

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 OTH 34/2022
(Please use this reference in your reply)

23 May 2022

Dear Mr. Diniz Araujo,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 57 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention 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

Agropecuária Mata Sul S/A

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 Trabalho¹.

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 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)², 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.

¹ 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.

² 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

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 provisions³ and the Agricultural and Land Policy and Agrarian Reform⁴. Currently they are organized in agrovillages or on small farms and have diverse food production, such as bananas, cassava, corn, yarns, 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.

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 da 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

³ Constitution of 1988, articles 184/191, 215, 225

⁴ Constitution of 1988, Chapter III, articles 184/191

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 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”⁵, 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 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 on the existing initiatives to ensure peasant communities in Zona da Mata Sul are fully informed of the chemicals being employed by the company in these areas and on the required precautions to avoid and respond to exposure;
- 3. Please provide clarifications about the alleged aerial sprayings of hazardous agrochemicals by the company over the peasant communities of Zona da Mata Sul and explain how such acts are in compliance with human rights obligations under international law;
- 4. Please describe the measures that your company has taken, or is planning to take, to prevent recurrence of such situations in the future;
- 5. Please provide information regarding measures that your company has taken, in response to the recommendations provided in the Report of the Working Group on the issue of human rights and transnational

⁵ Draft bill PL 6299/2002

corporations and other business enterprises on its visit to Brazil in December 2015, in particular in complying with your company's responsibility to respect international human rights law;

6. Please provide information regarding measures that your company 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 December 2015, in particular in enforcing buffer zones around the spraying of pesticides;
7. Please provide information as to what human rights due diligence policies and processes have been put in place by your company to identify, prevent, mitigate and account for how you address adverse human rights impacts throughout your business operations, in line with the UN Guiding Principles on Business and Human Rights (UNGPs);
8. Please indicate the measures taken by the company to ensure the implementation of the UNGPs, including information on whether your company has established or participates in any operational-level grievance mechanisms, to provide access to remedy for affected individuals and communities;
9. Please indicate what measures have been taken or are planned to ensure that persons who have suffered any human rights or economic impacts, as a result of the alleged aerial spraying of unknown pesticides, have access to effective remedy and reparation; and,
10. Please confirm whether residents working on or living near the company's plantations and who were exposed to hazardous agrochemicals had access to protective equipment and have adequate healthcare.

This communication and any response received from the company 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 the company to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been also sent to the Government of Brazil with regard to the allegations raised above.

Please accept, Mr. Diniz Araujo, 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 company's attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. 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 or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

According to the Guiding Principles, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principle 13 has identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts".

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from

corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

The Guiding Principles on extreme poverty and human rights were adopted by the Human Rights Council by consensus on 27 September 2012, in resolution 21/11. The Guiding Principles recommend in particular that business enterprises "avoid causing or contributing to adverse human rights impacts through their activities, products or services, and to deal with such impacts when they occur", and that they "undertake a human rights due diligence process to identify and assess any actual or potential impacts on human rights posed by the company's own activities and by business partners associated with those activities" (paras. 100-101).

In the 2018 report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) to the General Assembly, the Working Group noted that "The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights and that in order to do so they are required to exercise human rights due diligence. Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships". In addition, this involves (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact; (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working; (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.

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