



“PROJECTS OF CIG ITEMS ON THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS: PERSPECTIVE FROM INDIGENOUS PEOPLES AND LOCAL COMMUNITIES”.

OMPI. IGC 33. Geneva. 27 of February, 2017.



Ring. Handcraft from Kaingáng Indigenous People.
Rio Grande do Sul. South of Brazil.

Lucia Fernanda
Jofej - Kaingáng
Picture: Daniza
Jagsó - Kaingáng.



Lucia Fernanda Jofej – An Indigenous Individual from Kaingáng.
Founding Member of INBRAPI (Brazilian Indigenous Institute for Intellectual Property).
National Deputy Advisor of the Indigenous People Board (MINC).
Lawyer, Master's Degree in Biodiversity and Traditional Knowledge (University of Brasília UnB)
and Doctor's Degree student at University of Leiden (Holland).
The People of Kaingáng has a population of 45,000 inhabitants living in the South and
Southeast part of Brazil.
The People of Kaingáng is the 3rd largest Indigenous People with more inhabitants in Brazil.

Census 20101 – IBGE (Brazilian Institute of Geography and Statistics).

WHO WE ARE

Indigenous Peoples In Brazil

305 Indigenous Peoples

63 Isolated Peoples

274 Languages

817,963 people (2011)

870,000 people (2012)

0,4% of the Brazilian population

850 Indigenous Land (FUNAI (National Foundation of the Indigenous), 2011)

110 millions of hectares

About 15% of the national territory

Xingu Indigenous Land. Mato Grosso. Brazil



CARNAVAL RIO DE JANEIRO 2017
XINGU: THE CLAMOR COMING FROM THE FOREST



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COPYRIGHT OF SUBJECT MATTER/CRITERIA
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COMMITTEE MANDATE

The ICG “will continue expediting its action with an aim to reducing its current imbalances and based on an open and full participation, including text based negotiations, in order to reach to an agreement on one or more international legal instruments, with no judgement on the nature of result(s), in relation to guaranteeing the efficient and balanced protection of genetic resources, traditional knowledge and traditional cultural expressions”

PRINCIPLES/INTRODUCTION

Kadiweu Ceramic

ACKNOWLEDGING AND RESPECTING THE RIGHTS OF THE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES AS WELL AS THEIR TRADITIONAL CULTURAL EXPRESSIONS AND THE NEED OF PROTECTION IN CONSULTATION WITH THEIR CREATORS.

“Nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous peoples and local communities at present or those to be acquired in the future” (Introduction of the Nagoya Protocol, 2010 and the United Nations Declaration on the Rights of Indigenous Peoples art. 45.



PRINCIPLES/INTRODUCTION

“Recognising the value of a dynamic public domain and the set of knowledge available for its use by any individual as well as the fact it is essential for creativity and innovation and the need to protect, preserve and promote public domain”.

“Guaranteeing/Recognising the rights already acquired by third parties and guaranteeing/granting legal security and an accesible and rich public domain”.

PUBLIC DOMAIN – RES NULLIUS – REJECTION OF THE RIGHT TO SELF DETERMINATION AND THE RIGHTS TO MAINTAIN AND CONTROL

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, traditional cultural expressions...They also have the right to maintain, control, protect and develop intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions. Art. 31 DONUDPI

The concept of PUBLIC DOMAIN is only applied to the traditional cultural expressions of the Indigenous Peoples and Local Communities when respect and compliance with free, previous and informed consent principles are guranteed as well as the fair and equitable sharing of benefits.

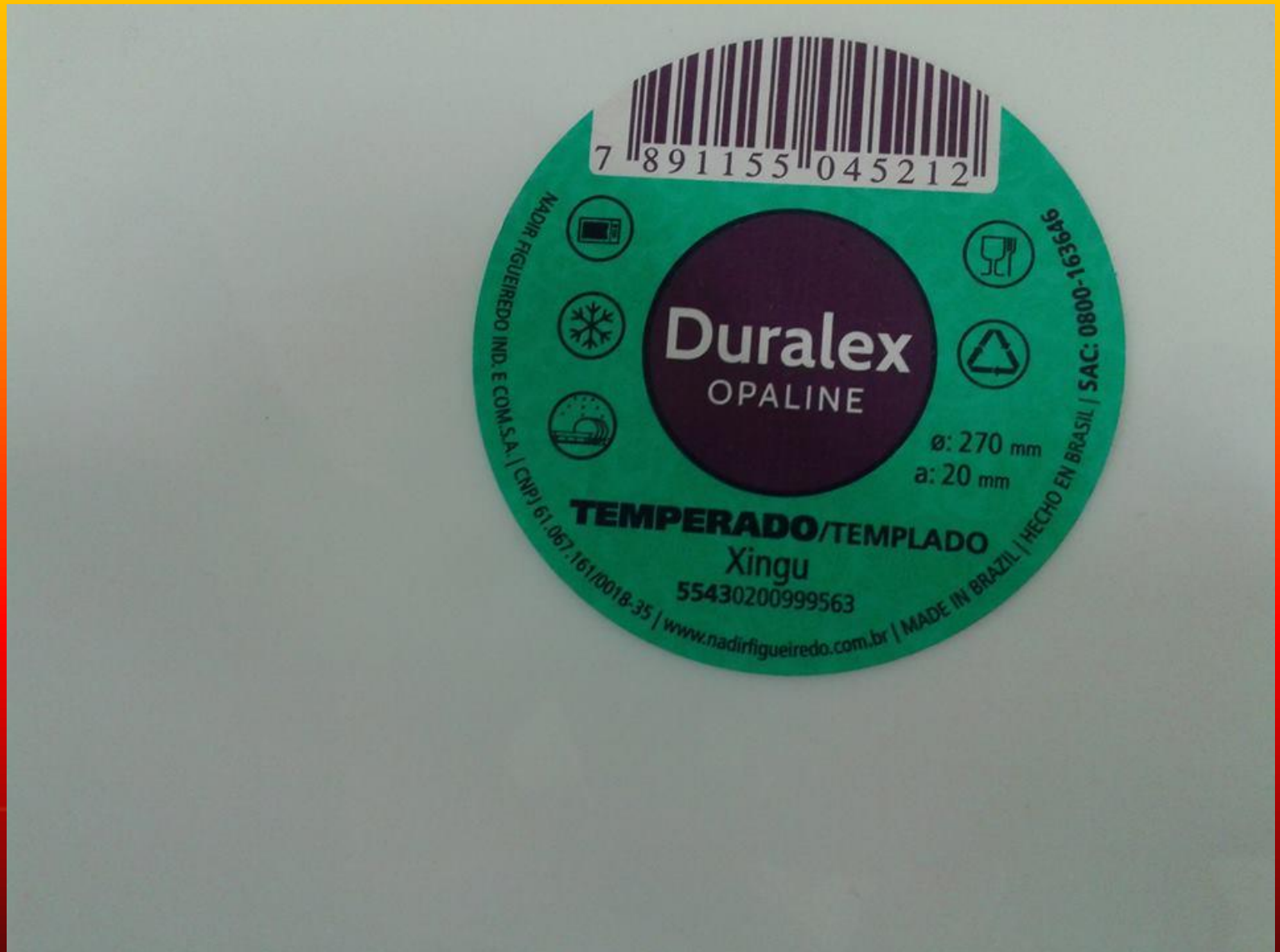
OBJECTIVES

TO PROVIDE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES WITH LEGAL, POLITICAL AND ADMINISTRATIVE RESOURCES FOR:
MISAPPROPRIATION OF TRADITIONAL CULTURAL EXPRESSIONS
CONTROL IN THE USE OF TRADITIONAL CULTURAL EXPRESSIONS BEYOND TRADITIONAL AND CUSTOMARY CONTEXT;
GUARANTEE FREE, PREVIOUS AND INFORMED CONSENT AS WELL AS THE FAIR AND EQUITABLE SHARING OF BENEFITS DERIVED FROM THE USE OF TRADITIONAL CULTURAL EXPRESSIONS



PLATES FROM DURALEX COMPANY OF THE XINGU COLLECTION

COMMERCIALIZATION OF PLATES USING TRADITIONAL DESIGN AND THE NAME OF AN INDIGENOUS LAND FROM THE CENTER PART OF BRAZIL.
USE OF THE NAME OF TUKANO INDIGENOUS PEOPLE



TERMS USED

Publicly available shall mean the subject matter/the traditional knowledge which has lost its distinctive liaison with an indigenous people and as such it has become generic or current knowledge, although its historical origin may be known to the public.



YAWALAPITI INDIGENOUS PEOPLE. XINGU INDIGENOUS LAND. MATO GROSSO. BRAZIL



HAVAIANAS TRIBES PROJECT. WITH NO COMMERCIAL PURPOSES. SIGNED BY THE REPRESENTATIVE OF YAWALAPITI INDIGENOUS PEOPLE. AS FAR AS COPYRIGHT LAW AND PORTARIA 177 OF THE NATIONAL FOUNDATION OF THE INDIGENOUS.

Available at http://brasil.elpais.com/brasil/2015/02/13/politica/1423839248_331372.html

THE INDIGENOUS PEOPLES AND THEIR COMMUNITIES AS WELL AS THEIR USES, CUMTOMS AND TRADITIONAS ARE ACKWLEDGED (FEDERAL CONTITUTION OF BRAZIL. 1988).

Traditional designs are part of the cultural identity and social organization of several indigenous peoples. They are a non verbal code of social identification.

“In their multiple manifestations, they gather the highest values of the culture” (Lux VIDAL. Indigenous Symbolism)

PORTARIA 177 OF 2006. NATIONAL FOUNDATION OF THE INDIGENOUS

“Taking into account the right of the indigenous peoples to participate in and be consulted about the activities related to integrity, values, practices and institutions of these peoples;”

COLLECTIVE RIGHTS REQUIRE CONSULTATION TO OBTAIN FREE, PREVIOUS AND INFORMED CONSENT AS WELL AS FAIR AND EQUITABLE PARTICIPATION ON THE BENEFITS SHARED BY THE COMMUNITY.



COPYRIGHT OF SUBJECT MATTER/CRITERIA FOR ADMISSIBILITY

TRADITIONAL CULTURAL EXPRESSIONS OF THE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES ACCORDING TO USE AND CUSTOM

COPYRIGHT OF THE TRADITIONAL CULTURAL EXPRESSIONS IS COLLECTIVE

TIME CRITERIA IS NOT ALLOWED FOR PROTECTION SINCE TRADITIONAL CULTURAL EXPRESSIONS ARE DYNAMIC AND EVOLVE, AND THE NATURE OF THE INDIGENOUS PEOPLES RIGHTS AND LOCAL COMMUNITIES AS TO THEIR CULTURAL HERITAGE IS INALIENABLE



**Kaingáng raft. Rio Grande do Sul
Bracelete.
Tradition and Innovation**

BENEFICIARIES OF THE PROTECTION

THE BENEFICIARIES OF THE PROTECTION ARE THE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES WHICH ARE THE CREATORS OF THE TRADITIONAL CULTURAL EXPRESSIONS RECOGNISING THE IMPORTANCE AND THE ROLE OF INDIGENOUS AND LOCAL COMMUNITIES WOMEN FOR THE CREATION, MAINTENANCE AND TRANSMISSION OF THE TRADITIONAL CULTURAL EXPRESSIONS.



INDIGENOUS PEOPLES AND LOCAL COMMUNITIES ARE SUBJECT TO RIGHTS. TO INCLUDE NATIONS OR STATES WHICH ARE BENEFICIARIES WILL LESSEN THE VALUE OF THE TEXT OF THE FUTURE DOCUMENT.



**INDIGENOUS PEOPLE OF KARAJÁ.
ILHA DO BANANAL.
MATO GROSSO. WEST CENTER PART OF
BRAZIL.**



KARAJÁ BODY PAINTING – ILHA DO BANANAL. MATO GROSSO.



**CERAMIC OF KARAJÁ INDIGENOUS PEOPLE: ACTIVITY RESTRICTED TO WOMEN.
ILHA DO BANANAL. MATO GROSSO. WEST CENTER PART OF BRAZIL.
CULTURAL HERITAGE OF BRAZIL. INSTITUTE OF THE NATIONAL HISTORICAL AND ARTISTIC
HERITAGE. (IPHAN) OF THE CULTURAL MINISTER (MINC).**

“... Myths and stories narrated by Karajá people which express the rich relationship among its people and the flora and fauna, social relationships and family and social organization. All this complex culture could be identified in the scenes sculpted in clay and decorated with precise layout in black and red dolls”. Available at <http://www.brasil.gov.br/cultura/2012/01/bonecas-karaja-sao-declaradas-patrimonio-cultural-brasileiro>

ADMINISTRATION OF THE RIGHTS

The Member States/The Contracting Parties shall state with the endorsed previous consent in consultation with the holders of the traditional cultural expressions a competitive authority or authorities in accordance with the national law and without prejudice of the right of the holders to administer its rights/interests as to the protocols, agreements, legislation and customary practices.

Alternative 2

The Member States/The Contracting Parties shall state a competent authority in compliance with the national legislation, for the management of the rights/interests foreseen herein.



Sarcófago from Egypt

EXCEPTIONS AND LIMITATIONS

THE EXCEPTIONS AND THE LIMITATIONS SHOULD NOT MEAN THE EXCLUSION FROM A WIDE VARIETY OF TRADITIONAL CULTURAL EXPRESSIONS AS FAR AS PROTECTION IS CONCERNED

DURATION OF PROTECTION

PROTECTION SHOULD NOT BE LIMITED IN TIME

FORMALITIES

As a general guideline, the Member States/the Contracting Parties will not submit the protection of the traditional cultural expressions to any formality.

TRANSITIONAL MEASURES

In relation to the traditional cultural expressions which are particularly important for beneficiaries and which are outside any control from those beneficiaries, they will be entitled to recover such traditional cultural expressions.

REPATRIATION OF
TRADITIONAL CULTURAL
EXPRESSIONS OUTSIDE
ITS TRADITIONAL CONTEXT



djh12665 www.fotosearch.com

ECT from Egypt in the Museum of Louvre.
Paris. France.

RELATION WITH OTHER INTERNATIONAL AGREEMENTS

‘Nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous peoples and local communities at present or those to be acquired in the future’

DECLARATION OF THE UNITED NATIONS ON THE RIGHTS OF THE INDIGENOUS PEOPLES – SELF DETERMINATION ILO – RIGHT TO PREVIOUS CONSULTATION.

SPECIAL MEASURES ENACTMENT

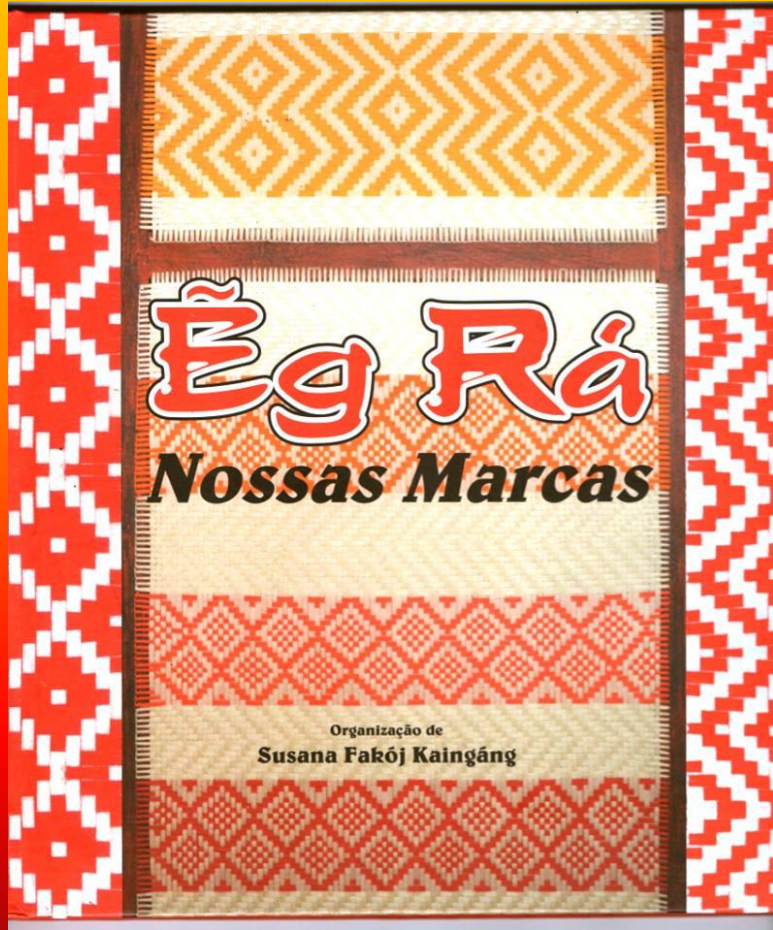
CDB – FREE, PREVIOUS AND INFORMED CONSENT

NAGOYA - FAIR AND EQUITABLE SHARING OF BENEFITS



WOMAN AND BABY OF THE XIKRIN
INDIGENOUS PEOPLE, PAR A. AMAZONIA.
BRAZIL

STRENGTHENING OF ABILITIES AND PROMOTION OF SENSITIZATION



The Member States/the Contracting Parties shall provide the indigenous peoples and local communities with the necessary resources, and they will join efforts to develop projects to strengthen abilities inside the indigenous peoples and local communities, focused on the elaboration of appropriate mechanisms and methodologies such as new culturally adequate electronic and pedagogical material, which have been created with the full and effective participation of the indigenous peoples and the local communities, as well as their organizations.

INDIGENOUS PEOPLES PERSPECTIVE AND CHALLENGES AS TO THE PROTECTION OF THE TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES

RESPECT FOR THE INTERNATIONAL SYSTEM OF RIGHTS OF INDIGENOUS PEOPLES: (NO REDUCTION OF RIGHTS);

FULL AND EFFECTIVE PARTICIPATION OF INDIGENOUS PEOPLES AT ALL LEVELS;

IMPLEMENTATION OF THE RIGHT OF CONSULTATION;

IMPLEMENTATION OF THE PRINCIPLE OF FREE, PREVIOUS AND INFORMED CONSENT;

FAIR AND EQUITABLE SHARING OF BENEFITS DERIVED FROM ANY TRADITIONAL USES OF KNOWLEDGE AND GENETIC RESOURCES



Pataxó People Traditional Games (BA).

Available at

[http://www.orkut.com.br/Main#AlbumZoom?uid=14246570781017295146&pid=1256088879110&aid=1256063227\\$pid=1256088879110](http://www.orkut.com.br/Main#AlbumZoom?uid=14246570781017295146&pid=1256088879110&aid=1256063227$pid=1256088879110)

**AWA GUAJÁ CHILD. 8 YEARS OLD. BURNT
ALIVE. 2012**



KAINGANG BABY. 2 YEARS OLD. BEHEADED. 2015

GENOCIDE – To try or to promote the total or partial destruction of a national, ethnic, race or religious group.

<http://www.dicionarioinformal.com.br/genoc%C3%ADdio/>

REPORT OF VIOLENCE AGAINST INDIGENOUS PEOPLE IN BRASIL. CIMI. 2015.

<http://www.cimi.org.br/pub/relatorio2015/relatoriodados2015.pdf>



ETHNOCIDE – THE DESTRUCTION OF AN ETHNIC GROUP IN CULTURAL PLAN. <https://www.dicio.com.br/etnocidio/>



**Golden Vegetable Handcrafts.
Geographic Indication from Center of Brazil.**



**Photos: courtesy of the
Brazilian Indigenous
Institute for Intellectual
Property (INBRAPI) and
Kaingáng Institute (INKA)**

**Prohibited any
unauthorized use and
forbidden to sell images.**

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