

**Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the rights of indigenous peoples**

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 28/11, 25/18 and 33/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the report issued by the Congressional Investigative Commission (CPI) to investigate the National Indian Foundation (Funai) and the National Institute of Colonization and Agrarian Reform (Incra) as well as the draft bill to establish the General Environmental Licensing Law (Substitute Bill No. 3729), which allegedly reduces environmental protection measures and the rights of indigenous peoples and people of African descent in Brazil.**

Funai is a governmental agency, which has advocated for the rights of indigenous peoples since the 1960s, which establishes and carries out policies related to indigenous peoples. It is responsible for mapping out and protecting lands traditionally inhabited and used by them.

Incra is a federal agency with responsibility over land reform, maintaining the national register of rural properties, and managing public lands. Incra was founded in 1970 as part of the Brazilian Agrarian Development Ministry and its mandate includes the redistribution of unused lands for the settlement of rural landless families.

According to the information received:

*With respect to the Parliamentary Commission of Inquiry (CPI) on Funai/Incra*

On 28 October 2015, a Parliamentary Commission of Inquiry (*Comissão Parlamentar de Inquérito – CPI*) was established to investigate the work of the National Indian Foundation (*Fundação Nacional do Índio – Funai*) and the National Institute of Colonization and Agrarian Reform (*Instituto Nacional de*

*Colonização e Reforma Agrária – Incra*) on the demarcation of lands from indigenous peoples and peoples of African descent (*quilombos*).

According to the information received, the CPI was created and led by agricultural landowner/ruralist groups, a sector which was linked to tensions over land rights resulting in conflict and killings of indigenous peoples. Concerns on the impartiality of the process have been raised, given that the Rapporteur of the CPI, a member of Partido da Social Democracia Brasileira – Mato Grosso (PSDB-MT), is the president of the Parliamentary Farming Front (*Frente Parlamentar da Agropecuária – FPA*). In 2015, he was elected as the president of the Special Commission to the Constitutional Amendment Proposal 215 (PEC-215), a constitutional amendment to give Congress control over the demarcation of indigenous and Quilombola territories, as well as the ratification of lands already approved.

In early May 2017, the CPI issued a draft report of 3,385 pages. Within the CPI, the adoption of the report was postponed several times, without reaching a final conclusion. As of the time of this communication, the basic text of the report had been approved, with the exceptions of two parts, which include the requests for indictments and other proposals made by the Rapporteur of the CPI. According to the information received, the CPI has asked for an extension of thirty days to be able to vote on the remaining sections of the report. It is unclear whether the adoption of the report will be subject to a vote in plenary at the Chamber of Deputies.

It is alleged the CPI failed to follow basic procedures such as gathering information from all relevant parties cited in the report, and therefore produced a one sided version of the situations examined. The report included 103 investigations and presents accusations against 70 individuals for crimes allegedly committed in processes of demarcation of indigenous lands, quilombolas and in rural settlements destined to agrarian reform. The investigations targeted fourteen federal prosecutors, eleven anthropologists, 33 indigenous leaders, five Funai staff members, five people linked to the indigenous organization Indigenous Work Center (*Centro de Trabalho Indigenista - CTI*), 21 people linked to the Missionary Indigenous Council (*Conselho Indigenista Missionário - CIMI*), and leaders of nongovernmental organizations with regard to fraudulent demarcation processes in Rio Grande do Sul, Santa Catarina, Mato Grosso, Mato Grosso do Sul and Bahia.

Furthermore, some of the individuals concerned in the report are human rights defenders who work with renowned non-governmental organizations, such as *Centro de Trabalho Indigenista*, and who are accused precisely because of their work protecting indigenous rights and environmental protection. The report mentions nothing about ruralists even in circumstances where indigenous peoples

have been killed. In relation to Incra, there are 41 cases including 28 indictments of Incra staff and officials, three anthropologists and fourteen federal prosecutors.

Among various proposals, the report initially suggested the dissolution of Funai and its replacement by an Indigenous National Secretary (*Secretaria Nacional do Índio*). The report accuses Funai of being influenced by Brazilian NGOs and of catering to the interests of foreign governments and international NGOs. According to the latest information received, the dismantling of Funai has been stricken from the text and the draft text now calls for the restructuring of the body.

The report suggests that the demarcation of indigenous lands should be based on the "temporal framework" (marco temporal) thesis making reference to a decision (Pet. 3388/RR) of the Federal Supreme Court (*Supremo Tribunal Federal – STF*) regarding the case of Raposa/Serra do Sol. This thesis proposes a restrictive interpretation of the Federal Constitution regarding indigenous lands according to which only those lands that were in possession of the indigenous people or were being claimed by them on the day of the promulgation of the Constitution, on 5 October 1988, should be considered traditional lands. Although the Federal Supreme Court applied the "temporal framework" thesis, it also established that this specific judgment would not automatically apply to other lands, besides the Raposa/Serra do Sol, the temporal framework thesis has been applied to other lands. However, on 11 May, 2016, the Federal Supreme Court denied an appeal that challenged the demarcation of an indigenous land in the state of Mato Grosso do Sul based on the "temporal framework" thesis.

The report also suggests that following the March 2016 visit of the Special Rapporteur on the rights of indigenous peoples, Ms. Victoria Lucia Tauli Corpuz, to the region of Dourados in Mato Grosso do Sul, attempts by indigenous peoples to take back their traditional lands intensified. The report cites her visit and points to her influence on the intensification of the indigenous land claims.

The report accuses the United Nations of being a confederation of NGOs which has influenced the Brazilian policy on indigenous peoples through its agencies, ILO Convention 169, and the Declaration on the Rights of Indigenous Peoples. Furthermore, the report claims that the United Nations Declaration on the Rights of Indigenous Peoples is a clear example of imposition on States which presents a grave threat to Brazil's sovereignty. The report also encourages Brazil to denounce ILO Convention 169, claiming it encourages systematic manipulation to establish indigenous ethnic groups where there are no more indigenous populations, with the objective to indefinitely expand indigenous lands in Brazil.

*With respect to the General Environmental Licensing Law (Substitute Bill n. 3729)*

There are reportedly no environmental laws in place in Brazil regulating the issuance of environmental licenses, with draft laws having been discussed and presented in Congress during the last ten years. Environmental licenses are currently regulated by decrees which are governed by the environmental authority of each of the three levels of the Federation: the federal, state and municipal levels, with each authority promulgating its own legislation, pursuant to the guidelines set forth in the Constitution (mainly Article 225) and the National Policy on the Environment (Federal Law 6.938/81). Currently, the Senate has before its consideration two draft bills, one led by a member of the ruralist lobby group, Mauro Pereira and another by the current administration of the Ministry of Environment, headed by Minister Sarney Filho. While these two draft laws differ slightly, both laws allegedly reduce substantially the safeguards currently in place for indigenous peoples, peoples of African Descent and the environment.

The draft laws provide extensive environmental licensing exemptions for agricultural activities, cattle ranching and forestry logging, regardless of size, degrading potential, location, necessity, use of pesticides and impact on water resources. The laws include a total of eight activities to be exempted from licensing, despite their character of potentially polluting activities. This would effectively undermine environmental licensing by making it the exception, rather than the rule.

Currently, during the licensing process potential impacts on affected communities need to be assessed and measures to avoid, mitigate and compensate for damages evaluated. In both draft laws, impact and mitigation and compensation for damages would no longer be imposed once the licensing process is waived for certain types of projects. It is important to note that the Federal Supreme Court has ruled that the exemption of licensing for activities that are potentially polluting or that can cause degradation is unconstitutional (ADI N° 1086/SC, ruling from 2001). This interpretation was recently endorsed by the federal courts of Bahia (14 March 2017) in a Public Civil Lawsuit ("Ação Civil Pública"), which ruled that the exemption of agro-forestry ("agrissilvipastoril") activities is illegal and unconstitutional.

The draft laws exclude the criterion of the environmental relevance of the area (locational criterion). Therefore, for the purpose of environmental licensing, it would be irrelevant for a project to be located within the boundaries of indigenous lands, conservation area, quilombola territory, priority area for conservation, wetlands, aquifer recharge areas, etc. or in an area without any environmental characteristics.

Furthermore, contrary to the licensing aim to contain the impacts of activities, under the draft laws, impact would be restricted to the immediate premises of the project and would not take into consideration any potential impacts which would

result from the project, including to indigenous peoples' access to water or continued access to areas to carry out their traditional livelihoods.

Also in the drafts, "intervening authorities" which include Funai (with respect to indigenous peoples) and Fundação Palmares (with respect to afro-descendants) are given limited time to comment. It also includes an explicit provision that the opinions by intervening authorities are not binding upon the environmental authority. In addition, late submissions by intervening authorities would only be considered at the time of the renewal of the license which has been extended from two years to five years.

Both drafts include a self-declaratory license in Article 2, XII which state that the self-declaratory license authorizes the installation and operation of an activity "by means of a declaration of adherence and commitment of the entrepreneur to the criteria, preconditions, requirements and environmental conditions established by the licensing authority" when the environmental impacts are known in advance. It is important to note that a case is pending at the Superior Court of Justice regarding the legality of the self-declaratory license. The proposal of a self-declaratory license system also defeats the purpose of adopting a law on environmental licenses under Brazilian regulation which lacks data verification systems, leaving room for fraudulent self-declarations.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed with regard to the lack of impartiality of the Parliamentary Commission of Inquiry, which allegedly seeks to undermine the rights of indigenous peoples and contributes to the increase of discrimination against them and against indigenous rights defenders in Brazil. In addition, concern is expressed at the fact that the report by the CPI intensifies the process of intimidation and criminalization of indigenous leaders, civil society organizations and human rights defenders for their work defending the rights of indigenous peoples. Concern is also expressed at the potential consequences of the CPI regarding future demarcation procedures as well as already demarcated indigenous lands given that it was controlled by a group of parliamentarians whose interests counter with those of indigenous peoples'.

Concern is also expressed with the tone of the report regarding the role of the United Nations as well as the purpose of the Declaration on the Rights of Indigenous Peoples and the ILO Convention No. 169. Grave concern is expressed with the accusations raised in the report against the Special Rapporteur on the rights of indigenous peoples, which suggests her influence in the intensification of what has been referred as indigenous invasions in the region of Dourados in the State of Mato Grosso do Sul. The Special Rapporteur on the rights of indigenous peoples was extremely alarmed that a series of armed attacks, leading to the injury of indigenous peoples in the communities in Dourados and Mato Grosso do Sul were carried out immediately following her visit to these areas.

Concern is also expressed at the reduced environmental protection which the proposed draft laws will have on indigenous peoples and on peoples of African Descent. In particular, draft articles which include exceptions from environmental licenses disregard the presence of indigenous peoples, the existence of protected areas for conservation and environmental impacts such as the use of agrochemicals, deforestation, fertilizers and resulting contamination of water resources.

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. In particular, we would like to refer to article 1.1 and 1.2 of the International Covenant for Civil and Political, ratified by Brazil in 1992, which provide all peoples with the right of self-determination by virtue of which they can freely pursue their economic, social and cultural development and may, "for their own ends, freely dispose of their of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence".

We would like to draw your Excellency's Government attention to the UN Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007, in particular to article 29 which provides for indigenous peoples' right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources". We would also like to highlight article 27 with regard to indigenous peoples' right to own and develop their lands, territories and resources and in particular calls on States to establish and implement with indigenous peoples' concerned "a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used". We would also like to draw your Excellency's Government's attention to article 19 which calls for States to consult in good faith with indigenous peoples through their own representative institutions to obtain their free, prior and informed consent before the adoption and implementation of any legislative or administrative measures that may affect them. Article 2 calls for the right of indigenous peoples to be free and equal to all other peoples and for their rights to be free from discrimination "in the exercise of their rights, in particular that based on their indigenous origin or identity".

We also refer to the article 231 of the Brazilian Constitution which provides that indigenous peoples shall have "their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy". It provides protection for these rights, especially in relation to the exploitation of natural resources on indigenous lands; protects indigenous peoples against dispossession of or forced removal from their lands; and places a duty upon the Union to

demarcate the lands traditionally occupied by indigenous peoples and “to protect and ensure respect for all their property”. Article 232 provides indigenous peoples and their organizations with standing to sue to defend their rights and authorizes the Public Prosecutor to intervene on behalf of indigenous peoples in all pertinent cases.

We would also like to draw your Excellency’s Government to International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, 1989 (No. 169), which was ratified by Your Excellency’s Government in 2002. We would like to draw your Excellency’s Government’s attention in particular to article 6.1(a) with respect to consultation with indigenous peoples on legislative or administrative measures which may affect them directly, article 14 with respect to rights of ownership and possession on indigenous peoples over the lands they traditionally occupy and provide measures to safeguard their right to use lands, not exclusively occupied by them but which they have traditionally had access to them to carry out their livelihoods and to guarantee effective protection of their rights to own and possess those lands and article 7(4) setting forth States’ obligations to take measures, with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

We would like to further 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, also known as the UN Declaration on Human Rights Defenders, which determines that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms (article 1), that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (article 2), and that everyone has the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as to be protected therein (article 12, (1) and (3)).

We also wish to recall Human Rights Council Resolution 31/32, which recognizes the important and legitimate role of environmental rights defenders and reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental issues.

Finally, we would also like to draw your Excellency’s Government to the report of the Special Rapporteur on the rights of indigenous peoples to Brazil (A/HRC/33/42/Add.1) in which she recommends inter alia that your Government “take immediate measures to protect the safety of indigenous leaders, including through strengthened and culturally appropriate protection programmes”, “conduct investigations into all attacks and killings of indigenous peoples and bring perpetrators to justice” and “(c)onduct a public campaign aimed at eliminating racism, discrimination, hate speech and violence towards indigenous peoples.”

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 persons 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 provide information on the report of the Parliamentary Commission of Inquiry and steps to prevent the criminalization of indigenous peoples and organizations working on indigenous issues.
3. Please provide any information about the future of Funai in the context of the proposals for restructuring and funding reductions.
4. Please provide information on steps undertaken by your Government to implement the recommendations of the Special Rapporteur on the rights of indigenous peoples to Brazil with respect to provision of adequate funding to Funai.
5. Please provide information on the legal basis of the charges suggested against the several human rights defenders named in the report, and how these prosecutions, if ultimately launched, would be compatible with the applicable international standards.
6. In view of the impact that the licensing bills will have on indigenous peoples, please explain if and how indigenous peoples have been consulted in this regard.
7. Please provide information on the financial resources allocated to licensing bodies, including Funai and Fundação Palmares to fulfill their mandates in the analysis of processing of licensing procedures.
8. Please indicate what measures have been taken to ensure that human rights defenders, including those working to protect the environment and indigenous peoples' rights, are able to carry out their legitimate work in a safe and enabling environment without fears of threats or acts of intimidation, harassment, and prosecution of any sort.



9. Please provide information as to how the bills for environmental licenses will be compatible with international standards on the rights of indigenous peoples and the people of African descent, as well as the rights of all people to the protection of the environment.

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 accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Michel Forst

Special Rapporteur on the situation of human rights defenders

Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples