

**Open letter: The Guarani-Kaiowá need Urgent Demarcation and Delivery of their Land, Justice and a Life in Dignity**

Madame President,

Amnesty International is concerned about violations of the human rights of the Guarani-Kaiowá Indigenous People. For decades, the communities have not been able to access their ancestral lands and culminate the process of land demarcation, as established by the constitution.¹ Consequently, the communities have been further marginalized and have had no access to essential services. Furthermore, attacks against human rights defenders and community leaders have been constantly documented, all of which remain in impunity.

Land demarcation and delivery

The Constitution of 1988 stated that all Indigenous Peoples' land must be demarcated and titled within a time period of five years. This provision, and the resulting mechanisms for demarcation and titling, were praised by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, in a report in 2009, who said that "Brazil has developed an exemplary model for securing indigenous land rights from which other countries have much to learn."² This provision provides the basis for Brazil to comply with its obligations to recognise the land rights of Indigenous Peoples under ILO Convention 169³, ratified by Brazil in 2002, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁴, and the jurisprudence of the Inter-American Court of Human Rights.⁵

However, the hope that this constitutional provision represented, opening up the prospect that Indigenous Peoples could regain their dignity, fully exercise their human rights, live in peace and prosperity on their ancestral lands, and practice their spiritual beliefs, has not been realised.

In Mato Grosso do Sul there are at least 41 *Tekohas* (traditional territories) of the Guarani-Kaiowá and Guarani-Ñandeva, each at different stages of completion of the administrative procedure of demarcation. However, 22 years after the expiration of the deadline set by the Constitution, not a single community has been able to reclaim their traditional territory. When non-Indigenous farmers obtained court orders paralyzing the demarcation procedures, these were successively overturned in higher courts, allowing the executive to move forward with the constitutional demarcation process.

In some cases, courts have issued eviction orders, despite the lands being identified by the government agency FUNAI (National Indian Foundation) as belonging to the community, allowing farmers to move on to the land and farm it. As Amnesty International stated in its 2010 report *We know our rights and we will fight for them*, "The damage caused to traditional Indigenous lands in Mato Grosso do Sul by

¹ See for example Amnesty International, 'We Know our Rights and we will Fight for them' Indigenous Rights in Brazil – the Guarani-Kaiowá, November 2010

² Report on the Situation of Human Rights of Indigenous Peoples in Brazil, 26 August 2009 (A/HRC/12/34/Add.2), Para 72

³ Article 14(1), 'The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.'

⁴ Article 26(1), 'Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.'

⁵ For example, *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-American Court of Human Rights, (Series C) No. 79 (2001).



agro-industrial development is a serious concern. Reducing the future productivity of the land undermines its ability to sustain the way of life of Indigenous Peoples when they are able to return".⁶ Indigenous Peoples, on the other hand, who, in impatience at the slow judicial process for the delivery of their land, have re-occupied them (a process known as *retomadas*), are subject to violence, including murder.

Amnesty International is also very concerned about PEC 215, a proposal for a constitutional amendment, which would transfer decision-making powers regarding the demarcation and titling of Indigenous Peoples' land from the Executive Branch (FUNAI) to the Legislative (Congress). Land ownership is a question of legal entitlement and rights under national and international law. Amnesty International is concerned that politically motivated considerations that ignore Brazil's obligations under international law will lead to negative outcomes for Indigenous Peoples in violation of their rights.

Attacks against human rights defenders and community leaders

There have been many violent attacks on Guarani-Kaiowá and Guarani-Ñandeva communities, particularly those that have engaged in peaceful reoccupations of their lands. The following are three examples of Guarani Kaiowá human rights defenders who have been attacked and murdered in recent times.

Marcos Verón, a Cacique (leader) of the Takuára community, led a small group in a retomada of their land in Juti municipality of Mato Grosso do Sul in 2003. He was shot at and beaten to death reportedly by a group of farm labourers and hired gunmen. To this day, no one has been found guilty for his killing.

Nizio Gomes, a Guarani-Kaiowá Cacique (leader), was killed in November 2011 in the *retomada* camp of the Guaiviry *Tekoha*, located in the municipalities of Aral Moreira and Ponta Pora, in Mato Grosso do Sul state. The 19 defendants accused by Mato Grosso do Sul federal prosecutors include farmers, lawyers, a municipal secretary, and the owner and employees of a private security company. Nizio's body has never been found; the trial is expected to drag on for another five years.

Semião Vilhalva, murdered on 29 August 2015, was a leader of the Ñanderu Marangatú community, whose land was demarcated and ratified in 2005. However, in the same year, the courts suspended the implementation of the land titling process and issued an eviction order in favour of non-Indigenous claimants. In August, the Indigenous Peoples of Ñanderu Marangatú decided to reoccupy their land. Vilhalva was shot in the face and killed, allegedly by a gunman hired by the farmers.⁷ Amnesty International issued a denunciation of the attacks. No one has been arrested in this case.

⁶ 'We Know our Rights and we will Fight for them', p11

⁷ Anistia Internacional repudia assassinato de líder indígena no Mato Grosso do Sul e pede urgência na investigação, 31 August 2015, <https://anistia.org.br/noticias/anistia-internacional-repudia-assassinato-de-lider-indigena-mato-grosso-sul-e-pede-urgencia-na-investigacao/>



A Life in Dignity

The Guarani Kaiowá have a suicide rate 34 times higher than Brazil's national average, and one of the highest rates in the world.⁸ The Missionary Council for Indigenous Peoples (CIMI – Portuguese acronym) documented 41 murders of Indigenous Peoples in Mato Grosso do Sul in 2014.⁹

Communities who have been evicted from their ancestral lands are unable to carry out the cultural and spiritual practices which are inextricably linked to those lands. In most cases they are living on very small portions of land which are insufficient to provide opportunities for livelihoods – some of which are located in the margins of highways. The consumption of alcohol has increased due to the situation of desperation of many community members. Members of the community are often forced to travel long distances to work on farms, where in some cases they work in conditions which have been found by the Brazilian authorities to be analogous to slavery.¹⁰

In order to face these threats to their lives, the Guarani Kaiowá have been strengthening their non-violent resistance both locally and at the national level along with several Indigenous Peoples from other Brazilian regions. Indigenous Peoples' national mobilizations and advocacy initiatives aim at defeating PEC 215 and other legislative proposals which could weaken Indigenous Peoples' rights. In Mato Grosso do Sul, the Guarani Kaiowá are resisting moves to evict them on a case by case basis. Brazil has an obligation to respect and protect the right of Indigenous Peoples to engage in non-violent protest to advance their rights.

In order to ensure that Brazil complies with its obligations under the International Covenant on Economic, Social and Cultural Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), to guarantee to all people without discrimination the rights enshrined in it, including the rights to health and education,¹¹ it is essential that the Indigenous Guarani-Kaiowá peoples have their land demarcated and delivered to them, so that they can engage in their livelihoods and spiritual and cultural practices in dignity.

Madame President,

The United Nations Special Rapporteur on the rights of Indigenous Peoples, in his 2009 report after visiting Brazil, stated that "Tensions between indigenous peoples and non-indigenous occupants have been especially acute in the State of Mato Grosso do Sul, where indigenous peoples suffer from a severe lack of access to their traditional lands, extreme poverty and related social ills, giving rise to a pattern of violence that is marked by numerous murders of indigenous individuals as well as by criminal prosecution of indigenous individuals for acts of protest."

Unfortunately, the situation in the past six years has not improved; if anything, Indigenous communities in this area have become more desperate, as they continue to live in extremely cramped conditions, often in dangerous locations where they are at great risk to their lives, and in constant

⁸ The Guardian, 'Brazil tribe plagued by one of the highest suicide rates in the world', 10 October 2013

⁹ Conselho Indigenista Missionário: *Violence Against Indigenous Peoples in Brazil – 2014 Data*
<http://www.cimi.org.br/pub/Relatorio%20Violencia%202014/Relat.pdf>

¹⁰ 'We Know our Rights and we will Fight for them', p13

¹¹ Article 2(2), 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'



danger of attacks and aggression by non-state actors. Amnesty International urges you to do all that is necessary to ensure that Brazil complies with its human rights obligations, in particular to:

- Ensure that the Guarani-Kaiowá communities are protected from further attacks;
- Ensure that the deaths of Marcos Verón, Nizio Gomes and Semião Vilhalva are promptly and thoroughly investigated, and that those found to be responsible are prosecuted in accordance with international standards of due process;
- Guarantee the effective protection of the rights of all Guarani-Kaiowá community leaders and human rights defenders;
- Expedite the demarcation and delivery of the ancestral lands of the Guarani-Kaiowá communities; in the meantime, guarantee that the Guarani-Kaiowá are not evicted from the lands which they traditionally own;
- Uphold the Brazilian Constitution and laws, as well as international norms on Indigenous Peoples' rights.

Sincerely,

Atila Roque

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