

**Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Working Group on the issue of human rights and transnational corporations and other business enterprises**

Ref.: AL BRA 6/2022  
(Please use this reference in your reply)

23 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Working Group on the issue of human rights and transnational corporations and other business enterprises, pursuant to Human Rights Council resolutions 45/17 and 44/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **implications for the human rights of communities affected by the aerial spraying of hazardous pesticides, in disregard of required buffer zones, in the "Zona da Mata Sul" region of Pernambuco, Brazil.**

According to the information received:

Around 1,500 families, or approximately 7,425 people, live in Zona da Mata Sul, an area of 7,000 hectares. The peasant communities in this region have cultivated the land for the past 70 years, with legal possession of the lands. The rural communities are Barro Branco, Batateiras, Caixa D'Água, Canoinha, Fervedouro, Guerra, Laranjeiras, Pau D'Óleo, Roncadorzinho, Várzea Velha located in the municipalities of Jaqueira, Maraial, Catende, Barreiros, and Tamandaré, all in the state of Pernambuco.

On April 7, 2020, a helicopter, allegedly from the company Agropecuária Mata Sul S/A, flew over several of the Mata Sul communities, and began spraying unknown agrochemicals 500 meters from residents' crops and houses. Several peasants reported to the Pastoral Land Commission of the Northeast feeling sick after being exposed, with symptoms including headaches, dizziness, bodily pains, vomiting, and shortness of breath. The case was subsequently reported by the Commission to the Secretaria de Desenvolvimento Agrário do Estado, Procuradoria Geral do Estado, Ministério Público Estadual, Ministério Público Federal and Ministério Público do Trabalho<sup>1</sup>.

On 8 April 2020, residents of Engenho Fervedouro denounced a similar incident when a helicopter sprayed unknown agrochemicals over areas which included community members' banana plantations. On April 9, 2020, several peasants went to the Police Station of Jaqueira to file a report about these events, but once they arrived there, they were told by the police officers that the police system was down, and that it would not be possible to register a report either electronically or in writing. In the face of these obstacles, the

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<sup>1</sup> In English: State Secretariat for Agrarian Development, the State Attorney General's Office, the State Public Prosecutor's Ministry, the Federal Public Prosecutor's Ministry and the Public Labor Ministry.

peasants prepared a report detailing the incidents and the names of affected community members and delivered it to the police station in the days immediately after the aerial spraying.

A year later, on April 29th, 2021, according to testimonies received by the Pastoral Land Commission from community members, numerous Agropecuária Mata Sul S/A employees, accompanied by private security guards and military police officers, reportedly damaged and contaminated over six hectares of the communities' banana plantations, comprising over 40,000 banana trees. The Pastoral Land Commission reported this the following day to several state officials (Ministério Público de Pernambuco, Ministério Público do Estado de Pernambuco, Secretário de Justiça e Direitos Humanos, Secretário da Casa Civil, Secretário de Desenvolvimento Agrário, Secretário Estadual de Defesa Social, Defensor Público de Pernambuco, Procurador Geral do Estado)<sup>2</sup>, who were asked to intervene in the region.

According to the information received, the aerial spraying of hazardous pesticides and the damages to the plantations of peasant communities are not single occurrences; they are part of a pattern of repeated attacks and persecution against these communities, who are subjected to continuous fear and psychological distress. These attacks have put the communities' families and plantations in danger, ruined their crops, and created a permanent state of anxiety, particularly among children and the elderly. The destruction of crops puts these communities at risk of hunger, exacerbating the effects of the COVID-19 pandemic on these families' livelihoods.

The violence in the "Zona da Mata Sul" reflects decades of land concentration and social injustice that have left peasant communities in a state of vulnerability. The situation has worsened since 2020, when some of the region's bankrupt sugar mills sold or leased their lands to cattle-raising companies, while they still had outstanding labor and social security obligations. While the families have had legal possession of these lands for at least 70 years, the property was in the name of the bankrupt sugar and alcohol farming companies. Per Brazilian legislation, peasants' rights have priority over the land, and the agribusinesses are not fulfilling the social function of the property.

Over time, the communities remaining in the areas of the former sugar mills established community associations, and the bonds of affection and identity between families were strengthened. These families define themselves as family farmers (peasants), who are currently protected under constitutional provisions<sup>3</sup> and the Agricultural and Land Policy and Agrarian Reform<sup>4</sup>. Currently they are organized in agrovillages or on small farms and have diverse food production, such as bananas, cassava, corn, yams, potatoes, and various fruits and vegetables. The lives of these communities are marked by land conflicts between peasants, the bankrupt sugar mills, and businesspersons from the sugar and cattle-raising sectors.

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<sup>2</sup> In English: Public Ministry of Pernambuco, Public Prosecutor of the State of Pernambuco, Secretary of Justice and Human Rights, Secretary of the House of Representatives, Secretary of Agrarian Development, Secretary of Social Defense of the State of Pernambuco, Public Defender of Pernambuco, and State Attorney General

<sup>3</sup> Constitution of 1988, articles 184/191, 215, 225

<sup>4</sup> Constitution of 1988, Chapter III, articles 184/191

The alleged illegal acts of violence against the peasant communities are documented in dozens of police reports, newspaper articles, and video recordings made by community members themselves. There is extensive documentation of aerial spraying of pesticides, damages to the land and plantations, destruction of property, and harassment.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned over the alleged exposure of peasants to hazardous pesticides in Zona di Mata Sul. We are particularly concerned about the potential impacts of the aerial spraying of hazardous pesticides on the communities' human rights, in particular the right to life, physical integrity, health, and a clean, healthy and sustainable environment. We are seriously concerned about children's prolonged exposure to hazardous pesticides, directly and through contaminated land, food and water, which may have severe and irreversible impacts on their right to the highest attainable standard of health. Additionally, we are concerned regarding the alleged acts of violence and intimidation recorded by the peasant communities.

Despite national restrictions on pesticide spraying within 500 metres of inhabited places, there is inadequate enforcement. We would like to recall that in 2019, following his official country visit to Brazil, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, highlighted cases of agribusinesses spraying pesticides over local communities, and of landless peasants reporting efforts by local businesses to force their eviction by spraying pesticides over their homes. The Special Rapporteur also stated that there were far too many occurrences of the failure by agribusinesses to respect legally required buffer zones so as to prevent the spraying of schools, houses and community centres with pesticides, and also noted a consistent pattern of not providing advance notice of spraying or information about pesticides used, and medical professionals being inadequately trained to diagnose pesticide poisoning.

We reiterate the recommendation of the Special Rapporteur on toxics and human rights to Brazilian authorities, contained in his country visit report, to develop time-bound plans to urgently reduce pesticide and toxic industrial chemical use and exposure, including by:

- (a) Banning aerial spraying, especially over inhabited areas;
- (b) Phasing out the use of highly hazardous pesticides, including glyphosate and atrazine, and toxic industrial chemicals, prioritizing those already banned or restricted in OECD countries;
- (c) Enforcing buffer zones and installing mandatory monitoring devices around schools and residences and on spraying vehicles;
- (d) Abandoning deregulatory legislative proposals, including the so called "poison package"<sup>5</sup>, and embedding a hazard-based approach to pesticides in law.

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

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<sup>5</sup> Draft bill PL 6299/2002

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 regarding the measures that your Excellency's Government has taken in response to the recommendations provided in the report of the Special Rapporteur on toxics and human rights on his visit to Brazil in 2019, in particular with regards to the issues highlighted above;
3. Please provide information on the existing initiatives to ensure communities in Zona da Mata Sul are fully informed on the chemicals being employed in these areas and on the required precautions to avoid and respond to exposure;
4. Please provide clarifications about the alleged aerial sprayings of hazardous agrochemicals by private companies over the communities of Zona da Mata Sul and explain how such acts are in compliance with Brazil's human rights obligations under international law;
5. Please provide information on any measures taken to ensure adequate medical assistance to the affected rural communities, including specific health support initiatives targeting children and women in these communities;
6. Please describe any measures taken by the authorities aimed at guaranteeing the demarcation of the lands and territories of the affected communities, as well as any undertaken or envisaged mitigation and accountability measures relative to the violence against members of the communities and the instances of aerial contamination by agrochemicals;
7. Please provide information on actions which are being taken for the immediate protection and guarantee of the right to adequate food and nutrition of the affected communities;
8. Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to fulfil its obligations to protect against human rights abuse by business enterprises under its jurisdiction, and ensuring that business enterprises within its territory conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights (UNGPs);

9. Please indicate the steps that your Excellency's Government has taken to create platforms and strengthen mechanisms for dialogue between Government, businesses and civil society on business and human rights issues, as supported by your Excellency's Government following the Universal Periodic Review in 2017;
10. Please provide information regarding measures that your Excellency's Government has taken, in response to the recommendations provided in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Brazil in 2015, in particular on developing a national action plan on business and human rights on the basis of multi-stakeholder engagement; on setting out clear expectations in relevant policies that all business enterprises in Brazil respect human rights throughout their operations and conduct human rights due diligence in relation to their domestic and international operations, and on conducting a review of access to effective remedy with a view to strengthening judicial and non-judicial mechanisms to identify and address business-related human rights abuses;
11. Please describe any measures taken by your Excellency's Government in response to the recommendations of the Committee on the Rights of Child, in its concluding observations on the combined second to fourth periodic reports of Brazil in 2015, that the State: ensure that existing laws and regulations concerning the use of agrochemicals are strictly enforced, particularly with regard to the use of crop dusters in proximity to villages and schools; expedite the evaluation of agrochemicals by allocating the necessary human, technical and financial resources to the National Health Surveillance Agency; expeditiously ban agrochemicals that have been widely banned in other countries; undertake awareness-raising programmes for communities living in affected areas to minimize the risks of being exposed to contaminated water and food, and for users of such agrochemicals; and conduct a comprehensive assessment of the effects of polluted air, water and soil on children's health and use it as a basis for developing and implementing a strategy to remedy the situation, and monitor the levels of air, water and soil pollutants and of pesticide residues in the food chain; and,
12. Please provide information about the measures that your Excellency's Government has taken, or is considering to take, to ensure that the affected local communities and affected workers in the "Zona da Mata Sul" region have access to effective remedies, including adequate reparation, in line with the UNGPs.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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.

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.

Please be informed that a letter on this subject matter has been also sent to Agropecuária Mata Sul S/A with regard to the allegations raised above.

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

Marcos A. Orellana  
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Elżbieta Karska  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Rights of the Child;
- The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas; and,
- The UN Guiding Principles on Business and Human Rights.

We would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. In particular, the Universal Declaration of Human Rights, article 25, which recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care" and article 19, which guarantees the right to "seek, receive and impart information".

Furthermore, we wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by your Excellency's Government on 24 January, 1992, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights describes the normative content of article 12 and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfill the right to health. In paragraph 11 of General Comment No. 14, the Committee interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information".

We wish to draw your attention to article 6.1 of the International Covenant on Civil and Political Rights (ICCPR), acceded by your Excellency's Government on 24 January, 1992, which states that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." We would also like to call your attention on General Comment No. 6 (1982) of the Human Rights Committee on the right to life. According to the Human Rights Committee, the expression "inherent right to life" should not be interpreted in a restrictive manner. The protection of the right to life therefore requires States to adopt

positive measures to implement this right, including measures to reduce infant mortality and increase life expectancy.

We would also like to draw your Excellency's Government's attention to article 7 of the ICESCR, enshrining the right of everyone to the enjoyment of just and favourable conditions of work, including safe and healthy working conditions. The above-mentioned General Comment No.14 holds that the improvement of all aspects of environmental and industrial hygiene comprises, *inter alia*, "preventive measures in respect of occupational accidents and diseases [and] the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health". We would also like to stress that the right to work is a fundamental right, recognized in the ICESCR. As specified in General Comment No. 18 (2005) on article 6 of the Covenant, work must be "decent work", that is, "work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration."

In addition, article 6 of the Convention on the Rights of the Child (CRC), which your Excellency's Government ratified on 24 September, 1990, recognizes that every child has the inherent right to life and that requires that States Parties ensure to the maximum extent possible the survival and development of the child. It further requires State Parties to take all effective and appropriate measures to diminish infant and child mortality. Moreover, the article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation. The article 24, paragraph 2 (c) of the Convention specifically requires States to pursue the full realization of the right of the child to the enjoyment of the highest attainable standard of health taking into consideration the dangers and risks of environmental pollution.

We would like to remind your Excellency's Government of the explicit recognition of the human right to safe drinking water by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, *inter alia*, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights (CESCR) clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

Article 11 (1) of the International Covenant on Economic Social and Cultural Rights, recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In interpreting this provision, the CESCR stressed in its General Comment No. 12 that the core content of the right to adequate food implies, *inter alia*, both economic and physical accessibility of food (para. 7). The Committee considers that the core content of the right to adequate food implies, *inter alia*, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility.

We also wish to recall the General recommendation No. 34 on the rights of rural women of the Committee on the Elimination of Discrimination against Women states in para. 64 that "State parties should ensure the realization of rural women's right to food and nutrition from a food sovereignty approach and guarantee that they have the authority to manage and control their natural resources".

We would like to draw your Excellency's Government's attention to the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted by the Human Rights Council on 28 September 2018 (A/HRC/RES/39/12), which recognizes in article 2, paragraph 1 that "States shall respect, protect and fulfil the rights of peasants and other people working in rural areas. They shall promptly take legislative, administrative and other appropriate steps to achieve progressively the full realization of the rights of the present Declaration that cannot be immediately guaranteed." The Declaration also indicates in article 2, paragraph 5 that "States shall take all necessary measures to ensure that non-State actors that they are in a position to regulate, such as private individuals and organizations, and transnational corporations and other business enterprises, respect and strengthen the rights of peasants and other people working in rural areas."

We also wish to recall that the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas indicates in article 18, paragraph 2 "States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment", and that "States shall take appropriate measures to ensure favourable safe and healthy working conditions for peasants". The Declaration also recalls in article 3, paragraph 10 that "peasants have the right to live a healthy life, and not be affected by the contamination of agrochemicals, such as chemical pesticides and fertilizers".

Furthermore, on October 8, 2021, the Human Rights Council adopted resolution 48/13 recognizing the right to a healthy environment. In this regard, we would like to draw Your Excellency's Government's attention to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The Principles provide that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2); and States should ensure effective enforcement of their environmental standards against public and private actors (Principle 12).

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and

- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The Guiding Principles clarify that under international human rights law, “States must protect against human rights violations committed in their territory and / or their jurisdiction by third parties, including business enterprises” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and / or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2).

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” This obligation requires that a State takes appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In addition, this requires, inter alia, that a State should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3).

The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur.

Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed. Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

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.