

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

Ref.: AL BRA 3/2024  
(Please use this reference in your reply)

16 July 2024

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human right to a clean, healthy and sustainable environment; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 53/3, 55/2, 53/4, 52/9, 52/4, 51/16 and 54/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of unpunished and escalating violence against and killings of Ka'apor, Guarani and Kaiowá, and Pataxó Hã Hãh Hãe Indigenous Peoples by invaders, illegal loggers, miners (garimpeiros) and farmers, resulting in a lack of protection and security measures, including land demarcation.**

According to the information received:

*Ka'apor Indigenous Peoples of the State of Maranhão*

*Background*

The Alto Turiaçu Indigenous land is located in the Amazon, in the northwest of the State of Maranhão, Brazil. It is the largest contiguous forest area in the State, together with the *Gurupi* Biological Reserve and the *Awa* Indigenous Land. The Alto Turiaçu was regularized by Decree no. 88,002 of 1982, which comprises an area of more than 530,000 hectares. The area has an Indigenous population of around 1,863 individuals from three different Indigenous Peoples: Guajá, Ka'apor and Tembé. Among them, there are some communities in voluntary isolation. The Alto Turiaçu borders *Rebio Gurupi* and the *Alto Rio Guamá* Indigenous Land to the north and the *Awa* Indigenous land to the south.

Reports indicate that the Ka'apor Indigenous Peoples initiated a long and slow migration to avoid aggression and conflict with the European colonizers, leaving the State of Pará across the *Gurupi* River to the State of Maranhão,

where they settled in 1870, in their current territory. The Ka'apor live in the eastern portion of the Amazon biome, in northwest Maranhão, and their lands comprise three main rivers: *Gurupi*, *Turiaçu* and *Maracaçumé*.

In the 1980s and 1990s a growing population of Indigenous Peoples in the Alto Turiaçu territory were distributed in different villages, which allegedly facilitated the invasion of Indigenous territories by non-Indigenous persons and groups. Due to this village distribution and the large extension of the Alto Turiaçu, various parts of the territory were vulnerable to illegal logging and mining, deforestation, illegal hunting, and various forms of resource exploitation.

The transformation of the natural environment and land occupation continued in the Alto Turiaçu from 2000 to 2010. New villages were established in other regions of the territory, which allowed resource exploitation and livestock projects to advance. In the new villages, Indigenous Peoples who were deprived of their livelihoods and ability to sustain themselves, were forced, by these circumstances, to engage in the illegal sale of timber and planting of pasture areas for cattle breeding. Mining activities 2 km from the Alto Turiaçu territory is reportedly causing mercury contamination of the *Maracaçumé* River, and local fauna and flora, impacting the Ka'apor's livelihood.<sup>1</sup>

From 2011 to 2021, the Ka'apor territory underwent positive socio-environmental transformations due to the Ka'apor Indigenous Peoples creating protection areas aiming at tackling illegal logging, invasion and land occupation. Specifically, in 2013, the *Gurupiuna* Protection Area was created as a self-governance and self-defence initiative in the Ka'apor territory. In the following years, ten more protection areas were created.

### *Escalation of violence*

According to the information received, in retaliation against the Ka'apor's successful self-protection and self-defence initiatives, criminal organizations have reacted with violence against the Ka'apor Indigenous Peoples, attacking villages, and killing five Ka'apor leaders. In 2016, a member of the Self-Defense Guard was allegedly stabbed to death in the village of Betel, in the municipality of Araguanã. It is alleged that in 2019, an Indigenous leader was beaten to death under circumstances that were not investigated and in 2021, another leader was shot and killed by illegal loggers. No investigation has been carried out in relation to these murders.

On 22 January 2022, human rights defenders of the Ka'apor Indigenous Peoples were allegedly chased by four vehicles on a road in the municipality of Santa Luiza do Paruá. The vehicles were driven by loggers who had blocked the road in an act of intimidation. Information indicates that the incident occurred in response to the establishment of a new protected facility, in a deforested area around the Alto Turiaçu Indigenous territory. Investigations into this act of intimidation were initiated but not concluded. In several cases of violence, the Ka'apor Indigenous Peoples were not able to register an incident report at the police due to their Indigenous ethnicity,

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<sup>1</sup> <https://outraspalavras.net/outrasmidias/no-maranhao-os-guardioes-kaapor-do-luto-a-luta/>

making them victims of discrimination. On 14 May 2022, the chief of the Ka'apor Indigenous Peoples guard was allegedly poisoned and killed in circumstances that have still not been investigated by the police.

It has been brought to our attention that on 22 January 2024, criminal groups attacked several Ka'apor Indigenous Peoples in the *Murutyrenda* protection area, which resulted in death threats and destruction of the *Tuxa Ta Pame* (Ka'apor Management Council) vehicle. The alleged intense pressure from the criminal groups has led Ka'apor leaders to develop severe mental health issues and alcohol use disorders.

#### *Harassment by mining companies*

The information received indicates that the Ka'apor Indigenous Peoples also face harassment from mining companies. Approximately 50 requests have been submitted for gold exploitation near the Alto Turiaçu in *Gurupi* Belt, an auriferous deposit of around 12,000 km<sup>2</sup> on the border between the States of Pará and Maranhão – with resources estimated at more than 158 tons of gold.

Although mining companies are currently not operating in the Ka'apor territory, three active applications at the National Mining Agency for mineral exploration and exploitation are targeting the “buffer zone” – this is a protected area close to the Ka'apor lands that aims to prevent the environmental impacts of economic activities from reaching the demarcated areas. Reportedly, the boundaries of the Ka'apor territory are not being respected by the mining companies, and they have already trespassed into their lands: in 2019 in *Ximborendá*, the most populous Ka'apor village and in 2020 in the *Waxiguiendá* village.

Reports indicate that actors involved in the carbon market are also causing internal conflicts within the Alto do Turiaçu territory. The Ka'apor have been harassed by a foreign company and a non-governmental organization who are promising a carbon credit project within the indigenous lands without any legal authorization from the Ka'apor Indigenous Peoples, who have reportedly spoken out against the project.

#### *Guarani and Kaiowá Indigenous Peoples of the State of Mato Grosso do Sul*

##### *Background*

The Guarani and Kaiowá Indigenous Peoples are the second largest Indigenous population in Brazil, estimated at around 58,000 individuals. The Guarani and Kaiowá lands are situated in the State of Mato Grosso do Sul, along the border between Brazil and Paraguay. According to the information received, most Guarani and Kaiowá communities experience restricted access to basic human rights, such as adequate housing, water and sanitation, healthcare, education, food security, physical security, decent work, and income.

The State of Mato Grosso do Sul is currently reporting an increased level of violence against Indigenous Peoples, with the third highest rates of violent

deaths of Indigenous Peoples, along with Amazonas and Roraima.<sup>2</sup> Although Mato Grosso do Sul is not considered a region to be affected by illegal mining, it still remains one of the most dangerous places for Indigenous Peoples in the country, due to the violence coming from and promoted by landowners in areas of indigenous repossession and self-demarcation. This violent situation is reportedly a consequence of the lack of demarcation of indigenous territories by State institutions.

In Mato Grosso do Sul, the *Pyelito Kue tekoha* territory is part of the *Iguatemipagua I* Indigenous Land, which has been awaiting a declaratory decree from the Brazilian Ministry of Justice for ten years. Indigenous Peoples there currently live in an area of 100 hectares, within a farm called Carambá, which was granted by the State through a Conduct Adjustment Agreement in 2014. The land is 0.2% of the Indigenous territory historically occupied by the Guarani and Kaiowá, delimited at 41,500 hectares in 2013.

The challenges faced by the Indigenous Peoples of the *Tekoha* gained national attention in 2012, when the Federal Court of Navirai ordered the eviction of the Guarani and Kaiowá from the Carambá Farm. After allegedly declaring that they would not leave the territory “alive or dead” the Guarani and Kaiowá’s statement was misinterpreted as an intention to commit a collective suicide. The eviction was suspended by the Federal Regional Court. The Guarani and Kaiowá Indigenous Peoples continue to await official developments and answers about the delay in the demarcation procedure. Concerns have been raised over the violence orchestrated by the region’s landowners, who own large estates overlapping with the *Iguatemipagua I* Indigenous land.

#### *Escalation of violence*

According to the information received, on 21 November 2023, the Guarani and Kaiowá Indigenous Peoples occupied the dispossessed traditional territory of *Tororõ* at Maringá farm in the city of Iguatemi. The next day, several men in pick-up trucks began shooting at them and kidnapped four Guarani and Kaiowá individuals. Information indicates that the indigenous persons who were kidnapped endured several hours of torture, humiliation, physical and sexual assaults and death threats.

On 22 November 2023, a Guarani and Kaiowá family was reportedly kidnapped and tortured near the city of Iguatemi, during the Great Guarani and Kaiowá Assembly. A group of journalists, anthropologists and forestry engineers went to Iguatemi to verify the accuracy of the information on the kidnapping and were informed by officers of the Border Operations Department that nothing was happening in the region. After this inquiry, around 30 to 50 hooded men attacked the group on their way back to the assembly. Reports indicate that a police vehicle was passing along the highway where they were being beaten and did not provide protection or assistance.

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<sup>2</sup> <https://www.ipea.gov.br/atlasviolencia/publicacoes>

Federal Police and the National Force arrived four days after the attack. Searches were carried out and approximately 88 rounds of large-calibre ammunition were found in the “*Pássaro Preto*” property, close to the occupied territories. The owner was arrested for irregular possession of ammunition and a firearm, and the kidnapped Guarani and Kaiowá individuals were released. It is alleged that cell phones and other belongings of the victims were burned.

On 16 December 2023, a group of Guarani and Kaiowá Indigenous Peoples from the *Pyelito Kue* village self-demarcated a part of their territory, the “Tororõ”, located in the Cachoeira and Maringá farms, one of the few areas that has not been deforested and turned into pasture. The occupation allegedly triggered a series of violent attacks by armed security guards.

#### *Lack of safe drinking water and river contamination*

In addition to the escalating violence against the Guarani and Kaiowá Indigenous Peoples, they also face a lack of safe drinking water and sanitation, as does the entire indigenous population of Mato Grosso do Sul. Concerns have been raised that there is no water to flush the toilet, bath or drink, and that some of the Guarani and Kaiowá have gone four months without access to water, forcing them to walk several kilometres in search of it. Some villages have access to shallow artesian wells with no water, and, in others, there are deeper wells with scarce water.

According to the information received, in September 2023, an indigenous person died while drilling a well to supply water to the *Jaguapiru* indigenous community, in Dourados. The case was registered as a “death to be clarified” and to date, updates on the investigation have not been provided by the relevant authorities.

The contamination of rivers in the Guarani and Kaiowá territories has also been brought to our attention, due to the use of pesticides by agrobusinesses. The *Mboreviry* River (*Córrego do Touro*) runs through the *Mboreviry* indigenous community (*Tekoha*) and serves as an important means of survival for the Indigenous Peoples living in the area. It is alleged that the river is contaminated by the introduction of poisonous agents and pesticides and, as a consequence, fish die and the use of the water for human consumption becomes unsafe.

In addition, in his report on his country visit to Brazil, the former Special Rapporteur on toxics and human rights raised his concerns regarding reported incidents of aerial spraying of pesticides near schools, including an indigenous village school in the village of Guyraroká of the Guarani-Kaiowá, endangering children who are at extreme risk of health impacts.<sup>3</sup>

Concerns have been raised over the lack of public drinking water and electricity in the *Mboreviry* indigenous community, which makes the *Mboreviry* River essential for water consumption, food preparation, hygiene and fishing activities of the Guarani Kaiowá Indigenous Peoples.

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<sup>3</sup> A/HRC/45/12/Add.2, para 29

## *The Pataxó Hã Hãh Hãe Indigenous Peoples of the State of Bahia*

### *Background*

The Pataxó Hã Hãh Hãe Indigenous Peoples live in several villages in the south of Bahia and the north of Minas Gerais. There is evidence that the village of Barra Velha has existed for almost two and a half centuries. The factors driving the conflict between Indigenous Peoples and non-indigenous individuals or groups are being caused by the cellulose agro-industry, livestock farming and the tourist sector, the latter of which has reportedly triggered real estate speculation. The territory of the Caramuru-Paraguassu Indigenous Peoples was created in 1926, at the time called the Caramuru-Paraguassu Reserve, by the now defunct Indian Protection Secretariat, with lands donated by the State of Bahia to house different indigenous groups supposedly “captured” in the region’s forests.

The Caramuru-Catarina Paraguassu reserve had been recognised by FUNAI since 1926 as the territory of the Pataxó and Tupinambá Indigenous Peoples and demarcated in 1937. However, in the 1970s, cattle and cocoa farmers reportedly invaded the land and expelled a large part of the Indigenous population.

The Government of Bahia reportedly extinguished the reserve between 1976 and 1982 and granted land titles to farmers. Consequently, the Pataxó Hã Hãh Hãe began reclaiming the territory in 1982. From 1982 to 2012, when the Supreme Court of Brazil ruled (ACO 312/BA) that it was illegal for the landowners to remain in the Caramuru-Paraguassu Indigenous Land, approximately 22 members of the Pataxó Hã Hãh Hãe Indigenous Peoples were murdered. Notwithstanding the Supreme Court’s decision, it was only in 2016 that the ruling ordering the farmers to leave the territory was published, which has still not been fully implemented. Concerns have been raised that the State’s inaction regarding Indigenous Peoples’ demands led the Pataxó Hã Hãh Hãe to demarcate lands themselves and face violence by farmers and non-Indigenous individuals.

### *Escalation of violence*

It has been brought to our attention that, on 20 January 2024, the Pataxó Hã Hãh Hãe Indigenous Peoples, expressing their discontent with the lengthy process of demarcation of land located between the municipalities of Potiraguá and Itapetinga, reoccupied the territory called “Inhuma Farm”. The group included indigenous children, older persons and women, allegedly indicating that the repossession was taking place peacefully. The region between Potiraguá and Itapetinga is facing abuse from farmers who claim to own the traditional lands and accuse the Pataxó Hã Hãh Hãe Indigenous Peoples of being “fake indians”.

On 21 January 2024, the Pataxó Hã Hãh Hãe had a confrontation with a farmers group called “zero invasion” who intended to take possession of their territory without a court order. Reports indicate that the military police, present in the confrontation in Potiraguá, were unable to prevent the attacks. A Pataxó leader was shot and injured, while one of his relatives was shot and

died. According to the Brazilian Technical Police Department, the shot was fired by the gun of a farmer's son.<sup>4</sup>

Other members of the Pataxó Hã Hãh Hãe reportedly suffered serious injuries during the confrontation. Information indicates that the attack, which initiated after the Pataxó Hã Hãh Hãe Indigenous Peoples repossessed their traditional territory, was organized and managed by a group of two hundred farmers from the region. In the absence of any legal process and through violent means, the farmers succeeded in taking possession of Inhuma Farm. In addition to the violence committed against the Pataxó Hã Hãh Hãe, the farmers also set fire to a car owned by the Pataxó Hã Hãh Hãe Indigenous Peoples. As reported by the national media, the military police of the State of Bahia were present at the confrontation, but no action was taken to protect the lives and security of the Pataxó Hã Hãh Hãe Indigenous Peoples.<sup>5</sup>

Reports indicate that the killing of the Pataxó Hã Hãh Hãe leader was not the first death of an indigenous leader between December 2023 and January 2024 and that the alleged murders were not isolated cases, as they are part of a wider context of violence perpetrated against the Pataxó Hã Hãh Hãe Indigenous Peoples. Since the regularization of the Caramuru-Paraguaçu Indigenous Land by the Supreme Court in 2012, more than 30 Pataxó Hã Hãh Hãe Indigenous Peoples have been reportedly murdered in the territory under unclear circumstances. In 2023 alone, there were seven murders that were not investigated.

On 24 April 2023, the Inter-American Commission on Human Rights (IACHR) adopted resolution 25/2023<sup>6</sup>, ordering precautionary measures in favour of the Pataxó Hã Hãh Hãe Indigenous Peoples. The IACHR requested the Government of Brazil to adopt the necessary measures to protect the life and personal integrity of the Pataxó Hã Hãh Hãe Indigenous Peoples, as it found that they and Indigenous Peoples of the region are at “grave and urgent risk of irreparable harm to their rights”. In addition, the Federal Public Prosecutor's Office, the Federal Public Defender's Office and the Public Defender's Office of the State of Bahia expressed concern about the flagrant lack of structural and effective measures from the Federal Government and the State Government of Bahia in the face of the repeated attacks suffered by the Pataxó Hã Hãh Hãe Indigenous Peoples. They further mentioned the lack of implementation of security measures aimed at addressing the Pataxó Hã Hãh Hãe's basic and fundamental human needs.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern regarding the alleged escalating violence against the Ka'apor Indigenous Peoples, the Guarani and Kaiowá Indigenous Peoples and the Pataxó Hã Hãh Hãe Indigenous Peoples, due to illegal activities in their ancestral lands. We are further extremely concerned about the reports of killings of Ka'apor, Guarani and Kaiowá and Pataxó Hã Hãh Hãe leaders, and the alleged absence of independent, impartial, prompt, thorough, effective, credible and transparent investigations of such deaths, as well as about the targeting of, intimidation and

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<sup>4</sup> <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2024/01/23/pericia-tiro-indigena.htm>

<sup>5</sup> <https://cimi.org.br/2024/01/lideranca-pataxo-ha-ha-hae-e-morta-por-fazendeiros-as-vistas-da-pm-da-bahia-em-reintegracao-ilegal/>

<sup>6</sup> [https://www.oas.org/pt/cidh/decisiones/mc/2023/res\\_25-23\\_mc\\_61-23\\_br\\_pt.pdf](https://www.oas.org/pt/cidh/decisiones/mc/2023/res_25-23_mc_61-23_br_pt.pdf)

attacks against these Indigenous Peoples, their leaders, human rights defenders and journalists, for their legitimate and peaceful human rights activities. We wish to express our most serious concern about what appears to be a pattern of acts of violence against the above-mentioned Indigenous Peoples, owing to a lack of and lengthy demarcation and titling processes of their territories, as well as a lack of further protection and security measures on these lands. It appears that such practices, especially the non-recognition of territorial rights, are the root cause of the increase in invaders, violent farmers, illegal miners and loggers on traditional lands and of the escalation of violence and attacks against human rights defenders that followed.

We would also like to express our grave concern about the ongoing harassment by mining companies that the Ka'apor Indigenous Peoples are facing in their ancestral and demarcated lands; and the contamination of the *Maracaçumé* River from illegal mining and *Mboreviry* River due to toxic substances released by agrobusiness. Our particular concern is also expressed over the lack of safe drinking water and sanitation for Indigenous Peoples in the Mato Grosso do Sul. It appears that the Guarani and Kaiowá Indigenous Peoples are living in a situation of food insecurity and at risk of serious diseases due to the consumption of unsafe water and the impossibility of proper hygiene habits. Further, we express our concern that, given the emerging carbon credit market and the impacts it may have on Indigenous Peoples worldwide, there is a need to restructure this market with a view to incorporating a human rights approach, including ensuring appropriate and meaningful consultation.

We would like to highlight that the above-mentioned allegations regrettably appear to be *prima facie* violations of international human rights norms and standards, including but not limited to the right of every individual to life and security, as set forth in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights, ratified by Brazil on 24 January 1992 and the right to an adequate standard of living, as enshrined in article 25.1 of the Universal Declaration.

Further, we are concerned about the chilling effect on the right to freedom of opinion and expression of the Indigenous Peoples and human rights defenders mentioned in the allegations and others in the region that these killings, attacks and acts of intimidation are prone to generate.

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 detailed and updated information about the circumstances of the alleged murders of Ka'apor, Guarani and Kaiowá and Pataxó Hã Hãh Hãe leaders, about the investigations conducted by relevant authorities, including whether these have adhered to the

relevant international standards such as the Minnesota Protocol on the investigation of potentially unlawful deaths, and whether anyone has been brought to justice for these killings.

3. In the event that the alleged perpetrators are identified, please provide full details of any prosecutions which have been undertaken and information on any criminal, disciplinary or administrative sanctions imposed on the alleged perpetrators. If no investigation has been conducted, is yet to take place, or has been inconclusive, please explain why.
4. Please provide the details, and where available the results, of any investigations carried out in relation to the violence, harassment, intimidation and threats against the Ka'apor, the Guaraní and Kaiowá and the Pataxó Hã Hãh Hãe Indigenous Peoples and their human rights defenders. In particular, please provide information on the measures taken to prevent further attacks and protect the Indigenous Peoples above-mentioned and their human rights defenders against such acts. If no investigation has been conducted, is yet to take place, or has been inconclusive, please explain why.
5. Please indicate what measures have been taken to ensure policing in the Alto do Turiaçu (Maranhão), Iguatemipegua I (Mato Grosso do Sul) and Inhuma (Bahia) indigenous territories after the above-mentioned attacks against the Ka'apor, Guaraní and Kaiowá and Pataxó Hã Hãh Hãe Indigenous Peoples. In particular, please provide detailed information on the alleged confrontation between the Pataxó Hã Hãh Hãe and "Zero Invasion" group.
6. Please explain what measures have been taken to ensure that all human rights defenders in Brazil, in particular those working towards the rights of Indigenous Peoples, can carry out their peaceful and legitimate activities without fear or restrictions. Please provide detailed information on any protection measures available and adopted, and measures to be taken to strengthen them, including through the Federal and State policies for the protection of human rights defenders.
7. 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 abuses 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 UNGPs. As part of this response, please indicate what additional steps have been taken by your Excellency's Government to ensure that Indigenous Peoples are protected against human rights abuses by mining, miners, mining companies, invaders, violent farmers and loggers.
8. Please provide detailed information on the alleged contamination of the Maracaçumé and Mborevirý Rivers and its negative consequences on

the right to food, the availability of safe drinking water and human rights related to a healthy environment.

9. Please provide information on any mechanisms for effective remedies, in line with the UN Guiding Principles on Business and Human Rights (UNGPs), and appropriate measures that have been taken to mitigate adverse environmental, health, economic, social, cultural or spiritual impacts on the Ka'apor, Guarani and Kaiowá and Pataxó Hã Hãh Hãe Indigenous Peoples.
10. 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.
11. Please provide detailed information on the measures taken to ensure due process, and in particular fair, equitable and transparent proceedings in cases of recognition, demarcation, and titling of Indigenous Peoples traditional territories.
12. Please provide information on any measures taken by your Excellency's Government to ensure the full implementation of the Supreme Court ruling regarding the demarcation of Caramuru-Paraguassu Indigenous land, in particular the removal of farmers and non-Indigenous and for ensuring the full access and use by Indigenous Peoples to their lands, territories and natural resources without restrictions and fear of violence.
13. Please provide detailed information on any measures to ensure compliance with international human rights obligations in light of the resolution 25/2023, in which the IACHR ordered precautionary measures in favour of the Pataxó Hã Hãh Hãe Indigenous Peoples for the protection of their life and personal integrity.
14. We would also be interested to know and to receive further information on whether the Government envisages the elaboration of a security program or initiative aimed at addressing the Pataxó Hã Hãh Hãe fundamental needs, in accordance with the repeated recommendations made by the Federal Public Prosecutor's Office, the Federal Public Defender's Office and the Public Defender's Office of the State of Bahia.
15. 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.

We would appreciate receiving a response within 60 days. Past 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.

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

Astrid Puentes Riaño  
Special Rapporteur on the human right to a clean, healthy and sustainable environment

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay  
Special Rapporteur on the rights of Indigenous Peoples

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

## **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 its obligations under International Human Rights and the instruments to which Brazil is party. We recall article 3 of the Universal Declaration of Human Rights and article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Brazil on 24 January 1992, that guarantees the right of every individual to life, liberty and security, and article 19 of the ICCPR that safeguards the right to opinion and expression. These articles should be read together with article 2.3. of the ICCPR, which provides for the right to an effective remedy for every person whose rights contained in the Covenant have been violated.

As highlighted by the Human Rights Committee in general comment No. 36, the duty to protect the right to life also includes an obligation for States to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities. States are required to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence, including indigenous persons.

General comment 36 also observes that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations should be independent, impartial, prompt, thorough, effective, credible and transparent.

The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (general comment 36 para. 26). The implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para. 62).

We would also like to draw your attention to the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Brazil in 1992. Article 12 enshrines the right to the highest attainable standard of physical and mental health, which is also guaranteed by the Universal Declaration under article 25, in terms of the individual's potential, the social and environmental conditions affecting the health of the individual, and in terms of health care services. In its general comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) 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”. The CESCR also affirms that vital medicinal plants, animals and minerals necessary to the full enjoyment: of health of indigenous peoples should also be protected.

Furthermore, we would like to draw the attention of Your Excellency's Government to article 11(1) of the International Covenant on Economic Social and Cultural Rights, which 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.

The obligation to respect access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

In 2002, Brazil ratified the International Labour Organization's Indigenous and Tribal Peoples Convention No. 169, which establishes in its article 15 “the rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources”. Furthermore, “in cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.”

We specifically wish to emphasize the relevant provisions of the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which sets out international human rights standards relating to Indigenous Peoples' rights. Article 7 of the UNDRIP, provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. Article 24 further states that indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health and, also provides for their collective right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal

plants, animals and minerals. In its article 21, the UNDRIP stipulates that Indigenous Peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the area of health. States are required to take effective and, where necessary, special measures in this regard, paying particular attention to the rights and special needs of indigenous children.

Article 26 of the UNDRIP asserts the right of Indigenous Peoples to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”. Article 32 affirms that Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and resources and that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”.

According to article 29 of the UNDRIP, States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous Peoples without their free, prior and informed consent. The United Nations Declaration also provides for the rights of Indigenous Peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. The UNDRIP further underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

In addition to the above, we would like to refer Your Excellency’s Government to the United Nations Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realization of human rights and indicates State’s prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (articles 1 and 2). The Declaration details the State’s obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of carrying out their legitimate work as human rights defenders (article 12). We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly<sup>7</sup>. This obligation derives implicitly, but clearly, from any number of rights and duties enshrined within the global human rights framework, under which States are obligated to respect and fulfil recognized human rights, and to protect those rights, including from the implications of exposure to toxics. Those rights include the human rights to life, health, safe food and water, adequate housing, and safe and healthy working conditions. The duty to prevent exposure is further reinforced by the national and

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<sup>7</sup> A/74/480.

regional recognition of the right to a safe, clean, healthy and sustainable environment, including clean air. The existence of the State's duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the person, which helps to provide context to the extent to which every person should have the right to control what happens to their body<sup>8</sup>. Read together, the international human rights legal framework clearly establishes a duty of the Government to prevent exposure to hazardous substances and wastes.

We also wish to refer to Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 29 July 2022, which recognize the right to a clean, healthy and sustainable environment as a human right.

We would also like to bring to the attention of your Excellency's Government the Framework Principles on Human Rights and the Environment as detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The Principles state that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (principle 1); States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by: a) Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used; b) Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources; c) Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources; d) States should also take additional measures to protect the rights of those most vulnerable to or at particular risk of environmental harm, taking into account their needs, risks and capacities (principle 14); e) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources (principle 15). In addition, in his latest report on water crisis (A/HRC/46/28), the Special Rapporteur on human rights and the environment highlighted the impacts of illegal mining related water pollution on children and the need to protect vulnerable groups from their adverse human rights impact.<sup>9</sup>

We wish to recall that in 2016, following her official country visit to Brazil, the Special Rapporteur on the rights of Indigenous Peoples raised concerns over serious human rights violations committed against Indigenous Peoples. She raised concerns over the failure of the State to protect Indigenous Peoples' lands from illegal mining, even where they had demarcated territories, they lacked effective control over their resources owing to increasing invasions associated with illegal activities. The Special Rapporteur recommended the Government to develop concrete and prioritized actions to guarantee environmental protection of indigenous lands and their natural resources and to prevent illegal activities, with due respect for Indigenous Peoples' forms of their special relationship with their lands.<sup>10</sup>

On the same occasion, the Special Rapporteur on the rights of Indigenous Peoples also expressed concerns over a series of disturbing threats and intimidation as well as armed attacks leading to the injury of indigenous individuals and indigenous rights defenders. She further noted that tackling and eliminating violence against

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<sup>8</sup> A/HRC/39/48.

<sup>9</sup> A/HRC/46/28, para 44 and 46.

<sup>10</sup> A/HRC/33/42/Add.1

Indigenous Peoples and ensuring protection of the lives of indigenous leaders and community members is an issue that requires immediate and concerted action. The Special Rapporteur urged the Government to take immediate measures to protect the safety of indigenous leaders, including through strengthened and culturally appropriate protection programmes, and to conduct investigations into all attacks of Indigenous Peoples and bring perpetrators to justice.<sup>11</sup>

In his report on his country visit to Brazil in 2019, the former Special Rapporteur on toxics and human rights, raised similar concerns around the deteriorating situation of Indigenous Peoples in Brazil. He noted that “recurrent proposals to legalize mining, hydroelectric projects and other business activities in the Amazon and elsewhere raise legitimate concerns of disregard of the right to free, prior and informed consent”. He also raised his concerns around contamination of rivers which Indigenous communities are dependent on; land grabbing; and pesticide use as “chemical weapons” allegedly to drive Indigenous communities from their lands. He also expressed his alarm at the pattern of criminalization and killing of Indigenous and environmental rights defenders oftentimes with impunity and little accountability. In this regard, the Special Rapporteur put forward a number of recommendations to the Brazilian Government and businesses including with respect to the right of Indigenous Peoples to self-determination and the implementation the United Nations Declaration on the Rights of Indigenous Peoples in national law as well as measures for the prevention and investigation of threats, attacks and killings.<sup>12</sup>

Finally, 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

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<sup>11</sup> A/HRC/33/42/Add.1.

<sup>12</sup> A/HRC/45/12/Add.2

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.