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## EL FUTURO DE LA ALIMENTACIÓN Y RETOS DE LA AGRICULTURA PARA EL SIGLO XXI:

*Debates sobre quién, cómo y con qué implicaciones sociales, económicas y ecológicas alimentará el mundo.*

## THE FUTURE OF FOOD AND CHALLENGES FOR AGRICULTURE IN THE 21st CENTURY:

*Debates about who, how and with what social, economic and ecological implications we will feed the world.*

## ELIKADURAREN ETORKIZUNA ETA NEKAZARITZAREN ERRONKAK XXI. MENDERAKO:

*Mundua nork, nola eta zer-nolako inplikazio sozial, ekonomiko eta ekologikorekin elikatuko duen izango da eztabaidagaia*

### ***The Guarani and Kaiowá Peoples' Human right to Adequate Food and Nutrition—a holistic approach***

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# The Guarani and Kaiowá Peoples' Human Right to Adequate Food and Nutrition—a holistic approach

Lucas Prates

## Abstract

This paper analyses the Human Right to Adequate Food and Nutrition (HRtAFN) of three emblematic communities of the *Guarani and Kaiowá* peoples from the state of Mato Grosso do Sul (MS), Brazil. The overall situation is one of extreme poverty and hunger caused by violations of rights by the Brazilian State, alongside local landowners and transnational companies attacking them whilst grabbing their ancestral territories and other natural resources, such as water. The study applied different methodologies, both quantitative and qualitative, such as: historical and anthropological research; legal analysis of the related Brazilian State's human rights obligations; and the appliance of EBIA, the Brazilian Scale of Food Insecurity (*Escala Brasileira de Insegurança Alimentar*). Some of the most remarkable conclusions point out to a rate of 100% of food insecurity within the communities researched, as well as severe violations of different human rights beyond the HRtAFN, and that the main strategy that remained for the Guarani and Kaiowá is the *retomadas* (recapture) – the occupation of their ancestral lands by their own means whilst the State does not recognize their rights. These conclusions prove the intricate relation between the land and all Human Rights in this case. This paper is based on the main study called “The Guarani and Kaiowá Peoples' Human Right to Adequate Food and Nutrition – a holistic approach”, which was developed by FIAN Brazil, in partnership with Aty Guasu, FIAN International and the Missionary Council for Indigenous Peoples (CIMI), published in August 2016.

## Introduction

The Guarani and Kaiowá peoples are the second biggest indigenous population living in Brazil nowadays. They account for nearly 60 thousand people living mainly in the state of Mato Grosso do Sul (MS), in the Brazilian Centre-West. Nevertheless, they are one of the most threatened indigenous populations in the country, with local and transnational capital forcing them out of their ancestral lands, poisoning the air, the water and the land of the region and even directly attacking them with the most brutal means. However, the Guarani and Kaiowá have resisted bravely, denouncing human rights violations and re-occupying their traditional lands. All this context, alongside with the political and economic situation of Brazil, makes possible to assert that the Guarani and Kaiowá represent a very important bulwark of the social struggles against the violent and destructive effects of agribusiness capital.

This paper seeks to analyse the condition of the Human Right to Adequate Food and Nutrition (HRtAFN) of the Guarani and Kaiowá peoples, based mainly on research carried out between 2013 and 2015 by FIAN Brazil, in partnership with Aty Guasu (the Guarani and Kaiowá's Grand Assembly), FIAN International and CIMI. A comprehensive Executive Summary of this research was published and launched in Portuguese and English in August 2016. In addition to that, historical and anthropological inputs were included, as well as a legal analysis on the human rights situation of these peoples.

The paper is divided in three main parts. First, the context in which the Guarani and Kaiowá live is outlined, with an overview of their recent history and their current situation. Secondly, details of the abovementioned research are presented. Finally, a holistic analysis of the human rights situation is delivered, linking the recognized violations of rights with the main subjects in discussion on this thematic axis (access and control over the means of production). A conclusion will follow.

## The History and Context of the Guarani and Kaiowá Peoples

Likewise all the indigenous peoples who historically lived in the area nowadays known as Brazil, the history of the Guarani and Kaiowá is one marked by the suffering of violence and many different human rights violations.

Since the Portuguese colonizers set foot in Brazil, the acts of violence against indigenous peoples have been committed either by the Brazilian State or by third parties. Among these acts of violence, one could mention: the contamination with diseases; the enslavement and, more recently, indentured servitude; or the direct killings and assassination of entire tribes.

When the Portuguese colonizers arrived in Brazil, in the sixteenth century, around 6 million indigenous inhabitants were living in the region. Nowadays, because of those acts of ethnocide, that number has fallen to around 900 thousand people, according to the latest researches from the Brazilian Government. This current number corresponds to only 0,4% of the country's population<sup>1</sup>.

Regarding the acts of violence committed by the State or by third parties with State's approval, recent documents from the Brazilian State confirm these facts. The final report from the National Truth Commission (CNV, in Portuguese), for example, proves that severe acts of violence and human rights violations against indigenous peoples occurred in Brazil between 1946 and 1988, recognizing the role and responsibility of the Brazilian State in that<sup>2</sup>.

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<sup>1</sup> IBGE. *Censo 2010: população indígena é de 896,9 mil, tem 305 etnias e fala 274 idiomas*. Comunicação Social. Agosto de 2012.

<sup>2</sup> COMISSÃO NACIONAL DA VERDADE. *Relatório: textos temáticos/Comissão Nacional da Verdade*. Brasília: CNV, 2014. (Relatório da Comissão Nacional da Verdade; Vol. 2, Texto 5. Violações de direitos humanos dos povos indígenas).

In what regards specifically the Guarani and Kaiowá peoples, the intensification of their territories occupation by white settlers started around 1870, with the end of the Paraguayan War. The region between the river Apa and the Guaíra Falls (current-day the southern region of the state of Mato Grosso do Sul) was visited by a boundary committee in 1874 and, after the new boundaries were demarcated, official leases of millions of hectares of land were approved by the central government of Brazil, with the exploitation of yerba mate starting. Different academics point out to the use of indigenous peoples work force in the harvest of yerba mate plantations, as well as in the preparation of the final product, configuring an indentured servitude system with no salaries, captivity and many threats and killings.

Until the beginning of the twentieth century the occupation of the land by the yerba mate plantations and by the first cattle farms did not threaten directly the Guarani and Kaiowá peoples, since most of their villages were located in the forests and the deforestation at that time was relatively small<sup>3</sup>. Anticipating the end of the leases and moving forward a process of forcing eviction of indigenous populations from their traditional lands, the Brazilian government created eight reserves in the region between 1915 and 1928.

The areas of these reserves varied between 700 and 3,6 thousand hectares, totalizing around 18 thousand hectares<sup>4</sup>. Their occupation was only intensified in the decade of 1940, when the Brazilian government started to distribute land in the region for small-scale farmers within the project called CAND – Colônia Agrícola Nacional de Dourados/Dourados National Agricultural Colony. At that time it was clear that the intention of the government was to “integrate” the indigenous peoples of Brazil into the “national culture” or “national communion”, as stated by the final report of CNV<sup>5</sup>. In the decade of 1950 the big agribusiness enterprises started to arrive in the region to cultivate coffee beans and cattle<sup>6</sup>. The process of deforestation grew after that, with its intensification happening in the 1970’s, when the soya plantations arrived<sup>7</sup>.

During this period from the 1940’s to the 1970’s the eviction of the Guarani and Kaiowá also became more frequent, with private militias hired by the farmers forcing the indigenous peoples to move to the reserves, sometimes with the help of the State through the Indigenous Service of Protection and/or the police<sup>8</sup>. The reserves kept growing in number of inhabitants, but not in space, till the point in which they find themselves today: overcrowded, with no space or natural resources that may sustain the traditional way of living of the Guarani and Kaiowá peoples<sup>9</sup>.

<sup>3</sup> BRAND, A. Os complexos caminhos da luta pela terra entre os Kaiowá e Guarani no MS, p. 138. In: *Tellus*, ano 4, n. 6, pp. 137-150, Apr. 2004. Campo Grande – MS.

<sup>4</sup> *Ibid.*, p. 139.

<sup>5</sup> COMISSÃO NACIONAL DA VERDADE, *op. cit.*

<sup>6</sup> BRAND, *op. cit.*, p. 140 and 146.

<sup>7</sup> *Ibid.*, p. 140.

<sup>8</sup> CARNEIRO DA CUNHA, M. O STF e os índios. Article published in the newspaper *Folha de S.Paulo*. 19 Nov. 2014

<sup>9</sup> *Ibid.*

The Reserve of Dourados, for example, has 3,5 thousand hectares of extension and a population of 14 thousand people, what causes conflicts since there are not space and resource for everyone<sup>10</sup>. It is also important to note that since the beginning family ties were not observed by the Brazilian State when transferring or forcing the Guarani and Kaiowá peoples to the reserves. Therefore, the families settled in the reserves were not only separated from their relatives, but they were also confronted with the necessity of living in an overcrowded place with people they were not historically close to<sup>11</sup>.

The overall situation remained the same over the last three decades, that is: the ever-growing presence of the agribusiness in the region, pushing the Guarani and Kaiowá peoples out of their traditional land, at the same time that paramilitary militias attacked the autochthonous peoples and many other violations of human rights continued happening in the villages, reserves, camps and within the region's cities.

Many killings, suicides, racism and threats – all caused by actions both from third parties and from the State, and also by omissions from the State. According to *Aty Guasu*, between 2003 and 2013 around 300 indigenous people were murdered in Mato Grosso do Sul<sup>12</sup>. Only in the abovementioned Reserve of Dourados, for example, the rate of deaths per 100 thousand inhabitants was in 2013 around the number of 100, making this one of the most violent cases in the whole country<sup>13</sup>.

Suicide has also been a major problem among this population, with numbers surpassing one thousand cases between 1988 and 2012, making international observers note that this is the highest known rate of suicide within any group in the world<sup>14</sup>. For example, only in 2013 were registered 72 suicides among the Guarani and Kaiowá peoples in Mato Grosso do Sul<sup>15</sup>.

## The Socio-Economic and Nutritional Research Carried out in 2013

For the main research that sustains this paper, three emblematic Guarani and Kaiowá's communities were chosen: Guaiviry, Kurusu Ambá and Ypo'i. These communities – all of them camps being originated in *retomadas*<sup>16</sup> and still awaiting

<sup>10</sup> FELLET, J. Área indígena do MS lideraria ranking de capitais mais violentas. *BBC Brasil*. 24 Feb. 2014.

<sup>11</sup> PIMENTEL, S.K. *Sansões e Guaxos: Suicídio Guarani e Kaiowá – Uma proposta de síntese*, p. 26-27. Master's dissertation presented to the University of São Paulo (USP). São Paulo, Aug. 2006.

<sup>12</sup> HECK, E. Mato Grosso do Sul: assassinatos, prisões e impunidade. *CIMI*. Jun. 2013.

<sup>13</sup> FELLET, *op. cit.*

<sup>14</sup> SURVIVAL INTERNATIONAL. *Progress can Kill: Survival report reveals world's highest suicide rate*. 4 Jan. 2016.

<sup>15</sup> SURVIVAL INTERNATIONAL. *Novo estudo revela maior taxa de suicídio do mundo entre tribo brasileira*. 5 Jun. 2014.

<sup>16</sup> *Retomadas* are the re-occupations by the Guarani and Kaiowá of their ancestral lands which have been in the hands of farmers and agribusiness. It is estimated that in the last 10 years around 60 *retomadas* have taken place in Mato Grosso do Sul.

official demarcation from the State – share similar social, demographic and environmental conditions.

Together, the three communities held a total population of 360 inhabitants at the time of the research. 96 households were visited in October 2013 within these communities, with one adult member of the household being interviewed (a woman in 83% of the occasions). The main part of these interviews was based on the application of the Brazilian Scale of Food Insecurity (EBIA, in Portuguese), the Brazilian adapted version of the official scale developed by the United States Food and Drugs Administration in the 1990's. The EBIA is largely used by the Brazilian authorities since 2004 in local and national surveys and it is considered the most important objective instrument to assess food security in households<sup>17</sup>. To this research the scale was adapted to the reality of indigenous peoples in Brazil with, among other changes, its main questions being translated into Guarani language for the interviews. Three different questionnaires were applied, regarding not only food and nutritional issues, but also socio-economic and historical ones. After the interviews the children and the women of the household had their anthropometric measures taken, including height and weight. The fieldwork was developed by a team of people from FIAN Brazil, CIMI, consultants and three indigenous interviewers who had previously been selected and trained with this methodology.

The EBIA is formed by six basic questions, such as: “In the last month, did the people of this house eat healthy food every day?”; “In the last month, was there any day in which you passed the whole day without eating anything at all because there was no food at home?”; “In the last month, was there any day in which you ate less food in order to leave food for the children?”. The questions are registered on a “Yes or No” basis, and the sum of all answers in a household is classified according to four categories: Food Security (in the case of zero positive answers), Slight Food Insecurity (between 1 and 2 positive answers), Moderate Food Insecurity (between 3 and 4 positive answers), and Severe Food Insecurity (between 5 and 6 positive answers).

According to the main findings of the research, 100% (one hundred percent) of the visited households with young people and children were in Food Insecurity situation, according to the table below:

**Table 1:** Analysis of Food Security/Insecurity in the households visited

Food Security Categories	Number of Households	Percentage
Food Security	0	0
Slight Food Insecurity	10	13,3

<sup>17</sup> SEGALL-CORREA, A.M., MARIN-LEON, L. A Segurança Alimentar no Brasil: Proposição e Usos da Escala Brasileira de Medida de Insegurança Alimentar (EBIA) de 2003 a 2009, p. 9. In: *Segurança Alimentar e Nutricional*. Campinas, 16(2): 1-19, 2009.

Moderate Food Insecurity	44	58,7
Severe Food Insecurity	21	28,0
Total households with young people and children	75	100,0

These numbers are clear to show that none of the visited households had their HRtAFN fulfilled at the time of the research, picturing a severe situation. However, the severity of the food insecurity of the Guarani and Kaiowá peoples can also be confirmed when one compares these percentages with the average rate of food insecurity in Brazil – that is, the rate among the non-indigenous peoples. According to the last National Survey of Sample Households (PNAD, in Portuguese), carried out in 2013, the percentage of households in the country that had any type of insecure food supply was of 22,6%<sup>18</sup>; regarding specifically the Serious Food Insecurity category among households with under 18s, the rate for the non-indigenous population of Brazil was 4,8%<sup>19</sup>. As it is possible to read from Table 1, these same rates among the Guarani and Kaiowá are, respectively, 100% and 28%. It is important to highlight that the PNAD research uses the same methodology applied in this research, that is, the EBIA.

The Human Right to Adequate Food and Nutrition (HRtAFN) has two fundamental dimensions: the right to be free from hunger and malnutrition; and the right to have adequate food and nutrition. Using the classification from EBIA, it is possible to say that the first fundamental dimension of the HRtAFN is not secured when Moderate and Serious Food Insecurity exist. This happens because either the inhabitants of the household have access only to an unbalanced diet, or they are deprived of food and going hungry. Therefore, it is possible to affirm that around 87% of the interviewed households shown in Table 1 did not have secured, at the time of the research, their first fundamental dimension of the HRtAFN, that is, the right to be free from hunger.

The most visible consequences of Severe Food Insecurity could also be analysed with the data gathered from measuring the height and the weight of Guarani and Kaiowá's children: 42% of the children younger of 5 years old presented chronic malnutrition; in other words, they demonstrated growth deficits for their age. This is explained because chronic malnutrition is defined by low-height-for-age and stems from malnutrition suffered by both the mother – before and during pregnancy and lactation – and the child during his/her first years of life. Those who suffer chronic malnutrition have experienced times of acute malnutrition; that is, they have gone hungry at various times during their lifetime. In comparison, whilst this rate is of 42% among the Guarani and Kaiowá under 5 years old, other indigenous children in the same age in other parts of Brazil present

<sup>18</sup> IBGE. *Pesquisa Nacional por Amostra de Domicílio: Segurança Alimentar*. Rio de Janeiro: Coordenação de Trabalho e Rendimento, 2013.

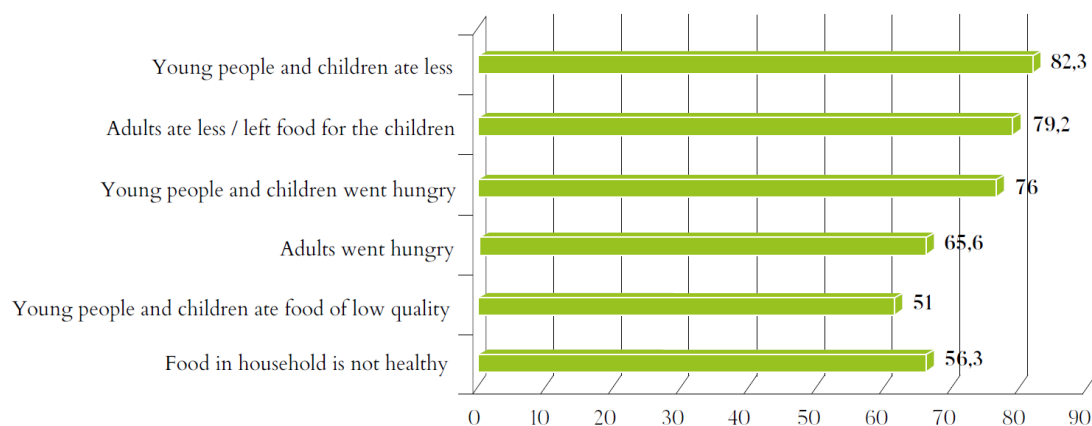
<sup>19</sup> *Ibid.*

an average rate of chronic malnutrition of about 28%<sup>20</sup>. When comparing the same mensuration with non-indigenous peoples of Brazilian Centre-West, this rate falls to 5,5%<sup>21</sup>.

Acute malnutrition, on the other hand, is defined by low-weight-for-height (a thin child for his/her height). Acute malnutrition can appear at any time in life as the result of a reduction in consumption or associated to infections or illnesses. It generally occurs in emergency or food and nutritional insecurity situations, when sufferers do not have physical or economic access to food. Within the Guarani and Kaiowá's peoples researched, the number of children under 5 years old who presented acute malnutrition was 9,1%. According to recent national surveys on non-indigenous peoples in Brazil, this same rate is of 1,8%.<sup>22</sup>

When one refers only to the answers of the EBIA's specific questions, other important data from the daily lives of the Guarani and Kaiowá living in *retomadas* can be emphasized. For instance, in 76% of the households the person interviewed stated that, in the month previous to September 2013, there were occasions in which children and young people (under 18 years old) in the house had spent a whole day without food and gone to bed hungry, as there was no food at home. Another extremely severe fact is that 82% of the households affirmed that, in the month previous to the research, the group living in the house ate less food than the quantity they considered necessary because they did not have the resources to obtain food. These numbers are summarized in the Figure 1 below:

**Figure 1: Percentage of affirmative responses to points of the EBIA (Brazilian Scale of Food Insecurity)**



Regarding the first fundamental dimension of the HRtAFN, an important public policy in Brazil that has been focused on securing minimal standards against the hunger is the *Programa Bolsa Família* (PBF, in Portuguese). A cash-transfer scheme established in 2003, the PBF was attending around 14 million families throughout Brazil in 2016, delivering monthly payments of about R\$ 176 to each

<sup>20</sup> FUNASA. *Inquérito Nacional de Saúde e Nutrição dos Povos Indígenas*, p. 240. Rio de Janeiro: 2009.

<sup>21</sup> *Ibid*, p. 240.

<sup>22</sup> MINISTÉRIO DA SAÚDE. *Saúde Brasil 2009: Uma análise da situação de saúde e da agenda nacional e internacional de prioridades em saúde*, p. 341. Brasília: MS, 2010.



family<sup>23</sup> (the equivalent to USD 56,4<sup>24</sup>). The public policy is well known as one of the main causes for the reduced numbers of poverty and hunger since 2003. Concerning the Guarani and Kaiowá's researched communities, although 100% of their families fulfilled the legal requirements to receive the PBF, only 40% of them were in fact receiving it in September 2013. In addition to that, 23% of the researched households had at that time their PBF's payments suspended. Between these families who had their payments suspended, around 42% were in a situation of Severe Food Insecurity – what demonstrates the importance of this public policy to alleviate hunger.

Among other important socio-economic data gathered in this research, it stands out the relation of these three communities with the production of their own food in the lands they are occupying - in a very fragile status, it is important to recall, from both legal and practical points of view. In this way the research showed that 64% of the households do sow in the land they occupy, but the outcome of this production is not enough to feed their respective families. Regarding the income situation besides PBF, the research found that 31% of the families did not have at the time of the research any kind of income nor were they receiving resources from any type of public policies (such as the PBF). Their water resources came either from simple water wells or were brought into the community by trucks.

### Human Rights analysis of the Findings

Once the main findings of the 2013 research were presented, it is now necessary to investigate the reasons why those numbers have appeared. In order to do that whilst setting the responsibilities of the State and third parties, a human rights based approach is fundamental. More than that, the use of the revamped concept of the *Human Right to Adequate Food and Nutrition (HRtAFN)* is necessary, since the links between new rights and ought-to-be situations are established.

In recent decades, the most common term that civil society throughout the world used when referring to human rights in the food context was *human right to adequate food (HRAF)*. Despite considerable progress in the quest for more precise definitions about the meaning of this term, the growing challenges in the realisation of this right have led, in recent years, to coherent arguments about the need for a structural change to the concept so that the causes of hunger and malnutrition are considered. According to Flavio Valente, Ana María Suárez-Franco and Denisse Córdova, the proposal to revise the concept of the HRAF stems from the need to adapt it to the new challenges that have emerged in the struggle to guarantee that right and other human rights<sup>25</sup>. The proposal is that the HRAF more explicitly

<sup>23</sup> PORTAL BRASIL. *Reajuste faz valor médio do Bolsa Família chegar a R\$ 176 em junho*. May 1st 2016.

<sup>24</sup> According to the exchange rate on 16 March 2017 (1 USD = R\$3,12).

<sup>25</sup> VALENTE, F.; FRANCO, A.M.; CÓRDOVA, D. Closing protection gaps through a more comprehensive conceptual framework for the human right to adequate food and nutrition. *In: Gender, Nutrition and the Human Right to Adequate Food: towards an inclusive framework*. 2015.

incorporates the nutritional dimension, the gender approach and food sovereignty into its conceptual structure, in the interest of overcoming the reductionist approach that has been applied to food and nutritional security policies, led by the influence of many powerful groups, such as the economic and political elite.

Therefore, the new concept of the Human Right to Adequate Food and Nutrition (HRtAFN) aims to incorporate not only the food and nutrition security elements enshrined in the General Comment Nº 12 from the UN Committee on Economic, Social and Cultural Rights (CESCR), but also, among others, those three elements abovementioned: the nutritional elements, women's rights and food sovereignty.

Alongside with those new elements, the concept of HRtAFN is also linked to the idea of *food process*. If the HRtAFN refers to the "should-be" situation, that is, how the fundamental food dimension of human life should be constituted, the *food process*, by its turn, refers precisely to the reality of that fundamental dimension. In other words, the *food process* refers to all the social relations that exist within the production and the consumption of food by human beings, englobing, therefore, the realities involved within production, commerce or exchange, transformation, consumption and biological use of food<sup>26</sup>.

Therefore, to the full delivery of the HRtAFN numerous elements must be considered, such as land, seeds, water, ethical work relations and so on. Some of the most important of these elements will be analysed in the following paragraphs in what relates to both the Guarani and Kaiowá reality and to access and control over the means of production.

For most traditional peoples and communities, the access to land is a fundamental issue not only to cultivate their food, but also to maintain their traditional ways of living. It is through the land, considered sacred, that those peoples guarantee their livelihood. Given the interdependency and indivisibility of human rights, the very severe food and nutritional insecurity faced by the Guarani and Kaiowá communities is connected to the unjustifiable delay to the demarcation of their ancestral territory. As explained above, the historical advance of agribusiness in Brazil, along with actions and omissions of the State, left the Guarani and Kaiowá without their traditional lands. According to CIMI, currently the Guarani and Kaiowá occupy around 40 thousand hectares in the state of Mato Grosso do Sul, whilst claiming ownership of around 700 thousand hectares – around 2% of the total extend of this Brazilian state. Most of those 40 thousand hectares currently occupied are the already demarcated lands, such as the eight reserves indicated above. The numbers and the historical processes mentioned show that, without the demarcation of their lands, where the Guarani and Kaiowá can plant, hunt, fish and live according to their traditions and their cultures, the HRtAFN and other human rights of these peoples cannot be ensured.

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<sup>26</sup> MORALES GONZÁLES, J.C. *Colombia com hambre: Estado indolente y Comunidades resistentes*. 3er Informe sobre la situación del Derecho a la Alimentación en Colombia/2013, p. 36-37. FIAN Colombia: Bogotá, 2013.

The corporate capture of the Guarani and Kaiowá's ancestral lands is also a big issue. In recent years clear evidence of increasing land grabbing by big companies from Brazil and abroad has come to light. Perhaps the main example is related to the Bunge case: reports from OXFAM and from *Repórter Brasil* assert that the transnational company, at the time of the research, was buying sugarcane for its sugar mills from farms which were located in Jatayvary<sup>27</sup> – a Guarani and Kaiowá ancestral land, recognized as such by the Brazilian State in 2004<sup>28</sup>. It was reported that the company did not intend to take any action at the time of the research because the demarcation process of the land had not finished by that time<sup>29</sup>.

The access of the Guarani and Kaiowá to water is also constantly threatened. Many of the rivers and lagoons surrounding them are poisoned with pesticides, for example, and/or they do not have access to the waterways which most of the times are located inside the farms. In 2012, for example, the Ypo'i community (one of the researched communities in this paper) filmed the water of a nearby river full of foam after barrels of pesticides had been thrown away upriver by farmers<sup>30</sup>. CONSEA – the National Council on Food and Nutrition Security – has also arrived to similar conclusions in a recent mission<sup>31</sup>. Due to these reasons, most of the water supply of the communities, at the time of the research, came either from water wells or by trucks backed by FUNASA – National Health Foundation, Fundação Nacional de Saúde. Similar complaints of contamination by pesticides were heard by the researchers regarding the water wells. In addition to that, it is important to remember that the absence of energy in the communities is also an element that violates their human right to water<sup>32</sup> and, thus, their HRtAFN, since it is very difficult to install electric water pumps in the wells under these circumstances.

The expropriation and deterioration of the water consumed by the Guarani and Kaiowá was also evaluated through this research, with important parcels of some communities declaring the water they were drinking was not proper for human consumption (46% of the people of Kurusu Ambá II, for example, declared that the quality of the water they were consuming was bad). This is extremely severe, since the presence of colour, taste or smell in the water already reveals that its quality is not adequate for consumption.

Regarding their traditional seeds, the research carried out in 2013 did not attempt to analyse quantitatively their presence in the Guarani and Kaiowá's

<sup>27</sup> GLASS, Verena. *Em terras alheias: a produção de soja e cana em áreas Guarani no Mato Grosso do Sul*, p. 9. *Repórter Brasil*: São Paulo, *s.d.*

OXFAM. *Sugar rush: land rights and the supply chains of the biggest food and beverage companies*, p. 7-8. OXFAM Briefing note. October 2013.

<sup>28</sup> BONILHA, P. Coca-cola solicitará à Bunge que não compre açúcar produzido em terra Guarani Kaiowá. November 2013. *CIMI*.

<sup>29</sup> GLASS, *op. cit.*, p. 9.

<sup>30</sup> SURVIVAL INTERNATIONAL. *Água de índios Guarani é 'envenenada' em disputa por terra*. Nov. 21st 2012.

<sup>31</sup> CONSELHO NACIONAL DE SEGURANÇA ALIMENTAR E NUTRICIONAL. *Tekoha: direitos dos Povos Guarani e Kaiowá: visita do Consea ao Mato Grosso do Sul*. Brasília: Presidência da República, 2017.

<sup>32</sup> *Ibid*, p. 75.

cultivations. However, according to the work of FIAN Brasil and CIMI, it is possible to note that most of the traditional seeds of the Guarani e Kaiowá were lost mainly due to the onrush of agribusiness cultivations. This fact, in addition to the lack of appropriate land and water to be used by these indigenous peoples, constitutes a severe violation of their HRtAFN and, more specifically, of their sovereignty on food and on natural resources.

Alongside with the main classical means of production, other elements are fundamental to understand the violations of the HRtAFN of the Guarani and Kaiowá, as well as to better understand the current processes of expropriation suffered by these indigenous peoples. Among these other threats affecting the control of natural resources, we highlight the lack of access to justice, the legal theory of the time-frame, the violent attacks suffered by the Guarani and Kaiowá and the bias from the surrounding society.

Regarding the access to justice of the Guarani and Kaiowá, it is possible to state that the Judiciary Branch in Brazil has not yet fully recognized indigenous peoples as rights holders. This happens mainly because in many legal cases the Guarani and Kaiowá are not allowed to speak in their traditional languages or are not even recognized as autonomous subjects. Their language, culture and autonomy as rights holders are thus expropriated from them. A clear example of this happened with the indigenous people of Guyraroká community, who in 2015 received with surprise a decision from the Brazilian Supreme Court cancelling the legal act that had previously recognized their land as indigenous. After that, the community submitted a legal appeal to the Court and, even more surprisingly, the appeal was denied because only the Brazilian State should be responsible to defend the indigenous community – a conclusion that is directly opposed to the article 232 of the Brazilian Constitution<sup>33</sup>. As stated by FIAN Brazil, CIMI and other partner organizations in a document addressed to the United Nations Human Rights Council in 2016, “to participate in all actions that concern them is a human right of the indigenous peoples, connected with other rights, such as due process of law, opportunity to be heard, adversary proceeding”<sup>34</sup>.

In addition to that, the so-called legal theory of the time-frame and tradition is a thesis created by the Brazilian Supreme Court according to which an indigenous land can only be considered traditional if it was occupied by the indigenous peoples at the time of the promulgation of the Brazilian Constitution – that is, October 1988. Although the Supreme Court has pointed out that this should not be applied if the indigenous peoples were not in their lands due to acts of non-Indians, this is not what has been applied by judges in legal cases throughout the country, especially in the case of the Guarani and Kaiowá. Therefore, the use of this legal thesis by the

<sup>33</sup> CUPSINSKI, A. *et al.*. Os povos indígenas e o acesso à Justiça. In: *Relatório Violência contra os Povos Indígenas no Brasil: dados de 2015*. Brasília: CIMI, 2016, pp. 27-29.

<sup>34</sup> Joint report by the *Missionary Council for Indigenous Peoples (CIMI)*, *FIAN Brazil*, *Justiça Global* and *Associação Juizes para a Democracia* for the third cycle of assessment of BRAZIL under the UN’s Universal Periodic Review Mechanism: the human rights situation of indigenous peoples – focusing on access to justice, criminalization and legal barriers to effectively demarcating Brazilian indigenous peoples’ land (time frame), October 2016.

Brazilian State contributes to the expropriation of the Guarani and Kaiowá's traditional lands.

The many paramilitary violent attacks suffered by the Guarani and Kaiowá, especially in recent years, are also a direct threat to the control of their natural resources, food sovereignty and, more broadly, to their HRtAFN, as well as other human rights. According to documents from CIMI, in the past 14 years at least 12 Guarani and Kaiowá community leaders have been murdered, with most of the cases not being investigated by the authorities. When one considers attacks both with and without deaths, the appalling number of 26 cases was reported only in the first six months of 2016<sup>35</sup>. These paramilitary attacks tend to arise whenever the Guarani and Kaiowá take any action to claim their human rights as well as their sovereignty over the means of production.

Finally, the generally spread bias of the surrounding society against the Guarani and Kaiowá indigenous peoples is also an element of fundamental concern, since it indirectly blocks the due control of means of production and it directly restrains the full fruition of human rights such as the HRtAFN. The related judicial and political process of criminalization of indigenous peoples and organizations claiming for indigenous rights is also of extreme concern, since the reasons of existence of the latter are closely related to that overspread bias among non-Indians. The Parliamentary Commissions of Inquiry created in the past years within the Legislative Branch throughout Brazil to investigate the demarcation of indigenous land and the activity of organizations such as CIMI are proof of the intensity of both processes (social bias and political-judicial criminalization): after months of audiences and formal investigations, nothing has been proved, but racist statements from politicians linked to agribusiness have abounded<sup>36</sup>.

## Conclusions

Notwithstanding the great progress seen in Brazil between 2003 and 2016 with the implementation of public policies that propelled the fulfilment of human rights, the current situation of the Guarani and Kaiowá indigenous peoples demonstrates that there is still a long way in order to achieve that fulfilment. The Guarani and Kaiowá's historical struggles also prove that, to overcome this challenge, it will be necessary to tackle structural elements of the Brazilian society, such as concentration of land distribution, racism, and corporate capture of the State.

In synthesis, the atrociousness of the current socioeconomic reality of the Guarani and Kaiowá can be explained by the grabbing of all their means of production cited in this paper (land, water, seeds, among others), together with violent actions from third parties and the consent of the Brazilian State in both its

<sup>35</sup> SANTANA, R., SPOSATI, R.; Em massacre, Guarani e Kaiowá é assassinado e cinco indígenas adultos e uma criança estão hospitalizados em estado grave. Jun 14th 2016. *CIMI*.

<sup>36</sup> ASSESSORIA DE COMUNICAÇÃO - CIMI. Organizações indígenas entram com ação na PGR contra novas declarações racistas do deputado Luiz Carlos Heinze. July 24th 2016. *CIMI*.

actions and omissions regarding its human rights obligations. A severe rate of 100% of food insecurity in all the researched communities, as shown above, demonstrates the consequences of all those human rights violations – which can be summarized as the antithesis of the new concept of the Human Right to Adequate Food and Nutrition (HRtAFN).

Whilst the few Guarani and Kaiowá communities that hold more stable land rights are struggling to produce food with little assistance from the State, the reality for most Guarani and Kaiowá is one of reclaiming their land. In this social resistance, the act of reoccupation or recapture (*retomadas*) of their traditional lands has become the most important act through which these indigenous peoples are able to fulfil their basic rights and, thus, to enable their own existence.

Therefore, the full realization of the human rights of the Guarani and Kaiowá necessarily passes through their social struggles (through *retomadas* and other means of exigibility of rights, such as legal actions<sup>37</sup> and political campaigns), together with the effective implementation of public actions by the Brazilian State (such as the demarcation of traditional lands and the insuring of other fundamental natural resources and elements of the HRtAFN).

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