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To Mr. Commissioner
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To Mr. Commissioner
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To Mr.
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Ref: Request the use of the procedure laid down in art. 41 of the American Convention on Human Rights concerning the titling of quilombola lands in Brazil

The organizations of Brazilian civil society infra-signed come by means of this report to this Honorable inter-American Commission on Human Rights and its special Rapporteurship on the Rights of Afro-descendents and against Racial Discrimination, the Rapporteur for Brazil, as well as to the Unit on Economic, Social and Cultural rights, on the situation of vulnerability and oppression in which the quilombola communities of Brazil in reason of the non-titling of their traditional lands. In this context, request to this i. Commission the use of the procedure provided for by art. 41 “d” of the American Convention on Human Rights, art. 18 “d” of the Statute of the inter-American Commission on Human Rights to formulate questions to the Brazilian State, everything according to what is exposed bellow:

Through this, we offer Yours technical information and policies about the pitiable situation of the titling of the quilombola territories in Brazil. We hope that through this expedient, the Brazilian State can provide official information on the progress of such public constitutional policy, in order to facilitate the monitoring actions by the company.

I) Racism, historical struggles, and quilombos

The quilombola communities derive from and are immersed in a secular historical context of oppression of the racist basis. For the understanding of the social quilombola phenomenon. It is necessary to recognize that in the origin of Brazilian history, the black slavery, as well as the concentration of land, made an economic project planned and executed by the european metropolises.

The condition of a slave, however, was not accepted without the insurgency of whom has been forcibly subjected to this oppression. From the perspective of the enslaved, it has been developed many forms of resistance as many were the modalities of oppression being the aquilombamento (reunite groups of enslaved people in quilombos) one of the coping strategies.

The resistance of the enslaved was critical to the achievement of freedom with the formal and inconclusive abolition of slavery in the year of 1888, through the Golden Law. However, the formal abolition of slavery, after more than three and a half centuries

of slavery, did not significantly change the patterns of domination and oppression to which black men and women were subjected in Brazil.

Therefore, it is necessary to recognize that the oppression of the black people has not ended with the formal and inconclusive abolition of slavery in Brazil in 1888. In the same way, it is important to take into account that the quilombola communities were, and still are, subjected to a context of racial oppression. And in this same context it is necessary to state that the quilombola communities have always been, even in the colonial period, and at this moment still are, forms of organization to combat racism, and constituted in autonomous and free life way.

II) The quilombola communities, the importance of access to land and land concentration in Brazil

The access to land is fundamental for the quilombola communities to be able to build autonomously the conditions for a dignified life. Depriving communities of access to land relegates them to conditions of political, economic, social, cultural and environmental rights vulnerabilities, among others, which reinforce the prevalence of racism and limit, when not prevent completely, the quilombola emancipation.

Without access to land, the material and symbolic aspects of reproduction of the life in the quilombola communities will be harmed in the essence, since the earth is a fundamental element of the reproduction of the traditional way of life. And we do not talk about whatever land here, but those lands in which the communities have developed as such, with whom they maintain both material and symbolic ties of existence.

Despite the importance that the access to land has for the quilombolas, historically, the communities had poor access and insufficient land, and for this reason, among others, living in situations of vulnerability with regard to human rights.

In Brazil, the access to land was, and still is, a privilege of few. Proof of this is the fact that Brazil is the second country in the world in land concentration, with a Gini index of 0.872, highlighting that 1% of the total rural landowners in Brazil holds 49% of the country's arable land[1]. The extreme concentration of land is not a coincidence, but a result of a secular public policy of social and racial exclusion.

[1] According to data from the last agricultural census released by the Brazilian Institute of Geography and Statistics (IBGE) in 2006

From the beginning of the process of colonization of Brazil in the XVI century to the year 1822 it was in force, as the legal framework of the relationship between people and the land, the Law of Sesmarias. By such law, could only have access to the land, the people who maintain close relations with the colony, and who had the capital to develop in Brazil the economic activities of interest to Portugal, as devices of sugar cane. To anyone else, with rare exceptions such as the Catholic Church, it was allowed to have legal access to land in Brazil, including the indigenous peoples who already inhabited these lands.

So, it's been about three centuries of unequal distribution of land in Brazil, inequality that favored a small white economic elite european descent, at the time that explicitly and directly prevented black women and black men had access to land through legal channels. In Brazil, land concentration and inequality are not fruits of chance.

With the end of the application of the institute of sesmarias, it became effective the Law 601/50 in Brazil, better known as the Land Law of 1850. In general, it stipulated rules to confirm the land grants given to private until 1822, transforming them into private properties. Also stipulated that all lands that had not been given in the allotment in the past, and that any other lawful ways had not been transferred to private individuals, would be considered public lands. Moreover, it stipulated that it would only be possible in the acquisition of public lands by purchasing costly. Once more in the history of Brazilian law, the quilombolas, as well as the black population in general, have been explicitly excluded from the legal possibility of access to land, since they could not afford to buy them.

Thus it is that the Land Law of 1850 was consolidated in Brazil with a framework of high concentration of land to endorse three centuries of the distribution of land via land grants at the time that made it impossible for the poor population to have access to land, stipulating that only through the purchase it would be possible to have access to public lands.

This scenario of exclusion of the black population and quilombola access to land continues even today, although in 1988 there have been important changes in the normative framework with regard to access to land for quilombolas.

III) The quilombola right to the land in the Federal Constitution of 1988

It was only with the Federal Constitution of 1988, which made positive, for the first time in Brazilian history, a right to the specific land for the quilombola communities. The constitutional clause that recognizes explicit and directly the right quilombola to the land is in the art. 68 of the temporary Constitutional Provisions Act, namely:

> Art. 68. The remaining communities of quilombos which are occupying their land is recognized as the final property, and the State must issue them the respective titles.

The formal recognition of the constitutional quilombola right to the land has the potential to present itself as a positive instrument of affirmation of identity, of history and of the black culture in Brazil. However, the recognition of such a right by itself does not bring major changes. The attempts of realization of material law have the potential of making the Constitution to transmude itself in the possibility of effective fight against racism. Thus, once recognized the quilombola right to the land in the Constitution, it went on to fight for its implementation.

The operation of the Brazilian legal system, in particular in respect of the State action for the implementation of public policies, provides for the need of administrative frameworks setting in which the acts that the State must adopt, and by which of its organs, for that to become effective the quilombola right quilombola to the land.

The first standard that was given to the titling of the quilombola territories was the Decree no. 25/95 of the Palmares Cultural Foundation, which established to this organ, the competence for the completion of the titling of the quilombola territories, as well as stated some of the procedural rules to reach this end. In the same year the National Institute of Colonization and Agrarian Reform (INCRA), through Ordinance no. 307/95, also self-granted jurisdiction to the titling of the quilombola territories that was on public federal lands.

At that time there was between the Palmares Cultural Foundation and the INCRA concurrent competence for the titling of the quilombola territories, or even a conflict of jurisdiction. The differences do not came to the jurisdiction for the titling, but also as to the form and scope of the right, since the way advocated by the Palmares Cultural Foundation had the potential to facilitate the titling of the territories of most quilombola communities, as that was not confined to public federal lands, as well as providing for the possibility of titration of a larger area than that actually occupied so quiet and peaceful at that time by the community.

In function of this context of normative administrative disputes it was established by presidential decree dated December 04, 1996, a working group within the Federal Government with the purpose of developing proposals related to administrative procedures necessary to the implementation of the provisions of art. 68 of the ADCT. The fruit of the discussions of the working group was the Provisional Measure n° 1911-11, which changed the Law in 9.649/1998 to establish the Ministry of Culture, the exclusive authority for the titling of the quilombola territories, the jurisdiction which was by the Ministry in reference attributed to the Palmares Cultural Foundation, by means of the Decree n° 447/1999. In the face of such delegation, the Palmares Cultural Foundation edited to Ordinance no. 40/2000, which established the administrative rites of the process for titling of quilombola territories.

Undeniable that assigning to the Palmares Cultural Foundation, at that time, the jurisdiction for the titling of quilombola lands hampered the application of art. 68 of the ADCT of the 1988 Federal Constitution. This, once that the said organ did not count, as it still does not count on a structure which is minimally consistent with the demand. Not that the INCRA had at the time, or even now, the structure that is needed to title all the quilombola territories in a reasonable time frame, but it is certain that the agrarian municipality has, and had also at the time, the most appropriate structure for such an end, if compared to the Palmares Cultural Foundation.

On the other hand, the process through the Palmares Cultural Foundation foresaw the possibility of titling larger areas, the nearest of which is indispensable to the reproduction of communities by their own means, because it does not restrict to title quilombos incidents on public federal lands already collected. It is certain that the Palmares Cultural Foundation has made some processes of titling of quilombola territories, however, it had no legal competence to issue titles of land, what limited a lot of its action.

Still that Ordinance no. 40 of the Palmares Cultural Foundation did not foresee the possibility of expropriations for the titling of lands with the occupation of not quilombola third parties that had valid domain titles, had among its provisions the rules that gave the ideia that the quilombola land to be titled was greater than that with which the community had full possession.

The procedures adopted by the Palmares Cultural Foundation tended to seek expedition of titles of land projects that would focus on the needs of the quilombola communities, because it is not restricted to the area effectively occupied by the

communities at the time of the completion of the studies. Since these studies should stick to the uses and customs of the community, to the essential lands to their cultural manifestations, as well as the lifting of titles of lands of third parties that were the focus in the quilombola lands.

It was in this context that in the year of 2001, the President of the Republic at the time issued a Federal Decree 3.912/2001, which upheld the competence of the titling of the quilombola territories next to the Palmares Cultural Foundation. But it has limited very much the quilombola right, by choosing an interpretation of art. 68 of the ADCT which precluded the possibility of titling in favour of quilombola lands that were necessary for survival. Stating that the Constitution would guarantee the title only of the lands that were being occupied by the quilombolas from the year of 1888, the date of the abolition of slavery, 1988, the date of the promulgation of the Federal Constitution, in a kind of adverse possession in centennial.

Thus, the Federal Decree 3.912/01 that has been issued to regulate how the Palmares Cultural Foundation should act in order to comply with art. 68 of the ADCT of the 1988 Federal Constitution. It is crystal clear the direct intervention of the President of the Republic, by decree, to impose a restrictive view on the right contained in the Constitution.

The parameters for titling of quilombola lands set forth In the decree in question practically annihilated the possibilities of titling quilombola lands, whether it is because it would be very difficult for most of the communities to prove the possession of an area for more than a hundred years, whether it is because historically the communities have been dispossessed of their land, or even never have had access, without conflict, to lands needed to ensure a dignified life.

The bases for the compliance with art. 68 of the ADCT of the Federal Constitution, according to the Federal Decree 3.912/01, did not relate to the need to ensure the quilombola communities survival conditions, that is, the material basis of its reproduction according its own way of life. In fact, the decree ensured and legitimized a history process of oppression to the black population, legalizing the historical expropriation that these subjects are even today subjected to. Without having access to the lands to ensure the means of life, the quilombolas would continue to live in precarious conditions, having to bear the weight of centuries of racial oppression.

However, in November of 2003 two decrees were published by the Federal Government that have significantly changed the public policy for titling of quilombola

territories. The Federal Decree no. 4883/03 transferred the competence of the titling of the quilombola territories from the Ministry of Culture to the Ministry of Agrarian Development, and the Federal Decree 4887/03 significantly changed the procedure for titling of quilombola territories, delegating to INCRA the task of conducting the processes of titling of the quilombola territories.

The changes in the procedure for titling of quilombola territories have transformed significantly the procedure and, substantially, the understanding of the content and scope of the constitutional quilombola right.

The normative framework established in 2003 appraises the quilombo as a unit of resistance to the historical oppression related to racism, oppression which is from the past, but also of the present. Furthermore, it is essential to note that the concept of the land being titled is also diametrically opposed to the constant Federal Decree 3.912/01, because the new rule set as a parameter, not an centenary occupation of a determined portion of land, but those necessary for the reproduction of the community. That is, it came out of a landmark interpretation which restricted the concept of quilombola land to be titled to a process of occupation of the centenary, to a concept of occupied land that directly relates to the purpose of the recognition of the right.

It is essential to emphasize this difference, since the normative framework previous did not establish any relationship between the right to be recognized and their purpose. It is evident that in the Federal Decree 4887/03 the titling of quilombola lands guards close relationship with the purpose of guaranteeing to the quilombola communities access to the land which allows them the possibility of dignified existence by its own means.

Thus, even with the constitutional recognition of the quilombola right in the Federal Constitution of 1988 it has been required 15 years for the Brazilian State to establish administrative norms that respected the integrity of the quilombola right.

IV) Constitutional quilombola law: the distance between the abstraction of the rule of law and the practical realization of the right

According to data from INCRA, up to the moment only 33[2] quilombola communities were titled by the local government land, and there are other 183[3] communities that were expressed by state organs, making a total of 761.568[4] hectares of land titles in favour of quilombola communities in Brazil.

In Addition to the areas already titled it is possible to identify that have been presented in the INCRA 1.536[5] (one thousand five hundred and thirty six) processes of titling of quilombola territories, with only 219[6] of these processes have already finished the preparation of the Technical Report of Identification and Delimitation (RTID), which alludes to the art. 9 of Normative Instruction no. 57 of INCRA, reaching a total of 2.023.730[7] (two million, twenty thousand and three thousand and seven hundred and thirty) hectares of land in this phase of the titling process.

Thus, it is possible to affirm that currently there are 2.785.298 (two million, seven hundred and eighty-five thousand, two hundred and ninety eight) hectares of land at the disposal of the quilombolas, by summing the areas titled and the ones that come with RTID completed, without being able to have access to the amount of land that would be being worked on by an organ of state for purposes of titling, behold, such data are no available for consultation. The lands are already titled, and in the process of titling would benefit 369 communities.

From these elements it is possible to conclude that following the current pace of titling of quilombola territories will be required to INCRA, at least 605 years to title all of the quilombola processes established in the framework of the local authority land.It is also feasible to state that, taking into account the total number of titling processes instituted in INCRA, the municipality met around 2.14% of the existing demand, taking into account the number of titled communities and those still to be titled.

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2 Available in: <http://www.incra.gov.br/sites/default/files/uploads/estrutura-fundiaria/quilombolas/andamento_dos_processos_pdf.pdf> January, 23, 2017;

3 Available in: <http://www.cpisp.org.br/terras/asp/ano.aspx?DataInicial=1900&DataFinal=2017> January, 23, 2017

4 Available in: <http://www.cpisp.org.br/terras/asp/terras_tabela.aspx>: January, 23, 2017

5 Available in: <http://www.incra.gov.br/sites/default/files/uploads/estrutura-fundiaria/quilombolas/andamento_dos_processos_pdf.pdf> Acesso em: January, 23, 2017

6 Available in:<http://www.incra.gov.br/sites/default/files/uploads/estrutura-undiaria/quilombolas/andamento_dos_processos_pdf.pdf> January, 23, 2017

7 http://www.incra.gov.br/sites/default/files/incra-andamentoprocessos-quilombolas_quadrogeral.pdf

It should be noted that these data take into account only the demand effectively presented today, and it is reasonable to assume that demand tends to increase if the pace of titling increases as well, since it will awaken in the communities the feeling that it is possible to conquer the land in this way.

It is added to these facts the observation that the budget for the titling of quilombola territories has decreased dramatically in recent years. The first time in the history of the Brazilian State in which there was a federal budget for the titling was in the year of 2009, with R$ 5.470.000 (five million four hundred and seventy thousand reais) for expropriation of land, a value that arrived in a growing range of R$ 51.687.000 (fifty-one million, six hundred and eighty-seven thousand reais) in the year of 2012. Subsequently the values destined for it have decreased a lot, and in a decreasing scale year-on-year reached five million in 2016, and the three and a half million for the year of 2017, according to the provisions of the budget laws each year.

It is also a very serious situation of the budget of the INCRA in respect of the funds necessary for the carrying out of the titling. The budget appropriation specifically designated for this purpose began only in the year of 2010, with a total authorized of R$ 6.238.754,20, a value that was R$ 5.995.072,00 in 2011, R$ 4.735.641,90 in 2012, R$ 5.071.550,00 in 2013, R$ 5.389.649,48 in 2014, R$ 4.270.482,06 2015, R$ 3.003.248,00 in 2016 and only R$ 1.388.935,00 for the year of 2017.

From the data it is possible to infer that there was a significant decrease in the budget for INCRA to carry out the titling work of the quilombola lands, representing the amount available for the year of 2017, slightly more than 22% of the highest value passed on to the organ.

The nearly absence of a budget for the expropriation of lands in favor of the quilombola communities, as well as the drastic reduction of the budget for the accomplishment of the works of the INCRA, show that the rhythm of the titlings will decrease even more, in order to almost paralyze the titration of Lands in this year of 2017.

These data can and should be compared with the information of the last agricultural census of the Brazilian Institute of Geography and Statistics (IBGE) published in 2006, when it was stated that there were in Brazil 5,175,636 (five million, one hundred and seventy five thousand and six hundred and thirty-six) agricultural establishments, occupying an area of 333,680,037 (three hundred and thirty-three million, six hundred and eighty thousand and thirty-seven) hectares.

From the comparison of the data on the titling with the information of the IBGE, it can be observed that the titled quilombola lands, considering each community as an agricultural establishment, correspond to 0.00063% of the total of agricultural establishments in Brazil. That is, if we consider that each titling process in INCRA would represent an agricultural establishment, the 1,500 openes processes would represent 0.029% of the total agricultural establishments in the country.

In other words, the total number of communities currently titled is insignificant compared to the total number of agricultural establishments in the country. And even if all of the communities that we currently expect for the realization of the right to land are titled, the amount of quilombola communities would continue to be impassive front to the amount of agricultural establishments in Brazil.

In this sense, even if all of the demand for quilombola titling currently existing was carried out, there would be no significant impact to the market for land, since the amount of communities is insignificant in front of the total agricultural establishments in Brazil. The same can also be said, based on the above data, regarding the amount of hectares of land titled in favor of the quilombola communities. Compared to the amount of hectares of land in the current agricultural establishments, it is observed that the sum of the land actually titled and those that already has RTID will be only 0.60% of the total land of the agricultural establishments destined to the quilombolas.

The above information is arranged to indicate that up until now, after more than twenty-eight years of the promulgation of the Federal Constitution and the other thirteen years since the publication of the Federal Decree 4887/03, the action of the State was negligible. The amount of lands titled during this period is almost negligible in front of the demand and puts the quilombola communities in a scenario of hopelessness, where the estimated time to complete all the titlings is greater than the double of time in which there was slavery in Brazil.

But, beyond this general overview of the titling of quilombola territories, there is a specific situation that requires attention by the potential of a general scope to the public policy in reference.

In November of 2016, the Prosecutor of the Republic of the municipality of Volta Redonda applied to the Civil House of the Presidency of the Republic information on the progress of the process of titling of the Alta Serra do Mar quilombola community, located in the municipality of Rio Claro, state of Rio de Janeiro. The process was stuck at the Civil House of the Presidency of the Republic for some time, where it awaited

developments for signature of the presidential decree of expropriation of land for the benefit of the quilombolas.

In its manifestation, the Civil House of the Presidency of the Republic affirmed that by reason of the Decree 4.887/03 *sub judice* in the Supreme Court, in a Direct Action of Unconstitutionality, it would be recommended to "wait for the outcome of the trial in order to observe the constitutional principle of Legal certainty"[8]. And it adds that even the Supreme Court recognizes the constitutionality of Decree 4.887/03, "it is up to the Executive branch, observing the criteria of convenience and opportunity, which reached the number of beneficiaries in each area and the possibilities of the budget of the Union, to decide the order in which they will give to the regularization"[9]. This implies that, in the opinion of the Federal Executive Power, no land shall be entitled before the Federal Supreme Court decides on the constitutionality of Decree 4.887/03, and that although it declared the constitutionality of the decree is an act of discretion of the Executive to review the titles, including the ones already carried out.

V) Conclusions and questions

The foregoing demonstrates that the quilombola communities daily dealwith the racism embedded in Brazilian society, and that the public policy of the titlingof the quilombola territories is still too far from realizing the right constitutionally assured to the quilombolas.

Taking into account this context, the petitioners are using the present to, withthe basis of article 41 "d" of the American Convention on Human Rights and 18"d" of the Statute of the inter-American Commission on Human Rights, require that this E.Commission asks the Brazilian State information about the public policy for the titling ofquilombola territories, and may do so in the form of questions below:

- Has the Brazilian State developed some strategic planning of the administrative action to cope with the demand for titling of quilombola territories in a reasonable time frame?

- If said strategic planning exists, which temporal estimate of the Brazilian State to give answers to all of the 1.536 administrative procedures for titling of quilombola lands that have been presented next to the INCRA?

[8]Note SAJ (2.897/2016 – AF in administrative procedure no. 1.30.010.000432/2013 to 30 in the annex
[9] Id. point 10 p. 2

- In case there are no said strategic planning, would the brazilian State be able to, along with the quilombola communities, carry out such strategic planning?

- Does the budget for the policy of title for quilombola territories meet the existing demand, taking into account the constitutional right of reasonable length of process? Why is the budget cutting of the quilombola policy of the land titling is much more than the program of titling individual land called

  "Legal Land"?

- Does the Brazilian State, specifically through the Executive Power of the Union, have an interest or is carrying out changes in the Federal Decree n° 4887/03?

- Does the Brazilian State, specifically through the Executive Power of the Union, have the intention of paralyzing the public policy for titling of quilombola territories in function of the processing of the Direct Action of Unconstitutionality n° 3239, who is being tried in the Supreme Court?

Established in conjunction this letter:

Curitiba, June 21st, 2017

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