

**To Norges Bank**

27 May 2019

UNOFFICIAL ENGLISH TRANSLATION

**Recommendation to exclude Centrais Elétricas Brasileiras SA from the  
Government Pension Fund Global**

## Summary

The Council on Ethics recommends that Centrais Elétricas Brasileiras SA (Eletrobras) be excluded from the Government Pension Fund Global (GPF) due to an unacceptable risk of breaching the Ethical Guidelines' section 3 (a) regarding serious or systematic human rights violations. Eletrobras is a Brazilian energy company engaged in a number of hydroelectric power projects. The Council has assessed the company's execution of the projects and the impact on affected groups.

While basing the assessment on Eletrobras's role in the construction of the Belo Monte power plant, the Council on Ethics has also taken into account the company's role in other hydroelectric projects and the future risk of violations in its enterprises. Belo Monte has been in partial operation since 2016 and is scheduled for completion in December 2019. With a licence to operate the hydroelectric power plant until 2045, Norte Energia has been in charge of the construction. Eletrobras is, by itself and through two wholly-owned subsidiaries, the main shareholder of Norte Energia and was also central to the planning of the project.

Human rights violations related to Belo Monte have been documented in reports from Brazilian authorities and international organizations. Many indigenous territories are severely affected by the project, in part due to the significantly reduced flow in a 100-km stretch of the river where various such territories are located. The project has led to increased pressure on indigenous lands, the disintegration of indigenous peoples' social structures and the deterioration of their livelihoods. The Council on Ethics rests on the understanding that the right of indigenous peoples to self-determination and consultation has not been respected in the implementation of the project.

The project has also resulted in the displacement of at least 20,000 individuals, including people with a traditional way of life who used to have their homes on islands and riverbanks that are now submerged. Forced relocation has been carried out on the basis of inadequate consultations and without giving those affected the possibility to maintain their living conditions. Some groups strongly affected by the project were not recognized as parties to the process and therefore not included in compensation schemes. The Council on Ethics finds it documented that this situation, at least such as it was until the authorities intervened from the middle of 2015, represented serious violations of the right to health and a satisfactory standard of living, including the right to housing, water and sanitation.

Despite basing its guidelines for social responsibility on the UN Guiding Principles on Business and Human Rights, Eletrobras gives little account of the steps it has taken to ensure compliance with these in practice. The company believes that human rights are protected as long as the developers have valid permits, even when there is documentation to the contrary. It seems that the company has neither examined the allegations of human rights violations related to the Belo Monte project nor assessed whether the mitigation measures have offset the dramatic consequences for those affected. In the Council on Ethics' view, this indicates that Eletrobras so far has failed to implement its own guidelines.

The Council on Ethics also gives weight to the fact that Eletrobras has been involved in other hydroelectric projects subject to criticism for human rights violations. Thus, Belo Monte is not an isolated case. Seen in conjunction with other hydroelectric projects, it paints a picture of a company that in general does not prioritize the protection of human rights. The company's considerable share in Brazil's power generation as well as its intention to take part in new hydroelectric projects lead the Council on Ethics to conclude that the risk of Eletrobras's continued contribution to serious or systematic human rights violations is unacceptable.

# Contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
1.1	Matters considered by the Council	1
1.1.1	Indigenous peoples' rights	2
1.1.2	Economic and social rights	3
1.1.3	Companies' involvement in human rights violations	4
1.2	Sources	5
<b>2</b>	<b>Background</b>	<b>6</b>
<b>3</b>	<b>The Council on Ethics' investigations of the Belo Monte project</b>	<b>7</b>
3.1	Impact on indigenous peoples	8
3.2	Consequences for other traditional communities	11
3.3	Reports from Brazil's Human Rights Council	12
3.4	Court decisions relating to the Belo Monte project	13
3.5	Criticism from international organizations	13
<b>4</b>	<b>Information provided by the company</b>	<b>14</b>
<b>5</b>	<b>The Council on Ethics' assessment</b>	<b>17</b>
<b>6</b>	<b>Recommendation</b>	<b>19</b>

# 1 Introduction

The Council on Ethics for the Government Pension Fund Global has assessed the Fund's investments in Centrais Elétricas Brasileiras SA (Eletrobras)<sup>1</sup> against the human rights criterion in the Guidelines for Observation and Exclusion from the GPF (Ethical Guidelines).<sup>2</sup> While focusing on Eletrobras's role in the Belo Monte dam project on the Xingu river in Brazil, the Council has also taken into account the company's role in other projects.

Eletrobras is engaged in power generation, transmission and distribution, controlling more than 30 per cent of Brazil's generating capacity. The Brazilian operations are handled by directly controlled subsidiaries that are part of a series of joint ventures. Currently, companies in the Eletrobras group have stakes in two ongoing hydroelectric power plant projects, Belo Monte and Sinop.<sup>3</sup> Eletrobras intends to participate in future hydroelectric power projects and is in charge of the environmental impact assessments for two power plants on the Tapajós river. Moreover, the company is involved in mapping the potential for further development of the Madeira river basin.<sup>4</sup>

Norte Energia was set up specifically for the Belo Monte project, which has had a significant negative impact on the living conditions of various indigenous groups. The project has also led to the forced relocation of at least 20,000 individuals. Through direct ownership and two wholly-owned subsidiaries, Eletrobras holds a 49.98 per cent stake in Norte Energia. The other owners have a maximum share of 10 per cent each.<sup>5</sup> In 2002 Eletrobras was responsible for the feasibility study of Belo Monte, as well as being in charge of the consortium that in 2005 commissioned a consultancy to prepare the impact assessment for the project.<sup>6</sup>

At year-end 2018, the GPF held shares worth NOK 705m in Eletrobras, corresponding to a 0.92 per cent ownership stake. The GPF also had NOK 176m in fixed income investments.<sup>7</sup> The company is listed on the stock exchanges of São Paulo, New York and Madrid, having the Brazilian state as its majority shareholder.<sup>8</sup>

## 1.1 Matters considered by the Council

The Council on Ethics has considered whether there is an unacceptable risk that Eletrobras “contributes to or is responsible for serious or systematic human rights violations” under section 3 (a) of the Ethical Guidelines. Its focus has been on the rights of indigenous peoples and on economic and social rights, in particular the right to health and a satisfactory living standard, including the right to water, sanitation and housing. The Council has assessed how the

---

<sup>1</sup> Issuer ID: 136110.

<sup>2</sup> The Guidelines are available at <https://nettsteder.regjeringen.no/etikkradet3/files/2019/12/guidelines-for-observation-and-exclusion-from-the-gpf-01.09.2019.pdf>

<sup>3</sup> Eletrobras, *Form 20-F, Securities and Exchange Commission, for the fiscal year ended December 2018*, p. 47, <https://eletrobras.com/en/ri/DemonstracoesFinanceiras/20-F%202018.pdf>.

<sup>4</sup> Eletrobras website, <https://eletrobras.com/en/Paginas/Energy-Generation.aspx>, (accessed 6 May 2019).

<sup>5</sup> Norte Energia website, <https://www.norteenergiasa.com.br/pt-br/ri/composicao-acionaria>, (accessed 6 May 2019).

<sup>6</sup> Aneel (Brazilian Electricity Regulatory Agency) information page on the Belo Monte Power Plant, [http://www2.aneel.gov.br/aplicacoes/hotsite\\_belomonte/index.cfm?p=7](http://www2.aneel.gov.br/aplicacoes/hotsite_belomonte/index.cfm?p=7), (accessed 11 April 2019).

<sup>7</sup> The Fund's holdings at year-end are available at the NBIM website, <https://www.nbim.no/no/oljefondet/beholdningene/beholdninger-per-31.12.2018/?fullsize=true>, (accessed 11 April 2019).

<sup>8</sup> *Form 20-F 2018*, Note 1 to the Financial Statements.

projects have been executed and their impact on affected groups. Its understanding of the Guidelines' criterion of *serious or systematic human rights violations* is based on internationally recognized conventions and authoritative interpretations of these. The Council has previously taken the position that if the human rights violations are serious, a limited number of violations may suffice to exclude a company from the Fund, whereas the violations need not be equally serious provided they are systematic. To qualify as systematic, the human rights violations must be substantial in scope. This may imply that they are numerous, that various types of rights are infringed, or that they occur in several company units, thus not appearing as isolated incidents but rather constituting a pattern of behaviour.

### 1.1.1 Indigenous peoples' rights

Covering the fundamental rights of the world's indigenous and tribal peoples (hereinafter referred to as indigenous peoples), the UN Declaration of 2007 on the Rights of Indigenous Peoples<sup>9</sup> and ILO Convention No. 169<sup>10</sup> constitute minimum standards to ensure the survival of indigenous peoples and their culture, dignity and welfare. Indigenous rights are based on existing universal human rights as enshrined in the International Covenant on Civil and Political Rights (ICCPR)<sup>11</sup> and in other international conventions, including the American Convention on Human Rights.<sup>12</sup>

ILO Convention 169 covers indigenous peoples' collective right to determine their cultural and economic development. Article 7 provides for indigenous peoples' right to decide their own priorities for the process of development as it affects their lives, their spiritual well-being and the lands they occupy or otherwise use, and, to the extent possible, exercise control over their own economic, social and cultural development. In addition, they should participate in the formulation, implementation and evaluation of development plans and programmes that may affect them directly. It is the authorities' responsibility to establish procedures ensuring this.

The right to land and resources is crucial to the survival of indigenous peoples and their culture. Article 13 recognizes indigenous peoples' collective cultural, spiritual and economic relationship with their lands, while Article 14 establishes indigenous peoples' rights of ownership and possession over the lands they traditionally occupy. The Convention further states that studies should be carried out, in cooperation with the peoples concerned, "*to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities*".<sup>13</sup>

According to the Inter-American Commission on Human Rights (IACHR), the right to land entails that indigenous peoples also "*have the right to be free from settlements or presence of third parties or non-indigenous colonizers within their territories*". This means that they must

---

<sup>9</sup> United Nations Declaration on the Rights of Indigenous Peoples, [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

<sup>10</sup> ILO Convention No. 169 on Indigenous and Tribal Peoples, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).

<sup>11</sup> UN Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>12</sup> American Convention on Human Rights, <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

<sup>13</sup> ILO 169, Article 7 (3).

be protected against such intrusion and that measures must be taken to move settlers out of the areas where necessary,<sup>14</sup> a requirement also established in Brazilian law.<sup>15</sup>

The right to be consulted is rooted in indigenous peoples' right to self-determination and is intended to ensure that their rights are protected, for example, in development projects. Article 32 of the Declaration on the Rights of Indigenous Peoples says: "*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources*". The duty to consult with indigenous peoples in order to obtain free, prior and informed consent (FPIC) is also enshrined in ILO Convention 169 (Articles 6 and 15), and the UN Expert Mechanism on the Rights of Indigenous Peoples stresses that FPIC is essential to ensure the right to self-determination, land, resources and culture.<sup>16</sup>

In an assessment from 2009, the UN Human Rights Committee establishes that participation in the decision-making process must be effective, requiring more than mere consultation. The Committee further states that "*the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members.*"<sup>17</sup> The right to FPIC is confirmed by various judgements from the Inter-American Court of Human Rights.<sup>18</sup>

### 1.1.2 Economic and social rights

From Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) follows the right to the "*highest attainable standard of physical and mental health*".<sup>19</sup> The Covenant stresses the importance of reducing infant mortality, improving hygiene and preventing, treating and controlling infectious diseases. A key element of the right to health is access to medical services for all. The UN Committee on Economic, Social and Cultural Rights, which monitors the Covenant, has also expressed that the right to health not only includes satisfactory medical services and institutions but also underlying conditions such as water, sanitation and housing.<sup>20, 21</sup>

The right to health is closely linked to ICESCR Article 11, which recognizes the right of all people to an adequate standard of living for themselves and their families, including adequate

---

<sup>14</sup> IACHR 30 December 2009, OEA/Ser.L/V/II, Doc 56/09, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources. Norms and jurisprudence of the Inter-American Human Rights System*, paras. 113–114, <https://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf>.

<sup>15</sup> Article 231 of the Brazilian Constitution, 2nd paragraph, [https://www.senado.leg.br/atividade/const/con1988/con1988\\_08.09.2016/art\\_231\\_.asp](https://www.senado.leg.br/atividade/const/con1988/con1988_08.09.2016/art_231_.asp), and decree 1775, section 4, [http://www.planalto.gov.br/ccivil\\_03/decreto/d1775.htm](http://www.planalto.gov.br/ccivil_03/decreto/d1775.htm).

<sup>16</sup> UN Council on Human Rights, Study of the Expert Mechanism on the Rights of Indigenous Peoples of 10 August 2018 A/HRC/39/62, *Free, prior and informed consent: a human rights-based approach*, section 19.

<sup>17</sup> UN Human Rights Committee, *Poma Poma v. Peru*, Comm. 1457/2006, U.N. Doc. CCPR/C/95/D/1457/2006 (HRC 2009), section 7.6, [http://www.worldcourts.com/hrc/eng/decisions/2009.03.27\\_Poma\\_Poma\\_v\\_Peru.htm](http://www.worldcourts.com/hrc/eng/decisions/2009.03.27_Poma_Poma_v_Peru.htm).

<sup>18</sup> E.g. Inter-American Court of Human Rights, *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 164, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf).

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

<sup>20</sup> UN Committee on Economic, Social and Cultural Rights (2000), *General Comment 14*, <https://www.refworld.org/pdfid/4538838d0.pdf>.

<sup>21</sup> Eide, Asbjørn (2006), *Retten til helse som menneskerettighet* in *Nordic Journal of Human Rights* 04/2006 (Volume 24) pp. 274–290, [https://www.idunn.no/ntmr/2006/04/retten\\_til\\_helse\\_som\\_menneskerettighet](https://www.idunn.no/ntmr/2006/04/retten_til_helse_som_menneskerettighet).

housing, as well as clean and safe drinking water and sanitation.<sup>22</sup> This also covers the treatment of sewage and wastewater.<sup>23</sup>

The right to housing contains freedom from forced evictions.<sup>24</sup> Regardless of their cause, forced evictions, meaning evictions without appropriate forms of legal or other protection, are considered a gross violation of the right to housing and will also often lead to other human rights violations. If eviction cannot be avoided, procedures must be put in place to reduce adverse effects. Steps must be taken to ensure real consultations with those affected, who must also be given reasonable notice.<sup>25</sup> In line with these principles, The UN Special Rapporteur on the right to adequate housing has designed guidelines to avoid human rights violations related to development-based evictions. The Guidelines point out that the evicted have a right to equal or better conditions than they had before, including access to health and education services. As regards compensation, the following is stated: “*Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.*”<sup>26</sup>

### 1.1.3 Companies’ involvement in human rights violations

Although international human rights conventions are binding on states, not companies, companies can be said to contribute to human rights violations. The Council on Ethics does not determine the extent to which a state is responsible for any human rights violations in a case. It is sufficient to establish that the company in question is acting in a way that would contribute to serious or systematic violations of internationally recognized human rights.<sup>27</sup> This applies irrespective of whether the state where the violations occur is party or not to the conventions against which the conduct is assessed.

In previous assessments of whether companies contribute to serious or systematic human rights violations, the Council has taken the position that there must be a visible connection between the company’s activities and the violations, and that these must have been committed with a view to serving the company’s interests or facilitating its operations.<sup>28</sup> Furthermore, the company must have contributed actively to or been aware of the violations without seeking to prevent them. Since the Ethical Guidelines are forward-looking, the violations must either be ongoing, or there must be an unacceptable risk that violations will occur in the future. The

---

<sup>22</sup> UN Committee on Economic, Social and Cultural Rights (2003), *General Comment No. 15: The Right to Water*, <https://www.refworld.org/pdfid/4538838d11.pdf>.

<sup>23</sup> UN Committee on Economic, Social and Cultural Rights (2011), *Statement on the Right to Sanitation*, section 8, <https://undocs.org/en/E/C.12/2010/1>, and the UN Special Rapporteur on the human right to safe drinking water and sanitation (2013), *Report of the Special Rapporteur on the human right to safe drinking water and sanitation*, paras. 20 and 21, <https://undocs.org/en/A/68/264>.

<sup>24</sup> UN Habitat, *The Right to Adequate Housing*, Fact Sheet No. 21/Rev. 1, p. 7, [https://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf).

<sup>25</sup> UN Committee on Economic, Social and Cultural Rights, *General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions*, [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>26</sup> UN Special Rapporteur on adequate housing, *Basic principles and guidelines on development-based evictions and displacement, Annex 1. A/HRC/4/18*, section 60, [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf).

<sup>27</sup> This is discussed in more detail in the Council on Ethics’ recommendation to exclude Wal-Mart Stores Inc., (2005), section 3.2, 15 November 2005, <https://etikkradet.no/files/2017/02/Tilr%C3%A5dning-WM-ENG.pdf>.

<sup>28</sup> E.g. the Council on Ethics’ recommendation regarding Total (2005), <https://etikkradet.no/files/2017/02/Total-ENG.pdf>.

Council considers that previous violations may give an indication of future patterns of behaviour.

When assessing a company's contribution to human rights violations, the Council on Ethics' basis includes the UN Guiding Principles on Business and Human Rights.<sup>29</sup> A company is expected to take independent responsibility for respecting human rights and evaluating the actual and potential adverse impacts of its activities on those affected by them. It must have strategies and procedures in place to help prevent human rights violations, in addition to examining the effectiveness of implemented measures and making any changes necessary to avoid that violations reoccur. Furthermore, companies must communicate externally how they work to prevent human rights violations in their operations. These principles are incorporated into the OECD Guidelines for Multinational Enterprises and the IFC Performance Standards. Standard 7, for instance, focuses on indigenous peoples, requiring companies to "*minimize negative impacts, foster respect for human rights, dignity and culture of indigenous populations, and promote development benefits in culturally appropriate ways. Informed consultation and participation with IPs [indigenous peoples] throughout the project process is a core requirement and may include Free, Prior and Informed Consent*".<sup>30</sup>

The UN Special Rapporteur on indigenous peoples also refers to the UN Guiding Principles for Business and Human Rights, underlining companies' independent responsibility to respect indigenous rights. According to the Special Rapporteur, companies cannot rely on compliance with national laws to safeguard indigenous rights, but must rather undertake due diligence and risk assessments on an independent basis to ensure that their operations do not constitute or contribute to rights violations.<sup>31</sup>

In the Council on Ethics' view, it falls on the company to prove that sufficient efforts are being made to prevent human rights violations.

## 1.2 Sources

The recommendation is based on assessments by Funai, i.e. the Brazilian National Indian Foundation, as well as Brazil's Human Rights Council, court decisions, the UN, the Interamerican Human Rights Commission, research communities, NGOs and media reports. Information about the Belo Monte hydroelectric power project has been obtained from Norte Energia's website and the impact assessment of environmental and social factors (EIA-RIMA, hereinafter called the impact assessment).

Moreover, the Council has engaged in correspondence with Eletrobras, which has provided information and also commented on a draft of this report. In addition, the Council has held a video conference with Eletrobras and Norte Energia.

---

<sup>29</sup> UN Guiding Principles on Business and Human Rights (2011), [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>30</sup> IFC Performance Standard 7, [https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/performance-standards/ps7](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps7), (accessed 7 May 2019).

<sup>31</sup> Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, *Extractive industries and indigenous peoples*, 1 July 2013, A/HRC/24/41.

## 2 Background

Several hydroelectric power projects in which Eletrobras is involved have been controversial. Allegations have been made of inadequate impact assessments, insufficient implementation of mitigation measures, destruction of important cultural values, forced relocation without adequate compensation and insufficient compensation for damage caused by flooding.

Table 1: Examples of hydroelectric power projects in which Eletrobras has a stake

Hydroelectric power plant <sup>32</sup>	Stake of Eletrobras group	Installed capacity MW	Accusations of human rights violations	In operation
São Manoel	33.3%	700	Violations of indigenous rights <sup>33</sup>	2017
Belo Monte	49.98%	11,233	Violations of indigenous rights Forced relocation of river people and other affected groups <sup>34</sup>	2016
Teles Pires	49.22%	1,820	Violations of indigenous rights <sup>35</sup>	2015
Santo Antônio	39%	3,568	Violations of indigenous rights Forced relocation <sup>36</sup>	2012
Jirau	40%	3,750	Violations of indigenous rights, including those of indigenous peoples in voluntary isolation <sup>37</sup>	2013

<sup>32</sup> Eletrobras, *Form 20-F, Securities and Exchange Commission, for the fiscal year ended December 2017*, pp. 45–66, <http://eletrobras.com/en/ri/DemonstracoesFinanceiras/20-F%202017.pdf>.

<sup>33</sup> Press release from the Federal Prosecution Service (MPF), 19 December 2018, <http://www.mpf.mp.br/mt/sala-de-imprensa/noticias-mpf-propoe-acao-civil-publica-para-suspender-efeitos-de-licenca-de-operacao-da-uhe-sao-manoel>, MPF press release, 10 December 2013, <http://www.mpf.mp.br/mt/sala-de-imprensa/noticias-mpf-sao-manoel-justica-suspende-leilao-de-usina-previsto-para-dezembro>, and *Hydroworld*, 18 July 2017, *Protestors shut down work on Brazil's 700-MW Sao Manoel hydroelectric plant*, <https://www.hydroworld.com/articles/2017/07/protestors-shut-down-work-on-brazil-s-700-mw-sao-manoel-hydroelectric-plant.html>.

<sup>34</sup> Philip M. Fearnside, 2017, *Brazil's Belo Monte Dam: Lessons of an Amazonian resource struggle*, in *Die Erde* 148 (2-3): 167–184.

<sup>35</sup> *Hydroworld*, 23 March 2013, *Court shuts down work at Brazil's 1.8 GW Teles Pires hydropower plant*, <https://www.hydroworld.com/articles/2013/09/court-shuts-down-work-at-brazil-s-1-8-gw-teles-pires-hydropower-plant.html>.

<sup>36</sup> *International Rivers*, 21 March 2012, *Comments on the Santo Antônio Hydropower Project Submitted to the Perry Johnson Registrars Carbon Emissions Services*, <https://www.internationalrivers.org/pt-br/node/3052>, (accessed 11 May 2019), MPF press release, 6 February 2012, <http://www.mpf.mp.br/ro/sala-de-imprensa/noticias-ro/mps-de-rondonia-firmam-tac-para-garantir-moradia-a-atingidos-por-erosoes-de-usina>.

<sup>37</sup> *Survival International*, 19 May 2010, <https://www.survivalinternational.org/news/5941>, (accessed 11 May 2019).

The impact assessment of a major project in the Tapajós river basin for which Eletrobras is the main responsible was also criticized in a report from August 2016 by the UN Special Rapporteur on indigenous peoples, who made the following remark about the dialogue with indigenous peoples: “*Instead of culturally appropriate prior consultations, individual households had allegedly been approached by a consulting firm employed by Grupo de Estudo Tapajós and offered compensation to abandon their opposition and debilitate indigenous collective decision-making in relation to the project. As in other projects, so-called public hearings were being conflated with the State duty to consult indigenous peoples. In addition, concerns had been expressed on the use of security forces to intimidate the Munduruku and other indigenous peoples opposed to the project.*”<sup>38</sup>

### 3 The Council on Ethics’ investigations of the Belo Monte project

The Belo Monte hydroelectric power plant is Brazil’s largest and the fourth largest in the world. It has been in partial operation since 2016 and is scheduled for completion in December 2019. Norte Energia’s licence expires in 2045.<sup>39</sup>

The Belo Monte project includes a dam on the Xingu river 40 km downstream from Altamira, a city of approximately 100,000 inhabitants. Some 100 km below the dam is the power plant itself, near the village of Belo Monte. A canal leads the water from the dam to the power plant. At each end of the canal a reservoir is formed, one in the direction of Altamira and the other down towards the power plant. The maximum water level by the power plant is just short of 100 metres above the original level. In the river stretch downstream of the dam, where the water runs in the canal to the power plant, the flow is reduced to a minimum.<sup>40</sup>

Ten indigenous territories are considered affected by the project. When the impact assessment was conducted in the period 2007–2009, these communities had populations of between 28 and 382 (see Figure 1). In addition, there are indigenous peoples living in or near Altamira.<sup>41</sup>

Four indigenous territories are directly affected by the project. Two of these are adjacent to the river stretch with reduced flow. Located between the river and the canal, the *Paquiçamba* indigenous territory belongs to the Yudjá people, whereas *Arara da Volta Grande* on the opposite riverbank belongs to the Arara indigenous group. A third indigenous territory, the *Trincheira/Bacajá*, is situated by a tributary and is populated by members of the Kayapó and Xikrin groups. Their access to Altamira goes through the river stretch with reduced flow. A fourth, smaller indigenous territory, *Juruna do Km 17*, is located near the power plant. Many indigenous families also live outside the regulated territories.

---

<sup>38</sup> Report of the UN Special Rapporteur on the rights of indigenous peoples, 8 August 2016, p. 12.

<sup>39</sup> Norte Energia’s Annual Report for 2017, <https://s3-sa-east-1.amazonaws.com/tcm-assets/norteenergia-pt-br/media/documents/attachments/source/20180516113723606-relatorio-anual-e-socioambiental-2017.pdf>.

<sup>40</sup> The project’s EIA, p. 39, [http://licenciamento.ibama.gov.br/Hidreletricas/Belo%20Monte%20-%202002001.001848\\_2006-75/EIA/Volume%2001%20-%20Caracteriza%e7%e3o%20do%20Empreendimento/TEXTO/EIA%20-%20Cap%edtulo%201.2.3%20e%204.pdf](http://licenciamento.ibama.gov.br/Hidreletricas/Belo%20Monte%20-%202002001.001848_2006-75/EIA/Volume%2001%20-%20Caracteriza%e7%e3o%20do%20Empreendimento/TEXTO/EIA%20-%20Cap%edtulo%201.2.3%20e%204.pdf).

<sup>41</sup> Funai, *Parecer técnico no 21, Análise do Componente Indígena dos Estudos de Impacto Ambiental*, pp. 15–27, 30 September 2009, (hereinafter called Funai 2009), available at [https://www.socioambiental.org/banco\\_imagens/pdfs/BeloMonteFUNAI.pdf](https://www.socioambiental.org/banco_imagens/pdfs/BeloMonteFUNAI.pdf).

Moreover, the Belo Monte project has consequences for people who do not define themselves as indigenous but have a traditional way of life. The urban population of Altamira is also affected. It was initially estimated that 20,000 people would have to move as a result of the project.<sup>42</sup>

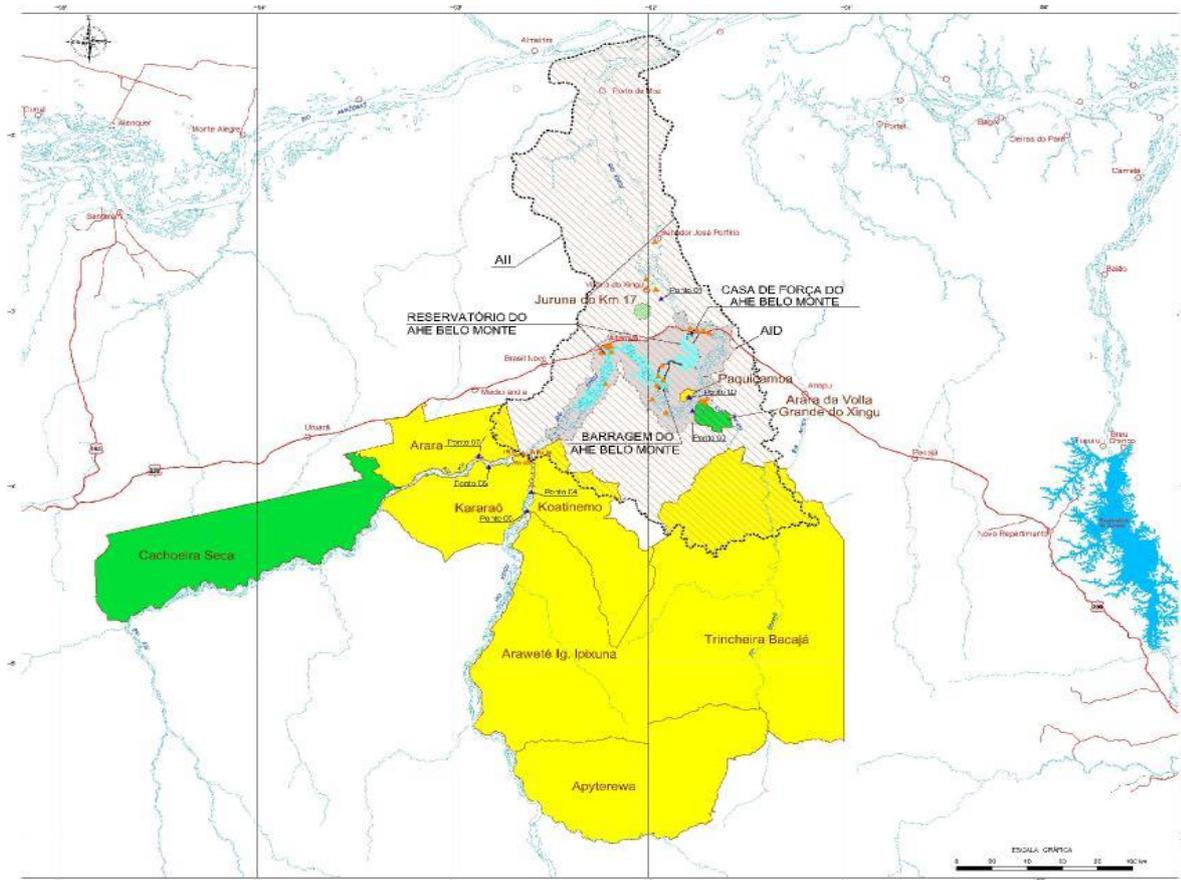


Figure 1 Indigenous lands affected by Belo Monte<sup>43</sup>

### 3.1 Impact on indigenous peoples

In Brazil, large hydroelectric power projects need approval from Ibama, the federal environmental agency, in three phases. Norte Energia was granted a provisional licence in 2010, a building permit in 2011 and an operating licence in 2015. Measures to mitigate adverse impacts, including on indigenous peoples, are part of the licencing conditions. The licencing process includes obtaining reports from Funai, which assesses whether the impact on indigenous peoples has been adequately investigated and makes recommendations. According to the impact assessment and the comments on this made by Funai in 2009, the negative consequences for indigenous peoples would only be contained if a detailed risk mitigation plan were implemented in parallel with the development. In more recent assessments, especially in the assessment prior to the operating licence of 2015, Funai has documented a series of deficiencies in the implementation of this plan.

<sup>42</sup> *Relatório de Impacto Ambiental*, p. 79, [http://licenciamento.ibama.gov.br/Hidreletricas/Belo%20Monte%20-%202002001.001848\\_2006-75/RIMA/Rima\\_AHE%20Belo%20Monte.pdf](http://licenciamento.ibama.gov.br/Hidreletricas/Belo%20Monte%20-%202002001.001848_2006-75/RIMA/Rima_AHE%20Belo%20Monte.pdf).

<sup>43</sup> Funai 2009, p. 28.

### *Funai's report from 2009*

Prior to the provisional licence, in 2009, Funai reviewed the indigenous report on which the impact assessment was based, making recommendations to Ibama. In its assessment, Funai mentioned concerns expressed by various indigenous groups that their areas would be invaded by outsiders and that their livelihoods would disappear. The indigenous peoples also feared exposure to diseases to which they had little resistance. A changed river course was another source of considerable concern, since the river has great cultural and spiritual significance.<sup>44</sup>

As stated by Funai, the means of subsistence for the indigenous peoples are hunting, fishing, gathering and agriculture. Fishing provides essential nourishment, but the indigenous communities also use the river as a transport artery to reach places where they gather forest produce, which is an important source of food and income. Reduced flow could lead to a decrease in the fish population, threatening the basis of existence for those affected. If the river were no longer navigable, three indigenous territories would be cut off from access to health services, education and markets in Altamira.

Funai pointed out that the influx of people in connection with the project could increase the pressure on indigenous areas, resulting in illegal logging, mining, poaching, cattle farming and fishing. At the same time, indigenous people might go to Altamira in search of better economic opportunities. Risks of ethnic conflict, disease, prostitution and drug use were also identified.

There are indigenous peoples living in the urban area of Altamira as well, whereas others alternate between living in the city and the indigenous territories. Besides the pressure due to population increase, the project's most serious consequence for these groups would be the displacement of parts of the city. Described as a vulnerable group, Altamira's indigenous population has loose ties to the formal labour market and its inclusion in government programmes is limited. Funai alerts to the risk of further marginalization of this group.

Funai's assessment concluded with a list of measures to protect indigenous territories from outside intrusion, bolster indigenous peoples' economic base and cultural identity, improve health services and education for indigenous peoples and strengthen public institutions, including indigenous peoples' own institutions. Consultation, the involvement of affected groups and information about the project were emphasized.<sup>45</sup> Funai also relied on Ibama to set a minimum flow requirement that would enable boat traffic and ensure spawning grounds and reproduction of fish and other aquatic organisms. It was assumed that the developer would guarantee all measures during the project's lifespan. Thus, various government agencies as well as Norte Energia are responsible for implementing measures, but the funding burden rests with the company. The measures include both immediate contingencies and long-term actions.

### *Funai's March 2015 assessment of the protection measures*

In December 2014, Norte Energia requested permission to make significant changes to the plan for immediate protection of indigenous territories. In its assessment of the request, Funai pointed out that by then most of the immediate measures were delayed by five years. These measures should have prevented an increase in outside pressure on the areas until a permanent action plan was in place. The company had failed to set up 12 of the 21 agreed monitoring units.<sup>46</sup> Funai also noted that this had been subject to judicial review, resulting in two legally

---

<sup>44</sup> Funai 2009, pp. 27–86.

<sup>45</sup> Funai 2009, pp. 87–99.

<sup>46</sup> Funai's assessment of the protection measures, *Parecer Técnico no 14/1015/cGMT-DPT-FUNAI-MJ*, p. 13, available at

enforceable judgements in 2013.<sup>47, 48</sup>

By then, unlawful logging, hunting, fishing and illegal settlements had been reported in most indigenous territories. Roads had been built without permission and loggers had been observed in areas that should have been monitored but in practice were not. Illegal mining had also been observed. Funai described a situation of high tension and risk of violent clashes.

*Funai's September 2015 assessment of the implementation of the licencing conditions' indigenous component in connection with the operating licence application*

In its September 2015 assessment of the application for an operating licence, Funai concluded that the indigenous component either had not been implemented or had been put into effect with great delay. Funai also reported that the indigenous peoples were against granting the operating licence, as the conditions for previous licences had not been met.<sup>49</sup>

To ensure that the affected indigenous peoples were given information and influence, Norte Energia was required to facilitate the involvement of local communities in various ways. According to Funai, committees were set up, but meetings were never convened, or the company failed to attend.<sup>50</sup> Moreover, the company provided deficient or contradictory information, blaming the authorities for issues within its own remit. The company's conduct contributed to an increase in the level of conflict, undermining Funai's ability to protect the indigenous peoples' interests.

To reduce opposition to the project, in 2009 Norte Energia introduced a system in which indigenous leaders could present lists of goods they wished to receive (e.g. boat engines, TV sets and consumer goods).<sup>51</sup> The fact that the company dealt with the village as an administrative unit in these transactions gave rise to a constant creation of new villages.<sup>52</sup> This undermined the original livelihoods and social structures, which were replaced by a "client society" making indigenous peoples dependent on access to consumer goods from Norte Energia. Goods could also be sold on to finance consumption banned from the lists, such as alcohol. When the system ended after four years in 2013, the communities' ability to subsist had been radically diminished.<sup>53</sup>

---

[http://www.consultaesic.cgu.gov.br/busca/dados/Lists/Pedido/Attachments/439329/RESPOSTA\\_RECURSO\\_1\\_Instituto%20Socioambiental%2003.pdf](http://www.consultaesic.cgu.gov.br/busca/dados/Lists/Pedido/Attachments/439329/RESPOSTA_RECURSO_1_Instituto%20Socioambiental%2003.pdf).

<sup>47</sup> Lawsuit no. 96.24.2013.4.01.3903, in which Norte Energia was ordered to build seven monitoring units, and public civil action (ACP) no. 655-78.2013.4.01.3903, in which Norte Energia and Funai were ordered to comply with the contingency plan and set a new timetable, something Funai did in June 2014. The last judgement can be found at [http://www.mpf.mp.br/pgr/documentos/FINALMPFEMDEFESADASTERRASINDGENAS\\_1\\_1.pdf](http://www.mpf.mp.br/pgr/documentos/FINALMPFEMDEFESADASTERRASINDGENAS_1_1.pdf).

<sup>48</sup> Regarding compliance with the licencing conditions when it comes to the protection of indigenous lands, see also report by Fundação Getúlio Vargas from July 2015, [http://indicadoresdebelomonte.eco.br/attachments/06febf7415c4bce0e6d78511fbbc713a880119b7/store/7a2d2b6fdc74661fbc65dfc75e00bb658c37196d840b7e87615d7721fd62/MapadosCaminhos\\_ProtecaoTerritorialIndigena\\_jul15.pdf](http://indicadoresdebelomonte.eco.br/attachments/06febf7415c4bce0e6d78511fbbc713a880119b7/store/7a2d2b6fdc74661fbc65dfc75e00bb658c37196d840b7e87615d7721fd62/MapadosCaminhos_ProtecaoTerritorialIndigena_jul15.pdf).

<sup>49</sup> Funai's assessment prior to the operating licence (hereinafter called Funai 2015), *Informação nº 223 /2015/CGLIC/DPDS/FUNAI-MJ*, pp. 414–415, <http://www.funai.gov.br/arquivos/conteudo/ascom/2015/img/11-nov/analisetecnica.pdf>.

<sup>50</sup> Funai 2015, pp. 39–40.

<sup>51</sup> Funai 2015, p. 43.

<sup>52</sup> Funai 2015, p. 408.

<sup>53</sup> Public civil action no. 003017-82.2015.4.01.3903, pp. 46–47, [http://www.prpa.mpf.mp.br/news/2015/arquivos/ACP\\_Belo\\_Monte\\_Componente\\_Indigena\\_2.pdf](http://www.prpa.mpf.mp.br/news/2015/arquivos/ACP_Belo_Monte_Componente_Indigena_2.pdf). The lawsuit refers to an anthropological report that describes how the system worked.

Sesai, the Special Secretariat for Indigenous Health, analysed the implementation of health measures in March 2014, concluding that a number of measures for which the company was responsible had not been put into effect, one example being that the strengthening of local health services for indigenous groups did not take place in accordance with the agreed plan.<sup>54</sup>

Funai also claimed that Norte Energia, after the building permit had been granted, tried to evade responsibilities that were a prerequisite for the permit and to which it had previously committed.<sup>55</sup> Only after a court order in 2015 did the company move the indigenous area of *Juruna do Km 17*, something that should have been done before the construction work began.<sup>56</sup>

In its final assessment Funai stated that all anticipated impacts had already occurred or were ongoing and that the proposed measures either had not been implemented or had only just started. Funai also said that the poor implementation quality of the measures resulted in an inadequate response to the expected adverse effects.<sup>57</sup>

### 3.2 Consequences for other traditional communities

In June 2015, a commission of representatives from Brazilian government agencies examined how the forced relocation of traditional communities living on islands in the Xingu river had taken place and the impact it had had on these groups.<sup>58</sup> Their report concluded that there was an immediate risk of serious human rights violations and that Norte Energia had not met the licencing conditions.<sup>59</sup> The authorities immediately suspended the forced relocation.<sup>60</sup>

The report focuses on the so-called *ribeirinhos* (river people), who divide their time between settlements on the river islands and dwellings in Altamira city. Their means of subsistence are hunting and fishing. They sell their produce in the city, where they also have access to education and health services. According to the report, an explicit requirement for the approval of the company's environmental plan was that these groups should be guaranteed the same, or better, living conditions than before.

The report cites various interviews with river people who said that Norte Energia had forced them to choose whether they were to be considered city or riverside dwellers, i.e. they had to choose between maintaining their economic base by the river and having access to markets and public services in the city. River people who made a living from fishing had been offered alternative settlement far from the river. Families, including indigenous families, had been split, and where compensation had been paid, there were inexplicable differences in the amounts. The company is also said to have taken advantage of its negotiating position vis-à-vis the river people, many of whom are illiterate. Family groups who had always lived together on the same island were called in to negotiate individually, resulting in different solutions in each case. Furthermore, the report says that no real negotiation process was observed, only a unilateral

---

<sup>54</sup> Funai 2015, pp. 165–181, quoted from Sesai's assessment *Parecer no 57/2015/diprosi/dasi/sesai/MS*.

<sup>55</sup> Funai 2015, pp. 407–408.

<sup>56</sup> Funai 2015, pp. 44–46.

<sup>57</sup> Funai 2015, p. 404.

<sup>58</sup> MPF, Brazil's Human Rights Council (CNDH), Ibama and Funai were among the participating entities. The report is available at [http://www.prpa.mpf.mp.br/news/2015/arquivos/Relatorio\\_inspecao\\_ribeirinhos\\_Belo\\_Monte\\_junho\\_2015.pdf](http://www.prpa.mpf.mp.br/news/2015/arquivos/Relatorio_inspecao_ribeirinhos_Belo_Monte_junho_2015.pdf).

<sup>59</sup> The Guardian, 6 February 2018, *They owned an island, now they are urban poor: the tragedy of Altamira*, <https://www.theguardian.com/cities/2018/feb/06/urban-poor-tragedy-altamira-belo-monte-brazil>.

<sup>60</sup> CNDH, December 2015, *Relatório da missão do CNDH em relação à população atingida pela implementação da UHE Belo Monte* (hereinafter CNDH 2015), p. 59, <https://www2.mppa.mp.br/sistemas/gcsubsites/upload/41/relatorio-missao-belo-monte-cndh.pdf>.

proposal from Norte Energia, which the affected parties were summoned to endorse, facing expropriation as the alternative.

### 3.3 Reports from Brazil's Human Rights Council

Brazil's National Human Rights Council (CNDH) took part in the visit to Altamira and Belo Monte in 2015. Its inspection report concluded that both indigenous and river peoples' rights were being violated. The CNDH cites conversations in which those affected said that they had been threatened with losing everything they owned if they did not accept the compensation offered by the company. People who were not at home when the company made its surveys and appraisals were under the impression that they would not receive compensation since they were not registered. Affected parties were not given prior notice of visits nor information about the appraised value afterwards. Moreover, public services such as sewage treatment and schools had not been established in the areas to which they were relocated.<sup>61</sup> Conversations that the CNDH had with supervisory authorities confirmed that the way in which the forced relocation had occurred did not allow the river people to maintain their living conditions.<sup>62</sup>

In October 2016, the CNDH returned to Altamira to follow up on the situation. It found that the measures aimed at indigenous peoples and evicted river people were still far behind schedule, citing problems related to sewage and water supply, the protection of indigenous territories and access to education, public transport and health services.<sup>63</sup> The National Human Rights Council also pointed out the failure to recognize some groups affected by the project, thus depriving them of their rights, including the right to relocation. It cautioned that these people found themselves in an unsustainable situation, lacking even clean drinking water.<sup>64</sup>

In February 2019, the CNDH also participated in a visit to Volta Grande with several other government agencies, calling attention to the very difficult conditions the population of Volta Grande is living under.<sup>65</sup> According to a Federal Prosecution Service press release from the inspection, great variations in the water flow have led to fish death and reduced the possibility of using the river as a transport route, which also affects the food security in the area.<sup>66</sup>

The flow in Volta Grande is critical to the indigenous peoples' lives and conditions now that the power plant is in operation. In parallel with the monitoring that Norte Energia is required to provide, the Yudjá people from the Miratu village in Paquiçamba have organised their own monitoring of the river. Their report for 2017 shows that the catches they made were significantly altered in both volume and composition, resulting in a considerable decline in fish consumption.<sup>67</sup> According to Norte Energia, the monitoring reports submitted by the company

---

<sup>61</sup> CNDH 2015, pp. 23–31.

<sup>62</sup> CNDH 2015, pp. 31–37.

<sup>63</sup> CNDH, *Direitos da população atingida pela implementação da Usina Hidrelétrica de Belo Monte e da Mineradora Belo Sun* (hereinafter CNDH 2017), available at <http://www.mdh.gov.br/informacao-ao-cidadao/participacao-social/conselho-nacional-de-direitos-humanos-cndh/relatorios>. See for example page 36.

<sup>64</sup> CNDH 2017, pp. 47–61.

<sup>65</sup> CNDH press release, 27 February 2019, <https://www.mdh.gov.br/todas-as-noticias/2019/fevereiro/cndh-integra-vistoria-a-volta-grande-do-rio-xingu-no-para>.

<sup>66</sup> MPF press release, 28 February 2018, <http://www.mpf.mp.br/pgr/noticias-pgr/depois-da-barragem-vistoria-na-volta-grande-do-xingu-revela-abandono-e-penuria-das-comunidades-que-sofrem-os-danos-mais-graves-de-belo-monte>.

<sup>67</sup> Independent monitoring report from 2018, *Xingu, o rio que pulsa em nós*, [https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/ningu\\_o\\_rio\\_que\\_pulsa\\_em\\_nos.pdf](https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/ningu_o_rio_que_pulsa_em_nos.pdf).

to Ibama do not show changes in the fish stocks caused by the project and that the amount of fish so far has not been reduced, even if the species distribution is somewhat altered.<sup>68</sup>

### 3.4 Court decisions relating to the Belo Monte project

Norte Energia has had its operating licence and building permit suspended by Brazilian courts several times due to non-compliance with the licencing conditions, most recently in September 2017, following a lawsuit about replacement housing and other services for the displaced.<sup>69</sup> In April 2017 the operating licence was suspended, this time because of delays in the construction of a water and sewerage system in Altamira. The suspension was later reversed by a higher court on the grounds that it was in the public interest to continue the project, but the orders to complete the water and sewerage facilities were upheld.<sup>70</sup>

In a number of other lawsuits, Norte Energia has been ordered to implement measures under its obligations, including building infrastructure to protect indigenous territories.<sup>71</sup> The latest court decision, in which Norte Energia was fined BRL 900,000, was delivered in November 2018 and relates to considerable delays in the strengthening of Funai.<sup>72</sup> There are still several lawsuits pending before the courts. The most recent case brought by prosecutors dates from November 2016, claiming insufficient monitoring of the fish resources.<sup>73</sup> Norte Energia has also been subject to more than 30 administrative sanctions for violating the licencing conditions, with fines totalling some BRL 80m.<sup>74</sup>

### 3.5 Criticism from international organizations

In December 2015 the Inter-American Commission on Human Rights (IACHR) opened a case against Brazil because of the Belo Monte project.<sup>75</sup> In its press release following a visit to Brazil in 2018, the Commission explicitly mentions an indigenous community that is suffering the environmental impact of the Belo Monte project.<sup>76</sup> As early as in 2011 the Commission

---

<sup>68</sup> Information provided in a video call with the Council on Ethics.

<sup>69</sup> Mongabay, 19 September 2017, <https://news.mongabay.com/2017/09/belo-monte-dam-installation-license-suspended-housing-inadequacy-cited/>, MPF press release of 22 September 2017 about authorizing the use of police force to halt the project, <http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/tribunal-autoriza-uso-de-forca-policial-para-paralisar-obras-de-belo-monte>.

<sup>70</sup> Hydroworld, 7 April 2017: <https://www.hydroworld.com/articles/2017/04/court-suspends-11-2-gw-belo-monte-hydropower-plant-s-operating-license.html>.

<sup>71</sup> Court documents relating to Belo Monte are available at [https://docs.google.com/spreadsheets/d/1cqfQ\\_9lswBRGv\\_LI42gj-qDRvz51oCcH9JjBZf-Xlck/edit#gid=1305259133](https://docs.google.com/spreadsheets/d/1cqfQ_9lswBRGv_LI42gj-qDRvz51oCcH9JjBZf-Xlck/edit#gid=1305259133).

<sup>72</sup> MPF press release, 21 November 2018, <http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/justica-multa-norte-energia-e-uniao-em-r-1-8-mi-por-atraso-em-condicionante-indigena-de-belo-monte>.

<sup>73</sup> MPF press release, 28 November 2016, <http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/mpf-pede-suspensao-da-licenca-de-belo-monte-ate-que-impactos-a-pesca-sejam-atenuados>.

<sup>74</sup> Ibama press release, 27 April 2017, <http://www.ibama.gov.br/noticias/422-2017/1071-norte-energia-e-autuada-em-r-7-5-milhoes-e-recebe-multas-diarias-de-r-810-mil-por-descumprir-exigencias-do-licenciamento-de-belo-monte>.

<sup>75</sup> Amazon Watch, 7 January 2016: <http://amazonwatch.org/news/2016/0107-iachr-opens-case-against-brazil-for-human-rights-violations-related-to-belo-monte-dam>.

<sup>76</sup> IACHR press release, 12 November 2018, conclusion 18.a, [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/238.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/238.asp).

instructed Brazil to introduce so-called “*precautionary measures*” for the Xingu river basin.<sup>77</sup> *Precautionary measures* are the instrument that the Commission may use if there is a serious and imminent risk of irreparable harm to persons or to the object of urgent human rights cases.

In 2016 the UN Working Group on human rights and transnational corporations as well as the UN Special Rapporteur on the rights of indigenous peoples visited Altamira. The Working Group points out that both the Federal Prosecution Service (MPF) and Funai in 2015 advised against granting Norte Energia the operating licence, as the licencing conditions to mitigate adverse social and environmental impacts had not been met.<sup>78</sup>

The report further states that the indigenous peoples in the area “[...] *had received no information nor had they been consulted on their resettlement and residents were concerned that the dam would flood their houses and that they would have nowhere to go.*”

Similar observations were made by the UN Special Rapporteur on the rights of indigenous peoples during her visit: “*Community members and their representatives rejected the notion that the Government or Norte Energia had adequately consulted them or informed them of the potential impacts during any of the phases of the project. They said that public hearings on the project were grossly inadequate compared with the standard of consultation provided for in ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples and explained that no efforts had been made to obtain their free, prior and informed consent and no opportunities had been provided for their participation in decision-making. The Special Rapporteur was also informed that adequate impact assessments had not been conducted or shared.*”<sup>79</sup>

Her report goes on to say: “*The Special Rapporteur was particularly alarmed to learn that mitigation measures and enabling conditions identified as necessary for the project to proceed had not been implemented, which compounded the serious impacts on indigenous peoples’ lives and rights. The demarcation of Cachoeira Seca indigenous lands as well as regularization and full protection of Apyterewa and Paquiçamba indigenous lands had not proceeded in accordance with the agreed time frames. Adequate compensation had not been provided for loss of livelihoods, nor had participatory monitoring units to protect indigenous lands been established and the local FUNAI has been weakened rather than strengthened.*”

## **4 Information provided by the company**

The Council on Ethics has corresponded with Eletrobras several times from the autumn of 2017 until March 2019. A video conference was also held between Eletrobras, Norte Energia and the Council on Ethics in February 2019. Moreover, the Council has obtained information from reports available on the companies’ websites.

*Eletrobras’s letters of 1 February 2018 and 15 March 2018*

In these letters, Eletrobras answers specific questions from the Council on Ethics about its efforts to ensure that human rights are respected and about projects in which it is involved.

---

<sup>77</sup> IACHR, 2011, *PM 382/10 Indigenous Communities of the Xingu River Basin, Pará, Brazil*, available at <https://www.oas.org/en/iachr/decisions/precautionary.asp>.

<sup>78</sup> Report issued by the UN Working Group on human rights and transnational corporations and other business enterprises after its visit to Brazil, 12 May 2016.

<sup>79</sup> Report from the UN Special Rapporteur on the rights of indigenous peoples, 8 August 2016.

Eletrobras finds the allegations in the report of the UN Working Group on human rights and transnational corporations inapt, citing a statement from Ibama in connection with the IACHR's "precautionary measures" of 2011 which says that indigenous peoples have been consulted on the subject of Belo Monte in accordance with ILO Convention 169. The company explains that in the period 2007–2010 indigenous communities were involved through meetings in various fora, maintaining that consultations with indigenous peoples is the government's responsibility. The company argues that hydroelectric power projects are subject to regulations, requiring impact assessments, compensation and mitigation measures, and says that indigenous rights are respected when one complies with the law. Regarding Belo Monte, Tapajós and the dams on the Teles Pires river, Eletrobras claims that everything has been done in accordance with laws and government orders and that indigenous rights have been protected throughout the process.

As for the river people, Eletrobras states that the impact assessment did not prescribe a need for special treatment in their case. It was only in the 2015 operating licence that specific conditions were imposed to guarantee the river people access to two dwellings. Eletrobras points out that Ibama has never fined or penalized the company for violations of the river people's rights, nor has the prosecuting authority filed any lawsuits to this effect.

*Eletrobras's letter of 12 December 2018 and subsequent video meeting*

In November 2018 the Council on Ethics requested comments on a draft recommendation for the exclusion from the GPF. In its reply, Eletrobras emphasizes the positive effects of the Belo Monte project, including that the proportion of Altamira's population living under the poverty line was reduced from 25 to 5 per cent in the period 2010–2015, and that in 2017 there was no longer malaria in the area.

The company argues that Belo Monte is a very complex project involving 11 indigenous territories and 9 peoples. Various government agencies are responsible for monitoring and combating environmental crime in the indigenous territories, removing non-indigenous persons from these territories and ensuring permanent ownership of them. In Eletrobras's view, Norte Energia cannot be held responsible for measures that fall within the remit of the government, even if these are part of the project's environmental plan.

Eletrobras stresses that it operates in strict compliance with the law and is committed to improving its practices based on its own ethical guidelines, corporate policy and other agreements it has signed, including the *Global Compact*. The company's *Social Responsibility Policy* from May 2016 refers to the *Global Compact* and *UN Guiding Principles on Business and Human Rights*.<sup>80</sup> Its ethical guidelines of 2018 also include human rights,<sup>81</sup> while the environmental guidelines from 2016 cover relocation and dialogue with those affected.<sup>82</sup> According to the annual report for 2017, the company's environmental committee is drawing up special guidelines for relations with indigenous peoples; however, in May 2019, these had not yet been published. Subsidiaries and joint ventures in which Eletrobras has a stake are required to implement the company's policies. In the video meeting, Eletrobras announced that it is

---

<sup>80</sup> Eletrobras guidelines for social responsibility of 2 May 2016, [http://eletrobras.com/pt/GestaoeGovernancaCorporativa/Estatutos\\_politicas\\_manuais/Pol%C3%ADtica-de-Responsabilidade-Social-das-Empresas-Eletrobras.pdf](http://eletrobras.com/pt/GestaoeGovernancaCorporativa/Estatutos_politicas_manuais/Pol%C3%ADtica-de-Responsabilidade-Social-das-Empresas-Eletrobras.pdf).

<sup>81</sup> Ethical guidelines approved by the board of Eletrobras on 30 November 2018, [http://eletrobras.com/pt/Documents/C%C3%B3digo\\_de\\_Conduta\\_%C3%89tica\\_e\\_Integridade\\_2018.pdf](http://eletrobras.com/pt/Documents/C%C3%B3digo_de_Conduta_%C3%89tica_e_Integridade_2018.pdf).

<sup>82</sup> Eletrobras environmental policy of 4 January 2016, [http://eletrobras.com/pt/GestaoeGovernancaCorporativa/Estatutos\\_politicas\\_manuais/Politica-Ambiental.pdf](http://eletrobras.com/pt/GestaoeGovernancaCorporativa/Estatutos_politicas_manuais/Politica-Ambiental.pdf).

providing human rights training and will make risk assessments of human rights violations but that these efforts are in an initial phase.

Moreover, Eletrobras refers to data and information on social and environmental conditions presented in the annual report for 2017, in which the company states that it seeks to facilitate dialogue with traditional communities in the areas where it operates and that *“as a rule of conduct, Eletrobras companies comply with legal requirements to repair damages caused to the indigenous communities from the implementation of electric power generation and transmission line projects, in addition to support cultural development projects at those communities.”*<sup>83</sup> The company offers examples of joint projects with indigenous peoples but does not mention the negative impact that companies in the Eletrobras group have on the lives and conditions of indigenous peoples. It reports that in 2017 there were no *“incidents of violations involving rights of indigenous and traditional peoples in the Eletrobras companies’ ombudsmen.”*<sup>84</sup>

Reiterating that the Belo Monte project has adhered to all laws and regulations, Eletrobras says: *“It is also important to bear in mind that since the provisional licence was granted, Norte Energia has not failed any obligation to implement mitigation measures and preserve and protect indigenous and non-indigenous peoples, being a chief actor in all areas (education, health, infrastructure, social and environmental monitoring) in the region from 2011 until the present. The Belo Monte power plant has thus been duly approved and has a valid operating licence.”* The company states that the project’s indigenous plan is reviewed and revised every five years. Hence, in 2019 it will assess and update the overview of impacts, measures and results. A plan for consultation with indigenous peoples will also be included in the evaluation.

Regarding the dialogue with indigenous communities, Eletrobras cites various dialogue processes said to have ensured information and participation for these groups. Stressing that Norte Energia has changed its approach in relation to indigenous peoples, the company states: *“To facilitate the discussion of the issues and provide broader representation of leaders and ethnic groups, subcommittees have been set up in the villages of each indigenous territory with a view to discussing matters relevant to each territory and contributing to the discussions at the Indigenous Steering Committee’s meetings. Norte Energia’s current management has placed great value on participation in these committees and has invested competently in its relationship with the indigenous peoples of the area affected by the project.”*

About the forced relocation of river people, Eletrobras says that the reports criticizing Norte Energia’s process do not accurately portray the company’s conduct, arguing that there has been a systematic process to identify those affected, appraise properties, assess options and negotiate with the target group. Moreover, the company mentions that two specific projects have been established within the framework of the environmental plan to improve the situation of the displaced river people. Eletrobras also describes a process of dialogue with this group aimed at reviewing the treatment they have received, in light of the negative reports from 2015.

Eletrobras exerts influence over Norte Energia through board participation. In the video meeting the Council learned that Norte Energia came under new management in 2017 and that an anthropologist responsible for the dialogue with indigenous groups had been hired. The new management has been requested to strengthen efforts on the social aspects of the project but the change in management was not occasioned by the criticism regarding human rights violations.

---

<sup>83</sup> Eletrobras’s annual report for 2017, p. 119, <https://eletrobras.com/en/SobreaEletrobras/Annual-Report-2017.pdf>.

<sup>84</sup> Eletrobras’s annual report for 2017, p. 122.

Neither in letters nor in the video meeting with the Council has Eletrobras stated whether it has conducted its own investigations to establish if human rights violations have occurred in connection with the Belo Monte project.

## **5 The Council on Ethics' assessment**

The Council on Ethics has assessed whether Eletrobras should be excluded from the GPFG due to an unacceptable risk of breaching the Ethical Guidelines' section 3 (a) regarding contribution to serious or systematic human rights violations. The Ethical Guidelines are forward-looking and there must either be ongoing norm violations or an unacceptable risk that violations will occur in the future. In line with previous practice, the Council on Ethics takes the position that the company's past conduct may give an indication of future patterns of behaviour. The assessment has mainly been made on the basis of information about the Belo Monte project and the company's handling of this, but the Council has also attached importance to other hydroelectric power projects in which the company has taken part. Moreover, its business model suggests that the company will be exposed to similar issues also in the future.

Eletrobras is the majority shareholder in Norte Energia, which owns the Belo Monte power plant, and was also central to the planning before Norte Energia was awarded the project. Thus, the Council on Ethics takes the position that Eletrobras has a direct responsibility for all phases of the Belo Monte development.

The Council on Ethics stresses that human rights violations in connection with Belo Monte have been documented by Brazilian authorities and international organizations in several reports. According to Funai and various UN agencies, the project has resulted in the disintegration of indigenous peoples' social structures and the destruction of their livelihoods. It is also well documented that the project has led to settler intrusion on indigenous territories, causing increased pressure on natural resources through illegal hunting, fishing, mining, logging and cattle farming.

Having noted that in Eletrobras's view the environmental plan drawn up in connection with the impact assessment guarantees the protection of indigenous rights, the Council attaches great importance to the fact that the environmental plan has not been adhered to, as shown by Funai's reviews of the measures. It seems particularly alarming that the protective measures intended to be implemented before the construction work started were severely delayed or not completed. The Council on Ethics believes that the company thus has contributed to the violation of indigenous peoples' right to land and resources.

In the Council on Ethics' opinion, it has not been documented that the indigenous peoples have given their consent to Belo Monte project. When the project nevertheless is carried through, it becomes especially important that the indigenous peoples are heard in all phases and that measures are implemented in a way which ensures their right to make decisions in matters concerning them. Norte Energia's consultation with indigenous peoples has been subject to strong criticism including from Funai and Brazil's Human Rights Council. Regardless of the quality of the consultation process, the Council on Ethics believes that consultations have little value if the measures agreed upon are not carried out. The Council therefore finds that Norte Energia has failed to respect the right of indigenous peoples to self-determination and consultations, both through insufficient consultation processes and through an inadequate implementation of the environmental plan.

The river people, who used to live on islands and riverbanks, have also been victims of human rights violations through the Belo Monte project. Many have been displaced without

consultation and without the possibility to maintain their living conditions. Forced relocation was also carried out before the necessary infrastructure was in place, including a functioning sewerage system, public transport and schools. Since Eletrobras has played a central role in both the planning of the project and the impact assessment, the Council on Ethics does not attach importance to the company's arguments that the river people's special characteristics and need for protection had not been adequately addressed in the impact assessment.

It is also documented, including in a report by Brazil's National Human Rights Council, that Norte Energia or its representatives gained the river people's acceptance under threats or based on deficient information. Moreover, the compensation originally awarded was not sufficient for them to maintain or improve their situation or living standard, as required by the UN guidelines for relocation. The Council on Ethics therefore finds that the forced relocation, at least as it was carried out until the authorities intervened in mid-2015, represented a serious violation of the right to housing.

The right to health and a satisfactory standard of living, including the right to water, sanitation and housing, was also violated for people living in poor neighbourhoods in Altamira not initially considered affected by the project. These neighbourhoods were not included when the new water and sewerage system was built and neither were the residents offered relocation, despite being severely affected by the project through an acute shortage of clean water.

Eletrobras points out that Norte Energia has abided by all laws and licencing conditions, and that this has been proven because the company has been granted an operating permit. The Council on Ethics believes that Eletrobras here paints a distorted picture of the situation, emphasizing that Norte Energia has lost several lawsuits and has also been fined more than thirty times for breaches of the licencing conditions. The fact that neither Eletrobras nor Norte Energia have reported problems in the implementation of the environmental measures further contributes to undermine the credibility of the information from the companies.

Although Norte Energia gradually has carried out several of the measures required by the Belo Monte licence, the Council on Ethics does not believe that the implemented measures are sufficient. The living conditions in some of the indigenous territories, especially the ones suffering the impact of reduced river flow, are still very poor and the conflict surrounding forced relocation and compensation to those affected has not yet been resolved.

Despite basing its social responsibility guidelines on the UN Guiding Principles on Business and Human Rights, Eletrobras gives little account of the activities it has carried out to ensure compliance with the guidelines in practice. The company claims that human rights are protected as long as the developers have valid licences, even when documentation shows that this is not the case. According to the company, it has not investigated the allegations of human rights violations in connection with Belo Monte or whether mitigation measures have compensated for the dramatic impact on those affected. In the Council on Ethics' view, this indicates that Eletrobras so far has not implemented its own guidelines.

The Council on Ethics also emphasizes that Eletrobras has participated in other hydroelectric power projects subject to criticism for human rights violations. Rather than being an isolated case, Belo Monte, together with other hydroelectric power projects, therefore paints a picture of Eletrobras in general as not prioritizing the protection of human rights. The company's considerable share of Brazil's power generation as well as its intention to take part in more power projects lead the Council on Ethics to conclude that the risk of Eletrobras contributing to serious or systematic human rights violations is unacceptable.

## 6 Recommendation

The Council on Ethics recommends that Eletrobras be excluded from the GPFG due to an unacceptable risk that the company contributes to serious or systematic human rights violations.

\*\*\*

Johan H. Andresen Chair (sign.)	Hans Chr. Bugge (sign.)	Cecilie Hellestveit (sign.)	Trude Myklebust (sign.)	Brit K. S. Rugland (sign.)
---------------------------------------	----------------------------	--------------------------------	----------------------------	-------------------------------