

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: UA
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9 October 2015

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 25/18, 24/9, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning alleged killing, attempted killing, attacks, death threats, harassment and persecution against human rights defenders and indigenous leaders of the Guarani-Kaiowá community in Mato Grosso do Sul, Brazil.**

Messrs. Elpídio Pires, Tonico Benites, Eliseu Lopes, Ismarte Martim, Lide Solano Lopes, Genito Gomes and Ms Inayê Lopes are indigenous leaders and human rights defenders of the Guarani-Kaiowá indigenous community in Mato Grosso do Sul, Brazil.

As well as denouncing the violence suffered by members of the Guarani-Kaiowá people, all seven human rights defenders are members of the indigenous organisation Aty Guasu, an assembly of indigenous leaders (caciques) which convenes to discuss issues concerning the rights of the Guarani-Kaiowá indigenous peoples. They have consistently denounced the violence perpetrated against the Guarani-Kaiowá community. They have further denounced the negative economic and social impact resulting from constant attacks, including the destruction of their homes, habitat and lands. In addition, they have actively participated in the struggle for the recognition of indigenous territories and of the ancestral lands of the Guarani-Kaiowá people.

Mr. Semião Fernandes Vilhalva, aged 24, was a young indigenous leader of the Guarani-Kaiowa community, who actively participated in these efforts, including those undertaken for the recognition of indigenous territories and of the ancestral lands of the Guarani-Kaiowá people.

Two earlier communications (BRA 4/2015 and BRA 6/2015) were sent by the Special Rapporteur on the rights of indigenous peoples on the evictions of the Kaiowá and Guarani communities in Mato Grosso do Sul, to which a reply was received from the Government of Brazil on 18 September 2015.

According to the information received:

In 2005, the territories of Tekoha Ñanderu Marangatu Guyrakambiy, Pyelito kue and Potrero Guasu where the Guarani-Kaiowá community resides were demarcated and approved as indigenous land. In the same year, this decision was suspended by the Federal Supreme Court after an injunction was filed by farmers who claimed ownership over the land. Ten years later, the Supreme Court is still to rule on the case.

Between 29 August 2015 and 19 September 2015, a group of farmers who claim rights to the land attempted to reclaim it by forcibly evicting the indigenous peoples living on it, and claiming that this land constitutes their ancestral territories of Tekoha Ñanderu Marangatu Guyrakambiy, Pyelito Kue and Potrero Guasu. During this period, members of the indigenous community were violently attacked, and indigenous leaders have since been facing harassment, death threats and attacks.

On 29 August 2015, a young indigenous leader, Mr. Semião Fernandes Vilhalva, was killed by a gunshot to the face while trying to find his son during a land recuperation operation held in the municipality of Antônio João, Mato Grosso do Sul.

On 2 September 2015, indigenous leaders Mr. Tónico Benites, Mr. Eliseu Lopes and Mr. Genito Gomes were followed by two unidentified men in a car as they returned to the city of Dourados, Mato Grosso do Sul. Upon realising they were being followed, they decided to drive towards the police station, at which point the car stopped following them. The following day, four unknown individuals entered the indigenous community's lands and asked about the whereabouts of the three indigenous leaders.

On 16 September 2015, a federal judge of Ponta Porã confirmed an eviction order for the Tekoha Ñanderu Marangatu territory. The Guarani-Kaiowás disagreed with this decision and the area remains in dispute.

On 18 September 2015, at approximately 4 pm, a group of unidentified armed men carried out a violent attack against the indigenous community Pyelito kue-Mbarakay, in the municipality of Iguatemi, Mato Grosso do Sul. It is reported that during the attack several of the gunmen were searching for community leader and human rights defender, Mr. Lide Solano Lopes. Mr. Solano Lopes managed to escape, but now fears for his safety.

On 19 September 2015, at approximately 5 pm, unidentified men carried out an attack against the indigenous communities in Tekoha Potrero Guasu, in the municipality of Paranhos, Mato Grosso do Sul, in an attempt to repossess the land where the community resides. Several members of the indigenous group were beaten and its leader, Mr. Elpídio Pires, was shot and wounded. Mr. Pires was taken to hospital in the city of Dourados, Mato Grosso do Sul, where he is recovering. This attack followed an incident a few days earlier where two unidentified men driving a pick-up truck had inquired about the location of Elpídio Pires' hut.

Instances of judicial harassment and criminalisation of indigenous rights defenders is also increasing. Ms. Inayê Lopes and Mr. Ismarte Martim face criminalisation for defending their communities' rights to their ancestral lands. These human rights defenders could face formal charges of “disobeying legal orders” for their violent resistance of eviction orders.

The above mentioned human rights defenders and indigenous leaders of the Guarani-Kaiowá are facing persecution, threats, harassment and killings as a result of their work protecting the rights of the Guarani-Kaiowá indigenous peoples and the recognition of their ancestral lands.

We are expressing grave concern about the allegations of killing, attempted killing and injuries of leaders and other active members of the Guarani-Kaiowá community in Mato Grosso do Sul, as well as the continued threats, including deaths threats, and other forms of intimidation and harassment against other members of that community, aimed at spreading fear among its members to force their eviction from the lands they have been residing on. Our concerns are particularly heightened by this campaign of violence against them appears to be linked to their legitimate and peaceful human rights work, in particular their work protecting the rights of the Guarani-Kaiowá indigenous peoples and the recognition of their rights over their ancestral lands.

In view of the urgency of the matter, we exhort your Excellency's Government to adopt all necessary measures **to protect the rights to life, security, physical integrity and liberty of the members of the Guarani-Kaiowá community in Mato Grosso do Sul, in particular their leaders, active members and other human rights defenders**

who appear to be at very high risk of being killed, injured or otherwise persecuted, including through judicial proceedings for defending their rights and those of their communities. Amongst them are Messrs. Elpídio Pires, Tónico Benites, Eliseu Lopes, Ismarite Martim, Lide Solano Lopes, Genito Gomes and Ms Inayê. We also urge you to adopt effective measures to investigate, prosecute and sanction those responsible of the alleged violations, to halt the current campaign of violence and fear apparently organised by farmers coveting their lands, and to ensure that the indigenous rights defenders are able to carry out their legitimate human rights work in a safe and enabling environment.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The acts alleged in this letter, if confirmed, are in contravention of the right to life, liberty and security as set forth in article 3, 7 and 8 of the Universal Declaration of Human Rights (UDHR) and 6, 26 and 27, among others, of the International Covenant on Civil and Political Rights (ICCPR), acceded by your Government on 24 June 1992. They also appear to contradict the spirit and letter of many of the rights universally recognized to indigenous peoples in the United Nations declaration on the rights of indigenous peoples, in particular its articles 1 (equal rights), 2 (non-discrimination), 3 (self-determination), 7 (life, integrity, security and liberty), and 8.1 (forced assimilation) and 8.2(b) (right to their lands) among others.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6, 9 and 12. Furthermore, we wish to recall Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We also want to recall that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principle 4) establish the obligation of States to ensure effective protection to those who receive death threats and are in danger of extra-legal, arbitrary or summary executions. Principle 9 also establishes the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please indicate what measures have been taken to protect the life, security, physical integrity and liberty of the above mentioned persons, their leaders, and other active community members of the Guarani-Kaiowá community, and ensure that they are able to carry out their legitimate work, including their activities aimed at protecting and promoting their individual and collective rights in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
3. Please provide the details, and where available the results, of any criminal investigation carried out in relation to the killings, attempted killings, harassment and death threats against the above mentioned individuals. If no investigation has been conducted, is yet to take place, or has been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the full accountability of any person, directly or indirectly responsible of the alleged violations.

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 our highest consideration.

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

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