

**Formal Request to Initiate
Early Warning and Urgent Action Procedures
To Avoid Immediate and Irreparable Harm
To the Indigenous Peoples of Raposa Serra Do Sol, Brazil,
And Follow-Up on Brazil's State Party Report
(CERD/C/431/Add.8)**

**Submitted to the Committee on the Elimination of
Racial Discrimination in its 69th Session
(Geneva, 31 July - 18 August 2006)**

By

**The Conselho Indígena de Roraima
The Indigenous Peoples Law and Policy Program -- The
University of Arizona, The Rainforest Foundation, and
The Forest Peoples Programme**

22 June 2006

CONTENTS

SUBMITTING ORGANIZATIONS	3
EXECUTIVE SUMMARY	5
I. Introduction	8
II. Raposa Serra do Sol and its Importance to Indigenous Peoples	12
III. Structural Discrimination against the Indigenous Peoples of Raposa Serra do Sol: Massive Colonization, Environmental Destruction and Cultural Loss	14
IV. Brazil's Demarcation and Titling Process: Justice Delayed and Equality before the Law Denied	17
A) The Legal Framework of Indigenous Lands in Brazil.....	17
B) The Failure to Protect RSS Indigenous Lands.....	19
1. <i>Unjustified Delay in the Demarcation of RSS Lands</i>	19
2. <i>The Petition Before the Inter-American Commission on Human Rights</i>	20
3. <i>Final Presidential Ratification</i>	21
V. Removal of Settlers: Still Pending	22
VI. The Escalation of Violence and Racial Hatred against the Indigenous Peoples of Raposa Serra do Sol.....	24
VII. Increased Racial Hatred against the Indigenous Peoples of Raposa Serra do Sol	26
VIII. State's Lack of Enforcement Actions to Protect the Indigenous Peoples of RSS.	27
IX. Legal Challenges against Indigenous Rights over Raposa Serra do Sol	28
X. Conclusion and Request.....	30
ANNEXES.....	32
Annex A: Presidential Decree of 15 April 2005	32
Annex B: Inter-American Commission on Human Rights Precautionary Measures.....	35
Annex C: Ministerial Administrative Ruling No. 534/05	37
Annex D: Chronology of Key Events related to Raposa Serra do Sol (RSS).....	40

SUBMITTING ORGANIZATIONS



Conselho Indígena de Roraima (Indigenous Council of Roraima)

Founded in the 1970s, CIR unites indigenous communities in Roraima in the search for economic and political alternatives to the violence and oppression perpetrated by ranchers, gold miners and other groups interested in indigenous lands. The organization represents 280 indigenous communities distributed among nine indigenous peoples: the Ingaricó, Macuxi, Patamona, Sapará, Taurepang, Wai Wai, Wapichana, Yanomami and Yekuana. CIR's initial goal and main priority has been the demarcation of indigenous lands and securing basic human rights for indigenous peoples. More recently, CIR's work has expanded successfully in the areas of health and education, and the organization has managed to gain political footholds on the local, regional and national levels. Today, CIR is one of the most important indigenous organizations in Brazil.



Indigenous Peoples Law and Policy Program, The University of Arizona

The Indigenous Peoples Law and Policy (IPLP) Program at the University of Arizona Rogers College of Law is composed of distinguished faculty, a committed and experienced staff, an international team of legal practitioners, and a large pool of JD and LLM students who are being trained to practice indigenous peoples law under the leading experts in the field. Together, this team of people is committed to serving the needs of indigenous communities, to deepen knowledge about their rights, and to become skilled at how to best promote them on a local and international level. Through clinical and advocacy programs, IPLP faculty - who are licensed attorneys - and students advise or take on direct representation of indigenous communities in matters before domestic courts and international human rights forums. In particular, the program has been at the forefront of major victories within the inter-American human rights system.



The Rainforest Foundation US

Rainforest Foundation US is a non-profit organization based in New York. Over the past several years, RF US has implemented innovative projects in partnership with grassroots organizations in Latin America. Its staff works with partner organizations in the rainforest to help indigenous communities to gain fundamental human rights, map their territories and file claims for land title, lobby for enforcement of laws and policy reforms, develop local sustainable development initiatives and monitor and manage natural resources. In the years since 1989, the Rainforest Foundation has had the privilege of working with and assisting many rainforest peoples in countries throughout the world. RF-US has partnered with and supported indigenous groups throughout the Amazon Basin.



Forest Peoples Programme

Forest Peoples Programme (FPP) is an international NGO, founded in 1990 to promote forest peoples' rights. Its UK-registered charitable arm is the Forest Peoples Project. FPP supports forest peoples to secure and sustainably manage their forests, lands and livelihoods. FPP advocates an alternative vision of how forests should be managed and controlled, based on respect for the rights of the peoples who know them best. FPP works with forest peoples in South America, Central Africa, South and South East Asia, and Central Siberia to help these communities secure their rights, build up their own organizations and negotiate with governments and companies as to how economic development and conservation is best achieved on their lands.

EXECUTIVE SUMMARY

1. On behalf of the Conselho Indígena de Roraima (Indigenous Council of Roraima) (CIR), representing the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona peoples of the Raposa Serra do Sol (“RSS”) indigenous land of the state of Roraima, Brazil; the Indigenous Law and Policy Program, the University of Arizona; the Rainforest Foundation; and the Forest Peoples Programme (“the submitting organizations”), we have the honor of addressing the United Nations Committee on the Elimination of Racial Discrimination (“the Committee”) to bring to its attention the dangerous and urgent situation that has developed in the RSS territory as a result of Brazil’s delay in titling these ancestral lands and failure to protect the indigenous peoples from increasingly violent attacks on their person, property, and institutions.
2. This present communication emphasizes the pressing need for the Committee’s sustained and urgent attention to the situation in Brazil under both its Follow Up and Early Warning and Urgent Action procedures. Indeed, such attention is required to prevent immediate and irreparable harm, halt the escalation of racial conflict, and limit the scale and number of serious violations of the Convention. Such attention would also be consistent with and a necessary and logical progression from the Committee’s most recent recommendations on Brazil. In its 2004 Concluding Observations regarding Brazil, the Committee not only expressed concern over the “recurrent acts of aggression against indigenous peoples” in Brazil that have “threatened and restricted” the “effective possession and use” of their lands, but also called upon the State to complete its demarcation of indigenous lands by 2007 and “adopt *urgent measures* to recognize and protect, in practice, the right of indigenous peoples to own, develop, control and use their lands, territories and resources.” These recommendations echoed the same concerns that the Committee expressed as far back as 1996 regarding Brazil’s failure to address indigenous lands and territories.
3. Immediate and increased attention to the situation in RSS is urgently needed due to the presence of a pattern of escalating racial hatred and violence towards indigenous peoples. As described below, this hatred and violence has the support of significant elements within local government and law enforcement and now has been markedly exacerbated by the recent failure of the Government of Brazil to meet its self-imposed deadline to complete the removal of illegal, non-indigenous settlers from this area by 15 April 2006. This deadline was established by Presidential decree issued just one year earlier on 15 April 2005 (attached at Annex A) which provided that all non-indigenous occupants would be removed and appropriately compensated by this date.
4. Since the Committee’s last review of Brazil in 2004, the situation of indigenous peoples in Raposa Serra do Sol has considerably worsened, to the point of requiring urgent international action. Brazilian authorities have failed to abide by their own laws, neglecting their task to remove rice-growers and other non-indigenous settlers from the area, one of the major causes of environmental damage, cultural loss and physical violence against the legitimate owners of the land. Meanwhile, public authorities and special interests are allowed to not only dictate national policy and violate federal law, but also to discriminate against indigenous peoples and foster an

environment where acts of aggression against indigenous peoples are not deterred and are met with a certain acquiescence. Embroiled in numerous juridical challenges by opposition interest groups, and faced with the ineffective and sluggish actions of the national government, RSS is in the midst of a legal limbo which only favors the vested economic and political interests in the area opposed to indigenous rights over lands and resources. Consequently, with almost three decades since the Government started the formal process of demarcation and tiling now passed, the indigenous peoples that inhabit the area face a somber situation with increasing and actual threat to their lives and security, and to the integrity and enjoyment of their ancestral territories.

5. The issuing of the Presidential Decree ratifying the demarcation of RSS on April 15, 2005, and the year leading up to its deadline, have been witness to increased discrimination and violence against the indigenous communities living in the area. As described in greater detail below, indigenous schools and missions have been burned. Villages and food supplies have been destroyed. Indigenous families have been displaced and left homeless. Bridges permitting sole access to indigenous areas have been set on fire and vandalized, and members of indigenous communities have been threatened, beaten, kidnapped and shot. These acts are racially oriented, with no other purpose than denying the indigenous peoples of RSS the right to live in the lands they have traditionally used and occupied.

6. As such, the demarcation and titling of RSS has surpassed mere regional importance. It has been elevated to a symbolic and political importance that has captured the attention of the entire nation. As such, the resolution of the serious threats currently faced by RSS' indigenous communities is poised to define the legacy of the administration of President Luiz Inácio Lula da Silva as it relates to the protection of indigenous peoples and their lands

7. Now, with the Presidential decree unfulfilled, the parties responsible for these acts of violence are only increasing in power and organization as completion of the removal of non-indigenous settlers is drawn out. As supported by this Committee's own jurisprudence (discussed below), Brazil's failure to make effective the indigenous peoples' rights to their lands, territories and resources and to protect them from these recurring and ever increasing acts of aggression constitute an ongoing violation of its obligations under the Convention and threatens irreparable harm to indigenous peoples, individually and collectively.

8. For these reasons, in order to avoid an escalation of conflict, serious violations of the Convention, and any further immediate and irreparable harm, the submitting organizations respectfully request that this Committee elevate its dialogue with and oversight of Brazil by considering the situation of Raposa Serra do Sol under its Follow Up and Early Warning and Urgent Action procedures and by engaging the Government of Brazil before its next session in February of 2007. In particular, this communication requests that the Committee:

- a) Adopt an Urgent Action decision expressing its profound concern over the delay in implementing measures to remove non-indigenous settlers from RSS, a situation that threatens the life and physical integrity of the indigenous communities living in the area, while depriving them from lands they require for their subsistence production.
- b) Request the Brazilian Government to fully implement, as a matter of urgency, the

Presidential Ratification Decree of April 15, 2005 and to take immediate measures to complete, as a matter of urgency, the process of removal and compensation of non-indigenous intruders living in the area.

c) Request the Brazilian Government to fully implement, as a matter of urgency, the Presidential Ratification Decree of April 15, 2005 and to take immediate measures to ensure the safety and security of indigenous communities; providing the competent authorities with the resources they need to discharge their tasks, and consulting with the indigenous communities concerned.

d) Request that the Brazilian Government and other state and local authorities abstain from any activity that would result in the removal of indigenous peoples and communities from RSS or the further diminishment of the lands and resources they have traditionally occupied or otherwise used.

e) Consistent with the Committee's authority under Article 65 of its rules of procedure, ask the Government of Brazil to provide information on this issue for the Committee's review during its next session in February of 2007.

9. We are confident that this Committee can take the necessary measures to assist and encourage the Government of Brazil to immediately finalize the titling of Raposa Serra do Sol in order to protect the physical, territorial and cultural integrity of the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona indigenous peoples. The Committee's urgent action in favor of RSS could be viewed as a test of Brazil's willingness to move forward with and meet the 2007 deadline recommended by the Committee in 2004.

**Formal Request to Initiate
Early Warning and Urgent Action Procedures
To Avoid Immediate and Irreparable Harm
To the Indigenous Peoples of Raposa Serra Do Sol, Brazil,
And Follow-Up on Brazil's State Party Report (CERD/C/431/Add.8)**

I. Introduction

10. Brazil acceded to the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter 'the Convention' or 'ICERD') in 1969. It is therefore bound to respect and guarantee the rights set forth therein without delay. It has failed to do so with regard to the indigenous peoples of Raposa Serra do Sol, who continue to suffer pervasive and institutionalized racial discrimination on a daily basis.

11. This Committee has acknowledged the plight of indigenous peoples in Brazil on more than one occasion – in particular the violence perpetrated against them in the context of land demarcation and related conflicts. For instance, in 1996 this Committee noted its “special concern” for “vulnerable populations, in particular indigenous peoples, blacks and mestizos” and about the “discriminatory attitudes” toward the same with respect to a number of areas including “the right to live and security of person” as well as “land ownership, [and] land use.”¹ The Committee went on to state the following:

[I]ndigenous populations encounter serious discrimination in regard to enjoyment of their civil, political, economic, social and cultural rights. Special concern is expressed about the unfair treatment of the indigenous populations during land demarcation and distribution, the violent and unlawful means used to settle numerous land disputes and the violence and intimidation used against them by private militias and even occasionally by members of the military police.”²

12. In light of these findings, over a decade ago this Committee recommended that the “State party ...adopt fair and equitable solutions for the demarcation, distribution and restitution of land.”³

13. As indicated above, the Committee followed up on these issues again in 2004 stating the following:

While the Committee takes note of the State Party's objective to complete the demarcation of indigenous lands by 2007 and considers it an important step towards

¹ Concluding Observations of the Committee on the Elimination of Racial Discrimination: CERD/C/304/Add.11, para. 10 (27 September 1996).

² *Ibid.* para. 14.

³ *Ibid.* para. 42.

securing the rights of indigenous peoples, it remains concerned at the fact that effective possession and use of indigenous lands and resources continues to be threatened and restricted by recurrent acts of aggression against indigenous peoples.

In the light of General Recommendation XXIII on the rights of indigenous peoples, the Committee recommends that the State party complete the demarcation of indigenous lands by 2007. Furthermore, the Committee recommends that the State party adopt urgent measures to recognize and protect, in practice, the right of indigenous peoples to own, develop, control and use their lands, territories and resources. In this connection, the Committee invites the State party to submit information on the outcome of cases of conflicting interests over indigenous lands and resources, particularly those where indigenous groups have been removed from their lands.⁴

14. The Committee has not been alone in expressing concern over the devastating impact that land demarcation issues have had on indigenous peoples in Brazil. The United Nations' Human Rights Committee addressed this issue in its Concluding Observations of 1996 and more recently in 2005. In 1996 the Committee stated the following:

The Committee is particularly concerned over the existence of racial and other discrimination against black and indigenous persons. It notes that the Government has been pursuing a process of demarcation of indigenous lands in Brazil as a means of addressing the rights of the indigenous communities, but regrets that the process is far from completion.⁵

15. In December of 2005 the Human Rights Committee went on to reiterate one more time the need to expedite the demarcation process to protect the human rights of indigenous peoples. Its Concluding Observations on Brazil stated:

The Committee is concerned about the slow pace of demarcation of indigenous lands, the forced evictions of indigenous populations from their land and the lack of legal remedies to reverse the evictions and compensate the victimized populations for the loss of their residence and subsistence (citing Art. 1 and 27) ...[and recommending that] [t]he State party should accelerate the demarcation of indigenous lands and provide effective civil and criminal remedies for deliberate trespass on those lands.⁶

16. As detailed below, the situation in Brazil's RSS territory has deteriorated to the point that the physical and cultural integrity of indigenous peoples is seriously threatened, leading to the current tragic situation. At a minimum, urgent action is required to avoid further immediate and irreparable harm to their lands and resources and their cultural rights. The Inter-American Commission on Human Rights has also reached this conclusion. Following an initial petition

⁴ Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, UN Doc. CERD/c/64/C/2 (2004), para. 15 (emphasis added) (hereinafter, CERD 2004 Concluding Observations: Brazil).

⁵ Concluding Observations of the Human Rights Committee: Brazil. CCPR/C/79/Add.66; A/51/40 para. 320 (24 July 1996).

⁶ Concluding Observations of the Human Rights Committee: Brazil. CCPR/C/BRA/CO/2, para.6 (1 December 2005).

under its complaint procedure, on 6 December 2004, the Commission issued precautionary measures in *Indigenous peoples Ingaricó, Macuxi, Patamona, Taurepang and Wapichana*, Case 818.04 (Brazil) (attached at Annex B) finding that the “lives, personal safety, and territorial occupation of the members of these indigenous peoples are in imminent danger because of the process of delimiting lands, which has been pending since 1977.”⁷

17. Interestingly, in Brazil’s 17th report to this Committee, it noted that even its own National Preparatory Committee established by the Government of Brazil for the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance noted the urgency and severity of the situation in RSS. As a result, the Preparatory Committee proposed that Brazil complete “the demarcation of indigenous lands – territorial protection and removal of illegal occupants, with the implementation of urgent measures in those areas in which conflict is imminent, such as the Macuxi territories in Roraima...”⁸

18. CERD has affirmed on numerous occasions that the Convention applies to indigenous and tribal peoples and requires states to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources” as well as their right to participate in and consent to activities that may affect their rights.⁹ It has also emphasized “that all appropriate means must be taken to combat and eliminate such discrimination” against indigenous and tribal peoples.¹⁰ CERD’s General Recommendation XXIII directly addresses one of the most serious threats facing indigenous and tribal peoples in Brazil – loss of lands and resources in the context of resource exploitation – and observes that these threats are directly related to preservation of cultural and historical identity.¹¹

19. Together with CERD, other international human rights bodies have highlighted the fundamental connection between recognition of and respect for indigenous and tribal land and resource rights and cultural integrity and survival. Both the UN’s Human Rights Committee¹²

⁷ *Povos Indígenas Ingaricó, Macuxi, Patamona, Taurepang e Wapichana, 818-04, Brasil, Pedido de Medidas Cautelares* (6 December 2004) cited in Annual Report of the Inter-American Commission on Human Rights 2004, OEA/Ser.L/V/II.122, Doc. 5 rev. 1 (23 February 2005).

⁸ See Reports Submitted by Status Parties Under Article 9 of the Convention, Seventeenth Periodic Reports of State Parties Due in 2002, Addendum, Brazil, UN Doc. CERD/C/431/Add.8, para. 41 (16 October 2003).

⁹ General Recommendation No. XXIV: Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Art. 1), para. 1 (27 August 1999); General Recommendation XXIII on Indigenous Peoples, para. 5 (18 August 1997); and Decision 2(54) on Australia, para. 4 - “land rights of indigenous peoples are unique and encompass a tradition and cultural identification of the indigenous peoples with their lands that has been generally recognized.”

¹⁰ General Recommendation XXIII, para. 1 (“The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.”)

¹¹ *Ibid.* at para. 3.

¹² See e.g., *Bernard Ominayak, Chief of the Lubicon Lake Band vs. Canada*, Report of the Human Rights Committee, 45 UN GAOR Supp. (No.43), UN Doc. A/45/40, vol. 2 (1990), 1; *Kitok vs. Sweden*, Report of the Human Rights Committee, 43 UN GAOR Supp. (No.40) UN Doc. A/43/40; *Lovelace vs. Canada* (No. 24/1977), Report of the Human Rights Committee, 36 UN GAOR Supp. (No. 40) 166, UN Doc. A/36/40 (1981); *I. Lansman et al. vs. Finland* (Communication No. 511/1992), CCPR/C/52/D/511/1992; *J. Lansman et al. vs. Finland* (Communication No. 671/1995), UN Doc. CCPR/C/58/D/671/1995; Concluding observations of the Human Rights

and the Inter-American Commission and Court of Human Rights¹³ have also affirmed the recognized the importance of protecting the special relationship that exists between indigenous peoples and their ancestral lands.¹⁴

20. In the past two years since the submission of Brazil's last periodic report and this Committee's review of the same, the situation in RSS has intensified and the territorial, physical and cultural integrity of the indigenous peoples living therein has been placed at great risk. The land conflicts have escalated to the point where serious violations of the Convention need to be addressed with urgency.

21. Good faith efforts by the indigenous peoples of RSS and their representatives to resolve issues of ownership of lands and resources and protection of the physical and cultural integrity of the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona indigenous peoples have not resulted in resolution of these matters through State action or any constructive dialogue with local authorities. This leaves them little option but to seek assistance and redress at the international level. The need for such assistance is urgent and compelling as indigenous and tribal peoples continue to face irreparable harm. This request seeks such urgent assistance. The precise request is set out in Section X below.

Committee: Australia. 28/07/2000. CCPR/CO/69/AUS; General Comment No. 23 (50) (art. 27), adopted by the Human Rights Committee at its 1314th meeting (fiftieth session), 6 April 1994. UN Doc. CCPR/C/21/Rev.1/Add.5.

¹³ The Inter-American Court on Human Rights has observed that: "By virtue of the fact of their very existence, indigenous communities have the right to live freely on their own territories; the close relationship that the communities have with the land must be recognized and understood as a foundation for their cultures, spiritual life, cultural integrity and economic survival. For indigenous communities, the relationship with the land is not merely one of possession and production, but also a material and spiritual element that they should fully enjoy, as well as a means through which to preserve their cultural heritage and pass it on to future generations." See *The Mayagna (Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001, Inter-Am. Ct. H.R. Ser. C No. 76, at para. 149. See also, Report on the Situation of Human Rights in Ecuador, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.96 doc.10, rev.1 (1997), 115; Second Report on the Situation of Human Rights in Peru, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.106, Doc 59 rev., June 2, 2000, Ch. X, para. 16; General Comment No. 23 (50) (art. 27), adopted by the Human Rights Committee at its 1314th meeting (fiftieth session), 6 April 1994. UN Doc. CCPR/C/21/Rev.1/Add.5; *Bernard Ominayak, Chief of the Lubicon Lake Band vs. Canada*, Report of the Human Rights Committee, 45 UN GAOR Supp. (No.43), UN Doc. A/45/40, vol. 2 (1990); and, United Nations draft Declaration on the Rights of Indigenous Peoples. UN Doc. E/CN.4/Sub.2/1993/29, Annex, arts. 7, 25 and 26.

¹⁴ The first report of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people's also provided the following: "[t]he Special Rapporteur considers, on the basis of the evidence and in agreement with Ms. Daes, that land, territory and resources together constitute an essential human rights issue for the and, that "[f]rom time immemorial indigenous peoples have maintained a special relationship with the land, their source of livelihood and sustenance and the basis of their very existence as identifiable territorial communities." The report also observes that "Indigenous communities maintain historical and spiritual links with their homelands, geographical territories in which society and culture thrive and which therefore constitute the social space in which a culture can reproduce itself from generation to generation." Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2001/57. UN Doc. E/CN.4/2002/97, paras. 30-33, 39, 49 & 57.

II. Raposa Serra do Sol and its Importance to Indigenous Peoples

22. The Raposa Serra do Sol indigenous territory is located in northern state of Roraima, bordering Guyana and Venezuela. The territory currently covers approximately 1.7 million hectares. RSS is the traditional homeland of the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples. The total population of these five groups amounts to approximately 15,000 to 16,000 members organized in 159 communities that stretch across four different regions. These regions are Serras, Baixo Cotingo, Raposa and Surumú.

23. Each of these communities is presided over by a *tuxaua* (village leader) and each of the four regions is coordinated by a Regional Indigenous Council, conceived as supra-village structures that would bring together indigenous communities where villages are spread across vast geographical areas. In 1987, a general assembly of *tuxauas* decided to create an organization with a head office in Boa Vista (the capital of the state of Roraima) to represent indigenous interests at the local and national level and to follow up on the demands and needs of the indigenous peoples of Roraima. Initially formalized as the Indigenous Council of the Territory of Roraima (CINTER), this organization later became known as the Indigenous Council of Roraima or Conselho Indígena de Roraima (CIR) – one of the submitting organizations. Since its inception, the CIR has been the main organization responsible for advancing the claims of delimitation, demarcation and titling of RSS.

24. Raposa Serra do Sol constitutes an integral territory for all the indigenous groups that inhabit the area, where they base their material, cultural and spiritual life. Various locations within the RSS area possess a fundamental importance for the preservation of indigenous cultures and societies. RSS's indigenous communities have adapted generation after generation to the life conditions of their environment and practice a subsistence economy based on sustainable use of natural resources and periodic migration during the rainy season. As a result of their periodic migrations, as well as their hunting expeditions and rituals, the indigenous peoples living in RSS exert influence over a vast geographical area. The combination of those activities constitutes an integral whole. In the terms of an official report on RSS published by the National Indian Foundation (FUNAI), the Brazilian indigenous agency,

All those activities, practiced by the ensemble of local groups, define a complex set of procedures for the exploitation of natural resources in the area, giving rise to a system of production and distribution of goods indispensable for the survival, both physical and cultural, of the indigenous groups concerned.¹⁵

25. In connection to the above, the integral protection of Raposa Serra do Sol's indigenous territory is further justified by the need to protect the natural environment in the area. RSS indigenous communities have contributed for generations to preserve a delicate balance with the environment in their traditional habitats. Over the years and until the present, however, RSS has

¹⁵ FUNAI-Ministério de Justiça, *Relatório sobre a proposta de demarcação da área indígena Raposa Serra do Sol, após o levantamento fundiário, feito por Grupo Técnico designado pelas Portarias No. 1.141/92 e 1.553/9 (1993)* (endorsed by the Minister of Justice, Renan Calheiros, by Portaria [Decree] 820/98-MJ) [Hereinafter, *FUNAI Report on RSS*]

faced a number of environmental pressures from non-indigenous settlers on their lands. These pressures have threatened their lives and cultural existence given that all are intrinsically linked. Some of the most immediate environmental problems are those that have been left to accumulate by ranchers and rice-growers who remain in the area. These problems include deforestation and burning, soil erosion, water and soil contamination and illegal fish killing, affecting communities' livelihoods with polluted water for drinking, bathing and cooking. There is also evidence of illegal damming of streams, silting due to unsustainable agricultural practices, and improper garbage disposal and cattle butchering operations.

26. The principle of integrality of the territory is a natural corollary of indigenous peoples' own views of their relationship to traditional lands, and the multiple implications of this relationship. According to an expert's description of indigenous peoples' relation to their ancestral lands in RSS,

The Land possesses multiple meanings (i.e. the spirits of the land, of water, the home of mythological "heroes", etc.). It implies an "Other," whom [indigenous peoples] relate to as one subject to another subject, quite different from the Western subject-object (of exploitation) relationship. That defines a special relationship with the Land... towards they need to be grateful when it is fertile, and fearful when it is enraged. They consider it as a being, of a non human category, which can be never possessed. This explains the difficulties those societies find to understand the easiness of our invasions, as well to as to unite in the defense of their rights, for the Land is not susceptible of being negotiated, limited, and violated¹⁶.

27. The integrality of the RSS territory is further explained by the cohabitation of different indigenous peoples in the same environment, the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana peoples, subgroups of the broader Arawak, Kapon and Pemon, families. The different peoples that inhabit RSS have developed close cultural and social ties that make them closely intertwined.

The Raposa Serra do Sol indigenous area is part of that category of lands inhabited by different ethnic groups, closely interrelated. A prolonged cohabitation, though not always peaceful, has made them become closer in cultural terms, to the point of developing an intricate and complex network of exchanges, alliances, and ties at different levels: economic, political, religious, linguistic, etc.

The preservation of the customs and uses of those peoples, i.e. their cultural reproduction, depends profoundly on the preservation of their territorial unity, without which the chain that links the different parts of the system is lost, turning it indiscernible.¹⁷

28. The integral use of the lands and resources, and the close social and cultural ties that connect the different indigenous peoples living in the area, justify the need to preserve the unity of the territory in the form of an official title over the totality of the RSS lands. The rights of these peoples over their traditional territory must be enforced through demarcation and titling, and

¹⁶ *Ibid.*

¹⁷ *Ibid.*

other positive measures of protection adopted by the State. As put by FUNAI, the full and contiguous demarcation of this area represents an “anthropological requirement”, as well as “a constitutional imperative, given that the Constitution explicitly provides for the recognition and protection of all the lands required for the physical and cultural reproduction of indigenous groups”.¹⁸

29. The lack of effective measures to demarcate and title the RSS indigenous territory, a process that has elapsed for almost three decades, has been a major factor in bringing about the current state of threat and lack of protection experienced by indigenous peoples in the relation to their traditional lands. The encroachment and colonization of those lands, the illegal creation of new population centers, the different agricultural practices and forest exploitation of the area by non-indigenous groups, and the resulting damage to the environment has put the indigenous peoples’ cultures and distinct lifestyles in serious jeopardy.

III. Structural Discrimination against the Indigenous Peoples of Raposa Serra do Sol: Massive Colonization, Environmental Destruction and Cultural Loss

30. The serious challenges currently faced by the demarcation of RSS are best understood by looking at the situation of structural discrimination generally experienced by indigenous groups in the state of Roraima and other Brazilian states in the Amazon region. Roraima has, proportionally, one of the largest indigenous populations in the country as it is home to the Macuxi, Patamona, Ingaricó, Wapichana, Taurepang, Yanomami, Yekuana, Wai Wai and Waimiri-Atroari indigenous peoples. It is also the Brazilian state where conflicts over land have been the most intense and recurrent in recent years. The state population is steadily increasing with a large number of Brazilians from other parts of the country arriving to prospect for gold or to find work. It is well-known that the state government is closely linked to mining, ranching, and other interests – and is therefore often anti-indigenous. As the Government of Brazil promotes demarcation and titling of the area, political groups who defend the interests of ranchers, miners, rice farmers and gold prospectors, have protested both ardently and often violently. This tense situation is exacerbated by Roraima’s location on the borders of Venezuela and Guyana. The increased militarization of border areas provides yet another source of pressure on already polarized economic and political interests as well as antagonism toward any perceived “internationalization” of the area.¹⁹

31. This Committee has already recognized that there are “deep structural inequalities” affecting the indigenous peoples of Brazil.²⁰ This is particularly apparent in Roraima and RSS, where a significant number of indigenous communities suffer from various social and environmental problems, such as nutritional and alimentary deficiencies, lack of adequate and appropriate educational opportunities, emigration of youth, communal violence and increased incidences of

¹⁸ See FUNAI Report on RSS, *supra* (unofficial translation).

¹⁹ Local papers are filled with statements by government officials from Roraima alleging the often repeated claim that foreign NGOs are behind the demarcation of Raposa Serra do Sol. See Mayor Paulo Cesar Quartierno of Pacaraima, in *Folha de Boa Vista* (20 February 2006); Egídio de Moura Faltão in the *Folha de Boa Vista* (1 May 2006); and Governor Ottomar Pinto in *Folha de Boa Vista* (14-16 April 2006).

²⁰ CERD 2004 Concluding Observations: Brazil, para. 12.

alcohol abuse.²¹ The anti-indigenous sentiments of the people and the state of Roraima permeate the state's institutions and result in obvious discrimination. This is best perceived in relation to the process of demarcation of RSS.

32. Roraima's state authorities typically support the economic and political interests of local elites, which in turn conflict with the prospects of recognition of a permanent land base to the indigenous communities of RSS. Roraima's state authorities have been overt, and even vehement, in their opposition to the demarcation of RSS by the Federal Government. In the meantime, the Federal government's failure to provide a permanent federal police presence in the area and to take the necessary steps to ensure that all acts of aggression against indigenous individuals and institutions are sanctioned has only contributed to the perpetuation of violence and lawlessness. Public authorities have indeed contributed, either actively or passively, to the current atmosphere of racial hatred and violence experienced by indigenous communities in RSS. And the fact that some of the most blatant opposition to the demarcation of RSS comes from Roraima's authorities is not a valid argument to deny the responsibility of the Brazilian State as a whole in this situation.

33. The opposition to the demarcation of RSS is exemplified by a policy of induced colonization promoted by the public authorities since the early 1980s. In 1982, when Roraima was still a Federal Territory, the Municipality of Normandia was established, whose jurisdiction overlaps with the RSS lands identified earlier by FUNAI as an area of traditional indigenous occupation. In 1995, the Governor of Roraima passed two new statutes, Law No. 96 and No. 98, establishing the municipalities of Uiramutã and Pacaraima; both of which overlap with the RSS indigenous territory. The creation of these municipalities and the establishment of new towns have fueled acute tensions between the indigenous communities and non-indigenous settlers. Referring to this situation, the Inter-American Commission on Human Rights noted in its 1997 special report on Brazil that:

A new problem which superimposes itself of the lack of administrative of demarcation and the invasions of indigenous lands is the creation of the administrative center of the municipalities that lie in part or in their entirety within the lands claimed and/or demarcated as indigenous areas....The creation of new municipalities in fact serves as a tool for dividing the local indigenous peoples...At the same time, the municipality's structure and its power relations tend to favor the settlement of non-indigenous persons – along with public services and authorities which compete with the ones already provided by or accepted by the indigenous authorities—in those areas.²²

34. The serious problems provoked by massive colonization and settlement by non-indigenous population is best exemplified by the situation of rice-growers, now one of the major barriers that prevent RSS' indigenous communities from enjoying their rights over lands and natural resources in the area. The majority of the rice-producers currently in RSS started arriving in the late 1990's, after the demarcation of RSS, purchasing or renting these lands from small non-indigenous farmers. At present, there are 13 rice growing areas, including farms whose size

²¹ “*Relatório de Casos de Violência*”, Conselho Indígena de Roraima, 2003.

²² 1997 report, paras. 42-43.

ranges from 1,300 ha to nearly 9,000 ha, and covering a total area of 45,168.86. This extensive area is owned by only 11 rich rice-producers..²³

35. A recent study²⁴ done by CIR in collaboration with scientists from the National Institute for Amazonian Studies (INPA) demonstrates both the environmental impact and expansion of rice-production in RSS. Since 1992, the first year in which rice farms are detected in RSS, their area has grown by nearly 7 times. The pace of growth remains the same both prior to and after the 1998 Portaria 820, which is the date which defines “bad faith” settlement and investments in the area. More than half of these areas, therefore, are in “bad faith”, having been created or expanded since 1998, as shown by satellite image data²⁵.

36. Rice production in RSS has brought about serious environmental damage to indigenous peoples’ traditional habitats. The most serious environmental impacts of rice production include the elimination of native vegetation, leading to loss of local biodiversity; and changes in hydrological structures, with lakes and streams disappearing, shrinking or changing dimensions. Other problems, including the death of birds, fish and cattle; poisoning of people in neighboring villages; and other issues related to aerial spraying of pesticides have also been denounced by communities. However, these serious environmental damages have never been thoroughly investigated or compensated for by public authorities²⁶.

37. Rice production has also impeded indigenous communities’ rich and varied cultural and spiritual practices within RSS. The rice-growing areas in RSS were once hunting and fishing grounds for the Macuxi. Various game animals, such as turtle, armadillo, wild boar, and deer, are no longer found in the area. The rice farms have occupied fishing grounds, including the “Pedra Preta”, a sacred place important to Macuxi history and mythology, from which fishing expeditions would begin. The areas were also pathways from Macuxi communities in the *Serras*, or Hills, to Boa Vista and to other communities. Fences built by the rice-producers have impeded passage through these areas, isolating communities.²⁷

38. The explicit support and promotion of colonization, agro-industrial production, and other vested economic interests by the government of Roraima is one of the main reasons for the failure to demarcate and otherwise protect indigenous peoples’ rights over their lands and natural resources in RSS. The failure to recognize and protect indigenous territories is yet an example of the structural discrimination suffered by indigenous peoples in Roraima and other parts of Brazil, a discrimination in which local government authorities have played an active role and the Federal authorities has not checked.

²³ *Lista dos Ocupantes não-índios/Arrozeiros na TI Raposa Serra do Sol.*, Conselho Indígena de Roraima, Departamento Jurídico, 2006.

²⁴ *O avanço de monoculturas na TI Raposa Serra do Sol, Roraima. Uma análise histórico-espacial por sensoriamento remoto.* Lauriola, Carneiro Filho, da Costa and Malheiro. 2006.

²⁵ Ibid. p.5.

²⁶ Ibid. p. 4., and *Relatório de pesquisa de campo realizado nas comunidades Homologação, Raposa Serra do Sol, Jauri, e São Francisco no Baixo Surumu, Terra Indígena Raposa Serra do Sol*, Carlos Cirino, August 7, 2004.

²⁷ Cirino, 2004.

IV. Brazil's Demarcation and Titling Process: Justice Delayed and Equality before the Law Denied

39. The commencement of the administrative process required to delimit, demarcate and title the Raposa Serra do Sol lands formally began almost thirty years ago and the indigenous peoples of the territory are still waiting amidst increasing uncertainty about their future and well-being. Despite the objectives set forth in the Brazilian Constitution of 1988 (that established the deadline of 1993 to demarcate all indigenous lands in the country²⁸), Brazil has repeatedly failed to implement *effective* measures in order to bring forth the demarcation and titling of RSS indigenous land. It is acknowledged that for years now the Brazilian Government has maintained some form of engagement with the matter of RSS, regularly expressing its political will to complete the demarcation and titling process. Unfortunately, that engagement has always fallen inexcusably short of what is required of a responsible State to equally protect the rights and physical integrity of all of its inhabitants.

40. As demonstrated below, Government officials have abused their discretion in executing the demarcation and titling process established by Brazil's own laws, and failed to take all necessary steps to not only expedite and avoid excessive delays in the process, but also to regain control over the region and protect both the lands and lives of the indigenous peoples of RSS. Instead, the Government's perversion of the demarcation process and its omissions and torpidity has let local interests and authorities dictate national policy and in the process, lead to Brazil's violation of its international obligations under the Convention.

A. The Legal Framework of Indigenous Lands in Brazil

41. The Federal Constitution of 1988 establishes that all lands traditionally occupied by indigenous people belong to the State (União).²⁹ However, while indigenous *ownership* of ancestral lands is not provided for in Brazilian law,³⁰ under the Constitution indigenous people do have the right to their possession and to the exclusive use of soil, rivers and lakes therein.³¹ According to Art. 231(1) of the Constitution:

²⁸ Federal Constitution of Brazil, 1988, Art. 67.

²⁹ Federal Constitution of Brazil, 1988, Art. 20.

³⁰ Contrary to Brazil's assertion in its 2004 report to the Committee that the Constitution respects indigenous peoples' "original rights to the lands they have historically occupied", Brazil's national law does not allow for indigenous ownership of their ancestral lands. See Reports Submitted by States Parties Under Article 9 of the Convention, Seventeenth Periodic reports of States parties due in 2002, Addendum, Brazil, CERD/C/431/Add.8, para. 41 (16 October 2003) (hereinafter, Brazil Periodic Report 2003). This is a violation of Brazil's obligations under existing international law which, as discussed above, recognizes the right of indigenous peoples to own, use and control the lands, territories and resources they have traditionally used and occupied. Such a right has been affirmed by the Inter-American Commission and Court of Human Rights, by the jurisprudence of various UN treaty bodies, and numerous domestic courts. See generally, Annex II of "Indigenous Peoples' Permanent Sovereignty over Natural Resources: Final Report of Special Rapporteur, Erica-Irene A. Daes", UN Commission on Human Rights, E/CN.4/Sub.2/2004/30 (July 13, 2004) (describing the domestic and international legal developments recognizing indigenous land and resource rights).

³¹ Constitution of Brazil, Articles 231.

Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those which are indispensable to preserve the environmental resources required for their well being and those necessary for their physical and cultural reproduction, according to their uses, customs, and traditions.

42. As the property of these lands belongs to the Federation, its demarcation is determined through a federal administrative process that focuses on identifying the traditional occupation of the indigenous peoples and thereby the physical limits of the land in question. As stated by Brazil in its last report to this Committee in 2003, the “Union has the duty to demarcate indigenous lands, protect them, and ensure respect for all the property thereon.”³² To this end, the 1988 Constitution set forth the deadline of 1993 to demarcate all indigenous lands in the country³³.

43. The procedure for the demarcation of indigenous lands is regulated by the Indian Statute, Law N° 6.001, promulgated in 1973³⁴, and by Presidential Decree 1.775/96, from 1996³⁵, which lays out the various phases for the demarcation and titling process as stipulated in previous decrees. The procedure can be divided into six stages. These six stages are: (1) identification and delimitation; (2) a public protest period; (3) decision by the Minister of Justice; (4) physical demarcation; (5) Presidential ratification; and finally, (6) registration.

44. Under Brazilian law, the demarcation of indigenous lands is an administrative act, issued by a Ministerial Administrative Ruling (known as a “Portaria Ministerial”), and on the basis of an initial study conducted by FUNAI, the Brazilian indigenous agency. That administrative ruling is not definitive, though, and requires legal ratification (or “homologação”), through a Presidential Decree. By sanctioning the administrative ruling, the Presidential decree authorizes the final removal and compensation of non-indigenous occupants, as well as the official registration of the land.

45. Despite the Constitutional protection of indigenous lands and the existence of a special procedure with defined timelines for carrying out the delimitation, demarcation and titling of indigenous lands, as applied by the State in the case of RSS, Brazil’s laws have proven cumbersome, ineffective, and vulnerable to unjustified delays and political influence. The Constitutional commitment to demarcate all indigenous lands by 1993 has long passed and still vast indigenous territories remain without title. The demarcation and titling process remains severely unfunded and it is the object of constant attacks by vested political and economic interests. This situation has given rise to a complex geography of conflicts all over Brazil in which indigenous peoples continue to suffer from discriminatory practice as regards to their right to enjoy their lands and natural resources. RSS is possibly the best example of how the lack of *effective* mechanisms for the demarcation and protection of indigenous lands in Brazil can result in serious human rights violations.

³² Brazil Periodic Report 2003, para. 41.

³³ Federal Constitution of Brazil, 1988, Art. 67.

³⁴ Law N° 6.001 of 19 December 1973, published in the *Diário Oficial* on 21 December 1973.

³⁵ Decree No. 1.775, of 8 January 1996, which “defines the administrative procedure for the demarcation of indigenous lands and other provisions.”

B) The Failure to Protect RSS Indigenous Lands

46. Since its inception, the process of demarcation of RSS has been politicized and held hostage by powerful special interest groups, questionable execution, and the abuse of power. In this context, it is no surprise that after almost three decades since FUNAI conducted its first study of the ancestral lands in RSS, the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona peoples are still waiting for justice. While they wait, their lives, homes and cultures are also held hostage by threats, violence, and a future of uncertainty.

1. Unjustified Delay in the Demarcation of RSS Lands

47. Raposa Serra do Sol's demarcation process began in 1977 when FUNAI began its first study in the area. It failed to conclude this study, and other similarly fated initiatives took place in 1979, 1984 and 1989. None were completed. Only in 1993 did FUNAI finally present a conclusive proposal for RSS's demarcation. In this report FUNAI concluded that the RSS territory originally covered 1.678.800 hectares (4,642,615 acres) in what is now present day Roraima³⁶. In 1993, FUNAI sent the results of its study to the Minister of Justice.

48. According to Brazilian legislation, upon receiving the FUNAI study results, the Minister has only two options – within *thirty* (30) days of receiving the study, s/he must accept the FUNAI conclusion or send it back for revision. In the case of RSS, it took *three years* – until 1996 – for Minister of Justice Nelson Jobim to take a decision on FUNAI's study. His *Despacho Ministerial No. 80/96* (Ministerial Instruction) arbitrarily decided that several areas should be excluded from the limits proposed by FUNAI.

49. In 1998, however, now *five years* after FUNAI's initial release of its study, the new Minister of Justice, Renan Calheiros, disregarded the earlier ministerial instruction and recognized the entirety of FUNAI's original delimitation through Portaria Ministerial N^o. 820/98. Pursuant to this new administrative ruling, physical demarcation was carried out by FUNAI in 1999.

50. However, despite the adoption of a new ministerial instruction, the Presidential ratification of this administrative ruling -- which is required for final titling and registration to occur – never followed. In fact, in the case of RSS, the indigenous peoples waited for *eight* long and difficult years for ratification and as described below, when it finally arrived it offered much less than was expected. During those long eight years when Presidential action was painfully absent, the indigenous peoples of RSS were denied due process and an effective legal remedy to vindicate their rights and instead, were forced to live in an environment of increasing violence and aggression.

³⁶ Funai report, 1993.

2. *The Petition Before the Inter-American Commission on Human Rights*

51. With six years passing and still no Presidential ratification, and with no other domestic recourse to secure the enjoyment of their rights, on behalf of the indigenous peoples of RSS, CIR and the Rainforest Foundation-US jointly filed a petition before the Inter-American Commission on Human Rights on 29 March 2004. The complaint alleged the violation of articles 21 (private property); 24 (equality before the law); 5 (right to personal integrity); 12 (freedom of conscience and religion), 22 (right of circulation and residence) and 25 (judicial protection) of the American Convention on Human Rights³⁷, and related provisions of the American Declaration of the Rights and Duties of Man,³⁸ due to Brazil's continuous failure to take definitive steps to title RSS—and, in particular, the lack of ratification of the indigenous territory—and to protect indigenous peoples living in the area, while actively promoting the colonization of RSS by non-indigenous settlers.³⁹

52. The complaint originally filed by the petitioners before the Inter-American Commission also included a request for precautionary measures, justified by the climate of imminent threat to the physical and cultural integrity of the indigenous communities living in the area. In communications dated August 2004 and December 1, 2004, the petitioners provided further information on serious legal threats of removal of indigenous communities and ongoing attacks on community members and property, including the violent raid of four indigenous communities in RSS on 23 November 2004. On December 6, 2004, the Commission adopted precautionary measures in favor of the communities concerned, ordering the Brazilian government to:

1. Protect the life and personal integrity of the members of the indigenous peoples Ingaricó, Macuxi, Patamona, Taurepang and Wapichana, respecting their cultural identity and their special relationship with their ancestral lands.
2. Assure that the beneficiaries can continue to live in their communities without any type of aggression, coercion or threat.
3. Abstain from illegally restricting the right of free circulation of the members of the indigenous peoples Ingaricó, Macuxi, Patamona, Taurepang and Wapichana.

³⁷ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

³⁸ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

³⁹ See Rainforest Foundation US, Press Release: "Indigenous Lawyer Brings Her People's Case to US Human Rights Petition Reveals Sophistication of Indian Warriors" (23 March 2004). The Commission acknowledged receipt of the petition and registered the case as *Indigenous peoples Ingaricó, Macuxi, Patamona, Taurepang and Wapichana* (Case 250-04).

4. Investigate seriously and exhaustively the facts which led to the request for precautionary measures.⁴⁰

53. It was in this context, with the precautionary measures issued by the Inter-American Commission still in force, that the Brazilian Government made a final move with the adoption of the Presidential Decree ratifying the demarcation of RSS. During the period of one year laid out in the decree for its implementation, the Commission has not taken any further steps in the case. In February 2006, however, the Commission requested the petitioners to provide “any information or new fact that [they] may consider relevant and that have not been incorporated into the petition’s file”.⁴¹

3. Final Presidential Ratification

54. As indicated above, bowing to significant international pressure, less than four months after the IACHR issued precautionary measures in the case, the fifth phase of demarcation was realized. President Luiz Inácio Lula Da Silva finally signed in 15 April 2005 a decree ratifying the delimitation and demarcation of RSS. The decree ratified Administrative Ruling 534/05, calling for completion of the titling and removal of non-indigenous settlers by 15 April 2006.⁴² Article 1 of the Decree states that:

The administrative demarcation, promoted by the Fundação Nacional do Índio (National Indian Foundation) – FUNAI, of Raposa Serra do Sol Indigenous Land, for the permanent possession of the Ingarikó, Makuxi, Patamona, Taurepang and Wapixana indigenous groups, is hereby ratified according to Administrative Ruling 534 of the Ministry of Justice, dated April 13, 2005. (Unofficial English translation).

56. Notably, the President did not ratify *Portaria 820/98*, already in force (and upon which the demarcation was carried out by FUNAI). Instead, folding to the political realities on the ground, he ratified a *new* administrative ruling (*Portaria Ministerial* No. 534/05) that was issued just two days earlier by Minister of Justice Márcio Thomaz Bastos (Annex C).⁴³ This new 13 April *portaria* provided for the demarcation of only 1,743,089 continuous hectares. The Supreme Court then extinguished all judicial actions against the former 1998 *Portaria Ministerial* arguing that when this decree was revoked, the claimants lost the legal subject of their case.

57. The new administrative ruling that President Lula ratified differed significantly from the original FUNAI recommendation and the earlier *portaria* of Minister Calheiros. Causing much controversy, the new ruling excluded from the delimitation the disputed urban area of the Uiramutã municipality, state and federal roads that crosses the area, and certain federal and state

⁴⁰ *Povos Indígenas Ingarico, Macuxi, Patamona, Taurepang e Wapichana, 818-04, Brasil, Pedido de Medidas Cautelares* (6 December 2004) cited in Annual Report of the Inter-American Commission on Human Rights 2004, OEA/Ser.L/V/II.122, Doc. 5 rev. 1 (23 February 2005) (unofficial translation).

⁴¹ Letter from Santiago A. Canton, IACHR, to CIR (14 February 2006) [unofficial translation].

⁴² Executive Decree of 15 April 2005, published in *Diário Oficial da União*, Edition N^o. 73 (18 April 2005) (hereinafter Presidential Decree (15 April 2005)).

⁴³ *Portaria* No. 534 of 13 April 2005, published in *Diário Oficial da União*, Edition No. 72 (15 April 2005).

equipment and installations (such as electric transmission lines). It also stated that Monte Roraima National Park (whose creation has been contested by indigenous peoples) must be co-managed by the Federal government and the Ingaricó People, without legal certainty as concerns indigenous peoples' rights over their ancestral lands in that area.⁴⁴

58. Following the established procedure, FUNAI requested the registration of the land within 30 days of the adoption of the Presidential Decree. The land was registered in the local property registers of Uiramutã, Pacaraima and Normandia (the municipalities to which RSS administratively belongs) in August 2005⁴⁵, and still awaits formal registration at the federal level (Serviço de Patrimônio da União).

59. But formal registration is only one step towards the effective enjoyment of land and resource rights by RSS' indigenous communities. One of the key directives of the measures provided for in the Presidential Decree and related administrative order is the removal of "non-indigenous occupants present in the area of Raposa Serra do Sol", which should be carried out "within a reasonable timeframe," and in any event, not over the deadline of a year after the approval of the Presidential Decree⁴⁶. Even though that deadline has passed, on April 15, 2006, Brazil has repeatedly failed to expel illegal settlers from the region, a situation in which overt opposition from economic and political interests at all levels has been key. The continuous permanence of indigenous settlers in the area, backed by local powers, economic entrepreneurs and judicial authorities alike, has been one of the major factors in the situation of violence, destruction, threats, and racial hatred that currently face indigenous communities in the area. This situation makes official recognition of their right to the land ineffective and meaningless.

V. Removal of Settlers: Still Pending

60. Brazilian law sets forth clearly the State's duty to remove non-indigenous settlers from indigenous lands upon demarcation. Although the Brazilian legislation distinguishes between "good faith" and "bad faith" settlers –attributing a right of compensation to the former– the law recognizes no property rights over indigenous lands, which, as discussed above, belong permanently to the "União" The responsibility to remove non-indigenous settlers is vested in FUNAI, the Brazilian indigenous agency, which is expressly attributed the power to call upon the support of security forces for that purpose. As seen above, the April 2005 Presidential

⁴⁴ As suggested above, Uiramutã, with its military base within, is a contentious issue for the indigenous peoples of RSS, as the formation of the municipality after the publication of FUNAI's findings in 1993 is considered to evidence an attempt to colonize indigenous lands. CIR has also filed legal challenges to the construction of the Cotingo Dam and the Guri Transmission line within RSS and the establishment of the army base in Uiramutã and the use of its landing strip. The matter of the National Park is also quite sensitive as the indigenous of RSS never consented to the establishment of the park within their territory to begin with and are not pleased by the decree further validating the existence of the park or the co-management by just one of the many indigenous communities that live in and around the park.

⁴⁵ *Vid.* Serviço do Registro de Imóveis - Justiça do Estado de Roraima, Comarca de Boa Vista – RR, Livro 2 - Registro Geral, Matrícula nº 28895 - Imóvel: área da TI RSS, com área de 811.783,9180 ha, e perímetro de 628.265,41 metros - Município de Uiramutã; Matrícula nº 28896 - Imóvel: área da TI RSS, com área de 811.783,9180 ha, e perímetro de 628.265,41 metros - Município de Paracaima; Matrícula nº 28897 - - Imóvel: área da TI RSS, com área de 811.783,9180 ha, e perímetro de 628.265,41 metros - Município de Normandia

⁴⁶ Portaria Nº 534, art. 5 (non-official translation)

Decree ratifying the demarcation of RSS restates this duty to remove non-indigenous settlers from the indigenous land.

61. Despite all the time that has passed since the adoption of the Presidential Decree and the meeting of the deadline date of April 15, 2006 established in the Decree, FUNAI has not been able to fulfill its duties to first remove non-indigenous peoples and pay all appropriate compensation, and has even been unable to even complete an assessment of the non-indigenous occupants and the value of their improvements.

62. In fact, evidencing the State's ineptitude and faltering political will to complete this task, FUNAI and INCRA did not even commence the initial surveys and assessments of the value of existing improvements of non-indigenous occupants until September 2005. But a survey of the most contentious areas, including rice crops and the Municipality of Surumu, only started in April of 2006 –a few days before the 15 April deadline was to expire. By postponing the most difficult areas to the end, the State permitted tensions to increase as dangerous speculation and apprehension brewed for months over the impending surveys and removals.

63. Only on 13 April the two institutions published the first list of “good faith” occupants due compensation, which included 160 families settled in the area. A second list followed in May 2006. The lists included the towns of Socó, Mutum, Água Fria and Raposa, as well as the rice farms in the municipalities of Normandia, Pacaraima e Uiramutã.⁴⁷

64. The payment of compensation to “good faith” occupants of RSS started only as late as in May 2006. On May 18, FUNAI started the process of payment of compensations to 61 families. Evidencing the stern resistance by non-indigenous settlers, only four of those families showed up for the official meeting⁴⁸.

65. The paralysis of the removal and compensation process is partly explained by the resistance of many non-indigenous settlers, mostly of rice-growers, to leave their farms. Supported by powerful local politicians and economic groups, the settlers base their refusal on supposed flaws in the demarcation process, leading to a ceaseless stream of legal actions against removal (*see* below). However, illegal occupants' refusal to leave is by no means a valid argument that can conceal Brazil's overt failure to act in a decided and effective manner under their own laws, to the detriment of indigenous peoples' lands and resources, environment, culture, and even physical integrity.

66. Far from being prevented by Brazilian authorities, rice growers continue their depredatory action in indigenous lands. The Surumu River has been rerouted by non-indigenous settlers, with public authorities failing to exert any supervision over the use of water resources. Meanwhile, deforestation has grown at an alarming pace after the Presidential decree, leaving behind a landscape of shattered lands that are no longer suitable for any productive activity by indigenous communities when they regain control over those lands.

⁴⁷ Ivo Galindo, “Governo pagou indenização da Raposa Serra do Sol,” *Folha de Boa Vista* (May 18, 2006).

⁴⁸ *Ibid.*

67. But, most importantly, non indigenous settlers have been responsible for the situation of physical violence, destruction and threats against RSS' indigenous communities. As described below, this period has been marked by considerable anxiety, rumors of pending blockades, village burnings, physical violence and even deaths. Organized groups of rice growers and other non-indigenous settlers have been responsible for these acts, with the implicit or explicit support of local politicians and producers, and under the passivity of public authorities.

VI. The Escalation of Violence and Racial Hatred against the Indigenous Peoples of Raposa Serra do Sol

68. By not executing the Presidential decree and providing security of land tenure to indigenous peoples in RSS, by failing to provide a sufficient federal police presence in RSS, and by neglecting to take measures to ensure that local government and enforcement agencies enforce the law without discrimination, Brazil has failed to guarantee the safety of indigenous peoples and has become complicit in the continuing discrimination and violence that has besieged the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona communities.

69. Despite the concern that this Committee expressed in its last report regarding the “recurrent acts of aggression” against indigenous peoples which “threaten and restrict” the use and possession of their lands and resources, the violence in the RSS territory has not subsided. As stated previously, it has become even more severe since the Committee's last review of Brazil's compliance with the Convention in 2004. The Conselho Indígena de Roraima has received numerous complaints from indigenous communities in RSS describing everything from death threats to indigenous members and leaders, to kidnappings, shootings, beatings, the destruction of whole villages and key community structures, as well as deliberate interference with indigenous peoples' ability to move in and out of the region through blockades and the burning of key bridges. The following paragraphs provide a few highlights of these actions.

70. On 23 November 2004, upon a visit to Roraima by Minister of Justice Márcio Thomaz Bastos, an explosion of violence ensued. Forty armed men (including ranchers, rice growers, their armed guards, and a few indigenous individuals opposing demarcation) invaded the four RSS communities of Jawari, Homologação, Brilho do Sol and Lilás with chainsaws, tractors, and fire. As they entered the villages they shot their guns liberally. One indigenous individual, Jocivaldo Constantino, was shot in the head and beaten. The shots reportedly came from a car that is known to belong to Paulo César Quartiero, a local rice grower and mayor of Pacaraima. Constantino also identified three other rice growers that participated in the raid. A friend of his, Nelson Macuxi, tried to help Constantino but when he fell, Nelson continued to run out of fear, and was reported as disappeared for over six days. Led by a local rice grower, the armed men went on to burn the four villages and destroy the National Health Foundation clinic, several small farming plots, various animal corrals, and stored food supplies. In the end, 37 houses were destroyed and 131 indigenous people were left without homes. Because of the massive scale of this attack, the Inter-American Commission on Human Rights issued precautionary measures two weeks later.

71. The precautionary measures may have assisted in prompting President Lula da Silva to issue his decree of ratification on 15 April 2005; the violence has not abated, however. As the indigenous communities of Maturuca, Canta Galo, Camará and Bismark planned festivities to celebrate the issuance of the Presidential decree, once again armed men attacked. The festivities were carried out from the 20th to 30th of September and were purposely put off for five months after the ratification for fear of violence. The largest celebration took place in Maturuca (in the region of Serras) from the 21st to 24th.⁴⁹ In response to these pending events, on 17 September 2005, 150 armed and hooded individuals entered the community of Surumú and set fire to the Education and Culture Centre of Raposa Serra do Sol. This Centre included a secondary school, a health clinic, and an old mission that was still active and used by the community.⁵⁰ They also beat a teacher from the SENAI (Brazil's National Industrial Training Service), destroyed all of the school's equipment, burned one car, and destroyed another vehicle that belonged to CIR/Funasa (National Health Foundation) – a joint initiative providing health care to indigenous communities in the Western part Roraima.

72. Also in connection with the communities' announced festivities, on 22 September 2005, as the festivities in Maturuca were underway, a group of men set fire to a wooden bridge that provides virtually the only access to the indigenous communities in the northern part of RSS -- including Maturuca. When returning by bus, indigenous peoples who traveled to Maturuca to participate in the celebration had to disembark and then spend several hours reconstructing the bridge. While reconstruction was possible, the damage was more permanent as the threat from anti-indigenous elements was well-received and an atmosphere of fear was solidified.

73. It should be noted that the Government of Brazil did send federal police to Maturuca in anticipation of potential violence during the festivities. In addition, because the threat was believed so significant and credible, the police advised the Minister of Justice to refrain from attending the event for fear that his presence would only exacerbate tension and invite acts of aggression. Unfortunately, the temporary presence of federal law enforcement did not prevent acts of violence.

74. Just over two months after the incidents surrounding the indigenous celebrations, on 23 November 2005, armed men set fire to two houses in the indigenous community of Nova Vitória. An investigation was begun and then stalled. The federal police argued that the community was too far away and would require flying in from Venezuela and then a long trek to the site of the incident. Hence, the investigation was too difficult. CIR filed a complaint to protest this inaction.

75. On 2 November and 11 December 2005, a total of 96 heads of cattle were also stolen from São Miguel, an indigenous community established around 1997. Since its formation, non-indigenous neighbors have not hidden their displeasure with the settlement and have regularly

⁴⁹ Maturuca is in the Serras region of RSS, in the mountains. Serras is the strongest region in RSS in terms of fighting for land rights and leading the indigenous struggle in general. Maturuca is its center – both because of its size, infrastructure and as the “heart” of the indigenous movement. Many of CIR's leaders also come from here.

⁵⁰ Surumú is in the most southern part of RSS and as a result, vulnerable to attacks because of the ease of which it can be accessed.

harassed the indigenous residents of São Miguel. The theft is just another form of their intimidation tactics.

76. In the last days leading up to and surrounding the 15 April 2006 deadline, the situation in RSS became particularly critical as threats and rumors of more attacks were ramped. By the 15th, over 300 federal police were temporarily located in RSS. Unfortunately, they largely shadowed the FUNAI and INCRA officials conducting their 24th hour assessment and evaluation studies. Hence, the sentiment of the indigenous communities was that the primary focus of the federal police was on protecting the federal officials from attack rather than the indigenous peoples.

77. On the 19th of April, demonstrators blockaded route 174 for several hours making movement within the region difficult. On the 23rd of April, opposition forces also tried to burn a small bridge that provides access to the RSS region and shots were fired by a rice grower at an indigenous individual living in the community of Tai Tai – a village burned during the 23 November 2004 attack mentioned above.

VII. Increased Racial Hatred against the Indigenous Peoples of Raposa Serra do Sol

78. The escalation of violence against indigenous peoples in RSS has taken place in and been promoted by an inflammatory context of discriminatory and hateful statements by local politicians who actively support economic interests in the area. This context was epitomized on 18 April 2006, when Ottomar Pinto, the Governor of the state of Roraima, issued a state decree declaring seven (7) days of mourning to formally protest the President's ratification decree of 15 April. The Governor's decree alleged that the ratification infringes on the constitutional right of free movement of non-indigenous residents of RSS.⁵¹

79. Further demonstrating local institutional collusion with anti-indigenous and anti-demarcation efforts, Paulo Cesar Quartiero, mayor of the town of Pacaraima and also the largest rice-producer in the state, has also taken direct action against the ratification of RSS and those who support it, and has issued several inflammatory statements. Indeed, he has four warrants for arrest out against him, alleging direct involvement or inciting others to raid the four communities in RSS on 23 November 2004. Because of his immunity as a politician, he has escaped arrest. He denies participation in these events, going as far as blaming CIR for the burning of Surumú that took place on 17 September 2005. Meanwhile, in April 2006 he declared a state of emergency in Pacaraima, due to the ratification celebrations to take place in RSS. He encouraged people not to attend the festivities stating that, "as mayor, I don't recommend participating in the festivities, because the situation is not yet resolved. The party could be a debauchery, and the consequences are unpredictable."⁵²

⁵¹ Decreto No. 6.289-E de 18 de abril de 2005. Diário Oficial, Boa Vista, 19 de abril de 2005. Governor Pinto also commenced a legal action in his name for all those who had their interests prejudiced by the ratification. He asked the court for a judgment to suspend the ratification decree and also asked the Boa Vista registry office not to allow FUNAI to register the area.

⁵² "Quartiero alerta para clima tensa na reserva", *Folha de Boa Vista* (22 April 2006).

80. Senator Mozarildo Cavalcanti, a federal congressman representing the state of Roraima, has also made a number of provocative statements. In statements made on 25 April 2006, Senator Cavalcanti alleged that local non-indigenous occupants were “threatened by the Indigenous Council of Roraima, which has links to the Indigenist Missionary Council (CIMI), which is an arm of the Catholic Church. The same church that did the inquisition, the crusades, and is now doing a real crusade against the people who occupied those frontiers defending their country.” He further stated that the indigenous communities are not from the area, but came from the Caribbean, and called the demarcation “apartheid”.⁵³

81. Consequently, the ongoing tragedy that is the Raposa Serra do Sol demarcation and titling process is played out against the backdrop of a divided state where the majority of an already impoverished indigenous population is on the receiving end of incredible animosity and bigotry from a powerful minority consisting of a very vocal and active group of non-indigenous rice growers, ranchers, small and large scale farmers which hold the support of key local officials.⁵⁴ There is a palpable atmosphere of prejudice and discrimination by certain sectors of local society against indigenous residents. As a result, indigenous people are stigmatized and associated with “savagery”, misery, backwardness and inevitably a perceived obstacle to development and prosperity.

82. This intolerance extends to the institutions and organizations that support indigenous peoples. For instance, as indicated by the statements above, the Conselho Indígena de Roraima (CIR) is the target of intense campaigns on the part of the local political and economic elite which aim to discredit CIR with the larger civil society and by extension, the indigenous population it represents. CIR’s relations with international cooperation organizations have been particularly targeted. In the local press, CIR is constantly accused of betrayal and trying to internationalize the Amazon as a result of its international activities and alliances⁵⁵.

VIII. State’s Lack of Enforcement Actions to Protect the Indigenous Peoples of RSS.

83. Despite the numerous requests for assistance from the indigenous peoples of RSS, the 2004 precautionary measures issued by the Inter-American Commission, and the repeated concerns expressed by this Committee regarding the physical integrity of the indigenous peoples in Brazil, the State has failed to protect these vulnerable communities from threats and violence to their person and possessions. Though the Brazilian State specified a “contingency plan” designed to protect indigenous peoples of the RSS area, there has been no sign of a concrete plan – including a permanent presence of federal police in the area. In fact, two years ago, in January 2004 CIR and the federal police agreed to establish a checkpoint in the indigenous community of Placa, which lies between the Community of Contão and the road leading up to the Serras Region, run

⁵³ *Folha de Boa Vista*, 25 April 2006, “Senador denuncia excesso da Federal.”

⁵⁴ The complexity of the political context in the state has resulted in previously unheard of situations of dissidence and antagonism in the indigenous movement in relation to the demarcation of continuous areas. Four organizations currently exist in Roraima that, despite the markedly different degrees of representation of indigenous populations, have obtained considerable visibility due to their alliances with local and state politicians, rural entrepreneurs, businessmen, the military and garimpeiros. These organizations are: Coping, Sodiur, Alidicirr and Arikon. With the exception of Apirr, the others oppose the titling of Raposa Serra do Sol as a continuous area

⁵⁵ *Folha de Boa Vista*, 14 April 2006, “Falta de posição pode ameaçar soberania na Amazonia Brasileira” and “Ottomar critica a “frouxidão” do Governo Federal diante de interesses internacionais”.

by the federal police and FUNAI. The aim was to use the checkpoint to reduce crime (including the stealing of livestock, assaults and drug trafficking) and to prevent the incursion of more settlers. This checkpoint was moderately effective during its short period of operation. However, it was quickly dismantled after three or four federal police were kidnapped. This once again illustrates the State's inability to secure the region and command compliance by one of its federal units with national and international laws ensuring equal protection and non-discrimination, as well as respect for the rights of indigenous peoples.

84. Consequently, the erratic and short-lived increases in federal police presence in RSS barely scratch the surface in terms of fulfilling the State's sovereign responsibility to protect the indigenous peoples of the territory by demarcating and titling their lands, territories and resources, and reestablishing control over a region that is relatively lawless and under the auspice of a local administration that is overtly hostile against its indigenous inhabitants, their interests, and their human rights. The situation of violence is further promoted by the blatant impunity that reigns in the state of Roraima, where the persons responsible of serious violations to indigenous peoples' rights to life, to physical integrity and to property over lands and natural resources continue without being prosecuted and punished. Until the State takes these necessary steps, the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona indigenous peoples of RSS will continue to live in fear and the situation will remain critical, conflict will escalate, and severe and ongoing violations of the Convention will continue.

IX. Legal Challenges against Indigenous Rights over Raposa Serra do Sol

85. Violence against indigenous communities' members and property is not the only threat to the demarcation of RSS. Opposition towards legal recognition of indigenous lands is also evidenced by the impressive number of legal challenges against the different administrative steps of the procedure. Many of those challenges are promoted by the powerful local economic and political elites, sometimes with the active support of public authorities. In a certain number of cases, legal challenges have resulted in irregular judicial rulings that promote third-party property interests, entering in direct contradiction with the constitutional and legislative provisions protecting indigenous land rights. The same pattern of racial discrimination that is promoted by physical violence against the communities is then found in the action of Brazilian courts

86. Legal challenges against the demarcation of RSS by rice farmers started well before the adoption of the Presidential ratification decree. In March 2004 the federal local court of Roraima decided to suspend the Portaria Ministerial No. 820/98 over certain areas, including what were denominated, though undefined, "rural areas." The court did not identify the exact physical limits of the "rural areas" to be excluded and as a result several rice farmers inside RSS started to claim possessory rights over new areas and petition local courts to remove indigenous people from these lands. At the same time, rice farmers also began expanding their crops in order to augment what might be considered "rural areas." Several local judges decided in their favor and ordered some indigenous people to leave their land. These decisions were later overturned by the Supreme Court on 14 June 2005.

87. In December 2004, rice producer Nelson Itikawa, owner of the company Itikawa Industria e Comercio Ltda, filled a petition to claim property rights over the area know as Fazenda Viseu.⁵⁶ This area includes the Tai Tai community, whose facilities were destroyed by the attack of 23 November 2004. On 29 November 2005, a local court decreed the expulsion of indigenous communities from the area. The decision was overturned by the Federal Supreme Court on 6 February 2006.

88. In March 2005, another action filed by local rice producer Jaqueline Magalhães Lima, challenged the validity of Portaria 820/98 went before the Supreme Court, requesting the expulsion of indigenous communities from her alleged lands in RSS. This request is still pending.⁵⁷

89. On April 26, 2006, renowned local journalist, Márcio Henrique Junqueira Pereira, with public ambitions to run for office, filled a petition before the Federal Supreme Court against Portaria 534 (2005), questioning the validity of the anthropological research on which it is based. The case was dismissed⁵⁸.

90. In 2006, four rice-growers brought legal challenges to the Presidential Decree ratifying RSS. Napoleão Antonio Zeolla Machado, Domício de Souza Cruz, and Nelson Massami Itikawa brought suit against FUNAI and others, and the Estate of Joaquim Ribeiro Peres brought suit against CIR and others. All of these are represented by one lawyer, Luiz Valdemar Albrecht, the “rice-producers lawyer”, who has been vocal in his criticism of RSS in local papers⁵⁹. On May 24 and 31, 2006, the Regional Federal Court, Roraima, granted these appeals, and ruled that FUNAI and INCRA immediately “refrain from expulsing, removing, or otherwise forcing or permitting the removal/expulsion of⁶⁰” the producers who brought suit. He further ruled an R\$50.000 fee to be applied to FUNAI, CIR and others, pro-rata, should the decision be ignored. The decision is currently being challenged before the Supreme Court.

91. In each of the decisions, Judge Helder Girão Barreto writes that the claimant states “centennial” ownership of the area, that it has never been occupied by indigenous peoples; contests the regularity of the demarcation process, and questions the validity of the anthropological study FUNAI based its 1993 recommendations on. He further states that the court of first instance – the Regional Federal Court (TRF) – is the correct venue for this kind of decision, and not the Supreme Federal Court (STF). CIR and FUNAI are appealing the

⁵⁶ Ação Possessória nº 2004.42.00.002115-0 (3 December 2005).

⁵⁷ Ação cível originária Nº 808 - 0 / 10 (31 March 2005).

⁵⁸ Ação civil originária Nº 804 – 1 / 10 (26 April 2006).

⁵⁹ Brasil Norte, “*Resistência: Produtores agora brigam pelo sul da Raposa*”, April 19, 2006; Folha de Boa Vista, “*Juiz manda suspender quaisquer ações de retirada de arrozeiros*”, May 25, 2006.

⁶⁰ Processo No. 2006.42.00.000757-5, Napoleão Antonio Zeolla Machado v. FUNAI e outros, decision by Federal Judge Helder Girão Barreto, May 24, 2006. Tribunal Regional Federal da Primeira Região, Seção Judiciária de Roraima, 1ª Vara Federal. Processo No. 2006.42.00.000737-0, Domício de Souza Cruz v. Funai & others, , decision by Federal Judge Helder Girão Barreto, May 24, 2006. Tribunal Regional Federal da Primeira Região, Seção Judiciária de Roraima, 1ª Vara Federal. Processo No. 2006.42.00.000739-7, Nelson Massami Itikawa v FUNAI & others, decision by Federal Judge Helder Girão Barreto, May 24, 2006. Tribunal Regional Federal da Primeira Região, Seção Judiciária de Roraima, 1ª Vara Federal. Processo No. 2006.42.00.000098-7, Estate of Joaquim Ribeiro Peres and others v FUNAI and others, decision by Federal Judge Helder Girão Barreto, May 31, 2006. Tribunal Regional Federal da Primeira Região, Seção Judiciária de Roraima, 1ª Vara Federal.

decisions, which evidence a pattern of discrimination and a clearly anti-ratification stance, asking the STF to annul the decisions.

92. Since the adoption of the Presidential Decree, Members of Parliament from Roraima have declared their intention to challenge the decree before the Federal Supreme Court. On 11 April 2006, Senators Mozarildo Cavalcanti and Augusto Botelho filed a request before the Court asking to suspend the Presidential ratification decree⁶¹. Together with that legal action, there have been plans for an intervention by the National Congress in order to change the official recognition of RSS. Since 1999, for instance, Senator Mozarildo Cavalcanti has tabled a number of proposals aimed at securing a formal pronouncement from Congress concerning FUNAI, Federal lands, and RSS. Senator Cavalcanti has further initiated formal proceedings to amend the Constitutional provisions on indigenous land rights.⁶² The senator has gone as far as publicly instigating non-indigenous occupants in RSS to refuse the compensation offered by FUNAI, promising them legal advice in order to initiate new proceedings against their removal⁶³.

93. Legal challenges against the Presidential decree are only part of a broader campaign against the recognition of indigenous peoples' lands, territories and resources in RSS. As each phase of Brazil's demarcation and titling process approaches, and then is delayed, achieved, contested, paralyzed, revoked and anticipated, the members of these indigenous communities brace themselves time and time again for the worst, which is so often visited upon them and their families. For these reasons, Brazil's failure to move ahead with the removal of non-indigenous settlers and to effectively protect indigenous communities is not just a violation of its obligation under international and national law, but a daily gamble that one more day of inaction will not unleash a wave of violence from which there is no turning back.

X. Conclusion and Request

94. In light of the preceding, the submitting organizations respectfully request that the Committee elevate the level of its dialogue with and oversight of Brazil by considering the situation of the indigenous peoples of Raposa Serra do Sol under its Follow Up and Early Warning and Urgent Action procedures so as to avoid further irreparable harm to indigenous peoples and to assist the State in ensuring that the rights guaranteed by the Convention are fully recognized and respected in law and practice.

95. In particular, the submitting organizations request that the Committee take the following measures.

- a) Adopt an Urgent Action decision expressing its profound concern over the delay in implementing measures to remove non-indigenous settlers from RSS, a situation that

⁶¹ Ação Cautelar Nº 1.086 – 1 / 822 (11 April 2006).

⁶² Projeto de Emenda Constitucional que modifica o artigo 231 da Constituição Federal de 1988 PEC 38/99 do senador Mozarildo Cavalcanti/RR.

⁶³ "Raposa Serra do Sol: Representante do senado diz para produtores não deixarem suas terras", *Folha da Boa Vista* (11 April 2006).

threatens the life and physical integrity of the indigenous communities living in the area, while depriving them from lands they require for their subsistence production.

b) Request the Brazilian Government to fully implement, as a matter of urgency, the Presidential Ratification Decree of April 15, 2005 and to take immediate measures to complete, as a matter of urgency, the process of removal and compensation of non-indigenous intruders living in the area.

c) Request the Brazilian Government to fully implement, as a matter of urgency, the Presidential Ratification Decree of April 15, 2005 and to take immediate measures to ensure the safety and security of indigenous communities; providing FUNAI and the Federal police with the resources they need to discharge their tasks, and consulting with the indigenous communities concerned.

d) Request that the Brazilian Government and other state and local authorities abstain from any activity that would result in the removal of indigenous peoples and communities from RSS or the further diminishment of the lands and resources they have traditionally occupied or otherwise used.

e) Consistent with the Committee's authority under Article 65 of its rules of procedure, ask the Government of Brazil to provide information on this issue for the Committee's review during its next session in February of 2007.

96. The submitting organizations extend their deepest appreciation to this Committee for its attention to this communication and remain available to respond to any further inquiries from this esteemed body and its members.

ANNEXES

ANNEX A

PRESIDENTIAL DECREE OF 15 APRIL 2005

(unofficial translation)

Edition Number 73 of April 18, 2005

Acts of Executive Power

DECREE OF APRIL 15, 2005

Ratifies the administrative demarcation of Raposa Serra do Sol Indigenous land, located in the Municipalities of Normandia, Pacaraima and Uiramutã, in the State of Roraima.

THE PRESIDENT OF THE REPUBLIC, in use of the attribution conferred to him by art. 84, section IV of the Constitution, and taking into account articles 19, § 1st, of Law 6001 dated December 19, 1973, and the 5th of Decree 1775 dated January 8, 1996, and

Considering the imperative need to harmonize the constitutional rights of Indians, the indispensable conditions for the defense of national territory and sovereignty, the preservation of the environment, the protection of ethnic and cultural diversity and the principles of a federation;

DECREES:

Article 1. The administrative demarcation, promoted by the Fundação Nacional do Índio (National Indian Foundation) – FUNAI, of Raposa Serra do Sol Indigenous Land, for the permanent possession of the Ingarikó, Makuxi, Patamona, Taurepang and Wapixana indigenous groups, is hereby ratified according to Administrative Ruling 534 of the Ministry of Justice, dated April 13, 2005.

Article 2. Raposa do Sol Indigenous Land has the surface of one million, seven hundred and forty seven thousand, four hundred seventy four hectares, seventy eight ares and thirty two square meters, and a perimeter of nine hundred seventy eight thousand, one hundred thirty two meters and thirty two centimeters, located in the municipalities of Normandia, Pacaraima and Uiramutã, and circumscribes to the following limits: NORTH: starting at Marker SAT RR-13=MF BV-0, of geodetic coordinates 05°12'07,662" N and 60°44'14,057" Wgr., located on Mount Roraima, on the triple border of Brazil/Venezuela/Guyana, follow the international border Brazil/Guyana, passing by the Border Markers B/BG-1, B/BG-2, B/BG-3, B/BG-4, B/BG-5, B/BG-6, B/BG-7, B/BG-8, B/BG-9, B/BG-10, B/BG-11, B/BG-11A, B/BG-12, B/BG-13, to the Digitalized Point 01, of approximate geodetic coordinates 05°11'54,8" N e 60°06'32,0" Wgr.,

located at the head of the Maú (or Ireng) River; EAST: from the point previously described, follow by the right bank of Maú (or Ireng) River, along the ebb tide, following the international border Brazil/Guyana, passing by the Border Markers B/4, B/5, to the Digitalized Point 02, of approximate geodetic coordinates 04°35'25,5" N and 60°07'42,7" Wgr., located at the confluence with a non-denominated narrow river; from there, follow by the right bank of the referenced narrow river, to the source, to Point-03, of approximate geodetic coordinates 04°35'44,7641" N and 60°10'45,7776" Wgr., located at the confluence of a non-denominated narrow river; from there, follow a straight line to Point 04, of geodetic coordinates 04°34'40,1683" N and 60°11'24,6414" Wgr., located at the source of a non-denominated narrow river; from there, follow the left bank of the referenced narrow river, along the ebb tide, to the Digitalized Point 05, of approximate geodetic coordinates 04°33'43,1" N and 60°09'32,3" Wgr., located in its confluence with the Maú (or Ireng) River; from there follow the right bank of the above-cited river, along the ebb tide, following the international border Brazil/Guyana, passing by the Border Markers B/3 and B/2, to the Digitalized Point 06, of approximate geodetic coordinates 03°51'56,5" N and 59°35'25,1" Wgr., located at the confluence with Igarapé Uanamará; SOUTH: from the point previously described, follow the left bank of Igarapé Uanamará, toward the source, to Marker 04, of geodetic coordinates 03°55'15,4420" N and 59°41'51,6834" Wgr., located at the confluence with Igarapé Nambi; from there, follow a straight line to Marker 05 (astronomic observation point, named Marker Pirarara), of geodetic coordinates 03°40'05,75" N and 59°43'21,59" Wgr.; from there follow the same alignment to the right bank of the Maú (or Ireng) River; from there follow this bank, along the ebb tide, following the international border Brazil/Guiana, to the confluence of the Tacutu River, where the Border Marker of Border 1, of geodetic coordinates 03°33'58,25" N and 59°52'09,19 Wgr. is located; from there, follow the right bank of the Tacutu River, along the ebb tide, to Digitalized Point 07, of approximate geodetic coordinates 03°22'25,2" N and 60°19'14,5" Wgr., located at the confluence of the Surumu River; WEST: from the previously described point, follow the left bank of the Surumu River, toward the source, to Digitalized Point 08, of approximate geodetic coordinates 04°12'39,9" N and 60°47'49,7" Wgr., located at the confluence with the Miang River; from there, follow the left bank of the Miang River, toward the source, to the Border Marker L8-82, of geodetic coordinates 04°29'38,731" N and 61°08'00,994" Wgr., located at its head, in the Pacaraima Hills, next to the international border Brazil/Venezuela; from there, follow the international border, passing the Border Markers BV-7, BV-6, BV5, BV-4, BV-3, BV-2, BV-1 and BV-0 to Marker SAT RR-13, the beginning of the description of this perimeter. Cartographic base used: NB.20-Z.B; NB.21-Y-A; NB.20-Z-D; NB.21-Y-C; NA.20-X-B and NA.21-V-A Scale 1:250.000 - RADAMBRASIL/DSG - Years 1975/76/78/80. The cited geodetic coordinates are referred to the Datum Horizontal SAD - 69.

Art. 3rd . The Monte Roraima National Park is public property of the Union subject to joint legal rule, destined to the preservation of the environment and to the realization of the constitutional rights of Indians.

§ 1st . The Monte Roraima National Park will be administered in conjunction with the Fundação Nacional do Índio (National Foundation of the Indian) – FUNAI, by the Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (Brazilian Institute for the Environment and of Renewable Natural Resources) - IBAMA and by the Ingarikó Indigenous Community.

§ 2nd . The Ministry of Justice and the Ministry of the Environment, having listened to FUNAI, IBAMA and the Ingarikó Indigenous Community, will present, for approval of the President of the Republic, a co-management plan for the above-referenced public asset.

Art. 4th . Activities of the Armed Forces for the defense of the national territory and sovereignty, and of the Federal Police Department of the Justice Ministry, to guarantee safety and public order and to protect indigenous constitutional rights, are ensured in Raposa Serra do Sol Indigenous Land, according to Decree 4412 of October 7, 2002.

Stand-alone paragraph. The Armed Forces and the Federal Police Department will use the necessary means, adequate and proportional, to perform their legal and constitutional duties.

Art. 5th . The President of the Republic retains the prerogative to, in case of real necessity appropriately confirmed, adopt necessary measures to affect the public property of the Union of indispensable use to the protection of the territory and to national sovereignty, as well as to exercise the power of the administrative police to guarantee public safety and order in Raposa Serra do Sol Indigenous Land.

Art. 6th . This Decree goes into effect on the date of its publication.

Brasília, April 15, 2005; 184th of Independence and 117th of the Republic.

LUIZ INÁCIO LULA DA SILVA
Márcio Thomaz Bastos

ANNEX B

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

**PRECAUTIONARY MEASURES IN *INDIGENOUS PEOPLES INGARICÓ, MACUXI, PATAMONA, TAUREPANG AND WAPICHANA*, CASE 818.04 (BRAZIL)
(unofficial translation)**

Inter-American Commission on Human Rights

Organization of American States
Washington DC 20006 USA

6 December 2004

Ref: Indigenous peoples Ingaricó, Macuxi, Patamona, Taurepang and Wapichana
818- 04
Brazil

Request for precautionary measures

Dear Sirs,

I am pleased to write to you on behalf of the Interamerican Commission for Human Rights, in reference to your communication of December 1, 2004, in which you requested precautionary measures on behalf of the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples.

In reply to this communication, I would like to inform you that the Commission, in a letter dated today, has asked the Government of the Federal Republic of Brazil to adopt precautionary measures in favor of the aforementioned indigenous peoples including:

1. Protect the life and personal integrity of the members of the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples, respecting their cultural identity and their special relationship with their ancestral lands.
2. Assure that the beneficiaries can continue to live in their communities without any type of aggression, coercion or threat.
3. Abstain from illegally restricting the right of free circulation of the members of the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples.
4. Investigate seriously and exhaustively the facts which led to the request for precautionary measures.

The precautionary measures should be implemented in consultation with the interested parties and should remain in force for 6 (six) months, at the end of which the Commission will decide whether to maintain or to shelve them, provided that they have not been previously suspended as a consequence of information received during this period.

The Federal Government of Brazil was asked to inform the Commission, within 15 days from the date of this letter, about the measures taken, and to update that information on a monthly basis.

Respectfully yours,

Ariel E Dulitzky
Executive Secretary

To:
Sra Isabela Figueroa,
Legal Program Coordinator- Rainforest Foundation
270 Lafayette Street, Suite 1107
New York, NY 10012 USA

Indigenous Council of Roraima – CIR
Avenida Sebastiao Diniz, 2630
Bairro Sao Vincente 69303- 120
Boa Vista – RR Brasil

ANNEX C

PORTARIA MINISTERIAL (MINISTERIAL ADMINISTRATIVE RULING) NO. 534/05 (unofficial translation)

Edition Number 72, April 15, 2005
Ministry of Justice - Cabinet of the Minister

ADMINISTRATIVE RULING 534, APRIL 13, 2005

THE MINISTER OF JUSTICE, in use of his attributes, observing Decree 1775 dated January 8, 1996, and with the objective of defining the boundaries of Indigenous Land Raposa Serra do Sol, and

Considering that Administrative Ruling 820/98 does not contemplate a solution to controversial questions in fact excepted in Instruction No. 50 dated December 10, 1998, by the then Minister of Justice;

Considering it convenient and opportune to resolve, pacifically, controversial situations excepted in the referenced Instruction No. 50;

Considering that the acts practiced based on Administrative Ruling 820, dated December 11, 1998, are valid and should be utilized;

Considering that the Monte Roraima National Park may be submitted, by presidential decree, to joint judicial rule, as public property of the Union set aside to preserve the environment and to protect the constitutional rights of the Indians who live there;

Considering that Decree 4412, dated October 7, 2002, ensures the action of the Armed Forces, to defend national territory and sovereignty, and of the Federal Police Department, to guarantee the safety, public order and protection of the constitutional rights of Indians, on the border, where Indigenous Land Raposa Serra do Sol is located;

Considering, finally, the imperative need of harmonizing the constitutional rights of Indians, the indispensable conditions for the defense of national territory and sovereignty, the preservation of the environment, the protection of ethnic and cultural diversity and the principles of the federation; it is resolved:

Article 1. Ratify, with the exceptions contained in this Administrative Ruling, the declaration of permanent possession of the Ingarikó, Makuxi, Taurepang and Wapixana indigenous groups of the Indigenous Land named Raposa Serra do Sol.

Article 2. Raposa Serra do Sol Indigenous Land, with a surface of one million, seven-hundred and forty three thousand, eighty nine hectares, twenty eight ares and five square meters and a

perimeter of nine hundred and fifty seven thousand, three-hundred ninety nine meters and thirteen centimeters, situated in the municipalities of Normandia, Pacaraima and Uiramutã, State of Roraima, is circumscribed to the following boundaries: NORTH: starting at Marker SAT RR-13=MF BV-0, with geodetic coordinates 05°12'07,662" N and 60°44'14,057" Wgr., located on Monte Roraima, on the triple border of Brazil/Venezuela/Guyana, following the international border between Brazil/Guyana, passing by Border Markers B/BG-1, B/BG-2, B/BG-3, B/BG-4, B/BG-5, B/BG-6, B/BG-7, B/BG-8, B/BG-9, B/BG-10, B/BG-11, B/BG-11A, B/BG-12 and B/BG-13, to Digitalized Point 02, with the approximate geodetic coordinates 05°11'54,8" N and 60°06'32,0" Wgr., located at the head of the Maú (or Ireng) River; EAST: from the point previously described, follow the right bank of the Maú (or Ireng) River, along the ebb tide, following the international border Brazil/Guyana, passing by the Border Markers B/5, B/4, B/3 and B/2, to the Digitalized Point 03 of approximate geodetic coordinates 03°51'56,5" N and 59°35'25,1" Wgr., located at the confluence with the Uanamará Stream; SOUTH: from the point previously described, follow the left bank of the Uanamará Stream, toward the source, to Mark 04 of geodesic coordinates 03°55'12,8544" N and 59°41'50,4479" Wgr., located at the confluence with the Nambi Stream; from there, follow a straight line to Marker 05 (astronomic observation point, denominated Pirarara Marker), with geodesic coordinates 03°40'05,75" N and 59°43'21,59" Wgr.; from there, follow the same alignment to the right bank of the Maú (or Ireng) River; from there, follow this bank, along the ebb tide, following the international border Brazil/Guyana to its confluence with Tacutu River, where Border Marker 1 with geodesic coordinates 03°33'58,25" N and 59°52'09,19" Wgr is located; from there, follow the right bank of the Tacutu River, along the ebb tide, to the Digitalized Point 07 of approximate geodesic coordinates 03°22'25,2" N and 60°19'14,5" Wgr., located at the confluence with Surumu River; WEST: from the previously described point, follow the left bank of the Surumu River, toward the source, to the Digitalized Point 08, of approximate geodesic coordinates 04°12'39,9" N and 60°47'49,7" Wgr., located at the confluence with Miang River; from there, follow the left bank of the Miang River toward the source, to the Border Marker L8-83 with geodesic coordinates 04°29'38,731" N and 61°08'00,994" Wgr., located at its head, in the Pacaraima Hills, along with the international border Brazil/Venezuela; from there, follow the international border, passing by Border Markers BV-7, BV-6, BV-5, BV-4, BV-3, BV-2, BV-1 and BV-0 to Marker SAT RR-13, the beginning of the description of this perimeter. Cartographic base used in the elaboration of this descriptive memorandum: NB.20-Z-B; NB.21-Y-A; NB.20-Z-D; NB.21-Y-C; NA.20-X-B and NA.21-V-A - Scale: 1:250.000, RADAMBRASIL/DSG Year 1975/76/78/80.

Article 3. The indigenous land to which this Administrative Ruling refers, located on international borders, is submitted to the disposition in art. 20, § 2nd, of the Constitution.

Article 4. Exclusions from Raposa Serra do Sol Indigenous Land:

I - the area of the 6th Special Border Platoon (6th PEF), in the Municipality of Uiramutã, State of Roraima;

II - public federal and state equipment and installations already existent;

III - the urban center currently existent in the Municipality of Uiramutã, in the State of Roraima;

IV - electric power lines; and

V - federal and state roads currently existent.

Article 5. The entry, transit and permanence of people or groups of non-Indians within the perimeter specified above, excepting the presence and the action of federal authorities, as well as

of private parties specifically authorized, as long as their activities are not harmful, inconvenient or dangerous to the life, property or impedes provision of assistance to the Indians.

The expulsion of non-indigenous occupants present in the area of Raposa Serra do Sol will take place within a reasonable timeframe, of not over one year, from the date of the approval of the administrative demarcation by presidential decree.

Article 6. This Administrative Ruling goes into effect on the date of its publication.

MÁRCIO THOMAZ BASTOS

ANNEX D

CHRONOLOGY OF KEY EVENTS RELATED TO RAPOSA SERRA DO SOL (RSS)

- 1977** First FUNAI study of RSS initiated, but not completed
- 1993** FUNAI study completed, made public, and sent to the Minister of Justice
- 1996** Minister of Justice Nelson Jobim issues *Despacho Ministerial* No. 80/96
- 1998** Minister of Justice Renan Calheiros issues *Portaria Ministerial* No. 820/98
- 1999** FUNAI demarcates RSS pursuant to *Portaria Ministerial* No. 820/98
- 2004** **5 March**, the CERD Committee reviews Brazil's 14th-17th periodic report and later issues Concluding Observations
- 2004** **29 March**, CIR and Rainforest Foundation file a petition regarding RSS before the Inter-American Commission on Human Rights
- 2004** **23 November**, Armed raid on (4) indigenous villages in Raposa Serra do Sol
- 2004** **6 December**, Inter-American Commission issues Precautionary Measures No. 818-04
- 2005** **13 April**, Minister of Justice Márcio Thomaz Bastos issues *Portaria Ministerial* No. 534/05
- 2005** **15 April**, Presidential Decree issued ratifying *Portaria Ministerial* No. 534/05
- 2005** **17 September**, Armed raid on the community of Surumú
- 2005** **22 September**, Bridge permitting access to northern RSS is set on fire
- 2005** **23 November**, Armed men set fire to two houses in the community of Nova Vitoria
- 2006** **15 April**, Deadline for completion of demarcation and titling under Presidential Decree expires
- 2006** **19 April**, Opposition demonstrators blockade route 174
- 2006** **23 April**, Opposition elements once again burn bridge providing access to RSS area and rice grower shoots at indigenous member of the Tai Tai community
- 2006** **22 June**, CIR et. al. files communication with the CERD Committee