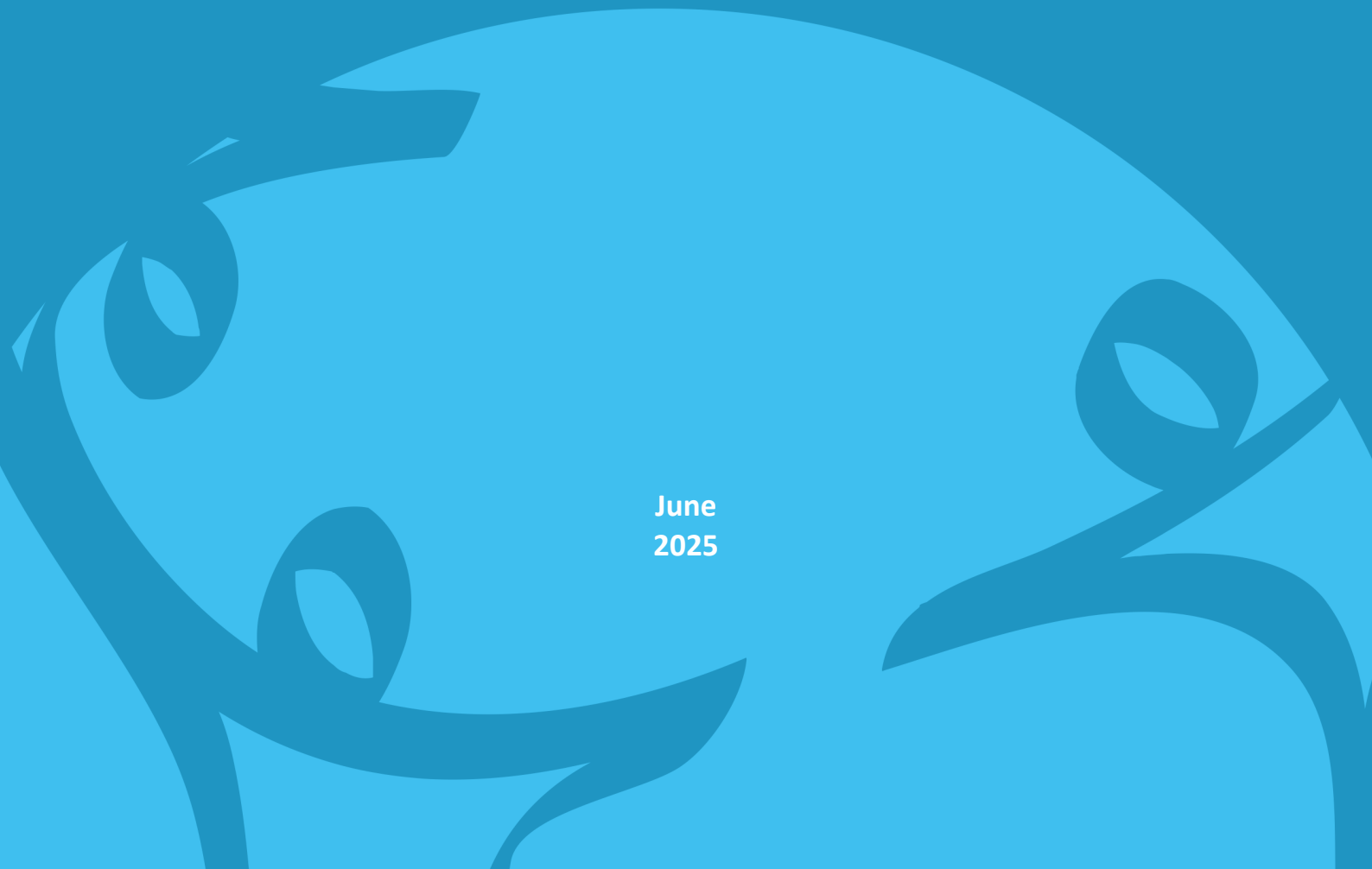
Terra de Direitos

TECHNICAL NOTE ON THE RIGHT TO FREE, PRIOR, INFORMED, AND GOOD-FAITH CONSULTATION AND THE STATE OF PARÁ'S ROLE IN THE JURISDICTIONAL REDD+ SYSTEM PROJECT AND PORT ENVIRONMENTAL LICENSING



June
2025

SUMMARY

1. INTRODUCTION

This Technical Note presents a critical analysis of the violations of the right to free, prior, informed, and good-faith consultation of Indigenous Peoples, Quilombola communities, and other traditional populations in the state of Pará. These violations occur in the context of the state government's proposal to implement the Jurisdictional REDD+ System and conduct environmental licensing for port facilities in the Tapajós region—located in the western and southwestern areas of the state—as part of the Tapajós–Xingu logistics corridor.

To this end, the reflections presented herein are based on a technical and legal examination of the right to free, prior, informed, and good-faith consultation, as established in Convention No. 169 of the International Labour Organization (ILO), to which Brazil is a signatory. Additionally, this analysis draws upon both national and international legal frameworks and incorporates emblematic cases to substantiate its arguments.

It is important to contextualize that the Brazilian State has historically designed and implemented projects targeting Indigenous, Quilombola, and other traditional communities with the primary aim of assimilating them into a dominant hegemonic society. The intention was for them to embody a so-called "civilized" State, rather than a "backward" one. Until the second half of the 20th century, it was therefore considered unacceptable for traditional peoples and communities to maintain their ways of life or to subsist from nature.

The enactment of the 1988 Federal Constitution and the ratification of international conventions marked a turning point in the recognition of the rights of Indigenous Peoples, Quilombolas, and traditional communities to exist as autonomous peoples. This recognition was achieved through hard-fought struggles during the National Constituent Assembly and continues to be upheld through persistent resistance in their territories. The guarantee of the right to be a people needed to evolve: it was not enough to merely protect cultural expression—traditional peoples needed a place to live out their cosmologies and ways of life.

Alongside the right to be, came the right to belong—meaning traditional peoples were entitled to live in accordance with their traditions, and to claim the right to their territories as the foundation of their existence. They no longer needed to relocate to cities in order to be "civilized" or assimilated; the State was at least compelled to recognize their right to live as culturally distinct groups, with their own social structures and practices.

By guaranteeing these peoples the right to maintain their own ways of life, the State was also compelled to develop mechanisms that would allow the decisions of traditional communities

to align with national legal standards. In this regard, the analysis by Professor Souza Filho is particularly relevant:

> The rupture brought about by the Latin American constitutions of the late 20th and early 21st centuries—beginning with Brazil's—secured the existence of these peoples as such, recognizing their internal social organization, internal norms, hierarchical structures, and a territory sufficient for their physical and cultural reproduction. This fundamentally changed the landscape of national law, making it necessary to determine how to deal with the internal decisions made by these peoples, which began to influence not only their internal governance and territorial relations, but also their direct engagement with the national States, whether through local decision-making or interpersonal relations among members of the communities. (SOUZA FILHO, 2019, p. 25).

These three foundational pillars in the construction of traditional peoples' rights—**being, belonging, and deciding over their territory**—represent the central banner in their struggle for survival: **self-determination**. Despite the existence of national and international legal frameworks aimed at protecting this autonomy, Indigenous Peoples, Quilombola communities, extractivists, artisanal fishers, and other traditional communities continue to suffer serious violations of their human and territorial rights.

This reality is largely driven by the implementation of plans, programs, and projects—such as the expansion of agribusiness—that directly impact the territories and ways of life of these communities. Such initiatives are often carried out without acknowledging their existence as collective subjects (being), without respecting the preservation of their cultures and ways of inhabiting the land (belonging), and without ensuring their effective participation in decisions that affect their lives (deciding).

In this context, the right to free, prior, informed, and good-faith consultation, as set forth in ILO Convention No. 169, is a key international legal instrument for the protection of the rights of traditional, Quilombola, and Indigenous Peoples. It guarantees that these peoples are heard, respected, and fully informed about decisions that may affect their territories and ways of life, reinforcing the country's commitment to the protection of their autonomy and fundamental rights.

ILO Convention No. 169 was adopted in 1989 and has since been ratified by 22 countries, including Brazil. It represents a historic milestone in the recognition of the sociocultural diversity that constitutes nation-states, as it affirms fundamental rights such as self-determination, self-identification, and participation of the peoples. At the same time, it imposes obligations on states in

their relationship with these communities[1]—most notably, the obligation to consult them whenever legislative or administrative measures that may directly affect them are being considered.

2. NORMATIVE AND JURISPRUDENTIAL FOUNDATIONS OF THE RIGHT TO FREE, PRIOR, INFORMED, AND GOOD-FAITH CONSULTATION, AND THE POSITION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Environmental issues have become increasingly prominent in daily life, demanding deep reflection on the relationship between human beings and nature. The current global climate crisis arises from a complex web of interconnected factors—such as economic dynamics and the pressures of international trade—that reflect a singular, dominant worldview shaped by specific cultural values.

These values are grounded in the idea that human beings occupy a central position on the planet, assuming the right to make use of everything around them. This anthropocentric conception grants humanity the exclusive power to assign value to the environment, reducing entire ecosystems to mere objects or resources to be exploited for economic gain. Within this framework, nature ceases to be recognized as a rights-bearing subject or as an integral part of collective life, and is treated solely as a means to human ends.

According to this logic, the human being is seen as the only bearer of value—and, therefore, the only holder of rights—claiming the authority to redefine the meaning of all things. What was once understood as nature is reduced to nothing more than a resource. When nature is treated in this way, the notion of utility overrides any other value, stripping away broader meanings of existence and relationality with the world. It is precisely within this context that Ailton Krenak (2020) offers a powerful critique, denouncing the dangerous notion that life's meaning must be rooted exclusively in utility—a worldview that impoverishes the diversity of ways of living and relating to the Earth.

The organizational structures of forest, riverine, floodplain, and rural peoples are guided by the protection and preservation of buen vivir. The concept of *Sumak Kawsay*[2], rooted in Andean Indigenous cultures and commonly translated as "good living" or "harmonious life," embodies a vision of territory not driven by predatory or economic exploitation, but rather by ancestral, spiritual, cultural, and symbolic richness.

1 Technical Note – ILO Convention 169 (Terra de Direitos).

2 Sumak Kawsay: Teachings from Indigenous Peoples.

It is in this sense—of the intrinsic and primordial relationship between traditional peoples and the environment—that the right to free, prior, and informed consultation has become **the primary international legal instrument for the protection of the rights of traditional**, Indigenous, and Quilombola communities. This right encompasses the enforcement and safeguarding of social and territorial rights, as well as rights to health, education, social security, and working conditions, ensuring access to public policies for the full realization of their citizenship—**while acknowledging and respecting their identity as distinct peoples.**

ILO Convention No. 169, adopted on October 5, 1989, marked a significant departure from Convention No. 107 of 1957, which promoted the assimilation of Indigenous, Quilombola, and traditional peoples into the dominant society. The new framework, based on respect for sociocultural diversity, rejects homogenization and advances the recognition and appreciation of these groups' specificities within Nation-States.

By adopting self-identification as a criterion for recognizing peoples, the Convention ensures that they can define their own priorities, including the preservation of their territories and traditional ways of life. This guarantees that their decisions are autonomous and that they reflect their territorial, cultural, social, and historical particularities.

Self-identification constitutes a fundamental principle for legitimizing traditional peoples as holders of collective rights. ILO Convention No. 169 stipulates that Indigenous, Quilombola, and other traditional communities must be consulted whenever legislative or administrative measures may affect their territories or ways of life. The core articles read as follows:

> **ILO Convention No. 169 on Indigenous and Tribal Peoples**
> Article 1
> 1. This Convention applies:
> a) to tribal peoples in independent countries **whose social, cultural, and economic conditions distinguish them from other sections of the national community**, and whose **status is regulated wholly or partially by their own customs or traditions** or by special laws;
> b) to peoples in independent countries who are regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest, colonization, or the establishment of present state boundaries, and who, irrespective of their legal status, **retain <u>some</u> or <u>all</u> of their own social, economic, cultural, and political institutions.**
> 2. **Self-identification as Indigenous or tribal shall be regarded as a fundamental criterion for determining the groups** to which the provisions of this Convention apply.
> [...]

> Article 2
> 1. Governments hold the duty to develop, in coordination with the peoples concerned, systematic measures to protect their rights and ensure respect for their integrity.
> [...]
> Article 3
> 1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of this Convention shall be applied without discrimination to male and female members of these peoples.
> 2. **Under no circumstances shall force or coercion be applied in ways that violate the human rights and fundamental freedoms of the peoples** concerned, including those enshrined in this Convention. (1991).

In Brazil, the Convention was ratified in 2002 and has been essential in advancing the rights of Indigenous, Quilombola, and traditional peoples. Accordingly, the State holds the responsibility to respect and protect the traditional systems of social organization and the cultural practices of these peoples.

The tribal peoples addressed in ILO Convention No. 169 were originally defined in a narrower sense, applicable mainly to contexts in other countries—as distinct social groups within national societies whose cultural specificities align with the notion of "tribal peoples." In the Brazilian context, however, this definition must be understood in accordance with the category of Traditional Peoples and Communities, as established by Federal Decree No. 6.040/2007.

According to this legal framework, such peoples are culturally distinct groups who self-identify as such, possess their own forms of social organization, and collectively use their territories and natural resources therein as a condition for their cultural, social, religious, ancestral, and economic reproduction. These peoples maintain and transmit, through tradition, the knowledge, practices, and innovations that sustain their ways of life.

Their recognition as rights-holders ensures them legal guarantees aimed at protecting and promoting their cultural, social, and territorial specificities. It also affirms their right to participate in the formulation and implementation of public policies. These policies must respect and strengthen their ways of life. In this context, the statement of the United Nations Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay, in July 2024, is particularly significant:

> "The rights of Indigenous Peoples are upheld and protected by international legal norms, including the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169; they are inalienable and non-negotiable." The rights of Indigenous Peoples must be recognized, enforced, and respected at

both federal and state levels—whether through land demarcation and protection processes, or through the implementation of national policies aimed at ensuring the right to life, health, and safety of Indigenous Peoples in Brazil.

It is essential that the Brazilian State recognize that lands and territories traditionally belonging to or occupied by Indigenous Peoples are fundamental to their identity, culture, and relationship with their ancestors and future generations**. Opening the door to extractive policies that serve solely business interests would legitimize violence against Indigenous Peoples and violate their rights to land, territory, and natural resources.**

In the context of climate change, lands traditionally belonging to or occupied by Indigenous Peoples are vital to biodiversity protection and contribute to climate balance, owing to the spiritual and harmonious relationship these peoples maintain with nature. Allowing mining, gold extraction, and cattle ranching activities would also constitute a profound environmental setback, undermining Brazil's commitments under international treaties aimed at urgently reversing climate change.

In the jurisprudence of the Inter-American Court of Human Rights regarding the right to free, prior, and informed consultation, it is understood that the State has a duty to actively consult communities in accordance with their customs and traditions, engaging in ongoing communication and ensuring that information is shared and received. Consultations must be conducted in good faith, through culturally appropriate procedures, and **with the goal of reaching an agreement**.

The Inter-American Court is an independent judicial body responsible for applying and interpreting the American Convention on Human Rights and other treaties within the Inter-American Human Rights System. Its jurisprudence is extensive, particularly regarding the territorial rights of Indigenous, Quilombola, and traditional communities, and it underscores the State's obligation to conduct free, prior, and informed consultation processes before adopting any measures that may affect the rights of these peoples.

Furthermore, traditional peoples must be consulted from the earliest stages of any development or investment project that may affect them, in accordance with their own traditions and organizational structures. The consultation must occur in advance, allowing sufficient time for communities to engage in internal discussions and provide an informed response to the State.

It is the State's responsibility to ensure that these peoples are fully informed about potential risks and impacts—both positive and negative—including those related to environmental, health, social, economic, and climate dimensions. The decision to accept or reject the project must be made freely, voluntarily, and with full information, based on clear and accessible content.

Moreover, consultation procedures must respect the traditional decision-making methods

of each community, acknowledging their cultural specificities. In this regard, it is worth highlighting the decision of the Inter-American Court of Human Rights in the case *Garífuna Community of Punta Piedra and its members v. Honduras*, with a ruling issued on October 8, 2015, which reinforces the binding nature of free, prior, and informed consultation as defined by ILO Convention No. 169:

> 220. Regarding domestic legislation, the Court notes that, in general terms, Article 95 of the 2004 Property Law stipulates that "if the State intends to exploit natural resources in the territories of [Indigenous and Afro-Honduran peoples], it must inform and consult them about the benefits and harms that may arise before authorizing any inspection or exploitation." Likewise, the Regulation of this Law refers to consultation without specifying its timing. In turn, Article 50 of the General Mining Law states that "the granting of mining concessions may not infringe upon private property rights or land belonging to municipalities, as established by the Constitution of the Republic and further elaborated by the Civil Code and international treaties on the Rights of Indigenous and Afro-descendant Peoples, with particular respect for Convention 169 [of the ILO] and the United Nations Declaration on the Rights of Indigenous Peoples."
>
> 221. However, Article 82 of the Regulation of the General Mining Law establishes that "prior to the resolution authorizing the exploitation concession, the Mining Authority shall request the respective Municipal Corporation and the population to carry out a consultation within a period not exceeding sixty (60) calendar days. The decision resulting from the consultation shall be binding on the granting of the concession. Citizens domiciled in the consulted municipality or municipalities who are registered as such in the electoral census of the last general election may participate in the consultation. If the result of the popular consultation is contrary to the exploitation, a new consultation may not be held until three (3) years later."
>
> 222. In view of the above, the Court finds that although Honduran legislation acknowledges the right of Indigenous and Afro-Honduran peoples to consultation and makes reference to international standards, the regulatory provisions on mining condition its implementation to the stage immediately prior to the authorization of mineral exploitation. In this sense, such regulation lacks the necessary precision in light of the standards examined regarding the right to consultation, particularly as established in the cases Saramaka People v. Suriname and Kichwa Indigenous People of Sarayaku v. Ecuador, which affirm that consultation must take place in the early stages of the project—that is, before the authorization of prospecting or exploration programs, with the reservations previously mentioned (see supra paragraph 218). However, the Court has emphasized that consultation, in addition to being a conventional obligation, is also a general principle of international law that States must comply with, regardless of whether it is expressly regulated in their domestic legislation. States are therefore required to have adequate and effective mechanisms in place to ensure the consultation process in such cases, without prejudice to the possibility of further detailing it through legislation.

Among the responsibilities of the Brazilian State, it is important to highlight that the country ratified the American Convention on Human Rights, also known as the Pact of San José, Costa Rica, in 1992, in addition to other significant international treaties such as the International Covenant on Civil and Political Rights (1992), the International Covenant on Economic, Social and Cultural Rights (1992), and the United Nations Convention on the Elimination of All Forms of Racial Discrimination (1968), among others. By ratifying these agreements, Brazil recognizes the jurisdiction of the Inter-American Court and the Inter-American Commission on Human Rights, the principal bodies responsible for safeguarding the fundamental rights and freedoms established by the American Convention on Human Rights.

Example of Inter-American Court of Human Rights Jurisprudence:

> **The Case of the Saramaka People v. Suriname (2007)**[3]
> The Court Declares, unanimously, that:
> 1. The State violated, to the detriment of the members of the Saramaka people, the right to property as recognized in Article 21 of the American Convention on Human Rights, in relation to the obligations to respect, ensure, and give effect to this right within the domestic sphere, in accordance with Articles 1.1 and 2 of the same Convention, as set forth in paragraphs 78 to 158 of this Judgment.
> 2. The State violated, to the detriment of the members of the Saramaka people, the right to recognition of juridical personality, as enshrined in Article 3 of the American Convention on Human Rights, in relation to the right to property established in Article 21 of this instrument and the right to judicial protection established in Article 25 thereof, as well as in connection with the obligations to respect, ensure, and give effect to these rights within the domestic sphere, in accordance with Articles 1.1 and 2 of the Convention, as stated in paragraphs 159 to 175 of this Judgment.
> 3. The State violated the right to judicial protection, recognized in Article 25 of the American Convention on Human Rights, in relation to the obligations to respect and ensure the right to property, as recognized in Articles 21 and 1.1 of the Convention, to the detriment of the members of the Saramaka people, pursuant to paragraphs 176 to 185 of this Judgment.
> And Decides: unanimously, that:
> 4. This Judgment constitutes, in and of itself, a form of reparation, pursuant to paragraph 195 thereof.
> **5. The State must delimit, demarcate, and grant collective title to the territory of the members of the Saramaka people, in accordance with their customary law and through prior, effective, and fully informed consultations with the Saramaka people, without prejudice to other Indigenous and tribal communities.** Until such delimitation, demarcation, and granting of collective title over Saramaka territory is completed, Suriname must refrain from taking actions that could encourage State agents or third parties, acting with the State's consent or

3 Available at: Inter-American Court of Human Rights.Case of the Saramaka People v.Suriname.Judgment of November 28, 2007 (Preliminary objections, merits, reparations, and costs).Series C No. 172. Accessed on: March 12, 2025.

> tolerance, to potentially affect the existence, value, use, or enjoyment of the territory to which the Saramaka people are entitled, unless the State obtains the free, prior, and informed consent of this people. With respect to concessions already granted within the traditional Saramaka territory, the State must review them in light of this Judgment and the jurisprudence of this Court, in order to assess whether it is necessary to modify the rights of the concessionaires to preserve the survival of the Saramaka people, pursuant to paragraphs 101, 115, 129–137, 143, 147, 155, 157, 158, and 194(a) of this Judgment.
> [...]
> 7. The State must repeal or amend the legal provisions that prevent the protection of the Saramaka people's right to property and, through domestic legislation and prior, effective, and fully informed consultations with the Saramaka people, adopt legislative or other necessary measures to recognize, protect, guarantee, and enforce collective ownership rights over the territory traditionally occupied and used by the Saramaka, including the lands and natural resources essential to their social, cultural, and economic subsistence. The State must also ensure that the Saramaka people can manage, distribute, and effectively control this territory in accordance with their customary law and communal property system, without prejudice to other Indigenous and tribal communities, pursuant to paragraphs 97 to 116 and 194(c) of this Judgment.
> 8. The State must adopt legislative, administrative, or other measures necessary to recognize and guarantee the right of the Saramaka people to be effectively consulted, according to their traditions and customs, or, where applicable, the right to grant or withhold their free, prior, and informed consent regarding development or investment projects that may affect their territory. Furthermore, if such projects are carried out, the State must ensure that the Saramaka people share in the benefits derived therefrom in a fair and reasonable manner, in accordance with paragraphs 129 to 140, 143, 155, 158, and 194(d) of this Judgment.
> [...]
> 15. The Court will monitor full compliance with this Judgment in the exercise of its functions and in accordance with its duties under the American Convention, and will consider the case closed once the State has fully complied with the provisions therein. Within one year of notification of this Judgment, the State must submit a report to the Court detailing the measures adopted to comply with it. This Judgment was drafted in English and Spanish, the English version being the authentic one, in San José, Costa Rica, on November 28, 2007.

The case brought before the Inter-American Court concerned alleged violations committed by the State of Suriname against the Saramaka people, a tribal community with deep historical and cultural ties to their ancestral lands. After receiving the complaint, the Inter-American Commission on Human Rights concluded that the State had violated the rights of the Saramaka by failing to legally recognize their ancestral territory, restricting their effective access to justice, and failing to adopt domestic measures to safeguard their collective rights. Given the gravity of the violations

and the lack of adequate remedy, the Commission referred the case to the Inter-American Court, which in 2007 condemned Suriname for violating, among other rights, the right to communal property, the right to judicial protection, and the right to free, prior, and informed consultation, in accordance with the standards established in the American Convention on Human Rights and ILO Convention No. 169.

As a result of the ruling, the Inter-American Court of Human Rights ordered the State of Suriname to proceed with the delimitation, demarcation, and collective titling of the Saramaka people's traditional territory, in accordance with the community's customary law. Furthermore, the process was to be carried out through prior, effective, and fully informed consultations, respecting the Saramaka people's own forms of organization and traditional decision-making methods.

The right to consultation, widely recognized in international law, stands as a vital tool for the realization of the fundamental rights of Indigenous peoples and traditional communities. It ensures not only the respect for their right to self-determination and to freely define their own development priorities, but also the effective protection of their territories, cultures, and ways of life.

Within this framework, Brazil— as a member of the international community and a signatory to multiple human rights treaties— holds the responsibility to adopt practices that break with the historical legacies of colonialism, discrimination, and marginalization. Building a fair, respectful, and plural relationship with traditional peoples necessarily requires the recognition of their collective rights and the full implementation of the right to free, prior, and informed consultation.

3. THE LEGAL STANDING OF ILO CONVENTION NO. 169 IN THE BRAZILIAN LEGAL FRAMEWORK

The right to Free, Prior and Informed Consultation was incorporated into the Brazilian legal system with the ratification of International Labour Organization (ILO) Convention No. 169, formalized through Legislative Decree No. 143 of June 20, 2002. The Convention entered into force in Brazil on July 25, 2003, pursuant to Article 38 of its text, and was internally enacted through Decree No. 5.051 of April 19, 2004, thereby granting it legal effect within the domestic legal order. As an international human rights treaty, it holds supralegal normative status—that is, it is hierarchically situated above ordinary legislation but below the Federal Constitution. This interpretation has been upheld in the consolidated jurisprudence of the Federal Supreme Court (STF), particularly in the judgment of Extraordinary Appeal No. 349.703 (rapporteur: Justice Carlos Britto, Full Bench, 12/03/2008), and reaffirmed in STF's ruling on Extraordinary Appeal No. 466.343/SP:

RE 349703, Rapporteur: Justice Carlos Britto, Full Bench, 12/03/2008
CIVIL IMPRISONMENT FOR BREACH OF DEPOSITARY OBLIGATIONS IN LIGHT OF INTERNATIONAL HUMAN RIGHTS TREATIES INTERPRETATION OF THE FINAL CLAUSE OF ARTICLE 5O, ITEM LXVII, OF THE 1988 BRAZILIAN CONSTITUTION HIERARCHICAL-NORMATIVE STATUS OF INTERNATIONAL HUMAN RIGHTS TREATIES IN THE BRAZILIAN LEGAL ORDER. Since Brazil's ratification—without reservations—of the International Covenant on Civil and Political Rights (Article 11) and the American Convention on Human Rights (Pact of San José, Costa Rica, Article 7.7) in 1992, **there has been no longer any legal basis for the civil imprisonment for breach of depositary obligations. The special status of these human rights instruments places them within the Brazilian legal system below the Constitution but above domestic legislation. Because international human rights treaties ratified by Brazil hold supralegal status, any infraconstitutional legislation that conflicts with them becomes inapplicable—regardless of whether it was enacted before or after the treaty's ratification.** This has been confirmed in Article 1,287 of the Civil Code of 1916, Decree-Law No. 911/69, and Article 652 of the current Civil Code (Law No. 10,406/2002). FIDUCIARY TRANSFER IN SECURITY. DECREE-LAW NO. 911/69. EQUATING THE FIDUCIARY DEBTOR TO A DEPOSITARY. CIVIL IMPRISONMENT OF THE FIDUCIARY DEBTOR IN VIEW OF THE PRINCIPLE OF PROPORTIONALITY. The civil imprisonment of the fiduciary debtor under a fiduciary transfer agreement as collateral violates the principle of proportionality, because: (a) the legal system offers other procedural enforcement mechanisms available to the fiduciary creditor to secure the claim, making civil imprisonment—an extreme coercive measure against the defaulting debtor—fail the proportionality test, understood as the prohibition of excess, in its three dimensions: adequacy, necessity, and strict proportionality; and (b) Decree-Law No. 911/69, by creating a legal fiction that equates the fiduciary debtor to a depositary for all civil and criminal purposes, introduces an atypical form of deposit that exceeds the semantic boundaries of the term "depositary in breach" as referenced in Article 5, item LXVII, of the Constitution, thus distorting the legal construct of deposit in its constitutional sense and violating the principle of proportional legal reserve. EXTRAORDINARY APPEAL GRANTED LEAVE AND DENIED ON MERITS

This means that all infraconstitutional legislation must be aligned with the provisions of the Convention and that it also serves as a reference for interpreting the constitutional norms themselves. Moreover, it implies that the rights set forth therein have immediate applicability, pursuant to Article 5, §1 of the Federal Constitution, regardless of any need for further regulation. It reads:

> Art. 5 All persons are equal before the law, without distinction of any kind, ensuring to Brazilians and foreign residents in the Country the inviolability of the right to life, liberty, equality, security and property, as follows:
> [...]
> §1 The norms that define fundamental rights and guarantees have immediate applicability.

With the recognition of this right, **States are responsible for adapting their legal frameworks and institutional practices to effectively ensure consultation with Indigenous, Quilombola, and other traditional peoples**, in full compliance with established international standards. The objective is to establish genuinely reliable and effective channels of dialogue with these groups.

In Brazil, there is a considerable number of court rulings that set important precedents for the protection of territorial rights of traditional peoples and communities, especially the right to free, prior, informed and good-faith consultation. Namely:

1. **Indigenous School Education in Santarém, Pará:** the Federal Court ordered the municipal government to consult with Indigenous peoples regarding Ordinance No. 001 of January 6, 2014, concerning the organization and structuring of Indigenous schools in the municipality. **Public Civil Action No. 378-31.2014.4.01.3902. (TRF-1)**

2. **Amazonas Naval Hub:** a project involving the construction of ports, mineral exploration and cargo transport, planned to be built on the banks of the Amazon River, on the waterfront of the city of Manaus. The Federal Court ordered the state of Amazonas to previously consult with more than twenty traditional communities of fishers and riverside dwellers affected by the project. **Public Civil Action No. 6.962-86.2014.4.01.3200. (TRF-1)**

3. **Superagui National Park, in Paraná**: the Federal Court of Paranaguá, state of Paraná, recognized the obligation to consult artisanal fishers in the preparation of the Management Plan of the federal conservation area. **Public Civil Action No. 742-88.2015.4.04.7008. (TRF-4)**

4. **Construction of Embraps port on Lago do Maicá, in Santarém:** the Federal Court ordered the suspension of the environmental licensing for the port of the Empresa Brasileira de Portos de Santarém (Brazilian Ports) until the Quilombola communities and traditional riverside communities affected by the project are consulted. **Public Civil Action No. 377-75.2016.4.01.3902. (TRF-1)**

5. **Rio Tapajós Logística Ltda. (RTL), in Itaituba, Pará:** a preliminary injunction by the Federal Court was granted on July 2, 2019, and suspended the licensing process of RTL's grain port until a free, prior and informed consultation is conducted with the Munduruku Indigenous people in the region. **Public Civil Action No. 1000487-34.2019.4.01.3908. (TRF-1).**

In this way, it is observed that Brazilian courts have adopted decisions based on the precepts of ILO Convention No. 169. The right to prior consultation was incorporated into the Brazilian legal system as a supralegal norm, with immediate applicability, and enjoys broad jurisprudential recognition, both nationally and internationally.

3.1 AUTONOMOUS PROTOCOLS AS INSTRUMENTS FOR STRENGTHENING THE RIGHT TO FREE, PRIOR AND INFORMED CONSULTATION

Traditional peoples and communities have the right to free, prior and informed consultation carried out in good faith, **regardless of the existence of specific regulatory norms – in other words, this is a self-executing right.** To ensure that this right is respected in accordance with their own ways of life, many communities have turned to the development of consultation protocols.

Protocols are autonomous instruments collectively developed by traditional peoples and communities themselves. They bring together internally defined principles, norms, and procedures, with the aim of clearly establishing how the consultation process should occur in accordance with their traditions, cultures, and forms of social organization. The Observatory of Consultation Protocols[4] defines these instruments as follows:

> Community protocols for free, prior and informed consultation and consent, also referred to as autonomous protocols, are documents prepared by Indigenous peoples, Quilombola communities, and other traditional peoples. These documents establish the rules for conducting free, prior, informed, and good-faith consultation, ensuring that their cultural specificities, legal traditions, and systems of social organization and collective decision-making are respected.

The rules that guide the consultation process for traditional peoples and communities may be formalized in a document—the Consultation Protocol—or may remain informal. The absence of a consolidated protocol does not, however, eliminate the right to free, prior, and informed consultation. Nevertheless, when such a protocol has been developed by the community, it must be mandatorily respected by authorities and developers, as it reflects the legitimate criteria established by the peoples themselves regarding how they wish to be consulted.

Since the incorporation of ILO Convention No. 169 into the Brazilian legal system, consultation protocols have acquired legal and procedural value. From this fact, they became the

4 Observatory of Autonomous Protocols..

most important instrument for protecting traditional peoples and communities from legislative or administrative measures that threaten traditionally occupied territories.

As this Technical Note will demonstrate, consultation protocols have been referenced in key court decisions concerning infrastructure projects that may impact the ways of life of traditional peoples and communities—such as the 2016 ruling by the Federal Court of Santarém, which suspended the implementation of the Private Use Terminal of the Empresa de Portos de Santarém (Embraps) until a free, prior, informed, and good-faith consultation was carried out with the Quilombola communities and other traditional peoples affected by the project.

This emblematic case illustrates the importance of autonomous protocols as tools for strengthening the right to consultation, as well as reaffirms what is set forth in national and international law: **the State's duty to consult and the rights of traditional peoples and communities to be consulted.**

The process of building a consultation protocol is carried out in respect to the uniqueness, time and forms of organization of each people. A considerable number of Indigenous, Quilombola and other traditional communities already have their protocols formalized, while others are still under development. The process of constructing the protocol is carried out by the communities, it is the assembled members who will decide how they want to be consulted. Protocols may be characterized and organized in the form of brochures, bulletins, videos or any other means, as long as they are collectively established by the communities. If the State imposes a certain format of consultation, disregarding the necessary time, decisions and rules of the communities, it is violating the right to consultation.

According to Marés *et al.* (2019, p. 43)[5]:

> (...) national States are obliged to accept the procedures established by the peoples because it is the State that is consulting, and it is the State's measures that will affect or may affect not only material rights, but also intangible rights of the peoples, which the State does not understand. Thus, when the State imposes its own format of consultation, it is, by this very act, violating the right to consultation and, therefore, rendering it ineffective for the purposes of the Convention. Just as only a people can define itself as a people, only it can determine how its collective will is formed, only it knows its priorities, its intangible rights, its way of being, and its vision for the future. Only it can consent to changing its own life.

5 Protocolos de consulta prévia e o direito à livre determinação / Carlos Frederico Marés de Souza Filho, Liana Amin Lima da Silva, Rodrigo Oliveira, Carolina Motoki, Verena Glass (org.). – São Paulo: Fundação Rosa Luxemburgo; CEPEDIS, 2019. Available at: <Protocolos de consulta prévia e o direito à livre determinaçã>.

Therefore, it is the State's duty to respect the consultation protocols of each people, whether they are formalized or not. Between the social organization of a people and the hegemonic organization of the State lies a wide gap of power dynamics, conflicting interests, and often antagonistic agendas. The mercantilist logic of capital diverges from the reflective logic of the people. Economic urgency must not override the right to consultation, which proceeds at the pace of traditional peoples, grounded in collective decision-making, in the value of land as territory – not as a commodity – and in intangible goods unknown to the State.

A matter that demands special attention, due to the risks it poses to the autonomy of traditional peoples and communities, is the attempt by major Brazilian corporations to remove the country from ILO Convention No. 169. These initiatives rely on the argument that the Convention generates legal uncertainty, territorial disputes, and obstacles to licensing processes, especially in the mining, agribusiness, and infrastructure sectors.

One such attempt materialized in July 2022, through a formal letter sent to then-President Jair Bolsonaro. In the document, five business associations – the Center of Industries of Pará (CIP), the Federation of Industries of the State of Pará (FIEPA), the Federation of Commerce of Pará (Fecomércio-PA), the Federation of Agriculture and Livestock of Pará (FAEPA), and the Commercial Association of Pará (ACP) – formally requested the denunciation of ILO Convention No. 169, ratified by Brazil in 2002. These entities represent some of the largest economic conglomerates in the country, such as Vale, Alcoa, MRN, Imerys, Hydro, and Agropalma, whose activities frequently affect traditionally occupied territories.

The most paradoxical aspect of this effort is that many of these companies have, on multiple occasions, sought to project a public image of commitment to environmental protection, human rights, and even the rights of Indigenous peoples. To that end, they invest in social responsibility programs and marketing campaigns aimed at promoting sustainability and inclusion. However, these actions often operate as institutional marketing strategies disconnected from the concrete reality of their operations, which are marked by rights violations, environmental degradation, and territorial conflicts.

This reflects a corporate sector that, under the guise of legal certainty and development, seeks to weaken historically conquered territorial rights, weaponizing economic discourse to justify setbacks in fundamental guarantees.

Furthermore, it is worth noting that some states have misguidedly attempted to "regulate" the right to free, prior and informed consultation through bills or regulatory acts that, in practice, undermine the rights of traditional peoples and communities. A notable example

occurred in 2024, with the issuance of Decree No. 48.893/2024 by the governor of the state of Minas Gerais[6], marking the state government's second attempt to loosen environmental licensing requirements for major enterprises under the pretext of regulating consultation.

The decree limited free, prior and informed consultation exclusively to peoples and communities formally recognized by bodies such as the National Foundation for Indigenous Peoples (Funai), the Palmares Cultural Foundation, and the State Commission for the Sustainable Development of Traditional Peoples and Communities (CEPCT), thereby violating the right to self-determination and disregarding the existence of territories that have yet to be officially recognized. It also excluded urban traditional communities, such as Afro-Brazilian religious groups (povos de terreiro), cart drivers, and Roma communities, and transferred to project developers the responsibility for conducting the consultation, in direct breach of ILO Convention No. 169, which establishes that this obligation rests with the State.

Given the evident usurpation of the Union's competence—since it is the Federal Government that holds the power to legislate on general norms for environmental protection and the rights of traditional peoples—the Federal Supreme Court suspended the effects of said decree in 2025.[7]

Such measures **represent not only serious violations of the fundamental rights of traditional communities, but also direct affronts to the Brazilian legal framework**. By seeking to eliminate the right to consultation, restrict its scope, or allow it to be conducted by private entities, the democratic, participatory, and collective nature of this instrument is undermined, jeopardizing social oversight over projects that may cause significant impacts to traditionally occupied territories.

These initiatives weaken the principle of self-determination of peoples and threaten the integrity of the environmental licensing process, in addition to violating an international norm that holds supralegal status within Brazil's domestic legal system. By breaching the commitments undertaken through ILO Convention No. 169, these actions also undermine the Brazilian State's duties to promote environmental justice, equity, and the protection of the collective rights of traditional peoples and communities.

6 Zema's decree strips traditional peoples of their rights and 'hands over' territories to mining companies.

7 STF suspends MG decree that restricts consultation with communities affected by environmental licensing.

4. CONTEXT OF VIOLATIONS OF THE RIGHT TO FREE, PRIOR, AND INFORMED CONSULTATION IN THE STATE OF PARÁ

From the standpoint that consultation is a fundamental tool for guaranteeing the right to autonomy and self-identification of traditional peoples and communities—in terms of their right to be, to belong, and to decide over their territory—it is crucial to critically analyze the various fronts that seek to override these rights.

The commodification of nature is one of the most commonly used strategies by external actors, such as the State and corporations, and it has the potential to violate the rights of traditional peoples and communities. The transformation of natural resources into financial assets reflects a worldview that contrasts with the relationship these peoples maintain with ecosystems, as it prioritizes the exploitation and appropriation of natural resources to the detriment of traditional practices of care and respect for the land.

The situation in Pará exemplifies this pattern, with infrastructure projects and environmental crimes significantly affecting local communities. Currently, the state is seeing the implementation of initiatives that pose serious risks of violating the right to free and prior consultation, such as the **Reducing Emissions from Deforestation and Forest Degradation (REDD+)** project and the expansion of **port terminal installations**.

These development projects impose a new model of territorial governance, distancing decision-making from community control and subordinating it to the interests of major corporations and financial investors. This leads to a deterritorialization of the power to decide over the land and a territorialization of negative impacts, which directly affect the lives of traditional communities, undermining their ways of life and their relationship with the land and environment.

4.1 PROPOSAL FOR THE IMPLEMENTATION OF THE JURISDICTIONAL REDD+ SYSTEM IN INDIGENOUS TERRITORIES, QUILOMBOLA COMMUNITIES, AND EXTRACTIVIST RESERVES

Frédéric Hache, from the Green Finance Observatory, notes that “nature is being reconceptualized as natural capital, ecosystems are being reframed as services to humans, disaggregated, abstracted from time and place, quantified and evaluated in monetary terms...” (HACHE, 2019). Based on this statement, we proceed to analyze carbon markets, the financialization of nature, and its implications, especially for traditional peoples and communities.

There are various types of projects that can generate carbon credits to be traded in these markets, including forest carbon projects—i.e., those in which the reduction of greenhouse gas (GHG) emissions occurs through the recovery, restoration, or maintenance of forests. "Such types of projects are known as projects for the reduction of emissions from deforestation and forest degradation combined with the conservation of forest carbon stocks, sustainable forest management, and the enhancement of forest carbon stocks—the so-called REDD+ projects." (LACLIMA, 2024).

The primary objective of carbon markets is to assign a price to greenhouse gas (GHG) emissions. These markets emerged from the establishment of GHG emissions limitation and reduction goals, which are key to combating climate change, under the Kyoto Protocol (Decree No. 5.445/2005). The main stakeholders interested in acquiring carbon credits are large polluting companies (TERRA DE DIREITOS, 2022)[8], which see this market as a way to continue operating without implementing structural changes in their industries, for instance. The operational logic of the carbon market is colonialist, and its primary intention is to legitimize forest degradation under the guise of preservation, as we can see:

> By participating in this emissions offset market, forests and territories become the "collateral," that is, the guarantee that authorizes the issuance of new ownership titles, known as "green bonds." For example, someone sells a certificate (a bond) that states that X is equivalent to the amount of greenhouse gas (calculated as carbon dioxide equivalent – CO^2e) that will not be emitted due to one hectare of preserved forest. The buyer asks what guarantees the validity of this statement. The seller replies that, in a certain area of the Amazon, there is a hectare of an Extractive Reserve (Resex), Indigenous land, or preserved national park (CARTA DE BELÉM, 2011).

The complexity, bureaucracy, and financial apparatus behind the carbon market mean that, in practice, family farmers and peasants, Indigenous peoples, and traditional communities are merely identified as "providers of environmental services" (CARTA DE BELÉM, 2011). Meanwhile, the buyer of the "green bond" is not only authorized to continue causing environmental degradation and pollution but also to profit from the speculation of these new forest assets in the financial market. It is the right to pollute, with potential financial returns for the polluters.

According to Laclima (2024), there is more than one type of carbon market, such as regulated, voluntary, and jurisdictional markets.

> **Regulated markets**, as the name suggests, are those created through regulations, that is, by State action. In these markets, an emission limit (a "cap") is established.

8 Territorial Rights in the Face of Carbon Market Contracts

> Within this cap, the regulatory body issues GHG emission permits and allocates them to regulated actors, such as sectors or individual companies. To operate, a company is required to hold a number of permits equivalent to the emissions caused by its activities. If the company cannot keep its emissions within the established limits, it may purchase additional permits in the carbon market from companies that have remained below the limit. Thus, the regulated carbon market is established, in which different regulated actors buy and sell their permits allocated by the regulatory body.

In Brazil, the regulated market came into effect through Law No. 15.042, dated December 11, 2024, which establishes the Brazilian Emissions Trading System (SBCE).

> **Voluntary markets** differ in that they are not subject to state interference and, as the name suggests, are created by private actors themselves who wish to offset their GHG emissions. Voluntary markets are the focus of this guide, as they represent the currently established market in Brazil and are responsible for the ongoing carbon projects in traditional territories.
>
> **Jurisdictional markets** are generally created by a regional state entity, such as a federative state in Brazil, for instance, the states of Tocantins, Mato Grosso, and Pará (in the implementation process). Thus, the established emission limits are also regional.

In the race to integrate into the so-called "green economy" during the year of the 30th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP30), in Belém, the state of Pará intends to implement the Jurisdictional REDD+ System (jurisdictional market), having signed a carbon credit purchase and sale agreement with international organizations. However, reports from the communities and documents released by the government indicate that the entire process thus far has taken place without conducting free, prior, and informed consultation with the traditional peoples and communities that will be affected.

As evidenced by the analysis of documents on the Jurisdictional REDD+ System published by the Pará State Secretariat for the Environment and Sustainability (Semas)[9], the administrative process concerning the potential future sale of carbon credits—starting from its earliest stages—did not ensure adequate quantitative representation or participation of traditional peoples and communities in discussions about the project. The informational workshops documented thus far involved only a portion of the peoples who stand to be affected, highlighting the need to expand the debate at the state level and ensure that all territories, peoples, and communities potentially

9 Available at <https://www.semas.pa.gov.br/redd/carbono/>.

impacted by the Jurisdictional REDD+ System are heard. Furthermore, the use of highly technical language in the documents may hinder access to and understanding of essential information.

The commercialization of carbon credits in traditional territories tends to provoke extreme changes in the way of life of these populations, since the green areas will be blocked for traditional use due to adherence to the jurisdictional carbon credit market, limiting the communities' autonomy to manage the natural resources of their territories sustainably, as they have always done.

Another point to be highlighted is that in order for the credits to be traded on the carbon market, the areas must be properly regularized to provide guarantees to the buyers of the "green bonds." However, traditional peoples and communities have been waiting for the regularization of their territories for years with no action taken. Yet the market-oriented logic of the carbon market brings forth the possible mobilization of the State through accelerated regularization maneuvers using precarious legal instruments, such as the Concession of Use in Quilombola territories, instead of definitive ownership, as stipulated in Article 68 of the Transitional Constitutional Provisions Act (ADCT). This ensures that the property remains in the hands of the State, so that it is the actual holder of the benefits arising from forest projects.

The right to collective land regularization prevails over political interests aimed at commodifying nature. Traditional territories are governed by specific legislation that ensures legal certainty in land regularization. This process is not merely about granting a land title that might generate environmental liabilities, but about recognizing a collective subject endowed with inalienable ethnic rights.

Another important point is that, in recent years, there has been a significant increase in the number of human rights and environmental defenders facing threats as they stand up to large-scale projects, the pressures of the green economy, and delays in the land regularization process. On average, three human rights defenders were killed each month in the country between 2019 and 2023, largely as a result of land and territory struggles. This is what the study "On the Front Line: Violence Against Human Rights Defenders in Brazil," conducted by Terra de Direitos and Justiça Global (2023), reveals.[10]

In light of this, the need to effectively guarantee the right to free, prior, and informed consultation of traditional peoples to be affected by the implementation of REDD+ in Pará becomes even more urgent. The political and financial pressure that traditional territories are likely to face—as well as the threats to their rights-defending leaders—must be fully understood by the affected peoples.

10 On the Front Line: Violence Against Human Rights Defenders in Brazil (2019 to 2022).

Consultation is not limited to hearing a small number of leaders or representative entities, nor is it carried out through public hearings or open consultations. It has its own procedures and must be conducted through appropriate mechanisms, allowing the peoples concerned to participate freely, in accordance with the provisions of Convention No. 169.

Ensuring the active participation of the main stakeholders affected by the implementation of the Jurisdictional REDD+ System is essential, as these groups must be involved in all stages of the process, including the right to express their views and decide on the project's implementation. Thus, consultation cannot take place only after the contract (or promise of contract) has been defined, so that communities do not become mere recipients of mitigating and/or compensatory measures. Furthermore, the State must present alternatives that ensure the autonomy of communities in the management and use of resources from their territories.

When it comes to implementing the Jurisdictional REDD+ System in a state inhabited by groups with distinct ethnic and cultural identities, traditional ways of life, and unique territorialities, peoples and the State are not speaking the same language. While one sees natural resources as economic and material assets, the other speaks of respect for its way of life, ancestry, belonging, autonomy, and very existence—so often rendered invisible by the actions or omissions of the State itself.

The peoples of the rivers, waters, and forests are those who best preserve the environment; the most well-preserved areas—and some still untouched—are within traditional territories. For a long time, these peoples have engaged in non-predatory activities and have their own ways of extracting and managing natural resources in a clean and sustainable manner.

With the advance of deforestation, monocultures, and the installation of large-scale infrastructure, nature has given its warning: greenhouse gas emission levels are completely out of control, leading to rising global temperatures, prolonged droughts, floods, and a series of climate catastrophes that are felt most intensely by traditional peoples and communities, who are already in a situation of vulnerability.

The implementation of the Jurisdictional REDD+ System by the state of Pará puts forth the promise of reducing greenhouse gas emissions, while also claiming that part of the financial resources from credit sales will be allocated to the territories. However, this emissions reduction model brings with it a series of limitations and restrictions on territorial management and the autonomy of communities, which must be assessed in light of the right to free, prior, informed, and good-faith consultation.

By ignoring the right to consultation with all the peoples who will be affected by the measure, the State disregards the very existence of these subjects—those who have played a vital role in confronting the climate crisis—reducing them to mere spectators of a project conceived, designed, and implemented in an imposed manner. This silences the voices of countless traditional peoples and communities across the territories, especially those in remote areas, with no access to basic information about the REDD+ project.

4.2 PORT EXPANSION IN THE TAPAJÓS REGION

Another mechanism that contributes to the commodification of nature is the creation and implementation of port complexes in the western region of the state—a process closely linked to the grain industry, especially soy and corn, which continues to advance without the proper conduct of free, prior, and informed consultation.

Agribusiness, one of the main examples of the commodification of nature, involves a set of interconnected activities, ranging from the planning, implementation, and agricultural production to the control of the flow of products, information, and resources in the productive and commercial process of the agricultural sector. Its central goal is to ensure that products—such as grains, meat, fruits, and other items—reach the final consumer efficiently, on time, and in ideal conditions.

Transportation is one of the most complex aspects of agribusiness logistics, as it often requires a combination of road, rail, river, and maritime modes to move products from farms to distribution centers and export terminals. When products are intended for the international market, transportation includes not only customs clearance but also maritime shipping.

From this perspective, a crucial milestone for the expansion of mega port projects in the region was the amendment of the Ports Law (Law No. 12,815/2013), which facilitated the installation of ports in the Tapajós region, such as that of the multinational company Cargill S/A. The introduction of new agricultural technologies contributed to consolidating the monoculture of soy and corn as one of the central pillars of national agribusiness, accelerating the expansion of the agricultural frontier and intensifying the exploitation of the territory, with direct impacts on traditional communities and the environment.

In Santarém, in western Pará, soy cultivation began to be tested in 1997 with the support of Embrapa. The success of these early experiments encouraged local technicians to seek investors in Mato Grosso, paving the way for production expansion in the region. The installation of the Cargill port in Santarém was one of the initial milestones of local agribusiness and played a crucial

role in the development of the Arco Norte plan, directly impacting neighboring municipalities such as Belterra and Mojuí dos Campos.

Cargill's presence also accelerated the creation of new port developments in Itaituba, in southwestern Pará, which significantly reduced the distance traveled by grain trucks along the BR-163 highway. The Tapajós-Xingu Logistics Corridor, which is directly associated with **major agribusiness companies and financiers, is part of a larger project called the** "Arco Norte," **encompassing commodity export corridors in the Madeira and Tocantins river basins. It is worth noting that the construction of these logistics corridors involves the implementation of infrastructure projects such as** highways, railways, cargo transshipment terminals, river dredging, and a network of transport services, which—depending on the territory—may pose serious social, environmental, and climate-related risks.

The implementation of port complexes, driven by Cargill's presence, brought numerous rights violations to the region, especially those affecting traditional peoples and communities. A study conducted by Terra de Direitos[11] reveals that Cargill began its operations in Santarém without conducting the required Environmental Impact Studies and Reports (EIA/RIMA), which were only carried out in 2010 after strong social mobilization and a court decision by the Federal Regional Court (TRF-1). Even so, these studies did not include free, prior, and informed consultation and failed to adequately address the impacts experienced by Indigenous and Quilombola peoples in the region.

Other emblematic cases, following the same pattern, involve the port of Empresa Brasileira de Portos de Santarém (Embraps) and Atem's Distribuidora de Petróleo Ltda. In both cases, although promoted as projects for regional development, the ports are located in areas of the city of Santarém where several traditional communities live—communities that should have been consulted regarding the implementation of these enterprises. However, neither of the two ports carried out prior consultation.

Gaps and irregularities in the environmental licensing of ports in the Tapajós region occur frequently. The study "Ports and Environmental Licensing in the Tapajós"[12], conducted by Terra de Direitos, indicates that out of the 27 ports operating between Santarém, Itaituba, and Rurópolis, only five possess complete environmental licensing documentation (EIA/RIMA, preliminary license, installation license, and operation license). And none of the 27 conducted free, prior, and informed consultation, which must occur before any licensing action.

11 What has Cargill done for the Amazon?

12 Ports in the Tapajós – online and interactive platform developed by Terra de Direitos

In the case of Embraps, the company only submitted the Environmental Impact Study (EIA) and the Environmental Impact Report (RIMA) two years after requesting an environmental license from Semas for the construction of its port — and only after intense pressure from social movements and local organizations. Despite the delay, the EIA, dated 2015, states that "no legally recognized traditional populations were found in the area directly affected by the port's construction." The attempt by Embraps to render invisible the traditional communities inhabiting the Lago do Maicá region — a branch of the Amazon River — and the complicity of Semas, resulted in a serious violation of the right to free, prior, and informed consultation, as established by Convention No. 169. In light of this scenario and based on complaints from social movements, the Federal Public Prosecutor's Office (MPF) and the Public Prosecutor's Office of the State of Pará (MPPA) filed a Public Civil Action (ACP) against Embraps, the National Waterway Transportation Agency (Antaq), the State of Pará, and the Federal Government. As a result, in 2019, the environmental licensing process conducted by Semas was judicially suspended until proper consultation with affected communities was carried out, in accordance with international human rights standards. Court ruling[13]:

> In view of the foregoing, I GRANT THE INITIAL REQUESTS (requests upheld), resolving the merits, pursuant to Article 487, I, of the Brazilian Code of Civil Procedure, to CONDEMN the defendants: a) to the obligation **to refrain from proceeding with the licensing and authorization for the construction of the EMBRAPS Port Terminal <u>until a prior consultation is carried out with the Quilombola peoples and other traditional communities</u> located in the area of influence of the project**;) to the correction and supplementation of the Environmental Impact Study and respective Environmental Impact Report, under the guidance of a team of duly qualified anthropologists, **so that the presence of traditional communities in the direct or indirect area of influence of the EMBRAPS port terminal project is taken into account**, whose ways of life depend on the preservation of the Lago do Maicá, the Ituqui River and surroundings (a measure under the responsibility of EMBRAPS and the licensing agency). Legal costs shall be borne by the defendant EMBRAPS. The public entities listed as defendants are exempt from this cost. No attorney's fees owed to the Public Prosecutor's Office (MPE) or the Federal Prosecutor's Office (MPF) (Art. 128, II, "a", Constitution). Attorney's fees in favor of FOQS, intervening assistant, are set at the minimum percentages provided in Article 85, §3 of the Brazilian Code of Civil Procedure, based on the updated value of the claim, to be shared among the defendants. Monetary adjustments shall follow the Federal Court's Procedural Calculation Guidelines Manual. I confirm the preliminary injunction previously granted in the case records. I clarify that, in public civil actions, appeals generally do not have a suspensive effect, unless granted by the judge (Art. 14, Law No. 7.347/1985), and therefore, the obligations become enforceable upon notification of this ruling.

13 Judgment Proc. No. 0000377-75.2016.4.01.3902 - TRF1.

> Regarding the request on page 1624, the removal of the records for external consultation is not permitted, as this measure is only allowed to attorneys of record in the case. I authorize consultation of the records through "quick review" for the purposes of digitization or extraction of copies.

Still in the same vein, the Fifth Panel of the TRF-1, in 2018, unanimously ruled to uphold the suspension of the granted licenses due to the lack of prior consultation with Quilombola and traditional populations affected:

> In the present case, involving the installation of a port terminal on the banks of the Amazon River, in the Municipality of Santarém/PA, whose licensing, in addition to not having been submitted to the Brazilian Institute of Environment and Renewable Natural Resources – Ibama, in its capacity as executor of national environmental policy, **was also not preceded by a proper prior consultation with the remaining peoples of Quilombola communities and other traditional riverside populations directly affected,** such omission clearly characterizes the irregularity of the project,thereby justifying the suspension of the aforementioned licensing, in order to prevent irreversible or difficult-to-repair harm, as in this case. (TRF1, Fifth Panel, Interlocutory Appeal No. 0057850-85.2016.4.01.0000/ PA, 05/02/2018).

In the third case, the company Atem's Distribuidora de Petróleo Ltda. not only disregarded the autonomy of Quilombola, Indigenous and traditional communities in the region, but was also accused of fraud in the environmental licensing process.

The fuel port, located on the banks of the Amazon River and at the entrance of Lago do Maicá, has caused significant impacts on approximately 10,000 families — including Quilombola, Indigenous peoples and artisanal fishers — who directly depend on the lake for their subsistence and the preservation of their traditional ways of life.

In 2020, the Federal Prosecutor's Office (MPF) and the Public Prosecutor's Office of the State of Pará (MPPA) filed a public civil action (ACP) to challenge the legality of the enterprise's installation. The lawsuit identifies several irregularities in the environmental licensing granted by Semas.

The ACP requests, through a declaratory injunction, the annulment of the preliminary and installation licenses issued to Atem's, based on substantial flaws in the licensing process. Among the main points raised are: a) **the absence of free, prior and informed consultation** with potentially affected communities, as required by Convention No. 169; b) **the lack of proper assessment of impacts on Indigenous peoples, Quilombola communities, and fishers**, without notification of the competent agencies to prepare a specific terms of reference; c) the **improper waiver of the**

requirement to submit an Environmental Impact Study (EIA) and Environmental Impact Report (RIMA), both of which are fundamental documents for analyzing the socio-environmental effects of the project.

In examining the preliminary injunctions requested in the lawsuit, the Court granted the provisional emergency relief, under the following terms:

> IN LIGHT OF THE ABOVE, I hereby partially grant the requested injunction, based on Article 300 of the Code of Civil Procedure, in conjunction with Article 6 of ILO Convention 169, and Articles 170, 215, 216 and 225 of the Federal Constitution, to: a) **order the immediate suspension of the effects of Preliminary License No. 1.725/2019 and Installation License No. 2.903/2019, both dated February 21, 2019**, granted by the State Secretariat for the Environment and Sustainability of Pará (SEMAS) in favor of ATEM'S DISTRIBUIDORA DE PETRÓLEO LTDA; and also order the suspension of the effects of Preliminary License No. 1.763/2019 (concerning the fuel storage license), with the consequent suspension of licensing processes No. 57607/2018 and No. 17541/2019; b) **order the STATE OF PARÁ (SEMAS) to refrain from granting any license related to the same enterprise**; c) order ATEM'S DISTRIBUIDORA DE PETRÓLEO LTDA **to immediately halt the construction activities of the port enterprise at "Lago do Maicá,"** including any work or intervention on the site aimed at the implementation of the project, even if related to the licensed activity under process No. 17541/2019 (for hazardous cargo); d) order ATEM'S DISTRIBUIDORA DE PETRÓLEO LTDA to refrain from any act that hinders fishing activities in the construction area described in the complaint; e) order ATEM'S DISTRIBUIDORA DE PETRÓLEO LTDA to adopt the necessary emergency measures to prevent the runoff of sediments from the enterprise into the Amazon River, and to submit, within 20 days of notification of this decision, a technical report on the possible impacts already incurred in this regard, as well as the measures adopted thus far. A fine of BRL 50,000.00 is hereby established for each act of noncompliance with the precautionary measures by the defendants, doubled with each recurrence.

Atem's filed an appeal and managed to overturn the decision; the case is still pending in court and, in the meantime, the company remains established in the region and continues to operate. According to reports from traditional communities living in the area of the lake, the structure built in the middle of the Amazon River hinders the river transport of small vessels that connect the communities to the city of Santarém.

The environmental licenses granted by Semas to Atem's were issued without following the proper procedures, especially considering that the enterprise is located in an area of significant socio-environmental importance, Lago do Maicá. This lake, in addition to being the cradle of several species, is an essential source of subsistence for many communities and traditional peoples of Santarém.

In the present cases, it has become clear that ports and terminals have the potential to cause significant impacts on Indigenous peoples, Quilombola communities, artisanal fishers, and areas adjacent to the enterprise, particularly concerning fishing activities. These potential impacts alone oblige the competent authority to conduct environmental impact studies and carry out prior and informed consultation in accordance with legal standards.

It is widely recognized that the Brazilian State is a signatory to ILO Convention No. 169, which holds binding force within the domestic legal framework. As an international human rights treaty, it has supra-legal status and guarantees Indigenous and tribal peoples the protection of their human rights, not only in the economic, social, and cultural spheres, but also through the recognition of diffuse and collective rights at the international level.

4.3. RECOGNITION OF THE BINDING FORCE OF THE RIGHT TO FREE, PRIOR AND INFORMED CONSULTATION IN BRAZILIAN COURTS: THE RIGHT TO CONSULTATION PRIOR TO EACH STAGE OF ENVIRONMENTAL LICENSING

In December 2024, the Federal Court of Santarém issued a landmark ruling in the Civil Public Action filed by the Federal Prosecutor's Office, which challenged the flaws and gaps in the environmental licensing processes of all ports and waterways in Santarém. This decision represents a major step forward for the right to free, prior, and informed consultation, establishing the need for it to be carried out before each stage of the environmental licensing process:

> **1. the mandatory execution of the Environmental Impact Assessment (EIA/RIMA)**, in accordance with Article 225, §1, IV of the Federal Constitution and Article 2, III of Conama Resolution No. 01/1986;
> 2. – within the EIA/RIMA, **the conduction of studies on Quilombola components (ECG) and Indigenous components (ECI) whenever the traditional territory is located within 10 km of the enterprise** and, regardless of this distance, the request for statements from local offices of Funai and Incra at the beginning of the process, so that these agencies may identify other potentially impacted territories beyond the 10 km radius;
> **3. – in the EIA/RIMA or prior to the renewal of the operating license for already constructed ports, the conduction of climate impact studies,** considering the cumulative and synergistic impacts of these infrastructure projects, in order to establish conditions that prevent, minimize, or offset the negative contribution of these enterprises to climate change, including, under the terms of the PNMC (National Policy on Climate Change), adaptation measures (Art. 2, I), mitigation measures (Art. 2, VII), and carbon sinks (Art. 2, IX);
> **4. – the requirement for a climate impact study for the renewal of operating licenses of ports already in operation**, considering the cumulative and synergistic impacts of

these infrastructure projects, in order to establish conditions that prevent, minimize, or offset the negative contribution of these enterprises to climate change, including, under the terms of the PNMC, adaptation measures (Art. 2, I), mitigation measures (Art. 2, VII), and carbon sinks (Art. 2, IX);

5. – based on the studies from item 2 and other assessments, the conduction of free, prior, informed, and good-faith consultation with potentially impacted traditional peoples and communities, according to the following adequacy parameters:

5.1 – Consultation must necessarily be conducted before the issuance of the preliminary license;

5.2. - Prior consultation is an autonomous legal instrument and is not fulfilled by public hearings, public consultations, or deliberations within consultative or deliberative management councils;

5.3 – Consultation must comply with existing protocols and, in their absence, a consultation plan must be developed **jointly with the traditional community**;

5.4 – Consultation must be carried out by the licensing authority, not by the interested company;

5.5 – Consultation must be conducted not only prior to the preliminary license but also prior to the installation license, the operating license, and the renewal of the operating license;

5.6 – Consultation must encompass all potentially impacted traditional peoples and communities—not only Indigenous and Quilombola groups—with special attention to the artisanal fishers of Santarém;

5.7 – The right to consultation is independent of the official demarcation of Indigenous, Quilombola, or traditional lands.

The aforementioned decision, along with others cited in this Technical Note, underscores both the binding nature and the critical importance of the right to free, prior, and informed consultation within the Judiciary. When the courts themselves recognize consultation as a prerequisite for the continuation of projects that impact traditional peoples and communities, it is unacceptable for State measures to contradict this understanding. Disregarding this essential right, which is enshrined in both domestic norms and international treaties, constitutes a direct violation of these peoples' right to self-determination and undermines the legitimacy of the entire decision-making process that affects their ways of life and their territories.

5. THE PARÁ STATE GOVERNMENT, THROUGH THE SECRETARIAT FOR ENVIRONMENT AND SUSTAINABILITY, AS A VIOLATOR OF THE RIGHT TO FREE, PRIOR, INFORMED AND GOOD-FAITH CONSULTATION

Projects with the potential to cause environmental harm must undergo an environmental licensing process as regulated by the following legal instruments: Federal Law No. 6.938/1981, which establishes the National Environmental Policy, its objectives and implementation mechanisms,

among other provisions; and CONAMA Resolution No. 237/1997, which defines concepts, scope, and procedures for obtaining environmental licenses, among other provisions. These regulations aim to uphold the principles of precaution and prevention that guide environmental law in Brazil.

Environmental licensing is essential for the State to carry out a prior assessment of potential impacts, monitor and supervise the execution of projects, and, if necessary, suspend or terminate their activities. In this context, it is crucial to ensure the participation of traditional populations—both urban and rural—as an integral part of this process. International frameworks, such as ILO Convention No. 169, guarantee these communities the right to be consulted whenever measures or projects may affect their territories.

In the case of the port developments mentioned, the Pará State Secretariat for Environment and Sustainability has demonstrated shortcomings and omissions by neglecting essential stages of the licensing processes, particularly with regard to respecting the right to prior consultation with Indigenous, Quilombola, and traditional communities. The failure to observe these fundamental procedures compromises the protection of these communities and violates rights guaranteed by specific legislation.

This omission is not merely an administrative failure but also reflects a practice which, according to Déborah Duprat (2015, p. 34)[14], reveals the idea that, in a society of equals, the State considers itself entitled to determine, on its own, what constitutes the common good, acting solely based on this assumption. Such a perspective exposes a lack of recognition of the diversity and autonomy of the affected communities, perpetuating the notion of a homogeneous interest that does not reflect the specific realities and needs of historically marginalized groups.

Upon revisiting the cases mentioned (Cargill, Embraps, and Atem's), these oversights and omissions become evident. In all cases, the Federal Prosecution Office (MPF) filed Public Civil Actions (ACP) with the aim of ensuring that the projects comply with the proper licensing procedures and consult the affected communities.

In the 2000 ACP against the company Cargill Agrícola S/A, issues such as the rescue of an archaeological site and compensation for the destruction of archaeological material were addressed. However, **even without presenting an Environmental Impact Study and Environmental Impact Report (EIA/RIMA), the agricultural commodities company received its first environmental license from the then State Secretariat for Science, Technology, and Environment[15] (Sectam)** in 2000, through the issuance of a preliminary license. That same year, Sectam also issued the

14 DUPRAT, Déborah. **ILO Convention No. 169 and the National States.** Brasília: ESMPU, 2015.

15 In 2007, Sectam was transformed into the Pará State Secretariat for the Environment (Sema). In 2015, Sema became the Pará State Secretariat for the Environment and Sustainability (Semas).

installation license, which allowed Cargill to construct a 580-meter embankment on the banks of the Tapajós River. The construction of the Cargo Transshipment Station was completed in 2003, and in that same year, the company was granted the operating license. The prior consultation was not required by Semas during the licensing process.

In the case of Embraps, the ACP highlights the need to recognize the Quilombola peoples whose territory lies within the area of influence of the port and therefore require prior consultation:

> [...]
> In 2013, Embraps – Empresa Brasileira de Portos de Santarém submitted an environmental study and requested an environmental license from the Pará State Secretariat for the Environment and Sustainability (Semas/PA) for the installation of a port terminal intended for the handling (loading) of soybeans in the municipality of Santarém, in the Maicá region (case file No. 2013/0000017021, dated 06/03/2013 – p. 102 of the ICP). Semas, in a technical note, concluded that:
>
> > *[...] based on the documentation submitted, the specific features of the project, the existing infrastructure, the environmental characteristics of the area where the project is to be implemented, the planned interventions, and the current applicable environmental legislation,* ***it is recommended that the environmental study to be submitted by the proponent be an Environmental Impact Study and the corresponding Environmental Impact Report – EIA/RIMA*** *(p. 111 of the ICP).*
>
> […]
> Regarding the presence of Quilombola territories in Santarém, the National Institute for Colonization and Agrarian Reform, Santarém Regional Superintendency – INCRA/SR-30, **informed SEMAS/PA itself that the quilombola communities of Arapemã, Saracura, Maria Valentina, Bom Jardim, Murumurutuba, Tiningu, and Murumuru are located in an area potentially affected by the port development project in the Maicá region**, under the responsibility of EMBRAPS (INCRA/GAB/SR(30)/OFFICIAL LETTER No. 71/2016 – p. 217 of the ICP).
> […]
> The Palmares Cultural Foundation, in turn, has already officially recognized the existence of the Quilombola communities by issuing self-recognition certificates, as per the attached documents, on the following dates: Tiningu, August 30, 2004; Bom Jardim, August 30, 2004; Maria Valentina, composed of the communities Nova Vista do Ituqui, July 27, 2005; São Raimundo do Ituqui, July 26, 2005; and São José do Ituqui, July 27, 2005; Murumuru, July 11, 2005; Arapemã – Residents in Maicá, March 1, 2007; Saracura, April 30, 2004; Arapemã, April 30, 2004; and Murumurutuba, FCP Ordinance dated August 12, 2005. (Public Civil Action Case File)

Despite the availability of official information, both Embraps and Fadesp (the company hired to prepare the EIA/RIMA) demonstrated a failure to acknowledge and register the presence of the affected traditional communities.

Likewise, SEMAS and ANTAQ refrained from issuing any statement or objection regarding the conclusions of the EIA/RIMA, or even opposed them, failing to comply with their legal obligations and institutional responsibilities.

As for Atem's, the Federal Prosecutor's Office (MPF) filed a Public Civil Action against the company and SEMAS, seeking to annul the preliminary and installation licenses granted to the company's project in Lago do Maicá, in Santarém. According to the Federal Prosecutor's Office (MPF), these **licenses were issued irregularly, as the environmental licensing process contains serious flaws.** First and foremost, no free, prior, and informed consultation was conducted with the Indigenous, Quilombola, and artisanal fishing communities potentially affected by the project, as mandated by ILO Convention No. 169. Moreover, there was no specific assessment of the impacts that the project might have on these traditional populations, nor were competent agencies such as FUNAI and the Palmares Cultural Foundation formally notified so that they could participate in determining the necessary studies.

Another issue raised by the MPF is that **Semas improperly waived the requirement for an Environmental Impact Study and Report (EIA/RIMA), despite the project being a private port terminal** intended for the export of petroleum derivatives—which, in itself, poses a high potential risk. The justification presented was that the project would handle up to 50 tons per month, would not involve hazardous cargo, and would affect only a small area of vegetation. The MPF disputes this reasoning and argues that the waiver of the EIA/RIMA requirement was inappropriate.

In addition, there was a serious failure in the consultation process: the Palmares Cultural Foundation was contacted only one day before the licenses were issued, making it impossible to provide any effective response. FUNAI was not contacted at all. The consultation with Quilombola communities was limited to only two groups (Arapemã and Saracura), even though others are also potentially affected.

In light of these irregularities, the MPF has requested that the court declare the granted licenses null and void and prevent the issuance of new ones until all deficiencies are remedied. The lawsuit argues that the licensing process violated environmental regulations, the constitutional rights of traditional communities, and international treaties to which Brazil is a signatory.

Although Brazilian legislation and the advocacy of traditional communities recognize the importance of the right to consultation in the context of large-scale projects—as reflected in the development of their own consultation protocols—the effective implementation of this right still faces significant challenges. In practice, even with constitutional guarantees, national regulations, and international recognition, consultation is often reduced to a bureaucratic formality—a rushed and superficial process disconnected from its core purpose: ensuring the full, informed, and

meaningful participation of potentially affected communities in decisions that directly impact their territories, cultures, and ways of life.

While it is now well established that the responsibility to conduct consultations lies with the State—and not with private enterprises—SEMAS continues to engage in recurrent practices that undermine the meaning and effectiveness of this right. Such conduct is repeatedly identified in legal proceedings that expose serious flaws in the environmental licensing process, particularly regarding the absence or superficiality of consultations with traditional communities. This pattern reveals a persistent institutional negligence regarding the duty to ensure active listening, leadership, and meaningful participation of these groups in decision-making processes that directly affect their territories and ways of life.

This situation is particularly concerning because the very body entrusted with upholding the rights of traditional peoples and communities—including their right to self-determination, that is, the right to exist, to be heard, and to shape their own future—is the same one that often invalidates, disregards, or undermines their participation. Rather than fostering dialogue and respecting sociocultural diversity, what is observed is a systematic exclusion of these voices from institutional decision-making spaces.

With regard to attempts to justify omissions or restrictions on consultation, the Inter-American Commission on Human Rights (IACHR) has taken an unequivocal position: consultation and the free, prior, and informed consent of traditional peoples are not mere formalities, but **essential conditions for the legitimacy of any policy or project that may affect them**. The IACHR emphasizes that the State has a duty to respect the will of these peoples, ensuring their full participation as an expression of their fundamental rights, including the collective right to territory, culture, and development according to their own values and priorities. Déborah Duprat comments on this understanding through the lens of the *Saramaka People v. Suriname*[16] case:

> Beyond the situations in which consent is essential, consultation must be binding. This means that any objections raised by the group must be taken seriously and overcome with stronger reasoning. If such reasoning is not presented, **the objections must be incorporated into the decision-making process, requiring the project to be modified, in whole or in part. It is not acceptable to dismiss or disqualify dissenting views based on appeals to authority.** (ILO Convention No. 169 and the Nation States, 2015, p. 73)

It is clear that social movements, traditional peoples, and communities continue to face significant challenges in affirming the importance, necessity, and obligatory nature of free, prior,

16 Case of the *Saramaka vs Surinam*. Judgment of November 28, 2007.

and informed consultation in the face of economic development interests and the omission or pressure exerted by the State itself. This ongoing struggle for recognition and respect reveals the persistent institutional resistance to the full realization of this fundamental right.

In this context, the state government, through Semas, occupies a central role: not only as the entity responsible for issuing environmental licenses, but also as the guarantor that such licenses are granted in accordance with constitutional principles, international norms, and the respect for the collective rights of traditional communities. It is up to the State not to perpetuate practices that marginalize these groups, but rather to adopt an active stance committed to socio-environmental justice, ensuring that no project moves forward without the proper fulfillment of the legal and democratic processes that involve listening to and obtaining the consent of the directly affected populations.

6. A BRIEF OVERVIEW OF FREE, PRIOR, AND INFORMED CONSULTATION

In light of all the above, there are some elements that must be considered for the effective implementation of the right to prior consultation.

- **Who holds this right?**

The holder of the right to consultation (free, prior, informed, and in good faith) is the traditional people or community that will be affected by the legislative or administrative measure taken by the State. In this case, the holders are all Indigenous peoples, Quilombola communities, riverine peoples, extractivists, and others who self-identify as traditional communities living in the territory of Pará and who will be affected either by the implementation of the Jurisdictional REDD+ System, by port developments in Santarém, or by any other measure that interferes with their way of life.

- **Who must carry out the consultation?**

The responsibility to conduct the free, prior, and informed consultation lies with the State and not with private developers or other entities. For projects undergoing environmental licensing procedures, the entity responsible for conducting the consultation is the licensing authority. In the cases under analysis, the body that has been leading negotiations for the commercialization of carbon credits and environmental licensing of ports within the state is Semas, and therefore, it is also the one that must conduct the consultation.

- **How should consultation with peoples and communities be conducted?**

The consultation with traditional peoples and communities, as established by Convention No. 169, must adhere to three fundamental principles: **prior, free, and informed**. This means that the consultation process must be carefully planned and executed to ensure genuine and effective participation of the affected communities.

Prior consultation is not to be confused with other mechanisms of public participation, such as public hearings, meetings, or assemblies. While those instruments aim to ensure the participation of the general public and of "associations representing various segments of the community," prior consultation is an exclusive right of Indigenous peoples, Quilombola communities, and traditional peoples. It is a culturally appropriate procedure that must respect the laws, customs, traditions, social and political organization of the groups being consulted, as well as their specific forms of representation.

There are specific criteria that must be present for a consultation under Convention No. 169 to be considered valid:

***The consultation must be prior*:** It must take place before the implementation of the project or activity that may affect traditional peoples and communities. In other words, it must occur prior to any administrative or legislative action related to the project, such as its planning, approval, or execution. This means that the affected peoples must be consulted during the early stages of the project's planning and development. They must be guaranteed the opportunity to express their opinions, to either consent to or reject the proposals, and to suggest mitigation measures.

***The consultation must be free**:* The traditional peoples and communities to be consulted must not be in a position of disadvantage or coercion, nor be pressured to accept any terms imposed by the State or by companies. On the contrary, they must have full autonomy to decide about their future and way of life. Freedom in the process therefore includes the recognition of the right to veto. This means that the outcome of the consultation may be either fully or partially favorable to the proposed project, or it may result in a complete veto of the initiative, thus ensuring the true right to consent. There is no point in carrying out a consultation that does not allow affected peoples to legitimately oppose the proposal — something that has been consistently recognized by the jurisprudence of the Inter-American Court. Therefore, the consultation must be

a genuine space for deliberation, where communities can effectively accept or reject measures that impact their territories and ways of life.

-***The consultation must be informed:*** This means that traditional peoples and communities have the right to receive, in advance, all the necessary information to make an informed decision. This includes the clear and detailed disclosure of the potential risks, negative impacts, and benefits that the measure or project may entail. In this specific context, affected communities must be informed about the limitations that such measures, if implemented, may impose on their territories, resources, and ways of life, ensuring that they can fully assess the consequences and make a decision based on adequate and understandable information.

- ***The consultation must be carried out in good faith:*** Good faith is a fundamental principle in contractual relations under modern law and must likewise be respected in the consultation process with traditional peoples and communities. To ensure good faith, the measure subject to consultation — such as the sale of carbon credits in Quilombola territories or the installation of ports — must not be conditioned on public policies that are the responsibility of the State, such as land titling or investment in health and education, which must be guaranteed regardless of the approval of private projects. This means that such rights cannot be promised or linked to any decision regarding private undertakings. Moreover, good faith requires that the process must not take advantage of the communities' historical social inequalities — for example, by offering funds or incentives for projects in underprivileged areas in order to gain approval for the enterprise. Such an approach would amount to exploitation, where the communities' lack of resources could be used to coerce them into accepting a project that they might otherwise reject.

The consultation must be carried out in accordance with the specific protocols, plans, and procedure established by the communities themselves, who have the right to define the rules under which they wish to be consulted. The development of these protocols is a way through which traditional peoples and communities have sought to ensure that their ways of life are respected during the prior consultation process. To ignore or disregard the rules established in these protocols constitutes a direct violation of the communities' right to self-determination, undermining their ability to define the conditions and manner in which they must be heard and involved in decisions that affect their territories and ways of life.

7. RECOMMENDATIONS

- The State of Pará should recognize and ensure the implementation of free, prior, informed, and good-faith consultation, as established in ILO Convention No. 169, for all traditional peoples and communities that may be impacted by the implementation of the Jurisdictional REDD+ System.
- It should also guarantee this right to communities affected by port expansion projects in the Tapajós region, along with adopting reparative justice measures to address the resulting environmental damage and disruption to traditional ways of life.
- The State should refrain from renewing environmental licenses for ports operating in the municipalities of Santarém and Itaituba until proper free, prior, and informed consultation has been conducted with all potentially impacted traditional peoples and communities, in accordance with ILO Convention No. 169.
- The State Legislative Assembly should acknowledge the self-executing nature of the right to consultation, as defined by ILO Convention No. 169, and act to block any legislative initiatives that seek to restrict or regulate this right in ways that diminish its effectiveness. It must also prevent the advancement of proposals that infringe upon the territorial, cultural, and social rights of traditional peoples and communities.
- The National Human Rights Council should monitor potential human rights violations arising from the implementation of REDD+ mechanisms and the environmental licensing of ports in the Tapajós region.
- The State Human Rights Council of Pará should also monitor imminent risks of rights violations associated with REDD+ projects and the licensing processes for infrastructure projects in the region, ensuring the protection of all potentially affected traditional communities.
- Lastly, every traditional people and community across the state must be guaranteed the right to free, prior, and informed consultation. They must be heard, respected, and meaningfully included in any administrative or legislative process, project, or program that could affect their lives, ways of being, and territories.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