

***Between the Law and Their Land:***  
***Afro-Brazilian Quilombo Communities' Struggle for Land Rights***



A Report by the Rapoport Delegation on Afro-Brazilian Land Rights  
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## Contents

<b>I. Introduction.....</b>	<b>2</b>
<b>II. The Historical and Social Context of the Quilombo .....</b>	<b>5</b>
<i>A History of Slavery and Resistance.....</i>	<i>6</i>
<i>The Quilombo, A Diverse and Evolving Concept .....</i>	<i>8</i>
<i>Quilombo Communities' Social Situation Today.....</i>	<i>10</i>
<b>III. Quilombo Rights in Brazilian and International Law .....</b>	<b>11</b>
<i>Land and the Law in Brazil: Before the 1988 Constitution .....</i>	<i>11</i>
<i>The 1988 Constitution of Brazil.....</i>	<i>14</i>
<i>Quilombo Rights in International Law .....</i>	<i>16</i>
<b>IV. The Titling Process.....</b>	<b>21</b>
<i>Early Implementation of the Law.....</i>	<i>21</i>
<i>The Current Certification and Titling Process .....</i>	<i>24</i>
<i>State-Level Regulation of Article 68 ADCT.....</i>	<i>26</i>
<b>V. The Failure to Implement Article 68 ADCT .....</b>	<b>28</b>
<i>The Burden of the Titling Process .....</i>	<i>29</i>
<i>Conflicts with Fazendeiros and other Third Party Interests .....</i>	<i>31</i>
<i>Conflicts with Public Use and Regulations.....</i>	<i>32</i>
<i>Development Projects.....</i>	<i>36</i>
<i>Uncertainty of Titles Already Granted and Lack of Federal Protection .....</i>	<i>36</i>
<i>Media and Public Perception .....</i>	<i>38</i>
<i>New Challenges to the Legitimacy of the Titling Process.....</i>	<i>39</i>
<b>VI. Recommendations .....</b>	<b>41</b>
<i>Brazilian Government.....</i>	<i>41</i>
<i>Organization of American States .....</i>	<i>413</i>
<i>United States Government .....</i>	<i>441</i>
<i>International Aid and Financial Organizations.....</i>	<i>415</i>
<i>Non-Governmental Organizations.....</i>	<i>45</i>
<b>Selected Bibliography and Quilombo Resources .....</b>	<b>46</b>
<b>Appendix A: Delegation Biographies.....</b>	<b>49</b>
<b>Appendix B: Organizations, Institutions, and Public Authorities Met With by Delegation .....</b>	<b>50</b>
<b>Appendix C: Quilombos Visited.....</b>	<b>52</b>
<b>Appendix D: Quilombo Communities with Title as of May 2008.....</b>	<b>53</b>

## **I. Introduction**

In 1988, following over two decades of military rule, Brazil rewrote its constitution to create a more inclusive, multicultural, and democratic nation. In particular, Article 68 of the new constitution's Temporary Constitutional Provisions Act (*Ato das Disposições Constitucionais Transitórias*, hereafter, Article 68 ADCT) recognized the rights to culture and to collective property for distinct Afro-descendant communities. These communities, comprised of the descendants of freed or escaped slaves, have traditionally occupied lands referred to as quilombos.<sup>1</sup> The Article expressly declared that

Final ownership shall be recognized for the remaining members of the quilombo communities who are occupying their lands and the state shall grant them the respective title deeds.<sup>2</sup>

This constitutional overture promised official redress of the political and social invisibility in which for centuries the vast majority of Brazil's quilombo communities had lived.

After twenty years, however, the 1988 Constitution's pledge remains largely unfulfilled; a surprisingly low number of land titles have been granted to quilombo communities. Of the over 3,550 quilombos currently recognized by the Brazilian government, only 87 of them (consisting of 143 communities) had received titles as of May 2008.<sup>3</sup> In response to the federal government's failure to create an effective titling program, the majority of these titles were issued by a few active land agencies at the state level. Moreover, the legitimacy of many of the titles that have been granted at the federal level have recently been called into question by a

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<sup>1</sup> These communities are also referred to in Portuguese as *mocambos*, *terras de preto* (black lands), or *comunidades negras* (black communities).

<sup>2</sup> Translation by the Rapoport Center for Human Rights and Social Justice. In Portuguese, the above quotation is as follows: "Aos remanescentes das comunidades dos quilombos que estejam ocupando suas terras é reconhecida a propriedade definitiva, devendo o Estado emitir-lhes os títulos respectivos," <http://pdba.georgetown.edu/Constitutions/Brazil/brazil05.html> (accessed August 18, 2008).

<sup>3</sup> *Comissão Pró-Índio de São Paulo* (CPI-SP), Programa Comunidades Quilombolas, <http://www.cpispp.org.br/comunidades/index.html> (accessed August 18, 2008).

recent constitutional challenge. Without clear, formal title to the lands that are indispensable to their livelihood, thousands of quilombo communities must continue to struggle for economic, social, and political viability.

This report, *Between the Law and their Land*, illuminates the current situation of Brazil's quilombo communities and their struggle for land rights. It first discusses the historical and social context of quilombo communities' struggle for recognition. Second, it examines the legal processes by which land rights are obtained and analyzes the various obstacles faced by quilombos to achieving meaningful rights. Finally, the report concludes by offering several recommendations for improving the titling process for quilombos and for reversing the precarious economic and social position of their inhabitants, or quilombolas.

*Between the Law and their Land* is the product of a semester-long project carried out by the Rapoport delegation on Afro-Brazilian Land Rights, an interdisciplinary group of students and professors from the University of Texas School of Law, the Lozano Long Institute for Latin American Studies, and the LBJ School of Public Affairs. Beyond intensive preliminary research on quilombo land rights, the Rapoport delegation organized a seven-day fact-finding trip to Brazil from March 8 -15, 2008, during which the group conducted interviews with Afro-descendant community representatives, government officials, non-governmental organizations (NGOs), activists, and academics in a variety of locations, including Brasilia, Rio de Janeiro, Salvador, and São Paulo. The Rapoport delegation also visited several quilombo communities in the states of Rio de Janeiro, São Paulo, and Bahia. Its research prior to and following the trip as well as conversations with various activists, government officials, and members of communities with whom the delegation met in Brazil form the basis of the information presented in this report.

The Brazilian State has failed to live up to its promise to provide quilombo communities with titles to their traditional lands. While the current government claims that the recognition of quilombo communities is a priority, it has made few improvements in its efforts to grant quilombos land title. In the twenty years since the passage of Article 68 ADCT, the story of the titling of quilombo lands has been one of undue delay, unfulfilled promises, and the constant creation of new barriers to title. Caught between the promise and realization of the right to their traditional lands, quilombo communities have been left to suffer the daily burden of racism, vulnerability, and an uncertainty of continued access to the land they occupy. Indeed, on the third day of our visit to Brazil, the federal government suspended the titling process altogether.<sup>4</sup>

For quilombo communities, title to their lands means both acknowledgement of their existence and rights within Brazilian society as well as the assurance of their community's survival. With the granting of title and the corresponding right to make claims for protection from third parties, communities are, at least in theory, given the security that no one can take away or expel them from their lands. For many quilombo communities and Afro-descendant groups, the titling of quilombo lands also represents a form of reparations for slavery on the part of the Brazilian government. By contrast, the lack of title represents a high level of invisibility within the Brazilian State and leaves the community members without basic citizenship rights or effective access to public programs. Consequently, quilombo community members are left in a vulnerable situation, uncertain about their community's status while remaining subject to intimidation and blatant rights violations.

This report is the second in what the Rapoport Center hopes will become a series of comparative human rights reports examining the rights of Afro-descendants in Latin America,

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<sup>4</sup> Eduardo Scolese, "Demarcações de áreas de quilombos são suspensas," *Folha de São Paulo Online*, March 10, 2008, <http://www1.folha.uol.com.br/folha/brasil/ult96u380309.shtml> (accessed August 18, 2008); Roldão Arruda, *AGU intervém e concessão de terras para quilombolas é suspense*, *O ESTADO DE SÃO PAULO*, March 15, 2008, [http://www.estadao.com.br/estadaodehoje/20080315/not\\_imp140698,0.php](http://www.estadao.com.br/estadaodehoje/20080315/not_imp140698,0.php) (accessed August 18, 2008).

authored by students and faculty associated with the Rapoport Center for Human Rights and Justice at the University of Texas School of Law. During 2007, the Rapoport Center reported on the successes and failures of the implementation of *Ley 70*, a provision similar to Article 68 ADCT aimed at securing land title for Afro-descendant communities in Colombia. The 2007 report resulting from this study, titled *Unfulfilled Promises and Persistent Obstacles to the Realization of the Rights of Afro-Colombians*, and related documents are published on the Rapoport Center website at <http://www.rapoportcenter.org/publications.html>.

The Rapoport Center would like to thank both the Robert S. Strauss Center for International Security and Law and the Lozano Long Institute for Latin American Studies for their support. Nevertheless, the views expressed herein represent those of the members of the Rapoport delegation and do not reflect the institutional position of the University of Texas at Austin.

## **II. The Historical and Social Context of the Quilombo**

The historical roots of quilombos in Brazil provide a critical context for understanding the many difficulties they face today. These communities are best understood as having been born out of a history of resistance to slavery whereby many slaves escaped captivity by fleeing, mostly to remote areas, and forming thousands of quilombos across Brazil. While quilombos have existed for hundreds of years, only in recent decades have they intensified their efforts to gain title to their lands. Unfortunately, they have encountered numerous obstacles, many of which stem from the disagreements over the definition of a quilombo, as well as from their socially and economically marginalized position within Brazil.

## *A History of Slavery and Resistance*

Quilombos emerged during the earliest years of colonial Brazil. Having decimated or pushed Brazil's native population into the interior, Portuguese colonizers sought to substitute for indigenous labor by importing African slaves. As historian Robert Conrad observes, "Indians performed most of the hard labor for the Portuguese pioneers during the first decades of Brazilian colonization after 1500." Nevertheless, he affirms, "already by 1551, with the founding of a permanent sugar colony at Bahia and the strengthening of other newly established settlements, African slaves began to reach Brazil in substantial numbers."<sup>5</sup> In fact, Conrad asserts that "by 1675, before the traffic to British North America had fully gotten under way, more slaves had already arrived in Brazil than would ever reach North America from abroad."<sup>6</sup> Indeed, of all the European colonies in the New World, the Portuguese settlement of Brazil – particularly because of its sugar plantations in the Northeast and its gold and diamond mines in Minas Gerais—ultimately became the destination of more slaves than any other colonial holding during the history of the Atlantic slave trade.<sup>7</sup>

While the massive importation of slaves provided Brazilian landowners with a steady supply of labor, it likewise promoted a long history of resistance to captivity. Not only was Brazil one of the first recipients of forced African labor; it was also the last nation in the Americas to abolish the institution. Bondsmen persistently resisted the intensity of slavery practices through various means, such as intentional indolence, armed revolt, poisoning, suicide,

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<sup>5</sup> Robert Edgar Conrad, *Children of God's Fire: A Documentary History of Black Slavery in Brazil* (Pennsylvania State University Press, 1994), 3-4.

<sup>6</sup> Ibid.

<sup>7</sup> Katia M. De Queriós Mattoso, *To Be a Slave In Brazil: 1550-1888* (New Brunswick: Rutgers University Press, 1986), 10. Specifically, Queriós Mattoso asserts that "Between 1502 and 1860 more than 9,500,000 Africans were brought to the Americas, with Brazil the largest importer of black men." See also Hugh Thomas, *The Slave Trade* (New York: Simon & Schuster, 1997), in which Thomas notes that Brazil obtained 35.4% of all African slaves in the Atlantic slave trade between 1450 and 1900.

infanticide, and hunger strikes. Yet perhaps the most common form of resistance was flight to quilombos.<sup>8</sup>

Throughout history, quilombos have struggled against elite perceptions that they form a serious threat to a stable social and political order. In the 18<sup>th</sup> and 19<sup>th</sup> centuries, for instance, large landowners demanded laws banning quilombos, which at one point they defined as “two or more blacks living in the wild.”<sup>9</sup> Moreover, an 1854 public report applauded a campaign to destroy the quilombos in the state of Maranhão, declaring that these black communities fomented a “state of terror” and were “disastrous to public order.”<sup>10</sup> The statement also revealed a less civic-minded motive for desiring to free Maranhão from “the yoke of the *quilombos*.” The communities’ presence, it warned, “rendered inaccessible a territory that was otherwise extremely fertile and suitable for various types of agriculture.”<sup>11</sup> Although progressive laws today establish quilombos’ right to stay on their lands, elites’ dismissive dispositions towards quilombos continue to yield similar consequences. Communities regularly suffer from forced displacement and the intrusion of development projects on to their lands.

For quilombos, resistance has meant not only protection of the physical integrity of their communities, but also the protection of their cultural identity as descendants of former slaves, their unique knowledge and forms of livelihood, and their collective forms of political and social organization. Quilombo communities have survived hundreds of years, resisting land conflicts and incursions from bounty hunters to preserve their identity as Afro-Brazilians. While poverty,

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<sup>8</sup> See Emília Viotti da Costa, *The Brazilian Empire: Myths & Histories*, Rev. ed. (Chapel Hill: University of North Carolina Press, 2000), 140-141.

<sup>9</sup> James Brooke, “Brazil Seeks to Return Ancestral Lands to Descendants of Runaway Slaves,” *New York Times*, 15 Aug. 1993.

<sup>10</sup> Conrad, *Children of God’s Fire*, 413.

<sup>11</sup> Conrad, *Children of God’s Fire*, 387.



violence, and malicious forms of social exclusion have often complicated their ability to maintain their way of life, quilombo communities continue to resist.

### ***The Quilombo, A Diverse and Evolving Concept***

During the Rapoport Delegation's meeting with the *Comissão Pro-Índio de São Paulo* (Pro-Indian Commission of São Paulo, or CPI-SP), a CPI-SP representative noted, "Everyone will agree that quilombo communities have a right to their lands. The problem is that no one will agree on what a quilombo is." This debate over definition –and the economic and social interests represented by this debate—has plagued the regulation of the quilombo titling process and communities' efforts to make rights claims. It now forms a central issue in the suspension of the titling process.

Only recently has scholarship begun to challenge the traditional perceptions of quilombos as backcountry, isolated communities that merely attempt to reproduce forms of African culture within Brazil. Since their birth, however, quilombos have been located in all spaces of Brazil, from the rural backlands to the edges of former plantations and the areas surrounding major cities. Given their varied geography and history, individual communities have often developed with distinct cultural traditions. Indeed, quilombos have been as diverse as the difficulties they have faced. Yet they find their common thread in the aim to form spaces within Brazilian society in which they can manage their lives without fear of violence and repression.

The most famous of all quilombos, Palmares, has often served as the classic image of what a quilombo should look like. Palmares was the largest documented quilombo in the Americas. At its apex, it is said to have been home to between fifteen and thirty thousand runaway slaves. From 1630 until 1695, it successfully resisted repeated attempts by the Portuguese crown and bounty hunters to destroy it. Consequently, Palmares and its iconic

leader Zumbi have often been employed by Brazil's *Movimento Negro* (Black Movement) as revered symbols of slave resistance.

Although Palmares was a large, rural community, in reality, most quilombos in Brazil's history have been smaller and located in close proximity to cities or plantation settlements.<sup>12</sup> Some communities even sustained themselves by trading their agricultural goods with sympathetic townspeople and small landowners for arms, clothing, or other manufactured goods.

The *Ilha da Marambaia* (Island of Marambaia), a quilombo in the state of Rio de Janeiro, offers an excellent case in point of a community that defies the traditional concept of a quilombo. In 1870, refusing to be transferred to another plantation, a group of slaves from the Fazenda Marambaia formed a quilombo on an isolated part of their owner Souza Breves' land. When Souza Breves freed the remainder of his slaves, they too settled on the island, a part of which he donated to them. This mix of escaped and freed slaves living on land partly provided by a former slave owner illuminates one of the diverse ways in which quilombo communities have originated.<sup>13</sup>

In sum, the definition of quilombos lies at the core of debates over the application of laws granting land rights to these communities. While quilombo representatives and advocates continue to seek an expansive definition that accommodates the historical diversity of quilombos, those groups with interests in conflict with the rights of quilombo communities seek to restrict the understanding of what constitutes a quilombo.

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<sup>12</sup> João José Reis and Flavio dos Santos Gomes, "Quilombo: Brazilian Maroons During Slavery," *Cultural Survival Quarterly*, Vol. 25, No. 4, 2002.

<sup>13</sup> José Maurício Arruti, *Relatório técnico-científico sobre a comunidade remanescente de quilombos da Ilha da Marambaia, município de Mangaratiba (RJ)* (Rio de Janeiro: KOINONIA Presença Ecumênica e Serviço, Fundação Cultural Palmares, 2003).

### *Quilombo Communities' Social Situation Today*

Quilombo communities find themselves amongst the most socially and economically excluded groups in a nation that contains one of the highest levels of income disparity in the world. As Afro-Brazilians, quilombolas face the same severe problems of racism, structural discrimination, and violence encountered by many black citizens of Brazil.<sup>14</sup> They often confront disparately low levels of access to education and healthcare, and cannot obtain a dignified level of income. The majority of quilombolas live without the recognition, the respect, and the basic rights due to all of Brazil's citizens. They consistently remain in a worse position than people of white or mixed-race. This vulnerability has severely impeded their ability to make effective rights claims.

International and governmental organizations have only recently begun to document quilombos' social and economic exclusion. For instance, a shadow report submitted to the United Nations Committee on Economic, Social, and Cultural Rights notes that the Human Development Index of the Afro-Brazilian population in Brazil lies well below the national average, with 85% of Afro-Brazilian women living in poverty.<sup>15</sup> Likewise, a 2005 United Nations Development Program report on Brazil states that quilombos are often located in municipalities with the lowest measurements of the Human Development Index.<sup>16</sup> As a Brazilian government report in 2006 highlights, even in relation to other Afro-Brazilians, quilombolas find themselves in a particularly precarious situation, for they endure "horrible living conditions and

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<sup>14</sup> United Nations Development Program (UNDP), *Relatório de Desenvolvimento Humano – Brasil 2005: Racismo, pobreza e violência* (Brasília: PNUD Brasil), 15. In particular, the report notes that "[s]e o racismo brasileiro é escamoteado no cotidiano de brasileiros e brasileiras, os diversos estudos e pesquisas do presente relatório revelam a existência de uma situação de desigualdade em diversos níveis: saúde, educação, emprego, habitação e renda."

<sup>15</sup> Flavia Piovesan, "Economic, Social and Cultural Rights: the experience of the Brazilian shadow report," *La Chronique des Amériques*, No. 30, 2004, 3.

<sup>16</sup> UNDP, *Relatório de Desenvolvimento Humano–Brasil 2005*, 104.

access to water and sanitation services.”<sup>17</sup> It also cites that “access to education is also very low, [as] evidenced by the low level of education of quilombola parents,” and that quilombo children under the age of five “are established as constituting a group with high risks of malnutrition, the same as children in the urban Northeast a decade ago.”<sup>18</sup>

The three reports cited above are among the very few studies focusing on the situation of quilombo communities in relation to other Afro-Brazilian communities. Yet, they underline how general problems associated with discrimination and inequality for Afro-Brazilians consistently affect quilombo communities to an even greater extent. Quilombo communities not only suffer the forms of discrimination facing all Afro-Brazilians, but they encounter additional forms of discrimination as poor, peripheral communities. For example, Doudou Diène, the UN Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, reported in 2005 that “the judiciary is often not willing to recognize [quilombo] lands because of racial prejudice.”<sup>19</sup> These disadvantages plague the daily struggle of quilombo communities and their efforts to achieve land title.

### **III. Quilombo Rights in Brazilian and International Law**

#### ***Land and the Law in Brazil: Before the 1988 Constitution***

The contemporary struggle for quilombo land rights has its roots in the politics and law surrounding large landholdings in Brazil. An understanding of both the exigencies of Article 68

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<sup>17</sup> Ministério do Desenvolvimento Social e Combate a Fome, *Chamada Nutricional Quilombola 2006* (Brasília: 2007), 7.

<sup>18</sup> Ibid.

<sup>19</sup> United Nations, Commission on Human Rights, “Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène: Mission to Brazil (17-26 October 2005),” Report No. E/CN.4/2006/16/Add.3, February 28, 2006.

ADCT in the 1988 Constitution, as well as of the ongoing resistance to its implementation, first requires a brief review of the Constitution's historical context.

For centuries, colonial law and slavery precluded the possibility that Afro-Brazilians might gain title to the lands on which they lived. Beginning in the early 1500s, the Portuguese Crown bestowed land grants in Brazil through an already-proven template worked out in earlier centuries during the Iberian "Reconquista" against the Moors. *Sesmaria* laws permitted individuals with the resources necessary to go through the formal land-granting process and with a stated commitment to improving the land within five years to receive a land grant (or *sesmaria*) on otherwise "empty land." This legal system operated in such a way that, by the eighteenth century, vast tracts of the Brazilian frontier lay in the hands of a few entrenched, landed elites.

When independence in 1822 ended the *sesmaria* system, the resulting absence of comprehensive land laws brought new challenges to Brazilian elites' ability to maintain landholdings and to control local labor.<sup>20</sup> In particular, squatting became widespread. As historian Emília Viotti da Costa has noted, the interlopers "created an anarchical situation" for landholders.<sup>21</sup> While squatters' rights "were not recognized by law," the properties often became part of wills and, therefore, more difficult for large landowners to retain. In addition, English pressure to end the slave trade at the exact moment that international demand for coffee had begun to soar made the land situation all the more exigent for the nation's traditional elites.

To protect their holdings and to solidify their ability to compete in an expanding international export economy, in 1850, Brazilian elites established the *Lei de Terras* (Land Law). This law prohibited the "acquisition of land through occupation," requiring that it be purchased

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<sup>20</sup> George Meszaros, "Taking the Land into their Hands: The Landless Workers' Movement and the Brazilian State," *Journal of Law and Society*, Vol. 27 (Dec. 2000), 527.

<sup>21</sup> Viotti da Costa, *The Brazilian Empire*, 82.

through the government. Unused lands were transferred to “a monopoly of the State,” which was controlled “by a strong class of large landholders.”<sup>22</sup>

During the hundred years following its establishment, the *Lei de Terras* effectively eliminated the lower classes’ ability to acquire land. Virtually anyone who did not possess land before 1850 remained landless and was forced to work for large landholders.<sup>23</sup> Potential small landowners were unable to purchase land due to a lack of resources or because states refused to sell, while already-wealthy landowners further increased their holdings. With the eventual abolition of slavery in 1888, landless former slaves had two options: either work as laborers or servants on large plantations or remain in or join quilombos.

Despite twentieth century efforts to promote agrarian reform, former slaves and their descendants saw little improvement in their ability to acquire land. In 1964, under the government of Castelo Branco, the establishment of the *Estatuto da Terra* provided a legal basis for expropriation, “promoted by a progressive land tax which was to penalize owners of unutilized or underutilized land.”<sup>24</sup> However, succeeding military governments quelled hopes for agrarian reforms.

Today, powerful landowners still wield considerable political influence in Brazil and resist any redistribution of land. Indeed, the above-mentioned shadow report indicated that the nation ranks fourth in the world in terms of concentration of wealth, behind only Sierra Leone, the Central African Republic, and Swaziland.<sup>25</sup> The report accordingly noted that Brazil still has

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<sup>22</sup> Meszaros, “Taking the Land into their Hands,” 527.

<sup>23</sup> George Meszaros, “No Ordinary Revolution: Brazil’s Landless Workers’ Movement,” *Race & Class*, Vol. 42 (2000), 5-6.

<sup>24</sup> Thomas E. Skidmore, *The Politics of Military Rule in Brazil, 1964-1985* (New York: Oxford University Press, 1998), 298-299. See also Anthony Pereira, “Brazil’s Agrarian Reform: Democratic Innovation or Oligarchic Exclusion Redux?” *Latin American Politics and Society*, Vol. 45 (Summer 2003), 43.

<sup>25</sup> Piovesan, “Economic, Social and Cultural Rights,” 3.

the world's second highest level of land concentration.<sup>26</sup> The extremely unequal distribution of land ownership in Brazil has forced quilombo communities to occupy land for which they have held no title. In a country where a vast amount of the land and resources remain in the control of a strikingly small percentage of the population, it is not difficult to imagine that proposed changes in land distribution might engender strong opposition.

### ***The 1988 Constitution of Brazil***

Ratified one hundred years after the end of slavery, Brazil's new constitution made the first meaningful effort in the country's history to provide land rights to descendants of former slaves. The 1988 Constitution's provisions on quilombos, cultural identity, and antidiscrimination are significant in providing quilombolas with a right to hold title for the lands they have traditionally occupied and in promoting a more general acknowledgement of their rights within Brazilian society.

Article 68 ADCT represented a long-sought-after legal victory for Brazil's quilombo communities and their supporters. For years, they had striven to improve quilombos' precarious situation by achieving a legal acknowledgement of their right to possess title for the lands they occupy.<sup>27</sup> Especially during 1987, representatives from the Black Movement had actively participated in the constituent assembly that guided the constitution's drafting. These activists and scholars, notes anthropologist Jan Hoffman French, not only had endeavored to include provisions ensuring Afro-descendant rights and opposing racism, but they had also "proposed that land be guaranteed to rural black communities that could claim lineage from quilombos."<sup>28</sup>

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<sup>26</sup> Ibid.

<sup>28</sup> Jan Hoffman French, "Buried Alive: Imagining Africa in the Brazilian Northeast," *American Ethnologist*, Vol. 33, No. 3 (2006), 341. Here, French claims that this move was viewed at the time as a compromise, i.e., a "concession made by those in the black movement, who wanted all rural black communities to be given land."

In addition to recognizing the right to collective land titling, the 1988 Constitution also establishes broad guarantees for the right to culture and equal protection. For one, Article 215 provides that the “State shall ensure to all the full exercise of the cultural rights and access to the sources of national culture” and that the government should “protect the expressions of popular, Indian and Afro-Brazilian cultures.”<sup>29</sup> For another, Article 216 defines “Brazilian cultural heritage” as “the assets of a material and immaterial nature, taken individually or as a whole, which bear reference to the identity, action and memory of the various groups that form the Brazilian society.” These “assets” include “forms of expression” and “ways of creating, making and living.” Significantly, Article 216 specifies that “[a]ll documents and sites bearing historical reminiscence to the ancient communities of runaway slaves are protected as national heritage.”<sup>30</sup> Together, Articles 215 and 216 indicate that quilombo lands are to be considered “Afro-Brazilian Cultural Territory” and should be protected as a national public good.<sup>31</sup>

Finally, the 1988 Constitution contains general provisions that affirm the rights of Afro-descendant communities to equal protection and non-discrimination. The constitution aims to “build a free, just, and solidary society” in order “to eradicate poverty and substandard living conditions and to reduce social and regional inequalities,” as well as “to promote the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination.”<sup>32</sup> Article 5 makes racial discrimination a crime and provides that “all persons are equal before the law, without any distinction whatsoever.” It further stipulates that

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<sup>29</sup> Federal Constitution, Article 215. For all subsequent Federal Constitution references, <http://pdba.georgetown.edu/constitutions/brazil/brazil.html> (accessed August 18, 2008).

<sup>30</sup> Federal Constitution, Article 216.

<sup>31</sup> *Fundação Cultural Palmares* (Palmares Cultural Foundation, or FCP), Article 6°, Portaria nº 6, Mar. 1, 2004 [quoted in *Secretaria Especial para Políticas de Promoção da Igualdade Racial* (Special Secretary for Policies Promoting Racial Equality, or SEPPIR) *Programa Brasil Quilombola* 14 (2005).

<sup>32</sup> Federal Constitution, Article 3.



“Brazilians and foreigners residing in the country [are] ensured of the inviolability of the right to life, to liberty, to equality, to security and to property.”<sup>33</sup>

### ***Quilombo Rights in International Law***

The rights guaranteed to quilombo communities in Brazil under domestic law are also enshrined in various international treaties to which Brazil is party. Important standards and precedents have been established through the International Labor Organization, case law from the Inter-American Commission and Court of Human Rights, and various international agreements that define the principles of non-discrimination and equality before the law.

*Rights to Culture and Property:* International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples (ILO 169), ratified by Brazil on July 25, 2002, is a key standard-setting document for the protection of land and the cultural rights of quilombo communities.<sup>34</sup> The Brazilian State has recognized the Convention’s application to quilombo lands, claiming to have met its obligations under ILO 169.<sup>35</sup>

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<sup>33</sup> Federal Constitution, Article 5. Article 5 also notes that “the law shall punish any discrimination which may attempt against fundamental rights and liberties” and that “the practice of racism is a non-bailable crime, with no limitation, subject to the penalty of confinement, under the terms of the law.” In the last few years, the Brazilian federal government started to implement some affirmative action policies. The Brazilian Congress is presently debating new legislation that, if passed, would specifically enshrine comprehensive affirmative measures aimed at reducing racial discrimination in Brazil. Introduced by Brazil’s only Black Senator, Paulo Paim, the legislation would also strengthen protective measures for quilombo lands. For more on these recent actions, please see Mala Htun, “From ‘Racial Democracy’ to Affirmative Action: Changing State Policy on Race in Brazil,” *Latin American Research Review* Vol. 39, No. 1 (2004), 60-89.

<sup>34</sup> Labour Organization Convention No. 169 on Indigenous and Tribal Peoples (ILO 169), adopted by the General Conference of the International Labour Organization, Geneva, June 27, 1989. ILO 169 entered into force Sept. 5, 1991. It was implemented in Brazil by Decree nº 5.051, Apr. 19, 2004.

<sup>35</sup> SEPPPIR, *Programa Brasil Quilombola* 14 (2005), 15. In fact, Presidential Decree 4.887, discussed below, establishes that quilombo communities are a special ethno-racial group that should be identified according to self-identification as they have a unique history tied to particular territory needed for their physical, social, economic, and cultural reproduction, see Presidential Decree 4.887, November 20, 2003, Article 2. Additionally, Article 2 of Normative Instruction 20—which regulates the titling process established by Decree 4.887—states that it “has a legal foundation in International Convention 169 of the International Labour Organization.”

ILO 169 requires governments to “take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.”<sup>36</sup> It also states that “[a]dequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.”<sup>37</sup> Upholding the importance and validity of self-identification, ILO 169 provides that “[s]elf-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.”<sup>38</sup> ILO 169 also establishes that these protected groups must be consulted about special policies, programs, or other “legislative or administrative measures which may affect them directly,” either through the use of land and natural resources, or otherwise.<sup>39</sup>

The lands protected under ILO 169 include all lands used for traditional activities by traditional groups, not just those presently occupied by communities.<sup>40</sup> The Convention also protects collective ownership of land, stating that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.”<sup>41</sup>

A growing body of international human rights law, particularly within the Inter-American system, has also affirmed the rights of indigenous and Afro-descendant groups to cultural and land rights. In *Awas Tingni v. Nicaragua*, for example, the Inter-American Court held that the

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<sup>36</sup> ILO 169, Article 14 (2).

<sup>37</sup> *Ibid.*, Article 14 (3).

<sup>38</sup> *Ibid.*, Article 1 (2).

<sup>39</sup> *Ibid.*, Articles 22, 6, and 15.

<sup>40</sup> *Ibid.*, Article 14 (1).

<sup>41</sup> *Ibid.*, Article 13.

right to property embodied in Article 21 of the American Convention of Human Rights applies to traditional and collective forms of ownership.<sup>42</sup> In *Case of Sawhoyamaya Indigenous Community v. Paraguay*, the Court reaffirmed this position, holding that the traditional lands and accompanying natural resources of indigenous communities are directly associated with their cultural livelihood and survival and to the right to property as protected under the American Convention.<sup>43</sup>

The Inter-American Court has found these cultural and land rights applicable to certain Afro-descendant communities. In *Saramaka People v. Suriname*, which dealt specifically with the land rights of Afro-descendant communities, the Court held that:

the members of the Saramaka people make up a tribal community protected by international human rights law that secures the right to the communal territory they have traditionally used and occupied, derived from their longstanding use and occupation of the land and resources necessary for their physical and cultural survival.<sup>44</sup>

Taking into account *Awas Tingni*, *Sawhoyamaya*, and ILO 169,<sup>45</sup> the Court further established the Saramaka people's collective property rights, indicating that "the State has an obligation to adopt special measures to recognize, respect, protect and guarantee the communal property right of the members of the Saramaka community to said territory."<sup>46</sup>

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<sup>42</sup> *Case of The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-American Court of Human Rights, Judgment of 31 August 2001 (Series C, No. 79).

<sup>43</sup> *Case of Sawhoyamaya Indigenous Community v. Paraguay*, Inter-American Court of Human Rights, Judgment of 29 March, 2006, 118, "Applying the aforementioned criteria, the Court has considered that the close ties the members of indigenous communities have with their traditional lands and the natural resources associated with their culture thereof, as well as the incorporeal elements deriving therefrom, must be secured under Article 21 of the American Convention. The culture of the members of indigenous communities reflects a particular way of life, of being, seeing and acting in the world, the starting point of which is their close relation with their traditional lands and natural resources, not only because they are their main means of survival, but also because they form part of their worldview, of their religiousness, and consequently, of their cultural identity."

<sup>44</sup> *Case of the Saramaka People v. Suriname*, Inter-American Court of Human Rights, Judgment of 28 November 2007, 96.

<sup>45</sup> *Ibid.*, 87

<sup>46</sup> *Ibid.*, 96.

*Rights to Non-Discrimination and Legal Equality:* A number of international law sources further emphasize the duty to protect the cultural and collective land rights of quilombo communities according to the principles of non-discrimination and equality before the law. These principles are enshrined in, among other places, ILO 169, the American Convention on Human Rights, and the International Convention on the Elimination on All Forms of Racial Discrimination (ICERD).

Central to the titling of quilombo lands is the right of quilombo communities to be free from racial discrimination. Article 1 of the ICERD, to which Brazil has been a party since 1968, establishes that racial discrimination means “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”<sup>47</sup> The ICERD recognizes the duty of states to prohibit discrimination and racism perpetrated by non-state actors, and it proscribes any policy or action that has a discriminatory effect.<sup>48</sup> In its 2004 country report on Brazil, the ICERD recommends specifically that the State implement policies that guarantee quilombos not only equality in law, but also equality in fact.<sup>49</sup>

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<sup>47</sup> International Convention on the Elimination on All Forms of Racial Discrimination (ICERD), Article 1, Section 1, [http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm) (accessed August 18, 2008).

<sup>48</sup> ICERD, [http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm) (accessed August 18, 2008).

<sup>49</sup> Under its concerns and recommendations section, the ICERD’s country report on Brazil states the following: “The Committee is concerned that only a few quilombo areas have been officially recognized, and that an even smaller number of these communities have received permanent title deeds to their lands. The Committee recommends that the State party accelerate the process of identification of quilombo communities and lands and distribution of the respective title deeds to all such communities,” [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f23afefafdb960cc1256e59005f05cc?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f23afefafdb960cc1256e59005f05cc?Opendocument) (accessed August 18, 2008).

While Article 3(1) of ILO 169 states that “[i]ndigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination,”<sup>50</sup> the jurisprudence of the Inter-American Court suggests some ways that antidiscrimination provisions might be applicable in the context of collective land rights. In *Sawhoyama*, the Inter-American Court has determined that, although collective property is a form of ownership that “does not necessarily conform to the classic concept of property, [it] deserves equal protection under Article 21 of the American Convention.”<sup>51</sup> For the Court, “[d]isregard for specific versions of use and enjoyment of property, springing from the culture, uses, customs, and beliefs of each people, would be tantamount to holding that there is only one way of using and disposing of property, which, in turn, would render protection under Article 21 of the Convention illusory for millions of people.”<sup>52</sup> The Court has further declared that the principles of non-discrimination and equality before the law establish an obligation for states to take positive and affirmative steps that effectively reverse discriminatory situations, including special measures for the protection of vulnerable groups.<sup>53</sup>

In short, both the 1988 Constitution and international law clearly attempt to prohibit or remedy disparities of land distribution confronted by quilombo communities. Yet, as the following section demonstrates, however much the adoption of Article 68 ADCT served as a symbolic victory for quilombolas, it also marked a beginning of false starts, delays, complex regulations, and shifting standards. In fact, not until seven years after the adoption of the 1988

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<sup>50</sup> ILO 169, Article 3 (1).

<sup>51</sup> *Sawhoyamaxa Indigenous Community v. Paraguay*, 120.

<sup>52</sup> *Ibid.*

<sup>53</sup> Inter-American Court of Human Rights, ADVISORY OPINION OC-18/03 OF SEPTEMBER 17, 2003, REQUESTED BY THE UNITED MEXICAN STATES, *Juridical Condition and Rights of the Undocumented Migrants*, paragraph 88.

Constitution did the first quilombo receive title. The innumerable obstacles and resistance to the implementation of domestic and international law have not subsided.

#### **IV. The Titling Process**

##### ***Early Implementation of the Law***

In 1995, on the three-hundredth anniversary of the execution of Palmares' iconic quilombo leader Zumbi, the Brazilian State finally began to respond to calls for the effective implementation of Article 68 ADCT. That year, the first *Encontro Nacional de Comunidades Negras Rurais Quilombolas* (National Meeting of Rural, Black, Quilombo Communities) met in Brasilia and produced a declaration of the demands of over four hundred quilombo communities.<sup>54</sup> Following the meeting, thirty thousand quilombolas rallied in Brasília in support of the measures. Quilombo leaders then sent this first official, collective statement from quilombo communities to the Brazilian government, calling for the creation of public policies that would carry out the promises made by Article 68 ADCT.<sup>55</sup>

In November 1995, in response to rising pressure for the regularization of quilombo lands, the *Instituto Nacional de Colonização e Reforma Agraria* (National Institute of Colonization and Agrarian Reform, or INCRA)<sup>56</sup> published its Portaria nº 307, an administrative rule that laid out a legal framework upon which regulations for the titling of quilombo lands could be built.<sup>57</sup> Though INCRA's new instrument aspired to provide the foundation for a land

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<sup>54</sup> The *I Encontro Nacional de Comunidades Negras Rurais Quilombolas* (or First National Meeting of Quilombola Rural Black Communities) took place in Brasília, November 17–19, 1995. Its theme was “Land, Production, and Citizenship for Quilombolas,” see SEPPIR, *Programa Brasil Quilombola 13* (2004).

<sup>55</sup> Ibid.

<sup>56</sup> INCRA is a subdivision of the *Ministério do Desenvolvimento Agrário* (Ministry of Agrarian Development, or MDA).

<sup>57</sup> See FCP, *Comunidades Quilombolas: Direito a Terra* 7 (2002), 16.

titling process, it extended only to quilombos situated on federal public lands.<sup>58</sup> For the great number of quilombos not fortunate enough to be located on federal public land, Article 68 ADCT continued to stand as dead-letter law.

Facing these challenges, quilombolas continued to organize themselves. In 1996, the first national quilombo organization was formed: the *Coordenação Nacional de Comunidades Quilombolas* (National Coordination of Quilombo Communities, or CONAQ). From 1996 to 1998, amidst a rising number of quilombo communities identified in the country, INCRA granted only six titles, all in the state of Pará.<sup>59</sup>

In 1999, the federal government transferred competence for administering the titling procedure to the *Fundação Cultural Palmares* (Palmares Cultural Foundation, or FCP), a governmental organ under the Ministry of Culture charged with promoting and executing programs dealing with the role of Afro-Brazilian heritage. The FCP and the Ministry of Culture retained exclusive competence in titling matters for a number of years. In July 2000, FCP published a directive<sup>60</sup> establishing administrative procedures for the identification and recognition of remaining quilombo communities and for their delimitation, demarcation, and titling.<sup>61</sup>

In September 2001, President Fernando Henrique Cardoso issued Decree 3.912, the first presidential decree to implement regulations for titling of quilombo land. Although purporting to implement Article 68 ADCT, this decree dramatically limited the possibilities for quilombo

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<sup>58</sup> Ibid, 40, states that “A constitucionalização de certos direitos não significa, infelizmente, sua imediata efetivação.”

<sup>59</sup> CPI-SP, *Terras Quilombolas, Terras Tituladas*, [http://www.cpis.org.br/terras/asp/pesquisa\\_terras\\_form.asp](http://www.cpis.org.br/terras/asp/pesquisa_terras_form.asp) (accessed August 18, 2008).

<sup>60</sup> FCP n° 40 (DOU de 14 de julho de 2000).

<sup>61</sup> SEPPPIR, *Programa Brasil Quilombola 14* (2004).

recognition because it only recognized land that had been occupied by quilombos in 1888—the year slavery was abolished—and that was still occupied by descendants of those quilombos on October 5, 1988, the date of the new Constitution.<sup>62</sup> The Decree further imposed strict evidentiary standards to prove historical occupation, requirements often impossible for communities to meet due to the lack of historical documentation and resources within communities. Not surprisingly, quilombo and black movement activists opposed the measure as narrowing the scope and availability of the titling process.<sup>63</sup>

During the FCP's four-year management of the quilombo titling process, the Foundation was involved in the titling of only 14 communities, thirteen of which were titled in 1999 and 2000.<sup>64</sup> Soon after taking office in 2003, current President Luís Inácio Lula da Silva began to address the issue of quilombo land titling. He created the *Secretaria Especial para Políticas de Promoção da Igualdade Racial* (Special Secretary for Policies Promoting Racial Equality, or SEPPIR), designed with the institutional duty to coordinate and articulate the formation, coordination, and evaluation of affirmative public policies for the promotion of racial equality and the combating of racial/ethnic discrimination.<sup>65</sup> SEPPIR spent eight months drafting a new decree to regulate the titling process.

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<sup>62</sup> Jan Hoffman French, "Dancing for Land: Law-Making and Cultural Performance in Northeastern Brazil," *Political & Legal Anthropology Review (PoLAR)*, Vol. 25, No. 1, 2002. French suggests that Cardoso's motivation for such a comparatively harsh interpretation of "quilombo" may have been a reaction to "problems that arose after the first titles were granted by [the FCP] in July 2000, without first expropriating or compensating the existing private landowners . . . [spawning] a series of legal questions still being sorted out by government lawyers a full two years later," *ibid.*, 28.

<sup>63</sup> *Ibid.*, 28. The SEPPIR publications neglect to mention this somewhat unpleasant phase in their history of the quilombo-titling carousel, in particular SEPPIR, *Programa Brasil Quilombola* 12 (2005) and SEPPIR, *Programa Brasil Quilombola* 14 (2004).

<sup>64</sup> See Appendix D, "Quilombo Communities with Title as of May 2008."

<sup>65</sup> SEPPIR, *Programa Brasil Quilombola* 14 (2005), 17. SEPPIR was created by Medida Provisória n° 111 (converted into Lei n° 10.678, May 23, 2003).



### *The Current Certification and Titling Process*

In 2003, after many months of deliberation by SEPPIR, President Lula issued Decree N<sup>o</sup> 4.887. It made several important changes to its predecessor. It shifted titling competence back to INCRA, effectively recasting the titling function as one of both land title and culture. The FCP remains involved in the quilombo recognition process, and it is given the authority to issue quilombos certification of self-identification, the receipt of which is a prerequisite to title under Decree 4.887.

In 2005, INCRA published a new regulatory measure designed to implement Decree 4.887: Normative Instruction (*Instrução Normativa*, or IN) N<sup>o</sup> 20/2005.<sup>66</sup> Together, Decree 4.887 and IN 20 (which is currently under reconsideration) require quilombo communities to navigate a long, seventeen-step procedure to receive title to their traditional lands.<sup>67</sup> To have

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<sup>66</sup> *Instrução Normativa* (Normative Instruction) No. 20, Sept. 19, 2005.

<sup>67</sup> As detailed by the Normative Instruction No. 20, the seventeen steps for the titling procedure include: 1) Initiation of Procedure. This may be initiated by the INCRA or by petition of the relevant quilombo association or its representative entity. This step need only be a simple manifestation of the will to undertake the procedure, and may either be transmitted in writing or verbally to an INCRA representative, who will put it in writing. The community or its representative must turn in information regarding the location of the land that is the object of identification; 2) Self-definition of community. A community must declare its self-definition as a remaining quilombo community. This is to be done by a simple written declaration—either by the community itself or a beneficiary—stating facts regarding its black ancestry, historical path, resistance and oppression, religion, and customs; 3) Registration of self-definition of community with the FCP. Palmares will issue a certificate of such registration, in accordance with provisions in Decree 4.887/2003. Any application to the INCRA that does not contain this certification by Palmares will be sent to the foundation for certification; 4) Identification and delimitation of the territory by the INCRA. Interdisciplinary group of the INCRA will meet with community to introduce the work and procedures to be adopted before verification of its status; 5) Production of the *Relatório Técnico de Identificação e Delimitação* (RTID). Based on a technical study to characterize the territory economically, spatially, and socio-culturally, the RTID should include the following parts: Anthropological report, Description and map, Registry of families, Registry of other occupants and title-holders, Survey of chain of title, Specification of overlap between quilombo land and conservation areas, national security land, *terras de marinha*, and state and municipal land, Conclusive opinion regarding the legitimacy of the land proposal and adequacy of the studies and documents put forward; 6) Publication of the summary of the RTID. The Regional Superintendent of the INCRA will publish the RTID both in the national Official Diary and in the state where the territory is located. Notification of interested parties: The Regional Superintendent of the INCRA must notify all occupants of the land of the period within which they may raise any concerns (*contestações*) to the RTID; 7) Contestações from interested parties. Any interested parties must respond within 90 days of the publication to raise any objections they may have to the conclusions of the RTID; 8) Consultation with other federal agencies: Period of 30 days within which relevant agencies are to raise any issues within their competencies. Agencies to be consulted include: *Instituto do Patrimônio Histórico e Nacional* (National and Historical Heritage Institute, or IPHAN), *Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis* (Brazilian Institute of the Environment and Renewable Natural Resources, or

access to the regularization policy for quilombo territories, a community must provide the FCP with a declaration in which the community formally self-identifies as a quilombo. If basic evidentiary requirements are met, the FCP issues a certificate recognizing and recording the community's self-recognition as a quilombo. Additionally, the community must direct a formal request for opening administrative regularization procedures to the Regional Superintendent of INCRA in its state.

The seventeen-step procedure contains several additional key requirements. The regularization of the territory begins with a study of the area, which results in a Technical Report (*Relatório Técnico*). This technical report uses anthropological and historical data to identify and delimit the territory of the community. Once the report is approved, INCRA publishes a notice of recognition that declares the limits of the quilombo territory. Both private parties and public institutions that have concerns or regulatory interests regarding the land's being claimed by the quilombo community then have a set period in which they may raise questions or challenges. The final phase of the procedure corresponds to agrarian regularization, including if necessary the expulsion of non-quilombo occupants by means of expropriation or by payment and demarcation of the territory. Afterwards, a collective and indivisible property title is provided in the name of the quilombo's community association and recorded by the property registrar.<sup>68</sup>

Even without title, FCP's certification of self-identification gives quilombo communities access to certain rights and inclusion in public programs aimed at quilombo communities. The

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IBAMA), *Secretaria do Patrimônio da União* (National Heritage Secretary), *Fundação Nacional do Índio* (National Indian Foundation, or FUNAI), *Secretaria Executiva do Conselho de Defesa Nacional* (Executive Secretary of the National Defense Council), and the FCP; 9) Judgment of the pleas (*contestações*) to the RTID, to be determined by the INCRA Regional Decision Committee; 10) Publication of portaria of definitive approval of RTID, as well as of the recognition and declaration of the limits of the quilombo territory; 11) Analysis of land situation. Where the land comes into contact with national security or conservation land, the INCRA should consult with National Defense or IBAMA; 12) Expropriation procedure; 13) Resettlement of non-quilombo occupants; 14) Demarcation of the territory, by the INCRA; 15) Concession of title. Granted by the INCRA to the community in the name of that legally constituted association; 16) Registration of property by the INCRA; 17) Registration of title. Register in Property Registry in accordance with the federal public registration law.

<sup>68</sup> See <http://www.incra.gov.br> (accessed August 18, 2008).

*Programa Brasil Quilombola* (Brazil Quilombola Program), for example, was initiated in 2004 and aims to coordinate government actions and communications for the remaining quilombo communities, with emphasis on participation in civil society.<sup>69</sup> The Program is coordinated by SEPPPIR, through the Subsecretary of Traditional Communities, but it depends on the participation of all government organs. While the Program is federal, it also seeks to promote decentralization through regional and state level subsidiaries of federal entities.<sup>70</sup>

Land regularization is but one of four axes around which the Brazil Quilombola Program revolves. The other focus areas are infrastructure and services, economic and social development, and social control and participation.<sup>71</sup> The Quilombola Social Agenda is a project initiated by the Program and is aimed at improving access to social services among quilombolas. The goals of the Agenda are to facilitate access to land, health, education, housing construction, electrification, environmental rehabilitation, and social programs, such as the *Bolsa Familia*.<sup>72</sup> Decreto 6.261, an executive order issued in late 2007, deepened and institutionalized the basic goals and precepts of the Quilombola Social Agenda.<sup>73</sup> Decreto 6.261 emphasizes access to land, infrastructure and quality of life, development, and citizenship.<sup>74</sup>

### ***State-Level Regulation of Article 68 ADCT***

Although much of the public attention surrounding the granting of title to quilombos focuses on the actions of the federal government, a number of state-level land and agrarian

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<sup>69</sup> SEPPPIR, *Programa Brasil Quilombola* 14 (2005), 12–13.

<sup>70</sup> Ibid., 13–14, 17.

<sup>71</sup> Ibid., 13–14.

<sup>72</sup> SEPPPIR, Agenda Social Quilombola, [http://www.presidencia.gov.br/estrutura\\_presidencia/seppir/copy\\_of\\_acoes/Principal.2007-11-18.0317](http://www.presidencia.gov.br/estrutura_presidencia/seppir/copy_of_acoes/Principal.2007-11-18.0317) (accessed August 18, 2008).

<sup>73</sup> Decreto N° 6.261, 20 Nov. 2007.

<sup>74</sup> Ibid., Article 6.

agencies also have their own procedures for the titling of quilombo lands. Indeed, the early failures and problems with titling prompted a handful of state governments to establish separate titling guidelines in order to carry out the aims of Article 68 ADCT. These state-level initiatives throughout Brazil have had varying levels of success. Yet, on the whole, state agencies have issued more quilombo land titles than the federal government. State endeavors therefore provide an important comparative perspective and possible model for federal titling.

Some of the most notable titling efforts have occurred in Pará, Maranhão, and São Paulo, whose land agencies respectively had granted 40, 20, and 6 titles to quilombo territories as of May 2008.<sup>75</sup> The state of Pará has created perhaps the most effective quilombo titling processes in Brazil. Established in 1998 by State Law (*Lei Estadual*) No. 6.165 and driven by the *Instituto de Terras do Pará* (Land Institute of Pará, or Iterpa), Pará's titling process requires only that communities self-identify as a quilombo in order to initiate the titling process. Unlike federal regulations, it has no requirement for a technical or a detailed anthropological report. If a third party has a well-founded conflict with a quilombo community's claim, a technical report may be considered, but the burden of providing it falls upon the third party, not the quilombo community. Since 1999, Pará's streamlined titling program has provided over 75 communities (40 territories) with titles.<sup>76</sup>

Despite this apparent success, a number of NGO and public representatives have noted serious shortcomings of relying on state law for title. Most saliently, state-level land agencies, unlike INCRA, do not have the authority to expropriate land from private owners. Thus, state-level land agencies have generally been able to provide quilombos with title when the territory is

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<sup>75</sup> See Appendix D, "Quilombo Communities with Title as of May 2008."

<sup>76</sup> Ibid.

located on what had been considered “unused” state-owned land (*terras devolutas*), but not when it is in conflict with private property or public use claims.

Furthermore, not all states with quilombo communities have been active in the implementation of Article 68 ADCT. Minas Gerais, for example, contains hundreds of identified quilombos but, as is discussed below, has not granted an effective title to a single community. Bahia, with a large number of self-identified quilombos, has titled only three as of May 2008. Without an active state-level titling process, or with government indifference to quilombos’ claims, the situation for quilombos can be particularly precarious, for their communities cannot find effective recourse at either the national or state level.

## **V. The Failure to Implement Article 68 ADCT**

The Brazilian State has consistently failed to implement Article 68 ADCT effectively. In the twenty years since the passage of the 1988 Constitution, only a small portion of the thousands of existing quilombo communities have received title. The ultimate failure to implement the aims of Article 68 ADCT can only be described as a lack of political will to carry through with these goals. At the governmental level, conflicting priorities during various presidential administrations have stymied the titling process, internal conflicts among and between agencies have frustrated progress, and political pressures have led to constitutional and legal challenges to implementing effective regulations. At the root of many of these obstacles lies a strong form of historically-derived structural discrimination and racism.

The failure to implement Article 68 ADCT leaves quilombo communities in a tenuous position and particularly vulnerable to daily discrimination. Additionally, they are left to confront the enormous burden of the titling process, the uncertainty and lack of protection of those titles already granted, direct threats from third parties, nearby landowners, and large

development projects, negative media campaigns that have sought to undermine the legitimacy of quilombos' claims, and efforts to challenge of the constitutionality of the titling process.

### ***The Burden of the Titling Process***

The burden of the titling process itself represents one of the principle obstacles for communities. In its present state, the titling process fails to understand and accommodate the needs, cultural particularities, and way of life of quilombo communities. The vast majority of quilombos that have applied for title are relatively isolated and maintain traditional forms of livelihood, such as subsistence fishing or agriculture, and are located hours away from major urban centers. They generally have few financial resources, little access to quality education, and maintain a differentiated viewpoint on the collective management of local affairs. The titling process is set up in a way that does not take into account their labor- and time-intensive way of life, complicating their ability to handle the burden of paperwork and administrative hurdles. At its core, this burdensome titling procedure reflects a lack of adequate government action in providing equal protection for quilombos.

The years-long process of applying for title requires significant resources, a large degree of technical knowledge, the ability to access information, as well as means of communication, time, and money.<sup>77</sup> Even the most well-resourced and organized community would find the seventeen-step process burdensome. The CPI-SP pointed out to the delegation that, while over 450 processes for quilombo titles have been opened at the national level through INCRA, more than half have yet to receive a protocol number, the first stage of the process. Most quilombos that have applied for title are therefore currently stranded at some stage of titling, with no idea

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<sup>77</sup> Representatives from CPI-SP, for example, likened the technical knowledge required to that of the publication of a masters-level thesis.

how long the process may take or whether they will ever be able to receive title to the lands that their families have lived on for generations.

Moreover, the process for enacting Article 68 ADCT is unstable. As illustrated above, a new procedure has come into being every few years since the right to title was recognized. Jan Hoffman French noted in 2002 how “the definition of *quilombo* for purposes of recognition, since 1988, has been debated, narrowed, broadened, and narrowed again, while remaining permanently in flux.”<sup>78</sup>

The Government has acknowledged many of these difficulties and has formally sought to provide quilombos with technical and legal assistance. Decree 4.887, for example, mandates that government organs provide assistance before, during, and after the titling process. INCRA is to guarantee the defense of quilombo communities’ interests in matters resulting from the titling of their lands, beginning as soon as the application is filed.<sup>79</sup> FCP is to be involved from no later than the moment the community formally self-identifies as a quilombo. Along with pre-titling certification of status, FCP is also responsible for guaranteeing legal assistance to quilombos after titles are issued.

The Brazilian government has often failed to ensure these guarantees in the Decreto. Representatives of the quilombo community on the Ilha da Marambaia, for example, indicated to the delegation that the lack of special assistance from the State within the titling process creates major obstacles for its implementation. Without the assistance of NGOs to help them navigate the complex legal process, they stated that it would be “impossible” to seek title to their lands. Unfortunately, the current demand for such assistance exceeds its supply.

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<sup>78</sup> French, “Dancing for Land,” 21.

<sup>79</sup> Decreto N° 4.887, Article 15.

### ***Conflicts with Fazendeiros and other Third Party Interests***

Innumerable conflicts often arise between quilombos and nearby large landowners (*fazendeiros*) and other parties with competing claims to quilombo-occupied lands without meaningful government intervention. In some instances, the government has sided with those opposing quilombos' claims. These conflicts have often intensified to the point where neighbors resort to the use of breakdown tactics such as manipulation and direct intimidation of quilombos. Communities with whom the delegation met recounted various cases of daily attack by neighboring owners.

Members of the Sacopã quilombo –located near the heart of a wealthy neighborhood in Rio de Janeiro— reported that intimidation attempts by condominium developers and other neighbors have intensified since the community initiated its request for land title in 2000. They contended that on several occasions police had shown up at their community in the middle of the night to investigate false complaints about noise, or unfounded claims that community members were felling trees in violation of environmental laws.

For São Francisco da Paraguaçu, near Salvador, Bahia, threats from area *fazendeiros* have also intensified since the community initiated its request for land title in 2005. Quilombo members told the Rapoport delegation, for instance, that nearby landowners have twice knocked down the building where the quilombo holds its meetings and that neighboring *fazendeiros* have also erected fences on quilombo land and restricted access to fishing areas traditionally used by the quilombo for subsistence. They have also, on multiple occasions, ripped up crops planted by the quilombolas. Community members further reported that area landowners have attempted to divide the community by bribing some members to claim publically that they are “not quilombolas.” An NGO with whom the delegation met reported that *fazendeiros* had influenced particular families in São Francisco da Paraguaçu to oppose the recognition of the quilombo by



offering to help them obtain government pensions that they would otherwise not be entitled to receive. So strained are relationships in the area that the delegation witnessed signs on houses on the edge of the village that read, “Não somos quilombolas,” or “We are not quilombolas.”

While visiting quilombo communities in the Vale do Ribeira region of São Paulo, the Rapoport delegation learned about how quilombos’ neighboring landowners have continually attempted to frustrate the attempts of communities to secure their land titles. For example, community representatives from Ivaporunduva, which holds title to over 90 percent of its lands, reported a similar situation to that of Paraguaçu. There, *fazendeiros* repeatedly attempted to bribe quilombolas and use other tactics to divide the community during the period after first seeking quilombo status. The quilombo of André Lopes, also in the Vale do Ribeira, alleged that its neighboring landowners have frequently planted *palmito* (heart of palm) crops –which are illegal to plant in environmentally protected areas without permission—in order to create problems for the community with governmental environmental agencies.<sup>80</sup>

### ***Conflicts with Public Use and Regulations***

Threats to quilombos have come not only from wealthy landowners and third parties, but also from various levels of government. When government interests and the protection of quilombo lands have collided, the federal government has tended to privilege its interests and those of state entities and public institutions over the protection of quilombos’ rights. Perhaps the most striking examples are the cases of Alcântara in the state of Maranhão, in Northwestern Brazil, and the Ilha da Marambaia in the state of Rio de Janeiro.

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<sup>80</sup> For an understanding of environmental and land use problems involving the cultivation and trade of hearts of palm, see Mauro Galetti and Jose Carlos Fernandez, “Palm Heart Harvesting in the Brazilian Atlantic Forest: Changes in Industry Structure and the Illegal Trade,” *The Journal of Applied Ecology*, Vol. 35, No. 2 (Apr., 1998), 294-296.

In 1980, the state of Maranhão declared the expropriation of land within the Alcântara municipality for “public use.” Although the area was home to various quilombo communities, the government planned the establishment of the Alcântara Launch Center (CLA).<sup>81</sup> As a result, 312 families, comprising thirty-one quilombo communities, were forcibly relocated inland to housing projects, called “agrovilas,” built by the CLA.<sup>82</sup> The relocations destroyed the communities’ economic, familial, cultural, and religious practices. Relocated families could no longer fish, as they were now far away from the beaches and waterways. Hunting in an unfamiliar place proved equally difficult. Furthermore, the new lands were infertile, and members were assigned tiny, individual plots of land that were half the size of the minimum area allowed for rural properties by Brazilian Law, destroying the quilombolas’ historical forms of communal land use.<sup>83</sup> A complaint by the communities is now pending before the Inter-American Commission on Human Rights.

A second case involves the quilombo community of the Ilha da Marambaia, which has suffered forced evictions, relocations, and severe restrictions on basic rights since the establishment of a Naval Base on the island in 1971. When the base was installed, many families were forcibly relocated and others were paid off if they agreed to leave their traditional homes and move to the mainland. Since the 1970s, the Navy has placed restrictions on nearly every element of quilombo communities’ lives. The Rapoport delegation heard from quilombo members, as well as NGO’s who hoped to meet with them, that movement to and from the island is restricted.

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<sup>81</sup> Inter-American Commission of Human Rights, Petition 555-01, Communities in Alcântara, Brazil, Report N° 83/06, 21 Oct. 2006, paragraph 16.

<sup>82</sup> Ibid., paragraph 22.

<sup>83</sup> See Louise S. Silberling, “Displacement and *quilombos* in Alcântara, Brazil: Modernity, Identity, and Place,” *International Social Science Journal*, Vol. 55, No. 175, March 2003, 145-146.

Restraints have continually been placed on the rights of the Marambaia community to construct and repair community structures, particularly housing. Quilombo members are prohibited by the Navy from building new structures or enlarging existing ones. While they are now allowed to make repairs on existing houses, the Navy first requires them to seek authorization. Even when permission is granted, it generally takes more than a month for community members to receive notification. According to quilombo members, the Navy uses this approval as a power mechanism to co-opt community members into favoring the naval base. Because these restrictions have existed for almost 40 years, the houses of the community are often severely dilapidated, and families have been unable to accommodate new members over the years. Consequently, many quilombolas have moved off the island in search of improved living conditions. Yet many do not have the skills needed to better their lives away from the island, and they often end up in the *favelas* (shanty towns) of large cities.

Navy regulations also restrict Marambaia quilombo members from traditional fishing and agricultural practices. The Navy forbids them to use their nets and restricts them from fishing in many areas that have historically been important for the community's survival. Quilombo members are forced to report to the Navy if they want to carry people on their boats, a situation which greatly limits their ability to carry out collective forms of fishing that the community has historically used as the principle means of subsistence. Military training carried out on the Island further limits the community's ability to cultivate crops or to raise animals because it has no guarantee that its goods or animals will not be adversely affected by such activities.

Similar conflicts between quilombos and the government have occurred within the sphere of environmental protection. Public environmental regulation agencies expressed opposition to the titling of particular communities that overlap protected environmental areas. In such cases, state parklands have typically been privileged over the rights of quilombo communities. For

example, the origins of many quilombo communities in the Vale do Ribeira region in the state of São Paulo date back 400 years. Yet, in 1969, the government created the *Parque Estadual de Jacupiranga* (Jacupiranga State Park) without consulting these quilombos. Quilombolas in André Lopes reported to the delegation that a number of communities, including Nhunguara, Sapatu, and André Lopes, lay within the park's boundaries until the passage of State Law 10.850 in 2001 changed the park's limits.

Those communities that have not received quilombo recognition continue to be treated as having illegitimate land rights claims and have been excluded from basic public services. For instance, although the community of André Lopes currently has electricity, the quilombo communities directly beside it –but within the boundaries of the park— do not have electricity or telephone lines. Members in these locations expressed dismay that the government could establish a national park on quilombo land.

This is not an isolated problem in the Vale do Ribeira. Many public parklands' and protected areas' boundaries have been established without consideration of quilombo existence. This neglect has forced quilombos to undergo a lengthy resolution of conflict with IBAMA- the federal environmental protection agency- before recognition and titling are possible.

Furthermore, environmental and health agencies place restrictions that do not properly consider quilombos' traditional practices. When the Rapoport delegation visited the communities of André Lopes and Ivaporunduva in the Vale do Ribeira, it learned that both had been economically damaged by the environmental agency's closure of a local cave for alleged unsafe conditions. The income of many members of the community of André Lopes depended on the ability to give school groups tours of the cave, and the community of Ivaporunduva reported that it had lost a significant amount of local income because school groups had cancelled their reservations for the small lodging place managed by the quilombo.

### ***Development Projects***

Another set of pressing obstacles that threaten quilombo rights to property and culture can be found in the many pending development projects near or on community lands. For example, many quilombo communities throughout the Vale do Ribeira presently face threats of the construction of a series of large dams that would flood much of the Vale do Ribeira, as well as over 200 requests for mining projects and the spread of large banana plantations.

The current explosion of ethanol production in Brazil will also likely pose a threat to quilombo lands. While the delegation did not find any direct evidence that quilombo communities have been pushed off of their lands to make way for crops grown for bio-fuels, a number of people with whom the delegation met—including activists, academics, and government officials—mentioned rising ethanol production as having potential impact on disputes over quilombo lands.<sup>84</sup> In the centuries-old sugarcane producing areas around Paraguaçu, for example, cane is now being grown for ethanol. One of the community leaders from Paraguaçu remarked that another quilombo community in that area had recently contracted with Petrobras, Brazil's largest energy producer, to grow crops for ethanol production. Given the government's intention of converting millions of hectares of land into ethanol-producing crops, it is probable that the aims of the state's economic development and the titling and protection of quilombo lands may come into direct conflict over ethanol, if they have not already.

### ***Uncertainty of Titles Already Granted and Lack of Federal Protection***

In the few instances in which quilombo communities have been granted title, that title has not led to the certainty and stability for which its applicants had aimed. First, many of the dozen

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<sup>84</sup> In March of 2007, for instance, the U.S. government signed a Memorandum of Understanding with Brazil aimed at increasing the production of biofuels in the western hemisphere, see U.S. Department of State, "Advancing Cooperation with Brazil on Biofuels," Fact Sheet (March 9, 2007), <http://www.state.gov/r/pa/prs/ps/2007/mar/81589.htm> (accessed August 18, 2008).

titles awarded by the Fundação Cultural Palmares from 1998-2002 are questionable due to allegations that the expropriation process used by the FCP to grant titles was unconstitutional for failing to compensate landowners. Second, title has not always meant adequate protection of quilombos' lands or the receipt of basic rights.

The quilombo of Porto Coris, in the state of Minas Gerais, illuminates the level of uncertainty that has arisen for communities that received title under the FCP. In 2000, Porto Coris became the first and only quilombo to obtain title in the state of Minas Gerais when the FCP granted it 199 hectares of land. However, another claim was also made on a portion of this territory. Because legal guidelines state that title holders must compensate prior competing claimants in order to have their title officially registered, and because Porto Coris did not do so, the quilombo's title was not recorded in the property registry. As a result, when the Energy Company of Minas Gerais subsequently built a hydroelectric dam up-river from Porto Coris, it was not required to compensate the quilombolas. The reservoir eventually flooded the region, which forced the community to leave. Today, the quilombo of Porto Coris resides in a resettlement area in the rural town of Mandassala, in the municipality of Leme do Prado. The community has had to adjust to living on new land, requiring unfamiliar agricultural practices and, ironically, having limited access to water and electricity.

The problem of lands titled by the FCP is not the only pressing limitation of many of the quilombo lands already titled. Just as important is the lack of mechanisms to protect community lands against threats from developers or manipulation and intimidation by neighboring landowners. Technically, according to the current regulatory mechanisms, INCRA should safeguard communities during the titling process and the FCP should do so after the title has been awarded. Neither of these federal entities, however, has provided any effective protection. The question of protection then often comes down to the land title from local government entities

and from local law enforcement. Comments by various communities and institutions with which our delegation met indicated that, unfortunately, even this source of security is typically inadequate.

### ***Media and Public Perception***

Media campaigns and news stories that present the claims of quilombo communities in a negative light have weakened public support for quilombos' struggle for title. In May 2007, Brazil's largest media conglomerate, *Rede Globo de Televisão*, launched a series of reports that questioned the legitimacy of the quilombo certification and titling process, and consequently, the legitimacy of quilombo rights claims. A team from *Rede Globo de Televisão's* network affiliate, TV Bahia, for example, aired a report that challenged the legitimacy of São Francisco do Paraguaçu's application for certification as a quilombo from the FCP. The reporter interviewed selected members of the community—all of whom denied the existence of the quilombo—and then accused the community of fraud in collecting the signatures on its application for FCP certification. His report ultimately implied that the community was not a quilombo and that, therefore, the entire certification and titling process was suspect.

*Rede Globo de Televisão's* challenge, however, does not hold up to scholarly scrutiny. For one, an in-depth anthropological report completed by INCRA contradicts the news outlet's claims. The report traces São Francisco do Paraguaçu's historical origins to the sixteenth century, when slaves constructed a large stone convent in the area and labored in the area's many sugar mills. The anthropological report indicates that, based on the community's history of resistance, its communal forms of living, and its unique cultural practices, São Francisco do Paraguaçu clearly constitutes a quilombo.

Despite their at times factually-questionable basis, reports such as *Rede Globo de Televisão*'s –there are dozens of examples—<sup>85</sup> have seemed to have had an effect on public perception and on public policy in Brazil. Community members and their lawyers at the Association of Lawyers for Rural Workers in the State of Bahia (AATR) told the Rapoport delegation that the *Rede Globo de Televisão* report in particular spurred powerful landowners and anti-titling factions within the government to demand an investigation that eventually had two significant consequences. First, the inquiry led to the temporary suspension of the titling process altogether. Second, it impelled the creation of a working group to be convened by the federal office of the attorney general for the executive branch to evaluate the overall legality and constitutionality of the quilombo titling process.<sup>86</sup>

### ***New Challenges to the Legitimacy of the Titling Process***

As mentioned above, on the third day of the Rapoport delegation's visit to Brazil, one of the country's largest newspapers announced that the federal government had completely suspended the titling process in the face of alleged "irregularities" in the certification and titling procedures.<sup>87</sup> Over the next few days, it emerged that the government investigation into the titling process had actually been initiated the previous year and was just then being leaked to the press. The controversy over the titling process and its suspension pointed out a number of internal government conflicts that have proved to be major obstacles to the implementation of Article 68 ADCT. Ultimately, this trend points to the government's lack of political will and leadership in guaranteeing the land rights of quilombo communities. Meanwhile, as the status of

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<sup>85</sup> See KOINONIA's "*Observatório Quilombola*" (Quilombo Observatory), which documents negative media campaigns through its "Dossiê Imprensa Anti-quilombola," <http://www.koinonia.org.br/OQ> (accessed August 18, 2008).

<sup>86</sup> Scolese, "Demarcações de áreas de quilombos são suspensas."

<sup>87</sup> Ibid.



the titling process is debated in Brasília, thousands of quilombos continue to face immediate threats to their existence.

Since its passage in 2003, Decree 4.887 –which represents perhaps the most promising regulation to implement the aims of Article 68 ADCT— has come under attack on many fronts. In 2004, Brazil’s Democratic Party advanced a constitutional challenge to the Decree by filing a complaint with the Federal Supreme Court, or Brazil’s constitutional court. Four years later, the case is still pending.<sup>88</sup> Decree 4.887 has also been assailed on the legislative front. In 2007, a legislative proposal was put forward aiming to revoke Decree 4.887 by disputing the constitutional limits on the authority of the presidential decree power, as well as by questioning the manner in which INCRA has approached the titling process.<sup>89</sup>

In response, President Lula commissioned an Inter-ministerial Working Group to address the issue. Coordinated by the Attorney General for the Union (AGU), the Working Group aimed to draw on expertise and perspectives from all areas of government. Ultimately, it decided to maintain Decree 4.887, but also proposed a new normative instruction to replace Normative Instruction 20. The Working Group settled on nine specific topics to be reformulated in the new rule. These included: (1) The Concept of Occupied Lands; (2) Certification and Development of the Administrative Process of Demarcation; (3) Anticipation and Prevention of Occasional Overlapping Interests Between Government Agencies; (4) Objectivity and Technical Impartiality in the Elaboration of the RTID, (5) Publicity; (6) Mandatory Consultation with All Government

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<sup>88</sup> *Ação Direta de Inconstitucionalidade (ADIN)*, nº 3.239, June 24, 2004.

<sup>89</sup> Valdir Colatto (PMDB-SC), Deputado Federal, “Revisão do processo de demarcação de áreas quilombolas,” Press Release, Sept. 27, 2007, [http://www.valdircolatto.com.br/index.php?option=com\\_content&task=view&id=225&Itemid=43](http://www.valdircolatto.com.br/index.php?option=com_content&task=view&id=225&Itemid=43) (accessed August 18, 2008).

Organs and Entities; (7) Suspensive Effect on Concurrent Proceedings; (8) Conciliation Among Government Organs and Entities; and (9) Vigilance and Efficacy.<sup>90</sup>

The proposed normative instruction has not yet been adopted, in part due to the resistance of quilombo communities. Although the Working Group sought the input of communities in accordance with what it considered to be the consultation requirements of ILO 169, quilombo representatives complained that they were only consulted after the fact and that they had never been invited to participate in the Working Group.

At present, the relevant parties have still not reached an agreement, and the titling process remains suspended. This current uncertainty surrounding titling is representative of an overall systematic failure to implement Article 68 ADCT.

## **VI. Recommendations**

As a result of its interviews, observations, and analysis, the Rapoport delegation provides the following recommendations to parties whose actions affect the rights, resources, and titling efforts of quilombos. These parties include the Brazilian Government, the Organization of American States, the United States Government, international aid and international financial institutions, and non-governmental organizations.

### ***Brazilian Government***

The delegation recommends that the Brazilian State:

1. *Immediately resume the titling process.*
  - The President should immediately reinitiate the titling process.
  - The federal government should use its best efforts to defend the constitutionality of the Decreto.

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<sup>90</sup> GT, *Questões Quilombolas e Indígenas*, slide 14–15.

2. *Revise regulations so as to simplify and accelerate the titling process.*

- The Inter-ministerial Working Group should, with full participation of quilombo community representatives, continue to engage in a process of revision of the regulatory mechanisms for quilombo titling, setting a final date for the revision within one year.
- ILO 169 should be used as the basic guideline for both the process and substance of new regulations.
- The titling process should start immediately upon self-identification. No evidentiary burden should be placed on communities in self-identifying.
- No extensive technical report should be required unless a third party has good faith and well-grounded challenges to the quilombo's claim. At that point, the burden of the technical report should be placed on the third party and not on the community itself (following Pará's titling process).
- Specific and demanding goals should be set for the number of communities to be titled each year, and a review process and accountability system should be implemented to ensure compliance with those goals.
- Specific deadlines for completion of the different steps of the titling process should be set.
- The federal government should provide explicit support for the passage of pending legislation on racial discrimination in a form that includes the substance of Decreto 4.887 in relationship to quilombo land rights.

3. *Ensure equal protection and basic rights to quilombolas as Brazilian citizens.*

Upon self-identification, every quilombo should receive a visit from a governmental agency to ensure that the basic needs of community members have been met. An expedited program should put these communities on a fast track for the receipt of any basic public goods they are lacking, such as potable water, access to healthcare and education, sanitary services, public transportation, and electricity.

4. *Create meaningful and accessible channels for the participation and protection of quilombos in all matters that affect them.*

- In accordance with ILO 169, provide mechanisms for the prior consultation of quilombos with respect to all policies, agreements, or development projects that may affect them.
- Strengthen the role, funding, and political power of SEPPIR and the FCP so that they may adequately protect quilombos throughout and following the titling process.
- Provide state-level land agencies with the power to expropriate private land for the purpose of quilombo land-titling.
- Establish a monitoring program of rights violations, including early warnings and preventative mechanisms, so that quilombos (whether titled or not) can appeal directly to appropriate agencies regarding threats from neighboring landowners or development projects.
- Develop cultural rights strengthening initiatives and training programs for federal, state, and local public officials aimed at reducing discrimination, avoiding corruption, and improving the understanding of the particularities of quilombo collective rights.

5. *Provide effective special measures for the protection of quilombolas' rights guaranteed under domestic and international law.*
  - Fully comply with the domestic law that requires differentiated education for Afro-descendant communities.
  - Ensure that quilombos' local affairs, cultural activities, and traditional economic practices are not restricted by third parties, such as the military, corporations, or large-landowners.
6. *Improve coordination between governmental agencies to ensure the protection of the rights of quilombos.*
  - Require that the establishment of national park lands be coordinated with the FCP, INCRA, and other state land agencies to ensure the absence of conflicts with quilombo lands. Environmental conservation legislation should accommodate the pre-existence and special rights of quilombo communities.
  - Create an inter-agency communication system that applies not only in reference to park lands, but with all state and federal land, including the establishment of a central mapping project.
7. *Collect, analyze, and maintain official statistics and social indicators for quilombo communities based on self-identified communities. Separate statistics should be kept for quilombo communities, as well.*
8. *Fully implement the Millennium Development Goals and the Plan of Action of the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance with regard to quilombos.*
9. *Exercise a more active leadership role in support of the proposed Inter-American Convention for the Prevention of Racism and All Forms of Discrimination and Intolerance, currently being drafted by the Organization of American States (OAS) and defend the inclusion of provisions about the cultural and land rights of quilombos and other traditional Afro-Descendant communities.*

### ***Organization of American States (OAS)***

The delegation recommends:

1. *That the OAS promptly finalize and adopt the proposed Inter-American Convention for the Prevention of Racism and All Forms of Discrimination and Intolerance, ensuring the inclusion of provisions protecting the cultural and land rights of quilombos and other traditional Afro-descendant communities.*
2. *That the OAS allocate to the Inter-American Commission and Court of Human Rights sufficient funds to make all of their publications and documents available in Portuguese.*
3. *That the Inter-American Commission decide the Alcântara Case, which was filed seven years ago.*

4. *That the Inter-American Commission conduct an onsite visit in Brazil to document and report on the situation of quilombo communities.*
  - The visit should include visits and meetings with quilombo communities which have yet to receive title, as well as communities that have been displaced by both private and public development projects.
  - A prompt public report following such a visit should make known the extent to which Brazil recognizes the civil and political, as well as economic, social, and cultural rights, of quilombo communities.
5. *That the Inter-American Commission strengthen the Role of the Special Rapporteur on Afro-Descendant Issues.*
  - The Special Rapporteur should closely monitor the situation of quilombo communities.
  - The Special Rapporteur should prepare a study on land rights of Afro-descendants in the Americas.
  - The Special Rapporteur should take an active role in preparing the Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance, and ensure that provisions are established regarding the collective property rights of Afro-descendant communities such as quilombos.

### ***United States Government***

The delegation recommends that the United States Government:

1. *Ensure that its policies on the production of biofuels will not have a negative impact on quilombos and other traditional communities.*
2. *Ensure that any trade or cooperation agreements with Brazil respect the rights of quilombo communities. No free trade or other bilateral agreement should be made without first requiring an assessment of how it would impact the rights of quilombos.*
3. *Increase direct foreign aid and assistance to support the political participation and economic development of quilombos.*
  - The United States should target foreign aid specifically to quilombo communities and require that quilombos themselves be in charge of managing the use of aid resources. The U.S. should also foster programs aimed at combating racism in Brazil.
  - The U.S. Congress should direct funds to be contributed (as Norway and Great Britain have done) to the Inter-American Development Bank's Social Inclusion Fund for the Americas.
  - Congress should increase funds for the Inter-American Foundation, the National Endowment for Democracy, or other federal agencies to initiate, increase, or improve projects specifically aimed at strengthening the rights of Afro-descendant communities and supporting their local economic development projects.
  - The United States should support efforts to meet the Millennium Development Goals by aiming to promote the social visibility of Afro-descendants and by supporting efforts to eliminate racial discrimination.

4. *Support the proposed Inter-American Convention for the Prevention of Racism and All Forms of Discrimination and Intolerance that is currently being drafted by the OAS.*

### ***International Aid and Financial Institutions***

The delegation recommends that international organizations, such as the World Bank, the Inter-American Development Bank, and the United Nations Development Program aid quilombos' efforts to achieve title in the following ways:

1. *Provide financial support for Afro-descendant collective rights projects identified in consultation with quilombo communities.*
  - Provide funds directly to quilombo communities to support projects and programs they freely decide to pursue.
  - Provide funds and technical assistance to the Brazilian Government to improve and expedite the titling process.
  - Assist government projects and programs to increase the access of quilombo communities to basic public goods.
2. *Provide funding for NGOs and other groups working for quilombo rights in Brazil.*

### ***Non-Governmental Organizations (NGO's)***

The delegation recommends that human rights NGO's:

1. *Attend to issues of discrimination, racism, and gender inequality and their effects on the enjoyment of quilombos' rights.*
2. *Help strengthen the capacity of quilombos to make effective land rights claims by providing support for communities attempting to navigate the titling process and helping to improve access to resources and information.*
3. *Support expanded dialogue between quilombo communities and other social movements, such as the many indigenous peoples in Brazil, or Movimento de Trabalhadores Rurais Sem Terra (MST).*

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## **Appendix A: Delegation Biographies**

### *Faculty Coordinators:*

**Karen Engle** is Cecil D. Redford Professor in Law and Director of the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas School of Law.

**Ariel Dulitzky** is a Visiting Professor of Law and Latin American Studies and the Associate Director of the Audre and Bernard Rapoport Center for Human Rights and Justice at the University of Texas School of Law.

### *Student Coordinators:*

**Christina Turner** received her J.D. degree from The University of Texas School of Law in May 2008.

**Matthew Wooten** is a Master's degree candidate at the Lozano Long Institute of Latin American Studies at the University of Texas.

### *Student Delegation:*

**Andréw Biberstein** received his J.D. degree from The University of Texas School of Law in May 2008.

**Tina Codini** is a third-year student at the University of Texas School of Law.

**Mary Isernhagen** received her J.D. degree from The University of Texas School of Law in May 2008.

**Gina LaMotte** is a Master's degree candidate at the Lozano Long Institute of Latin American Studies at the University of Texas.

**Raegen Rogers** is a third-year student at the University of Texas School of Law.

**Jonathan M. Square** is a Master's degree candidate at the Lozano Long Institute of Latin American Studies at the University of Texas.

**Karla Vargas** is a third-year student in the joint degree program at the University of Texas School of Law and the LBJ School of Public Affairs.

### *Project Intern:*

**Tony Keffler** is an undergraduate Latin American Studies major at the University of Texas.

**Appendix B: Organizations, Institutions, and Public Authorities Met with by the Delegation**

*Associação das Comunidades Quilombolas de Marambaia (ARQUIMAR), Rio de Janeiro State*

*Associação das Comunidades Quilombolas do Rio de Janeiro (ACQUILERJ)*

*Association of Lawyers for Rural Workers in the State of Bahia (AATR)*

*Center for Justice and International Law (CEJIL)*

*Centro de Assessoria Jurídica Popular*

*Centro de Assessoria Jurídica Popular Mariana Criola*

*Comissao Pro-Indio de São Paulo (CPI-SP)*

*CONNECTAS, Human Rights*

*Ecumenical Coordination of Service, Salvador, Bahia (CESE)*

*Equipe de Articulação e Assessorias as Comunidades Negras do Vale do Ribeira (EAACONE)*

*Federal Office of the Attorney General*

*Federation for Social and Educational Assistance (FASE), Pará, Pernambuco, Mato Grosso, Bahia, Espírito Santo, Rio de Janeiro*

*Fundação Cultural Palmares (FCP, Palmares Cultural Foundation)*

*Fundação Instituto de Terras do Estado de São Paulo (ITESP)*

*Instituto dos Defensores de Direitos Humanos (IDDH)*

*Instituto Pro Bono*

*Instituto Socioambiental (ISA)*

*Justiça Global*

*KOINONIA - Presença Ecumênica e Serviço, Rio de Janeiro*

*Ministerio Publico, Dr. Daniel Antonio de Moraes Sarmento*

*Ministry of Agrarian Development (MDA)*

*National Coordination of Quilombo Communities (CONAQ)*

*National Institute of Colonization and Agrarian Reform (INCRA)*

*Núcleo de Direitos Humanos (Human Rights Center) of PUC-Rio*

*Núcleo Interdisciplinar de Reflexão e Memória Afrodescendente (NIREMA)*

*Senator Paulo Renato Paim*

*Secretaria Especial para Políticas de Promoção da Igualdade Racial (SEPPIR)*

*The Commission of Justice and Peace of the Archdiocese of Salvador (CJP)*

## **Appendix C: Quilombos Visited**

*André Lopes: Here the delegation also met with representatives from Sapatu and Nhunguara*

*Ivaporunduva*

*Marambaia: The delegation met with this quilombo's representatives outside of the community*

*Sacopa (Rio de Janeiro)*

*São Francisco de Paraguaçu*

## **Appendix D: Quilombo Communities with Title as of May 2008**

Source: Comissão Pro-Índio de São Paulo, CPI-SP

Updated May 26, 2008

Quilombo Lands with Title in Brazil							
Quilombo Territory	Community	Families	Size (hectares)	Municipality	State	Titling Agency	Year Awarded Title
<a href="#">Boa Vista</a>	Boa Vista	112	1.125, 0341	Oriximina	PA	Incra	1995
<a href="#">Água Fria</a>	Água Fria	15	557, 1355	Oriximina	PA	Incra	1996
<a href="#">Pacoval</a>	Pacoval	115	7.472, 879	Alenquer	PA	Incra	1996
<a href="#">Trombetas</a>	Bacabal, Aracuan de Cima, Aracuan do Meio, Aracuan de Baixo, Serrinha, Terra Preta II, Jarauacá	138	80.887, 0941	Oriximina	PA	Incra; Iterpa	1997
<a href="#">Erepecuru</a>	Pancada, Araçá, Espírito Santo, Jauari, Boa Vista do Cuminá, Varre Vento, Acapú	154	221.044, 2605	Oriximina	PA	Incra; Iterpa	1998 2000
<a href="#">Itamoari</a>	Itamoari	33	5.377, 602	Cachoeira de Piria	PA	Incra	1998
<a href="#">Abacatal - Aurá</a>	Abacatal - Aurá	53	308, 1991	Ananindeua	PA	Iterpa	1999
<a href="#">Campinho da Independência</a>	Campinho da Independência	59	287, 9461	Parati	RJ	Secretaria de Assuntos Fundiários do Rio de Janeiro	1999
<a href="#">Curiau</a>	Curiau	108	3.321, 8931	Macapa	AP	Fundação Cultural Palmares	1999
<a href="#">Eira dos Coqueiros</a>	Eira dos Coqueiros	35	1.011, 8271	Codo	MA	Iterma	1999
<a href="#">Mocorongo</a>	Mocorongo	24	162, 6254	Codo	MA	Iterma	1999
<a href="#">Rio de Contas</a>	Bananal, Barro do Brumado	148	1.339, 2768	Rio de Contas	BA	Coordenação de Desenvolvimento Agrário	1999
<a href="#">Santo Antônio dos Pretos</a>	Santo Antonio dos Pretos	102	2.139, 55	Codo	MA	Iterma	1999
<a href="#">Cabeceiras</a>	São José, Silêncio, Matar, Cuecê, Apui, Castanhaduba	445	17.189, 6939	Obidos	PA	Fundação Cultural Palmares	2000

<a href="#">Castainho</a>	Castainho	206	183, 6	Garanhuns	PE	Fundação Cultural Palmares	2000
<a href="#">Conceição das Crioulas</a>	Conceição das Crioulas	750	17.845, 0015	Salgueiro	PE	Fundação Cultural Palmares	2000
<a href="#">Furnas da Boa Sorte</a>	Furnas da Boa Sorte	52	1.475	Corguinho	MS	Fundação Cultural Palmares; Idaterra	2000 2006
<a href="#">Furnas do Dionísio</a>	Furnas do Dionísio	92	1.031, 8905	Jaraguari	MS	Fundação Cultural Palmares	2000
<a href="#">Gurupá</a>	Jocojó, Flexinha, Carrazedo, Camutá do Ipixuna, Bacá do Ipixuna, Alto Ipixuna, Alto do Pucuruí, Gurupá-mirin	300	83.437, 1287	Gurupa	PA	Iterpa	2000
<a href="#">Kalunga</a>	Kalunga	600	253.191, 72	Monte Alegre de Goiás / Teresina de Goiás / Cavalcante	GO	Fundação Cultural Palmares	2000
<a href="#">Mangal/Barro Vermelho</a>	Mangal	295	7.468, 9643	Sítio do Mato	BA	Fundação Cultural Palmares	2000
<a href="#">Maria Ribeira</a>	Maria Ribeira	32	2.031, 8727	Gurupa	PA	Iterpa	2000
<a href="#">Mata Cavalo</a>	Mata Cavalo	418	14.748, 3413	Nossa Senhora do Livramento	MT	Fundação Cultural Palmares	2000
<a href="#">Mocambo (SE)</a>	Mocambo (SE)	113	2.100, 54	Porto da Folha	SE	Fundação Cultural Palmares	2000
<a href="#">Porto Corís</a>	Porto Coris	21	199, 3001	Leme do Prado	MG	Fundação Cultural Palmares	2000
<a href="#">Rio das Rãs</a>	Rio das Rãs	300	27.200	Bom Jesus da Lapa	BA	Fundação Cultural Palmares	2000
<a href="#">Santana (RJ)</a>	Santana (RJ)	25	828	Quatis	RJ	Fundação Cultural Palmares	2000
<a href="#">Laranjituba/África</a>	Laranjituba, África	48	118, 0441	Moju	PA	Iterpa	2001
<a href="#">Maria Rosa</a>	Maria Rosa	20	3.375, 6582	Iporanga	SP	Itesp	2001
<a href="#">Pilões</a>	Pilões	51	5.908, 6824	Iporanga	SP	Itesp	2001
<a href="#">São Pedro (SP)</a>	São Pedro (SP)	39	4.558, 1986	Eldorado / Iporanga	SP	Itesp	2001
<a href="#">Bailique</a>	Bailique Beira, Bailique Centro, Poção, São	112	7.297, 691	Oeiras do Para / Baião	PA	Iterpa	2002

	Bernardo						
<a href="#">Bom Remédio</a>	Bom Remédio	116	588, 167	Abaetetuba	PA	Iterma	2002
<a href="#">Camiranga</a>	Camiranga	39	320, 6121	Cachoeira de Piria	PA	Iterpa	2002
<a href="#">Cipó dos Cambaias</a>	Cipó dos Cambaias	124	2.440	Sao Joao do Soter	MA	Iterma	2002
<a href="#">Guajará Miri</a>	Guajará Miri	70	1.024, 1954	Acara	PA	Iterpa	2002
<a href="#">Icatu</a>	Icatu	80	1.636, 6122	Mocajuba / Baiao	PA	Iterpa	2002
<a href="#">Igarapé Preto</a>	Igarapé Preto, Baixinha, Panpelônia, Teófilo, Varzinha, Campelo, Cupu, França, Araquenbaua, Carará, Costeiro, Igarapezinho	565	17.357, 0206	Baiao / Oeiras do Para / Mocajuba	PA	Iterpa	2002
<a href="#">Ilhas de Abaetetuba</a>	Campopema, Jenipaúba, Acaraqui, Rio Tauaré-açu, Arapapu, Alto Itacuruça, Baixo Itacuruça, Igarapé São João (Médio Itacuruça)	701	11.458, 532	Abaetetuba	PA	Iterpa	2002
<a href="#">Jenipapo</a>	Jenipapo	74	589	Caxias	MA	Iterma	2002
<a href="#">Jurussaca</a>	Jurussaca	45	200, 9875	Tracuateua	PA	Iterpa	2002
<a href="#">Santa Fé/Santo Antônio</a>	Santa Fé, Santo Antônio	28	830, 8776	Baiao	PA	Iterpa	2002
<a href="#">Santa Rita de Barreira</a>	Santa Rita de Barreira	35	371, 3032	Sao Miguel do Guama	PA	Iterpa	2002
<a href="#">São José de Icatu</a>	São José de Icatu	80	1.636, 6122	Baiao	PA	Iterpa	2002
<a href="#">Alto Trombetas</a>	Abuí, Paraná do Abuí, Tapagem, Sagrado Coração, Mãe Cue	182	138.788	Oriximina	PA	Iterpa	2003
<a href="#">Itancuã Miri</a>	Itancuã Miri	96	968, 9932	Acara	PA	Iterpa	2003
<a href="#">Ivaporunduva</a>	Ivaporunduva	82	672, 2844	Eldorado	SP	Itesp	2003
<a href="#">Pedro Cubas</a>	Pedro Cubas	40	2.449	Eldorado	SP	Itesp	2003
<a href="#">Santa Maria do Mirindeua</a>	Santa Maria do Mirindeua	85	1.763, 0618	Moju	PA	Iterpa	2003
<a href="#">Santo Cristo</a>	Santo Cristo	52	1.767, 0434	Moju	PA	Iterpa	2003



<a href="#">Bela Aurora</a>	Bela Aurora	32	2.410, 2754	Cachoeira de Piria	PA	Incra	2004
<a href="#">Paca e Aningal</a>	Paca, Aningal	22	1.284, 2398	Viseu	PA	Incra	2004
<a href="#">Altamira</a>	Povoado Altamira		1.220, 9398	Pinheiro	MA	Iterma	2005
<a href="#">Jamari dos Pretos</a>	Jamari dos Pretos	162	6.613, 063	Turiacu	MA	Iterma	2005
<a href="#">Nossa Senhora da Conceição (PA)</a>	Nossa Senhora da Conceição (PA)	54	2.393, 0559	Moju	PA	Iterpa	2005
<a href="#">Olho D'água do Raposo</a>	Olho D'água do Raposo		187, 3333	Caxias	MA	Iterma	2005
<a href="#">Santa Maria do Tracateua</a>	Santa Maria do Tracateua		833, 3833	Moju	PA	Iterpa	2005
<a href="#">São Manoel</a>	São Manuel	68	1.293, 1786	Moju	PA	Iterpa	2005
<a href="#">São Sebastião dos Pretos</a>	São Sebastião dos Pretos	62	1.010, 2186	Bacabal	MA	Iterma	2005
<a href="#">Agrical II</a>	Agrical II		323	Bacabeira	MA	Iterma	2006
<a href="#">Bom Jesus dos Pretos</a>	Bom Jesus dos Pretos		216, 3937	Candido Mendes	MA	Iterma	2006
<a href="#">Carananduba</a>	Carananduba		644, 5477	Acara	PA	Iterpa	2006
<a href="#">Centro Ouro</a>	Bom Jesus Centro Ouro, Nossa Senhora das Graças, São Bernardino		5.243, 1409	Moju	PA	Iterpa	2006
<a href="#">Conceição do Macacoari</a>	Conceição do Macacoari	30	8.465, 471	Macapa	AP	Incra	2006
<a href="#">Imbiral</a>	Povoado Imbiral		46, 4981	Pedro do Rosario	MA	Iterma	2006
<a href="#">Jacunday</a>	Jacunday		1.701, 5887	Moju	PA	Iterpa	2006
<a href="#">Jussaral</a>	Santa Helena		345, 4331	Itapecuru Mirim	MA	Iterma	2006
<a href="#">Lago Grande</a>	Lago Grande		906, 8315	Peritorio	MA	Iterma	2006
<a href="#">Olho D'água dos Pires</a>	Olho D'água dos Pires		623, 839	Esperantina	PI	Interpi	2006
<a href="#">Parateca e Pau d'arco</a>	Pau D'Arco, Parateca	500	41.780	Malhada / Palmas de Monte Alto	BA	Secretaria de Patrimônio da União	2006
<a href="#">Queluz</a>	Queluz		256	Anajatuba	MA	Iterma	2006
<a href="#">Rio dos Peixes</a>	Povoado Rio dos Peixes		54, 2234	Pinheiro	MA	Iterma	2006
<a href="#">Santa Izabel</a>	Povoado Santa		837, 6155	Candido	MA	Iterma	2006

	Izabel			Mendes			
<a href="#">Santana (MA)</a>	Povoado Santana		201, 1171	Santa Rita	MA	Iterma	2006
<a href="#">Santo Inácio</a>	Povoado Santo Inácio		1.363, 4178	Pinheiro	MA	Iterma	2006
<a href="#">Sítio Velho</a>	Sítio Velho	92	92.335	Assuncao do Piaui	PI	Interpi	2006
<a href="#">Usina Velha</a>	Usina Velha		1.160, 9576	Caxias	MA	Iterma	2006
<a href="#">Galvão</a>	Galvão	32	2.234, 33	Eldorado / Iporanga	SP	Itesp	2007
<a href="#">Jatobá (BA)</a>	Jatobá (BA)	69	14.496, 152	Muquem do Sao Francisco	BA	Secretaria de Patrimônio da União	2007
<a href="#">Mel da Pedreira</a>	Mel da Pedreira	25	2.600	Macapa	AP	Incra	2007
<a href="#">Porto Alegre</a>	Porto Alegre	54	2.597	Cameta	PA	Iterpa	2007
<a href="#">Volta do Campo Grande</a>	Volta do Campo Grande	103	10.800	Isaias Coelho	PI	Interpi	2007
<a href="#">Jacarequara</a>	Jacarequara		1.602, 9725	Santa Maria do Para	PA	Iterpa	2008
<a href="#">Matias</a>	Matias	60	1.479, 6824	Cameta	PA	Iterpa	2008
<a href="#">Menino Jesus</a>	Menino Jesus (São Miguel do Guamá)		306, 5891	Sao Miguel do Guama	PA	Iterpa	2008
<a href="#">Santa Luzia (Macapazinho)</a>	Santa Luzia (Macapazinho)			Santa Isabel do Para	PA	Iterpa	2008
<a href="#">Tipitinga</a>	Tipitinga		1.624, 1271	Santa Luzia do Para	PA	Iterpa	2008
87	143	8.874	1.171.579				