

## **Failure to comply with autonomous during Covid-19 in Brazil**

*Indigenous and traditional communities have been especially hard hit by the coronavirus. The pandemic is compounded by ecocide, fires, hydroelectric power and mining. Beyond the Brazilian government's negligence, the State has failed to adopt special measures for the communities, nor has it suspended the consultation processes, as established by the IACHR. The indigenous peoples are trying to resist subjugation with their own protocols, their fight within the justice sector and their refusal to adhere to virtual consultations.*

**By Liana Amin Lima da Silva and Priscylla Monteiro Joca - October 1st, 2020**

“For us, the indigenous people, the memory of those who have passed continues to live on inside us, we know who the real heroes of the earth are and who the imaginary borders and invented territories are”.

[Denilson Baniwa](#)

The right to consultation and free, prior and informed consent (DCCLPI) is recognised by the Brazilian State in the Federal Constitution of 1988, and the 2002 ratification of the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples. Because of this, indigenous peoples, the quilombolas (communities of African descent) and other traditional peoples and communities are recognised as collective subjects.

On the other hand, the [National Policy for the Sustainable Development of Traditional Peoples and Communities](#) specifies the existence of culturally differentiated groups that have their own forms of social organisation and that occupy and use territories and natural resources as a prerequisite for their cultural, social, religious, ancestral and economic reproduction. Nonetheless, their right to consultation and consent has not been respected or implemented to any significant degree throughout the country, especially when mega-developments or extractive projects are being carried out.

Failures to comply are countless and stem from other violations of human, socio-environmental and ethnic rights. Generally, these infringements occur during conflicts that

affect the socio-biodiversity and the lives and territories of the peoples and communities that inhabit the various ecoregions of Brazil: the Amazon, [the Cerrado savannah](#), the Pantanal, the Northeast Caatinga, the Atlantic Forest and the Pampas region in the south of the country.

## **Autonomous protocols as a strategy for resistance**

Within this context, the peoples and communities have been sustaining their resistance and legal-political strategies to demand the effective enforcement of their right to consultation and consent. These include the elaboration of autonomous protocols that articulate how, where and when they wish to be consulted, and set out the rules and procedures for their implementation, including issues relating to representativeness and legitimacy of the decisions. These protocols are an expression of jusdiversity, that is, the coexistence of the variety of legal systems and rules of the peoples native to Brazil, and which bases itself on their legal traditions, autonomous laws and intercultural interpretations of international law.

In this way, the right to autonomy and self-determination is asserted, while demanding compliance with Convention 169 in a culturally appropriate manner. According to a the survey carried out by the [Protocols Observatory](#), there are currently 46 legal instruments in Brazil: 24 drawn up by indigenous peoples, 13 by quilombolas and 9 by other peoples and traditional communities, such as the Calon gypsies, traditional fishermen, riparian communities or the [flower pickers of the Agricultural System of Serra do Espinhaço](#). There are also two Socio-Biodiversity Community Protocols for the Protection of Traditional Knowledge and Know-How: the [Biocultural Community Protocol of the Raizeiras do Cerrado](#) and the [Community Protocol of Bailique in Amapá](#).

Despite insufficient implementation of consultation and the incipient recognition of protocols, the contingency of these documents has been considered by community leaders, specialists and civil society actors, as essential in order to progress towards these rights being given effect. Likewise, the construction of the protocols has strengthened the articulation of the peoples and communities in their claim. Consequently, it can be noted that the existence of the autonomous protocols has required the State to comply with its

duty to consult, based on rules set out by the peoples and communities, independent of general regulation.

In Brazil, there is no national regulation of consultation and free, prior and informed consent, and both the justice sector and specialists have understood that this right can be implemented by the peoples themselves, without the need for state regulation. Thus, judicial rulings have determined that peoples and communities are consulted according to their own protocols. The first of these rulings occurred in 2017, when [the Justice Department forced the Brazilian State to use the Juruna people's protocol to carry out a consultation on the gold exploration by the Canadian company Belo Sun.](#)

In fact, most of the consultations that are in progress, have been requested from the State on the basis of application of autonomous protocols. This is the case with the [consultation of the Wajãpi people regarding changes in the management of their territory](#) and the one to be held with the Peoples of the Xingu Indigenous Territory, concerning the paving of a highway and construction of the Central West Integration Railway.

The Federal Government for its part, has failed to properly recognise these documents, although some officials have publicly declared that they intend to respect the autonomous protocols. For example, the National Indian Foundation (FUNAI) reported that [consultation with the Waimiri-Atroari, located in Roraima and Amazonas, about the construction of a power transmission line would respect their protocol.](#) At the same time, the government has also stated that work will be implemented shortly, [without referring to the possible outcome of the supposed consultation.](#) This uncertainty arises in a climate of a rollback on rights, dismantlement of public policies and an increase in violations that affect peoples and communities and has been further aggravated by the Covid-19 crisis.

## **Ecocide and the threat of genocide in times of Covid-19**

In Brazil, the coronavirus pandemic has hit the indigenous peoples, quilombolas and other traditional peoples and communities especially hard. The Amazon Environmental Research Institute and the Coordination of Indigenous Organizations of the Brazilian Amazon suggest the rate of indigenous people affected by Covid-19 to be 84% higher than the national average.

Incidentally, the Articulation of Indigenous Peoples of Brazil (APIB) indicates that 158 of the 305 indigenous communities in Brazil have been affected by SARS-CoV-2. [As of September 16, 31,851 indigenous people were infected and 806 fatalities were recorded](#). For these communities, who have suffered the deaths of their tribal elders and wise men, this has meant losing references of ancestral knowledge. One of the greatest losses was the passing of [Professor Higino Tuyuka](#), a protagonist within the history of the struggle of the 23 communities of the Rio Negro basin in the northwest of the Amazon. [The over 800 indigenous deaths each have a name](#) and a wealth of knowledge transmitted by oral tradition from generation to generation, which have been interrupted by the coronavirus. In addition to this tragedy, [the communities are being deprived of their mourning rites](#) due to restrictions set in place to avoid further contagion.

As if the pandemic itself weren't enough, the environmental crimes and disasters, the threat of mining, invasions, the takeover of land and fires make up a State of ecocide and genocide. Recently, indigenous peoples have denounced actions and omissions by the federal government that could be considered as crimes against humanity and threats of genocide. For this reason, the APIB and the National Coordination of Black Rural Quilombola Communities have made a claim of non-compliance with a fundamental precept, with the aim of forcing the federal government to take urgent measures to combat the pandemic in [indigenous](#) and [quilombola](#) communities. In this regard, the Inter-American Commission on Human Rights (IACHR) expressed its support for [the right to life and integrity of the Yanomami and Ye'kwana peoples](#), taking into consideration their vulnerable situations, the shortcomings in health care and the [garimpeiros](#) and logging industry's invasion into their territories.

In the midst of the Covid-19 crisis, violations of the right to consultation and consent were also recorded. One of the most relevant cases is the Belo Sun mining project. Disregarding the [IACHR Resolution 01/2020](#), which recommends that States "refrain from promoting legislative initiatives or advances in the implementation of productive or extractive projects in the territories of indigenous peoples for the duration of the pandemic", the bidding process was not suspended. According to Biviany Rojas Garzón, a lawyer and political scientist, the bidding process has failed to respect the procedures set out in the [Juruna](#)

[Consultation Protocol](#). A similar scenario occurred in the Quilombola Territory of Alcântara, where hundreds of families were blindsided by a relocation ruling, to make way for the Alcântara Space Centre, without prior consultation or respect for the [Alcântara Protocol](#).

Meanwhile, a new form of violation of the right to prior consultation in Latin America, is the pressure exerted by nation states and interested parties to conduct consultations online. In Brazil, specialists [Biviany Rojas Garzón and Luís Donisete Grupioni](#) reported that the Planning and Logistics Company has tried to continue their process of consultation and consent regarding [construction of the "Ferrogrão" railway](#) with the Munduruku people via the Internet. [The Munduruku people's autonomous protocol](#) expressly states that consultations must take place on their territory, in order for officials to dialogue with the indigenous people and listen to their demands: "They must live with us, eat what we eat. They have to listen to our conversation". In addition, the Ferrogrão railway project affects other peoples and traditional communities, who also have their own autonomous protocols: the [Kayapó-Menkragnoti](#), the [Panará people](#), the peoples of [Indigenous Territory do Xingu](#), the traditional community [Montanha and Mangabal](#) and the [Quilombolas of Santarém](#). None of them have been recognised as being affected by the state.

## **Awaiting a truce**

The "Report on the Application of Convention 169 to Indigenous Peoples, Quilombolas and Traditional Communities in Brazil" states that a renewed attempt at virtual consultation was carried out with the Karipuna, Palikur-Arukwayene, Galibi Marworno and Galibi Kali'na indigenous peoples of Oiapoque, who have a joint consultation protocol. The National Department of Transport Infrastructure conducted an on-line consultation, without respecting the procedures set out by the [Oiapoque Protocol](#). The action also included the exertion of pressure on the Indigenous Peoples' Council of Chiefs, which does not have the power to decide on the consultation and consent processes single-handedly. In addition to these violations of collective rights, there are also issues such as the lack of access to drinking water and health care for the Guaraní and Kaiowá peoples in the southern region of Mato Grosso do Sul.

The absence of an official and federal emergency plan, the high infection rates and the increasing number of deaths from coronaviruses among the indigenous population have exacerbated the situation of traditional peoples and communities. Thus, the Covid-19 tragedy is compounded by the absence of land demarcation and titling, illegal invasions and incursions into ancestral territories, threats from extractive and development projects, and the violation of the right to free, prior and informed consultation and consent.

Nevertheless, not all news is bad news. The Judiciary's recognition of the legal validity of the autonomous protocols and the legitimate demand for consultation of indigenous peoples and traditional communities, support the expectation that the Brazilian state will give them a break, and that the rollbacks and attacks on socio-environmental, human and ethnic rights will eventually cease.

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