

Considerations for the Special Rapporteur on Minority Issues

CONTRIBUTIONS FROM:

The Federal Public Defenders' Office of
Brazil

INPUTS TO THE:

Special Rapporteur on Minority Issues



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The Federal Public Defenders' Office of Brazil (DPU), through its Working Group for the Assistance of Indigenous Populations, submits the following considerations for the report that the Special Rapporteur on Minority Issues is preparing for the UN General Assembly on institutional arrangements of States that enable minority rights to flourish.

1. Do you consider the interests of persons belonging to minority groups appropriately taken into account in your country? If yes, how? If no, why?

Historically, the path to the recognition of the interests of persons belonging to minority groups in Brazil is complex and multifaceted. There are significant advances in some aspects, but also persistent challenges.

In recent decades, Brazil has advanced in the elaboration of legal and political norms aimed at protecting and promoting the rights of minorities, combating structural inequalities, discriminatory practices and guaranteeing the right of self-determination of peoples with the recognition and valorisation of social, cultural, and religious practices.

In this sense, Brazil has adhered to Convention 169 of the International Labour Organization, which protects the rights of indigenous peoples and traditional communities and imposes free, prior and informed consultation, through appropriate procedures, whenever legislative or administrative measures that are likely to affect them directly, are planned.

In 2002, Brazil created the National Policy for the Care of Indigenous Peoples (PNASPI), which provides for the adoption of a complementary and differentiated model for the organisation of health services aimed at protecting, promoting, and restoring the health of indigenous peoples, thus ensuring access to comprehensive health care in accordance with the social, cultural, geographical, historical, and political diversity of these peoples. The PNASPI was regulated based on the law that created the Indigenous Health Care Subsystem (SASISUS) that provides primary health care within Indigenous territories.

Also in line with this, in 2007 the National Policy for the Sustainable Development of Traditional Peoples and Communities was instituted, which are understood as culturally differentiated groups that recognize themselves as such, have their own forms of social organization, occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral, and economic reproduction, using knowledge, innovations, and practices generated and transmitted by tradition.

It is also noteworthy that, by means of a presidential order, the procedure for the identification, recognition, delimitation, demarcation, and titling of the lands occupied by remnants of quilombo communities that are ethnic-racial groups was regulated, according to criteria of self-attribution, with its own historical trajectory, endowed with specific territorial relations, with a presumption of black ancestry related to resistance to the historical oppression suffered.

Currently, the Brazilian National Congress is discussing Bill No. 1387/2022 that creates the Statute of Romani People, which aims to combat ethnic racism and guarantee specific rights and public policies for the Romani, fundamental premises to eradicate the social vulnerability that part of this population faces.

In terms of guaranteeing indigenous rights, Funai's role in carrying out interinstitutional coordination aimed at ensuring equitable access to social and citizenship rights for indigenous peoples is highlighted, through the monitoring of policies related to social security and indigenous school education, as well as in promoting, fostering, and supporting traditional community educational processes and social participation and control. Funai's performance is guided by several principles, among which stands out the recognition of the social organisation, customs, languages, beliefs, and traditions of indigenous peoples, seeking to achieve the full autonomy and self-determination of indigenous peoples in Brazil, contributing to the consolidation of a democratic and pluriethnic State.

Contrary to advances in serving the interests of minorities, the National Congress recently passed Law 14.701/2023 that applies the time frame proposition (known as "Marco Temporal" in Portuguese) for the demarcation of indigenous lands and recognizes as traditionally indigenous lands only those that were occupied by indigenous peoples on the date of the promulgation of the Federal Constitution of 1988. Brazil's Supreme Court rejected the "Marco Temporal" thesis, but the case is still pending, and this new law can have serious consequences for the rights of indigenous peoples and large territorial conflicts.

Thus, despite the progress made in favour of minorities, the lack of representation in terms of elective positions in the legislative and executive prevents minority groups from actually having political expression and a voice within the Brazilian State. In the 2022 Brazilian election, the new composition of the National Congress was mostly white men. Of the 513 seats in the lower chamber, women occupied only 17%, with only two being transgender representatives. Regarding the racial profile, the disparity is enormous: 72.12% of representatives declared themselves white to the electoral court, 20.8% stated they were brown, 5.26 said they were black, and indigenous individuals occupy less than 1% of seats. [1]

The Federal Public Defenders' Office, exercising its constitutional function in the provision of comprehensive and free legal assistance, as well as the defence of individual and collective interests of disadvantaged persons, created the Working Group for the Assistance of Indigenous Populations and the Working Group for the Assistance of Traditional Communities with the objective of carrying out articulated actions to stop violations of rights or ensure a certain fundamental right for populations that are socially, organizationally, and informationally vulnerable.

2. Are there institutional arrangements that guarantee (or facilitate) effective political representation of persons belonging to minorities? For example, a Second Chamber in Parliament, the federal structure of the state, specific “minority institution” (such as a Council of Minorities or a dedicated Ombudsperson, or electoral mechanisms (quotas, separate lists for minorities).

With regard to Indigenous Peoples, Brazil does not have electoral mechanisms that guarantee or facilitate political representation at the local, state, and federal levels.

The last demographic census, carried out in 2022, counted more than 1,600,000 indigenous individuals in Brazil who have an extremely low representation in elective positions of the legislative and executive branches. In the last election, only 5 federal representatives, 2 state representatives, and 2 senators who stated they were indigenous were elected. This scarce expression of indigenous individuals in electoral political environments prevents adequate discussion on policies that affect them, such as the aforementioned law that imposes a time frame for demarcation of indigenous lands.

It is opportune to reflect that even after the re-democratization of Brazil and the advent of the Constitution of 1988; it took Brazil over three decades to elect an indigenous representative to its lower chamber, which only happened in the 2019 election. This reveals that for over 30 years every policy affecting indigenous peoples dealt with within the federal legislature was decided by non-indigenous people. Recently, on 27 February 2024, the Superior Electoral Court equated indigenous candidacies with the candidacies of other underrepresented groups, such as black individuals, for example, establishing that indigenous candidacies must receive proportional resources per the number of candidates running in the elections. However, it has not yet been decided whether such a measure will be applied to the 2024 elections.

In this sense, there is an urgent need to adopt a mandatory reserve of resources and allocated time for campaign advertising for the exercise of citizenship rights of indigenous peoples and the incentive of the participation and contribution of these populations to the legal system and the formulation of public policies in the country. This ensures the autonomy of these peoples regarding development choices that affect their lives, beliefs, traditions, spiritual well-being, and the lands where they live.

Regarding institutional mechanisms, the National Council for Indigenous Policy (CNPI) stands out. It is an advisory collegiate, linked to the Ministry of Indigenous Peoples, responsible for the

elaboration and monitoring of public policies aimed at indigenous peoples. It is composed by an equal number of representatives of indigenous peoples and the Brazilian State with equal speaking and voting rights. In the same sense, there is the National Council of Traditional Peoples and Communities (CNPCT), a collegiate advisory body, part of the basic structure of the Ministry of Women, Family and Human Rights, within the scope of the National Secretariat for Policies for the Promotion of Racial Equality. The purpose of the CNPCT is monitoring and improving public policies for Traditional Peoples and Communities that identify themselves as culturally differentiated groups and recognize themselves as such, ensuring that their cultural, religious, economic, and territorial traditions are preserved.

Within the scope of the Judiciary, there is the National Forum of the Judiciary for Monitoring and Effectiveness of Demands Related to Indigenous Peoples (Fonepi) which has representatives from four indigenous councils, including the Articulation of Indigenous Peoples of Brazil (APIB), and the Coordination of Indigenous Organizations of the Brazilian Amazon (COIAB).

In addition to the political-electoral scenario, and as a way to boost diversity in terms of representation in the political, economic, and social dimensions, Brazil adopted, through Law No. 12.711/2012, a quota system that reserves a percentage of spots for black, brown, and indigenous individuals to access federal universities and educational institutions. This achievement has affected other areas of public administration and some states have created their own affirmative actions to include other groups, such as quilombolas, refugees and transgender individuals.

The Federal Public Defenders' Office, together with the Brazilian Association of Black Researchers (ABPN), prepared a Research on the Implementation of the Racial Quota Policy in Federal Universities. Its objective is to contribute to defend the betterment of Law 12711/2012, based on the firm belief of its effectiveness in fighting racial and social inequalities in education, through the presentation of data collected from Federal Universities from 2013 to 2019 ^[2]

A bill that allocates 30% of spots in civil service entrance examinations to black, indigenous, and quilombola individuals is currently under analysis in the Brazilian National Congress, thus intending to achieve a more plural and representative civil service. It is noteworthy that affirmative actions are instruments that promote material or substantial equality for social minorities, which are used to alleviate and remedy situations resulting from a past of discrimination.

3. Are there minority issues insulated from (or not subject to) State authorities' decisions (including the Parliament)? (For example, constitutional guarantee; political/traditional agreement; competence on minority issues at a regional level, where the persons belonging to a minority represent the majority of the population).

Indigenous Peoples are subject to specific protections and autonomy guaranteed by the Federal Constitution of 1988, including social organization, customs, languages, beliefs, and traditions, and the original rights over the lands where they traditionally live. The Constitution also considers as areas traditionally occupied by Indigenous Peoples any area where they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs, and traditions. Therefore, by recognizing the right of Indigenous Peoples to own and use exclusively their traditional lands and the guarantee of their customs and traditions, Brazilian legislation reinforces their right to self-determination as provided for in ILO 169.

In Brazil, as a rule, indigenous peoples are subject to state jurisdiction and the decisions of parliament, with no minority issues being insulated from State authorities' decisions. In the criminal sphere, however, should an indigenous individual not have a clear understanding of the criminal, illicit, and culpable character of the act, according to their culture, traditions, and customs, they may be considered unaccountable.

Around the country, several organizations that have a large representation of indigenous people in certain regions carry out actions seeking to insert said ethnic minority in the planning and destination of public policies, such as:

National Association of Indigenous Action (ANAI). ANAI uses indigenism ideas in its actions in the Eastern Northeast region of Brazil, the same area occupied by the states "represented" by the indigenous organization the Articulation of Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo

(Apoimne). Its activists intervene in public policies aimed at the indigenous peoples of the region that involve land, education, health, sustainability, etc. ANAI advises Apoimne and local indigenous organizations in the region, especially in Bahia, on political training, indigenous rights, and other topics. It has a network for the dissemination of news about indigenous peoples called ANAIND. For more information, see: www.anai.org.br

Indigenous Work Center (CTI) Founded in 1979, the Indigenous Work Center, through its programs, works directly with indigenous communities (Guarani, Timbira, Terena, Vale do Javari) passing on resources and technical advice. Each program was developed based on local demands identified together with the indigenous people. The objective of their work is to reduce the indigenous communities' dependence on State and other aid agencies, ensuring they are able to take control of all interventions within their territories. The programs translate into continuous actions and include one or more thematic areas, organized and made possible through inter-complementary projects. For more information, see: <http://www.trabalhoindigenista.org.br/default.asp>

Indigenous Peoples Mission Council (COMIN) - The Indigenous Peoples Mission Council (COMIN) is a body that advises and coordinates actions with indigenous peoples. Created in 1982, it is committed to supporting the priorities established by indigenous peoples and communities, respecting their way of life and their culture, working with them and not for them. To this end, it works by creating partnerships and providing support in the areas of education, health, land, organization, sustainability, and defence of rights. COMIN is linked to the Evangelical Church of the Lutheran Confession in Brazil (IECLB) and is currently one of the programs carried out by the Lutheran Foundation of Diaconia (FLD), since its incorporation in 2018. The work of COMIN is carried out via an interdisciplinary team divided into four areas: Acre and southern Amazonas, Rondônia, eastern and northern Santa Catarina, and Rio Grande do Sul. This Council also operates through PROFORDI, a programme that involves intercultural and interreligious dialogue and training, which aims to show the reality of indigenous peoples to non-indigenous peoples so that they can respect and value it. For more information, see: <http://www.comin.org.br>.

4. Are there institutional arrangements and/or political practices that de facto exclude persons belonging to minorities from effective participation in decisions at the national – and, where appropriate, regional level – concerning the minority to which they belong?

The state omission in the creation of public policies related to the representation of indigenous peoples in spaces of power results in the de facto exclusion of the voices of this ethnic minority in places where relevant decisions are made.

5. Are there legal, administrative or other barriers that prevent persons belonging to minorities to participate effectively in cultural, religious, social, economic or public life?

Explicitly, there are no legal, administrative, or other barriers that prevent persons belonging to minorities from effectively participating in cultural, religious, social, economic, or public life.

However, as previously stated in answers to other questions, there is reiterated and evident omission of the Brazilian State in terms of providing ethnic minorities, such as indigenous peoples, with basic resources, such as the protection of their territories, food, health, education, among other fundamental rights, which directly impacts the chances of indigenous individuals to participate effectively in cultural, religious, social, economic and public life.

6. What are the benefits and/or challenges of recognizing and granting sectoral (for example, concerning sectors like education) or territorial autonomy to minorities?

Indigenous peoples' self-determination is a core principle that recognizes the right of these communities to freely determine their political, economic, social, and cultural status, as well as forms of development. Ensuring the autonomy of indigenous peoples is to recognize the particular cosmologies of each people so that they can rule their lives according to their beliefs, customs, and social organization.

With regard to specific sectors such as education, Brazil adopts a mixed model managed by the Ministry of Education, which provides for the training of indigenous teachers, and the production of specific didactic material in indigenous languages and bilingual. Furthermore, it also provides for the promotion of Indigenous Social Control, which, in partnership with FUNAI, offers training courses for

indigenous teachers and leaders to know their rights and exercise social control over the financing mechanisms related to public education, and the execution of actions and programmes in support of indigenous school education.

This autonomy is fundamental for the continuity of customs and traditions of indigenous peoples, an indispensable cultural wealth for the formation of a State with different worldviews.

The existing challenge, in most cases, involves the absence of a budget for the implementation of public policies related to indigenous peoples, which means that many of the legislative measures are not actually put in practice for the benefit of indigenous peoples.

[1] Available at <https://congressoemfoco.uol.com.br/area/congresso-nacional/perfil-da-nova-camara-escancara-social-inequalities/>, accessed on 18 April 2024.

[2] Available at https://www.dpu.def.br/images/2022/Pesquisa_GTPE_sobre_Cotas_Instituicoes_Nacional.pdf, accessed on 18 April 2024.

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