



CONTRIBUTIONS TO THE

# **Study on The impact of militarization on the rights of Indigenous Peoples**

From The Federal Public Defenders'  
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**Contributions to the Study on "The Impact of Militarization on the Rights of Indigenous Peoples"****1. Impact of militarization on the rights of indigenous peoples (UNDRIP Articles 2 to 7, 10, 11, 14, 19, 22 to 24, 26, 28 to 30, 32 and 36 - United Nations Declaration on the Rights of Indigenous Peoples) - Consider the types of militarization occurring around the world and their impact on the rights of indigenous peoples.**

Catherine Lutz defines militarization as a historical and social process for which a country's military institutions are responsible, through their actions, for the control of people's lives. [1]

Stephan Graham adopts the expression militarization of cities, or military urbanization as an explanation for this phenomenon and, unlike Lutz, sees militarization as a process of inserting military personnel into civilian spaces as a way of combating a war experienced by urban societies, whether it be against drugs, crime, insecurity, or terror. [2]

In this way, we can perceive at least two distinct types of militarization today: 1) Militarization characterized by the insertion of the military into civilian instances so that they participate in decision-making that can directly interfere in people's lives; 2) The insertion of the military in civilian spaces for a specific purpose, such as fighting drugs or crime.

The first type presents more harmful impacts on indigenous peoples' rights since civil instances are responsible for decisions that impact the lives of indigenous peoples. In fact, in the 4 (four) years of Jair Bolsonaro's government in Brazil - famous for a militaristic discourse - a 70% increase in the presence of military personnel in civilian positions in the federal administration was observed. [3]

Not coincidentally, it was during this period that the bodies responsible for protecting indigenous rights in the country were weakened the most. Human Rights Watch pointed out that the government of Jair Bolsonaro weakened the National Indigenous Peoples Foundation - FUNAI (former National Indian Foundation), a public body in charge of protecting these peoples' rights.

It is important to highlight the context in which FUNAI was created, as part of the project to reformulate the administration of the Brazilian State during the military dictatorship that the country went through between 1964 and 1985. Founded in 1967 as part of the military government's politico-economic expansionist policy toward the interior of Brazil, with special attention to the Amazon region, FUNAI and indigenous policies in general were completely linked to national defense plans. Thus, during the dictatorship, FUNAI had an assimilationist bias in relation to the indigenous people, also seeking to isolate them and keep them away from areas of strategic interest through the remedy at law monopoly.

Also, in the context of the dismantling of the indigenous defense bodies during the four years of Bolsonaro's government, there was the issuing of regulations that were harmful to the indigenous peoples and the suspension of the demarcation of their traditional lands. The government has also weakened federal environmental protection agencies. The Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) and the Chico Mendes Institute for Biodiversity Conservation (ICMBio), leaving indigenous lands even more vulnerable to invasion. In 2022 Only 2 of the 39 regional coordinators - charged with protecting the rights of indigenous peoples in their region - were career public servants acting as local authorities, the remaining regional coordinations were headed by people from outside FUNAI, **including 21 active or reserve military** or police officers with little or no experience in indigenous issues. [4]

Therefore, it is clear that in Brazil the militarization of civilian bodies had a great impact on the rights of indigenous peoples, since there was a great weakening of all bodies responsible for the protection of these peoples.

**2. - Analyse violence and its impact on the right to life, freedom and security of indigenous peoples in the context of militarization. (Article 7) / To what extent militarisation impacts Indigenous Peoples' rights to land and natural resources, the right to self-determination and free, prior and informed consent.**

It is well known that indigenous territories are often rich in various untapped natural resources that cause the greed of many groups that try to possess these riches despite the presence of indigenous peoples in these territories. With the increase in militarisation and the consequent decrease in the defence of indigenous peoples, the increase in violence suffered by these peoples is evident.

At this juncture, as a promise of an electoral campaign that became a reality when effectively elected, Jair Bolsonaro in his government completely paralyzed the demarcation of Indigenous Lands (ILs) in Brazil, causing insecurity and endangering the territorial rights of indigenous communities. In fact, Bolsonaro was the only president in Brazil's recent history not to recognise indigenous peoples' constitutional right to land, a fact proven when analysing the direction of his policies and actions. As an example of these policies, in 2022 it issued a Decree enabling mineral exploration in ITs in the Amazon, likewise, it presented in 2020 a bill, which is currently being processed in the National Congress and goes in the same direction, seeking the release of mineral exploration in ILs.

This stoppage of IL demarcations was consistent with the strong presence of military personnel in all spheres of public administration, especially within FUNAI, the highest body in the defense of indigenous rights. In fact, Franklimberg Ribeiro de Freitas, the first president of the body appointed by Jair Bolsonaro, is a general of the Army reserve, while Marcelo Augusto Xavier da Silva, the second president appointed was a Chief Police Officer of the Federal Police.

All this dismantling and disregard for the rights of indigenous peoples has proved to be a source of violence against these peoples as can be seen. Data from the Indigenous Missionary Council (CIMI) highlight that 2021 was marked by the deepening and dramatic intensification of violence and violations against indigenous peoples in Brazil. This is what the *Violência Contra os Povos Indígenas do Brasil* (Violence Against Indigenous Peoples of Brazil) report points out – 2021 data.

As a consequence of the paralisation of the demarcation of indigenous lands under Jair Bolsonaro's government there has been an increase in cases of "possessory invasions, illegal exploitation of resources and damage to heritage". In 2021, CIMI recorded the occurrence of 305 cases of this type, which affected at least 226 Indigenous Lands (ILs) in 22 states of the country. [5]

In the previous year, 263 cases of invasion had affected 201 lands in 19 states. The number of cases in 2021 is almost three times higher than that recorded in 2018, when 109 cases were registered. In addition to the increase in the number of cases and territories affected by the illegal action of prospectors, lumberjacks, hunters, fishermen and land grabbers, among others, the invaders intensified their presence and the truculence of their actions in the indigenous territories. [6]

The report recorded an increase in 15 of the 19 categories of violence systematized by the publication compared to the previous year. There were 176 murders of indigenous people – just six fewer than in 2020, which recorded the highest number of homicides since CIMI began recording this data based on public sources in 2014. [7]

The first chapter of the report brings together the "Violences against the Heritage" of indigenous peoples, divided into three categories, the records thus add up to a total of 1,294 cases of violence against the heritage of indigenous peoples in 2021. [8]

Regarding the cases of "Violence against the Person", which are systematized in the second chapter of the report, the following data were recorded: abuse of power (33); threat of death (19); various threats (39); murders (176); involuntary manslaughter (20); intentional bodily injury (21); racism and ethnic-cultural discrimination (21); attempted murder (12); and sexual violence (14). The records total 355 cases of violence against indigenous people in 2021, the highest number recorded since 2013. In 2020, 304 such cases had been reported. [9]

In relation to violence against isolated indigenous peoples, invasions have reached at least 28 ILS where there is presence of isolated indigenous peoples, putting the very existence of these groups at risk. [10]

### **3. Examine the impact of militarization on the social, economic and cultural rights of Indigenous Peoples, including the right to healthcare; The right to education;**

As mentioned above, the four years of Jair Bolsonaro's government saw a great increase in the participation of the military in all spheres of public administration, which had negative repercussions on all the rights of indigenous peoples, and in relation to healthcare it was no different.

In Brazil, the National Healthcare Policy for Indigenous Peoples and the entire management process of the Indigenous Healthcare Subsystem (SasiSUS) in the Brazilian Unified Healthcare System (SUS) is under the coordination of the Special Secretariat for Indigenous Health (SESAI). During his government, the direction of this body was always under the leadership of the military, even without any experience in the area of indigenous health; in the same period the country's own Minister of Health was a general in the Army.

The neglect of indigenous health during the covid-19 pandemic gave rise to the Articulation of Indigenous Peoples of Brazil (APIB) together with several other actors to seek judicially through an Argument for Non-Compliance with Fundamental Precept (ADPF) No. 709 the concrete action by the federal government to protect indigenous health.

### **4. Determine to what extent militarisation affects the right of indigenous women and children to be free from any form of violence and the right to be free from any form of discrimination.**

In this context of militarisation of the decision-making spheres in Brazil and disregard for the rights of indigenous peoples, the aforementioned report 'Violence Against Brazil's Indigenous Peoples' 2021 data shows that violence affects all indigenous people, including women, children and the elderly.

The report showed that in the year 2021, 14 cases of sexual violence against indigenous people were recorded. Of the 14 cases presented in this report, three are children, aged 3 and 5 years old, and seven are teenagers, aged 13 and 14 years old, as well as an elderly woman with visual impairment. Regarding discrimination, 21 cases of racism and ethno-cultural discrimination were registered in the same period [11]

These figures are conclusive in understanding the consequences for the rights of indigenous peoples due to the militarization of civilian bodies and defense of the rights of these peoples.

### **5. Effective mechanisms/programs/remedies - The role of national courts in violations of Indigenous Peoples' rights caused by militarisation. / Positive examples of conflict prevention processes to avoid increased militarization on indigenous lands.**

Like what is foreseen in the Declaration on the Rights of Indigenous Peoples, the Brazilian Constitution provides in its articles 231 and 232 full access to justice by indigenous people, their communities, and organizations.

As presented above, the militarization of Brazilian civil instances has led to a growing number of violence against indigenous peoples. In this context, the national courts are essential in the defense of the rights of these peoples, since despite the militarization reaching the civil instances of indigenous rights protection, the Brazilian State is still fully democratic. In this way, when indigenous rights are violated, through the invasion of their lands, assassinations and other means of violence, the Judiciary Branch through its judges and courts will be responsible for analysing and deciding on these violations, guaranteeing the rights of indigenous peoples whenever called upon to do so.

In addition to the violence itself, the neglect of indigenous health during the covid-19 pandemic led the Articulation of Indigenous Peoples of Brazil (APIB) together with various other actors to seek legal action through the Argument for Non-Compliance with Fundamental Precept (ADPF) No. 709 for the federal government to take concrete action to protect indigenous health.

Still, in the context of the role of national courts in violations of indigenous peoples' rights and conflict prevention proceedings, the role of the Federal Supreme Court (STF) in ADPF No. 991 stands out. It seeks to protect the rights of isolated or recently-contacted indigenous peoples as a way to protect these peoples from all types of violence, and above all to guarantee their rights to live in their territories in accordance with their culture, customs, and traditions. In this action, this court fully granted the requests of the plaintiffs, determining that the federal government adopt concrete measures for the protection of these isolated and recently-contacted indigenous peoples.

### **6. The extent to which conflict resolution strategies can reduce militarisation on indigenous lands / Consider how indigenous peoples' laws and customs, as well as national and international law, can be used to facilitate mediation and peaceful conflict resolution. / Types of problem-solving approaches that facilitate constructive dialogue between States and Indigenous Peoples.**

The Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 on Indigenous and Tribal Peoples provide for respect for the customs of indigenous peoples, obliging States and governments to recognize and protect the social, religious and spiritual values and practices of these peoples.

They also deal with the consultation of the indigenous peoples concerned, through appropriate procedures whenever legislative or administrative measures are planned that are likely to affect them directly, that is, the carrying out of free, prior and informed consultation whenever any work, action, policy or programme is to be developed that affects indigenous peoples.

In this context, in relation to conflict resolution strategies as ways of reducing militarization in indigenous lands, taking into consideration that conflict resolution strategies (Negotiation, Mediation, and Arbitration), although they each have their specificities, always deal with conflict resolution based on dialogue and mutual understanding. In this way, the most effective approach that respects the traditions of indigenous peoples and is a source of constructive dialogue between these peoples and the States involves prior, free and informed consultation with these peoples in order to understand their realities and demands, an understanding that is in line with the international declarations and conventions on the subject, and in the case of Brazil, also with its internal legislation.

[1] Available at: <https://www.academia.edu/2839719/Militarization>

[2] Available at: [https://edisciplinas.usp.br/pluginfile.php/5294739/mod\\_resource/content/1/GRAHAM%2C%20Stephen.%20Cidades%20sitiadas%20O%20novo%20urbanismo%20m](https://edisciplinas.usp.br/pluginfile.php/5294739/mod_resource/content/1/GRAHAM%2C%20Stephen.%20Cidades%20sitiadas%20O%20novo%20urbanismo%20m)

[3] Available at: <https://veja.abril.com.br/politica/presenca-de-militares-em-cargos-civis-dispara-sob-bolsonaro-revela-estudo/>

[4] Available at: <https://www.hrw.org/pt/news/2022/08/09/brazil-indigenous-rights-under-serious-threat>

[5] Available at: <https://cimi.org.br/wp-content/uploads/2022/08/relatorio-violencia-povos-indigenas-2021-cimi.pdf>

[6] Idem

[7] Idem

[8] Idem

[9] Idem

[10] Idem

[11] Idem



Document electronically signed by **Francisco de Assis Nascimento Nóbrega, Working Group Coordinator**, on 09/02/2023, at 00:23, according to paragraph 2nd of article 10 of Provisional Presidential Decree No. 2.200-2 (August 24, 2001)



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