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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **allegations of acts of harassment, intimidation and criminalization of activists and human rights defenders of the Movimento Xingu Vivo Para Sempre (MXVPS) in the context of the protests against the construction of a Hydroelectric Power Plant complex in Belo Monte, in the State of Pará.**

The construction of the Belo Monte dam in the State of Pará was the subject of an allegation letter sent on 15 March 2010 by the Special Rapporteur on the rights of indigenous peoples. We thank your Excellency's Government for its detailed response. This communication followed a previous report by the Special Rapporteur concerning the situation of indigenous peoples in Brazil, which was made public in 2009 (A/HRC/12/34/Add.2).

According to the information received:

In June 2011, a licence to construct a Hydroelectric Power Plant on the Xingu River in Belo Monte, State of Pará, was granted to the consortium Norte Energia S.A. (NESA) by the Brazilian Institute of Environment and Renewable Natural Resources. Environmental and social activists have expressed concerns about the environmental consequences of the project and its impacts on inhabitants of the area around the dam.

In reaction to these concerns, a group of associations and social and environmental activists from the Altamira region emerged to protest against the construction of the dam. According to reports received, in the context of the United Nations Conference on Sustainable Development held in Rio from 20 to 22 June 2012, another conference entitled Xingu +23 was organized from 13 to 17 June by the MXVPS in the town of Santo Antonio to commemorate the 23 years of protest against the Belo Monte dam project.

It is reported that the NESAs consortium filed a complaint against the organizers of the Xingu +23. On 13 June, the judge of the 2^o Vara Cível from Altamira decided against the organization of the event, finding Ms. Antônia Melo, Mr. Ruy Marques, Ms. Mônica Brito Soares and Mr. Lázaro José da Silva Verçosa, members of the MXVPS, responsible for trespassing, harassing or disturbing purported property of the Consórcio Constructor Belo Monte, imposing a fine of 1,000 Brazilian reals for each day of such acts. The judge also declared the area near the Belo Monte Mount in the town of Santo Antonio as a restricted area.

Following an alleged investigation of the activities of the Xingu +23 event, the civil police of the State of Pará issued an arrest warrant of 11 persons, listing Ms. Antônia Melo, coordinator of the MXVPS, journalist Mr. Ruy Marques, Father Alirio Bervian who conducted a mass and blessed the event, Sisters Agnes and Flora Wenzel, Mr. Elio Alves, a fisherman affected by the project who had his residence demolished in the preceding days, and a documentary filmmaker, Mr. Rafael Salazar, among others. According to reports, the complaint and the police's warrants are groundless and based on fabricated evidence, and are a clear form of threat and intimidation against human rights defenders protesting against the construction of the Belo Monte dam. On 22 June, legal representatives from the MXVPS filed a request for habeas corpus. The request was denied three days later and the legal proceedings against these 11 persons are still on-going.

On 15 June, participants of the Xingu +23, including activists from the Xirin, Juruna, Parakana and Araras communities, allegedly accessed the construction area by peaceful means. Protesters dug a channel on an earthen dam to facilitate the flow of the river's water back to the area. Cultural activities were also held, including dancing and singing as well as media events.

Moreover, on 21 June it is alleged that Mr. Ruy Marques was arbitrarily detained by the police for a short period of time while reporting an occupation of a building located in the Ernesto Alcily road by several families. The building's property was claimed by the Rede de Rádio e Televisão Vale do Xingu Ltda.

On the same day, it is reported that approximately 150 indigenous peoples decided to occupy the Belo Monte Dam site by peaceful means. According to these reports, the Xikrin peoples allegedly set up an encampment in the earthen coffer dam, confiscating keys of a number of trucks and equipment. The construction works were allegedly interrupted. Several other indigenous groups,

including the Juruna, Araweté, Assurini and Parakanã reportedly joined the occupation.

In response to these actions, the NESAs consortium filed a complaint requesting forcible eviction of the protesters. On 23 June, the judge from the 8.º Vara Federal instructing the case decided in favour of protesters, declaring legitimate the peaceful occupation of the site.

According to reports received, on 11 July representatives from 9 indigenous groups decided to end the peaceful occupation of one of the work sites of the Belo Monte dam. It is also reported that at least two meetings were held between the protesters and the NESAs consortium company, although no agreement was reached between the parties.

Without prejudging the accuracy of these allegations, we would like to express our concern that the allegations against social and environmental activists and human rights defenders may have been intended to prevent their legitimate expression of peaceful dissent and opposition against the construction of the Hydroelectric Power Plant on the Xingu River in Belo Monte.

We would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully; and

- article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the

Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." In this connection, we wish also to draw the attention of your Excellency's Government to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We wish to recall that the State has a positive obligation to take every measure to ensure that the rights to freedom of peaceful assembly and of association are duly respected. In this context, reference is made to the consensus that led to the adoption of resolution 15/21 of the Human Rights Council, and to operative paragraph 1 in particular, that "(c)alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law".

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 persons in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please kindly provide detailed information of any investigation carried out with regard to the activities of the Xingu +23 Conference. Please describe the reasons for denying the request for habeas corpus for the organizers of the conference.
3. Please provide information on the measures taken to ensure that activists and human rights defenders, including the indigenous communities, are able to conduct their activities in a safe and enabling environment without fear of intimidation or harassment.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
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