



***Permanent Mission of Brazil to the United Nations Office
and other international organizations in Geneva***

*Ch. Louis-Dunant, 15
1202 – Geneva / Switzerland*

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The Permanent Mission of Brazil to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and has the honor to forward, attached, answers to the communications sent by the Special Rapporteur on the rights of indigenous peoples, dated 5 and 28 August 2015.

The Permanent Mission of Brazil in Geneva avails itself of this opportunity to renew to the OHCHR the assurances of its highest consideration.

Geneva, 18 September 2015.



Office of the High Commissioner for Human Rights (OHCHR)

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Communications sent by the Special Rapporteur on the rights of indigenous peoples

Information from the Government of Brazil

I – Legislation and public policies concerning indigenous lands

Prior to ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, the Brazilian Constitution of 1988 has provisions concerning the rights of indigenous peoples to their traditional lands which are very similar and sometimes even more ambitious than those set out in the said international standards. Complying with these constitutional provisions, the Brazilian Government has already demarcated over 680 indigenous lands occupying roughly 1.1 million square kilometres (12.6% of the national territory), the largest aggregate surface of indigenous lands anywhere in the world.

Although most indigenous lands in Brazil have already been demarcated, some particularly complex areas still remain to be demarcated, many of them located in Mato Grosso do Sul. As noted by the Special Rapporteur, the situation in the State is particularly complex. Many agricultural producers have been occupying these areas for decades, often for more than one generation. Most of them settled in these areas in good faith and have land titles regularly issued by public authorities.

Despite the complexity of the situation, the Government is committed to addressing this challenge and offering fair and effective solutions that respect the rights of all parties concerned. Farmers settled in the areas concerned are contesting in court standard administrative procedures, making these processes exceedingly complicated and lengthy.

In view of this situation, the Ministry of Justice has been advocating for negotiated solutions whereby the Government congregates representatives of farmers and indigenous communities in a single negotiating table to seek reasonable settlements and prevent cases from being brought to court. Following up on previous efforts to that effect, the Minister of Justice, José Eduardo Cardozo, travelled to Mato Grosso do Sul on 2 September where he held meetings with the State Governor, Reinaldo Azambuja, authorities from the Judiciary and the Federal Prosecution Service, indigenous leaders, civil society organisations and local farmers. The Minister subsequently proposed the launching of five negotiating processes concerning areas jointly chosen by indigenous leaders and local farmers. The National Council of Justice (CNJ) and the National Council of the Prosecution Service (CNMP) have already confirmed their intention to participate in this initiative. One of the main challenges to be addressed is the definition of compensation for land taken from farmers possessing official titles to the areas concerned (the Constitution only requires compensation for infrastructure, not for the land).

In a parallel development, the Brazilian Senate adopted on 8 September a draft Constitutional Amendment (PEC 71) providing for financial compensation to farmers

possessing titles "regularly issued by public authorities" to areas to be demarcated as indigenous lands. Such compensations shall cover not only infrastructure and investments made in the area, but also the value of the land. The draft Amendment has been forwarded to the Chamber of Deputies which is expected to take a decision on this matter soon.

II – Administrative demarcation and legal processes concerning indigenous lands in Mato Grosso do Sul

Please find below an update of the administrative procedures and legal processes concerning the areas mentioned in your letters:

- *Tekoha Ypo'i / Triunfo* (Municipality of Paranhos, Guarani Nãndéva people) – Technical studies concerning land demarcation are advanced. In an eviction case concerning this area, the Judge assigned a plot of 100 hectares for the community to live on a provisional basis, pending judgment on the merits of the case (0002584-96.2010.403.6005). An appeal arguing that the community occupied an area beyond the assigned limit was rejected by the Judge.

- *Tekoha Kurusu Amba III* (Municipality of Coronel Sapucaia) – Technical studies concerning land demarcation are ongoing. In one of the legal cases concerning this area (Santa Joana and Bom Retiro farms), an eviction order (0002459-89.2014.4.03.6005) against the indigenous community currently settled in the area was successfully appealed by FUNAI (explicar o que é FUNAI) (0017332-33.2015.4.03.0000). Another farmer who claims legal possession of a neighboring area that at present does not have indigenous presence (Cambará farm) filed another case requesting a legal order preventing indigenous communities from occupying the area (000013325.2015.4.03.6005), which was appealed by FUNAI and is currently pending the judge's decision (001733148.2015.4.03.0000).

- *Tekoha Ñu Vera* (Municipality of Dourados) – Technical studies concerning land demarcation are advanced. An eviction order (000228934.2011.4.03.6002) was successfully appealed by the indigenous community currently settled in the area together with FUNAI (003288965.2012.4.03.0000) as well as by the Federal Prosecution Service – MPF (003389170.2012.4.03.0000). According to the legal decision, the indigenous community is entitled to stay in the area currently occupied (26.89 ha) until the demarcation review process ("aviventação") is concluded.

- *Tekohas Teyi Jusu, Pindo Roky and Itagua* (Jointly known as *Dourados-Amambaipaguá* – Municipalities of Amambai, Caarapó and Laguna Carapã) – Technical studies concerning land demarcation are ongoing. An eviction order (0000654-76.2015.4.03.6002) was appealed by FUNAI and is currently pending the judge's decision (001299938.2015.4.03.0000).

- *Tekoha Nãnde Ru Marangatu* (Municipality of Antônio João) – All technical studies are concluded and the land was recognised by the Government by a Presidential Decree on 28 March 2005. Farmers currently settled in the area had filed a previous law suit claiming to have valid legal titles to the same land, which is pending the judge's decision (000192429.2001.4.03.6002). The same farmers subsequently appealed to the Federal Supreme Court (STF) and obtained the suspension of the

Presidential Decree pending judgment on the merits of both the original case and the appeal (MS 25463).

- *Tekoha Guaiviry* (Municipality of Aral Moreira) – Technical studies concerning land demarcation are ongoing. Two of the farmers who claim legal possession of the area filed requests for eviction orders against the indigenous community that is currently occupying the land (000134836.2015.4.03.6005; 0001375-19.2015.4.03.6005). Another farmer settled in a neighboring area not yet occupied filed a case requesting a legal order preventing indigenous communities from moving to the said area (000138818.2015.4.03.6005). All three cases have been appealed by FUNAI (001769872.2015.4.03.0000; 001754017.2015.4.03.0000; 0017541-02.2015.4.03.0000). The Federal Prosecution Service also appealed against the first case (001871983.2015.4.03.0000). All four appeals are currently pending the judge's decision.

III – Public security, protection of the personal integrity of individuals

With regard to public security and the protection of the personal integrity of individuals in the areas mentioned in your letter, we would like to offer the following comments:

- Responding to requests by the State of Mato Grosso do Sul, as well as by indigenous communities and other stakeholders, the Federal Government ordered the National Public Security Force (Força Nacional de Segurança) to operate in all municipalities located within 150 kilometres of the international borders of that State, which include Paranhos, Laguna Carapã, Coronel Sapucaia, Amambai, Aral Moreira, and Antônio João. The President also instructed the Armed Forces to take over control of security operations in the latter two municipalities on a provisional basis ("Garantia da Lei e da Ordem" – GLO), as well as in Bela Vista and Ponta Porã, with the purpose of "preserving public order and the safety of persons and property".

- The southern portion of Mato Grosso do Sul State ("Cone Sul") faces a complex security situation due to factors such as drug trafficking, smuggling of weapons and other merchandise, and land disputes between indigenous communities and local farmers. The Brazilian Government does not have specific statistics about the number of indigenous victims of violent deaths related to land disputes in the region. Nevertheless, the allegation presented in the Special Rapporteur's letter, that 290 Guarani indigenous leaders would have been victims of violent deaths between 2003 and 2013 in connection with land disputes seems significantly exaggerated. We are ready to discuss this issue further if we are presented with precise information about the names of the individuals concerned and the circumstances of their deaths.

- In a visit to Mato Grosso do Sul on 2 September, the Minister of Justice has sent a clear message to all parties involved in current land disputes that Federal and State institutions will not tolerate violence and will spare no efforts to enforce the rule of law in the region. The Judiciary and the Prosecution service, which are engaged in the investigation and prosecution of several cases of violence against indigenous leaders, are also committed. For instance, in the case of the deaths of Guarani leaders Rolindo Verá and Genivaldo Verá in 2009, the crime has been thoroughly investigated and three individuals are currently facing murder trials. Likewise, the criminal process is

well advanced in the case of the murder of Chief Nisio Gomes in 2011. The same holds for the case of the death of Mr. Simião Vilhalva on 29 August in Antônio João. Forensic experts have gathered all the evidence available and the Federal Prosecution Service is currently working on the case.

- The Federal Prosecution Service, as well as Federal and State Police, also follow closely allegations about the operation of private security services in disputed areas in Mato Grosso do Sul. In this connection, the Federal Prosecution Service filed in 2013 a class-action against the security services firm Gaspem, resulting in the closure of the said company in early 2014 by the Federal Police following a judicial order (0000977-52.2013.403.6002).

- The Human Rights Defenders Protection Programme (PPDDH) of the Secretariat for Human Rights currently offers protection for 22 individuals from the Guarani people of the State of Mato Grosso do Sul (Kaiowá and other subgroups). Ms. Valdelice Veron, leader of the Tak'wara Community in Juti Municipality, has been under the protection of PPDDH since February 2013. In addition to measures directly aimed at protection of the physical integrity of the individuals concerned, such as police escorts, the programme also comprises broader actions to address the causes of the situation of insecurity, and to prevent and mediate conflicts. In the case of Ms. Veron, actions by PPDDH in the last months included a request for regular police patrols in Juti Municipality, a request for investigations about threats against her personal integrity, and requests for monitoring by FUNAI and the Federal Prosecution Service of the security situation at Tak'wara community.

- Mr. Natanael Vilharva Caceres, who is also mentioned in the Special Rapporteur's letter and happens to be Ms. Valdelice Veron's husband, has never asked protection by PPDDH and is therefore not included in the Programme. Incorporation in PPDDH is strictly voluntary, so he has to present a request if he wants to be a part of it.

Additional information will be sent as it becomes available.