

# The Yanomami Crisis: Indigenous Sovereignty, Unauthorized Incursions, and International Responses

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**ABSTRACT:** The Yanomami Indigenous Territory (TI) exemplifies the paradox of Indigenous self-determination within the Westphalian paradigm, which subjects Indigenous right to autonomy to the will of autonomous States. While Brazil's 1988 Constitution guarantees Indigenous peoples' exclusive rights to their territories, the humanitarian crisis in the Yanomami TI demonstrates crucial gaps between legal provisions and their application. Departing from this internal systemic failure in enforcement, this paper shifts the discussion to the responses of international institutions such as the United Nations (UN), the International Criminal Court (ICC), and the Inter-American Commission on Human Rights (IACHR), to the unauthorized incursions in Yanomami territory and the human rights abuses that followed. The article defends that, despite efforts by the UN and IACHR to address state neglect and violations of Indigenous rights, their actions were constrained by political resistance and noncompliance from Bolsonaro's administration. As to the ICC, the Office of the Prosecutor (OTP) has yet to render a decision at the time of writing on whether to initiate a preliminary examination on government officials, with skepticism remaining high regarding the potential for any substantive action. By reframing incursions into Indigenous territories as a form of unregulated migration, this paper highlights the contradictions in the international system's approach to mobility and sovereignty. It argues that the State-centric framework of international law perpetuates colonial legacies, leaving Indigenous nations vulnerable to extractivist exploitation, systemic neglect, and violence. Finally, the paper also underscores the urgent need for a paradigm shift to ensure meaningful Indigenous self-determination and protection.

## 1. Introduction

Indigenous peoples' self-determination is constrained in a paradox: while the concept underscores the Indigenous right to autonomy, its realization is fundamentally dependent on the compliance of autonomous (and internationally recognized) nation-states.<sup>1</sup> The Westphalian system, crystallized by the Treaty of Westphalia (1648) and current status quo, positions states as the primary actors in international relations, granting them complete and exclusive jurisdiction within their borders.<sup>2</sup> This framework creates a disconnect between the pragmatic reality and the semantic interpretation of "international relations." While the term suggests interactions between nations, it pragmatically refers to relations between nation-states subscribing to the Westphalian model. Consequently, international law's state-centric foundation marginalizes non-state Indigenous nations, relegating the realization of their right to self-determination to "legitimate" duty-bearers, namely, States.

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<sup>1</sup> BAUDER, Harald. *From Sovereignty to Solidarity: Rethinking Human Migration*. Oxford, UNITED KINGDOM: Taylor & Francis Group, 2022. 23 p.

<sup>2</sup> *Ibid.*, p. 29.

The use of the territorial nation-state as an epistemological foundation is evident in the way (international) migration is often understood as mobility between states, rather than between nations within the same state. This perspective reaffirms the principles of Westphalian sovereignty, particularly its norms of territorial control and domestic authority.<sup>3</sup> Notwithstanding, such an understanding erases Indigenous notions of land, mobility, and belonging, which often transcend the rigid territorial boundaries imposed by the nation-state.

The subjection of Indigenous self-determination to State authority is partly rooted in the historical entanglement of self-determination with the mid-20th-century decolonization movements in Africa and Asia.<sup>4</sup> In 1960, the United Nations General Assembly (UNGA) defined self-determination within a decolonization context, offering three potential outcomes: secession, association with an existing State, or integration into an existing State.<sup>5</sup> Secession was nevertheless limited by the so-called “saltwater” or “blue water” thesis, which sponsored the premise that only overseas colonized territories were eligible to formal independence.<sup>6</sup> For many Indigenous nations thus unable to secede, this framework subordinated them to an imperialist territorial system, effectively reframing their mobility and political autonomy as domestic, rather than inter-national, concerns. As a result, breaches of Indigenous land rights or occupations of demarcated territories are primarily addressed today within the jurisdiction of the nation-state in which the lands are located, curtailing opportunities for international intervention.<sup>7</sup>

The shortcomings of a system that approaches Indigenous self-determination as a domestic issue are especially visible in Brazil, where multiple Indigenous nations are left vulnerable to political tides and shifting attitudes toward their rights. For Indigenous population there, as in many places across the world, self-determination is inextricably tied to land rights.<sup>8</sup> Both the 1967 Constitution drafted by the military regime, and the 1988 Constitution following the fall of the dictatorship, recognized these rights by guaranteeing Indigenous peoples permanent possession of their lands and exclusive usufruct of their resources.<sup>9</sup> In principle, this legal framework aligns with the concept of non-domination that Young (2004) argues to underpin Indigenous self-

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<sup>3</sup> *Ibid*, p. 23.

<sup>4</sup> CASTELLINO, Joshua. Territorial Integrity and the Right to Self-Determination: An Examination of the Conceptual Tools. *Brooklyn Journal of International Law*. 2007, Vol. 33, n° 2, p. 515.

<sup>5</sup> *Ibid*, p. 515.

<sup>6</sup> LIGHTFOOT, Sheryl et MACDONALD, David. The UN as Both Foe and Friend to Indigenous Peoples and Self-Determination. *E-International Relations* [en ligne]. Mars 2020 [consulté le 13 décembre 2024]. Disponible à : <URL : <https://www.e-ir.info/2020/03/12/the-un-as-both-foe-and-friend-to-indigenous-peoples-and-self-determination/>>

<sup>7</sup> KEAL, Paul. Indigenous Self-Determination and the Legitimacy of Sovereign States. *International Politics* [en ligne]. Mars 2007, Vol. 44, n° 2, p. 288-289. DOI 10.1057/palgrave.ip.8800189

<sup>8</sup> CESCR. E/C.12/GC/26: General Comment No. 26 (2022) on Land and Economic, Social and Cultural Rights. Dans : OHCHR [en ligne]. 22 décembre 2022 [consulté le 14 novembre 2024]. Disponible à : <URL : <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and>>.

<sup>9</sup> TOLEDO, Andre de Paiva, DI BENEDETTO, Saverio et BIZAWU, Kiwonghi. Yanomami Indigenous People in Brazil: Internal Order and the Inter-American Human Rights System as Humanitarian Crisis Indication. *Veredas do Direito*. 2023, Vol. 20, p. 5, 13.

determination.<sup>10</sup> However, the Westphalian principle of non-interference has historically undermined these protections, reframing incursions into Indigenous lands as internal state matters, and enabling non-consenting or non-compliant States to circumvent international scrutiny.

The case of the Yanomami people starkly illustrates this tension. Despite being legally demarcated for their exclusive use, the Yanomami Indigenous Territory (Território Indígena – TI) has experienced a sustained influx of miners (*garimpeiros*) over the past decades.<sup>11</sup> What might otherwise be classified as irregular migration in the context of state-to-state relations has, in this case, culminated into two severe humanitarian crises: the first during the military regime of the 1980s and the second beginning in 2014, driven by the steady resurgence of political groups aligned with Brazil’s military dictatorship.<sup>12</sup> On both occasions, the humanitarian crises were marked by widespread environmental destruction, violent confrontations, outbreaks of disease, and acute food insecurity among the Yanomami.<sup>13</sup> The state-centric approach to migration not only enabled the government to turn a blind eye on unauthorized settler exploitation of Indigenous lands, but also to evade accountability under international norms by repositioning these issues as domestic affairs. International bodies, such as the Inter-American Commission on Human Rights, eventually attempted to intervene, though their limited authority, constrained by the consensual nature of international law, yielded questionable results.<sup>14</sup>

Drawing on the most recent crisis, this research seeks to answer two main questions: To what extent did international institutions condemn the breaches of Yanomami’s right to self-determination and how effective were their interventions vis-à-vis the hegemony of the Westphalian State? The central hypothesis is that while international institutions such as the United Nations (UN), the International Criminal Court (ICC), and the Inter-American Commission on Human Rights (IACHR) tried to virtually address the Yanomami humanitarian crisis, their efforts were noticeably ineffective due to Brazil’s political resistance and systemic failures in upholding Indigenous rights. In analyzing this interplay between international and “domestic” actors, the

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<sup>10</sup> YOUNG, Iris. Two concepts of self-determination. Dans: *Human Rights, Concepts, Contests, Contingencies* [en ligne]. [S. l.] : Cambridge: Cambridge University Press, 11 novembre 2004, p. 176-196. ISBN 978-0-521-60317-1. DOI 10.1017/CBO9780511489235.009.

<sup>11</sup> TOLEDO, André de Paiva, DI BENEDETTO, Saverio et BIZAWU, Kiwonghi, *art. cit.*, p. 3.

<sup>12</sup> *Ibid*, p. 4.

<sup>13</sup> TOLEDO, André de Paiva. Impacts on the Legal Framework for Protecting Environmental and Human Rights in Brazil due to Ideological Antagonism: The Interrelated Cases of the Yanomami and the Amazon Fund. *Ecological Civilization* [en ligne]. SCIEPublish, Avril 2024, Vol. 1, n° 3, p. 8-10. DOI 10.35534/ecolciviliz.2024.10006.; TOLEDO, André de Paiva, DI BENEDETTO, Saverio et BIZAWU, Kiwonghi, *art. cit.*, p. 6.

<sup>14</sup> IACHR. IACHR and Its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Stress That Brazil Must Ensure the Survival of the Yanomami People. Dans: *Inter-American Commission on Human Rights (IACHR)* [en ligne]. 8 février 2023 [consulté le 6 décembre 2024]. Disponible à : <URL : <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp>>; IJRC. Inter-American Commission Issues Precautionary Measures as Covid-19 Threatens Indigenous Communities. Dans : *International Justice Resource Center* [en ligne]. 22 juillet 2020 [consulté le 6 décembre 2024]. Disponible à : <URL : <https://ijrcenter.org/2020/07/22/inter-american-commission-issues-precautionary-measures-as-covid-19-threatens-indigenous-communities/>>; LEÃO, Gabriel. Why Lula has failed to address the Yanomami genocide. Dans : *Al Jazeera* [en ligne]. 27 janvier 2024 [consulté le 6 décembre 2024]. Disponible à : <URL : <https://www.aljazeera.com/opinions/2024/1/27/why-lula-has-failed-to-address-the-yanomami-genocide>>

paper aims to reveal the pitfalls of subordinating self-determination to the authority of the Westphalian State. Section 2 provides an overview of the procedural bureaucracies designed to implement the Indigenous right to self-determination in Brazil, depicting subsequently the humanitarian crisis that unfolded in the Yanomami TI over the last decade. Section 3 then assesses international bodies' responses to the crisis, evaluating the actions taken and their effectiveness. Finally, Section 4 synthesizes these insights to offer a comprehensive overview of the international repercussions of the Yanomami situation.

## 2. Indigenous Self-Determination in Brazil

Brazil is a State party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which impose specific obligations regarding the protection of Indigenous peoples.<sup>15</sup> In its General Comment No. 26, the Committee on Economic, Social, and Cultural Rights emphasizes that State parties' obligation to respect and protect “the relationship that Indigenous Peoples have with their lands, territories, and resources,” requires them to demarcate Indigenous lands, safeguard them from encroachment, and respect the right of Indigenous peoples to manage these lands according to their internal systems of organization.<sup>16</sup> This obligation validly aligns with the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the adoption of which Brazil was equally supportive. Notably, the Office of the High Commissioner for Human Rights (OHCHR) defends that the UNDRIP is “the most comprehensive instrument detailing the rights of indigenous peoples in international law and policy,” providing “a universal framework of minimum standards for the survival, dignity, wellbeing and rights of the world’s indigenous peoples.”<sup>17</sup>

In Brazil, the right of Indigenous peoples to their land predates the development of international human rights law, with the 1680 Portuguese Royal Act being the first to recognize traditionally occupied Indigenous territories.<sup>18</sup> Nevertheless, the recognition of these rights on paper was not matched by their effective implementation and enforcement.<sup>19</sup> This challenge is not unique to Indigenous land rights but extends to the broader incorporation of human rights norms in Brazil, where there have been significant inconsistencies between the acceptance of

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<sup>15</sup> OHCHR. UN Treaty Body Database. Dans : United Nations Human Rights Treaty Bodies [en ligne]. 2024 [consulté le 14 décembre 2024]. Disponible à : <URL : [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN)>

<sup>16</sup> CESCR. E/C.12/GC/26: General Comment No. 26 (2022) on Land and Economic, Social, and Cultural Rights. Dans: OHCHR [en ligne]. 22 décembre 2022. Para. 16.

<sup>17</sup> OHCHR, UN Declaration on the Rights of Indigenous Peoples. Dans : OHCHR [en ligne]. 2024 [consulté le 14 décembre 2024]. Disponible à : <URL : <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>>

<sup>18</sup> YAMADA, Erika Magami. International Human Rights Law in the Context of Indigenous Peoples: Moving From Legislation to Implementation [en ligne]. The University of Arizona, 2008 [consulté le 14 décembre 2024], p. 21. Disponible à : <URL : <https://repository.arizona.edu/handle/10150/631496>>

<sup>19</sup> *Ibid*, p. 22.

international human rights instruments and their application.<sup>20</sup> This dynamic reflects a broader tension identified by Krasner (1999): while international human rights norms—such as those embodied in the UNDRIP—challenge Westphalian sovereignty, their influence on domestic authority structures remains slow and incremental.<sup>21</sup> As a result, the gap between formal commitments and actual practices creates latitude for violations of international norms by the State to go unpunished.

Section 2.2 outlines the legal and administrative framework for the recognition, demarcation, and protection of Indigenous lands in Brazil. Section 2.3 examines the failure of this system in protecting the Yanomami and their land from exploitation by mining companies.

## 2.2 Current Framework

In Brazil, the recognition and protection of Indigenous lands are enshrined in the 1988 Federal Constitution, which declared traditionally occupied Indigenous territories as part of the Union's patrimony.<sup>22</sup> This recognition goes beyond mere physical occupation, encompassing all lands necessary for the maintenance of Indigenous cultures, including sacred sites, cemeteries, and areas for cultural practices.<sup>23</sup> TIs were thus institutionalized as permanent and exclusive domains for Indigenous peoples, giving due acknowledgement to the role of land tenure in the preservation of Indigenous ways of life, social organization, and cultural reproduction.<sup>24</sup>

The demarcation of TIs today in Brazil involves a detailed, multi-step administrative process regulated by Decree No. 1775/96, with the National Indian Foundation (Fundação Nacional dos Povos Indígenas—FUNAI) playing a key role.<sup>25</sup> This process begins with identification and delimitation studies, followed by an administrative counterargument phase that allows stakeholders, including non-Indigenous occupiers, to contest the boundaries.<sup>26</sup> Once the boundaries are agreed upon, and validated by the Minister of Justice, physical demarcation is carried out, and non-Indigenous occupants are surveyed for compensation for their properties.<sup>27</sup> After the demarcation is formally homologated by the President, the lands are officially recognized

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<sup>20</sup> *Ibid*, p. 43.

<sup>21</sup> KRASNER, Stephen D. *Sovereignty: Organized Hypocrisy*. Princeton, UNITED STATES : Princeton University Press, 1999. 106 p.

<sup>22</sup> Constituição da República Federativa do Brasil [en ligne]. 1988 [consulté le 15 décembre 2024]. Disponible à : <URL : <https://normas.leg.br/?urn=urn:lex:br:federal:constituicao:1988-10-05;1988>>; Legal provisions such as the 1988 Constitution, Law No. 6001/73 (Statute of the Indian), the Decree No. 1775/96 establish a structured blueprint for the demarcation process and the protection of these territories.

<sup>23</sup> FUNAI. Demarcação. Dans : Fundação Nacional dos Povos Indígenas [en ligne]. 2024 [consulté le 25 septembre 2024]. Disponible à : <URL : <https://www.gov.br/funai/pt-br/atuacao/terras-indigenas/demarcacao-de-terras-indigenas>>

<sup>24</sup> ALMEIDA, Alisson da Cunha, CASTRO, Artur Soares, NETO, José Moreira da Silva, et al. DEMARCAÇÃO DE TERRAS INDÍGENAS. *REVISTA DA AGU* [en ligne]. Décembre 2006 [consulté le 14 décembre, p. 4. DOI 10.25109/2525-328X.v.5.n.11.2006.393.

<sup>25</sup> FUNAI. Demarcação, *art. cit.*

<sup>26</sup> ALMEIDA, Alisson da Cunha, CASTRO, Artur Soares, NETO, José Moreira da Silva, et al., *art. cit.*, p. 9.

<sup>27</sup> FUNAI. Demarcação, *art. cit.*

as Indigenous territories.<sup>28</sup> Additional steps, such as the removal of non-Indigenous occupants and registration of the land with the Secretariat of the Union's Heritage, further formalize the process.<sup>29</sup>

Territorial monitoring actions aimed at the protection of these demarcated spaces are, in a way, similar to border security services. They are divided into two types: control actions, such as enforcement and inspections, and preventative actions, such as training, monitoring heat sources, and protection plans. These activities are carried out by FUNAI staff, Indigenous peoples themselves, and occasionally external contractors, particularly for activities related to environmental compensation for Indigenous lands impacted by development projects.<sup>30</sup> These measures are further strengthened through inter-institutional and cross-sector collaborations. Public policies and institutions like FUNAI, the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), and the Federal Public Ministry (MPF) are crucial in supporting these efforts. Their goal is not only to protect Indigenous territories and cultural heritage, but also to safeguard Indigenous peoples from exposure to epidemics, given their historical vulnerability to infectious diseases.<sup>31</sup> In line with ILO Convention No. 169, a cornerstone of the transnational Indigenous rights movement, these actions must involve the active, participatory consent of Indigenous peoples, ensuring the expulsion of illegal intruders and upholding the rights and way of life of Indigenous communities.<sup>32</sup>

Despite the thoroughness of this legal and administrative framework, the enforcement of these protections has been inconsistent, often due to competing interests from non-Indigenous groups and a broader political climate that undermines the full realization of Indigenous land rights.<sup>33</sup> This systemic failure is most evident in the ongoing encroachments on the territories of groups like the Yanomami, demonstrating the disconnect between legal protections and actual enforcement.

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<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.* There are exceptional cases in which the standard demarcation process may not apply. For instance, when conflict or large-scale development projects threaten the integrity of Indigenous territories, the recognition of these lands may shift to the category of Indigenous Reserves, as outlined in Article 26 of Law No.6001/73. In such cases, the Union may acquire or expropriate lands for Indigenous use. For isolated Indigenous peoples, additional protections are put in place, restricting third-party access to their lands while studies of identification and delimitation are conducted. These exceptions are thoroughly detailed in [FUNAI's website](#).

<sup>30</sup> FUNAI. Proteção Territorial. Dans : Fundação Nacional dos Povos Indígenas [en ligne]. 2024 [consulté le 14 décembre 2024]. Disponible à : <URL : <https://www.gov.br/funai/pt-br/atuacao/terras-indigenas/fiscalizacao-e-monitoramento>>; Preventative actions include capacity-building programs, Indigenous-led surveillance, territorial monitoring on the ground, the establishment of green markers, fencing, integrated fire management, territorial protection plans, and diagnostic assessment of Indigenous territories.

<sup>31</sup> SOUZA, Harold Epifânio de et JÚNIOR, Zedequias de Oliveira. Degradação e violência na Terra Indígena Yanomami: análise do contato entre o indígena e o garimpeiro. *Revista Brasileira de Meio Ambiente* [en ligne]. Décembre 2022 [consulté le 15 décembre 2024], Vol. 10, n° 3, p. 235. Disponible à : <URL : <https://www.revistabrasileirademeioambiente.com/index.php/RVBMA/article/view/1325>>.

<sup>32</sup> *Ibid*, p. 235

<sup>33</sup> KONZEN, Jase Jasson Frantz. A (des)construção de instrumentos normativos para a demarcação e proteção de terras indígenas no Brasil. *Manancial: Repositório Digital da UFSM* [en ligne]. Universidade Federal de Santa Maria, Décembre 2013 [consulté le 6 décembre 2024], p. 68. Disponible à : <URL : <http://repositorio.ufsm.br/handle/1/2930>>



### 2.3 The Yanomami Case

The Yanomami people, spanning regions of Brazil and Venezuela, exemplify the tragic consequences of the State's unwillingness to uphold Indigenous land rights despite constitutional guarantees.<sup>34</sup> The 1992 homologation of the Yanomami TI granted the Indigenous nation over 9 million hectares across seven municipalities in the states of Amazonas and Roraima.<sup>35</sup> Comparable in size to Portugal, the Yanomami TI is home to approximately 27,398 members of the Yanomami and Ye'kwana peoples, distributed across 331 villages.<sup>36</sup> For decades, its rich gold deposits have made it a target for miners, whose incursions are strictly illegal under Brazilian law.<sup>37</sup> In the 1970s-80s, during the military dictatorship, the construction of the Perimetral Norte Highway sparked an initial rush of 50,000 miners, leaving environmental destruction and cultural disintegration in its wake.<sup>38</sup> According to the National Truth Commission report, entire communities vanished due to epidemics, violent conflicts with miners, and starvation, while social fragmentation worsened as miners lured Indigenous individuals away from their traditional ways of life, fueling child abductions and the spread of prostitution.<sup>39</sup> Today, the same challenges persist, exacerbated by State negligence and complicity, including insufficient enforcement against illegal mining and outright resistance to monitoring requests. As of 2022, over 20,000 miners were occupying Yanomami land, devastating forests and rivers, and perpetuating cycles of violence and disease.<sup>40</sup>

In the late 2010s, when members of the social groups that controlled the Brazilian State during the military dictatorship returned to power, these invasions escalated into yet another full-fledged humanitarian crisis. In 2018, the year President Jair Bolsonaro was elected, illegal mining surged by an alarming 309% in the lead up to his inauguration.<sup>41</sup> Four years later, in 2022, the activity continued expanding, with a yearly growth rate of 54%. While comparatively lower, the larger base amount of deforested land at that point entailed the destruction of over 5,000 hectares of land in the year alone.<sup>42</sup> This meant more mercury contamination, deforestation, and river

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<sup>34</sup> SOUZA, Harold Epifânio de et JÚNIOR, Zedequias de Oliveira, *art. cit.*, p. 226.

<sup>35</sup> *Ibid.*

<sup>36</sup> BBC. O que se sabe sobre invasão de garimpeiros no território yanomami. BBC News Brasil [en ligne]. 4 mai 2022 [consulté le 20 novembre 2024]. Disponible à : <URL : <https://www.bbc.com/portuguese/brasil-61328546>>.

<sup>37</sup> *Ibid.*

<sup>38</sup> SOUZA, Harold Epifânio de et JÚNIOR, Zedequias de Oliveira, *art. cit.*, p. 226; TOLEDO, André de Paiva, DI BENEDETTO, Saverio et BIZAWU, Kiwonghi, *art. cit.*, p. 18.

<sup>39</sup> BBC, *art. cit.*

<sup>40</sup> G1. Garimpo ilegal na Terra Yanomami cresceu 54% em 2022 | Roraima. Dans : Globo.com [en ligne]. 1<sup>er</sup> février 2023 [consulté le 25 septembre 2024]. Disponible à : <URL : <https://g1.globo.com/rr/roraima/noticia/2023/02/01/garimpo-ilegal-na-terra-yanomami-cresceu-54percent-em-2022-aponta-levantamento-de-associacao.ghtml>>.

<sup>41</sup> *Ibid.*

<sup>42</sup> ABREU, Gabriel Lucas Bentes de, VIEIRA, Gabryelle Batista et FADEL, Anna Laura Maneschy. Biocropolitics as a form of government and the genocide of the Yanomami people. CONTRIBUCIONES A LAS CIENCIAS SOCIALES [en ligne]. Février 2024, Vol. 17, n° 2, p. 12. DOI 10.55905/revconv.17n.2-215

pollution, which, together, devastated ecosystems and public health.<sup>43</sup> In the meantime, Bolsonaro's administration proceeded to systematically dismantle protective government institutions like FUNAI, redirecting them to serve agribusiness interests while neglecting Indigenous rights.<sup>44</sup> Coupled with the COVID-19 pandemic, which spread unchecked due to the influx of miners and lack of sanitary barriers, the Yanomami faced respiratory diseases, epidemics of malaria, and severe malnutrition, with 56.6% of Yanomami children experiencing chronic underweight in 2021.<sup>45</sup> Instead of providing aid, Bolsonaro's administration obstructed humanitarian efforts and pushed for the *Marco Temporal*, a legal framework that would delegitimize Indigenous land claims to areas demarcated after the 1988 Constitution, including the Yanomami TI.<sup>46</sup> For many, these actions, alongside Bolsonaro's open endorsement of economic exploitation and assimilationist rhetoric, constituted a deliberate campaign threatening Indigenous sovereignty, health, and cultural survival nationwide.<sup>47</sup>

This systemic neglect underscores the glaring hypocrisy in the State's enforcement of its national borders and domestic authority while disregarding the sovereign borders of Indigenous nations. The Yanomami case lays bare how the prioritization of extractivist ambitions over constitutional protections perpetuates colonial legacies, conceptualizing Indigenous lands not as protected homelands but as expendable frontiers for exploitation and development.

### 3. International Responses to the Yanomami Humanitarian Crisis

Thus far, the paper has shown that Brazil's strong engagement with international human rights law and its detailed, rigorous process for Indigenous land demarcation and protection have not thoroughly protected groups such as the Yanomami from the consequences of political manipulation and neglect. A significant gap between legal provisions and their enforcement leaves Indigenous rights at the mercy of biased government institutions, which are easily influenced by political shifts, economic interests, and ideological agendas. While the role of domestic judicial bodies in holding the Brazilian State and its leadership accountable, as well as the impact of the shift to a left-leaning government in addressing the Yanomami humanitarian crisis, have been

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<sup>43</sup> LINSTROTH, J. P. Cultural Genocide, Genocide, and Amerindian Genocide. Dans : LINSTROTH, J. P. (dir.), *Politics and Racism Beyond Nations: A Multidisciplinary Approach to Crises* [en ligne]. Cham : Springer International Publishing, 2022 [consulté le 5 décembre 2024], p. 87-138. DOI 10.1007/978-3-030-91720-3\_4.

<sup>44</sup> ARTICULAÇÃO DOS POVOS INDÍGENAS DO BRASIL. Communication to the Prosecutor requesting a Preliminary Examination of Genocide and Crimes against Humanity perpetrated against the Indigenous Peoples of Brazil Committed by President Jair Messias Bolsonaro [en ligne]. [S.I.] : International Criminal Court, 9 août 2021, p. 18-19. Disponible à : <URL : [https://iprights.org/images/articles/news-and-features/from-old-website/Communication\\_APIB\\_to\\_the\\_ICC.pdf](https://iprights.org/images/articles/news-and-features/from-old-website/Communication_APIB_to_the_ICC.pdf)>.

<sup>45</sup> TOLEDO, André de Paiva, DI BENEDETTO, Saverio et BIZAWU, Kiwonghi *art. cit.*, p. 23.

<sup>46</sup> *Ibid*; ZAP. Risks and Rights Associated With the Marco Temporal Thesis | Amazon Watch [en ligne]. 18 mai 2023 [consulté le 15 décembre 2024], p. 2. Disponible à : <URL : <https://amazonwatch.org/news/2023/0518-risks-and-rights-violations-associated-with-the-marco-temporal-thesis>>.

<sup>47</sup> GARBE, Douglas de Souza. Biopolítica indígena dos povos yanomami no Brasil nos anos de 2019 a 2022. Anais do Seminário Internacional em Direitos Humanos e Sociedade [en ligne]. Décembre 2024 [consulté le 5 décembre 2024], Vol. 6, p. 6. Disponible à : <URL : <https://periodicos.unesc.net/ojs/index.php/AnaisDirH/article/view/9435>>.



explored elsewhere;<sup>48</sup> this section shifts its focus to international institutions. The objective is to explore their effectiveness in addressing Brazil's failure to mitigate the consequences of illegal incursions into Indigenous lands within a system constrained by Westphalian principles of non-interference and state sovereignty.

Section 3.1 assesses the United Nations' (UN) response to the humanitarian crisis in the Yanomami TI. While the entity made significant efforts to emphasize the severity of the crisis and urged Brazil to uphold Indigenous rights, its interventions were considerably disregarded by Bolsonaro's government. Section 3.2 turns to the International Criminal Court (ICC), examining its role in tackling allegations against Bolsonaro for crimes against humanity and genocide against Indigenous populations, including the Yanomami. While submissions to the ICC from 2021 highlight systematic anti-Indigenous policies, the Office of the Prosecutor (OTP) has yet to initiate a preliminary examination, casting doubt on the Court's responsiveness to such complaints. Finally, Section 3.3 analyzes the IACHR's proactive response, which, though potentially the most impactful one, was considerably less effective as compared to prior interventions in the late twentieth century.

### 3.1 The United Nations (UN)

The UN has been relatively involved in addressing the Yanomami crisis, and the overarching threats to Indigenous right to self-determination in Brazil. From 2019 to 2021, major developments in the humanitarian crisis were marked by both the Brazilian government's resistance to addressing Indigenous issues and the UN's considerable attempts to draw attention to the situation. In 2019, Bolsonaro's speech at the UN General Assembly downplayed Indigenous land protection, criticizing land demarcations and environmental policies and using the unpopular Indigenous leader Ysani Kalapalo to render credibility to his stance.<sup>49</sup> The President's rhetoric, which framed Indigenous issues as an internal matter, set the tone for the government's broader disregard for Indigenous rights. By 2021, attacks on Yanomami communities had escalated further as illegal mining intensified, with miners encroaching on their lands, spreading violence, and polluting the environment.<sup>50</sup> The UN responded by publicly condemning these actions, urging the Brazilian government to hold illegal miners accountable after deadly attacks on the Yanomami

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<sup>48</sup> BIERNATH, André. Por que governo Bolsonaro é investigado por suspeita de genocídio contra os yanomami. BBC News Brasil [en ligne]. 27 janvier 2023 [consulté le 5 décembre 2024]. Disponible à : <URL :

<https://www.bbc.com/portuguese/brasil-64417930>>; LEÃO, Gabriel, *art. cit.*; MCCULLOUGH, Ethan. An Introduction to The Yanomami Humanitarian Crisis and An Interview with Carlos Messiass on Contemporary Brazilian Indigenous Issues. Anthropology at Digital Kenyon: Research, Scholarship, and Creative Exchange [en ligne]. Spring 2024. Disponible à : <URL : [https://digital.kenyon.edu/cgi/viewcontent.cgi?article=1004&context=anthropology\\_posters](https://digital.kenyon.edu/cgi/viewcontent.cgi?article=1004&context=anthropology_posters)>.

<sup>49</sup> SILVA, Jairo da Silva e. "NOSSA AMAZÔNIA PERMANECE PRATICAMENTE INTOCADA" A AMAZÔNIA NO DISCURSO DO PRESIDENTE JAIR BOLSONARO NA ONU. *ContraCorrente: Revista do Programa de Pós-Graduação Interdisciplinar em Ciências Humanas*. Novembre 2020, n° 14, p. 125, 128.

<sup>50</sup> OHCHR. Brazil: UN experts deplore attacks by illegal miners on indigenous peoples; alarmed by mercury levels. Dans : OHCHR [en ligne]. 2 juin 2021 [consulté le 20 novembre 2024]. Disponible à : <URL : <https://www.ohchr.org/en/press-releases/2021/06/brazil-un-experts-deplore-attacks-illegal-miners-indigenous-peoples-alarmed>>.

and Munduruku.<sup>51</sup> While the UN emphasized the need for Indigenous peoples' participation in decision-making processes, including on policies affecting their land, these calls were largely ignored by the Bolsonaro administration.<sup>52</sup>

From 2022 to 2024, the UN intensified its focus on Indigenous rights in Brazil, responding to the escalating crisis with stronger actions and appeals. In early 2022, UN Special Rapporteurs issued a landmark joint denunciation of the Bolsonaro administration, accusing it of violating obligations under the ICESCR, ICCPR, and CERD,<sup>53</sup> as well as the international norms enshrined in the Durban Declaration and UNDRIP.<sup>54</sup> The denunciation highlighted discriminatory policies, inadequate health infrastructure, and the disproportionate impact of COVID-19 on Indigenous peoples, reinforcing ongoing accusations against Bolsonaro in the ICC.<sup>55</sup> In 2024, after the inauguration of left-leaning President Luiz Inácio Lula da Silva, the Alliance in Defense of Territories, representing the Kayapó, Yanomami, and Munduruku peoples, held a parallel event during the UN's Expert Mechanism on the Rights of Indigenous Peoples annual meeting in Geneva.<sup>56</sup> This initiative, co-organized with international NGOs, aimed to spotlight the devastating effects of illegal gold mining, including environmental destruction and mercury contamination.<sup>57</sup> The Alliance issued urgent recommendations to the Brazilian government, including the complete removal of invaders from Indigenous lands and a stricter regulation of the gold supply chain.<sup>58</sup> While the UN provided a platform and amplified Indigenous voices, its effectiveness remained limited. The Bolsonaro government expansively ignored UN recommendations during his presidency, and persistent mining activities in 2024 underscored the ongoing challenges under Lula's regime.

### 3.2 The International Criminal Court (ICC)

The Rome Statute grants the ICC the ability to prosecute individuals in positions of power for crimes that affect the international community. Between 2020 and 2023, a number of submissions to the ICC accused Bolsonaro of committing crimes against humanity, genocide, and ecocide due to his anti-Indigenous policies. Notably, in January 2021, infamous Indigenous leaders Raoni Metuktire and Almir Narayamoga Surui filed a claim with the ICC, stating that since the

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<sup>51</sup> *Ibid.*

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

<sup>53</sup> International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>54</sup> CHADE, Jamil. Carta da ONU sobre o tom e denuncia crimes de Bolsonaro contra indígenas. Dans : UOL [en ligne]. 23 mars 2022 [consulté le 20 novembre 2024]. Disponible à : <URL : <https://noticias.uol.com.br/colunas/jamil-chade/2022/03/23/onu-denuncia-ataques-de-bolsonaro-aos-indigenas-e-cita-violacao-de-tratados.htm>>.

<sup>55</sup> *Ibid.*

<sup>56</sup> GRUPIONI, Luis Donisete et VIEIRA, Marina. Em agendas na ONU, aliança indígena cobra ações efetivas do Brasil contra o garimpo | Instituto Socioambiental. Dans : Instituto Socioambiental [en ligne]. 15 juillet 2024 [consulté le 5 décembre 2024]. Disponible à : <URL : <https://www.socioambiental.org/noticias-socioambientais/em-agendas-na-onu-alianca-indigena-cobra-aco-es-efetivas-do-brasil-contra-o>>.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

beginning of Bolsonaro’s presidency, “the destruction of the Amazonian forest [had] accelerated without measures.”<sup>59</sup> They reported an 11-year high in the assassination of Indigenous leaders, and the collapse or threats to environmental agencies, arguing that killings, forced transfers, and persecution constituted crimes against humanity.<sup>60</sup> In August 2021, the Articulation of Indigenous Peoples of Brazil (APIB) filed a complaint alleging that Bolsonaro’s administration had implemented an explicit, systematic, and intentional anti-Indigenous policy,<sup>61</sup> specifically mentioning the Yanomami people as one of the groups most severely impacted by President Jair Bolsonaro’s policies.<sup>62</sup> The submission argued that the administration’s efforts to reduce the presence of health services and dismantle environmental protection agencies intentionally exacerbated the already precarious situation of the group, signaling clear violations of international law.<sup>63</sup>

Thus far, the OTP has not rendered a decision to initiate a preliminary examination into these submissions. Legal scholar Lombardi (2022) considers the claims under Article 7 on Crimes Against Humanity to be promising, but they acknowledge that substantiating the required *mens rea* could prove challenging—an obstacle that becomes even more pronounced for claims under Article 6 on Genocide.<sup>64</sup> Moreover, skepticism abounds regarding whether any substantive action will be taken, given the lack of updates from the OTP in the last few years, and the absence of a timeline for a formal response.<sup>65</sup>

### 3.3 The Inter-American Commission on Human Rights (IACHR)

The IACHR, an autonomous organ of the Organization of American States (OAS), plays a crucial role in monitoring and defending Indigenous rights across its member states, including Brazil. As a signatory to the American Convention on Human Rights (ACHR) since 1992, Brazil is subject to the IACHR’s jurisdiction, which gives the Commission permission to receive, for instance, petitions regarding alleged violations, conduct country visits, issue precautionary

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<sup>59</sup> OYETADE, Yinka. Brazil indigenous leaders sue Bolsonaro for killings and ecological destruction. Dans : France 24 [en ligne]. 23 janvier 2021 [consulté le 5 décembre 2024]. Disponible à : <URL : <https://www.france24.com/en/americas/20210123-brazil-indigenous-leaders-sue-bolsonaro-for-killings-and-ecological-destruction>>.

<sup>60</sup> *Ibid.*

<sup>61</sup> ARTICULAÇÃO DOS POVOS INDÍGENAS DO BRASIL, *art. cit.*, p. 132.

<sup>62</sup> *Ibid.*, p. 79.

<sup>63</sup> AL JAZEERA. Brazil Indigenous group sues Bolsonaro at ICC for ‘genocide’. Dans : Al Jazeera [en ligne]. 9 août 2021 [consulté le 5 décembre 2024]. Disponible à : <URL : <https://www.aljazeera.com/news/2021/8/9/brazil-indigenous-group-sues-bolsonaro-at-icc-for-genocide>>.

<sup>64</sup> LOMBARDI, Frederica. THE INTERNATIONAL CRIMINAL COURT: A NEW FORUM FOR THE PROTECTION OF INDIGENOUS PEOPLE’S RIGHTS IN BRAZIL? Dans : Contemporary Challenges in Human Rights: A Transatlantic Dialogue [en ligne]. Fortaleza : EdUnichristus: Editora do Centro Universitário Christus, 2022, p. 243. Disponible à : <URL : <https://unichristus.edu.br/wp-content/uploads/2022/05/Ebook-CONTEMPORARY-CHALLENGES-IN-HUMAN-RIGHTS.pdf#page=224>>.

<sup>65</sup> CAVALCANTE, Amanda Sales da Silva. CRIMES CONTRA A HUMANIDADE: O CASO BOLSONARO NO TRIBUNAL PENAL INTERNACIONAL. Revista Jurídica da Universidade Estadual de Feira de Santana (UEFS) [en ligne]. 2021 [consulté le 16 décembre 2024], n° 3. DOI 10.13102/rjuefs.vi3.5637.

measures, and recommend corrective actions to member states.<sup>66</sup> The IACHR operates as both an advisory and quasi-judicial body, complementing national and regional legal frameworks to uphold the principles enshrined in the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man.<sup>67</sup>

The IACHR has long been involved in managing the crises affecting Yanomami people, with its first significant engagement during the 1980s when the Commission investigated Brazil for human rights violations stemming from illegal incursions into Yanomami lands. In its 1985 Resolution No. 12, the IACHR concluded that Brazil had indeed violated the Yanomami's rights to life, health, and cultural preservation by failing to prevent these incursions.<sup>68</sup> The resolution called for the demarcation of Yanomami lands and enhanced health protections, culminating in Brazil's eventual recognition of the Yanomami TI in 1992.<sup>69</sup> To this extent, the first intervention was particularly successful, in that the newly established democracy proved itself responsive to international authority and committed to respecting Indigenous sovereignty and human rights.

Under Bolsonaro's presidency, the Yanomami crisis resurfaced with alarming intensity, leading the IACHR to intervene once more by issuing precautionary and provisional measures. In 2020, the IACHR adopted Precautionary Measure No. 35/2020 to protect the life and personal integrity of the Yanomami and Ye'kwana peoples.<sup>70</sup> This measure urged the Brazilian government to implement actions to prevent COVID-19 outbreaks and provide adequate healthcare to Indigenous communities, particularly given the severe deficiencies in the Yanomami Indigenous Special Health District (DSEI-Y), one of Brazil's most vulnerable health units. However, the IACHR soon noted the Brazilian government's lack of effective compliance, leading to further escalation in 2022 when the Commission requested provisional measures from the Inter-American Court of Human Rights (IACtHR).<sup>71</sup> This request stemmed from the continued risks posed by illegal mining, including violence, sexual exploitation, and environmental devastation, all amplified and enabled by state negligence. The IACtHR issued temporary protection measures, compelling the State to implement actions aimed at ensuring the survival of the Yanomami, Ye'kwana, and Munduruku peoples.<sup>72</sup> Yet, major operations to remove illegal intruders from these territories did not begin until February 2023 (notably, after the transition of power), following a

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<sup>66</sup> NINA BERNARDES, Marcia. Inter-American Human Rights System as a Transnational Public Sphere. *Sur - International Journal on Human Rights* [en ligne]. Décembre 2011 [consulté le 16 décembre 2024]. Disponible à : <URL : <https://sur.conectas.org/en/inter-american-human-rights-system-transnational-public-sphere/>>.

<sup>67</sup> IACHR. What is the IACHR? Dans : Inter-American Commission on Human Rights (IACHR) [en ligne]. 2024 [consulté le 16 décembre 2024]. Disponible à : <URL : <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp>>.

<sup>68</sup> TOLEDO, André de Paiva, DI BENEDETTO, Saverio et BIZAWU, Kiwonghi, *art. cit.*, p. 10.

<sup>69</sup> *Ibid.*

<sup>70</sup> IJRC, *art. cit.*

<sup>71</sup> IACHR. IACHR and Its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Stress That Brazil Must Ensure the Survival of the Yanomami People, *art. cit.*

<sup>72</sup> IACtHR. ADOÇÃO DE MEDIDAS PROVISÓRIAS ASSUNTO MEMBROS DOS POVOS INDÍGENAS YANOMAMI, YE'KWANA E MUNDURUKU A RESPEITO DO BRASIL [en ligne]. 1<sup>er</sup> juillet 2022. Disponible à : <URL : [https://www.corteidh.or.cr/docs/medidas/yanomami\\_se\\_01\\_por.pdf](https://www.corteidh.or.cr/docs/medidas/yanomami_se_01_por.pdf)>.

visit by the IACHR and its Special Rapporteur on Economic, Social, Cultural, and Environmental Rights, which further pressured the government to address the “serious humanitarian crisis caused by ethnic-racial discrimination.”<sup>73</sup>

Violent clashes between the Yanomami and miners persisted notwithstanding the Lula administration’s efforts to expel thousands of illegal miners, destroy mining sites, and confiscate private aircrafts.<sup>74</sup> Despite their forcefulness, these measures failed, however, to tackle structural drivers of exploitation, with hundreds of miners returning to Yanomami territory in the past year.<sup>75</sup> As of 2024, Yanomami communities continued to suffer from disease and malnutrition due to the ongoing contamination of their waterways.<sup>76</sup> One thing remained certain, nevertheless: the IACHR’s interventions were remarkably less effective this time compared to the 1980s, with the recurrence of the crisis calling into question the success of the initial intervention as well.<sup>77</sup>

#### 4. Conclusion

This paper has approached the Yanomami case as a lens through which to analyze the broader challenges of Indigenous self-determination within the modern State. The Yanomami crisis therefore unveils the extreme difficulty, and potential contradiction, of enforcing Indigenous self-determination within a Westphalian paradigm that prioritizes state sovereignty over respect for the autonomy and borders of Indigenous nations. Incursions into the Yanomami TI, fueled by illegal mining and neglect, reflect a form of unregulated migration that the international system often overlooks. This, however, is not accidental: the invisibility of this type of mobility is in itself crucial for the validity and credibility of the State, insofar as it legitimizes the State’s dominance over all nations under its territorial jurisdiction. After all, the principle of sovereign equality, as enshrined in the UN Charter, applies only to its member States, and not to all human nations.<sup>78</sup> This truth could not be more evident in Brazil, where Indigenous lands are *inter alia* recognized as property (“patrimônio”) of the State.<sup>79</sup>

In order to paint a holistic picture of the question at hand, the article departed from an initial consideration of Brazil’s legal framework to a thorough analysis of the international community’s ability to respond to Indigenous’ struggles within “domestic” spheres. First, Section 2 outlined Brazil’s legal instruments for Indigenous land demarcation and protection, emphasizing the

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<sup>73</sup> IACHR. IACHR and Its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Stress That Brazil Must Ensure the Survival of the Yanomami People, *art. cit.*

<sup>74</sup> PHILLIPS, Tom. Brazil’s battle to reclaim Yanomami lands from illegal miners turns deadly. *The Guardian* [=en ligne]. 1<sup>er</sup> mai 2023 [consulté le 16 décembre 2024]. Disponible à: <URL : <https://www.theguardian.com/world/2023/may/01/yanomami-territory-illegal-miners-death-toll>>.

<sup>75</sup> LEÃO, Gabriel, *art. cit.*

<sup>76</sup> *Ibid.*

<sup>77</sup> One possible explanation for the limited effect is that, while the IACHR had more leverage during Brazil’s return to democracy, Bolsonaro’s undermining of democracy and resistance to international pressure weakened the Commission’s ability to achieve meaningful change.

<sup>78</sup> UNITED NATIONS. Charter of the United Nations. 26 juin 1945, art. 2(1).

<sup>79</sup> FUNAI. Demarcação, *art. cit.*

disconnect between formal guarantees and their enforcement in practice, as observed in the Yanomami TI. Section 3 assessed the responses of three key international institutions, namely the UN, ICC, and IACHR, to the humanitarian crisis that unfolded in the respective territory, concluding that while the UN and the IACHR took significant steps to hold Brazil accountable for its failures, with the ICC submissions still pending approval, their efforts were constrained by state resistance and the structural limitations of international law. When considered in unison, these analyses expose the vulnerabilities of Indigenous nations under the current territorial nation-state model.

The Westphalian system can thus be understood as a colonial legacy in itself, originating from a time where the idea of an international system grounded in the promotion of human rights was yet not conceivable. By relying on this outdated organizational structure, Indigenous nations are left at the mercy of settler States with unjustifiable power over their territories. This paper additionally reveals the extent to which States are willing and able to ignore the outcries of international institutions as well as their obligations under international law, stressing the urgent need for a paradigm shift for the sake of Indigenous peoples' survival.



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