

# **INDIGENOUS PEOPLES AND ACCESS TO THE JUSTICE SYSTEM IN MARANHÃO**

**E x e c u t i v e  
S u m m a r y**

This Executive Summary is part of the *“Indigenous Peoples and Access to the Justice System in Maranhão”* report, prepared by the Coordination of Indigenous Organizations of the Brazilian Amazon (COIAB) and Hivos, in the framework of the All Eyes on the Amazon program, with the support of the Coordination of Indigenous Coalitions and Organizations of Maranhão (COAPIMA), Greenpeace Brazil and the Coalition of Indigenous Peoples of Brazil (APIB).

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# i n d e x

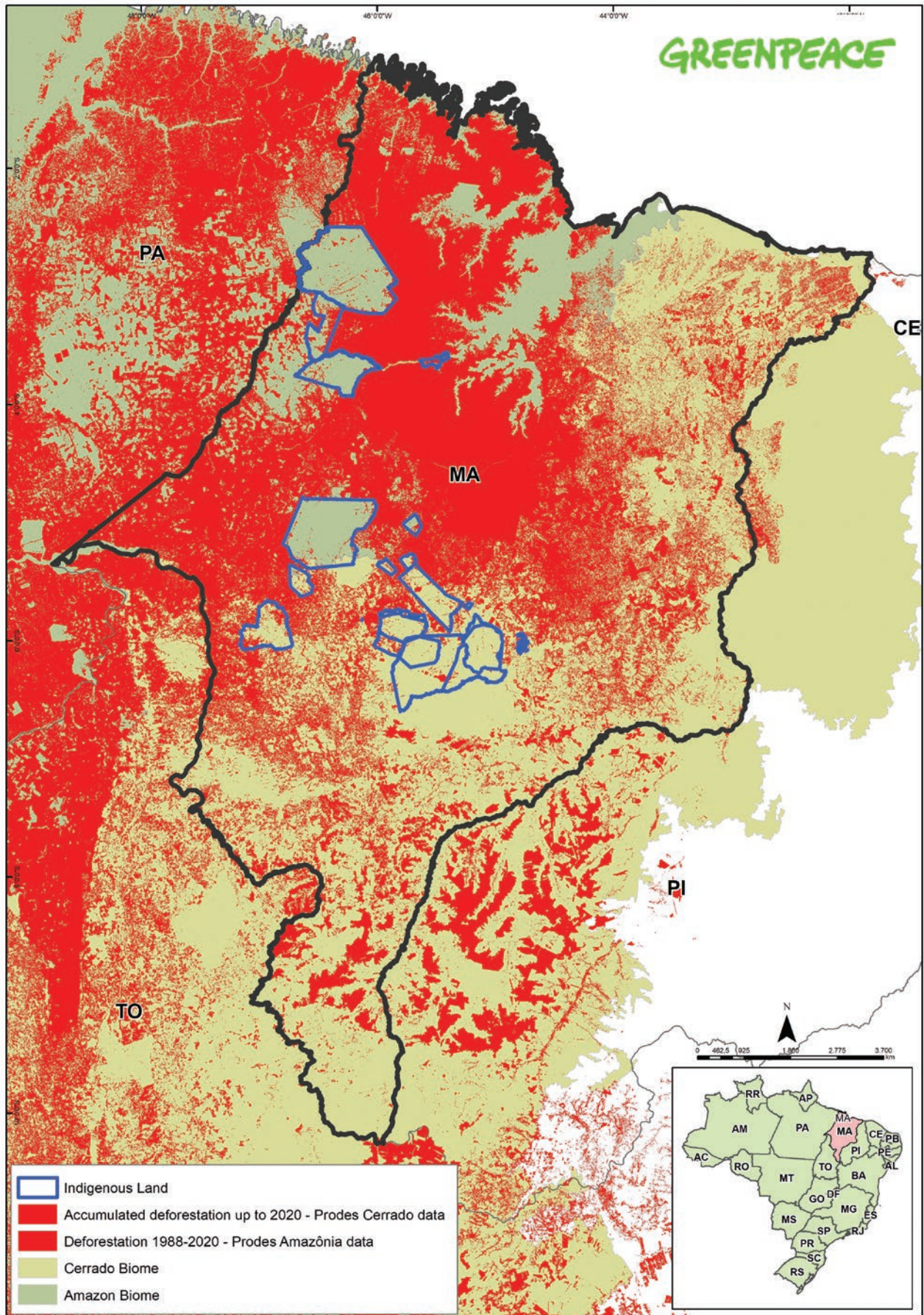
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# 1. Introduction/Contextualization

The state of Maranhão is profoundly impacted by historical dynamics that are intertwined with environmental degradation and violence against the lives, cultural forms of organization, and rights of Indigenous and traditional Peoples. Data from PRODES, a monitoring project conducted by the National Institute for Space Research (INPE), revealed that, by 2017, nearly 75% of the total areas of the Amazon Rainforest in Maranhão had been deforested. Of the 25% remaining original forest that still stands—an equivalent of around 24,000 square kilometers—more than 70% is located within protected areas, including Indigenous Lands (ILs) and Conservation Units (CUs).

Today there are more than 22 indigenous lands that have been demarcated or are in the process of being demarcated in Maranhão, and all of them are under pressure from exploitation or the target of various threats. As the years go by and as logging, slash and burn practices, and infrastructure projects swallow up the forest that surrounds indigenous lands, the threats they face increase and, as a consequence, the already longstanding, recurrent violations of original peoples' social, territorial, cultural, and human rights intensify.

The situation has progressively worsened due to the federal government's refusal to comply with its duty to protect indigenous lands. Abandoned to fate, the Indigenous Peoples have organized themselves to protect their territory, and this situation has increased the vulnerability of indigenous leaders in the face of violence by land grabbers, loggers, and other invaders of their lands.

Organized into groups of men and women, they risk their safety to preserve their territories. These groups are known as the Guardians and Warriors of the Forest. They monitor and protect their lands, identify criminal activities carried out by hunters, loggers, land grabbers, drug traffickers, and other invaders and report these violations to the relevant authorities. These leaders defend the collective rights of Indigenous Peoples, putting their lives at risk to be guardians and consequently guarantee the conditions necessary for the physical and cultural reproduction of their respective peoples.

The atmosphere of violence against the Indigenous Peoples of Maranhão has caught the attention of both the national and international community and human rights organizations. In January of 2021, the Inter-American Commission on Human Rights (IACHR) issued an injunction requesting that Brazil adopt effective measures to protect the health and safety of the indigenous Guajajara and Awá peoples living on the Araribóia Indigenous Land, given the vulnerable situation in which they find themselves due to the invasion of their territories and the elevated risk of the spread of COVID-19 caused by the present invaders. However, no action has been taken by the government.





In the face of this situation, with support from the All Eyes on the Amazon Project, we conducted a study in the second half of 2020 to investigate how the judiciary, the branch of government responsible for interpreting and applying the law in concrete cases, has conducted and positioned itself with regard to the systematic violation of indigenous rights. Have problems like those mentioned above – land grabbing, invasions, illegal extraction of natural resources, and aggression against Indigenous People – been reviewed by the judiciary? How does the judicial branch decide what cases should be brought forth for a ruling? And what do the answers to these questions say about Maranhão's Indigenous Peoples' access to the justice system?

**To answer these questions, we developed our study according to two axes:**

## **I.**

The first axis consisted of research regarding jurisprudence and analyses of decisions by Brazil's Federal Supreme Court (STF), the Superior Court of Justice (STJ), and the Federal Court of Appeals of the 1st Region (TRF-1) involving indigenous rights in Maranhão to find out the judiciary's position in these cases; and

## **II.**

The second axis consisted of an investigation into the government's actions with regard to the murders of indigenous leaders in Maranhão. More specifically, we analyzed police investigations and legal proceedings to understand the measures taken to prevent and prosecute these crimes, including criminal accountability, and their effectiveness.



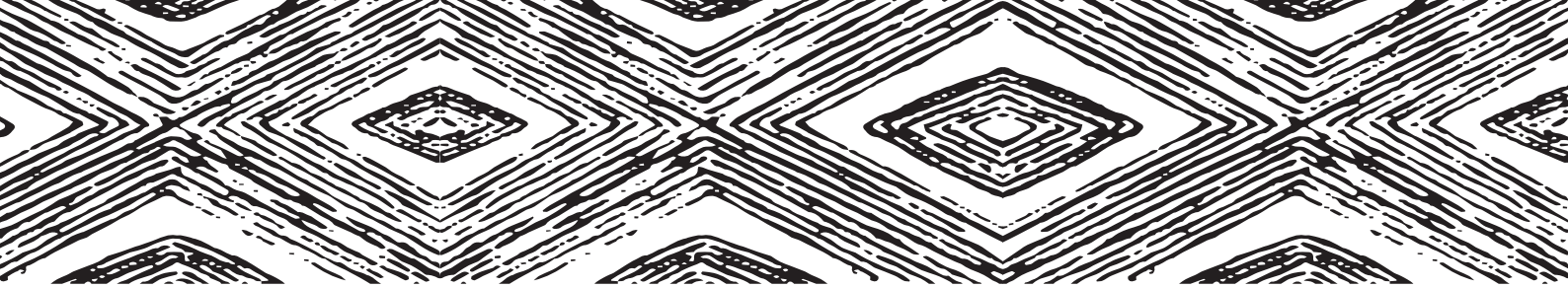
## 2. Findings

### I. The "Investigation of Judicial Rulings" axis

#### 1. The judiciary has contributed to hindering the demarcation of indigenous lands

In September 2014, when judging a writ of mandamus authored by the municipalities of Fernando Falcão, Formosa da Serra Negra, and Barra do Corda, all in the state of Maranhão, the Second Panel of the Supreme Court—with Justice Carmen Lúcia acting as judge-rapporteur—annulled the demarcation of the Porquinhos Indigenous Land of the Apãnjekra Canela people. In this case, the Timeframe Doctrine was applied, according to which Indigenous Peoples only have a right to demarcate their lands if they were in possession of them on the date the Federal Constitution of 1988 was ratified or if, on that date, the lands in question were under proven physical or judicial dispute. The Timeframe Doctrine has no basis in the Federal Constitution, nor is it supported by any precedence established by the Federal Supreme Court, where decisions by other panels have made rulings that are diametrically opposed to it.

By ruling according to the Timeframe Doctrine, the Second Panel of the Federal Supreme Court suggests that the history of violence against the Canela people of the Porquinhos IL should be disregarded. Furthermore, the writ of mandamus is not an adequate means to annul the demarcation procedure of indigenous lands, as it does not include a stage requiring the production of evidence. The procedure for a writ of mandamus is brief, with a narrow scope, which is inadequate for assessing complex matters such as the demarcation of indigenous lands. **Currently, the understanding established by the Federal Supreme Court is that the procedure for a writ of mandamus is incompatible with the complexity of questions involving the territorial rights of indigenous peoples and the respective demarcation process.**



## 2. Municipalities are among the primary actors that appeal to the judiciary to circumvent indigenous territorial rights

At least five legal decisions that sought to nullify or undermine the demarcation of indigenous lands were the result of cases brought by municipal governments of the state of Maranhão. This is an extremely relevant data point as it **shows once again that governments are actively working to undermine the right to land**. Such situations represent attempts by certain political groups entrenched in local governments to thwart public interests guaranteed by the federal constitution.

## 3 Environmental crimes on indigenous lands continue to take place with impunity

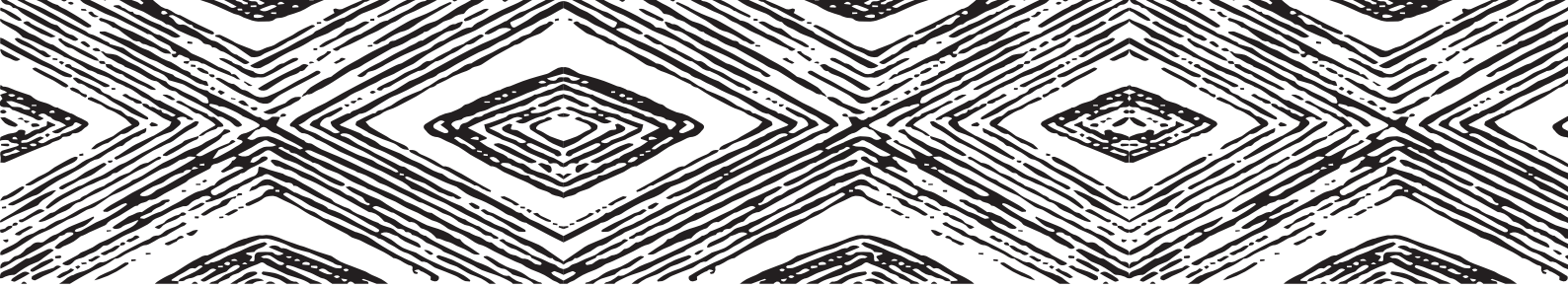
In the higher courts and the Federal Appeals Court of the 1st Region, we **found no convictions for environmental crimes that occurred on indigenous lands**. Considering the widely documented scenario of invasions and deforestation within these areas, the absence of convictions related to environmental crimes within indigenous lands reinforces the perception that **there is a general atmosphere of impunity surrounding crimes committed against indigenous territorial rights, which, as shown below, is a determining factor in supporting the escalation of violence**, making Maranhão one of the most dangerous states for Indigenous Peoples in Brazil.

## 4. There is no jurisprudence in the state regarding the pressing issue of the certification of private properties within indigenous lands

Public documents drafted solely with information provided by private individuals, such as contracts for land purchases registered in notary offices (*cartórios*), the Rural Environmental Registry (*Cadastro Ambiental Rural*, or *CAR*), and the certifications issued by the federal Land Management System (*Sistema Gestão Fundiária*), are instruments essential to the process of land grabbing. In April of 2020, the National Indian Foundation (*Fundação Nacional do Índio*, or *FUNAI*), as authorized by Normative Instruction 09/2020, approved the certification of private properties on indigenous lands whose demarcation has not yet been formally ratified.

Three indigenous lands in Maranhão whose demarcation has not yet been formally ratified – Porquinhos (of the Canela-Apãjekra), Bacurizinho (of the Guajajara), and Kanela Memortumré (of the Kanela Memortumré)—are among the ILs in Brazil most impacted by certified private properties within their limits. **Despite representing a severe violation of indigenous territorial rights, the certifications of private properties overlapping ILs have not been the subject of rulings by the higher courts or the Federal Appeals Court of the 1st Region.**



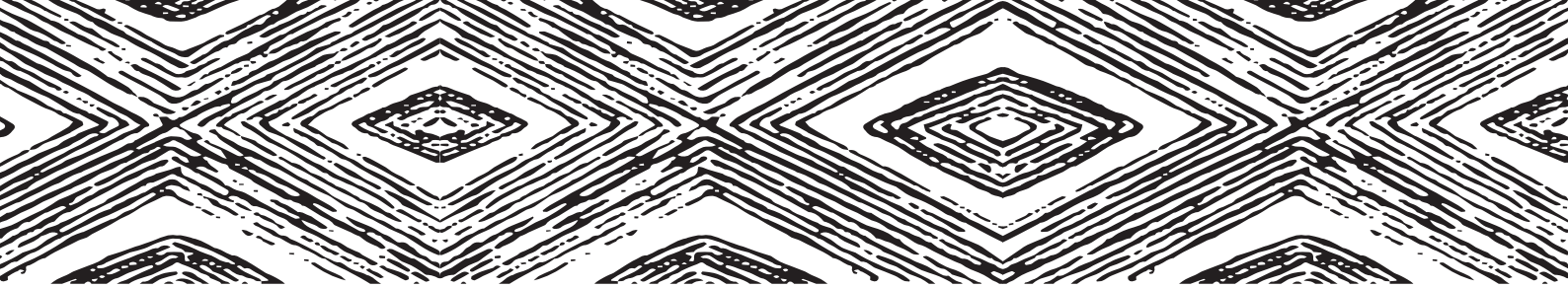


## 5. Systematic violations of Indigenous People's right to self-determination and self-representation are taking place

Before the promulgation of the Federal Constitution in 1988, Indigenous Peoples were characterized as relatively incapable of representing themselves, so FUNAI was given the role of exercising their institutional representation. However, the constitution of 1988 broke with this regime of state guardianship over Indigenous Peoples and gave them the right to represent themselves through their own organizations in any institutional proceeding. However, **it is common for the rulings of the judicial authorities to be rendered in violation of Indigenous Peoples' right to self-determination and participation**, with the sole attendance of FUNAI, whose interests are often at odds with those of Indigenous Peoples.

## 6. The rights of indigenous defendants are systematically disregarded in criminal proceedings

Both national legislation and Convention 169 of the International Labor Organization (ILO) recognize a number of specific rights held by Indigenous Peoples within the proceedings of criminal law, such as the right to apply the normative systems and penalties of their community, a special prison regime, the mitigation of penalties, and access to an interpreter for all acts of the proceedings. Each of these rights had been systematically ignored and disregarded in the criminal proceedings involving indigenous defendants that we analyzed for our study. The majority of the rulings followed an assimilated logic that holds that if an indigenous defendant has had significant contact with non-indigenous society, he or she loses his or her ethnic identity, and thus the rights linked to this identity do not apply. Such reasoning has no basis in the legal system, in which the principle of self-identification and cultural and normative plurality are the rule. **The lack of recognition of indigenous procedural rights is one of the hallmarks of the lack of equitable access to the justice system experienced by the Indigenous Peoples of Maranhão.**



## II. The "murder" axis

### 7. Difficulty in accessing information

There is no government agency in the state of Maranhão committed to documenting, registering, and systematizing the cases of murders and other violence committed against the Indigenous Peoples of the state, leaving it up to civil society organizations to carry out this task. Our research team sought information from public security agencies but did not obtain systematic responses within a reasonable time. This issue is relevant because **the absence of information from the authorities contributes to obscuring the reality that Indigenous People face in Maranhão** and compromises the development of public policies adequate to the issues they address.

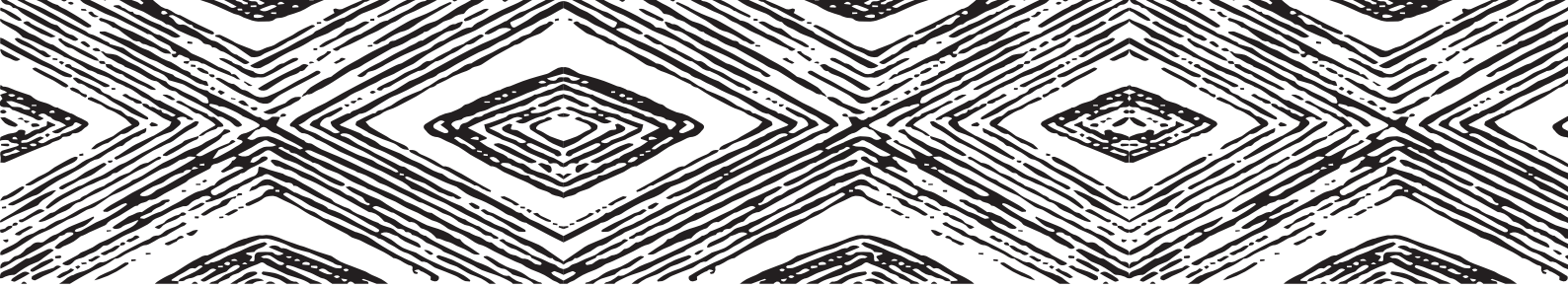
### 8. Murders of indigenous leaders and disputes over territory

In Maranhão, there is a grave situation in which the invasion of indigenous lands and the violence practiced against Indigenous Peoples feed into each other, resulting in an alarming number of murders. **Between 2003 and 2019, at least 32.3% of the reported 57 murders of Indigenous People correlated in some way with the invasion of their lands and the illegal exploitation of the natural resources located on them.** In 40% of these cases, it was not possible to reach a conclusion about the true motive of the murder due to a lack of information. A fact that stood out is that for every ten Indigenous People murdered in the period between 2003 and 2019, seven were members of the Guajajara People.

### 9. Flaws in investigations and legal cases involving murders of indigenous leaders

Due to the difficulty accessing information, of the 21 murders of Indigenous Peoples involving land conflicts and taking place in Maranhão between 2003 and 2019 that we investigated, it was only possible to document six. There were no convictions in any of these cases. Such cases are marked by systematic violations of indigenous rights and constitutional guarantees, as specified below:





**a. ABSENCE OF AN ADVERSARY PROCEEDING:**

This is an essential element of the investigative procedure. However, the documents analyzed had no testimonies from Indigenous People.

**b. ABSENCE OF INVESTIGATIONS:**

In the analyzed cases, investigative actions were not carried out, such as the preservation of the crime scene, expert examinations, wiretapping, search and seizure, confrontations, etc. There was only testimony from those allegedly involved.

**c. ETHNIC DE-CHARACTERIZATION:**

Authorities systematically disregarded the ethnicity of Indigenous People. In most cases, the authorities dispensed with the preparation of an anthropological report and disregarded the ethnicity of Indigenous People based on erroneous subjective criteria, such as the fact that the indigenous person is literate or has a motor vehicle license, in flagrant violation of the Federal Constitution, Convention 169 ILO, and Law 12228/2010, which establishes the Racial Equality Statute.

**d. CONCEALMENT OF THE CONTEXT OF DISPUTES BEHIND THE CRIMES:**

In the investigative procedures we studied, the context of disputes involving indigenous rights was disregarded. Even in the cases in which it was most evident that the murders were carried out in retaliation against leaders who tirelessly struggled to prevent the invasion and deforestation of their lands, this context was ignored in favor of a prevailing narrative that the murder was a "common crime."

**e. DELAYS IN DETERMINING IF THE CASES FALL UNDER THE JURISDICTION OF THE FEDERAL JUSTICE SYSTEM:**

Both the ethnic mischaracterization and the concealment of the context characterized by disputes involving indigenous rights are violations that cause a significant delay in investigated procedures. It should be emphasized that crimes committed against Indigenous Peoples' interests must be prosecuted and judged by the federal justice system. However, just determining whether a case falls under the jurisdiction of the state or federal justice system often takes years, contributing to the impunity with which such crimes are committed.







### 3. Conclusions: limits and obstacles to access to the justice system for Indigenous Peoples in Maranhão

Successive rights violations mark the relationship between indigenous communities and the institutions of the justice system in itself, and we have identified a set of institutional practices that hinder Indigenous Peoples' access to the justice system. Such practices manifest within the judiciary in several ways, among which the following are most prominent:

- **OBSTACLES TO THE RECOGNITION OF INDIGENOUS TERRITORIAL RIGHTS:**

The acceptance of doctrines that hinder or prevent demarcation and have systematically failed to punish crimes committed against indigenous territorial rights.

- **LACK OF RECOGNITION OF INDIGENOUS RIGHTS IN CRIMINAL PROCEEDINGS**

The judiciary has failed to follow the principle of normative plurality provided for by ILO Convention 169, refused to recognize the ethnic identity of indigenous defendants, and failed to recognize the indigenous rights provided for by national legislation and international law during criminal proceedings.

- **SYSTEMATIC FAILURES IN THE PREVENTION AND SUPPRESSION OF HOMICIDES AGAINST INDIGENOUS PEOPLE:**

In cases where indigenous leaders are the victims of homicides, investigations are slow and ineffective. Almost all are conducted in a way that obscures the territorial conflicts underlying the crime. There is no commitment by the federal government to record and monitor these cases.

**These practices demonstrate that a disregard for rights and lack of access to the justice system is a structural characteristic of the relationship between Indigenous Peoples and the judiciary. This relationship accentuates inequality and reinforces a stigmatizing narrative regarding Indigenous Peoples, with serious consequences that make the protection of the rights and guarantees of Indigenous Peoples in the state of Maranhão extremely difficult.**











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