the Brazilian Republic to examine and explain the serious violations of human rights committed between 1946 and 1988 by public officials, people serving them, with the support and in the interest of the Brazilian State. President Dilma Rousseff delivered the National Truth Commission's Final Report in an official ceremony at the 'Palácio do Planalto' on 10 December 2014 and is available (in Portuguese) at the following address: <http://www.cnv.gov.br/index.php/outros-destaques/574-conheca-e-acesse-o-relatorio-final-da-cnv>.

3. The Figueiredo report, drafted by the then public prosecutor Jader de Figueiredo Correia, at the request of the Interior Minister at the time, Albuquerque Lima, details torture, the kidnapping of children, the killing of whole communities and all manner of cruelties against Indigenous Peoples throughout the country, mainly by landowners and officials of the now-defunct SPI (Serviço de Proteção ao Índio: Indigenous Peoples Protection Service). The report is available (in Portuguese) at the following MPP (Ministério Público Federal: Federal Prosecutor's Office) address: [http://6ccr.pgr.mpf.mp.br/institucional/grupos-de-trabalho/gt\\_crimes\\_ditadura/relatorio-figueiredo](http://6ccr.pgr.mpf.mp.br/institucional/grupos-de-trabalho/gt_crimes_ditadura/relatorio-figueiredo).

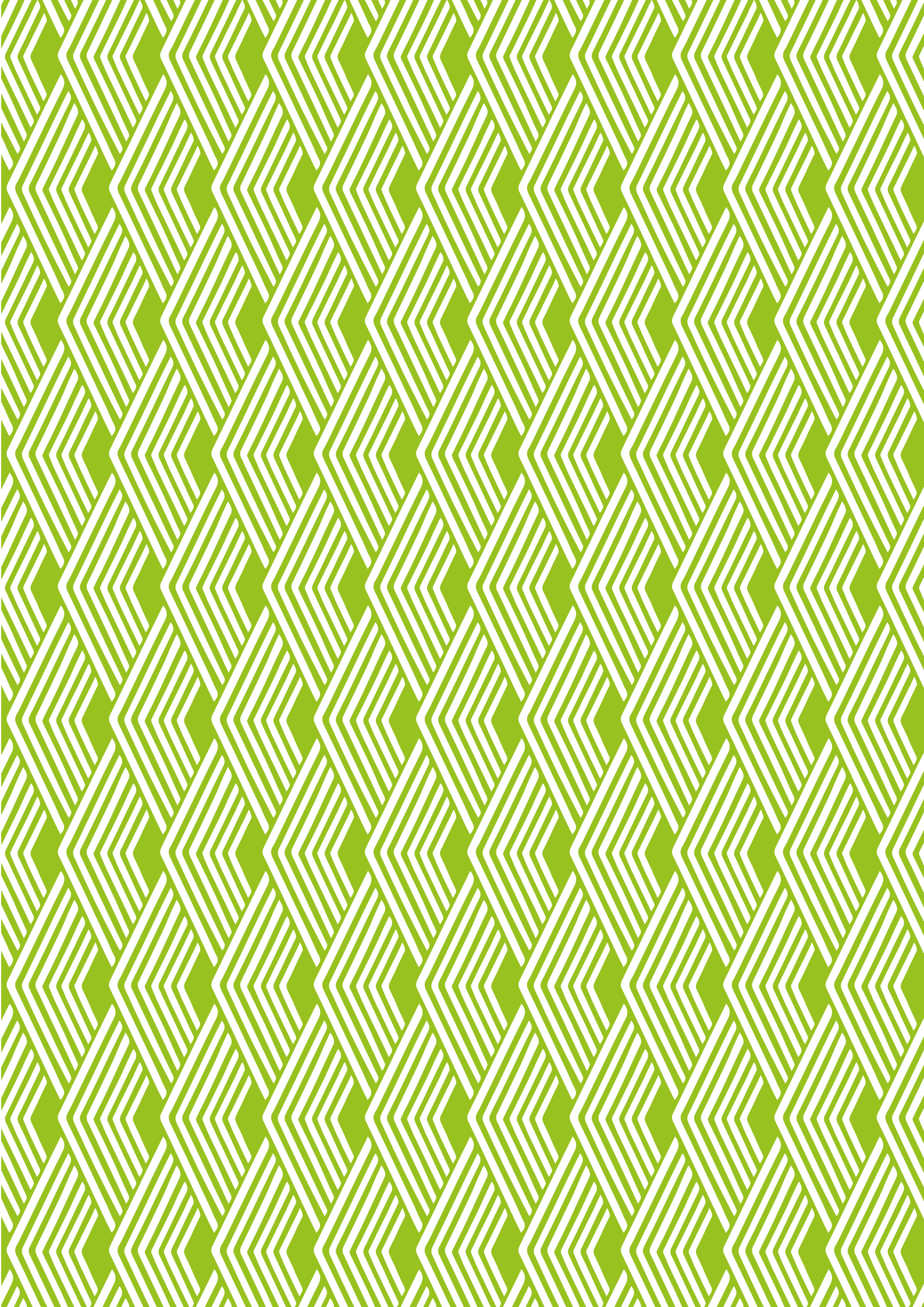
4. *Aty Guasu* is the Guarani and Kaiowá Grand Assembly.



5. The report with all the data from the research carried out in 2013 is at final revision stage and a digital version of it will be published on both FIAN Brazil's and CIMI's websites as soon as it has been finalised.

Given that context, this executive summary is intended to provide an overview of the main results of the socio-economic and nutritional research carried out by FIAN Brazil and CIMI-MS in 2013 and to outline the main points from “The Guarani and Kaiowá Peoples’ Human Right to Adequate Food and Nutrition – A Holistic Approach”, produced in 2015<sup>5</sup>. A stronger focus will be given to violations of the right to adequate food and nutrition, in the framework of the indivisibility and interdependency of human rights.

To that end, it presents: i) a brief history and the social, political and legal context of the indigenous peoples in Brazil and the Guarani and Kaiowá people; ii) the chosen representative communities; iii) a human rights interpretation in light of the quantitative and qualitative results of the 2013 research, which also provides data on those peoples’ living conditions and access to food; and iv) some final considerations.





1.2

A brief outline of  
the history and  
situation of the  
indigenous peoples  
in Brazil



The history of indigenous peoples in Brazil is marked by systematic acts of all types of violence that constitute serious human rights violations, either perpetrated by the Brazilian State itself or with its complicity. Serious tangible and intangible damage – such as the loss of ancestral territories and the near extinction of culture and other forms of violence – and human rights violations are the outcome of a policy of disregard, neglect and institutional abandonment, as well as actions which, through public officials, went against the rules that guarantee their rights.

When the Portuguese set foot in Brazil, they found an indigenous population of approximately six million. Since then, indigenous peoples have been persecuted, attacked, indoctrinated, disrespected and massacred, and many have been exterminated; as a result, their numbers have depleted. The Portuguese enslaved and contaminated them with diseases that they had never encountered before<sup>6</sup>, and many died of ill treatment or as a result of being shot when they tried to escape”. (CIMI Rondônia, 2014).

The FUNAI (Fundação Nacional do Índio: National Indigenous Peoples Foundation) states that “from 1500 until the 1970s, Brazil’s indigenous population declined dramatically and many peoples died out”.<sup>7</sup> According to the Demographic Census conducted by the IBGE (Instituto Brasileiro de Geografia e Estatística: Brazilian Institute of Geography and Statistics) in 2010, the Brazilian indigenous population currently stands at 896,900 people and comprises 305 different ethnicities, in which an “ethnicity” is a community defined by linguistic, cultural and social affinities. According to data from the Census, the Brazilian population in 2010 amounted to 190,755,799 million people and, although Brazil claims a substantial share of the indigenous population in South America, that share corresponds to just 0.4% of the total population of the country (IBGE 2012)<sup>8</sup>. As mentioned above, the dramatic decline in the indigenous population in Brazil was caused, above all, by the violent occupation of their territories, the introduction of non-indigenous diseases and the absence, ineffectiveness, omission and direct actions of the Brazilian State, which violated – and continue to violate – the human rights of those populations.

6. It is clear that, in many moments in the history of the country, contact with previously isolated indigenous peoples was made without due precautions or vaccines. According to FUNAI (Fundação Nacional do Índio: National Indigenous Peoples Foundation), during the colonial era, the spread of diseases such as smallpox, influenza, tuberculosis, pneumonia, whooping cough, measles and other viruses played a part in conquering Brazil’s indigenous population and led to the decimation of countless indigenous peoples. FUNAI also states that, in the first decades of the 20th century, the situation did not change: whole villages were destroyed as a result of pulmonary diseases in the groups contacted recently by the SPILTIN (Serviço de Proteção aos Índios e Localização dos Trabalhadores Nacionais: Protection of Indigenous Peoples and National Workers Placement Service), which was created in June 1910 by Decree no 8.072 and known from 1918 as simply “SPI” (Serviço de Proteção aos Índios: Indigenous Peoples Protection Service). Available in Portuguese at: [www.funai.gov.br](http://www.funai.gov.br). Accessed: June 2015. According to the CNV, contact without due precautions in the 1970s, for example, caused the indigenous population in Paraná, Mato Grosso and Pará to shrink by two-thirds. (National Truth Commission (CNV), 2014).

7. Available in Portuguese at: <http://www.funai.gov.br/index.php/indios-no-brasil/quem-sao>. Accessed: July 2015.

8. The 2010 Census identified 274 indigenous languages and established that around 17.5% of the indigenous population does not speak Portuguese (IBGE, 2012). It also revealed that indigenous populations live in every state, including the Federal District (IBGE, 2012).

9. The CNV, proposed under the 3rd National Human Rights Programme, was composed of seven members appointed by President Dilma Rousseff and supported by advisers, consultants and researchers. As previously mentioned, the CNV was created to examine and explain the serious violations of human rights against the indigenous population of Brazil between 1946 and 1988 by public officials, people serving them, with the support and in the interest of the Brazilian State.

10. The CNV report describes periods of serious neglect by the Brazilian State, when the Union protected local power and private interests – and thereby created favourable conditions for dispossessing indigenous land – but also failed to investigate corruption among its staff. It also recounts other moments where it was patently clear that the Union was seriously violating the human rights of the indigenous peoples and in which fatal neglect, particularly in the areas of health and corruption control, continued to exist.

11. The SPILTN (known as the SPI from 1918 onwards) was created in June 1910 by means of Decree no 8.072 and was designed to provide assistance to all indigenous people on national territory. At the basis of SPI's work was the idea that the "Indians" were transitory beings: they were destined to become either rural workers or urban proletarians. SPI work began with the Guarani Kaiowá in 1915 and the demarcation of the first indigenous reserve. Another seven reserves were recognised by 1928. The SPI fixed the boundaries of the indigenous reserves with the intention of welcoming and promoting the idea of "progressive integration" in national society of the "forest-dwellers" removed from their traditional work in the process of "liberating land" to colonise the region. In 1967, during the military dictatorship, the SPI was replaced by FUNAI.

12. In October 1977, the president at the time, Ernesto Geisel, signed Supplementary Law no 31, which divided Mato Grosso and created the state of Mato Grosso do Sul.

A comprehensive population recovery process, which gives particular emphasis to children and the young, is currently taking place. Anthropologists and academics have pointed out that the process is the consequence of a conscious demographic recovery and not of state initiatives or policies. Regardless of that process, it is worth stressing again that all the indigenous societies together represent a small fraction of the national population – at less than 1% of the total population of Brazil – and that the indigenous population continues to suffer violence, prejudice and discrimination, which contributes to the deep marginalisation and extremely adverse living conditions that this population experiences on a daily basis.

The serious and historic violations of indigenous rights in Brazil that were perpetrated between 1946 and 1988 by public officials and the people serving them, with the support and in the interest of the Brazilian State, are depicted extensively in the Final Report of the National Truth Commission (CNV), which was created by Law 12.528/2011 under the framework of the Presidency of the Brazilian Republic<sup>9</sup>.

The document drafted by the CNV states from the outset that "State neglect and direct violence have always come as a pair in indigenous policy, but the afflictions that they have respectively caused have varied." Serious violations perpetrated by the Brazilian State against indigenous peoples between 1946 and 1988 are described in the report as systemic inasmuch as they were the direct ramifications of the State's structural policies<sup>10</sup>.

"Governmental plans routinely instigated the dispossession of indigenous land" (National Truth Commission (CNV), 2014). In the 1940s, for example, then-president Getúlio Vargas introduced a federal policy called "Marcha para o Oeste" ("March to the West") to explore and occupy the Centre-West region with colonies, which favoured invading and giving ownership of indigenous land to third parties. Several state governments, for example the State Government of Paraná, began to adopt targeted colonisation policies. In that period,

in addition to invasions themselves, land leases that did not comply with contract conditions – when a contract existed – were common and took up vast expanses of indigenous land, which led, in some cases, to the accommodation of irregularities (invasions practised and later legalised by the SPI<sup>11</sup> by means of leases). (National Truth Commission (CNV), 2014).

In the state of Mato Grosso (which included the states of Mato Grosso do Sul and Mato Grosso until they were divided in 1977)<sup>12</sup>, for example, the arrival of settlers gave rise to major conflicts between Indigenous and non-Indigenous peoples, who disputed ownership of the land. The SPI then “advised” the indigenous peoples that they should move to reserves<sup>13</sup>. When they refused, the SPI itself became responsible for transporting Indigenous peoples to reserves by force: steering indigenous peoples towards reserves was the method chosen to free land for economic exploitation, so resistance was taken as a subversive act, a rejection of an order, worthy of punishment. One form of punishment was to deny them access to resources that the state of Mato Grosso only offered at the time to Indigenous peoples living in reserves. In the reserves, the Guarani and Kaiowá – who had never, under their own customs, lived in a small, organised area – began to face a number of conflicts and difficulties, such as deteriorated quality of land and a lack of space to sow plants, high population density and significant levels of violence and political conflicts that resulted from the overlapping of families<sup>14</sup>.

The National Truth Commission (CNV) report confirms, in short, that the various types of human rights violations caused by the actions and failures of the Brazilian State towards the indigenous peoples, between 1946 and 1988, were the consequence of the attempt by the State to force or accelerate the “integration” of those peoples and colonise their territories, whenever colonisation was strategically important to the State’s political and economic project. The situation continues to this day as a result of a development model that focuses on the interests of national and international companies and on extraction (mining, agribusiness, infrastructure projects), which goes against the development vision of indigenous communities. The situation is

13. In the state of Mato Grosso do Sul, there are currently 8 reserves. They cover a total of 17,975 hectares, where 39,334 inhabitants live. Their living conditions are famously precarious and, for that reason, have been the subject of several national television reports. According to the Federal Prosecutor’s Office, the murder rate in the reserves is three times higher than the national average, at one hundred for every hundred thousand inhabitants. As various communities were “accommodated” and/or “confined” in reserves, without any regard for their cultural identity, they are now suffering the consequences of a public measure that disregarded their rights and of the failure of the Brazilian State to overcome this violation. Available in Portuguese at: <http://www.prms.mpf.mp.br/servicos/sala-de-imprensa/noticias/2015/06/justica-federal-afirma-ser-201cim-possivel201d-diminuir-crimes-contra-indigenas-e-extingue-acao-do-mpf>. Accessed: June 2015.

14. “The Guarani and Kaiowá communities are not very large; they are made up of two to five extended families, known amongst themselves as “kindreds”, who come together in a particular territory called the *tekoha*, understood to be the only place where they can carry out their traditional way of life. (Lutti, 2009).



15. According to the CNV, “The economic interests of landowners were represented at local authority level with a view to pressuring the advance of the agricultural border into indigenous areas.” (National Truth Commission (CNV), 2014).

exacerbated by the State’s historic debt owed to the indigenous peoples as compensation for the damage caused by violations of their human rights, as a result of initiatives and public policies introduced during the twentieth century.

As an official Brazilian State document, the CNV’s Final Report is especially relevant because it publicly discloses and faces up to the gravity of the violations perpetrated by the State itself, while also describing the criminal actions committed by powerful economic agents (particularly large land owners)<sup>15</sup> protected by the Union, which constitutes a serious violation by the State of its obligation to protect the human rights of the indigenous peoples against the actions of third parties. The criminal actions that deprived the indigenous peoples of their land also seriously damaged, along with all their other human rights, their human right to feed themselves and their families.

To conclude its *Violações de Direitos Humanos dos Povos Indígenas* (Violations of the Human Rights of Indigenous Peoples) Report, the National Truth Commission (CNV) stressed that many of the effects of the violations continue to this day:

“It is clear – and acknowledged in this constitutional text – that the ‘way of life’ of every indigenous people depends on its land being guaranteed, in order to promote the conditions for the protection and development of its ‘practices, customs and traditions’. Therefore, as long as compensation has not been given for all the indigenous land that was dispossessed during the period that the CNV studied, the transition from an integrationist regime that persecuted this country’s native peoples into a fully democratic and multi-ethnic regime cannot be considered complete.” (National Truth Commission (CNV), 2014.)

One of the sources for the work by the CNV was the report drafted by the then public prosecutor Jader de Figueiredo Correia, at the request of the Interior Minister, who at the time was Albuquerque Lima (1967). The report, which became known as the Figueiredo Report, exposes torture cases, along with the kidnapping of children and rapes:

“Killings of whole communities, tortures and all sorts of cruelties against indigenous people throughout the country – principally by landowners and officials of the defunct SPI (...) hunting of humans with machine guns and dynamite fired from planes, intentional smallpox injections among isolated settlements and donations of sugar mixed with strychnine – a poison”<sup>16</sup>.

Since 1993, the Indigenous Missionary Council (CIMI) has been publishing reports on violence towards indigenous peoples in Brazil that demonstrate the serious neglect in the state’s indigenous policy, but also highlight that violence towards those peoples has intensified in recent years<sup>17</sup>. According to CIMI:

“Disrespect for those peoples goes beyond territorial rights. It is also evident in the criminal neglect of healthcare for the indigenous population, which, according to data from the Ministry of Health itself, resulted in the death of 693 children in 2013. The fact that, for every 100 indigenous people that die in Brazil, 40 are children makes it impossible to deny that a genocidal indigenous policy is being pursued.” (CIMI, 2014).

The violations by the Executive power, the Legislative power and the Judiciary power are, in essence, coupled to their failure to comply with Article 67 of the ADCT (Ato das Disposições Constitucionais Transitórias: Transitional Constitutional Provisions Act), which stated that “The Union will finish demarcating indigenous lands within five years from the enactment of the Constitution”, in other words, in 1993. However, 27 years after the Constitution was enacted, very little progress has been made and we could go so far as to state that the demarcation of indigenous territories is even more jeopardised, particularly when we consider the legislative initiatives designed to amend the indigenous lands demarcation process, such as PEC (Proposta de Emenda à Constituição: Constitutional Amendment Proposal) no 215, which will be explained below.

Indigenous entities claim that the paralysis in recent years of the demarcation of indigenous lands has intensified violence against indigenous peoples in Brazil which, together with large economic projects supported and financed by the Brazilian State<sup>18</sup>, can be cited as contributing factors to the other violations faced by the indigenous populations in the country.

16. Available in Portuguese at: [http://6ccr.pgr.mpf.mp.br/institucional/grupos-de-trabalho/gt\\_crimes\\_ditadura/relatorio-figueiredo](http://6ccr.pgr.mpf.mp.br/institucional/grupos-de-trabalho/gt_crimes_ditadura/relatorio-figueiredo). Accessed in July 2015.

17. The data in the reports that CIMI publishes annually are collected, systematised and compiled on the basis of a number of sources, such as: information from the Public Prosecutor’s Office, judgments, sentences, reports and police bulletins; complaints and reports from the peoples, leaders and indigenous organisations; data published by the written and digital press from every region in the country; and forms completed by CIMI missionaries who work with the indigenous peoples and communities and observe daily life in the villages.

18. Organisations that work with indigenous peoples accuse the development policy adopted by the Brazilian State of enriching agribusiness, contractors, lumber companies, mining companies and hydraulic power generation companies. They cite as an example the water transposition works on the São Francisco river, the hydroelectric complexes on the Madeira, Xingu (Belo Monte hydroelectric dam) and Tocantins rivers, along with the other hydroelectric dams that are being built or are foreseen on the rivers Tapajós, Juruena, Teles Pires e Araguaia, as well as the construction and duplication of major roads. Thus, countless complaints and studies indicate that major PAC (Programa de Aceleração do Crescimento: Growth Acceleration Programme) projects have seriously disrespected the indigenous inhabitants of those areas and violated their human rights. According to CIMI: “It is not just farmers and land-grabbers who are invading indigenous lands, it is not just miners and loggers who are stealing or destroying natural resources. Destruction and plundering are also organised at federal level. The development project – summed up in the PAC – ruthlessly invades, occupies and destroys lands, communities and indigenous lives.” (CIMI, 2011). CIMI reports that more than 500 ventures have reached indigenous lands and affected 182 territories of at least 108 peoples. (Heck et al., 2012).

## 2. The socio-economic and nutritional research carried out in 2013









2.1

# Representative communities chosen: Guaiviry, Kurusu Ambá and Ypo'i

The social, demographic and environmental conditions of the three communities chosen to participate in the research are very similar and are characterised by conditions that stem from the violence and structural discrimination to which indigenous peoples have historically been subjected since the Portuguese occupied the territory that is now known as Brazil. The communities have, for years, faced extreme exclusion, hunger, discrimination, violence and marginalisation.

Before small areas of land from their ancestral territories were returned to them, the families from those communities lived in different indigenous reserves created by the SPI in the 1920s<sup>19</sup>. Experienced as real pockets of violence and disruption of traditions and indigenous culture, the reserves marked out by the SPI were known as “pigsties” among community elders, which demonstrates the extent to which indigenous people objected to and shunned life in the reserves. Similarly, the lack of space to live in dignity and the conflicts between the families were instrumental in the decision by the communities to leave the reserves and reorganise in the hope of recovering their traditional territories, which are now owned by a number of ranchers.

The story of those communities taking back and occupying small areas of traditional territories which are rightfully theirs is, however, marked by violence and the murder of their leaders<sup>20</sup>, crimes which continue to go unpunished and reinforce the

19. When they were expelled from their traditional territory, the Guaiviry community moved to the indigenous reserve of Amanbai, in the Aral Moreira municipality; the Kurusu Ambá community moved to the Taquapiry reserve, in Coronel Sapucaia and the Ypo'i community moved to the Pirajui reserve, in Paranhos.

20. Guaiviry: only on their fourth attempt to take back their territory, on 1 November 2011, some 68 indigenous men, women and children managed to reoccupy part of their traditional territory, which now falls within 'Fazenda Nova Aurora'. From 2 November 2011, farmers from the region, the president of the town's farmers' union at the time, the town works secretary and the owner of Gaspem, an independent security company, among others, held a series of meetings and talks which were intended to force the Guaiviry community out by using criminal and violent means. On 18 November 2011, the community was the target of an attack which resulted in its leader, Nísio Gomes, being killed and his corpse being hidden and in the injury of a young man, Jonathon Velasques Gomes. Kurusu Ambá: a first attempt to take back their territory was made in January 2007. That first attempt, thwarted by the extremely violent actions of gunmen and by the murder of the ñande sy (healer) Xurite Lopes, an important figurehead in the community, was followed by another three attempts to reoccupy their ancestral lands. In recent years, three leaders that were fighting for the demarcation of land have been murdered and one has received death threats. Five people have gunshot wound scars that they have attained during attacks on the community. The land claimed by the community spans 5 farms: Madama, Maria Auxiliadora, Mangueira Preta, Barra Bonita and Fazenda de Ouro. Since 2009, the community has occupied a small strip of jungle in an environmental conservation area that borders on two farms, five kilometres from Fazenda Madama. In addition to that area, the community also took back small headquarters in Fazenda Barra Bonita on 22 September 2014 and a part of Fazenda Madama on 22 June 2015. Ypo'i: in the early morning of 29 October 2009, approximately 50 men, women and children from the extended Vera family rallied together and took back part of their traditional territory. On 1 November 2009, the group camped in Ypo'i was, as documented in police investigations, viciously attacked by the farmer Fermino Aurélio Escobar, with help from his three sons, among others. During the attempt to force the community out by criminal means, two teachers from the village, Rolindo and Genivaldo Vera disappeared. Rolindo's body was never found, but Genivaldo's body was found ten days later in a stream near the farm. Since 19 August 2010 the community occupies a small area of Fazenda São Luís and, during the night of 29 April 2015, the community took back two new areas in other farm sites.

21. There have been countless cases of criminalisation, which reveal a hazy connection between racism and connivance among powers, particularly the Judiciary, as in the case of Kurusu Ambá: “Leaders are being criminalised and one of them had to leave the community to seek safety. On that site, a number of leaders had been detained since 2007, when four of them were condemned to 17 and a half years of imprisonment. The proceedings happened in a flash: seven months from investigation to condemnation; cases on the murder of indigenous leaders, meanwhile, take tens of years to come to an end or simply prescribe, such as the murder case for Marçal de Souza Tupã’i. The speed at which indigenous people are convicted is evident in that more than 200 indigenous people are held in prisons in the south of Mato Grosso do Sul, the highest number of indigenous prisoners in any state in Brazil.” (CIMI, 2010).

22. The *tekohá* is the physical place – including land, jungle, fields, watercourses, plants and remedies – where *teko*, the Guarani way of life, takes place.

23. The National Justice Council recently reported that only in Famasul (Federação da Agricultura e Pecuária de Mato Grosso do Sul: Federation of Agriculture and Livestock of Mato Grosso do Sul) there were 20 lawsuits intended to paralyse or affect the process of demarcating indigenous lands, a duty assigned by the Brazilian Constitution.

24. To give a recent example, on 22 June 2015, some 50 members of the Kurusu Ambá community occupied a new area in their traditional territory, which includes the headquarters of the Fazenda Madama. Once again, farmers in the region reacted extremely violently to the occupation: on 24 June 2015, 40 vans arrived at the Fazenda Madama headquarters and took the area by force. Armed farmers fired shots at the men, women, children and elderly there and used diesel to set fire to the families’ huts. The farmers’ efforts “(...) were preceded by a meeting at the Sindicato Rural (Farmers’ Union) de Amambai (MS) headquarters, attended by representatives from Famasul, the deputy mayor of Amambai, Edinaldo Luiz Bandeira, the town’s councillor and mayor, Jaime Bambil Marques, and military and civil police commanders. Tonico Benites, a Kaiowá anthropologist and one of the coordinating members of the Aty Guasu organisation states that, after the meeting, the vans headed to the Fazenda Madama headquarters under the pretext that they were going to remove their herds from there.” ISA (Instituto Socioambiental: Socio-Environmental Institute). After Indigenous peoples take back lands, farmers attack Guarani Kaiowá camp in the south of MS. Available in Portuguese at: <http://www.socioambiental.org/pt-br/noticias-socioambientais/apos-retomadas-de-terras-por-indios-fazendeiros-atacam-acampamento-guarani-kaio-wa-no-sul-de-ms>. Accessed: July 2015.

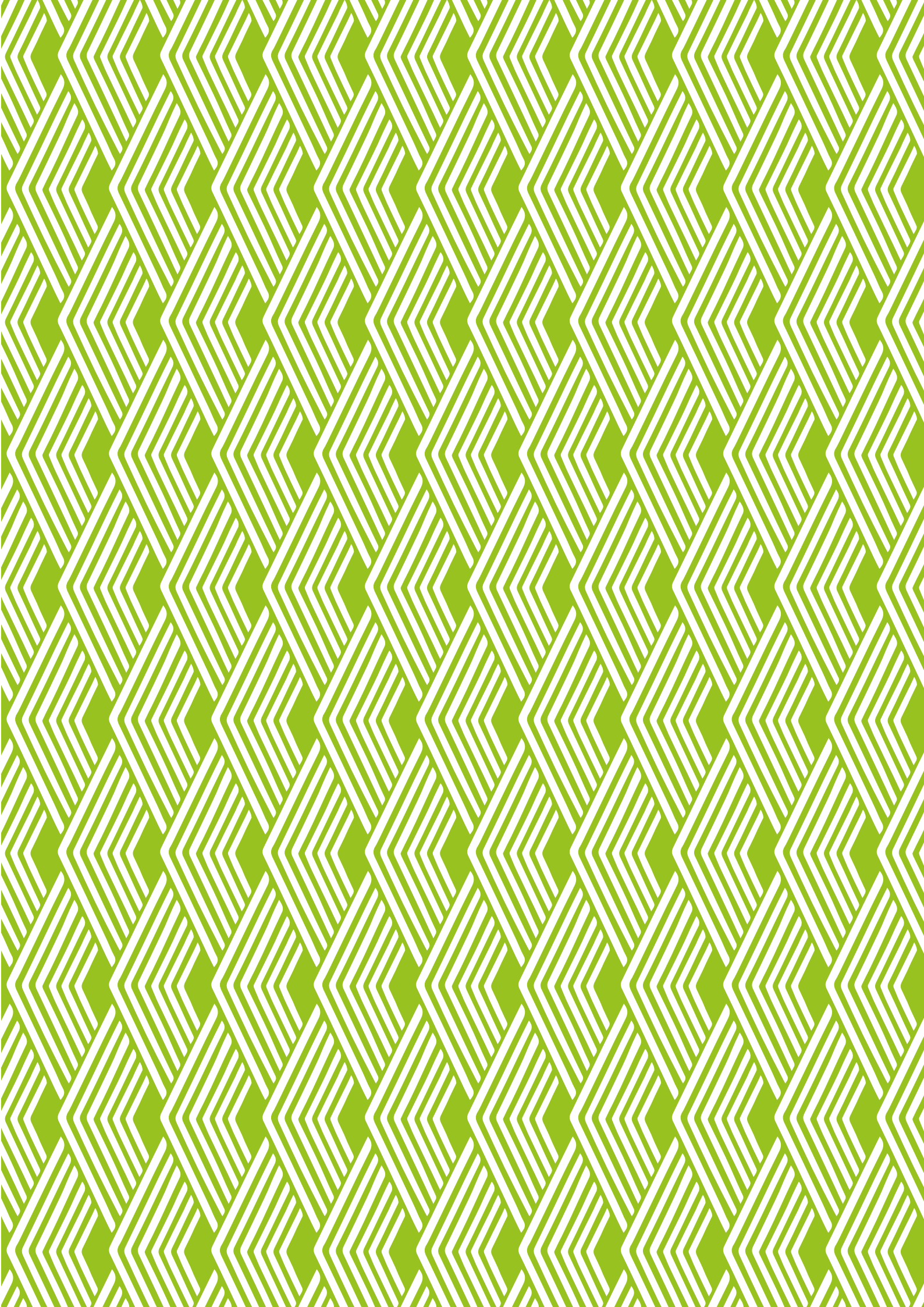
justified mistrust in the Brazilian justice system, which has also been exacerbated by the historic criminalisation of leaders and of the communities themselves<sup>21</sup>.

The failure by the State to regularise the situation of those *tekohás*<sup>22</sup> – and that of other indigenous lands in Mato Grosso do Sul – paves the way for numerous legal disputes to threaten and harm indigenous originary rights, which start to be treated as a “threat” to individual property rights exercised under the Constitution of the Federal Republic of Brazil<sup>23</sup>. While this executive summary was being prepared, for example, the files for four (4) proceedings inimical to the rights of the Guaiviry community were being handled by the Federal Courts – three (3) prohibitory injunctions and one repossession suit.

It is also important to remember that the three communities live in a constant climate of fear and hostility. Recent and violent attacks against these communities confirm that political power and local economic power are still connected, without any shame and without any fear of being punished for the criminal acts against the Guarani and Kaiowá in Mato Grosso do Sul<sup>24</sup>. Historic impunity endorses these attacks, which arise whenever the Guarani and Kaiowá take any action to claim their rights under the Federal Constitution.

The pieces of land that the communities occupy within their traditional territories are dominated by farms’ monocultures, which require excessive use of pesticides and other products representing a serious risk to their health and lives, as well as a violation of their other human rights, such as the right to food, nutrition and water.







# The Conduct Adjustment Commitment

The terrible conditions in which the children, elderly, women, men and young people from the three communities live, as reported in the 2013 research, reveal the extent and severity of their human rights' violations.

The areas claimed to be traditional by the three communities that took part in the 2013 diagnosis are covered by the TAC (Termo de Ajustamento de Conduta: Conduct Adjustment Commitment) signed between the MPF and FUNAI in November 2007<sup>25</sup>. The TAC provides for a series of obligations for FUNAI to deliver reports that identify and demarcate 39 Guarani and Kaiowá territories in the south of MS<sup>26</sup>.

With a view to preparing the reports, FUNAI created six internal working groups – Technical Groups – with specialists from FUNAI and INCRA (Instituto Nacional de Reforma Agrária: the National Land Reforms Institute), together with anthropologists. The purpose of the groups was to carry out the ethno-historical, anthropological and environmental studies needed to identify and demarcate the lands traditionally occupied by the Guarani and Kaiowá<sup>27</sup>. However, so far, FUNAI has published just one of the many overdue anthropological reports and, given the delay, in 2011 the MPF brought two enforcement actions under the Commitment – numbers 0003544-61.2010.403.6002 and 0003543-76.2010.403.6002 – before the Federal Courts<sup>28</sup>.

The detailed reports on the identification and demarcation of indigenous lands claimed by the three communities leave no doubts as to the fact that the territories are traditional, permanently inhabited by indigenous people from ancient times until they were forced out, very often violently, by white settlers. Despite the content of the reports, it is crucial that the processes are concluded so that those communities may enjoy their originary rights.

25. Administrative Procedure MPF/RPM/DRS/MS 1.21.001000065/2007-44. The TAC is available in Portuguese at the following address: <http://www.prms.mpf.mp.br/servicos/sala-de-imprensa/noticias/2010/08/TAC%20terras%20indigenas.pdf>. Accessed: August 2015.

26. In the TAC, the MPF lists legal provisions which guarantee that those indigenous areas will be demarcated, such as Article 231 of the Federal Constitution, Article 67 of the Brazilian Transitional Constitutional Provisions Act and Convention 169 of the International Labour Organisation (ILO) on Indigenous and Tribal Peoples, approved by Legislative Decree no 143 of 20 June 2002 and made enforceable by Decree no 5051 of 19 April 2004.

27. The deadline for preparing the reports was June 2009, when they should have been sent to the Ministry of Justice, which is responsible for arranging the demarcation of territories. The TAC has not yet been fulfilled. Civil society entities claim that the greatest obstacle to the recognition and demarcation of the indigenous Guarani and Kaiowá lands is pressure from agribusiness-related sectors in the state. They state that an anti-indigenous movement currently exists and uses all means possible to paralyse or even undo progress by working groups. The movement is taking political steps to persuade the Federal Government to respond to the demands of agribusinesses and their organisations (Dhesca Platform, 2014). In the 2009 report, *Violência contra os Povos Indígenas no Brasil* (Violence against the Indigenous Peoples in Brazil), CIMI states that: "FUNAI has shown that it is incapable of fulfilling its demarcation obligations. This is because the body is susceptible to pressure from politicians and economic segments that oppose indigenous rights. This situation is evident in Mato Grosso do Sul, where FUNAI is not even able to provide the technical groups with the working conditions to carry out the land identification and demarcation studies. To the contrary, the chair of the indigenous body, Márcio Meira, laid the working groups open to the interests of the state government and farmers, the majority of whom have invaded indigenous lands." (CIMI, 2010).

28. MPF urges fulfilment of TAC obligations to demarcate territory in MS. Available in Portuguese at: <http://www.prms.mpf.mp.br/servicos/sala-de-imprensa/noticias/2010/08/mpf-cobranca-justica-cumprimento-de-tac-das>. Accessed: August 2015.

### 3. Human rights-based analysis of data from the socio-economic and nutritional research carried out in 2013









### 3.1

# A brief introduction on the violation of the human rights of the Guarani and Kaiowá

In Mato Grosso do Sul, many conflicts arise between indigenous and non-indigenous people. In the area of territorial rights, there is a fierce conflict between the production method used on large estates and monocultures and the use of territory in accordance with indigenous culture. The use of indigenous territory, by indigenous people, does not comply with the parameters of production of “wealth”, or accumulation of goods, to which the properties and large estates are subject, the majority of which are currently used to produce soya and raise cattle<sup>29</sup>. That “difference” in the traditional method through which indigenous people connect to the land is a historic obstacle to the congenital and originary right to their territory<sup>30</sup>.

FUNAI itself acknowledges that in some regions of the country,

characterised by the advanced colonisation and economic exploitation process and where the landholding net is more complicated, indigenous peoples have managed to keep small and sparse areas, many of which were recognised by the SPI between 1910 and 1967, although it failed to take account of the necessary physical and cultural reproduction requirements of the indigenous people, as is the case in areas occupied by indigenous peoples in Mato Grosso do Sul, particularly the Guarani and Kaiowá<sup>31</sup>.

The very grave situation for the Guarani and Kaiowá with regard to rights such as health, food and nutrition, access to water, education, safety, equality and social security – among others – is the outcome of the failure to guarantee their territorial rights, of the violence and discrimination that they face and, what is more, of the inefficiency of the bodies that are meant to protect their rights.

29. The territorial advance of agribusiness in the last years is certainly linked to the increase in conflicts between indigenous and non-indigenous populations in the state, as well as vast rights violations regarding the formers. While soya, sugar cane and cattle productions keep growing expressively, entire communities are evicted from their lands without judicial orders. Regarding the sugar cane production, Cleber Buzatto, Secretary Executive of CIMI, confirms that “The sugar cane cultivation occurs, largely, on traditional lands that are not demarcated and with the use of cheap or slavery workforce from the Guarani and Kaiowá peoples”. The effects of sugar cane in the life of indigenous peoples of Mato Grosso do Sul. Available in Portuguese at: <http://www.mst.org.br/2015/11/30/os-efeitos-da-cana-de-acucar-na-vida-dos-povos-indigenas-do-mato-grosso-do-sul.html> Accessed: January 2016.

30. Extracts from the declaration from the 003432-49.2001.403.6005 proceedings show that the authors – farmers from the region – are prejudiced and discriminate against indigenous culture and its method of producing and obtaining food. See, for example, the following statement describing the indigenous people: “People who spend their lives drinking and living off foundations and government donations as they are incapable of producing anything.” The claim that they are “incapable of producing anything” here refers to the failure of the indigenous people to copy the agribusiness operating method, applied on large monoculture estates, of large-scale production and which makes intensive use of pesticides and other substances.

31. Available in Portuguese at: [www.funai.gov.br](http://www.funai.gov.br). Accessed: June 2015.

32. <http://www.cimi.org.br/site/pt-br/?system=news&action=read&id=6981>

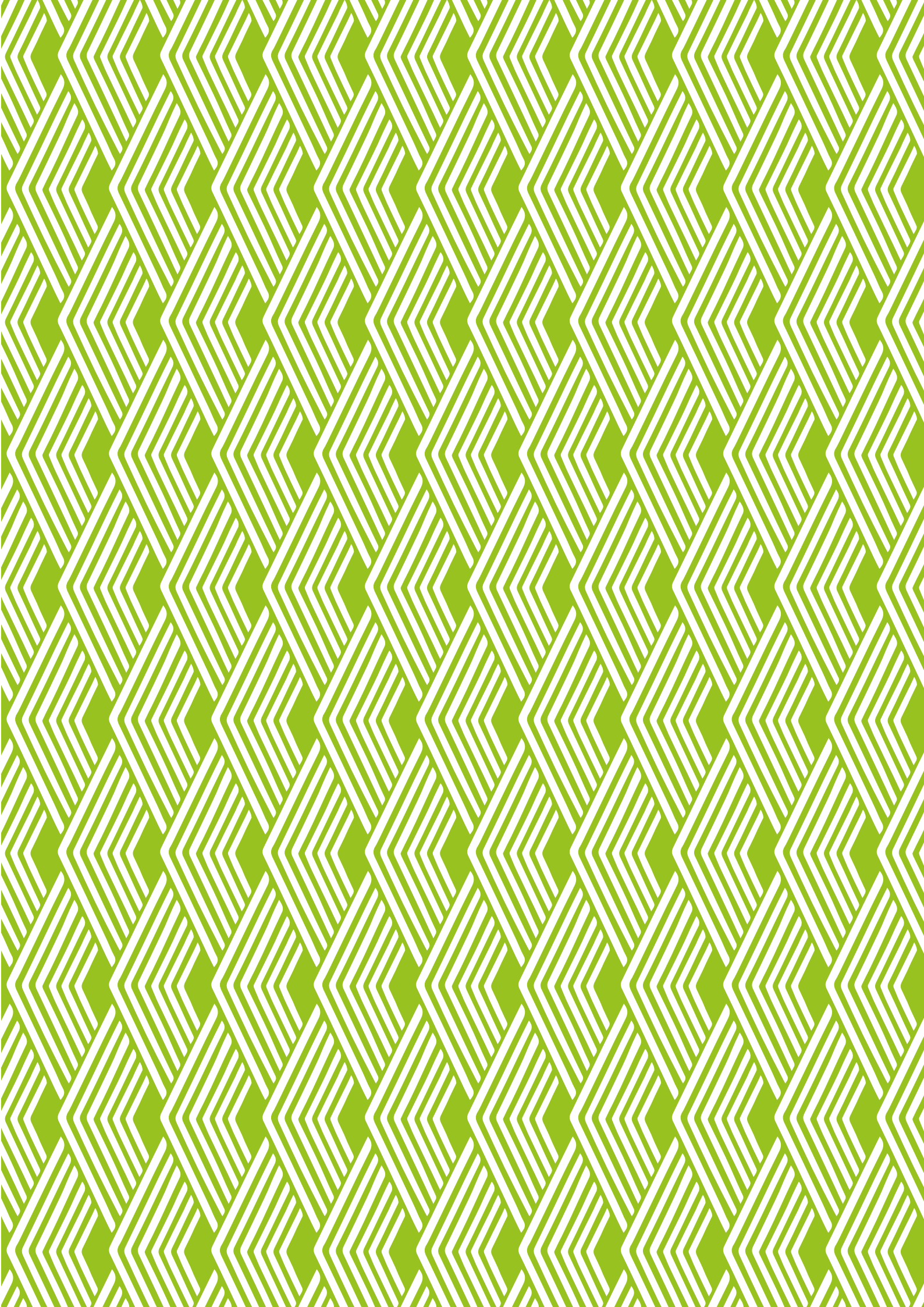
The violation of the right to cultural identity and to the use of territory according to that identity has created a series of other violations. They cannot grow plants, raise animals or produce food for their own consumption or for their natural remedies, nor are they able to move around their traditional territory. Instead, they find themselves in a hostile environment of discrimination, violence and prejudice and surrounded by monocultures that require intensive use of pesticides and machinery, which degrades their traditional soil, affects their physical and mental health and, consequently, conditions all their rights and their lives.

Together with those factors, difficulty gaining access to justice – not just access to the Judiciary, but, above all, to the value of justice, whether to demand their territories back or to demand public policies that are suitable to their cultural requirements – condemns them to a series of rights abuses. For example, the violation of all the dimensions of the human right to adequate food and nutrition (HRtAFN). The more obvious example of this violation is the death of indigenous children as a consequence of malnutrition or constant exposure to pesticides, which in turn leads to abuses of their right to good health and education, given that it is scientifically proven that children – particularly those younger than 24 months – who do not have a proper diet, do not have the necessary immune system to stay healthy and have reduced learning capacities. Thus, these are problems that create vicious impoverishment and degradation cycles for an entire people.

This framework makes clear the interdependency of rights such as cultural identity, territory, physical, psychological and moral integrity and access to justice, all of which are recognised by international law and by the Brazilian legal system.

Like the rights, it is worth stressing that the violations of these rights are also interdependent and strengthen each other, condemning the Guarani and Kaiowá to living away from their culture, to existing without rights and to dying either in the name of that struggle or paying the penalty for the actions and omissions of the Brazilian State. The number of murders of indigenous people and suicides in Mato Grosso do Sul is alarming. According to a report by *Ary Guasu* members, between 1988 and 2012, more than a thousand Guarani and Kaiowá people committed suicide, which demonstrates their degree of despair and scepticism that a solution to their problems, particularly their land problems, will be found. *Ary Guasu* also states that more than 300 Guarani and Kaiowá have been murdered in recent years<sup>32</sup>.







3.2

# Legal framework

In spite of the considerable legal framework with regard to the protection and recognition of the human rights of indigenous peoples, Brazil continues to systematically violate the rights of those peoples: “Through either their actions or their inaction, the three powers belonging to the Brazilian state are the biggest authors of indigenous rights abuses.” (Amado *et al.*, 2012).

At national level, the Federal Constitution of 1988 is a cornerstone of indigenous rights: the Constitution departs from the integrationist paradigm and, in Articles 231 and 232, grants indigenous peoples the fundamental rights to differentiation and to the lands that they traditionally occupy. Similarly, the Constitution sets out a number of provisions regarding indigenous peoples. Those provisions provide for the ownership of traditionally occupied lands, the competence of the Union to demarcate lands, and protect and ensure that due regard is given to their properties and to the relations of indigenous communities, including the preservation of their languages, habits, customs, beliefs and traditions<sup>33</sup>.

Given that the Federal Constitution is the highest ranking set of laws in the Brazilian legal system, other infra-constitutional laws should comply with its provisions, so that their interpretation and application ensures the greatest possible effectiveness of the constitutional provisions<sup>34</sup>. In light of the above, it is worth mentioning that one of the main demands of the indigenous peoples in Brazil is for the Statute of the Indigenous Peoples to be revised<sup>35</sup>.

33. It is important to remember that, during the work of the Constituent National Assembly from 1987-1988, indigenous peoples from different ethnicities, together with organisations and movements that defend their rights, maintained a strong presence in the National Congress, through which they discussed proposals and advanced claims. This major mobilisation and pressure movement made up of a number of indigenous populations – who often come straight from their villages to the National Congress – and of intellectuals and entities that support the struggle of the Indigenous People, stimulated the approval of rights that had already been granted under previous constitutions and the extension of the definition of other important guarantees in the 1988 constitutional text: the aforementioned break with the integrationist perspective and the guarantee that the right of the indigenous peoples to their land is an original right, i.e. before the law or act passed that right, was acknowledgement of the historic fact that before the Portuguese landed in Brazil, the Indigenous Peoples already inhabited those lands. Thus the new constitution set new milestones for relations between the State and Brazilian society, on the one hand, and the Indigenous Peoples, on the other.

34. In this context, the Constitution is no longer just a system itself – with its order, unity and harmony – but is also a method for looking at and interpreting all the other branches of law. This phenomenon, identified by some authors as constitutional filtering, means that all legal order should be interpreted and understood through the lens of the Constitution, with the intention of realizing the values therewith consecrated. As discussed above, the purpose of constitutionalising infra-constitutional law is not to include in Supreme Law the provisions of other domains, but, above all, to ensure that its institutes are reinterpreted under a constitutional lens. (Barroso, 2005)

35. In response to the Indigenous People’s demands and the need to revise the Statute of the Indigenous Peoples, Draft Law 2.057/1991, on the Statute of Indigenous Societies, which has been pending in the National Congress for 24 years, is primarily intended to: “[...] meet the constitutional provisions that guarantee total protection and foster indigenous culture (Articles 231, 232, Federal Constitution of 1988). Thus, it is perfectly possible to protect native peoples through this Statute without their members being obliged to acquire a new identity to fit the precepts of national civilisation and, therefore, not be considered legally incapable [...]” (Souza and Barbosa, 2011) Similarly, one of the proposals of the new Statute is to establish, pursuant to Article 232 of the Federal Constitution, that indigenous peoples, their communities and organisations are legitimate parties to take legal action in defence of their rights and interests.

36. Of the main rights and principles enshrined in Convention 169, it is worth highlighting: the right of indigenous peoples to take possession of the lands that they traditionally occupied, the principle of non-discrimination, the right that their culture, integrity and institutions be respected, the right to participate directly in decision-making for policies and programmes that are in their interest and affect them, the right to determine their development model, and the right to be consulted about legislative or administrative measures that may also affect them. In April 2004, Brazil enacted Convention 169 under Decree 5.051/2004, which states that the convention “will be enforced and fulfilled in its entirety in accordance with the stipulations therein.”

37. For more information about the adoption procedure for the Declaration of the United Nations on the Rights of Indigenous Peoples, see the Instituto Socioambiental website:

38. The United Nations General Assembly adopted the ICESCR in 1966 and it was incorporated into Brazilian law when it was ratified under Legislative Decree no 591/92 of 6 July 1992

39. The United Nations General Assembly adopted the ICCPR in 1966 and it was incorporated into Brazilian law when it was ratified under Legislative Decree no 592/92 of 6 July 1992.

40. “Regionally, we still do not have a specific treaty for those peoples (the American Declaration on the Rights of Indigenous Peoples is experiencing a long gestation period). But the Inter-American Court of Human Rights has taken important protective positions, such as the case of the Kichwa people of Sarayaku versus Ecuador, of June 2012, in which it recognised the violations of the right to consultation and cultural identity, as a private oil company had been allowed to carry out exploitation activities at the end of the 1990s in the territory of the Kichwa people without consulting them. That decision is certainly a driving force in the struggle of the Indigenous Peoples of Latin America and the Caribbean.” (Amado et al., 2012).

Within the framework of international human rights law, in July 2002 the Brazilian State ratified Convention 169 of the International Labour Organisation (ILO) on Indigenous and Tribal Peoples, adopted in 1989 during the 76th ILO Conference in Geneva. Convention 169 is the oldest binding international instrument in the world that specifically addresses the rights of the Indigenous and Tribal Peoples<sup>36</sup>.

In 2007, Brazil was one of 144 countries that approved the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295). The UN General Assembly adopted the declaration in September 2007 after more than two years of negotiations between governments and representatives of the indigenous peoples<sup>37</sup>. Although it is a non-binding instrument, the declaration is an important international human rights instrument because it reflects all the current claims of indigenous peoples worldwide and helps raise awareness to the violations historically committed against those peoples.

Other binding international human rights instruments, which have been ratified and incorporated in the Brazilian legal system, reaffirm fundamental rights and are relevant to the rights of indigenous peoples, as for example, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>38</sup>; the International Covenant on Civil and Political Rights (ICCPR)<sup>39</sup>; the International Convention on the Elimination of All Forms of Racial Discrimination; the United Nations Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the American



Convention on Human Rights ; the Additional Protocol to the American Convention on Human Rights<sup>40</sup> in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). Also of importance are the Voluntary Guidelines to Support the Progressive Realisation of the Right to Food in the Context of National Food Security and the Voluntary Guidelines for the Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security (VGGT), which, although voluntary, provide advice on how to adopt binding provisions.

By signing international human rights treaties, the Brazilian State recognised its obligation<sup>41</sup> to draw up laws and public policies and take steps, of any nature, with regard to human rights, to promote equality and progressively reduce inequalities. What is more, it committed not to take any measures which might threaten<sup>42</sup> or violate human rights and to ensure mechanisms to protect<sup>43</sup> those rights.

This national and international legal framework creates obligations for the Legislative, the Executive and the Judiciary powers, at their three levels – federal, state and municipal – to guarantee the rights of the indigenous peoples as effectively and diligently as possible, and in coherence with the principles of human rights.

Similarly, it is true that the current and main challenge in Brazil in the area of indigenous rights is no longer in their legal recognition, but in the enforcement of those rights, which, for those fully recognised rights to become reality, requires concrete and effective measures.

41. Obligation to guarantee the progressive implementation of the human right to adequate food and nutrition (HRtAFN), among other rights, including the obligations to promote, facilitate and provide.

42. Obligation to respect the progressive implementation of the HRtAFN, among other rights.

43. Obligation to protect the progressive implementation of the HRtAFN, among other rights.



### 3.3

Violations of the obligations to respect, protect, promote and fulfil the human rights of the Guarani and Kaiowá

Below we present a summary of the main violations committed by the Brazilian State with regard to its obligation to respect, protect, promote and fulfil the human rights of the Guarani and Kaiowá people. The different dimensions of the obligations, adopted in recent decades by the United Nations, were used as the basis for the analysis of the human rights violations committed against the Guarani and Kaiowá people, in both the full version of “The Guarani and Kaiowá Peoples’ Human Right to Adequate Food and Nutrition – A Holistic Approach” and this executive summary.

It is very important to remember that no one particular government or management is exclusively responsible for the violations that affect these people. In reality, the indigenous peoples have historically and repeatedly suffered these violations, which are, above all, the consequence of the failure to guarantee their territory and identity. These violations arise from the prejudice and discrimination inherent in Brazilian society and which are visible in the three roles and at every level of the State. Nevertheless, that does not reduce the responsibility of the Brazilian State for the violations; on the contrary, it reaffirms the need for urgent measures to be adopted in the interest of providing immediate compensation for the documented damage, to protect the indigenous peoples against the recurrence of violations and damage, and, above all, short-, medium- and long-term measures that reverse the structural causes identified above.

It is worth highlighting that Article 2 of the Statute of the Indigenous Peoples and a number of provisions from the Federal Constitution of the Brazilian Republic attribute the duty to respect, protect and fulfil the fundamental rights of every person who lives in Brazil, which includes the indigenous peoples, to the Federal, State and Municipal, in the scope of their competencies.

# Obligations Respect

44. “With the end of the Paraguayan War, a committee on boundaries looked over the region occupied by the Kaiowá and Guarani – between the river Apa, current-day Mato Grosso do Sul and the Guaíra Falls, in Guaíra, Paraná – and completed, in 1874, the demarcation of the borders between Brazil and Paraguay. Its head, Thomas Larangeira, noticed the large amount of plants native to the region and the considerable post-war manpower available there. (Brand et al., 2005) Through Imperial Decree no 8799 of 9 December 1882, Larangeira obtained from the Empire a lease for the lands to exploit yerba mate, which was native to the region. He founded the Companhia Matte Larangeira in 1892. With the arrival of the Republic, unclaimed lands were managed by states, which favoured the company because of the relationship it had, from the very start, with people connected to public power. Years later, under Resolution no 103 of 15/07/1985, it obtained as leased area more than 5,000,000 ha; this was one of the biggest leases in the whole country of unclaimed lands to private companies under the republican regime (Arruda, 1989).

45. In 1967, during the military dictatorship, the SPI was replaced by FUNAI. Documents prove that FUNAI “played a critical role in the process of removing the Kaiowá and Guarani groups, as it provided vehicles, drivers and food-stuffs to enable families that were sought on the farms to move there (Brand, 1997, p.104).” (National Truth Commission, 2014).

The obligation to respect human rights requires the State not to take any measures that block the enforcement of those rights. The State may not, through laws, public policies or measures, harm the enforcement of human rights and, when it does, it must create mechanisms to repair the damage caused.

## **Violation of the human right to territory**

The violation of the obligation to respect the human rights of the Guarani and Kaiowá in MS by the Brazilian State happened, historically, by supporting and encouraging enterprises which misappropriated the traditional lands of those peoples (for example, leasing indigenous lands to the business Companhia Matte Larangeira<sup>44</sup>, *Marcha para o Oeste*). Furthermore, the failure of the Brazilian State to respect the human rights of the Guarani and Kaiowá also stems from the extremely violent movement of indigenous families to reserves from 1920



by the SPI and, after 1967, by FUNAI<sup>45</sup>. The current financing of soya production and cattle-raising, among other farming sectors, may also constitute a failure to respect the rights of the Guarani and Kaiowá people.

In light of the fact that, without access to land, the other human rights of the Guarani and Kaiowá could not exist, the Judiciary is also responsible for the violations of the obligation to respect their human rights, given that it paralysed demarcation processes and ordered evictions, as are the congressmen who stand against demarcating indigenous lands and put forward legislative proposals such as PEC 215<sup>46</sup>, Complementary Draft Law 227/2012<sup>47</sup> and Draft Law 1610/1996<sup>48</sup>, among others.

46. The Proposta de Emenda à Constituição (Proposed Amendment to the Constitution) no 215 of 2000 (PEC 215/2000) constitutes one of the most serious attacks on the rights of the indigenous peoples. The PEC proposes alterations to Articles 49 and 231 of the Federal Constitution. In accordance with the proposal, Article 231.4 – a fundamental provision which was intended to recognise the originary right of indigenous peoples to their territory – states that indigenous lands would be unavailable and inalienable and the rights to them indefeasible only after their respective demarcation has been approved by National Congress. And the new Article 231.8 would be worded as follows: “The demarcation criteria and procedures for indigenous areas should be governed by law.” However, if the PEC is approved, the originary right to indigenous lands would be entirely conditional on the wishes of the political majority in Parliament, as it pre-dates any public act, given that approval is simply the act that recognises that right; it states rather than establishes it.

47. In 2012, the government proposed Complementary Draft Law 227 to the Chamber of Deputies, “which, among others, establishes the exploitation of mineral deposits, together with the use and occupation of public lands intended for the construction of oil and gas pipelines, road and rail infrastructure, sea and inland ports, airports and transmission lines, as a public interest of the Union, which takes precedence over the territorial rights of Indigenous Peoples and restricts the exclusive use of Indigenous Peoples over their lands”. (Dhesca Platform, 2013)

48. Relaxing laws on mining in indigenous lands has also been discussed under Draft Law 1610/1996 of the Federal Senate, which provides for the exploitation and harvesting of mineral resources in indigenous lands, in accordance with Articles 176.1 and 231.3 of the Federal Constitution.

## **Right to territory and the violation of other human rights**

The loss of territory, of the forest as a living space, and the confinement harmed the way of life of indigenous peoples, who, since they were forced out from their lands, have been subjected – either in areas that they have taken back, in their reserves or next to main roads – to unacceptable living conditions, hunger, violence and other violations of their human rights.

In reclaimed areas, as is the case for the communities that took part in the research, communities live without the space to grow crops for food, without access to proper public policies and without conditions suitable for production and raising income, which has created the appalling food and nutritional insecurity evidenced in the 2013 research and which will be discussed below. What is more, ending their ancestral and sacred relationship with the land has had serious effects on their health and subjects them to degrading living conditions. For Indigenous Peoples, there is a strong relationship between land and health: land gives them good health. Similarly, confining them to small areas of land and the terrible living conditions, housing, hunger and lack of basic sanitation, along with discrimination, threats, violence and daily fear and the strong signs that they are consuming and using water contaminated by pesticides are factors that directly influence the health of these communities. Furthermore, support for economic exploitation in the state of Mato Grosso do Sul is a violation of the obligation to respect the human right of the Guarani and Kaiowá people to water, as that exploitation has resulted in their expulsion from their ancestral lands, destruction of their environment, deforestation and contamination of their natural resources.

The main parties responsible for these violations: The Federal, State and Municipal Executive powers (Art. 2, Law 6001/1973). In some cases, judgments adversely affected the right to territory. Likewise, the Legislative power is accountable for laws which contributed to the failure to demarcate lands and expulsion of indigenous peoples from those lands.

## Suspension of access to the 'Bolsa Família' programme

The Brazilian State violates the obligation to respect the HRtAFN of the communities researched when it suspends access for families, living in a state of hunger and food and nutritional insecurity, to the 'Bolsa Família' programme. It is important to point out that, in these cases, the Brazilian State is also violating its fundamental obligation not to regress<sup>49</sup>.

### The main parties responsible for this violation:

The Ministry of Social Development and the Fight against Hunger (requiring conditions<sup>50</sup>, monitoring of municipalities) and Municipal Administrations (in the case of problems with the single registry).

## Violation of the human right to education

Historically, the educational policy that the Brazilian State put forward to the indigenous peoples was structured without taking into condition the traditional principles of indigenous education, such as the languages and culture of those peoples (SECAD, 2007). That failure constitutes a violation of the obligation to respect their human right to education. "When schools were introduced in indigenous areas, languages, oral tradition, the knowledge and art of the Indigenous Peoples were discriminated against and excluded from the classroom. The role of schooling was to ensure that indigenous students unlearned their cultures and stopped being indigenous individuals. Historically, schools may have been instruments to pursue a policy that helped to eradicate more than a thousand languages" (Freire, 2004). Official studies, such as the study by SECAD (Secretaria de Educação Continuada, Alfabetização e Diversidade do Ministério da Educação [the Ministry of Education's Department for Continuing Education, Literacy and Diversity] – now called SECADI: Secretaria de Educação Continuada, Alfabetização, Diversidade e Inclusão [Department for Continuing Education, Literacy, Diversity and Inclusion]), *Educação Escolar Indígena: Diversidade sociocultural indígena ressignificando a escola* (Indigenous School Education: Indigenous sociocultural diversity giving new meaning to schools), reveal the violations that the Brazilian State has historically committed with regard to the obligation to respect the right of the indigenous peoples to education and self-determination.

### The main parties responsible for that violation:

The Federal, State and Municipal powers.

49. In accordance with General Comment no 3, any measure which is a deliberate regression must be examined very carefully and needs to be wholly justified, also taking into consideration the context of the full use of the greatest number of resources available.

50. The violation of the obligation to respect the human right to adequate food and nutrition (HRtAFN) also includes setting conditions under the 'Bolsa Família' Programme, given that, from a human rights perspective, measures, requirements and conditions cannot be imposed on a right, as we will explain further on.

# Obligations

## Protection

The State is obliged to protect inhabitants of its territory against the actions of third parties (individuals, groups, companies, and so on) that violate human rights. Similarly, States must introduce monitoring mechanisms, adopt regulations, establish investigation procedures and set up compensation mechanisms to avoid human rights violations by non-governmental actors.

### **Violence by farmers and private militias**

The Brazilian State violates the human rights of the Guarani and Kaiowá by not protecting them against the violent responses of farmers and private militias to indigenous claims to their traditional territories. The number of murdered leaders, evictions, threats and people run over, among other violent incidents, are strong indicators of that violation.

With regard to the communities researched, the violation of the obligation to protect them against threats and aggression by farmers and private militias contravenes their HRtAFN and their human right to health, water, education, housing and work. Those communities live in fear of farmers and hired gunmen, and they do not have the freedom to come and go. Living day-to-day under the strain of possible – and commonplace – aggression seriously hinders their capacity to produce food and gain access to paid work. Violence and threats cause insecurity, tension and fear, and they violate the right to good health and prevent access to a state of complete physical, mental and social well-being. Under the stress of conflict, they cannot settle and, without enough adequate food, the health of those peoples is completely undermined. With regard to the human right to water, reports frequently state that communities' access to rivers and sources of water is hindered by various actions by farmers and their employees. When that happens, by failing to protect them from extreme violence, the Brazilian State also violates the communities' right to physical access to water.

### **The main parties responsible for those violations:**

The Ministry of Justice and FUNAI, the Federal Police, the State Executive (through the Military Police, the State Government should act with the Federal Police)<sup>51</sup> .



## Deforestation and lack of protection from pesticides

The Brazilian State also violates the obligation to protect the human rights of the Guarani and Kaiowá when it allows, under the pretext that it is supporting economic development, lands ancestrally occupied by indigenous people to be deforested and the natural resources and biological diversity of those lands to be destroyed as a result. A study by Embrapa (the Brazilian Agricultural Research Agency) revealed that in 23 years, from 1984 to 2007, deforestation in Mato Grosso do Sul grew from 38.4% to 56.3%.

The failure to comply rigorously with environmental and health legislation, including policing of those laws, the actions of pesticide companies and the use of pesticides, also constitute abuses of Guarani and Kaiowá human rights to food, life, health and water. There is no governmental initiative to evaluate the impact of pesticides on the health of indigenous communities, and the level of water, soil and food contamination is unknown. The lack of protection from pesticides threatens the adequacy of food, as there is strong evidence that the water consumed by the communities and the little food which they manage to plant are contaminated due to the closeness to monocultures that use considerable amounts of pesticides.

The main parties responsible for those violations: ANVISA (Agência Nacional de Vigilância Sanitária: National Health Surveillance Agency), part of the Ministry of Health: responsible for cross-sector measures to extend initiatives to reduce the use of pesticides and prepare and distribute educational material on the use of pesticides; IBAMA (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis: Brazilian Environmental and Natural Resources Institute), part of the Ministry of the Environment: responsible for ensuring the suitability of the procedures to control hazards and evaluate the risk of chemical substances and dangerous products; Ministry of Agriculture, Livestock and Supply: responsible for improving and modernising the procedures for monitoring agricultural inputs. Researchers also claim that the State Government finances projects in areas where there are procedures for demarcating indigenous lands.

51. A form of violence by the State Executive is its inefficiency in guaranteeing the security of the indigenous people, given that competency for public security lies with state governments. Using the pretext that indigenous issues are a federal concern, the State Government has refused to take care of the indigenous population in matters of emergency. As a result, the MS Federal Public Prosecutors' Office initiated a Public Civil Action (Proceeding 0001641-08.2012.4.03.6006 in the Federal Courts of Mato Grosso do Sul) which seeks to find the state of Mato Grosso do Sul, through its civil and military police, guilty of failing to provide emergency assistance in incidents which affect indigenous people. A preliminary injunction was granted which obliges the State Government to "provide emergency assistance, through its civil and military police forces, to indigenous people, when the military police is contacted via an emergency number, to ascertain that a crime is taking place and combat it, when that crime threatens the life, heritage, honour or psycho-physical integrity of indigenous peoples, whether in indigenous lands or not, inside the territorial boundaries of this 6th Judicial Subsection".

52. When authorities and civil servants discriminate against people, they are violating the obligation to respect human rights; when third parties – either individuals or groups – violate that obligation, the Brazilian State is violating the obligation to protect indigenous people against those violations. Discrimination is a violation of Article 2.2 of the ICESCR, Article 2.1 of the ICCPR and Article 1 of the Convention against Discrimination in Education (UNESCO, 1960).

53. In 2009, Aline Lutti put forward in her Master's dissertation a case study, which used materials disseminated in the printed press and the local media to try to demonstrate how farmers and, consequently, the local media consider all indigenous attempts to recover their former territories unlawful. In the document, Lutti states that: "As part of the economic elite in the region, the Dourados farmers rely on help from the local press to reproduce their version of the conflict for land and strive to shape public opinion. As we will see, the majority of the reports published in local newspapers take only one view, omit that the demarcation of indigenous lands is constitutional and present indigenous actions, which are intended to win back the right to land, as against the law." (Lutti, 2009).

### **Discrimination: violation of the obligation to protect and respect human rights<sup>52</sup>**

Entities that defend the rights of Indigenous Peoples have documented that it is not only the authorities and local civil servants that are guilty of threats and racist, anti-indigenous discourse that defends large estates, which is a violation of the obligation to respect human rights. But also the local press and a considerable part of the society in Mato Grosso do Sul, which therefore constitutes a violation of the obligation to protect the indigenous peoples against action by third parties. That discourse increases discrimination and worsens the situation that the Guarani and Kaiowá have been facing in the state. The local press, bolstered by its supposed impartiality, has published reports which discredit the indigenous way of life and criminalise actions to reclaim their traditional territories. The result is that public opinion is stirred up and the discrimination suffered by those peoples in the region worsens<sup>53</sup>.

In a number of situations, the discrimination suffered by the Guarani and Kaiowá means that they are overlooked, for example, by those who provide work. The prejudice towards and discrimination against these peoples are connected to the violence that they face because they are indigenous and to the total failure to understand and the disregard for the sacred relationship that they have with their traditional territories, including the method that they use to produce their food. Moreover, with regard to the human right to health, the lack of preparation,

neglect and discrimination of health workers as concerns the Guarani and Kaiowá peoples in Mato Grosso do Sul brings to light the violation by the Brazilian State of the obligation to respect and promote the right of those peoples to good health by failing to guarantee, among other initiatives, effective measures to “prepare human resources to work in an intercultural environment”, in accordance to one of the guidelines of the National Policy on the Health of Indigenous Peoples. Furthermore, in schools outside communities, children and young people face discrimination from both school employees and non-indigenous students<sup>54</sup>.

It falls upon the Brazilian State to immediately guarantee measures that will build a non-discriminatory culture in governmental bodies and society. In that sense, the State must immediately refrain from discriminatory measures in its policies and laws and take steps to create a non-discriminatory culture that guarantees rights on the part of its officials and of society. To improve public policies designed for the indigenous population, public, federal, state and municipal officials must also receive training in history, culture and indigenous rights. Finally, the Brazilian State must also launch campaigns to end discrimination against Indigenous Peoples.

**The main parties responsible for those violations:**

The Federal Government (FUNAI, Ministry of Justice, Ministry of Health, Ministry of Education), State Government and Municipal Government.

54. In 2013, the Federal Public Prosecutor’s Office received complaints about the discrimination suffered by Ypo’i, Guaiviry and Kurusu Ambá students at schools outside their camps. “Only those pupils had their school meals reduced and, sometimes, they were forced to clean the school toilets. In the opinion of the Public Prosecutor’s Office, that situation lead to mass failures, which created social unrest in the communities and revealed a major abuse of the inherent rights of the indigenous children to education and inconsistency in the obligatory provision of education as a public service, which the public authorities may not forget”. The Federal Public Prosecutor’s Office enters into agreement and guarantees school education for indigenous communities in camps. State Prosecutor’s Office in Mato Gross do Sul. March 2013. Available in Portuguese at: <http://www.pms.mpf.mp.br/servicos/sala-de-imprensa/noticias/2013/03/mpf-celebra-acordos-e-garante-educacao-escolar-para-comunidades-indigenas-em-situacao-de-acampamento/?searchterm=None>. Accessed: July 2015.

# Obligation: Promotion

Under its obligation to promote/facilitate, the State must be proactively involved in activities intended to improve individuals' access to resources and means to guarantee their human rights. The obligation to promote requires states to adopt legislative, administrative, budgetary, judicial and other appropriate measures to realise human rights in full.

## **Failure to demarcate indigenous lands**

Violation of the obligation to promote the human rights of the Guarani and Kaiowá begins with the failure to demarcate indigenous lands, a violation which dates back to 1993, the deadline stipulated in the Constitution, by which indigenous lands in Brazil were supposed to be demarcated. Demarcating indigenous territories is the first step towards effectively guaranteeing their HRtAFN and other human rights. The violations stem from the shelving of processes to demarcate lands traditionally occupied by those peoples and the delay to the approval and registration of the lands already recognised as traditionally occupied by indigenous peoples.



By failing to demarcate their traditional territories, the Brazilian State violates, for example, the human right of children, young people and adults in those communities to education, given that the failure to demarcate lands seriously violates their HRtAFN and reduces their cognitive development and learning. Countless studies and pieces of research have demonstrated the direct relationship between the nutritional status of children and their cognitive development. Chronic malnutrition, caused by a series of violations, including repeated periods of acute hunger, limits intellectual potential and causes irreversible damage to physical, mental and social development in children. “In general, children with an inadequate diet or insufficient food have difficulties concentrating and problems with motor coordination, which undermines their capacity to acquire and build knowledge” (Surui, 2014). What is more, by failing to demarcate their lands, the Brazilian State violates the rights of those families to access traditional and preventative care, practices and medicine.

**The main parties responsible for those violations:**

The Federal Executive, in particular, the Presidency of the Republic and the Ministry of Justice, which are responsible for demarcating lands; the Legislative and Judiciary powers.

55. The PAA, created under Article 19 of Law 10.696 of 2 July 2003 has two basic purposes: to promote access to food and promote family farming. To meet these two goals, the Programme buys, with exemption from auctions, food produced through family farming – including food produced by indigenous peoples – and sends it to individuals living in a situation of food and nutritional insecurity and those served by the network for the vulnerable, by public food and nutritional security teams and by the public and philanthropic school network. Source: <http://www.mds.gov.br/segurancaalimentar/aquisicao-e-comercializacao-da-agricultura-familiar>

56. Law no 11.947 of 16 June 2009 determines that at least 30% of the amount transferred to states, municipalities and the Federal District by the National Educational Development Fund to the PNAE must be used to buy foodstuffs directly from family farming and from rural family businesses or their organisations, and they should prioritise agrarian reform settlements and quilombola and traditional indigenous communities. Source: <http://www.fnide.gov.br/programas/alimentacao-escolar/agricultura-familiar>.

## Public policies

The Brazilian State also violates the obligation to promote Guarani and Kaiowá human rights by failing to guarantee the adoption of an organic indigenous policy, connected to the other policies, which guarantees structural policies to ensure the right to health and school education at all levels, guaranteeing customised service, respect for the identity and values of indigenous cultures and sustainable management of their lands.

The lack of public policies to serve the Guarani and Kaiowá communities, such as policies to support crafts, the planting of community gardens, subsistence farming and raising animals is a serious violation of the obligation to promote their HRtAFN. Various programmes and public policies, adopted with the participation and empowerment of the indigenous peoples, could be creating physical access to food – such as subsistence farming and community gardens – and could also be creating income (economic access), for example, inclusion in programmes such as the PAA (Programa de Aquisição de Alimentos: Food Acquisition Programme)<sup>55</sup> and the PNAE (Programa Nacional de Alimentação Escolar: National School Food Programme)<sup>56</sup>. These programmes and policies must be adopted to facilitate physical and economic access to adequate and healthy food, among other rights. The total absence of the Brazilian State in the adoption of these policies demonstrates a serious violation of its obligation to promote the HRtAFN and other human rights of these communities.

### **The main parties responsible for those violations:**

The Federal, State and Municipal Executive powers responsible for measures on food production, access to water, education, work, health and housing, among others.

## Poor budget execution

The Brazilian State is not using all the resources available to enforce the human rights of the Guarani and Kaiowá people in MS<sup>57</sup>. Poor budgetary execution of the programmes and measures designed to help indigenous peoples constitutes a violation of the obligation to promote and fulfil Guarani and Kaiowá human rights.

### **The main parties responsible for those violations:**

The Federal Executive, Legislative power and control bodies.

## Dependency on emergency programmes

Just as with dependency on food baskets, dependency on emergency programmes contravenes the promotion of the HRtAFN, as the provision of emergency programmes should be complemented by measures to create concrete and effective conditions that emancipate and empower the beneficiaries of the programme, so that they can win back the capacity to feed themselves and have access to other rights on their own, when they are capable of doing so.

### **The main parties responsible for those violations:**

The Federal Executive, above all, the Presidency of the Republic and Ministry of Justice, which are responsible for the land demarcation process and for emancipatory policies that enable access to all fundamental rights; State Executive and Municipal Executive.

57. When it ratified international human rights treaties, the Brazilian State committed to take all necessary measures and use all resources available to meet progressively the rights set out in those treaties. However, in accordance with entities that defend the rights of indigenous peoples, “The clearest example of the lack of commitment by the government to protecting and promoting the rights of indigenous peoples lies in budgetary execution (or, in other words, the lack of investment in resources authorised by the National Congress for that purpose).” (CIMI, 2014). The figures given in CIMI reports prove that, every year, the Executive fails to invest millions of reais allocated to programmes and measures that are intended for the indigenous population. It is important to remember that the resource allocation instruments and the manner in which they are operated are serious obstacles to better budgetary execution. Thus, to overcome that violation, the cost-control bodies of the Executive and the Legislative powers need to be involved, with a view to setting up a legal and operational framework that is more conducive to guaranteeing the rights of that population.

58. The World Health Organisation defines good health as a state of complete physical, social and mental well-being, and not merely the absence of disease or infirmity. The UN's Committee on Economic, Social and Cultural Rights uses the definition of the right to good health set out in Article 12(1) of the ICESCR, which states that it is an inclusive right that applies not only to the adoption of adequate healthcare measures, but also to the fundamental of good health, such as the promotion of measures to guarantee food and nutritional security and access to drinking water and adequate sanitation, decent housing conditions, safe and healthy working conditions, education and health information – including sexual and reproductive health – and access to a healthy environment. Another important aspect is the participation of the population in all health-related decisions at local, national and international level.

59. "SESAI's responsibilities include: i) Developing measures for attending properly to indigenous health and education in health, in accordance with the policies and programmes of the SUS and observing traditional indigenous health practices; ii) Planning and coordinating sanitation and indigenous health education measures; iii) Working together with states, municipalities and non-governmental organisations to introduce measures to care for indigenous health that respect the cultural idiosyncrasies and epidemiologic profile of every people; iv) Promoting the strengthening of Social Control in the Attention to Indigenous Health Subsystem." Available in Portuguese at: <http://portal-saude.saude.gov.br/index.php/conheca-a-secretaria-sesai>. Accessed: August 2015.

## Violation of capabilities

The Brazilian State has also damaged the extent of the capabilities that reflect human potential and are created by the nutritional well-being of growing, developing, reaching psychological and cognitive maturity, learning, having a cultural identity, socialising, having the capacity to work, be creative, and so on. By violating the extent of those capabilities, it is also violating all the rights related to those connections (the right to health, education, work, and so on).

**The main parties responsible for those violations:**  
The Federal, State and Municipal Executive powers.

## Human Right to Good Health<sup>58</sup>

The Brazilian State, despite all the complaints made by the indigenous movement and by indigenous entities, along with the lawsuits filed by the Federal Public Prosecutor's Office, continues to be neglectful when it comes to deaths caused by easily treatable illnesses. In the case of the indigenous peoples in Mato Grosso do Sul, violations of the human right to good health take place, according to the complaints made by indigenous entities, because of "a lack of basic sanitation, drugs, equipment, qualified professionals, continued and preventative assistance; a lack of control and monitoring of measures and of the application of resources; an absence of planning, social control and training; the poor infrastructure of the Casas de Apoio à Saúde Indígena (Indigenous Health Support Facilities) and because of a lack of hospitals with the capacity and qualifications to receive sick indigenous people." (CIMI, 2013) What is more, the absence of any effective and differentiated public policies that guarantee the fundamental determinants of good health is a serious violation of the obligation to promote the human right of the Guarani and Kaiowá communities to good health.

The main parties responsible for those violations: The Ministry of Health (specifically, SESA<sup>59</sup> [Secretaria Especial de Saúde Indígena: Special Department for Indigenous Health]), the State Government and Municipal Government; the Federal, State and Municipal Executive powers, which are responsible for guaranteeing the fundamental determinants of good health.



## **Scrapping public bodies**

The scrapping of FUNAI is the basis of the violation of the obligation to promote Guarani and Kaiowá human rights. In 2014, FUNAI had two interim presidents, totalling, by the end of the year, 18 months of temporary leadership in its presidency – the longest period that the body has been under an interim leader since it was created in 1967. “The budget and body of technical staff were slashed. According to data, divulged by the FUNAI press office itself, in 2013, FUNAI appropriations (the sum of funding and investment) amounted to R\$174,000,000, but in 2014 that figure was reduced to R\$154,000,000. The number of permanent employees fell from 2,396 in 2010 to 2,238 in 2014.” (CIMI, 2015).

### **The main parties responsible for those violations:**

The Federal Executive power (particularly the Presidency of the Republic and the Ministry of Justice).

Furthermore, by failing to ensure a fully functioning SESAI, a department connected to the Ministry of Health, the Brazilian State is, in general terms, violating the obligation to promote the human right of indigenous peoples to good health. SESAI has barely been operational because it has been in a state of transition for five years already (CIMI, 2013). Indigenous organisations claim that the department is receiving funding but is not structured to attend effectively to the needs of indigenous peoples.

### **The main party responsible for that violation:**

The Ministry of Health.

## **Lack of documents**

Many Guarani and Kaiowá communities claim that they do not have identity documents, which prevents them from being included in many social programmes and is a violation of the obligations to promote and fulfil their human rights.

The main parties responsible for those violations: The Federal Executive power (the Ministry of Justice and FUNAI).

# Obligation: Fulfilment

The State is obliged to fulfil human rights in emergency situations and/or individual or collective situations in which, because of structural or cyclical conditions, there are no conditions to guarantee food, adequate housing, education or healthcare. The State must seek to guarantee that groups and individuals regain the capacity to produce food for themselves, for example, when they are capable of doing so.

## **Failure to fulfil fundamental human rights**

The Brazilian State violates the obligation to fulfil Guarani and Kaiowá human rights when it does not adopt measures that guarantee adequate food, in a dignified manner, for indigenous communities that are going hungry or suffering malnutrition as a result of conditions that are beyond their control, as is the case for the communities that took part in the research. Irregular distribution of baskets may be described as a violation of the obligation to guarantee that food will be provided to those families. What is more, the inadequacy of some of the food in the baskets demonstrates the State's violation of the obligation to provide adequate food that is also suitable for the food culture and habits of those peoples.

The Brazilian State also violates the obligation to fulfil the other rights of communities that are in camps in reoccupied land, such as materials for building decent housing, blankets and warm clothing, access to drinking water, resources and infrastructure for schools that operate in the communities themselves, special healthcare that respects indigenous culture, and so on. The communities that participated in the research do not have, for example, access to health units that they can physically and safely reach. The distance for the Kurusu Ambá community to a health clinic is in the region of 35 km and, taking into account that the community is isolated and does not have means of transport to access health clinics rapidly, that constitutes a violation of the obligation to fulfil the human right of those families to healthcare.

**The main parties responsible for those violations:**

The Federal, State and Municipal Executive powers responsible for ensuring access to food, water, work, good health, housing and education, among others.

**Non-inclusion in the ‘Bolsa Família’ programme**

Not including any of the families in the ‘Bolsa Família’ programme constitutes a violation of the obligation to fulfil their HRtAFN, given that all the families in the three communities meet the legal criteria to receive cash transfers.

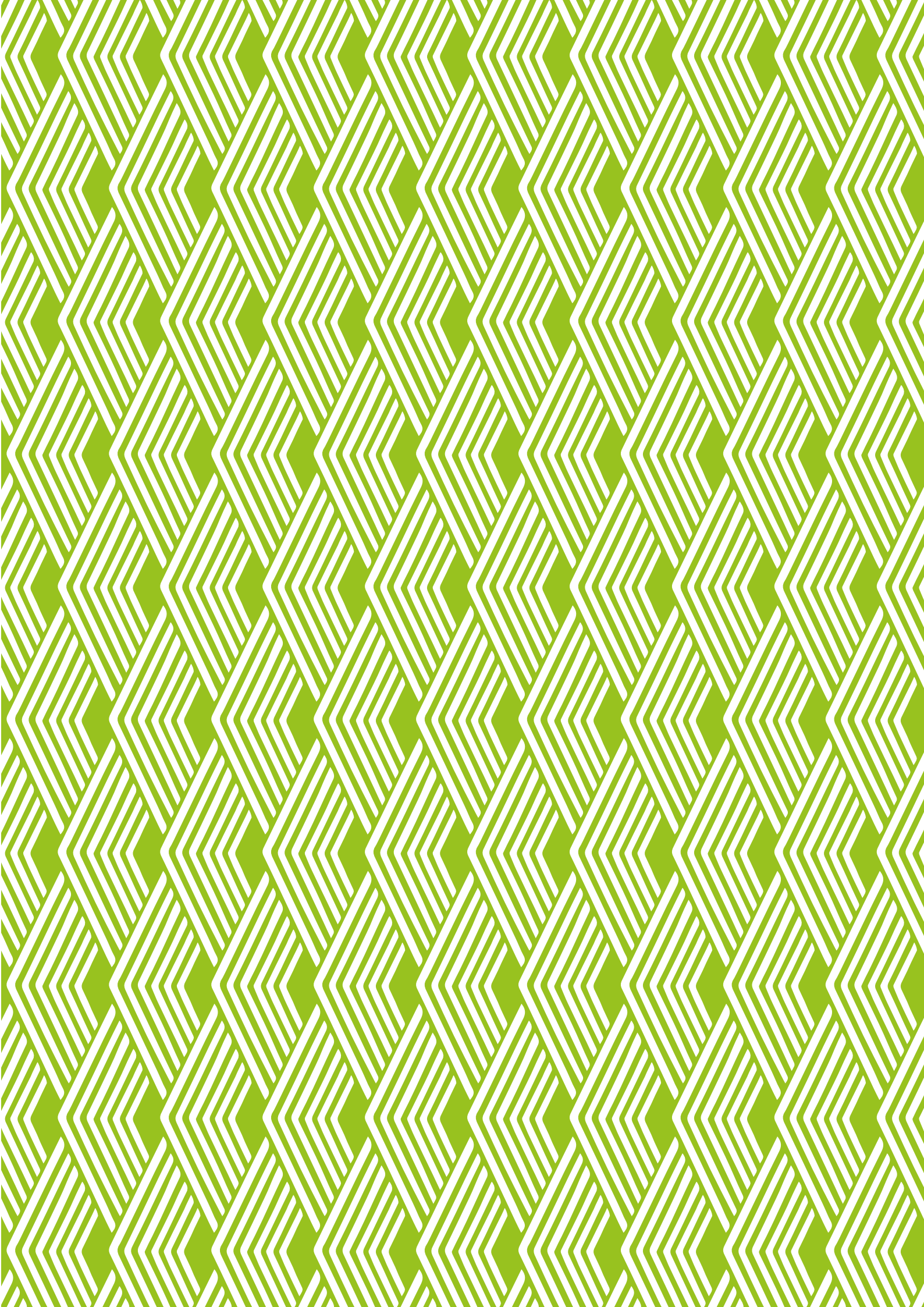
**The main parties responsible for those violations:**

The Ministry of Social Development and the Fight against Hunger, the Municipal Executive power (in the case of problems with the single registry and other issues under its competency).

60. In accordance with General Comment no 13, the ban on discrimination enshrined in Article 2(2) of the ICESCR is not subject to progressive implementation or to the availability of resources; it applies in full and immediately to all aspects of education, for example.

It is important to remember that the Brazilian State is obliged to immediately adopt measures that will guarantee and fulfil the human rights of the Guarani and Kaiowá communities<sup>60</sup>, along with other measures to tackle: discrimination, the suspension of access to the ‘Bolsa Família’ programme by families faced with extreme marginalisation, as well as the poor budgetary execution of programmes and public policies intended for indigenous peoples.

Further on we will share some Guaiviry, Ypo’i and Kurusu Ambá socio-demographic data collected during the 2013 research. We will also present and analyse data on violations of those communities’ HRtAFN, which actually reflect the severity of the human rights violations of the Guarani and Kaiowá peoples as a whole.







3.3.1

# Socio-demographic Data<sup>61</sup>

The research carried out in 2013 by FIAN Brazil and CIMI-MS included 96 existing households in the indigenous communities of Ypo'i (29), Guaviry (33), Kurusu Ambá – Nucleus I (12) and Kurusu Ambá – Nucleus II (22)<sup>62</sup>, all of which are located in the south-east of the state of Mato Grosso do Sul. All three communities, as explained before, were formed from the process of taking back land that traditionally belonged to the Guarani and Kaiowá peoples.

At the time of research, 360 people lived in the communities, spread evenly across the households. Of all the people interviewed, 83.3% were women, who were responsible for preparing food for the family<sup>63</sup>.

The age distribution of the Guarani and Kaiowá population shows that young people dominate, as 15% were less than 5 years old, 33% were children up to the age of 10 and 46% of the inhabitants were less than 15 years old, and the proportion of young people was even higher in the Guaviry, as 61.8% of their inhabitants were in the “less than 15” age bracket (Table 1).

According to the 2010 Census (IBGE, 2012), the proportion of under 15s in Brazil was around 24%. Whereas, on the one hand, the diagnosis data points, as a positive, to a growing population that still takes the shape of a wide pyramid (taking into account that 46% of the inhabitants were less than 15 years old at the time of research), on the other hand, it shows a younger population that is therefore more likely to become marginalised, requiring greater attention from public policies on health, nutrition, education and social assistance.

61. To carry out the field work, a work group was set up comprised of FIAN Brazil (coordinated by Célia Varela), CIMI-MS, consultants and three indigenous Guarani Kaiowá interviewers selected and trained beforehand. The working group was made up of Ana Maria Segall-Corrêa (consultant), Juliana Licio (FIAN Brazil), Joana Ortiz, Roberto Liebgott and Sandra Procópio (CIMI) and by the indigenous researchers Helinha Perito (Panambizinho), Fabio Turibo (Aroeira) and Holanda Vera (Ypo'i).

62. It is important to mention that, since 2013, the Kurusu Ambá community has been split into two nuclei, as one large family left for another place in their traditional territory, where they set up a new camp. Mobility when occupying geographic areas is a natural and traditional practice for the Guarani and Kaiowá peoples. The data from the 2013 diagnosis will take the split into account, as the two groups are classified as *Kurusu Ambá* (Nucleus I) and *Kurusu Ambá* (Nucleus II). The two nuclei contain around 250 people in total.

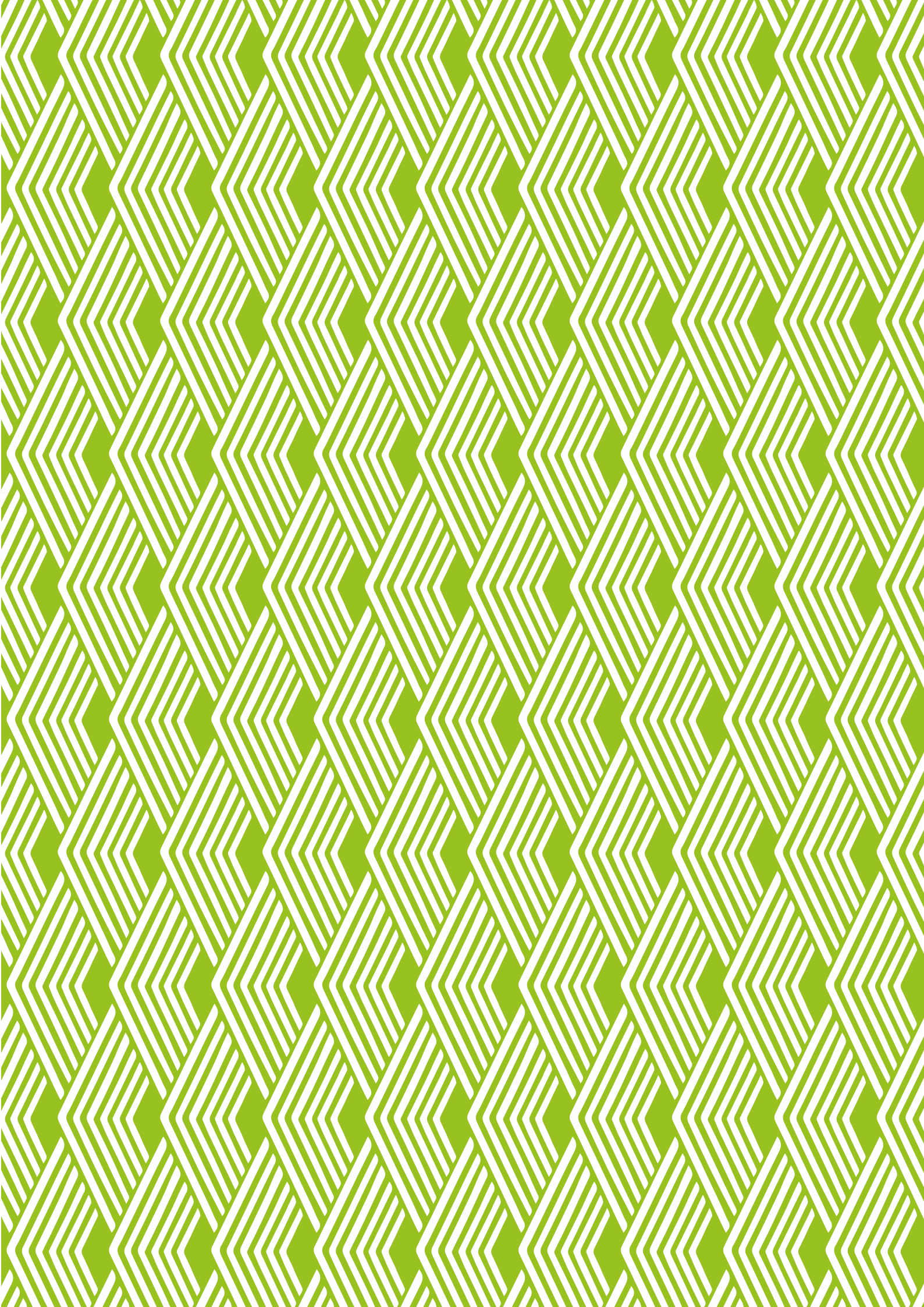
63. The project, which the leaders and council of the Aty Guasu initially discussed and approved, was presented to the communities again at the time of research. When group members arrived at a household, the objectives and methodology of the project were explained again to the person who had declared himself/herself to be responsible for the household. The researcher read the Informed Consent Form (ICF) in Portuguese and it was translated into Guarani. It provided information about the project and explained the data collection process in full. Interviews only began after the ICF had been signed.

**Table 1.** Census of the communities visited according to age bracket Diagnosis Project, 2013.

Age	Ypo'i		Kurusu Ambá (Nucleus I)		Kurusu Ambá (Nucleus II)		Guaiviry		Total
	Male	Fem	Male	Fem	Male	Fem	Male	Fem	
[0,5)	10	11	3	4	8	3	8	9	56
[5,11)	10	12	8	4	6	6	13	13	72
[11,15)	8	4	2	3	5	6	6	4	38
[15,25)	14	13	5	6	12	12	8	15	85
[25,35)	7	7	2	2	3	4	8	8	41
[35,50)	3	4	4	2	5	3	5	6	32
[50,65)	7	4	2	1	2	2	1	2	21
65 +	2	1	1	1	2	1	3	4	15
<b>Total</b>	<b>61</b>	<b>56</b>	<b>27</b>	<b>23</b>	<b>43</b>	<b>37</b>	<b>52</b>	<b>61</b>	<b>360</b>

It can be seen from the table above that at the time of diagnosis, 56 children younger than 5 years old – 15.5% of the total population – were identified. Of them, 28 (50.9%) were girls and 27 (49.1%) were boys. Of all the children, 10.9% were less than 5 months old, 14.6% were in the 6 to 11 months age bracket, 28.5% between 12 and 23 months and 46% were between 24 and 59 months. Those ratios do not vary much among the three communities included in the study. All of them were mostly made up of young individuals.

The data which will be set out in the following points of this executive summary, all of which was obtained from the 2013 research, helps to visualise and understand the severity of the abuses that these communities face.





3.3.2

# Violations of the Human Right to Adequate Food and Nutrition (HRtAFN)



Both aspects of the HRtAFN<sup>64</sup> must be considered. These aspects are the right to be free from hunger and the right to adequate food and nutrition. Hunger is just one of the forms of violation, and may be more visible and immediate, but it is not the only violation:

Any action or inaction that threatens or affects the production or consumption of foods and that is not coherent with human rights principles may constitute a violation – contamination with pesticides, lack of information, lack of means to produce or buy food, difficulty accessing seeds, loss of biodiversity, loss of food culture, for example, are rights violations (Valente et al., 2015).

Hunger is the result of expulsion from territories and other factors that are caused by violence that in turn has been sparked by the current food production model; whereas malnutrition is the result of hunger, poor food quality, reduced diversity and the contamination of food, the inadequacy of sanitation and health problems that prevail in this model (Valente et al., 2015).

Despite considerable progress in the quest for more precise definitions about the meaning of the human right to adequate food, the growing challenges in the realisation of that right have led, in recent decades, to coherent arguments about the need for a structural change to the concept so that the causes of hunger and malnutrition are considered. According to Flavio Valente, Ana María Suárez-Franco and Denisse Córdova, the proposal to revise the concept of the human right to adequate food (HRAF) stems from the need to adapt it to the new challenges that have emerged in the

<sup>64</sup>. Although the term human right to adequate food is used more often by civil society entities in Brazil, we use the term *human right to adequate food and nutrition* (HRtAFN) to make more explicit the relationship between that right and its nutritional dimension, type and food sovereignty. It is also important to remember that FIAN Brazil is in the process of discussing in its various bodies the use of the term *human right to adequate food and nutrition* (HRtAFN). Therefore, although it has already incorporated the aspects of the HRtAFN into its practices, FIAN Brazil is still in the process of incorporating the use of the full term, as set out in the eighth Elective and Ordinary General Assembly, held between the 17 and 18 July 2015.

65. One of the structural disconnects that is currently being discussed is the isolation of the right to food from its nutritional dimension. Nutrition can be defined as the interface between consumption of food and its use by the human body. However, not all types of food provide nutritional well-being. Foods need to be produced sustainably and healthily, using agro-ecological processes that offer nutritionally rich, diverse and culturally acceptable diets. The nutritional dimension of the HRtAFN brings to the concept the idea that the right is realised when individuals and communities have a healthy, active and productive life, which is made possible through the capabilities created by nutritional well-being, among other factors. Motor, affective, immunological and cognitive capabilities, among others, are, in practice, the very fibre of the indivisibility of the human being, and they enable well-fed and well-nourished human beings to be more healthy (protected against common illness through immunity), to learn and decode stimuli in the world, to benefit from human stimulation and the environment in pursuit of full physical, motor and cognitive development, and to develop their capacity to understand the world and learn to transform it. That is the basis of the indivisibility of human beings, in which the relationship is clear between the rights to food and nutrition and the rights to a healthy environment, to good health, land, education, work and human dignity. (Valente *et al.*, 2015).

66. The second inconsistency is the structural isolation of women's rights in relation to the human right to adequate food and nutrition. Violence against women can be considered one of the main structural causes of hunger and malnutrition. That violence has been expressed through gender discrimination, by limiting their rights to participation and self-determination, by controlling their lives and bodies, by unequal remuneration and by the lack of fair access to natural resources, policies and public services. Those factors have severe consequences on women's nutritional status. That violence is also a structural cause of the transfer of poverty and malnutrition on to the next generation, as it triggers poor nutritional status in children from birth and throughout their lives. The promotion of women's rights includes access to self-determination and independence, high-quality education, productive resources, work, fair remuneration, healthcare, services and information about their reproductive rights, and so on. Thus, the quest to eradicate hunger and malnutrition should be considered fundamental to including the full realisation of the human rights of women as an integral part of the pillars for realising the human right to adequate food and nutrition. Only with the full recognition of equality between men and women, in practice, will it be possible to guarantee that women control their own lives and bodies, decide what to do with their lives (study, work, and so on) and decide whether they want to have a partner, with whom they may want to have and/or adopt children. The eradication of forced early marriage and child domestic labour and the

struggle to guarantee that right and other human rights (Valente *et al.*, 2015). The proposal is that the HRAF more explicitly incorporates the nutritional dimension<sup>65</sup>, the gender approach<sup>66</sup> and food sovereignty<sup>67</sup> into its conceptual structure, in the interest of overcoming the reductionist approach that has been applied to food and nutritional security policies, led by the influence of many powerful groups, such as the economic and political elite.

### Extent of household food security<sup>68</sup>

In the three communities, the analysis of food security and insecurity<sup>69</sup> in households with children and young people that still depended on the family for food at the time of the research (75) demonstrates the appalling situation as concerns the HRtAFN of the families, given that all the families in the three communities found themselves, at that time, in a position of some food and nutritional insecurity (Table 2).

A little more than 13% of households were experiencing slight food insecurity, which means, according to the EBIA (Brazilian Scale of Food Insecurity), that those households were concerned, at the very least, about a lack of food in the near future and lower quality food. On the other hand, 59% of all the households lacked food, with mainly adults going hungry. In general, that situation among adults was the result of a strategy to keep food for children. Serious food insecurity was evident in 28% of the households, where both adults and children were going hungry.

**Table 2.** Analysis of food security/insecurity in the households visited.

Food Security Categories	Number of Households	Percentage
Food Security	0	0
Slight Food Insecurity	10	13,3
Moderate Food Insecurity	44	58,7
Serious Food Insecurity	21	28,0
Total households with young people and children	75	100,0

The data that emerged from the 2013 research revealed that, at the time of the research, around 87% of the participating communities were not guaranteed even the first aspect of the HRtAFN, which is the right to be free from hunger. When slight food insecurity is also taken into account, the violation of that right becomes indisputably serious: 100% of the inhabitants of the communities found themselves in a position of food and nutritional insecurity.

When compared to the percentage of households in Brazil that have an insecure food supply to some degree, the data from the research becomes unequivocal proof of the severity of the discrimination against and abandonment and neglect of the Brazilian State in the realisation of the Guarani and Kaiowá's HRtAFN. According to the PNAD (National Survey of Sample Households), conducted by the IBGE<sup>70</sup> (Brazilian Institute of Geography and Statistics), the percentage of households in Brazil that, to some degree, have an insecure food supply, fell from 30.2% in 2009 to 22.6% in 2013. According to the IBGE, in 2013, 52 million people in 14.7 million households lived with some food restriction or, at least, some concern that food could become restricted owing to a lack of resources to acquire food. With regard to hunger, the most serious expression of food and nutritional insecurity, the percentage of Brazilians in that condition in 2013 was 3.2%. According to the IBGE, "serious food insecurity has reduced significantly in comparison to previous studies. That indicator fell from 6.9% in 2004 to 5.0% in 2009 and, in 2013, sunk to its lowest level: 3.2%" (Brazilian Institute of Geography and Statistics, 2013). According to the data from the 2013 PNAD, serious food insecurity rose from being present in 3.2% of households to around 4.8% when there are under 18s in the household.

Thus, in Brazil, if 4.8% of households with under 18s found themselves in a position of serious food insecurity in 2013, in the same year, the data from the research by FIAN Brazil reveals the severity of the HRtAFN violation by the Brazilian State against the communities that participated in the diagnosis, given that 28% of the households with children and adolescents that still depended on their families for food at the time of research were facing serious food insecurity. At the same time, although 22.6% of Brazilian households stated that they were facing some degree of food insecurity in 2013, 100% of households that participated in the diagnosis stated that they were facing some degree of food and nutritional insecurity.

prevention of pregnancy in adolescents are a fundamental part of combating child and women's malnutrition and mortality, given their enormous contribution to intrauterine malnutrition, low birth weight, child, maternal and women's malnutrition and stunted growth. (Valente *et al.*, 2015).

67. The need to incorporate the concept of food sovereignty into the scope of the HRtAFN has been reflected in the different positions of various human rights defenders, non-governmental organisations (NGOs) and social movements. The concept of food sovereignty promotes the idea that every people/nation, including pluri-national states such as Bolivia, has the right to formulate policies that guarantee the food and nutritional security of their peoples, including the right to preserve the production and traditional food practices of every culture. In addition, it is recognised that the process should be built on sustainability, from an environmental, economic and social point of view (Valente *et al.*, 2015).

68. With regard to the HRtAFN, the data obtained through the diagnosis demonstrated the violation by the Brazilian State of Article 11 of the ICESCR, Article 6 of the ICCPR, Articles 4 and 26 of the American Convention on Human Rights, Article 25 of the Universal Declaration of Human Rights, Article 6 of the Federal Constitution and also Article 2(2) of the Organic Law on Food and Nutritional Security. With regard to the HRtAFN of the children from the communities that took part in the diagnosis, the State is also violating Article 4 of the Statute on Children and Adolescents (SCA).

69. According to EBIA (Brazilian Scale of Food Insecurity) criteria, households with a secure food supply are those in which the inhabitants have access to adequate quality and adequate quantity of food and do not feel any threat of their supply being restricted in the near future. Households with a slightly insecure food supply, according to the EBIA, are those in which some concern is detected with regard to a lack of food in the near future and in which the quality of food available is not entirely suitable. In households with moderate food insecurity, the inhabitants have a restricted amount of food. Finally, in households suffering serious food insecurity, in addition to adult members, any children are also deprived of food, and in the most serious cases, families are going hungry.

70. In December 2014, the IBGE (Brazilian Institute of Geography and Statistics) divulged data from the PNAD on the levels of food insecurity in Brazil. The study was carried out in agreement with the Ministry of Social Development and the Fight against Hunger.

71. With regard to the indivisibility of the human right to land and the HRtAFN, in its Explanatory Statement 006 of 25 October 2013, the National Food and Nutrition Security Council, stated the following: “We reiterate that the Right to Food and the Right to Land and Territory are indivisible, given that the organisation methods, agricultural-extractive systems and the food habits of indigenous peoples and quilombolas are closely connected to lands and territories, and they may not be addressed separately. That being the case, as long as their lands are not being recognised or regularised, the existence of programmes to foster production and preserve their food habits is not enough to improve the quality of life of those peoples, given that, legally, some governmental programmes, such as the National Policy on Environmental and Territorial Management of Indigenous Lands are only pursued in regularised territories, which therefore excludes the thousands of people who live in non-regularised territories and in a situation of land conflict. Available in Portuguese at: <http://www4.planalto.gov.br/conseal/ eventos/plenarias/exposicoes-de-motivos/2013/e.m.-no-006-2013/view>

Access to their ancestral territories is a pre-requisite to the human right of indigenous peoples to adequate food and nutrition, as it is through the land, considered sacred, that those peoples guarantee their livelihood<sup>71</sup>. Given the interdependency and indivisibility of human rights, the very grave food and nutritional insecurity faced by those communities is connected to the unjustifiable delay to the demarcation of their ancestral territory and to the terrible living conditions, destruction of their means of subsistence, lack of income, discrimination, extreme physical, moral and psychological violence against them, the lack of adequate housing and the abandonment by the State as demonstrated by the absence of public policies for the communities, including policies that foster and support production, together with the violations of their human rights to good health and education, among others.

In reality, without the demarcation of their lands, where they can plant, hunt, fish and live according to their traditions and their cultures, the HRtAFN and other human rights of those peoples cannot be ensured.

The indigenous leader Valdomiro de Guaiviry, spoke of the intrinsic connection for those communities between the violations of the HRtAFN and the human rights to live and work:

The land belongs to us, not to farmers. The land has always belonged to Indigenous populations. [...] With the land, we plant, harvest, hunt and fish. But now farmers don't let us do any of that. I want to work, I want to eat. Man lives on food alone. (Account of Statements, 2013)

Elizeu Lopes, a Kurusu Ambá leader, also revealed in his statement the severity of the human rights violations faced by the community, including the HRtAFN:

We're also experiencing threats, death, violence, everything. So every day we face poison, sickness, (lack of) food... as a result of a lack of care from public bodies. (Account of Statements, 2013)

At present, the leaders continue to speak of the great difficulties that they have with producing food without suitable production conditions, which includes the fact that they live on small pieces of land in areas that they have reclaimed. Ypo'i leaders, for example, claim that if they received credit and technical support, they could produce

more food to consume and also sell. They could also join public programmes, such as the PAA and the PNAE, which buy local produce for school food and for other federal government programmes.

The climate of violence is another factor which seriously hinders food production. When the results of the research were given to the communities in May 2015<sup>72</sup>, the Kurusu Ambá leader, Ismarte Matins, said: *We are not able to plant food when we are suffering violence and living under the stress of conflict.* (Report on Returning the Diagnostic Project, 2015)

In addition, discrimination, including being subjected to living in areas of conflict, directly violates the HRtAFN of communities, given that there are often reports that, in many situations, the members of those communities are overlooked, for example, by those with work on offer, which hinders their access to jobs or other paid activities. In its *Relatórios sobre Violência contra os Povos Indígenas* (Reports on Violence against Indigenous Peoples), CIMI sets out annual studies on cases of ethnic or cultural racism and discrimination experienced by indigenous peoples and the Guarani and Kaiowá in MS.

It is important to remember, again, that those communities are surrounded by extensive monoculture plantations that intensively use pesticides in areas very close to the places where the families live or even spray them above their houses<sup>73</sup>, which strongly affects them and results in flagrant violations, such as evidence of contamination in the little food that families manage to produce, evidence of contamination in river and stream water and serious risks to their health. It is also important to mention that there are signs that the intensive use of pesticides represents a serious risk of contamination of breast milk, which only strengthens the rights violations cycle.

According to a researcher at IPEA (Instituto de Pesquisa Econômica Aplicada: Institute of Applied Economic Research), Antônio Teixeira L. Júnior:

The country has become the biggest pesticide market in the world, with a share of 84% of the amount sold in Latin America. In 2009, the state that bought the most pesticides was Mato Grosso, followed by São Paulo, Rio Grande do Sul, Paraná, Goiás, Minas Gerais, Bahia, Mato Grosso do Sul, Santa Catarina and Maranhão. Of the products sold in 2009, 85% of the

72. In May 2015, FIAN Brazil and CIMI-MS visited all three communities to present the results from the socio-economic and nutritional research. For the process of returning the diagnosis, FIAN Brazil prepared and delivered to the communities a document with a summary, in accessible language, of the violations that the research proved. After it presented the results of the research to every community, leaders and other members of the communities took part in a round of discussions in which they were able to comment on the results of the diagnosis, which demonstrated the severity of the violation of their human rights. Various leaders used that opportunity to state that the violations, which continue to be systematic and go unpunished, were worsening.

73. Aerial spraying of pesticides is highlighted by the Dourados Public Prosecutor's Office, Marco Antonio Delfino de Almeida, as a serious problem that requires considerable attention. In a 2014 speech, the prosecutor cited the case of the plane that dropped farming poison by mistake on a school called Assentamento Pontal dos Buritis, in Rio Verde (GO), in June 2013, which led to the intoxication of 37 people, of whom eight were adults and 29 were children between the ages of six and 14 (MPF, 2014). That event exemplifies the serious effects caused by aerial spraying of pesticides. The Guarani and Kaiowá communities, along with the Ypo'i community, are routinely subjected to the aerial spraying of pesticides.



74. In Brazil, the right to social security is also set out in the Federal Constitution, under the catalogue of social rights in Article 6 and under Articles 194 and 204. Article 194 states that social security “covers an integrated set of actions by Public Authorities and society, intended to ensure rights to good health, welfare and social assistance.” Under the right to social security, the right to social assistance is connected, above all, to actions that are intended to address poverty and social exclusion and has as one of its principles, set out in the Social Assistance Organic Law, Law no 8.742 of 1993, “the universalisation of social rights, in the interests of ensuring that the recipient of assistance is reached by as many public policies as possible” (Social Services Organic Law, Article 4(II)). The Social Assistance Organic Law establishes standards and criteria for organising social assistance in the country and, in 2005, the Single Social Assistance System was adopted, as determined by the Social Assistance Organic Law and the National Social Assistance Policy.

brands were considered dangerous and 15% very dangerous. The sale of glyphosate, used to produce soya and maize, represented a staggering 76% of herbicides sold (L. Júnior, 2014).

The indiscriminate use of pesticides is also closely linked to the violation of the human rights to good health, adequate food, land, water, housing, education and life.

### **‘Bolsa Família’ and other public policies**

Programmes such as ‘Bolsa Família’ and the provision of basic food baskets are crucially important to impoverished and excluded populations. The creation and adoption of the programmes is progress towards guaranteeing the HRtAFN and it is these programmes that have reached those populations. The progress needs to be recorded to avoid setbacks. However, these programmes have still not reached some groups, such as the Guarani and Kaiowá, and they are not suitable for their culture or sufficient to guarantee rights including the rights to territory, security and non-discrimination, among others.

In the case of the communities researched, the obligation to facilitate physical and economic access to food has clearly been violated. It has been noted that, at the time of the research, the families of the three communities did not have access to public policies such as rural extension and support for food production, among others. The lack of access to territory and of support to communities on lands that they have taken back is a major obstacle to physical access to food.

On the other hand, both economic access to food and the human right to social security have also been violated<sup>74</sup>. Although all the families meet the legal criteria to receive a cash transfer under the ‘Bolsa Família’ programme, fewer than 40% had access to the programme at the time of research (Table 3), which is a violation of their HRtAFN and of their human right to social security.

Other programmes, such as the Continuous Cash Benefit, which guarantees the monthly transfer of 1 month’s minimum wage to the elderly – those who are 65 years old or more – and to people who are unable to live independently or to work and who demonstrate that they do not have the means to provide for themselves or for their family, should also be implemented in the communities. The fact that programmes of that type do not exist in the communities is also a violation of the human right to social assistance.

**Table 3.** Relationship between levels of food insecurity and some household and individual characteristics.

Household/ individual	Categories	Slight FI.		Moderate FI.		Serious FI.	
		N	%	N	%	N	%
Income	Yes	04	08,0	27	54,0	19	38,5
	No	06	24,0	17	68,0	02	08,0
Receiving 'Bolsa Família'	Yes	04	11,1	18	50,0	14	38,9
	No	06	15,4	26	66,7	07	17,9
Access to 'Bolsa Família' suspended	Yes	0	0,0	12	54,5	10	41,5
	No	04	26,7	07	46,7	04	26,7
Chronic Malnutrition in <5 year-olds	Yes	04	17,4	13	56,5	06	26,1
	No	06	18,8	20	62,5	06	18,8

60.4% of households reported that they were not receiving a cash transfer at the time of their interview and, in 22.9% of cases issuance of the amounts owed had been suspended (Table 4).

It is important to highlight that the majority of children who are suffering chronic malnutrition, and therefore have a chronic growth problem, live in households in which the families experience or have experienced serious food insecurity and hunger.

**Table 4.** State of access to public policies in the three Guarani and Kaiowá communities.

Receiving 'Bolsa Família'	Ypo'i	Kurusu Ambá (Nucleus I)	Kurusu Ambá (Nucleus II)	Guaiviry	Total	Total (%)
<b>Yes</b>	14	5	8	11	<b>38</b>	<b>39,6</b>
<b>No</b>	15	7	14	22	<b>58</b>	<b>60,4</b>
<b>Households whose access to 'Bolsa Família' has been suspended</b>	3	3	8	8	22	22,9

Suspending access to resources for families that are living in a state of food and nutritional insecurity and have no alternative options for physically and economically accessing food is a gross violation of the obligation to fulfil the HRtAFN, and it also violates the fundamental obligation not to regress.

75. Families are selected for the 'Bolsa Família' on the basis of information registered by the municipality in the Single Registry for Federal Government Social Programmes, an instrument used to collect and manage data and which is designed to identify all the low-income families in Brazil. <http://www.mds.gov.br/bolsafamilia>.

76. With regard to conditions, it is worth stressing that, from a human rights perspective, families are publicly responsible for guaranteeing that their members – especially children, the elderly, pregnant women and nursing mothers – use services available to ensure a better quality of life, but the obligation to comply with the conditions, again from a human rights perspective, lies with the public authorities, who should guarantee the quality of the services and also that they are provided.

It is a gross violation for three reasons. Firstly, given the people that it affects, as they are part of a marginalised population. 41.5% of the households to which access was suspended were suffering serious food insecurity, in other words they were going hungry, and the rest were in a situation of moderate food insecurity (Table 3). Secondly, given its consequences, which exacerbate the nutritional status of that population and, thirdly, given that those people have been suspended precisely because their other rights have been violated.

The reasons for the suspension are mainly: i) problems with being included in or excluded from the single registry<sup>75</sup> as a result of lost documents or failure to renew information about housing (n=11), which, in some cases, implies a failure to serve the population; ii) failure to comply with the "conditions" of the 'Bolsa Família' programme<sup>76</sup>: the access of some families was suspended because their children were not attending school (n=3), although there is no effective measure in place to ensure that schools are suitable for their culture and conditions for participation in the programmes are sometime missing, for example, public transport or workers who are able or motivated to establish contact with the populations holding this right. It is very often reported that children and young people are suffering discrimination in schools in town, which can even lead to them dropping out of school altogether, as previously mentioned. On the other hand, considering the importance of the programme for many families faced with poverty, it does not make sense for a measure that is designed to eradicate hunger – and therefore realise a vital human right – to be subject to conditions. Especially when those conditions, in many cases, cannot be met and there is iii) lack of information, given that eight of the households interviewed did not know how to respond to the question of why their rights under the programme had been suspended.

The communities with the least access to the 'Bolsa Família' at the time of research were the Guaiviry (66.7%) and Family Nucleus II of the Kurusu Ambá (63.6%).

Many reports demonstrate that basic food baskets are delivered irregularly, which further exacerbates the serious food and nutritional insecurity highlighted in the 2013 research. Irregular delivery of the baskets constitutes a violation of the obligation to ensure that food is available to extremely marginalised families, as is the case for Kurusu Ambá, Guaiviry and Ypo'i families. There are also many reports from the communities that some foods in the baskets are very different from the food traditionally produced and consumed by the Guarani and Kaiowá peoples, which also demon-

strates the violation of the Brazilian State's obligation to provide adequate food, taking into account the food habits and culture of those peoples. In addition, dependency on the baskets is a serious challenge for realising the HRtAFN, not only for the communities living on reclaimed land, but also for the Guarani and Kaiowá living in reserves. According to Antônio Brand:

Confinement and overpopulation inside the demarcated reserves reduced the space available, led to the depletion of natural resources that are important for quality of life in the Kaiowá and Guarani villages and hampered food production. That means that people who, as historical documentation attests, for centuries produced not just enough, but plenty of food, are now reliant on the supply of basic food baskets and all manner of external help. (Brand et al., 2012)<sup>77</sup>

The reality is that, as long as their traditional territories are not demarcated and as long as the instruments to exercise their HRtAFN adequately are not guaranteed – through subsistence farming, hunting, fishing, fruit-picking, production for access to institutional markets and other income sources – food for community families in areas that have been reclaimed must be provided through regular distribution of basic food baskets, that respect their culture and their food habits, and through other programmes that guarantee their HRtAFN, such as the 'Bolsa Família' Programme, which must also be adopted in a differentiated manner, in respect of the sociocultural specificities of Indigenous Peoples.

However, if the Brazilian State does not, at the same time, adopt structural policies that promote conditions under which families can recover, in the shortest time frame possible, the capacity to produce and acquire their own food, the human rights of those communities, including their HRtAFN, will continue to be grossly violated. Thus, the Brazilian State cannot refrain from guaranteeing either regular basic food baskets that respect the food habits of indigenous peoples or income programmes, under penalty of violating the obligation to fulfil the HRtAFN of those communities. Above all, however, the State cannot continue to refrain from demarcating indigenous lands that are recognised as ancestral and must adopt other structural public policies under penalty of violating all the other HRtAFN dimensions of these communities.

77. The border dilemma in the Guarani journey. Interview with Antônio Brand by the Instituto Humanitas Unisinos (Unisinos Humanitas Institute), 2012. Available in Portuguese at: [http://www.ihuonline.unisinos.br/index.php?option=com\\_content&view=article&id=3249&secao=331](http://www.ihuonline.unisinos.br/index.php?option=com_content&view=article&id=3249&secao=331). Accessed: June 2015.

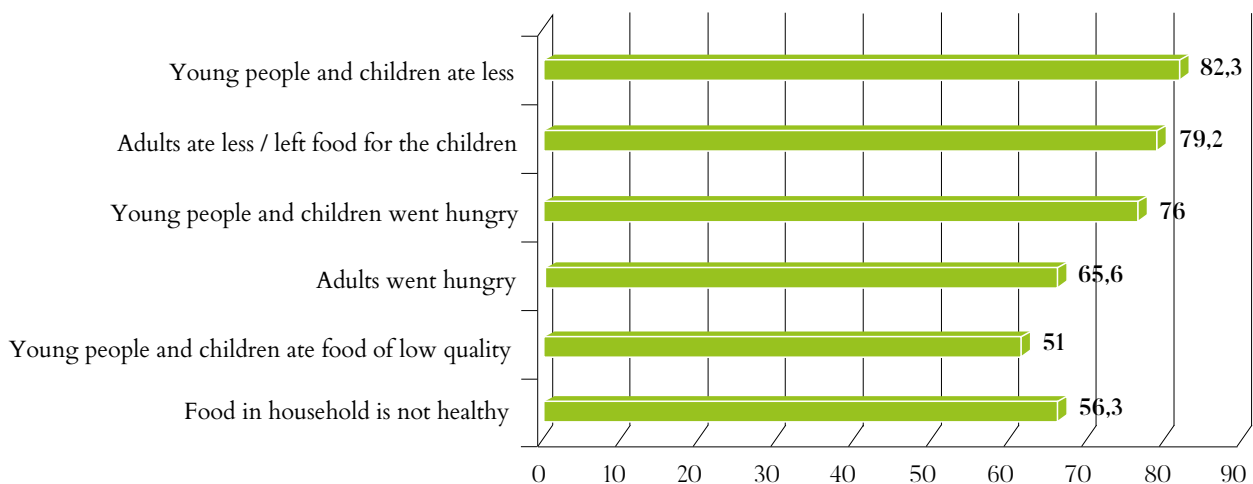
The indigenous people in the communities included in the diagnosis, such as the Kurusu Ambá leaders, made it very clear that they do not want to depend on the food baskets and that their communities want to guarantee their HRtAFN through the use of their own lands.

### Children: food and nutritional insecurity and rights

The fact that children are going hungry is also evident from the affirmative responses to Indigenous EBIA (Brazilian Scale of Food Insecurity) points. In 76% of households, the person interviewed stated that, in the month previous to September 2013, there were occasions in which children and young people in the house had spent a whole day without food and gone to bed hungry, as there was no food at home. Interviewees from 82% of households confirmed that the group ate less food than necessary (the amount of food that they considered enough) because they did not have the resources to obtain food.

The lack of food at home and lack of resources to obtain food prove the violations of the obligation to facilitate and ensure availability of and physical access to food, through, for example, regular delivery of basic food baskets and policies to foster food production, which also demonstrates the violation of the obligation to provide economic access to food, through the ‘Bolsa Família’ programme, for example.

**Figure 1.** Percentage of affirmative responses to points on the EBIA (Brazilian Scale of Food Insecurity).





The lowest percentage of affirmative responses to points on food quality, for both adults and children, shows the major concern of interviewees with regard to the quantity – rather than quality – of food available in households, which is understandable in their situation of extreme food shortages. It is also worth highlighting that families sought to protect their children from this terrible situation, given that, in around 80% of the households the interviewee stated that he/she ate less to leave enough food for the children.

From the analysis of the Guarani and Kaiowá households with children less than 5 years old, there is not higher food and nutritional insecurity, differently from the non-indigenous population, in which the prevalence of food insecurity is greater in households with small children that are more dependent on their parents for food and other vital needs (Table 5). This situation may be the consequence of greater care towards children in the communities, possibly because they live in a situation of extreme risk. In addition to the food shortages witnessed, the threats to the integrity of all the communities may lead to more effective protection strategies. However, it cannot be ruled out that this apparent discrepancy in comparison to other results may be an effect of analysing small numbers of households and children.

**Table 5.** Percentage of Guarani and Kaiowá children younger than five years old living in households faced with Food Insecurity (F.I.).

Household classification according to degree of F.I.	Nº of households	Children younger than five in the household (%)
Slight Food Insecurity	10	18,2
Moderate Food Insecurity	33	60,0
Serious Food Insecurity	12	21,8
<b>Total</b>	<b>55</b>	<b>100,0</b>

78. Chronic malnutrition is defined by low-height-for-age and stems from malnutrition suffered by both the mother – before and during pregnancy and lactation – and the child during his/her first years of life. Those who suffer chronic malnutrition have experienced times of acute malnutrition; that is, they have gone hungry at various times. It is important to remember that, according to research, all races and ethnicities have the same potential to grow (WHO, 2006). Acute malnutrition (weight/height) is defined by low-weight-for-height (a thin child for his/her height). Acute malnutrition can appear at any time in life as the result of a reduction in consumption or associated to infections or illnesses. It generally occurs in emergency or food and nutritional insecurity situations, when sufferers do not have physical or economic access to food. In the anthropometric evaluation of children younger than 5, a high proportion of children were affected by chronic malnutrition at the time of research. Some 42% of children demonstrated growth deficits, and for 13% that deficit was very serious. That level of around 42% of children with chronic malnutrition at the time of research was much higher than the average for the centre-west (27.8%) and for Brazil as a whole (26%). With regard to acute malnutrition, no one was recorded as having very low weight – severe acute malnutrition – but 9.1% of people in the communities were suffering acute malnutrition (low weight/height) at the time of research. That percentage is almost twice as high as the severe acute malnutrition average in the centre-west (5%) and in Brazil as a whole (5.9%).

79. Measuring the waist circumference (WC) of the women that were heads of their households revealed that, at the time of research, 64.4% of those women had waist circumferences higher than World Health Organisation recommendations, which points to overweight or obesity and a risk of cardiovascular diseases. The research data reveals a scenario of violations which draws attention to supposedly separate problems, such as chronic malnutrition in children and overweight and obesity in women. However, as stated in the National Survey on Health and Nutrition among Indigenous Peoples, carried out in 2009, there are studies that prove the relationship between chronic malnutrition in childhood and obesity and associated disorders in adulthood, such as chronic illnesses and increased mortality from those illnesses (diabetes, cancer, high blood pressure, and so on). (FUNASA, 2009).

## Violations of other human rights

Along with the appalling violation of their HRtAFN, the other data collected from the 2013 research – which will be presented in full in “*The Guarani and Kaiowá Peoples’ Human Right to Adequate Food and Nutrition – A Holistic Approach*” – also reveal serious violations of the human right to territory and to cultural identity, health, water, housing and education. Thus, it is clear that violations have been committed mainly against:

1. *Their human right to territory:* given the failure to demarcate lands and to adopt effective measures to reverse that failure. This violation has led to all the others.
2. *Their cultural identity:* given the discrimination that they suffer and the total incapacity of the Brazilian State to protect their identity.
3. *Their human right to good health:* given the continued lack of preventative assistance; the struggle to access health services; the neglect and discrimination at the hands of public health networks; the irregularity of SESAI services; the high prevalence of chronic child malnutrition<sup>78</sup> that is aggravated by the lack of assistance with health and basic sanitation; the lack of medical drugs and qualified professionals; and the high prevalence of overweight and obesity that was assessed by measuring the circumference of the waists of women that participated in the diagnosis<sup>79</sup>. What is more, generally speaking, the high levels of mortality among indigenous children in the state of Mato Grosso do Sul<sup>80</sup> are evidence of what has been happening in recent years, but also enables us to ascertain what will happen over the next few years, unless measures are adopted to prevent deaths that can be prevented. By not adopting those necessary measures, the Brazilian State is responsible for the death of those children, due to the lack of effectiveness of its actions. It is because of these and other violations that indigenous people claim that they are suffering genocide.
4. *Their human right to housing:* given the precarious nature of their lodgings; given the absence of a public supply of water, a sewage system and an adequate location for rubbish disposal. Almost all the inhabitants use latrines (holes) that have been built – also precariously – outside their homes.

5. *The human right to water*: given the lack of access to drinking water that is safe for consumption as a result of the indiscriminate use of pesticides<sup>81</sup>; given the lack of water for production and given the violence reported by communities when they are prevented by farm owners and their employees from reaching rivers and water sources<sup>82</sup>.

6. *Their human right to education*: given the absence of adequate public policies; given the very low level of education of adults revealed in this research<sup>83</sup>; given the absence of an indigenous school in Kurusu Ambá; given the lack of resources and infrastructure in the indigenous schools that are set up in Guaiviry and Ypo'I; the mobility difficulties of children and young people that need to study outside the camps – including difficulty accessing roads from which they can take a bus to town and the fear and intimidation that they experience on the route to schools –; the lack of school food; the serious discrimination that students face at schools outside areas where communities have taken back land. Moreover, these schools do not offer a specific, differentiated, intercultural programme. Thus, instead of guaranteeing access to schools that respect their traditions, culture and way of life, indigenous children and young people in the communities face discrimination at schools because they are indigenous.

7. *Human rights on gender issues*: given the absence of an effective gender perspective in measures and public policies and given the discrimination faced by indigenous women.

8. *Their rights to life and security*: given the violence to which they are exposed.

9. *Their right to access justice*: given that they do not have the same access to justice as other groups in Brazil, such as the urban middle class, for example.

All these violations bolster each other, strip the communities of their dignity and, in essence, affect all their rights.

80. A document drawn up by CIMI on indigenous health in Brazil points out the following information divulged by the DSEI/MS (Distrito Sanitário Indígena do Mato Grosso do Sul: Special Indigenous Health District of Mato Grosso do Sul) on the period between 2010 and 2012: "In that state, 118 children died at birth, another 208 children died before they reached their first birthday and 87 died before they were five years old. Those numbers are much higher than verified figures for the national average, which are 23 deaths per thousand live births. Indigenous leaders of the Aty Guasu Council claim that child mortality is embedded in the context of a State policy that encourages the silent genocide of the Guarani and Kaiowá peoples" (Altini *et al.*, 2013).

81. Data from the diagnosis reveals that around 47% of accommodation had canvas or plastic structures at the time of research.

82. The strong evidence that river water is contaminated constitutes a violation by the Brazilian State, given that it has not protected the communities from pollution of water courses stemming from the indiscriminate use of pesticides, which violates the obligation to guarantee the quality of water that the communities consume and use.

83. It is important to reiterate that, when that happens, by failing to protect them from the actions of farm owners and employees, the Brazilian State also violates the communities' right to physical access to water.

84. Of the people responsible for their household (household head), 93.7% (n=90) did not complete primary education, and of those, 45.8% (n=44) never went to school.

# 4. Final considerations









There is ample evidence that the Guarani and Kaiowá people traditionally occupied its lands in the state of Mato Grosso do Sul. That occupation was always protected by rules in force in Brazil. However, the level of indigenous land demarcation in the state is one of the worst in the country and history reveals the intolerance and discrimination and all manner of violence experienced by that people. The official documents published by the Brazilian State – such as the Figueiredo Report and the Final Report by the National Truth Commission (CNV) – reveal appalling and intolerable violations. Furthermore, civil society entities have produced countless reports about the violations that the Guarani and Kaiowá face. The annual record kept by CIMI on those violations is one such report.

As in the past, indigenous rights continue to be foreseen by law and the current Federal Constitution is a step towards breaking with the integrationist legal culture, previously in force, as well as with the civilist notion which considered Indigenous People as relatively incapable. The Constitution is bolstered by a number of human rights treaties that, according to the Federal Supreme Court, are the highest forms of law in Brazil. Just as in the past, the protection that the law provides and the reality that Indigenous People experience are worlds apart, particularly for the Guarani and Kaiowá peoples in Mato Grosso do Sul.

Although Brazil has made very important progress with regard to child malnutrition, child mortality and the reduction of poverty, indigenous peoples continue to have the worst indicators concerning fundamental human rights such as food and nutrition, health, water and income, among others. Those violations are a direct result of the denial of the right to their traditional territory, their cultural identity and of the inadequacy or absence of detailed and specific public policies. Furthermore, actions by the National Congress – for example PEC 215 – and legal decisions which put at risk the originary right of Indigenous Peoples, aggravate the situation. Thus, the three Functions (Executive, Legislative and Judiciary), the three administrative branches and society are responsible for the violations of the rights of Brazil's indigenous peoples. It is for this reason that Noé Lopes – a member of the Kurusu Ambá community – exclaimed that “(...) Brazil is anti-indigenous!”



In Mato Grosso do Sul, the Guarani and Kaiowá are in three situations: i) a minority of them are in demarcated land and, even when that is the case, some lands are threatened by legal proceedings, as is the case for Ñanderu Marangatu; ii) many of them are in reserves, where the indicators on violence, malnutrition and suicide are the worst; and iii) another group are in camps next to roads or in areas that they have reclaimed, which means they are occupying farms that overlap with their traditional territories and – because they are challenging and resisting the Brazilian State’s failure – are facing violence and the murder of their leaders. Therefore, most of them are isolated in small areas of land that are hemmed in by monocultures that require the intensive use of pesticides, lacking the conditions for planting, hunting, fishing or carrying out other parts of their culture.

There is a vast amount of literature and news that proves their situation, and the 2013 research by FIAN Brazil and CIMI-MS into reoccupied land in Guaiviry, Ypo’i and Kurusu Ambá reveals that 100% of them experience food insecurity of some type and that children suffer high rates – much higher than the national average – of chronic malnutrition. The discrimination and violence they suffer at the hands of the surrounding society are appalling and go unpunished, as reported in accounts collected during research. The Federal Public Prosecutor’s Office has introduced positive initiatives to reverse the situation, such as the TAC, which was designed for the demarcation of indigenous lands in the State, but they have been paralysed.

Thus, those peoples continue to live within a framework of total violation of the obligations to respect, protect, promote and fulfil their human rights, which will only be reversed if, first of all, their territory is guaranteed and, secondly, adequate public policies are devised, run and adopted in a participatory manner, enabling them to follow their own culture and traditions, which, incidentally, are constitutional rights.

In that regard, the effort contained in the present work has been to document violations, with a human rights approach, in a manner which supports accountability proceedings by the Guarani and Kaiowá before national and international rights protection bodies. These actions underpin the direct struggle of Indigenous Peoples. The resistance and historic struggle of that people are the greatest guarantees of their right to life.

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