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HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: UA Assembly & Association (2010-1) G/SO 214 (107-9) Indigenous (2001-8) G/SO 214 (33-27)
BRA 2/2013

3 June 2013

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 15/21, 16/5, 15/14, and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **recent incidents of escalating violence against indigenous peoples in the states of Mato Grosso do Sul and Pará, including the alleged killing of an indigenous person by police authorities.**

According to the information received:

Violent eviction in Mato Grosso do Sul

On 30 May 2013, police in Mato Grosso do Sul engaged in a forcible eviction of approximately 1000 indigenous Terena people who, for two weeks, have been occupying a piece of land in the locality of Buriti that is officially titled to a private landowner. The land in question lies within an area that reportedly has been determined by the Ministry of Justice to be an indigenous territory. However, this determination has been the subject of legal challenges since 2001 by the affected landowner. The indigenous Terana people have continually demanded that they be able to return to their traditional lands in Buriti.

At the request of the landowner, on 29 May 2013, a federal judge in Mato Grosso do Sul ordered the eviction of all the indigenous persons occupying the land in Buriti. The following morning, federal and state military police arrived in Buriti and began to forcibly evict the indigenous people present, firing their guns as they did so. One Terena indigenous man, Mr. Oziel Gabriel, was allegedly killed by

police gunfire, several others were wounded and ten indigenous people were arrested.

According to the information, the eviction occurred before representatives of the National Indian Foundation (FUNAI) could be present at the scene. This was reportedly contrary to the institutional agreement between the police and FUNAI in which the latter would be informed prior to any removal of indigenous peoples by police, including court-ordered evictions. This would supposedly provide an opportunity for FUNAI to dialogue with the indigenous peoples concerned and possibly mediate a solution. Consequently, FUNAI was not able to inform the indigenous Terena at Buriti about the eviction order nor engage in a dialogue with them before the police proceeded with the evictions. An appeal has reportedly been lodged by FUNAI against the federal judge's eviction order which is still pending.

Concerns over the imminent eviction in construction site of the Belo Monte Dam

Allegations have also been received about the imminent eviction of approximately 150-170 indigenous Kayapo, Arara, Munduruku and Xipaia persons who since 27 May 2013 have occupied one of the construction sites of the Belo Monte dam in the state of Pará. The protesters reportedly have blocked access to the site preventing construction workers from entering. On 28 May 2013, a federal court in Altamira issued an eviction order which gave the indigenous protesters 24 hours to peacefully vacate the premises or else they would be forcibly removed. The indigenous protesters have reportedly refused to leave the site until they talk directly with the Chief Minister of the Secretariat General of the Presidency of the Republic about their demands. The protesters are allegedly demanding that they be consulted about the construction of the dam on their traditional territories due to the concerns over possible environmental impacts on the water, rivers and other traditional resources.

According to the information, the Chief Minister of the Secretariat General agreed to a meeting with the indigenous representatives to be held on 4 June 2013 in Brasilia. Indigenous representatives have reportedly stated they would remain at the construction site until the day of that meeting, but have cleared access to the construction site. Armed police officials have allegedly surrounded the indigenous protesters since the eviction order was issued and consequently, there has been concern that a violent eviction and deaths of indigenous protesters could ensue.

Without making a judgment as to the accuracy of the information made available to us, the information described above raises serious concerns over the human rights situation of indigenous peoples in Matto Grosso do Sul and other regions of Brazil, and particularly regarding the use of force by State security forces against indigenous peoples engaged in peaceful acts of protest or in the context of land disputes with private landowners.

We are deeply concerned about the ongoing patterns of violence against members of indigenous peoples due to conflicts that arise from their efforts to recover or protect their traditional lands. This issue, as you are aware, has been the subject of previous communications to your Government as reflected in the 2009 report of the Special Rapporteur on the rights of indigenous peoples in the situation of indigenous peoples in Brazil (A/HRC/12/34/Add.2) and subsequent communications to your Government. His most recent letters on this issue were from 8 October 2012, concerning alleged attacks on the Guarani-Kaiowá Arrio Korá, which reportedly resulted in the disappearance and possible death of one community member, and his letter of 6 November 2011 regarding the threat of eviction faced by the Guarani-Kaiowá community of Pyelito Kue/Mbarakay. In addition, the human rights situation of indigenous peoples affected by the Belo Monte dam was the subject of communications to your Government dated 15 March 2010 and 6 April 2010. We acknowledge receipt of your reply to the letter dated 15 March 2010.

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination,

pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to the information on the killing of Mr. Oziel Gabriel following police gunfire, we would like to refer to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which Brazil acceded to on 24 January 1992, and under which the Government of Brazil has the obligation to protect every individual's right to life and to ensure that no individual on its territory or subject to its jurisdiction is arbitrarily deprived of his or her life. In its General Comment on article 6, the Human Rights Committee stated that "[t]he protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6(1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity." (HRI/GEN/1/Rev.9, Vol. I, p. 177, para. 3).

The use of lethal force by law enforcement officials is strictly regulated under international law, according to which, when force is used excessively without strict compliance with the principles of necessity and proportionality, any loss of life that results is an arbitrary deprivation of life and therefore illegal. The principles of necessity and proportionality under international human rights law are interpreted to mean that lethal force may be used as a last resort, with the sole objective of saving life.

In this regard, we would like to draw the attention of your Excellency's Government to the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). Principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." We would like to further draw the attention of your Excellency's Government to the duty to investigate, prosecute and punish all violations of the right to life, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the Economic and Social Council resolution 1989/65). In particular, principle

9 provides that “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. Principle 18 further requires Governments to “ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.” We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time pursuant to principle 20.

We would also like to refer your Excellency's Government to article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

In this connection, we would like to also refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In addition, we would like to quote the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, which states that “States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (Council resolution 19/35, para. 6)” (A/HRC/20/27, para. 89).

We would like to urge your Excellency’s Government to avoid an escalation of conflict or violence against the indigenous peoples referred to in this communication. As we continue to monitor the circumstances surrounding these situations, we would be grateful if your Excellency’s Government could provide any additional information it deems relevant. Additionally, we would be grateful if you could provide information on the following:

- 1) Are the facts alleged in the above summary of the case accurate?
- 2) The measures your Government is taking to ensure that the rights to life, personal integrity and peaceful assembly of the indigenous peoples in the locality of

Buriti and the indigenous protesters in the construction site of the Belo Monte dam are protected against undue force by State security forces or other third party actors;

3) Whether there have been or will be any investigations regarding the death of Mr. Oziel Gabriel in Buriti, Mato Grosso do Sul on 30 May 2013 and the results, if any, of those investigations and other proceedings on this case. Please also specify whether any sort of remedy has been made available to the family of Mr. Oziel Gabriel.

4) Where relevant, please indicate which branches of the security forces were involved in the alleged incidents and what instructions they have received or issued in relation to the aforementioned incidents. Kindly specify how the use of force in the alleged incidents complies with international standards set forth inter alia in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

James Anaya
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