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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandate of the Special Rapporteur on the rights of indigenous peoples

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 15/14.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the **human rights situation of the Guarani-Kaiowá community of Pyelito Kue/Mbarakay in Mato Grosso do Sul who allegedly face the risk of eviction from lands considered to be their traditional territory.**

According to the information received:

Since November 2011, 170 members of the Guarani-Kaiowá community of Pyelito Kue/Mbarakay in the state of Mato Grosso do Sul have occupied an area of two hectares of forest land at the banks of the Hovy River, which they consider to be part of their ancestral territory, after armed men allegedly connected to local landowners destroyed their previous settlement. The community's actions are allegedly the result of its frustration over delays in the Government's demarcation of its lands.

The Pyelito Kue/Mbarakay community has awaited the demarcation of its lands following a November 2007 agreement between 23 indigenous leaders, the Ministry of Justice, the Federal Public Prosecutor's Office and the National Indian Foundation (FUNAI), where the latter committed to demarcating 36 Guarani-Kaiowá community territories including Pyelito Kue/Mbarakay before April 2010. The demarcation has not been concluded and consequently there have been various instances of occupation of ancestral lands by Guarani-Kaiowá communities in Mato Grosso do Sul which in turn have reportedly caused violent reprisals by local landowners in possession of the lands claimed by the Guarani-Kaiowá.

In the case of the Pyelito Kue/Mbarakay community, their land occupations have caused conflict with soy and sugar cane plantation owners who have settled on those lands. It has been alleged that since the occupation of their ancestral lands on November 2011, the local landowners have blocked all road

and access points to the lands in question, causing community members to be unable to obtain food, water, medical services, assistance services from FUNAI and education for children of the community. The landowners have allegedly restricted the community members' mobility within those lands and have constantly threatened and intimidated them.

The information received indicates that at the request of the plantation owners, the federal court of Navirai ordered the eviction of the Pyelito Kue/Mbarakay community in September 2012, which would mean that members of the community would likely have to live next to a highway. As a response to the eviction order, the community issued a public letter to the Brazilian Government and the federal judiciary on 11 October 2012 reportedly stating that the eviction order signified their extermination, that they were not willing to move elsewhere as they had no prospect for a dignified life, and that they were prepared to die together in defense of their ancestral lands.

The letter from the community reportedly prompted national and international concern over the eviction order, leading to an appeal by FUNAI for a suspension of the eviction order which was granted by the federal court on 29 October 2012. According to the information, the eviction was suspended pending the completion of the anthropological studies needed for the demarcation of the community's lands. The federal court also reportedly held that the community members had to remain only within a one hectare area, and not the two hectare area they have settled since November 2011, until FUNAI finished the demarcation process. Thereafter, the Minister of Justice reportedly announced that security in the region would be strengthened and that all studies related to the demarcation of Pyelito Kue/Mbarakay were to be turned in within one month.

Despite the suspension order, members of the Pyelito Kue/Mbarakay community still face the threats of violence and reprisals from local landowners. It has been alleged that on 24 October 2012, a woman from the community was abducted and taken to a nearby farm where eight gunmen raped her and interrogated her about the community before releasing her. Police are reportedly investigating this incident.

It has been informed that after a meeting with community representatives on 29 October 2012, the deputy federal prosecutor acknowledged that the presence of the federal Government was necessary in the conflict areas of Mato Grosso do Sul and that priority be given to the provision of health, sanitation, education and other basic services to the Guaraní-Kaiowá communities.

Excellency, the information described above evidences the ongoing grave human rights situation faced by Guaraní-Kaiowá indigenous peoples in Mato Grosso do Sul, which was the subject of concern in my 2009 report on the situation of indigenous peoples in Brazil (A/HRC/12/34/Add.2, paras. 32. 47-54), and subsequent letters to your Government. The most recent letter being on 8 October 2012 concerning alleged attacks on the Guaraní-Kaiowá Arrio Korá, which reportedly resulted in the disappearance and possible death of one community member.

With regards to my previous communication of 30 November 2011 concerning the alleged killing of Nisio Gomes, a Guarani man in Mato Grosso do Sul, I take note of your Government's response of 30 December 2011. In that response, your Government informed about the measures taken to provide security and policing services for the benefit of Guarani-Kaiowa communities in Mato Grosso do Sul, particularly through a "Technical Cooperation Agreement between the State of Mato Grosso do Sul and the Union".

As I continue to monitor the circumstances surrounding this situation and the critical land tenure issues in the region, I would be grateful if your Excellency's Government could provide any additional information it deems relevant. Additionally, I would be grateful if you could provide responses to the following questions:

1. The measures taken to ensure basic services and needs are provided to members of the Pyelito Kue/Mbarakay community including food, water, medical services, and education;
2. The measures taken to investigate, prosecute and sanction those responsible for alleged acts of threats, violence and intimidation directed against Pyelito Kue/Mbarakay community members, including the alleged case of rape of a woman from the community on 24 October 2012;
3. The basis for the September 2012 eviction order against the Pyelito Kue/Mbarakay community, including information on who requested the eviction, and if there was any consideration of the rights the community may have on the lands in question;
4. The progress that has been made in the demarcation of Pyelito Kue/Mbarakay and other indigenous community lands in Mato Grosso do Sul;
5. In case the demarcation process for the Pyelito Kue/Mbarakay community is not undertaken within the timeframe contemplated by the federal court and Government agencies, would measures be taken to ensure that the suspension of the eviction order against the community is still in effect in order to provide more time for the completion of the demarcation process?;
6. The progress that has been made in providing security and policing services to indigenous communities in Mato Grosso do Sul, particularly through the Technical Cooperation Agreement between the State of Mato Grosso do Sul and the Union.

Given the urgency of the situation, I would appreciate a response within 30 days. I undertake to ensure that your Excellency's Government's response is accurately reflected in the report I will submit to the Human Rights Council for its consideration or in any other public statements I may make in relation to this situation.

Please accept, Excellency, the assurances of my highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples