

Mandate of the Special Rapporteur on the rights of indigenous peoples

REFERENCE: UA
BRA 4/2015:

5 August 2015

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 24/9.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the **imminent eviction of seven Kaiowá and Guarani communities, in the Tekohas (traditional lands) of Ypo'i, Apyka'i, Teyi Jusu, Pindo Roky, Itagua, Guaiviry and Kurusu Amba located in five counties: Dourados, Caarapo, Amambai, Aral Moreira, Coronel Sapucaia, all in the state of Mato Grosso do Sul. There are also allegations of possible violence should this eviction take place, including a declaration by indigenous community members that they plan to resist the eviction until death.**

According to information received:

The Kaiowá and Guarani are indigenous peoples from the state of Mato Grosso do Sul. The Kaiowá and Guarani historically inhabited the region and lived according to their traditional ways of life on their territories. At the start of the 20th century, however, the Kaiowa Guarani people and other indigenous peoples of the State of Mato Grosso do Sul were removed from their ancestral lands, and forced to live on reserves. In the 1940s their traditional lands were then transformed for commercial use, and the National Agricultural Colony of Dourados was established. The establishment of this colony led to migration of non-indigenous farmers, who began cultivating these lands for commercial use. Indeed, the region has since become an important area for agro-business, and many of these farmers now hold formal title to these lands.

Over the past decades, the indigenous communities in Mato Grosso do Sul, including the Kaiowá and Guarani, have attempted to regain ancestral lands that are under the control of non-indigenous occupants, including through moving back to parts of their ancestral lands and territories. Reportedly, the process for land demarcation is already advanced in some Kaiowá and Guarani lands, with Declaratory Orders already issued by the Ministry of Justice. However, the Presidential Decree which is required to effectively guarantee the enjoyment of the lands has not been forthcoming, effectively paralyzing this process.

According to the information received, seven eviction orders have been handed down by the Federal Courts of Ponta Pora and Dourados) over the following Tekohas: Guaiviry (Amambai), Kurusu Amba (Coronel Sapucaia), Ypo'I (Paranhos); Apyka'I (Dourados), Uvera "Curral do Arame" (Dourados), Tey'i Jusu (Caarapó) and Pindoroky (Caarapó). These Tekohas have important significance for the Kaiowá and Guarani, and contain numerous sacred sites, including cemeteries, which they will not abandon.

The eviction orders¹ purportedly do not stipulate a specific date or time that the forcible evictions be carried out, but apparently could occur at any given moment, as allegedly the period for voluntary vacation of these lands has expired. The community has reported that it will resist any forcible eviction, and are prepared to stay on their lands, and even die in this process.

It is also reported that prior to the eviction order being carried out, militias, may be deployed to attack and intimidate the communities, in a campaign to spread psychological terror and ensure they comply with the eviction. It is suspected that these militias are hired by landowners.

Moreover, should these evictions be carried out, the implementation of these court orders against these communities will affect hundreds of families - consisting mostly of children, women and elders. It is further alleged that should these evictions take place, there is no provision for the affected indigenous people to be provided any adequate alternative housing, and as a result they may be stranded on the banks of highways or on Indian reservations where they have not previously resided, leaving them in a state of severe humanitarian crisis.

It is alleged that the FUNAI (Fundação Nacional do Índio) have filed appeals against these eviction orders but no further information on this has been made

¹ Particular reference is made to the following injunction orders: docket number 0002459-89.2014.4.03.6005, (1ª Vara/MS – Ponta Pora); docket number 0000133-25.2015.4.03.6005 (1ª Vara/MS – Ponta Pora); docket number 0001348-36.2015.4.03.6005 (1ª Vara/MS – Ponta Pora); docket number 0001375-19.2015.4.03.6005 (1ª Vara/MS – Ponta Pora); docket number 0001388-18.2015.4.03.6005 (1ª Vara/MS – Ponta Pora); docket number 0002289-34.2011.4.03.6002 (1ª Vara/MS – Dourados); docket number 0000654-76.2015.4.03.6002 (1ª Vara/MS – Dourados)

available to me about the status of these appeals and their impact on the implementation of the eviction orders.

I am also concerned by the situation of many indigenous individuals and families living in the Tekohas. According to the information received, these communities live in inhumane conditions, with lack of access to adequate food, housing, clean water sanitation, healthcare and education.

Moreover, these indigenous communities face ongoing violence and intimidation. According to the information received, between 2003 and 2013, over 290 Kaiowá and Guarani leaders have been killed. Indigenous women living in these communities also suffer high rates of sexual and gender based violence. It is suspected that this intimidation and violence is carried out by gunmen and armed militia hired by local farmers, due to the unresolved conflict over land issues, among others.

Allegedly, some federal police agents have been deployed by your Excellency's Government to protect the indigenous communities in the region from this violence. However according to the information received; only 8 such agents are operational to protect over 45,000 indigenous peoples, effectively rendering any assistance ineffective.

In this context, I am also concerned about direct threats against two Kaiowá and Guarani leaders who travelled to Geneva in July 2015 to discuss the situation of their people with various United Nations human rights mechanisms. As outspoken indigenous leaders, Ms. Valdelice Veron and Mr. Nathaniel Vilharva Caceres now fear for their lives and have had threats made against them. According to information provided, while Ms. Veron is registered under the victims' protection programme of the National Secretary of Human Rights (Programa de Protecao a Vitimas e Testemunhas Ameacadas da Secretaria de Direitos Humanos da Presidencia da Republica), she continues to be threatened and followed by gunmen and armed militia, in connection to her work in defence of the Guarani Kaiowa.

The information I have received about the events described above raise serious concerns over the human rights situation of the Kaiowá and Guarani People. I urge your Excellency's Government to take all the measures necessary to prevent any further violence and ensure the safety of the indigenous people in the area, and to address the underlying causes of the conflict.

Moreover, I remain deeply concerned about the ongoing pattern of violence against members of indigenous communities in Mato Grosso do Sul, including in connection with conflicts related to agriculture or development activities that encroach on

or otherwise affect indigenous lands and reserves. The ongoing situation of conflict in Mato Grosso do Sul has been the subject of a number of communications to your government (BRA 1/2010, BRA 7/2011, BRA 12/2012, BRA 13/2012, BRA 2/2013).

As you are aware, the issue of violence against indigenous peoples was a subject that was reflected in the 2009 report on Brazil of my predecessor, (A/HRC/12/34/Add.2) In that report, the former Special Rapporteur made some observations on the situation of Guaraní people in Mato Grosso do Sul (Ref: A/HRC/12/34/Add.2, paras. 32, 47-54), including about the severe impact that the aggressive past policies of the Government of parcelling large tracts of traditional lands to non-indigenous farmers has had on Guaraní communities. The present situation appears to be emblematic of the continued concerns that remain about this region.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Are the alleged facts correct? Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide specific information on the ordered evictions, including whether these will be carried out or not? Is there any possibility of withdrawing these eviction orders as requested by FUNAI? If evictions will be carried out how will the safety of the affected communities be ensured?
3. What steps has your Excellency's Government taken to find meaningful alternatives to these evictions which respect and protect the rights of the Kaiowá and Guarani people? In this regard, what steps are being taken to effectively mediate the long-standing conflict between the indigenous Kaiowá and Guarani peoples, and the non-indigenous land-owners?
4. In particular, please provide information on all steps taken towards demarcation of the Kaiowá and Guarani indigenous lands and the approval of their land claims by Her Excellency President Dilma Rousseff?
5. What measures have been foreseen to ensure that should the eviction take place, the affected indigenous communities will not become homeless? If sites have been designated for relocation, please provide details on the exact location, including details on the area and quality of land, access to public services and livelihood sources, and cultural appropriateness for the indigenous communities.

6. What steps are being taken to ensure the Kaiowá and Guarani and other indigenous peoples in Mato Grosso do Sul have adequate access to basic services, including clean water and sanitation, adequate housing, healthcare, food, and education?
7. What measures are being taken to ensure Kaiowá and Guarani leaders, Ms. Valdelice Veron and Mr. Nathaniel Vilharva Caceres safety? What measures are being taken to prevent any further violence against Kaiowá and Guarani by armed militias?

In view of the urgency of the matter, I would appreciate a response to this communication within 30 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations, including halting the evictions, and prevent their re-occurrence.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples