

Universal Periodic Review: Brazil

The UHE Belo Monte dam project

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The UHE Belo Monte Dam project

1. The UHE Belo Monte dam project is located in the state of Pará in the Brazilian Amazon. The hydroelectric project has created controversy for more than 20 years, (since the period of the military dictatorship) and the federal government is currently exerting a lot of pressure to move forward with the project.

2. The mega-project consists in the damming of two stretches of the Xingu River – in the Main dam site (Pimental) and the main powerhouse site (Belo Monte). The main dam will flood about 668 km² of land in three cities of the State of Pará, Altamira, Brasil Novo and Vitória do Xingu, of which 400 km² are native forest. The water from the flooding will be diverted from the reservoir by a large artificial canal, (larger than the Panama Canal) which will cause a drastic reduction in the water level of the 100 km stretch of the Xingu River known as the “Big Bend” (Volta Grande).

3. In 2011, the Belo Monte hydroelectric project obtained the first two environmental permits, and is currently under construction, funded by a consortium of State electric companies (Eletrobrás group), pension funds of state company employees (Petrobras, Caixa Economica Federal and Banco do Brazil), and several private capital of national origin, the main one is the industrial group Queiroz Galvao.

4. The project has more than thirty years of history, as its original design was developed in the 1980s during the dictatorship. The project’s original technical studies were done by one of the largest conglomerates in the country, the Camargo Correa company, and presented to the State company Eletronorte.

5. This project has caused many negative repercussions in one of the largest rivers of the Amazon basin: open conflict with indigenous peoples, environmentalists and neighborhood organizations; decisionmakers have taken positions and used techniques contrary to the advice of scientists across the country; and the Federal Public Ministry has presented several Public Civil Action lawsuits questioning the legality of the decisions and execution of the project. Thus, the entire project has undergone various modifications. In the new "Study of hydroelectric inventory," presented by the Energy Research Company and the Ministry of Mines and Energy and approved by the National Agency of Electrical Energy in 2007, plans for some plants were canceled (Jarina on the Xingu River and Cachoeira Seca, in Iriti), while others decreased the generating capacity and decreased the reservoir size of the other three dams (Babaquara, now the Altamira plant; Ipixuna, now the Pombal plant, and Kokraimoro).

6. To stem the tide of criticism and resistance, especially by some indigenous communities of the nation Mbengokre (Kayapo) located along the Xingu River and its main tributaries, in 2009 the federal government announced that construction would be limited only to the portion known as Belo Monte, which previously was called Kararaô.

7. The Belo Monte project involves a barely deforested stretch of the Xingu River, replete with waterfalls islands and rapids, known as the Big Bend in Para State, Brazil. In this "Big Bend" the project calls for the construction of a dam several kilometers wide, located just downstream from the city of Altamira, and the diversion of the river through a series of smaller dams and canals. This series of dams and canals would send the the river flow to a power house located on the left bank of the river near the town of Vitoria do Xingu. Including the canals, the reservoir would cover a total of more than 60,000 hectares, while the flow of a 150 km stretch of river in the Big Bend would be greatly reduced; its flow subject to the operation of the plant.

8. The plant's designers plan to equip the power house with twenty groups of 550 MW turbo-generators, among the largest available in the world today. With generators this large, the plant would have a capacity of 11,000 megawatts. This would make the plant nearly as powerful as China's Three Gorges on the Yangtze, which has a capacity of 18,000 MW, and the second to the most powerful dam in Brazil, the Itaipu Dam located on the Parana River, along Brazil-Paraguay border, which has a capacity of 14,000 MW. In its publicity, the Brazilian government and companies involved state that "Belo Monte will be the third largest dam in the world."

9. However, this propaganda and the formal licensing of the project in the face of contrary advice even from government agencies overlooks the fact that variation in the of flow of the Xingu River would cause the Belo Monte machines to halt during the driest period, the Amazon "summer." Therefore, the huge capacity of Belo Monte would only be utilized during the two or three months of the rainy season, or Amazon winter.

10. The propaganda surrounding the dam also omits the fact that around twenty thousand people would be forced out of their homes from the lower part of the city of Altamira and from hundreds of lots in rural areas and on the banks of the Xingu River. There is no plan or guarantee that these people can or will be relocated in other urban areas and rural settlements in order to ensure that they can resume their traditional economic and social networks and family activities after their relocation.

11. The energy that would be generated if the dam is completed would be injected into the national grid, complementing the current load supplied by Tucuruí plant, also in Pará, Tocantins river basin, adjacent to the Xingu River. It is very likely that the destination of most of the energy supplied by Belo Monte would be the same as energy produced in Tucuruí: ensuring the operation and the expansion of the highly energy intensive activities :

- 1) mining in one of the largest mineral deposits in the world, the Carajás region, which produces iron, copper, manganese and nickel on a large scale.
- 2) metallurgical processing done in the cities of of Pará Maraba, Tucuruí, Barcarena and towns of Maranhão Açailândia, São Luiz and other places where manufacturers of pig iron, iron alloys and two of the largest aluminum smelter in the world are located

12. The official figure given regarding the cost of the Belo Monte project and on civil works, complementary to the Belo Monte power plant, such as the machines and other programs, is about 25 billion reais. However, the indicators of producing hydroelectric power of this size in the international economy suggest that the real cost may be between 35 to 40 billions of dollars. The high cost of the project has been one of the largest obstacles Brazil has faced in trying to move forward with Belo Monte: no national or international private bank was willing to finance such a huge project. The only bank willing to take such a risk has been the BNDES state bank. As of November, 2011, the BNDES bank is still analyzing the technical and economic feasibility of the project. Even if the bank determines that the project is feasible, Brazil would need to obtain additional capital contributions from the National Treasury, contributions which depends entirely upon the economic policy of the government and Congressional political maneuvering.

The procedure of environmental licensing:

13. Environmental licensing in Brazil includes the provision of three types of licenses: Provisional License, Installation License and the Operation License.¹

14. Since its inception, the licensing process of Belo Monte hydroelectric has been marked by irregularities that violate national and international standards.

15. The Preliminary Environmental License (PL) was granted by IBAMA on February 1, 2010, demonstrating Brazil's intention and political will to implement the proposed Belo Monte Hydroelectric Plant, despite its noncompliance with national and international standards. There are many indigenous communities located in the area to be flooded: Arara of the "Big Bend", the Juruna Paquiçamba, Juruna of the Km17, Xicrin of the Bacajá Trench, the Assurini Koatinemo, Kararaô, the Kayapo Kayapo Indigenous Land, Parakanã of Apyterewa, the Araweté Ipixuna, Arara Indian land, Arara, and Arara of Cachoeira Seca. None of these groups were consulted prior to the granting of the Preliminary Environmental License, in violation of both international and domestic law.

16. The process for public participation, which in Brazil is conducted through public hearings, was riddled with irregularities. First, the number of public hearings was insufficient, precluding adequate access to information by affected communities in

¹ The environmental license is an administrative procedure whereby the relevant environmental agency licenses the location, installation, expansion and operation of projects and activities that use environmental resources considered effective or potentially polluting or those which, in any form, can cause environmental degradation, considering the laws and regulations and technical standards applicable to the case. The 03 stages of the environmental licensing procedure are: Preliminary License (PL) - Granted in the preliminary planning phase of the project or activity approving its location and design, environmental sustainability certifying and establishing the basic requirements and conditions to be met in the next stages of implementation; installation License (IL) - authorizes the installation of the project or activity in accordance the specifications of the plans, programs and projects approved, including the environmental control measures and other conditions, which are crucial and why; License of operation (LO) - authorizes the operation of the activity or project, after checking the effective compliance with the licenses listed above, with the environmental control measures and certain conditions for the operation. (Resolution 237/97 of the National Council for the Environment).

order to permit their genuine participation in the proceedings. The location of the audience was inaccessible for most affected communities, and all the hearings were held with the presence of the heavily armed Brazilian police. Finally, no interpreter was provided for indigenous groups who do not speak Portuguese. Additionally, the Environmental Impact Study did not contain sufficient information about all potential project impacts and mitigation measures to guarantee the rights of affected communities,² and contained flaws and irregularities, such as the lack of indigenous lands protection, underestimating the issue of compulsory displacement of the rural and urban population, contained uncertainties about the reduced flow of the Big Bend of the Xingu River, negligent evaluation of the health risks, uncertainty of the flow of the migrants, and minimized the impact of cultural loss and other social impacts.

17. Even without complying with conditions imposed by IBAMA and FUNAI³ for the deferment of the further licenses, the Partial License of Installation (LI) of the construction sites of Belo Monte Hydroelectric Plant was granted on January 26, 2011⁴. The granting of the partial LI was again followed by irregularities: The figure of the "Partial License of Installation" does not exist in Brazilian law.⁵ However, this figure had been used previously in the case of the Madeira River Hydroelectric Complex (another PAC project), to keep advancing work, even without complying with legal requirements, thus creating a situation of *fait accompli*.

18. The use of this Partial LI represents a threat to the communities because it demonstrates the government's decision to build the project without complying Brazilian or international law, and greatly reduces the possibility of the IBAMA's conditions being fulfilled.

19. On June 1st of 2011 IBAMA issued the full License of Installation for the Belo Monte power plant.⁶ The License of Installation again was issued without compliance with the IBAMA conditions set out, which flatly contradicts the decision of the IACHR that on 1 April 2011 asked the government of Brazil, to suspend "immediately the licensing process of UHE Belo Monte, and prevent the implementation of any physical

² S MAGALHÃES, S.; HERNANDEZ, F. (orgs). Specialists Panel: *Critical analysis the Environmental Impact Study of the Belo Monte Hydroelectric*. Belém: September 29, 2009 ([http://www.internationalrivers.org/files/Belo%20Monte%20pareceres%20IBAMA_online%20\(3\).pdf](http://www.internationalrivers.org/files/Belo%20Monte%20pareceres%20IBAMA_online%20(3).pdf)).

³ IBAMA – Brazilian Institute of Environment and Renewable Natural Resources, IBAMA is a Federal agency responsible for coordinating, implement, enforce, monitor, preserve and maintain in accordance with the National Environmental Policy (Pnma). Linked to the Ministry of Environment (MMA) for perform environmental licensing activities and works of national or regional impact. FUNAI - National Indian Foundation, is an agency of the Brazilian Government that according to the constitution of 1988, establishes and executes the Indian policy in Brazil. Are their core competencies to promote education, demarcate, secure and protect the lands occupied by indigenous.

⁴ IBAMA: Partial Installation License No 770/2011 of 26 January 2011 (<http://www.inesc.org.br/biblioteca/textos/Licenca%20Instalacao%20No.%20770%2C%2026.01.2011.pdf>).

⁵ Law No 6938/81 on Environmental Policy, Art. 3:10 (http://www.planalto.gov.br/ccivil_03/leis/L6938compilada.htm) and Resolution No 237/97 of the National Council for the Environment, art. 8 (<http://www.mma.gov.br/port/conama/res/res97/res23797.html>).

⁶ IBAMA. Office No. 510/2011/DILIC/IBAMA. Annex 01.

work execution until the following minimal conditions are observed..."⁷. Thus, the Brazilian state once again violates national and international laws of human rights and the environment.

20. With the issuance of the License of Installation, IBAMA has set new deadlines for the implementation of the conditions, as it has done in the past in the environmental licensing process. The behavior of IBAMA to delay the conditions ensures the continuity of the work without the proper protection of the human rights of affected populations.

21. Civil society organizations, researchers and scientists express themselves about pointing out the seriousness of the breach of the conditions and rights of indigenous peoples and populations affected by hydroelectric Belo Monte⁸.

22. There was also frequent pressure from the federal government during the proceedings deciding over the temporary injunctions against the dam, as well as during the licensing process and the public bidding process to build the dam (eventually won by the National Agency of Electric Energy). Ministers also made constant public statements pushing trial courts to expedite their decisions regarding injunctions that threatened to delay the public bidding process.

23. The project will be financed mainly with public money, through the *Banco Nacional de Desenvolvimento Economico e Social* (BNDES), which, using capital from the National Treasury, will lend 80% of Rs\$ 26 billion (the government's official estimate, although construction companies and electro-mechanical manufacturers involved predict the cost will be no less than Rs\$ 30 billion). No private banks are financing the project, possibly because of the multiple human rights and environmental harms mentioned above and the dam's poor public image.

24. The value of Rs\$ 78 per megawatt-hour, the maximum cost established in the public bidding process, will not be enough to repay the project's financing, which is likely why many companies from the hydropower industry that traditionally participate in public auctions on projects refused to participate. Soon after the auction was won, these companies presented themselves as sub-contractors with the capacity to build the plant, which allowed these companies to benefit indirectly from a significant amount of funding while avoiding economic risks a potential underestimate in energy production costs. These contractors are participating in the construction and installation of equipment, with the majority of the consortium comprised of the State

⁷ In November 2010, communities and indigenous populations through the Xingu Alive Forever Movement (MXVPS), Coordination of Indigenous Organizations of the Brazilian Amazon (COIAB) Prelature of Xingu Indigenous Missionary Council (CIMI), Pará Society for Human Rights (SDDH), Global Justice, Asociación Interamericana para la Defensa del Ambiente" (AIDA) joined a Internamericana Injunctive Relief Commission on Human Rights, which in April 2011 ordered the suspension of the construction process.

⁸ Society for the Anthropology of Lowland South America (Annex 02) and the Brazilian Association of Anthropology and Brazilian Academic of ciencia and 19 more scientific associations (<http://www.xinguvivo.org.br/2011/05/19/associacao-brasileira-de-antropologia-e-sbpc-pedem-suspensao-de-belo-monte/>).

enterprises Eletrobrás, Eletronorte and Chesf (49.98% share) and public employee pension funds Petros and Funcef (15% share). Because the majority of the financial risk for the project is being assumed by public pension funds and the project is financed by a public bank, the project poses an additional threat to the national economy that is not being discussed publicly.

25. The number of Public Civil Action lawsuits awaiting a judgement on the merits from a trial-level court is now over fourteen. In addition to court delays, which also violate the precautionary principle since the dam's construction is already underway, another concern is the recent ruling of the 1st Regional Federal Tribunal (appellate court) upholding the position of the executive branch regarding the dam. In the ruling, which involved a Public Civil Action lawsuit seeking prior consultations with affected indigenous peoples, allows the government to continue the project without consultations. One of the judges who voted in favor of the ruling was previously a lawyer for seven years of an interested party and a member of the consortium project - Eletronorte.

26. The ongoing impediments to public discussion about Belo Monte and the problems and illegalities in the licensing process are extremely worrying. In particular, social groups that oppose or are critical of the project, such as social movements in defense of the Xingu River, human rights and environmental organizations, and academic associations including the Brazilian Association of Anthropology, Brazilian Academy of Sciences, and the Society for the Advancement of Science, are harassed for being opposed to progress, development, and national well-being. These groups also do not receive official government responses from their petitions, protests, or letters.

The Failure to implement adequately the conditions.

a) The lack of supervision by IBAMA.

27. An analysis of the environmental licensing procedure reveals that neither IBAMA nor FUNAI, has the ability to track, monitor and oversee the implementation of the conditions they placed on the dam, and, at their own incompetence, IBAMA ended up weakening those conditions instead of enforcing them. In fact, thus far, the only source of firsthand information on compliance with the conditions is the company itself, which demonstrates the complete lack of control that the government has over the project.

28. Regarding the obligation, content, and timing of the conditions, they were changed without proper justification, and without confirming their proper implementation. Thus, the Company's reports and support documents constitute the only material that supports the decision of the IBAMA in its role of tracking and monitoring the social and environmental conditions of the enterprise.

b) Failure to comply with the conditions needed for infrastructure

1) Conditions for the health infrastructure.

29. The so-called anticipatory actions, or conditions in the licensing process, aimed to prevent and mitigate the impacts caused by the population growth that the region might experienced as migrants come looking for jobs -- potentially doubling the population in the cities of Altamira, Vitória do Xingu and Anapu, the main cities affected by the dam⁹. Thus, the IBAMA required the construction company to build new health and sanitation infrastructure before starting construction.

30. Since 2009, IBAMA reiterates in all his opinions and technical notes that anticipatory actions are necessary to prevent a disastrous outcome for the region. Finally, IBAMA weakened the conditions, and pushed back the deadline for compliance with the obligations relating to anticipatory actions as to dilute and eliminate these obligations, thereby allowing the start of construction without adequate monitoring of the conditions.

31. The Altamira's City government itself on September 14th, 2011, through its report no. 191/2011¹⁰, demonstrates the lack of compliance with the commitments made between it and the NESA, as well as the growing impacts of the project on that city. These conditions were to correct the current inability of the municipal hospital as well as the hospitals of the neighboring cities to attend to the current medical needs of the local population.

32. It is noteworthy that most of the conditions that the State must still implement, will soon be ineffective to protect the rights of communities because they would be implemented after the impacts are already felt in the region. Many of the plans to comply with the conditions are still in the planning stages and are not yet being implemented, even though the project is already causing impacts. Nonetheless, the government continues to approve construction activities, which the consortium is currently implementing.

33. Thus, it would be impossible to avoid most of the dam's future impacts, because when the plans for mitigation measures are completed, the consequences will have already manifested themselves, irreversibly violating the rights of affected communities.

2) Conditions for the basic sanitation.

34. The political pressure to start work at any cost and authorize construction on the dam, has forced IBAMA to authorize the construction of the building site, even though it is aware of the lack of fulfillment of its conditions. Thus, in the Partial Installation License, rather than enforcing the existing conditions, instead weakens them and pushes back their deadlines to a future and uncertain date. For example, IBAMA changed the aforementioned requirement to improve sewage facilities for a sanitary

⁹ Immigration to the region of Transamazônica highway, estimated at about 100 000 people and the current population of the region of 119,165 people, which corresponds to the so-called "Area of Direct Influence" project established by the entrepreneurs. EIR, pg. 64. (<http://www.internationalrivers.org/files/RIMA.pdf>).

¹⁰ City Hall of Altamira-PA. Office n°. 191/2011.

education program¹¹, as if they were equivalent. However, even without proof of the beginning of this "Sanitary Education Programme", IBAMA in January 2011, authorizes the construction of the building site, ignoring the lack of action from the construction company.

35. According to information¹² provided by the city of Altamira, about the lack of advances in the implementation of conditions new water and sanitation systems, these requirements have not been even started in most cases and will not be complied with before the deadlines imposed by IBAMA. In addition, there are no public plans available showing limits of flood areas, areas where families will be relocated, identifying areas for expansion of the city, as well as bridges for crossing the parts of the reservoir that flood the city.

3) Conditions concerning to the indigenous people.

i. The conditions for the indigenous health.

36. Currently, there is no basic structure in operation for the Special Indigenous Sanitary District (SISD) of Altamira. The aforementioned District, based in Altamira, serves four cities covering an area of 267,640.45 km², equivalent to more than the territory of Portugal and Greece together, but with incommensurable differences in transport and access. The mentioned territory is covered by only 26 employees, mostly contracted at the headquarters of SISD in Altamira, when, in fact, at least 140 would be needed to supply the area's demand.

37. Despite predictions to deploy at least three bases for its operation, until now, no base has been implemented throughout the coverage area of the SISD. In other words, today the gap of employees needed for attending the indigenous population in the region is 96.6%. The existing health posts in indigenous villages do not have sufficient staff or materials to meet present needs.

38. According to sources connected to FUNAI, until very recently, ten villages in the Altamira region lacked even with nursing staff, who, after five months without receiving wages, were forced to leave the workplace. Thus, removal of sick people in the villages was almost paralyzed and ended up being made by relatives.¹³

39. In Altamira, there is no adequate infrastructure to stop receiving patients and companions. Indigenous families are signed in the "CASAI" of the city or received by the families of the same ethnicity living in Altamira in the worst conditions of sanitation and housing, as they are sadly known as indigenous neighborhoods of the city of Altamira.

¹¹ Information available on the Petition of the traditional communities of the Xingu River basin Vs State of Brazil. IBAMA: Installation License No 770/2011 of 26 January 2011. MC-382-10 of the IACHR (<http://www.inesc.org.br/biblioteca/textos/Licenca%20Instalacao%20No.%20770%2C%2026.01.2011.pdf>).

¹² City Hall of Altamira-PA. Office n°.191/2011.

¹³ MXVPS. Malaria, infant mortality and rampant deforestation impact Indigenous in Altamira. (October 6, 2011): <http://www.xinguvivo.org.br/2011/10/06/malaria-mortalidade-infantil-e-desmatamento-desenfreado-impactam-indigenas-em-altamira/>

40. The situation of indigenous peoples in the region is so desperate in relation to health care that on March 17th, 2011 about forty Indians of the Xicrim and Parakanã ethnicity occupied the offices of the District of Indigenous Health in Altamira to protest about overcrowding, lack doctors, dentists, medicines and nursing staff in the villages and the city of Altamira.

41. Despite these observations on the ineffectiveness of the system at SISD Altamira, after two months of the indigenous occupation of FUNASA facilities, the federal government did not submit any concrete answer to reshape the precariousness of services at the Indigenous Lands in and the town of Altamira.

42. The newly created Special Secretariat of Indigenous Health (SESAI) is unable to answer the claims of indigenous peoples, citing problems of structure. Thus, on April 18th, 2011 the federal government acknowledged its inability to effect the transition of responsibilities to the SESAI by Decree 7461 of 2011, art. 6 of postponing the deadline for the transition from FUNASA to SESAI until December 31st, 2011.

43. Likewise, the service providers in the regions also had their contracts extended, regardless of the complaints and inefficiency in the provision of services clearly proved. Thus, by Ordinance No. 253, April 20, 2011 the SISD Altamira extended the term of the agreement for a maximum of 180 days, or until it is finalized the process of public calling. That is, the specific response that the Brazilian government gave to the indigenous protests in March 2011 was to extend the contracts of service providers that maintain the chaos of the situation of indigenous health in the region of Altamira.

44. The immediate improvement of health infrastructure is essential to protect the rights of indigenous peoples in the region of the impacts of Belo Monte UHE.

ii. The protection of the isolated people.

45. With regard to uncontacted indigenous peoples, or isolated, there's no specific plans to protect these communities¹⁴, that will be affected by the project, as very generic and general policies, do not respond to the particular situation of communities affected by hydroelectric of Belo Monte. Apart from these plans, results extremely difficult to understand how the Brazilian government could take measures to guarantee the rights of communities, since they do not know what plans should be implemented. This despite the fact that the works have already started and so the project is already causing impacts on communities.

iii. Tenure protection of indigenous lands.

46. The process of demarcation of at the Indigenous Lands (IL) has not yet been completed. So, FUNAI has had great difficulties and limitations in the process of demarcation and regularization of them in order to comply with the conditions. Among the most serious problems for the protection of land, stands the occupation of non-indigenous areas, which remains unsolved.

¹⁴ Federal Republic of Brazil, Communication re: CIDH MC-382-10 Information from the Brazilian State, para. 110, July 6, 2011. Annex 03.

47. The most emblematic case is IL Apiterewa whose declaratory decree was published in 2001 and was ratified in 2007. According to the land survey of the area, published by the Official Gazette in September, there are about 1,270 nonindigenous occupations in IT, of which 850 were considered invasions of bad faith (which occurred after 2001 and must be condemned without compensation).

48. Since the process of withdrawal of settlers from IL Arara of the “Big Bend” is stopped and should only begin after the land survey of the Cachoeira Seca, which began in October 2011 and scheduled for completion in January 2012 only.

49. In addition, there are reports that leaders of the community of Arara Indians of the “Big Bend” are being threatened by settlers and has not often gone out of the IL because of these.

50. The IL Xipaya Arara and are not approved yet, as a previous condition of the LP. As for the redefinition of IL Paquiçamba and usufruct of the islands for of the Xingu indigenous people, there is no definition yet. With regard to another key measure to protect the territories of the beneficiary communities: the monitoring and surveillance of the IL (beyond restrictions imposed by FUNAI due to arrival of thousands of new people to the region, attracted by Belo Monte) no measures have been implemented in fact. Only one provisional vigilance station was built in the area of Apiterewa, leaving the remaining indigenous lands - especially the IL Ituta / Itata inhabited by indigenous in voluntary isolation - remain unprotected.

51. In addition, other key measures for the protection of beneficiaries and territories that correspond to conditions imposed by FUNAI prior to acceptance of the installation license¹⁵ also are not fulfilled: The Protection Plan from IL (within 20 days of IL) also does not exist in practice. The same applies to the operational plan for implementing the BEP (Basic Environmental Plan), which should have been made 30 days after the IL.

Lack of compliance with precautionary measures of the IACHR

52. Responding to an urgent request sent by affected communities, on April 1st, 2011, the Inter-American Commission on Human Rights (IACHR) published a resolution urging the State of Brazil to implement Precautionary Measures protecting the rights of 12 indigenous communities¹⁶ threatened by the construction of the Belo Monte Dam.¹⁷ Despite the urgent and serious threats the dam poses for the rights of these communities, the Brazilian government has refused to implement the IACHR’s Precautionary Measures, and instead has assumed a confrontational and aggressive posture toward the IACHR. This government’s response not only further endangers

¹⁵ FUNAI Office nº 126/PRES-Funai, 12 de maio de 2011.

¹⁶ The beneficiary communities include: Arara da Volta Grande; Juruna da Paquiçamba; Juruna do km 17; Xikrin de Trinchira Bacajá; Asuriní de Kaotinemo; Kararaô da TI Kararaô; Kayapó da TI Kararaô; Parakanã de Apyterewa; Araweté do Igarapé Ipixuna; Arara da TI Arara; Arara da Cachoeira Seca; and indigenous communities in voluntary isolation in the TI Ituna/Itatá.

¹⁷ IACHR, Resolution of precautionary measures MC-382-10, April 1, 2011. Annex 04.

the rights of affected communities but also threatens to undermine the legitimacy and independence of the Inter-American Commission, an important international human rights body that is fundamental for the protection of human rights in the Americas.

53. In its first Precautionary Measures resolution, the IACHR urged the State to “immediately suspend the licensing process for the Belo Monte Hydroelectric dam project and stop any construction work from moving forward until certain minimum conditions are met.”¹⁸ These conditions included (1) conducting free, prior, and informed consultations with indigenous communities in good faith and with the objective of reaching an agreement; (2) guaranteeing access to the project’s Environmental Impact Assessments in indigenous languages; (3) the protection of indigenous peoples in voluntary isolation, and; (4) protecting the health of indigenous communities affect by the project. The Commission’s reached its decision after carefully reviewing all the information sent by the communities’ counsel and the State of Brazil.

54. Despite having the full opportunity to present its arguments and strong evidence proving that the UHE Belo Monte project will severely harm indigenous territory and natural resources, the Brazilian State has refused to comply with the IACHR’s resolution and insists that indigenous consultations are not required because the project “does not involve the suppression of [indigenous] territory” due to flooding.¹⁹ In response, the IACHR reiterated its resolution of Precautionary Measures on August 3rd, 2011 highlighting the need to protect the health and territory of the 12 indigenous communities and also the lives of indigenous peoples in voluntary isolation.²⁰ Unfortunately, as we presented above in this report, to this day the government has yet to comply adequately with either the Precautionary Measures or the conditionalities imposed by Brazilian agencies.

55. In addition to its official response refusing to comply with the Precautionary Measures, Brazil has initiated a parallel campaign through which it has allegedly attempted to discredit the Inter-American Commission and pressure it into rescinding its resolution. Immediately following the publication of the IACHR’s resolution, the Ministry of Foreign Relations on April 5, 2011 publically rejected the resolution as being “unjustifiable” and “rash.”²¹ Subsequently, the Brazilian government recalled its ambassador to the Organization of American States (OAS), Ruy Casaes,²² and withdrew

¹⁸ Id.

¹⁹ Federal Republic of Brazil, Communication re: CIDH MC-382-10 Information from the Brazilian State, para. 105, July 6, 2011. Annex 03.

²⁰ IACHR, Communication re: Traditional Communities of the Xingu River Basin, Pará MC-382-10, Aug. 3, 2011. The IACHR also determine that the controversy surrounding the need to consult indigenous communities and obtain their free, prior, and informed consent was a question regarding the merits of the case, and postponed its review of that matter for the contentious case P-817-11, currently underway in the Commission.

²¹ Ministry of Foreign Relations, Press Release No 142, *Brasil considera medidas da OEA sobre Belo Monte “precipitadas e injustificáveis”*, April 5, 2011, available at: <http://blog.planalto.gov.br/brasil-considera-medidas-da-oea-sobre-belo-monte-precipitadas-e-injustificaveis/>.

²² Ambassador Caseas has yet to receive orders from the government to return to his post in Washington, see Folha de São Paulo, *Dilma retalia OEA por Belo Monte e suspende recursos*, April 30,

its nomination for its candidate to the IACHR, former Secretary of Human Rights Paulo Vannuchi,²³ in retaliation for the Precautionary Measures. Finally, according to a report in the Brazilian press, the government has refused to disburse its annual contribution to the OAS (the equivalent of approximately 6% of the total budget for the OAS) in protest over the international case. According to the Ministry of Foreign Relations, Brazil's relations with the OAS "will only be normalized after the reform of the IACHR, entity responsible for this imbroglio."²⁴

56. As a direct rebuke to the Inter-American Commission and affected communities, the Brazilian government has also refused to appear before the IACHR in a Working Group Meeting convened for October 26, 2011 in the IACHR's headquarters in Washington DC. This further act of defiance on the part of Brazil denied indigenous leaders and affected peoples one of their only chances to dialogue directly with the government, demonstrating the Brazilian State's complete intransigence and unwillingness to even discuss human rights protections for affected communities.

57. In addition to pressure directly from the Brazilian government, there has been a disturbing trend for other organs of the OAS to interfere with the international proceedings before the IACHR. In early May 2011, the Secretary General of the OAS, José Miguel Insulza, referred directly to the Belo Monte case before the IACHR during an interview with international press. Insulza insisted that Brazil did not have to comply with the resolution of the IACHR, that the IACHR "makes recommendations, never orders for countries," and that neither Brazil nor any other country would be violating an international treaty if the measures were not followed.²⁵ Later, in an interview with the Brazilian press on Sept. 15, the OAS Secretary for Multidimensional Security, Adam Blackwell, misleadingly claimed that the Precautionary Measures had been lifted and that: "This matter is closed for us. I believe that there was a lack of information on the part of the Commission's members."²⁶ By interfering unduly in an ongoing proceeding, these declarations are an assault on the IACHR's independence and autonomy. They also directly contradict interpretations of international law from various human rights bodies and experts,²⁷ and threaten to weaken the Precautionary

2011, available at: <http://oglobo.globo.com/pais/noblat/posts/2011/04/30/dilma-retalia-oea-por-belo-monte-suspende-recursos-376625.asp>

²³ O Globo, *Vannuchi não é mais candidato á OEA*, April 13, 2011, available at: <http://www.fazenda.gov.br/resenhaeletronica/MostraMateria.asp?page=&cod=714730>

²⁴ O Estado de São Paulo, *Brasil não paga OEA por causa de Belo Monte*. Oct. 20, 2011, available at: <http://www.estadao.com.br/noticias/impresso,brasil-nao-paga-oea-por-causa-de-belo-monte-787892,0.htm> The government has never officially confirmed or denied these allegations of not disbursing its annual contribution.

²⁵ BBC Brasil, *Comissão da OEA deve 'revisar decisão' sobre Belo Monte, diz secretário-geral*, May 4, 2011, available at: http://www.bbc.co.uk/portuguese/noticias/2011/05/110502_insulza_jc.shtml

²⁶ O Globo, *OEA volta atrás sobre Belo Monte*, Sept. 15, 2011, available at: <http://www.blogbelomonte.com.br/2011/09/15/o-globo-oea-volta-atras-sobre-belo-monte/>

²⁷ See IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 241 OEA/Ser.L/V/II.124 Doc. 5 rev.1, March, 7 2006; IA Court HR, *Matter of the Mendoza Prisons regarding Argentina*, Provisional Measures, Nov. 22, 2004, Resolution 16; European Court of Human Rights, *Mamatkulov and Askarov v. Turkey*, Decision of Feb 4, 2005; International Court of Justice, *Case of La Grand (Germany v. United States)*, June 27, 2007; see also Medina, Cecilia, *The Battle for Human Rights:*

Measure mechanism, which has played a fundamental role for protecting human rights in the Americas.

58. As a result of the lack of compliance with the IACHR's resolution of Precautionary Measures and the absolute refusal of the Brazilian government to dialogue, communities affected by the Belo Monte dam project continue to suffer from a constant threat to their human rights including rights to life, physical integrity, health and cultural survival. The primary measure that Brazil must implement to adequately protect the rights of affected peoples is to halt the dam's construction, as required by the IACHR's April 1st resolution of Precautionary Measures. Without this initial step, there will be no way of ensuring the adequate implementation of protective and mitigating measures before the projects causes further harm.