

Mandates of the Special Rapporteur on the situation of human rights defenders and the Working Group of Experts on People of African Descent

REFERENCE:
AL BRA 13/2021

27 October 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Working Group of Experts on People of African Descent, pursuant to Human Rights Council resolutions 43/16 and 45/24.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged criminalisation of human rights defenders Anacleta Pires da Silva, Joércio Pires da Silva and Elias Belfort Pires.

Ms. **Anacleta Pires da Silva**, 55, is a human rights defender, Quilombola leader and mother of four. Messrs. **Joércio Pires da Silva** and **Elias Belfort Pires**, aged 29 and 49, are human rights defenders, respectively the President of the Association of Rural Quilombola Producers of Santa Rosa dos Pretos and the President of the Union of Rural Quilombola Communities of Itapecuru Mirim – UNICQUITA. All three are members of the Santa Rosa dos Pretos Quilombola community in the municipality of Itapecuru Mirim, Maranhão State. As of 4 August 2021, they have been included in the national Human Rights Defenders Protection Program in the state of Maranhão, although protection measures for the human rights defenders have reportedly been inconsistent and ineffective thus far.

According to the information received:

The Santa Rosa dos Pretos community in Itapecuru Mirim, Maranhão State, comprises approximately 900 families, including 5,000 people. In 2004, it was formally recognised as a Quilombola community by the Palmares Cultural Foundation, the body responsible for certifying the claims of Quilombola communities expressing a wish to obtain formal recognition of their heritage, in order to subsequently obtain land titles. Since 2005, the territory traditionally occupied by the community has been under a land titling process, overseen by the Instituto Nacional de Colonização e Reforma Agrária - INCRA. As part of this process, in 2008, a report identifying the boundaries of the community's land and examining the community from an anthropological and historical perspective was finalized. In 2015, a Presidential Decree of Expropriation concerning the land was published, providing for its expropriation to the benefit of the community, along with compensation for private parties currently accessing or using it, in cases where they held valid titles to do so. The titling process has remained stagnant since the publication of the Presidential Decree, with the identification and evaluation of the properties overlapping the community's territory, as well as the compensation of valid title holders, yet to be completed.

In the absence of progress in the land titling process, community members defending their right to a collective title over their land have allegedly faced

retaliation from private actors, including efforts to criminalize them and delegitimize their legal claims, as well as violations of their right to free, prior and informed consent, as defined in ILO Convention 169, concerning large-scale public and private projects affecting their land.

In this context, on 29 April 2021, Ms. Pires da Silva, Mr. Pires da Silva and Mr. Belfort Pires were summoned to appear at the police station located in the city of Itapecuru Mirim, approximately 25 km from the community. The summons was connected to a criminal complaint lodged against the human rights defenders by a private individual identifying themselves as the purchaser of two farms overlapping with the territory of the Santa Rosa dos Pretos community. The individual in question accused Ms. Pires da Silva, Mr. Pires da Silva and Mr. Belfort Pires of threatening them in connection with their purchase of the farms, allegedly based on unfounded indirect reports. If convicted, the human rights defenders risk one to six months' imprisonment, or a fine, under article 147 of the Brazilian Penal Code.

An initial hearing in the case, scheduled for 9 September 2021, was cancelled, with a new court date yet to be set at the time of finalizing this communication.

Without wishing to prejudge the accuracy of the information received, we wish to express our concern at the accusations brought against Ms. Pires da Silva, Mr. Pires da Silva and Mr. Belfort Pires, which we fear may be an attempt to delegitimize and curtail their peaceful efforts to defend the collective rights of their community over their land.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the legal and factual basis for the charges brought against Ms. Pires da Silva, Mr. Pires da Silva and Mr. Belfort Pires.
3. Please provide information on the current status and expected timeline of the land titling process concerning the Santa Rosa dos Pretos Quilombola community.
4. Please provide information on the steps taken to implement effective protection measures for Ms. Pires da Silva, Mr. Pires da Silva and Mr. Belfort Pires through the Human Rights Defenders Protection Program.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Dominique Day
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards.

Firstly, we would like to recall your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Brazil on 27 March 1968, article 1 (1) of which defines racial discrimination as “any discrimination, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Article 5 of the Convention obliges State Parties to guarantee the right of everyone, without discrimination, to equal treatment before tribunals and all other organs administering justice, to freedom of opinion and expression, as well as to economic, social and cultural rights.

In relation to this, we would like to remind your Excellency's Government of the provisions on non-discrimination included in the article 2 of the International Covenant on Civil and Political Rights (ICCPR) and article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESR), each acceded to by Brazil on 24 January 1992.

We would further like to refer to ILO Convention 169, in particular to the provisions of Part II of the Convention, concerning land, including article 14, which in its first clause states that the “rights of ownership and possession of the peoples concerned over lands which they traditionally occupy shall be recognised”, and which holds in its second clause that “Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession”. The same article, in its third clause, also establishes that “Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.” In addition, we would also like to remind your Excellency's Government of article 26 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that: “Indigenous peoples have the right to the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired”. This article also stresses that: “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired”. According to this provision, States have the obligation to provide legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. We also wish to refer to article 14 of the ICCPR, which provides that all persons shall be equal before courts and tribunals, and guarantees that in the determination of any criminal charge against a person, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. We would further like to remind your

Excellency's Government of the provisions included in paragraph 3 of article 14, concerning the minimum guarantees to which all persons charged with a criminal offence shall be entitled.

We also wish to refer 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, in particular, article 1, which states that everyone has the right, individually and 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 article 2, which provides 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. We would also like to make specific reference to article 9, which holds that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights, and to article 12 of the Declaration, which states 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.