REPORT SUMMARY

INDIGENOUS PEOPLES OF THE NORTHEAST OF BRAZIL IMPACTED BY THE TRANSPOSITION OF THE SÃO FRANCISCO RIVER
Colophon

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Introduction

The Transposition of the waters of the Rio São Francisco\(^1\) undertaken by the Brazilian Government is a project that violates ethno-cultural and territorial rights of Traditional Peoples and Communities, especially Indigenous Peoples, some of whom have already been affected by major hydroelectric dams. The Brazilian State, by undertaking the work without Prior Consultation of the affected Indigenous peoples and the National Congress, ignores the Brazilian Federal Constitution of 1988, ILO Convention 169 to which Brazil is a signatory country, as well as other national and international legal instruments, especially those referring to territory, access to natural resources, biological diversity and traditional resources.

Representatives of nine indigenous peoples co-operated to prepare this report: the Truká, Tumbalalá, Pipipã, Kambiwá, Pankararu, Tuxá, Kariri-Xocó, Xocó and Anacé. Together, they denounce large-scale social and environmental impacts caused by the works that have been initiated in June 2007.

This Report also relied upon support and guidance from APOINME - Articulação dos Povos e Organizações Indígenas do Nordeste (Articulation of Indigenous Peoples and Organizations in the Northeast, Minas Gerais and Espírito Santo), in partnership with AATR - Associação de Advogados de Trabalhadores Rurais no Estado da Bahia (Association of Attorneys for Rural Workers in the State of Bahia), NECTAS - Núcleo de Estudos em Comunidades e Povos Tradicionais and Ações Sócio Ambientais (Nucleus for Studies in Traditional Communities and People and Socio Environmental Actions) of the State University of Bahia) (UNEB - Universidade do Estado da Bahia), Projeto Nova Cartografia Social do Brasil (New Brazilian Social Cartography Project, of the Federal University of the Amazon - UFAM) and with the CPP - Conselho Pastoral dos Pescadores (Pastoral Council of Fishermen) through the Project for Popular Articulation for Revitalization of the Rio São Francisco.

\(^1\) The Rio São Francisco represents 60% of water reserves in the Northeast region of Brazil. Recognized since the Brazilian Empire as the River of National Integration, it supplies six states: Minas Gerais, Bahia, Pernambuco, Alagoas, Sergipe, Goiás, in addition to the Federal District. Its basin embraces 504 municipalities, or 9% of all municipalities in the country. It links the Southeast region to the Northeast. Its source is located in Piumi (Mato Grosso) and flows to Piaçabuçu in Alagoas and Brejo Grande in Sergipe. It flows through the semi-arid Brazilian region, through the nation’s most threatened biomes: the Cerrado and Caatinga, characterized by intense periods of rain and long dry seasons.
The Indigenous People vehemently denounce the great social and environmental losses and damages that have been created by the construction of the seven hydroelectric plants and approximately 30 dams constructed in the river so far and that the Brazilian Government has not yet acknowledged. Regarding the transposition project, they demand:

1) Recognition of their ethnic and territorial identities;
2) The right to be duly informed and consulted as respects the transposition, as stipulated by ILO Convention 169 and by the Brazilian Constitution;
3) Full rights to their territories and demilitarization of areas that have been occupied by the Brazilian Army to guarantee the execution of the works, and the liberation of other areas invaded by settlers, farmers and companies, which have precipitated violent conflicts in the Indigenous lands;
4) the right of access to the courts of justice in order to question the threats posed upon Indigenous rights by the transposition, peremptorily denied by the Federal Supreme Court;
5) the guarantee of security and of fair and equal treatment by the country's judicial system, putting an end to the violent and criminalizing actions that are committed with impunity against Indigenous leaders;
6) The right to Indigenous self-determination and a model of sustainable development that respects nature, the way of life and production of the indigenous; an alternative plan to resolve the issue of water democratization, based on coexistence with the Semi-Arid climate, and prioritization of public investment in the revitalization of the São Francisco river.

The main elements of the Report are hereby summarized. For the full report, please access: [http://www.cimi.org.br/pub/publicacoes/1241549933_relatapoinmetransp.pdf](http://www.cimi.org.br/pub/publicacoes/1241549933_relatapoinmetransp.pdf)
The Rio São Francisco or Opará: "Father and Mother of the Indigenous Nation"

‘The Rio São Francisco is the father and mother of the Indigenous nation and river dwelling people.’
Neguinho Truká Indian Tribal Chief

‘But, the greatest treasure we have here is the Rio São Francisco. We don't give him away for anything in life, right? There is nothing that could buy this heritage.’
Raimundo Xokó Shaman

Reports from indigenous people affected by the transposition works dramatically demonstrate that this project is reproducing historical practices that the current International Human Rights System totally opposes. This, because the Indigenous Peoples are denied their rights in many aspects.

In order to understand the impact of these works some comments are unfolded on the relationship of these People with the primary river in the Northeast Region. The São Francisco River is treasured, throughout its course, by the Indigenous Peoples as one of the most valuable resources in the Northeast Region for both its symbolic and material value.

It has caused and guided migrations, determined populations and guided the process of territory demarcation of many ethnic Indigenous groups in the Northeast. Its riverbed was crucial as an entry point towards the country’s interior. It also has been motive for Indigenous resistance and fights against physical and cultural dominance by colonizers.

From headwaters to its bay, the River crosses a continuous traditional territory occupied for more than nine thousand years. Nowadays, in its 2,800 km extension, 32 Indigenous Peoples are distributed among 38 territories: Kaxagó, Kariri-Xocó, Tingui-Botó, Akonã, Karapotó, Xocó, Katokin, Koiupanká, Karuazu, Kalankó, Pankararu, Fulni-ô, Xucuru-Kariri, Pankaiuká, Tuxá, Pipipã, Kambiwá, Kapinawá, Xukuru, Pankará, Tupan, Truká, Pankararé, Kantururé, Atikum, Tumbalalá, Pankaru, Kiriri, Xacriabá, Kaxixó and Pataxó. The estimated population is approximately 70 thousand people.

The significance of the Rio São Francisco finds unanimous resonance in the narratives of the communities: the river was and is vital to their physical and cultural survival, including

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2 Ecologias do São Francisco, Juracy Marques.
river regime adapted agricultural methods, traditional fishing, livestock husbandry, etc. as well as to maintaining Indigenous rites, culture and religious beliefs.

1.1 - Dams on the São Francisco: people without water from a “nearly dead river”

Over the past forty years the São Francisco River has been undergoing a series of interventions, especially since the 1970s, marked by large-scale development projects. Destruction of riparian forests, pollution – a consequence of urban and industrial effluents (used-water discharges) –, soy and sugar cane monocultures and large scale irrigation projects contribute on a daily basis to the degradation of river. In fact, the São Francisco river is in deplorable environmental conditions.

The construction of the hydroelectric power plants in the river caused the forced removal and dislocation of over 150 thousand persons, among whom are several Indigenous peoples;
Irrigation projects, public and private, occupy an area of 342 thousand hectares and are expanding through the use of slave labor and labor in degrading circumstances;
Five hundred thousand riparian people suffer from the absence or precarious supply of water and basic sanitation;
The river has already lost 95% of its riparian forests (forests along the river sides that retain water and avoid erosion) and the sea, as a result of the weakened river flow at the mouth of the river, has advanced 50 km. into the river.

These impacts directly influence the way of life of Indigenous Peoples in the São Francisco Basin. The large number of hydro power projects has already provoked population decimation, forced dislocation and destruction of archaeological and cultural patrimony of many Indigenous Peoples, resulting in large scale social, ethnic and environmental liability.

Without due compensation by the Federal Government, they still plead for recomposition of lost territories, access to water, demarcation of territories, river revitalization, repatriation of cultural patrimony material, among other demands. They likewise endure forms of irreparable damage, such as loss of sacred places flooded by dam waters.

Literal cascades of dams created a situation of extreme poverty for most of the Indigenous populations, with no access to vital recourses such as water, land and food. This situation, contrary the image that is historically associated with this fact, does not result from drought in the region, a supposed lack of water, but from exploitation by the economic elites in the region as well as by large national and multinational companies that systematically violated the rights of the local population. Electric power and the stored water have not served the people, but rather the large mining companies, irrigation-based large-scale agriculture, the iron and steel foundries, the livestock farming.
Corruption in public investments in the region is a matter of historical record; elites are accustomed to being beneficiaries of federal governments through what is suitably called the "drought industry".

All contexts reveal the historical debt that the Brazilian Government has with the indigenous People in the São Francisco Hydrographic Basin. Affirmative policies need to be created to ensure their territories, respect for their culture and rituals, access to natural resources and to promote self determined development for their lives. The damages that remain from these large enterprises, the resulting environmental degradation, the expropriations of water and land and successive diasporas have already left the deep
The scars of social misery and the extermination of Indigenous culture are too bad
to allow any other infrastructural project in a similar way and with similar impunity.

Therefore, this scenario is our starting point to interpret the manner in which the
Transposition Project is developed: whether it is realized in recognition of Indigenous
rights, or that it will add up to the historic denial and negligence of indigenous rights. Which
would reproduce historical practices that are in clear opposition to the present International
Human Rights System, as well as the very Federal Constitution of Brazil.
2: The Transposition Project and Violence by the State Against Indigenous Peoples

The Rio São Francisco Integration Project with the Northern Northeast Hydro Basins, also known as the Transposition Project, is presented by the Brazilian Government as the final solution for the drought phenomena that hits the Northeast Semi-Arid region of the country. The undertaking includes the construction of another two hydro electric dams (called Pedra Branca and Riacho Seco), nine pumping stations, 27 aqueducts, eight tunnels and 35 water reservoirs, in other words, it is a complex engineer work in a degraded river. It is the Lula Government’s largest infrastructure project in the PAC (Program for Accelerated Growth).

In theory, the project would construct two large channels over 600 km in length, to supply 12 million people and 268 cities with water and to irrigate three hundred thousand hectares of land, at a total cost of 6.6 billion Brazilian Real. (approximately 2.5 billion euros or 3.5 billion dollar according to the currency exchange rate of august 2009).

According to the Brazilian Government, the Project will supply locations that at present have no easy access to water. Its implementation is said to be without negative impact to either riverside communities or to the São Francisco. However, drought and human and animal thirst will be the least addressed part of the project, since the Semi-Arid regions most exposed to drought will remain far from the channels and aqueducts. The Project text that the government issued confirms that only 4% of transposed waters will reach the so-called diffuse population, spread throughout the Caatingas; 26% will be used for both urban and industrial use and 70% for irrigation projects.

The so-called AID (Area of Direct Influence) is well known to contain environmental preservation areas, Indigenous reserves, the remaining quilombo communities and other social groups and resources of inestimable value. In fact, the perspective is that more than eight thousand Indians will be directly affected. Yet the Environmental Impact Study does not include a single sentence on the relationship between affected communities and use of cultural, archaeological, historical or ecological patrimony of the region.

The Project has been questioned by several civil society organizations as well as river dwelling communities, fishermen, Indigenous peoples and quilombolas in the Basin. Of particular note is the absence consultation of the people that are directly affected and their participation in the decision making. Especially on the necessity and the effectiveness of the project. First, since the main benefits are for large (irrigation) projects, which will increase water disputes in the Semi-Arid region; And second, since the project will result in further degradation of the river and therefore affect the way of life, production and habits of all groups historically living in the São Francisco Basin.
The São Francisco River Basin Committee, with the authority to approve the Plan of Hydro Resources of the Basin according to Law No. 9.433/1997, was opposed to the São Francisco River Integration with the Northern Northeast Basins Project. It would only allow for the use of water for human consumption and for animal thirst, and only if scarcity is proven and after infrastructure and management measures were adopted to address demands under the Receptor Basins Plan.3

Regarding the Indigenous component, the Funai (the Federal Organ for Indigenous Affairs) did not object to the project, as long as ethnological studies of affected people were carried out. Initially a plan to survey 10 affected communities was proposed, however without any explanation, this number was reduced to four: Kambiwá, Pipipá, Tumbalalá and Truká.

Even prior to the conclusion and discussion of the studies with the communities, Funai’s then president, Marcio Meira, issued a favorable opinion on the project, although all studies present elements and facts for which the people involved rejected the Project. It also reinforced negative impacts on Indigenous territories.4

All irregularities seen in the implementation of the Transposition Project have led to a series of court ordered interruptions. For example, because of the lack of environmental impact studies and abrogation of participatory rights. There have been more than 15 court orders in several Brazilian states. However, on December 19, 2007, the Federal Supreme Court, the highest power in the Brazilian Judicial system, refused to recognize and judge the judicial actions presented by civil society organizations, considering them to be illegitimate. The Supreme Court only recognized legitimacy to judicial actions presented by state agencies and judged only those appeals made by the Federal Public Ministry. These were deferred by the judges, who stated that the project were legal and that it would not negatively affect Indigenous lands.

Such positioning, considered to be highly political by public opinion, violates directly the constitutional guarantees of access to justice, in this case, especially for Indigenous organizations, as well as the right to prior information and participation in the decision taking. A right that is guaranteed to communities that are affected by any Governmental project, be it for positive or negative impacts, which is to be valued by the affected communities themselves.

As the project has been licensed by the Brazilian Justice system and by the Brazilian Environmental Institute, the works on the channels have already started in the region of the Truká people, on Assunção Island (PE), and in the region of the Pipipá people, in the city of Floresta. In both cases it’s the Brazilian army that is executing the work, in effect making the territory a militarized zone.

Therefore, the transposition project of the Rio São Francisco is taking place on the Indigenous land, disregarding the consequences on the indigenous land and with disregard to the indigenous voices.

In general debates and institutional positioning, the three powers of government, the Federal Government (executive), the National Congress (legislative) and the STF

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3 It should be noted that the PISF-study foresees that more than 70% of the transported water is intended for irrigation and cattle raising and not for human consumption. On top of that, water scarcity has not been proven for the receiving basins, as was anticipated as a criterion in the São Francisco Basin plan.

4 Information verbally given by representatives of CGPIMA (General Coordination for Indigenous and Environmental Patrimony), of Funai. Documents were delivered but remained answered.
(judiciary) avoided to face this question, preferring, rather, to deal with different arguments. Such as: the non-existence of Indigenous in the area where the canals will go through, that there will be no harm and that, in fact, they will benefit from the project. Meanwhile they continue to disregard the need of consultation and public hearings. The very ethno-ecological studies undertaken and presented by the Funai were not taken into consideration, not the reported negative impacts nor the outcomes of the dialogue with the Indigenous People, thus explicitly showing the opposition and antagonism between the different positioning of the different state organs.

In the following we list the various violations of the rights of Indigenous peoples as stipulated by international treaties such as ILO Convention 169 on the rights of the Indigenous People, and as recognized in the text of the São Francisco Water Transposition Project by the Brazilian Government.

2.1. IDENTITY AND ETHNIC DISCRIMINATION
ART.1.2, 3 AND 4 OF ILO-CONVENTION 169; ART. 5, 215 AND 216 OF FEDERAL CONSTITUTION

The Brazilian Government has compromised itself, through decree 6040/07, to "recognize, with celerity, the self identification of traditional peoples and communities, for their full access to civil, individual and collective rights". The Federal Constitution, under Article 5, sections 215 and 216, recognizes the diversity of the groups that form Brazilian society as well as its ethnic plurality, determines the protection and valorization of the diverse cultural manifestations and modes of creating, making and living of these people, specifically highlighting the Indigenous Peoples and the Afro Brazilians.

However, as in many other projects, the various party in favor of the Transposition, deny the existence of the Indians in the region, including many state authorities. The indigenous are accused of being liars, charlatans and profiteers. Buttressed by preconceived stereotypes, this has become common discourse. Denying their identity, these parties equally deny any rights to the indigenous, like their participation and self-determination rights.

This negation constitutes a plain denial of another, internationally recognized right, as set forth in the United Nations Convention 169, of the International Labour Organisation (ILO). Brazil is signatory party of this convention. Article 1.2 recognizes and affirms that the only defining criterion on ethnic provenance of an indigenous community is self-definition. In other words, the only one who can determine whether or not someone is indigenous, is that very own indigenous community.

Further more, under Articles 3 and 4 the Convention condemns any discriminatory practice in the affirmation of Indigenous identity. So, rather then deny their existence, the State must take measures to safeguard goods, institutions and culture of the indigenous people.

There were moments, regarding the Transposition Project, when the Government recognized the Indigenous People as affected. But this was only to suggest that the would benefit from the project, allowing the government to pretend a beautiful guardianship over them. In other instances, representatives of the public powers explicitly denied the existence of Indigenous land in the areas covered by the Project.

An example of this denial refers to the planned construction of the Riacho Seco Hydroelectric Power Plant, that will provide electricity and water to pump into the
Transposition canal. The preparatory geo-reference data state that there are no Indigenous lands in the region, although all are aware that in Curaçá – a municipality certain to be impacted – there is the Tumbalá village, with about 1500 indigenous men and women, living in the Pambu village.

Lastly, investments on the scale of millions of dollars in projects that oppose Indigenous interest, such as the transposition, are in sharp contrast to the scant investments in social policies for the indigenous. As such, this attitude is considered as institutional racism. The report from the Federal Public Ministry, dealing with the impact of the transposition in Indigenous lands, also shows that: "The local populations are treated as obstacles to development and as an 'environmental problem'. Therefore the impacts experienced by the population due to the enterprise are not fully taken into consideration. Affected people are not treated as Citizens, as actors within their own history, carriers of strong relationship with the environment and importance for its maintenance and well-being."

2.2. PRIOR CONSULTATION (ART. 6 OF 169 CONVENTION), RIGHT TO INFORMATION AND PARTICIPATION

The Federal Constitution, in §3 of Article 231, which is the chapter that deals exclusively with the Indigenous population, establishes that the utilization of water resources in Indigenous lands can only take place with the permission of the National Congress, hearing the affected communities. This internally recognizes the important principle of the International Right that refers to the rights of traditional communities, which is the Principle of Free and Informed Consent, as established in Article 6 of Convention 169 of the ILO.

Contravening the provisions cited, the Brazilian Government did not conduct any proceeding of prior consultation of the Indigenous peoples affected by the Transposition project, nor did it submit the project to the National Congress for authorization. The few hearings that were held, were conducted in the State capitals, therefore distant from the Basin itself and distant of those peoples directly interested. Thus, a plain and clear disrespect is observed to the constitutional principle of self determination of the peoples, denying various traditional populations – river peoples (ribeirinhas), quilombolas and indigenous – the right to participate in a process on decisions that directly influence their lives.

As a further affront to the right to information and participation, repeated denunciations indicate that the Government entered into informal negotiation strategies, selling the transposition as exchange currency. In exchange for the approval of affecter communities, the authorities offer other goods or services that in fact already are constitutional rights of the indigenous people. In other words, these are ‘gifts’ that are already obligations of the State to provide to the Brazilian citizens, but that were never delivered. Services such as access to water, social housing, schools and social programs. This negotiation of state obligations as favors to one or another people in exchange for their approval of the project handles as favoritism what should be the exercise of full and free citizenship and participation in society, as guaranteed by constitutional law. Added to this, there is many reports of intense institutional propaganda, released through mass media, advertising the project as an undertaking to quench the thirst of the population, while negative impacts are conveniently silenced, as well as the real objectives of the transposition.
Besides representing the violation of free and informed consent of the affected citizens, the facts denounced equally affront the right and duty of all citizens to have access to information in the hands of the State. International conventions and jurisdiction provide an ample foundation for the importance of the right to information to enable the exercise of full and free citizenship.

2.3. TERRITORIAL RIGHTS (ART. 13 TO 15 OF THE 169 CONVENTION; ART. 231 OF FEDERAL CONSTITUTION)

The right of the indigenous peoples to their territories is consecrated in Article 231 of the 1988 Federal Constitution. It confers originary rights to the indigenous over the land that is traditionally occupied by them. Moreover, the Constitution demanded demarcation of all Indigenous land within a period of five years (that would be 1994). Article 231 and its paragraphs elevated the concept of Indigenous land to category of Constitutional Text. It affirms indigenous territorial right, namely: “traditional lands occupied by indigenous” are those they inhabit in a permanent character, utilized for their productive activities, those indispensable to preservation of the environmental resources necessary to their well being and those necessary to their physical and cultural reproduction, according to their uses, customs and traditions (CF, art. 231, §1).

The Federal Constitution establishes that land traditionally occupied by the Indigenous people is patrimony of the Federal Union, guaranteeing to the Indigenous peoples occupying them, the permanent possession and exclusive usufruct of the riches of the soil, rivers and lakes existing in them. It likewise forbids any process of forced removal.

The Transposition Project, however, in and of itself, represents violations of these constitutional rights and guarantees. For one thing, in June 2007, the Truká people were dispossessed, by a court order, at the request of the Brazilian Government, of their own territory in Pernambuco. Second, the territories of the Truká and Pipipã indigenous peoples have already been occupied by the Brazilian Army and with accesses interdicted to others to guarantee the initiation of the works.

Overall, it can be observed that the processes of demarcation conducted by the FUNAI develop very slowly. Considering that the deadline was 1994. And nowadays many territories are found in areas directly affected by the Transposition as well as other supposed development projects, the various indigenous peoples argue that the Government does not want to demarcate precisely in order to leave these areas free to the companies. People such as the Tuxá, Truká and Pankararu, for example, had their demarcated territories reduced and have waited for years for the revision of the boundaries by the FUNAI. Other peoples who are impacted, like the Anacê, Pipipã and Tumbalalá have not had any territories demarcated while the construction of the canals advances on them.

Given these data, and others, presented in the full version of the report, we are confronted by the shameful non-compliance of the Federal Government in guaranteeing and preserving the indigenous territorial rights. At one hand by plain omission in the demarcation process and the failure to fend off invasions and occupations of those lands. On the other hand, by direct state action through incentives to and execution of economic projects that are opposed to interests of the indigenous people. In fact, in the case of the Transposition Project the Federal Government figures as the greatest invader.
2.4. ACCESS TO NATURAL GOODS; THE RIGHT TO ECOLOGICAL DIVERSITY AND TRADITIONAL RESOURCES
article 231 and 225 of federal constitution; article 15 of 169 ILO-convention; article 8 of biological diversity convention

The environmental preservation which was due to the specific relationship that the Indigenous People cultivate with nature, was suppressed by a process of intense degradation in the hydrographic Basin (Bacia) of the Rio São Francisco.

The situation of the river and its predominant biome, the Caatinga, is extremely precarious, in terms of both access to water of the river and extermination of most of its traditional species, such as fish, trees, birds, forests and plants, among other elements. It is estimated that more than 70% of the Caatinga is already deforested. Silting of the river and destruction of the riparian forests, resulting from over-exploitation of the river for development projects, especially hydroelectrics, have taken an alarming toll. This has led many people and environmental organizations to promote a national campaign entitled “Vamos Salvar o Velho Chico”, or: Let’s Save Velho Chico. (Velho Chico being the nickname of the Rio São Francisco).

Grave problems are already experienced by the Indians living near the mouth of the Velho Chico along the river located in the region of the Baixo São Francisco. Peoples such as the Xocó and Kariri-Xocó people, are deprived of native fish due the impact of the dams. These seriously interfere with the flow of the river, causing a combination of a decrease in the river flow and a strong advance of the sea up the river. This, among other things, threatens access to potable water. Others, like the Pankararu, are already deprived of access to the banks of the river because they have been fenced off. Many Indigenous fishermen have to walk great distances to access the river because of farms that have been installed, silting and the great expansion of aquaculture of tilapia fish by private companies.

Destruction of vegetation caused by monoculture has destroyed most of the river margin lagoons, the primary fish nursery in the lower São Francisco region, leaving today only a fragile ecosystem. These lagoons provided means of subsistence for the Indigenous people. Control of the water flow by hydroelectric power plants, which increase and decrease the volume according to energy criteria, has a substantial impact on the river biology and causes many people to lose marshland areas, traditionally used for dry season agriculture, when receding rivers leave fertile soil margins.

The transposition also tends to make access to water more difficult in a region where the river population itself suffers from lack of access to drinking water, due to lack of investment in a distribution system. The aim of the transposition of the water is to supply large irrigation projects and new industrial enterprises in other states, like the Port of Pecém in Ceará, which will even further prejudice the water supply for both humans and for watering of livestock. While exactly these were stated as priority uses in the Plano Decenal da Bacia (Ten Year Basin Plan). The supply of water to water basins would hardly signify the democratization of water; as such basins have concentrated – and privatized – a substantial amount of water in the hands of a few.
Water, carried through long canals, will suffer an intense process of evaporation, causing substantial losses making it more expensive. In other words, the indigenous peoples and riverside people will have even greater difficulty to access water.

In turn, the Transposition and the limitation of access to water and natural resources will directly interfere in the preservation of knowledge and traditional practices of the Indigenous people, as well as in biological diversity, which is both maintained and generated by such traditional knowledge.

2.5. VIOLENCE, CRIMINALIZATION AND ACCESS TO JUSTICE

Article 12 of Convention 169 establishes that the Indigenous people shall have effective protection against violation of their rights and that they shall be able to initiate legal proceedings, be this personally or through representative organs, to safeguard the effective respect of those rights. Article 18 determines that Governments must adopt measures to prevent the commission of crimes connected to land conflicts and to identify, judge and sanction, in an exemplary manner, those people responsible for deeds committed.

However, territorial insecurity, due to lack of demarcation and the struggle in opposition to transposition of the Rio São Francisco, has generated several conflicts for the indigenous people in the São Francisco Basin. Acts of violence range from the murder of Indigenous leaders (as was the case in the occurrence of the five Truká people murdered in the context of their territorial struggles in the last four years) to judicial processes of criminalization of indigenous leaders, with strong endorsement by segments of the Brazilian Government.

The Transposition project itself has been implemented by force by the Brazilian Army. Instead of seeking dialogue, the Government imposed the initiation of the work, by force. The excavation works located in the territories of the Truká People and Pipipã People have completely been fenced off, limiting the free access of these peoples. In June 2007 demonstrators were removed from the area by court order and with the use of police force. On the other hand, accountability measures against the abrogation of the rights of indigenous peoples are not taken. While murders are not investigated, the transposition, despite all of the flagrant irregularities, continues to enjoy endorsement by the Brazilian Justice system. The positioning by the Supreme Court absurdly concluded the non-existence of impact on Indigenous lands, contradicted by facts that are both public and notorious, including official documents such as the ethnological studies by the Funai. Similarly absurd was the decision to only judge the judicial action by the Federal Public Ministry, judging illegitimate the actions proposed by civil society. The Supreme Court, by means of this interpretation, violated the right of access to the justice system for innumerable organizations, amongst them indigenous organizations, violating not only Article 12 of Convention 169, but also Articles 5 and 232 of the Federal Constitution as well as the Universal Declaration of Humans Rights.

2.6. SELF DETERMINED DEVELOPMENT

Recognition of the right of all Peoples to free determination, which allows them to freely decide their political condition and to freely pursue their economic, social and cultural development, is recognized and affirmed in the United Nations Charter, in the International Pact of Economic, Social and Cultural Rights, in Convention 169 of the International Labor Organization (ILO), as well as in the Vienna Declaration and Program of Action.
The Transposition Project stands completely and totally counter to all other intervention policies in the Semi-Arid and to the use of water, demanded for years as a condition for improvement of life for the river dwelling indigenous people. The demand for immediate and urgent revitalization of the Rio São Francisco is an example of this.

In March 2005, in the Tuxá village Rodelas, the first meeting of river dwelling indigenous people took place with the objective of presenting a collective reflection on the Rio São Francisco Integration Project with the Hydroelectric basins of the Northern Northeast and construction of dams that affect both the river dwellers, the Indigenous Peoples and the Quilombolas. The debates centered around three axis: the cultural, social and economic relationship that exists between the Indigenous populations and the Rio São Francisco. The result of the meeting was a general positioning favorable to a project that revitalizes the Rio São Francisco, with the drainage of its channel, reforestation, studies on the use of agrotoxins and utilization of organic products, basic sanitation for municipalities along the river and democratization of the use of water. This revitalization project also includes a plan for improvement of living conditions for the semi-arid indigenous communities, with the balanced use of the groundwater, surface and rain water, storage and management of cisterns, wells, weirs and springs.

On the other hand, EIA/RIMA proposal presented by the entrepreneur did not present an alternative other than the transposition, as if it were the only choice available, ignoring a series of alternatives already practiced by the Indigenous and riverside people of the São Francisco Basin and of the receptor basins.

What is most contradictory and appalling in all of this is that other forms of coexistence with the drought conditions have proven more viable and less costly, as presented in the study “Atlas Nordeste”, prepared by the Government itself through the National Agency of Waters. This project seeks to consolidate alternatives for water supply in the main settlements of the municipalities of the Northeast region of Brazil and of the north of the state of Minas Gerais.

The comprehension of development as defended by the Indigenous People distances itself from the premises of “natural poverty of the Semi-Arid” and of “combating drought”, false premises that are being reproduced by the Transposition Project. Their comprehension affirms the value of local biodiversity as well as the necessity of “coexistence with the Semi-Arid”.

Among proposed alternatives is universalization of access to water by the democratization of the water that is stored in seventy thousand water basins spread over the region; water supply to the urban and rural population in the cities in the São Francisco Basin; making good sustainable use of all superficial and underground waters; significant reduction of loss in distribution and use of water, which has reached up to 50% of water conveyed; reuse of water; the careful capture of rain water that falls every year in the Semi-Arid; agrarian reform adapted to the Brazilian semi-arid, oriented toward family agriculture; implementation of policies that privilege initiatives to co-exist with the Semi-Arid according to local interests, characteristics and familiar reality, such as: cistern construction (ater tanks), circular small-scale mandala irrigation, subterranean dams, small animal husbandry, production and storage of forage, demarcation of indigenous territories; demarcation and regularization of traditional river communities areas; regularization of public land from the federal and state government, to distribute it to those who do not yet possess land to live on, while increasing the size of
land for those who do not have sufficient land to ensure true sustainable development. Furthermore, the indigenous propose conservation and sustainable utilization of the regional and local biodiversity; recovery of degraded areas and combating desertification.
3: Government Responsibility and Recommendations

If there were at least some dialogue, perhaps we could sit down, we could look for better solutions other than the transposition. We need this land, this river... Lula must see that he’s killing the river, while he is there saving, selling power, he’s killing our Indians.

Cícero Tumbalalá Tribal Chief

The River is the most important thing, it provides us our living, its where the enchanted light people come from. Here we have the trees, we have the birds, the otters, the signs of life and death. We and the river are one.

Adailson Truká Shaman

Analysis of the implementation of the Project of Transposition of the Waters of the Rio São Francisco thus reveals serious and successive violations of fundamental rights of the Indigenous People that are recognized in international treaties and in National Legislation, especially the ILO Convention169 and the Brazilian Federal Constitution of 1988. In order to avoid that the indigenous rights are irreversibly violated, it extremely urgent and necessary that international and national human rights entities pronounce themselves over the reported facts and recommend to the Brazilian State:

a) That it immediately suspend the work and the licensing of the Project of Transposition of the Waters of the Rio São Francisco as well as Riacho Seco and Pedra Branca Hydroelectric Plants until prior consultation is undertaken with the 32 Indigenous Peoples of the Bacia do São Francisco and that an authorization project is delivered to the National Congress, under terms stipulated by the Federal Constitution under Article 49, XVI;

b) That the Brazilian Army be withdrawn immediately from the territory of the Truká People and from the village Icó Mandantes where the community of Pipipã People live, among others people that were affected by the Itaparica dam and resettled in that village;

c) That the Brazilian Government demarcate and confirm the areas claimed as territories of the Pipipã, Tumbalalá, Truká, Tuxá, Kalankô, Anacé and other Indigenous Peoples of the Bacia do São Francisco;

d) That the Brazilian Government, as guarantee of the right to development revindicated by the indigenous communities of the São Francisco basin, provide an ample program of Revitalization of the Rio São Francisco, and promote public policies that guarantee social, economic and cultural sustainability of the Indigenous People in their territories, as well as policies of coexistence with the semi-arid;
e) That the Brazilian Government take action to end the criminalizing attitude towards the political struggle of the indigenous peoples taken by institutions of the Brazilian state itself, such as the police forces, the Public Ministry and Judiciary; that effective measures of investigation and accountability be adopted for the crimes against indigenous leaders;

f) That there be repairs to social, environmental and economic liabilities of previous projects, under principal responsibility of CHESF (Companhia Hidroelétrica do São Francisco - São Francisco Hydroelectric Company).
Bibliografy

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