



‘WE KNOW OUR RIGHTS AND WE WILL FIGHT FOR THEM’

INDIGENOUS RIGHTS IN BRAZIL —
THE GUARANI-KAIOWÁ

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“We have suffered too much with so much violence within and against our communities... We are not asking, we are demanding rights: demarcation of our lands with urgency so that we can return to live in peace, with happiness and dignity.”

Open letter from the Guarani-Kaiowá to President Luiz Inácio Lula da Silva, August 2010

For the Guarani-Kaiowá of Brazil, as for all Indigenous Peoples, traditional lands are vitally important for their identity and way of life. Some 30,000 Guarani-Kaiowá live in Mato Grosso do Sul state in the Brazilian midwest. For over a century, their communities have been driven from their lands by the expansion of large-scale agriculture – a process that continues to this day. The consequences for affected communities can be devastating.

Thirty-five Guarani-Kaiowá families of the Laranjeira Ñanderu community, including around 85 children, are living in makeshift shacks by the side of the busy BR-163 highway in Mato Grosso do Sul. Their living conditions are deplorable and they face

threats and harassment from armed security guards hired by local farmers.

The families were evicted from the traditional lands in September 2009. The Federal Police, who oversaw the eviction, told the landowner that the community would return to collect their remaining belongings. However, the landowner burned the families' houses and all their belongings.

The community is now living in shacks covered with sheets of black plastic in temperatures of more than 30°C. The area is frequently flooded and their encampment is teeming with insects and leeches. According to community leader José



The Laranjeira Nhanderu community were evicted from their ancestral lands in September 2009. After the eviction the landowner burned the families' houses and all their belongings. They now live in precarious conditions by the side of a highway.

Almeida, local farmers drive past the community at high speed during the night and shine lights into the shacks to try to intimidate them.

Indigenous Peoples continue to face serious obstacles in getting their rights recognized and fulfilled in Brazil. The federal government has made some important promises to Indigenous People, but it has also sent some very mixed messages. On

the one hand, it has offered some protection to Indigenous Peoples' rights. On the other, it has pushed large-scale development projects in the region without the free, prior and informed consent of the Indigenous Peoples affected.

The failure of the Brazilian authorities to ensure the right to land of Indigenous Peoples in Mato Grosso do Sul has intensified economic hardship and social dislocation in Guarani Kaiowá communities. Lengthy delays in legal procedures for returning lands to communities, and a widespread failure to punish those who have attacked and killed Indigenous people in the past, have laid the foundations for continuing violence.

BRAZIL'S INDIGENOUS PEOPLES

Brazil is home to more than 700,000 Indigenous people, including the majority of the world's uncontacted tribes. There are more than 200 Indigenous groups, speaking over 180 different languages. Traditional lands are of central importance to their identity and their social, cultural and economic wellbeing – a fact acknowledged by the government when it coined the phrase "Indian is land".

Front cover: Members of the Guarani-Kaiowá community of Passo Piraju, 2009.

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Mato Grosso do Sul. The southern part of the state (shaded area) is where the different groups of Guarani-Kaiowá are claiming plots of land, a series of small islands of Indigenous territory surrounded by farms.

THE UNFOLDING TRAGEDY IN MATO GROSSO DO SUL

The Guarani-Kaiowá's struggle for land has run up against an expanding agricultural frontier in Mato Grosso do Sul.

Approximately 50,000 Indigenous people from various ethnic groups live in the state; the Guarani-Kaiowá are the largest of these groups. Their traditional lands are located in the south of the state, amid vast expanses of flat, fertile land. In recent years, this area has become the new frontier of the expanding sugar cane industry. This is the latest phase in a long history of agro-industrial incursions into Indigenous territories. In the late 19th century, it was

erva mate (a type of tea) that swallowed up large tracts of land. Since the 1950s, cattle ranching and cash crops – principally soya, but also sugar, corn, wheat and beans – have gradually covered the area.

At the beginning of the 20th century Indigenous Peoples in Mato Grosso do Sul were forced into a series of reservations. Nevertheless, many *aldeias* (Indigenous villages) continued to exist outside the official settlements on traditional lands. However, this changed with state government colonization schemes, which encouraged settlers to move into the area from other parts of the country, and the growth of cattle ranching. The remaining *aldeias* came under



intense pressure and their inhabitants were pushed off the land and into the reservations. Today, these reservations are severely overcrowded. Wracked by poverty and riven by ethnic divisions, Indigenous communities subsist mainly on government food aid (*cestas básicas*). According to Federal Prosecutor Dr Marco Antonio Delfino de Almeida, “the demography is comparable to being imprisoned in spaces so small that social, economic and cultural life are impossible to sustain.”

In a 2009 report on Brazil, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people wrote that Mato Grosso do Sul “has



Left: Ladio Ava Taperendy'i stands beside a memorial to his father, Marcos Verón, who was beaten to death in 2003 by farm hands after he led a reoccupation of his community's traditional lands.

Above: Marcos Verón in Porto Seguro for the 500th anniversary of the arrival of the Portuguese in Brazil, April 2000.

the highest rate of indigenous children's death due to precarious conditions of health and access to water and food, related to lack of lands." Child malnutrition, high levels of suicide, violence and alcoholism have threatened to undermine the very identity of these complex cultures.

It is in the face of these dire conditions that some communities have embarked on a perilous journey out of the reservations, and back into their ancestral lands.

VIOLENCE AND INTIMIDATION

In the 1990s, against a backdrop of deteriorating conditions on the reservations, the Guarani-Kaiowá adopted a strategy

known as *retomada* – the peaceful reoccupation of small plots of land on their traditional territories – to try and speed up the process of getting their lands returned. These actions were met with threats, violence and evictions carried out by armed groups hired by landowners. Several Indigenous leaders have been killed. The failure of the authorities to bring to justice those responsible for these killings has fomented a climate of violence.

On 11 January 2003, Marcos Verón, a 72-year-old Guarani-Kaiowá leader (*cacique*), led a small group in an attempt to peacefully reoccupy a small area of the Takuara Indigenous territory in Juti municipality, Mato Grosso do Sul. The

Takuara had been expelled from the land in 1953 and this was their third attempt since 1999 to reoccupy traditional land.

Despite initial assurances by representatives of the National Indian Foundation (Fundação Nacional do Índio, FUNAI) and the police that there would be no forced evictions and that a peaceful agreement would be negotiated with the landowner, events quickly became violent. On 12 January 2003, a group reportedly made up of farm labourers and hired gunmen, gathered near the reoccupied area and fired shots at a truck in which members of the community were travelling. Fourteen-year-old Reginaldo Verón, Marcos Verón's nephew, was shot in the leg. The following



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morning, a group of some 30 men attacked the encampment. Marcos Verón's son, Ladio Ava Taperendy'i, who was badly beaten and threatened with death in the attack, describes what happened:

"They all let off fireworks, fired their revolvers and threw firecrackers with gunshot going off in the direction of our tents. You could hear women and children crying in desperation... while this was going on they grabbed the cacique Marcos Verón from the other tent and began to beat him, and kick him until he fell on the ground. After he fell on the ground, each one of them kicked the cacique, who was groaning in agony on the ground. I shouted out for

them to stop beating him because he is old and has retired... Then I saw my father being struck with the rifle butt on the head and saw his face for the last time... he wasn't moving any more..."

Document signed by 71 Guarani-Kaiowá and presented to Amnesty International, May 2005

The attackers left Marcos Verón and his son by the side of the road. He was subsequently taken to hospital where he died as a result of his injuries. An immediate response and investigation into the attack by the Federal Public Prosecutor's Office in Dourados ensured that several men were quickly arrested and warrants issued for other suspects. They

were charged with a variety of crimes including murder, attempted murder, kidnapping and torture. However, progress in the case has been extremely slow. It finally came to court in April 2010, but was suspended following a decision by the court to withdraw the use of a translator for the witnesses, many of whom have difficulty expressing themselves in Portuguese, and so undermining their right to justice.

The case of Marcos Verón has become symbolic of the Guarani-Kaiowá's exclusion from justice. Despite all the international attention his death has received, seven years on, no one has been brought to justice.



Above: Sign indicating identified Jatayvary land near Dourados.

Far left: A burned-out shack belonging to the Apyka'y Guarani-Kaiowá community. Ten armed men attacked their highway encampment in September 2009.

Left: Guarani-Kaiowá Indigenous leader on the Dourados reservation, May 2008.

Since the killing of Marcos Verón, the use of violence against Indigenous Peoples has continued unabated. Numerous attacks and killings have been attributed to private security guards hired by local landowners acting as irregular armed militias and terrorizing Indigenous communities. Several cases have been attributed to Gaspem Segurança (Gaspem Security), a company hired by landowners, which is currently being investigated by federal prosecutors following numerous allegations against its employees. Four UN Special Rapporteurs – the Special Rapporteur on indigenous people, the Special Rapporteur on the right to food, the Special Rapporteur on violence against women, and the Special Rapporteur

on adequate housing – have also expressed their concerns to the Brazilian authorities regarding these allegations.

Guards employed by the company have been charged with killing Indigenous leader Dorvalino Rocha in December 2005 and were accused by federal prosecutors of killing spiritual leader Xurete Lopes in January 2007, although the company denied any involvement.

Allegations against Gaspem Security persist. The Apyka'y Guarani-Kaiowá community of 15 families living near Dourados in Mato Grosso do Sul have tried to reoccupy their traditional lands several times since they

were forced from it by farmers in the 1990s. Like the Laranjeira Nanderu community, they have been living by the side of the highway which runs past their traditional lands since the landowner served them with an eviction order in April 2009. At 1am on 18 September 2009, around 10 armed men attacked the community. One 62-year-old man was shot in the leg and a woman was beaten. The men burned down a shack and threatened that there would be deaths if the community did not abandon the encampment. Federal prosecutors are investigating the possibility that the attack was carried out by security guards working for Gaspem Security.



Cousins Genivaldo (*left*) and Rolindo Vera, literacy teachers working with the Guarani-Kaiowá Y'poí community. After a violent eviction in 2009, Genivaldo Vera was abducted by gunmen; his body was later found in a nearby stream. Rolindo Vera fled the gunmen; his whereabouts remain unknown.



Members of the Guarani-Kaiowá community of Passo Piraju, 2009.

The pattern of threats and discrimination is repeated throughout the state. On 29 October 2009, a group of approximately 25 members of the Guarani-Kaiowá Y'poí community reoccupied their traditional lands near the town of Paranhos. The following day, dozens of armed men arrived and the group fled into a nearby forest. Community members say that they saw literacy teacher, Genivaldo Vera, being taken away by the gunmen while his cousin Rolindo Vera, also a teacher, fled into the forest. On 7 November, Genivaldo Vera's body was found in a nearby stream. Photos of the body released by the police show that his head had been shaved and there was extensive bruising on his body. Rolindo Vera's whereabouts remain unknown.

The community fear he may have been abducted and taken to Paraguay.

In August 2010, the Guarani-Kaiowá Y'poí reoccupied their lands once more. In September, they were surrounded by armed men hired by local farm owners. They were threatened and gunshots were fired into the air at night. They were also prevented from leaving their encampment. The community was left without access to water, food, education or health care. The Federal Health Agency (FUNASA) did not provide health care, arguing that they could not guarantee the security of their staff.

The Guarani-Kaiowá Ita'y Ka'aguyrusu community is facing a similar situation.

Members of the community reoccupied their traditional lands on 4 September 2010. Since then, they have been attacked four times by local farmers. Efigênia, an Indigenous teacher in the community, described how during the latest attack, on 21 September, local men approached the encampment with sticks, threatening to beat the women and children, and set off fireworks to frighten them. On previous occasions farmers have fired shots and tried to run over community members.



The Guarani-Kaiowá Kurusú Ambá community in the municipality of Coronel Sapucaia reoccupied lands in November 2009 and are now living in extremely precarious conditions with inadequate food supplies and very limited access to health care. In September 2010, a three-year-old Indigenous boy died, apparently of malnutrition. Following the death, FUNASA, which had refused to send staff into the community, issued a press release saying that such was the level of conflict that access was difficult even for the federal and military police. The community has been repeatedly threatened by gunmen believed to be linked to local landowners.

PROMISES AND DELAYS

The rights of Indigenous Peoples to their “traditionally occupied lands” were enshrined in Brazil’s 1988 Constitution (Article 231). This was and remains one of the most notable victories in the struggle for Indigenous rights to land and identity.

Under the Constitution, the federal government is responsible for protecting and transferring traditional lands back to Brazil’s Indigenous Peoples. The complex transfer process is administered by FUNAI. The process includes five stages: identification; delimitation of boundaries; official demarcation; ratification (often called “homologation”) by the President; and registration. The Constitution ordered

the demarcation of all such lands by 1993.

Since 1988, important transfers of lands to Indigenous Peoples have taken place, particularly in the north of the country where large reservations, including Raposa Serra do Sol, Parque do Xingu and the territories of the Yanomami, have been demarcated. However, even here, land transfers have gone ahead against a backdrop of violent local opposition from local landowners. There are also continuing threats of development inside the reservations, including a series of planned hydroelectric projects across the Amazon, to which Indigenous Peoples affected have not given their free, prior and informed consent.



However, overall the process of land transfer has proved painfully slow. It can take years, if not decades, to settle a claim. Many factors have contributed to the delays. These include long-term underfunding of FUNAI and opposition from local landowners and state governments. The process has been further delayed by a barrage of state and federal judicial appeals by landowners, and resistance among some judges to Indigenous claims.

In an attempt to speed up the process, in November 2007, the Federal Public Prosecutor's Office in Mato Grosso do Sul signed an extrajudicial agreement called a TAC (Termo de Ajustamento de Conduta). The TAC committed FUNAI to identify and

delimit 36 separate Guarani-Kaiowá traditional lands by April 2010. The move was opposed by the Mato Grosso do Sul state government and the farming lobby, who managed to derail the process by lodging a series of judicial appeals. Federal prosecutors criticized FUNAI for the lack of progress, saying that it "constituted a grave violation of fundamental rights expressly guaranteed in the 1988 Constitution." Now that the deadline has expired without the identifications having been completed, federal prosecutors have begun fining FUNAI for the delay. This money will be paid as compensation to the Indigenous Peoples affected.

THE CHALLENGE OF AGRO-INDUSTRY

While the demarcation process remains stalled, a new wave of agro-industrial development is taking place in Mato Grosso do Sul. Cane plantations, owned or sub-let by powerful *usinas* (distilleries), are spreading over land that has been identified as Indigenous but that is awaiting the final stages of legal recognition. For example, in 1999, 8,000 hectares of land were identified as the traditional territory of the Jatavyary community, located near Dourados. Since then, the demarcation process has been blocked in the courts. The *aldeia* now occupies only 180 hectares and is surrounded on all sides by sugar cane.



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Arlindo, a member of the Guarani-Kaiowá Jatavyry community, looking out at the cane fields that stretch from the edge of his village out over the community's traditional lands. Like many Guarani-Kaiowá communities, the Jatavyry's land claims remained blocked in the courts.

Indigenous leader Arlindo told Amnesty International that he cannot understand why the demarcation process has stalled while the planting and harvesting of cane forges ahead. The sugar cane plantation begins close to the edge of the *aldeia*. Arlindo described how farm workers try to intimidate villagers by pointing arc lights at the community during the night; how the community can no longer fish in the nearby river because of pollution; and how villagers' crops are infested with insects because of the use of pesticides in the cane fields. He said that the communities have never been consulted by the government or industry representatives and their repeated complaints have been ignored.

The damage caused to traditional Indigenous lands in Mato Grosso do Sul by 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. The need to preserve the integrity and viability of the land is a critical issue for Indigenous Peoples. States and companies have an obligation not to carry out destructive activities on traditional lands before returning them.

In April 2010, the Federal Prosecutor's Office in Dourados signed a TAC agreement with a local *usina* to cancel contracts with suppliers of cane situated on traditional Indigenous land in the process of being

identified, demarcated or homologated. The agreement means that the *usina* will stop using cane produced on Jatavyry land. The Prosecutor's Office in Dourados told Amnesty International that, although this may seem a small step, it in fact represents a significant advance as it sets a precedent for other similar agreements, not just with the cane industry, but also with cattle ranchers and soya farmers.





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FORCED TO CUT CANE

Denied access to their traditional lands, the Guarani-Kaiowá have no option but to work on the patchwork of farms that have covered the state. Today, more than half of young Guarani-Kaiowá men are travelling large distances within the state to work as cane cutters on plantations, often in harsh and exploitative conditions.

José (not his real name) worked as a cane cutter and told Amnesty International about the working conditions he experienced. José lives in the *Ñande Ru Marangatu aldeia*. Although the traditional lands of his community were officially ratified by President Lula in March 2005, appeals by landowners have delayed the return of the land to the community; at the time of writing, the case remained stalled in the courts. Prevented from working on local farms because of local hostility to community land claims, José had to look for work hundreds of kilometres away. He described the chaotic situation that he faced when he arrived in the cane fields in the municipality of Sidrolândia after a six-hour bus trip:

“You arrive there and you are in the middle of a hell... We didn’t have soap, nothing for us to take a shower, to sleep... they rent you the room, and they deduct it from your pay; you’re promised R\$450, but you never see it, everything you drink, eat is deducted... There were people who wanted to hang themselves. When we left groups of workers who had not been paid for months were crying in the middle of the cane fields”.

José’s experiences echo those of hundreds of other Indigenous cane cutters. In two key cases, over a thousand Indigenous workers

were rescued during inspections by federal labour prosecutors, when they visited the state in 2007. At the *Distilaria Centro-Oeste Iguatemi* (Dcoil) and the *Usina Debrasa* in *Brasilândia*, prosecutors found Indigenous cane cutters living in overcrowded, filthy accommodation, being given rotten food and transported to the cane fields in buses without brakes. Workers told labour prosecutors that in the fields there was no drinking water, shelter or medical assistance. They said that they were often paid late and that employers regularly failed to pay their social security contributions, on which future benefits, such as retirement pensions, depend. Both companies were subsequently placed on the “dirty list,” an official inventory that names and shames companies whose workers are found to be working in conditions defined as analogous to slavery in Brazilian law.

For many Indigenous workers, their key relationship is with *cabeçantes*, Indigenous gang-masters, sometimes referred to as *capitães*. It is *cabeçantes* who generally organize Indigenous work-crews. Most Indigenous workers have limited knowledge of their legal rights and do not belong to trade unions. Left in the hands of *cabeçantes*, many, like José, are exploited.

FUNAI is responsible for monitoring of conditions of work and reporting abuses against Indigenous workers. However, the Head of FUNAI in Dourados, Margarida Nicoletti, told Amnesty International that even though FUNAI should be monitoring working conditions and providing guidance to the *usinas* about the employment of Indigenous workers, there were no resources to carry out this work.

As mechanization sweeps the state and the process of land demarcation remains stalled, the Guarani-Kaiowá’s fight for their rights is more urgent than ever. The authorities must act in concert to prevent further erosions of Guarani-Kaiowá rights. Ensuring their rights to traditional lands is a vital step in enabling Indigenous Peoples to rebuild their societies and economies and so protect their way of life and cultural heritage.

Discrimination means that many Indigenous people are forced to take on low-paid and difficult work, often as cane cutters.



INTERNATIONAL STANDARDS

Indigenous Peoples enjoy specific rights under international standards. The two key international human rights instruments which deal with Indigenous Peoples' rights are International Labour Organization (ILO) Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples. Together, the Convention and the Declaration provide a robust normative framework that affirms Indigenous Peoples' right to their traditional lands, along with their right to free, prior and informed consent in relation to developments that may affect their lands.

The Convention requires governments to adopt a co-ordinated strategy to address Indigenous Peoples' labour issues, with effective monitoring of recruitment and working conditions, and safeguards against discriminatory practices. This includes an obligation to respect the special importance of traditional land for Indigenous Peoples and to recognize their rights of ownership and possession. It also states that Indigenous Peoples should not be removed from the lands that they occupy. The Convention sets out the right of Indigenous Peoples to participate in decision-making processes that affect them; to decide their own development priorities; and to exercise control over their own economic, social and cultural development.

Protest in Brasilia in May 2009 during the Acampamento Terra Livre – an annual event in which Indigenous Peoples from around Brazil come together to fight for their rights.

Brazil was an early participant in the UN working group that drafted the Declaration and voted for the Declaration in the General Assembly. At the time of the vote, Brazil welcomed the Declaration and noted that Indigenous Peoples in Brazil "were crucial to the development of society at every level, including the development of spiritual and cultural life for all."



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“For the most part Brazil’s indigenous people are not benefiting from the country’s impressive economic progress, and are being held back by discrimination and indifference, chased out of their lands and into forced labour.”

UN High Commissioner for human rights, Navi Pillay, November 2009, after an official visit to Brazil

CONCLUSION

Brazil’s sustained economic growth over the past decade has transformed the country into a major world economy. However, this wealth has bypassed many Indigenous Peoples. According to the Brazilian Institute of Geography and Statistics, more than 30 per cent of Indigenous people in Brazil live in extreme poverty – more than double the percentage in the general population. Nowhere are the disparities more apparent than in Mato Grosso do Sul.

As Brazil’s profile on the world stage rises, the federal government must take the commitments it has made on human rights seriously. Most importantly, it must resolve all outstanding land claims and ensure that

The Guarani-Kaiowá community of Passo Piraju retook a small portion of their ancestral land in 2006, but are surrounded by sugar cane plantations and facing threats from gunmen.

free, prior and informed consent is sought and gained for any decision affecting traditional Indigenous lands.

“Our patience is already exhausted. All the deadlines have been overrun. We want our land, our liberty.”

Indigenous leader, Passo Piraju community, September 2010

OPEN LETTER FROM THE GUARANI-KAIOWÁ TO PRESIDENT LULA, AUGUST 2010

“Many times we have heard you speaking about and promising personally to resolve the problem of the demarcation of our Guarani lands. We don’t understand why this hasn’t happened yet... Now, President Lula, you come to the region of our Guarani-Kaiowá lands in Dourados without having, in almost eight years of government, done practically anything about our lands... Mr President, please do not make any more promises: order our land to be demarcated... we know our rights and we will fight for them. We have waited too long and our patience is exhausted. We only hope that we don’t need to go out to the world, to the UN and the international courts to denounce the government in which we invested so much hope... Don’t leave our people to suffer so much. Our people continue to be killed like animals and many of our young people commit suicide because of despair and lack of land. We have suffered too much with so much violence within and against our communities. This will only begin to change with the demarcation of our lands, along with a plan to recuperate the environment and produce food...

We are not asking, we are demanding rights: demarcation of our lands with urgency so that we can return to live in peace, with happiness and dignity.”

ACT NOW

Please write to the Brazilian authorities calling on them to:

- Fulfil their obligations under the UN Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and the Brazilian Constitution to resolve all outstanding Indigenous land claims in Brazil fairly and promptly.
- Thoroughly investigate all acts of violence and intimidation against Guarani-Kaiowá communities; provide immediate protection for communities under threat, along with full access to basic services including health care; and identify, investigate and bring to justice those responsible for abuses.

- Support the efforts by federal prosecutors to regulate agricultural development on land that is in the process of being identified and demarcated in order to ensure that these lands are fit to provide the Guarani-Kaiowá with minimum adequate standards of living and their economic, social and cultural rights.
- Develop a process, with Indigenous Peoples, to ensure their free, prior and informed consent to any economic development that could have an impact on their traditional lands.
- Ensure that FUNAI, working with labour prosecutors, monitors the process by which Indigenous workers are contracted, and follows up all complaints received about degrading working conditions, irregular payment and discriminatory recruitment practices.

Write to:

Federal Minister of Justice
Exmo. Ministro, Sr. José Eduardo Cardozo
Esplanada dos Ministérios,
Bloco “T”, 70064-900 Brasília/DF, Brazil
Fax: + 55 61 2025 7803
Salutation: Dear Minister/Excelentíssimo
Senhor Ministro

Federal Human Rights Secretary
Exma. Secretária de Direitos Humanos
Sra. Maria do Rosário Nunes
Setor Comercial Sul, Edifício Parque da
Cidade Corporate
Quadra 9, Lote C, Torre A, 10º andar
70308-200 – Brasília/DF, Brazil
Fax: + 55 61 2025 9414
Salutation: Dear Secretary/Excelentíssima
Senhora Secretária

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