

Curitiba/PR e Altamira/PA - Brazil, May 12th, 2010.

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Your Excellency

Ms. Gabriela Carina Knaul de Albuquerque e Silva

Special Rapporteur of the Human Council on the Independence of Judges and Lawyers

c/o Office of the United Nations High Commissioner for

Human Rights

United Nations Office at Geneva

8-14 Avenue de la Paix

1211 Geneva 10

Switzerland

Fax: 41 22 917 9006

Via e-mail: SRindependenceJL@ohchr.org

C/c: urgent-action@ohchr.org

Ref.: Intimidations, threats and political pressure on Federal Prosecutors and the Federal Judge of Altamira due to the regular exercise of their functions

Dear Ms. Silva,

Movimento Xingu Vivo Para Sempre¹, Terra de Direitos - Organização de Direitos Humanos, Conselho Indigenista Missionário - CIMI, Sociedade

¹ Movimento Xingu Vivo Para Sempre (MXVPS) is composed of a large group of associations, organizations and labor unions. At the end of this denunciation there is a list of all member entities.

Paraense de Direitos Humanos (SDDH), Justiça Global, Comitê Metropolitano do Movimento Xingu Vivo (Belém – Pará)², Prelazia do Xingu, Comissão Pastoral da Terra – Pará, Rede FAOR, Associação de Defesa Etno-ambiental - Kanindé aiming to strengthen former denunciations sent to the United Nations and this Illustrious Representative³, bring to your awareness new facts of violation of judicial independence concerning the case of the construction of Hydroelectric Power Plant Belo Monte (Pará/Brazil), in order to draw your attention to the actions of the Brazilian State.

1. The Facts: Public Civil Suits (*Ações Civis Públicas*) by the Federal Public Prosecutor and Civil Society Organizations – preliminary orders from the Court of Altamira for the suspension of Belo Monte HPP’s auction – Decisions repeatedly suspended by the President of the 1st Regional Federal Court - Intimidations, threats and political pressure on Federal Prosecutors and the Federal Judge of Altamira

Based on consistent pieces of evidence, official technical reports and conclusions from independent experts, the Public Federal Ministry (*Ministério Público Federal - MPF*), according to its constitutional attributions of *custos legis* and of promoter of Human Rights guarantees, started a Public Civil Suit (attached document) in the Federal District of Altamira with the purpose of taking to judicial appreciation the irregularities found in the process of construction of Belo Monte Hydroelectric Power Plant, derived of a public-private partnership under responsibility of the Federal Government.

Indicating such irregularities, Public Prosecutors Mr. Cláudio Terre do Amaral, Mr. Bruno Alexandre Gütschow and Mr. Ubiratan Cazetta preliminarily demanded the suspension of the referred auction in which the concessionaires for the work’s realization would be defined, as well as the suspension of its administration.

Having verified the pertinence of the allegations and the veracity of the proof

² Comitê Metropolitano do Movimento Xingu Vivo is composed of a large group of organizations. At the end of this denunciation there is a list of all member entities.

³ Official Correspondence JG/RJ n° 34/10, april 1th, 2010.

presented, Federal Judge Antonio Carlos Almeida Campelo, from Altamira, State of Pará, conceded the requested preliminary order. In a solid and precise decision he tried to safeguard economic, social, cultural and environmental rights of the affected communities, including local and regional biodiversity and the very protection of public funds, in the sense that the suspension of the auction represents the suspension of the application of public resources in an enterprise that, for its precarious conditions of execution and technical irregularities is possibly subject to legal impediment on the basis of its social and environmental lack of sustainability.

It so happens that, regardless of the undeniable nature of the evidence, documents and considerations of the Public Federal Ministry, consolidated in the judicial response, this was immediately suspended by the President of the 1st Federal Regional Court – Judge Jirair Aram Megueriam, through an individual decision (i.e. a decision which was taken solely by the judge and not by other court members) which seems to overlook all process' evidence, its foundation being no more than two news published in the national press.

We must highlight the extremely short period of time between the concession of the preliminary orders in Altamira, in the state of Pará, and the various suspensions by an office of the Judiciary located about 1000 km away from Altamira, according to chronological information extracted from the website of the 1st Federal Regional Court⁴, as follows:

1st Public Civil Suit (PCS): n. 411-57.2010.4.01.3903, promoted by the Public Federal Ministry (PFM):

- 1) Distributed on April, 8th, 2010;
- 2) Preliminary order conceded on April, 14th, 2010;
- 3) Suspension n. 0021954-88.2010.4.01.0000/DF ordered on April, 16th, 2010.

2nd PCS: n. 410-72.2010.4.01.3903, promoted by the PFM:

- 1) Distributed on April, 8th, 2010;
- 2) Preliminary order conceded on April, 14th, 2010;
- 3) Suspension n. 0022487-47.2010.4.01.0000/DF ordered on April, 20th, 2010.

3rd PCS: n. 421-04.2010.4.01.3903, promoted by civil society's entities:

- 1) Distributed on April, 19th, 2010;

⁴ Source: Federal Regional Court's website - www.trfl.gov.br. Last access in 26/04/2010.

- 2) Preliminary order conceded on April, 20th, 2010, around 12 a.m.;
- 3) Suspension ordered on the same afternoon, without exact time.

Therefore, not resigned to the *modus operandi* of such suspension decisions, the PFM, seconded by various civil society organizations representative of the social and environmental interests at stake, proposed new Public Civil Suits, each time incorporating to this demand of relevant collective impact a greater level of proof and argument elaboration, as the very complexity of the matter increased.

It must be taken into consideration that the focus of the matter extrapolates the mere public interest to enter the domain of social interest, as far as it encompasses since the emergence of the 1988 Brazilian Federal Constitution the coordination of public and private interests of collective and diffuse nature, also referring to Human Rights – the essential core of the national legal ordering.

In fact, one can no longer ponder, in the Democratic State of Brazil, the imposition and superposition of public policy in opposition to the social interest, with the State intervening only to satisfy its own interests, against the human rights of the communities affected by its actions. It can no longer ponder, therefore, the contradiction between public and social interest, because the Economic, Social, Cultural and Environmental Human Rights are now protected by the Constitution of 1988.

In the case of Belo Monte HPP the Federal Judge of Altamira emitted the decisions for the auction's suspension in fulfillment of his constitutional obligation to give a response to the judicial demands.

Regardless of all the polemics generated by Minister Gilmar Mendes, President of the Federal Supreme Court at the time and known for his tendency towards public manifestations of a political nature on cases awaiting judgment, openly criticized civil society organizations, the members of the PFM and even the Federal Judge of Altamira himself, discrediting his functional independency and the sovereignty of his verdict:

“The president of the Federal Supreme Court, Gilmar Mendes, criticized the Public Ministry which, in his words, had let himself be used as a tool by non-governmental organizations (NGOs) in the war of preliminary orders that surrounded Belo Monte HPP's auction, in Pará. ‘These groups make up judicial guerilla strategies and divide their petitions so that there is no final decision. It is common that NGOs co-opt the PM for their theses. No NGO possesses the title of greater defender of the planet’ he stated during

an interview after the ceremonial session in homage to the Court's 50th anniversary in Brasilia [...]”⁵

As if these situations were not enough, information was publicized that agents of the Brazilian Intelligence Agency (ABIN – in Portuguese) contacted the judge of Altamira, in a flagrant and unsustainable attempt of the Union to intimidate and pressure the Judiciary, a clear offense to the principle of inter-dependency of the Republican Forces. Not only was the judge approached by ABIN agents, but also employees of the PFM, like Press Assistant Helena Palmquist, as well as people connected to social movements and Human Rights organizations, including Marco Apolo Santana Leão, Roberta Amanajás, Renata Pinheiro e Antonia Melo Silva. Press releases also indicated as such:

“Spies. The decision of the Federal Senate's Commission for External Relations and National Defense to investigate the denunciation of pressure of ABIN agents favorable to Belo Monte over Altamira's Federal Judge Antônio Carlos Almeida Campelo finds an echo at the Public Federal Ministry in Pará. The so-called “arapongas” [special agents] have been calling PFM's civil servants in Belém to spy on the Federal Prosecutors' steps, in charge of lawsuits to question impacts of the Power Plant.”⁶

Alongside with that, the Union's General-Attorney Office (AGU – in Portuguese) publicly informed the national press of its intention to consolidate threats stated months before in the sense of denouncing the Federal Judge and the Federal Prosecutors involved to due disciplinary organisms (the National Counsel of Justice – CNJ, in Portuguese – and the Public Ministry's National Counsel – CNMP, in Portuguese), for no more than having fulfilled their constitutional attributions in the defense and guarantee of Human Rights. That is what can be extracted from the *O Estado de São Paulo*'s report of April, 22th, 2010:

“The war of preliminary orders which put at risk the realization of Belo Monte Hydroelectric Power Plant's auction will reach both the Public Ministry's National Counsel and the National Counsel of Justice. The Union's Attorney General Office is preparing denunciations against the Prosecutors and the Federal Judge of Pará responsible for the concession of the orders.

Once these denunciations are offered, the AGU will have fulfilled

⁵ Source: CORREIO BRAZILIENSE. **ONGS fazem guerrilha judicial**. 22.04.2010. Virtually available at: <http://www.correiobraziliense.com.br/app/noticia/182/2010/04/22/economia,i=187932/ONGS+FAZEM+GUERRILHA+JUDICIAL.shtml>

⁶ Source: DIÁRIO DO PARÁ. **Espiões**. 30/04/10 Política, A3.

its threat made to the Public Ministry in February. Then, shortly after the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA, in Portuguese) had authorized the previous license for the project, Federal Prosecutors said they would question the work of the Institute's technicians. At that time, the Union's Attorney General Luis Inácio Adams promised to sue PM's members who abused their prerogatives to stop the building of the Plant. [...]"⁷

We must highlight that AGU's intimidating posture is actually a constant practice, since the office offered disciplinary claim at the Public Ministry's National Counsel against Federal Prosecutor Rodrigo Timóteo da Costa e Silva and District Prosecutor of Pará Raimundo de Jesus Coelho Moraes, at the time of their involvement in Belo Monte's case. In this sense, it's still important to take note that AGU's claim is chronologically simultaneous with Administrative Improbability Case n. 2009.39.03.000363-2 started by the referred Federal Prosecutor against civil servant Adriano Rafael Arrepia de Queiroz, who signed the irregular liberation of administrative procedures of the Power Plant. On the other hand, such a coincidence brings to light evidences of a retaliation practice of the Union's Office:

“AGU sues Federal Prosecutors involved in Belo Monte's case

The Union's Attorney General Office presented a Disciplinary Claim at the Public Ministry's National Counsel against Federal Prosecutor Rodrigo Timóteo da Costa e Silva and State Prosecutor of Pará Raimundo de Jesus Coelho Moraes. According to AGU, the agents disturbed the public hearing in Belém where the construction of Hydroelectric Power Plant Belo Monte was being discussed. (...)"⁸

Thus, one can easily identify in the present case successive violations of Federal Prosecutors', judges' and NGO's Lawyers' functional attributions, arbitrarily hindered in their liberty of decision-making and in the judicial defense of Human Rights.

⁷ Source: O ESTADO DE SÃO PAULO. **AGU processa juiz e procuradores que ameaçaram leilão**. 22.04.2010. Available at: http://www.estadao.com.br/estadaodehoje/20100422/not_imp541427,0.php.

⁸Source: Consultor Jurídico. Available at: <http://www.conjur.com.br/2010-abr-23/agu-processa-procuradores-tumultuar-audiencia-publica-belo-monte>.

2. Vertical independence of the Brazilian Judiciary – Federal Regional Court’s President’s managerial and jurisdictional functions and the procedural mechanism of “Sentence and Preliminary Order Suspension” (Act n. 7.347/85, art. 12, 1st paragraph) - Offense to the Basic Principles on the Independence of the Judiciary approved by the UN (Preamble’s 2nd and 5th par.) and to Principle n. 2 – Recommendations to the Brazilian State

The structure and organization of the Brazilian Judiciary Power follows a model of complete administrative independence in relation to other organs or powers of State in what concerns its functions and the entitlement to manage its budget, as well as to plan, organize and establish public policies of justice.

Internally, Courts of Appeal possess a large number of managerial and self-governing powers, apart from their disciplinary function connected to their jurisdiction. The Court’s Presidency notoriously concentrates these functions, among which the attribution (i.e. both a right and an obligation) of budget planning for the whole judicial structure under its hierarchical responsibility. In the development of this activity the Court’s Presidency politically works together with the Executive to assure that it is contemplated in provisions of the respective law (Lei de Diretrizes Orçamentárias - in Portuguese), what creates a sort of bond between the Court’s Presidency and the Executive Power.

It so happens that Federal Act n.7.347/85, commonly known as the “Public Civil Suit’s Act”, in its 12th article, 1st paragraph, institutes a procedural mechanism which conditions the analysis of preliminary orders against public powers – especially against the Executive – to the individual jurisdictional sphere of the Court’s President. Therefore, as the experts point out, there is an entanglement of managerial and jurisdictional activities (Joaquim Falcão, Boaventura de Souza Santos and Raúl Zaffaroni).

This so-called “SPOS” (Sentence and Preliminary Order Suspension) mechanism (Suspensão de Liminar e Sentença, “SLS – in Portuguese) as long as it connects the Court’s Presidency to the Executive Power as a judicial litigant frontally violates the “natural judge” principle, since it nears the judge and one of the sides of the case, without any kind of safeguard of jurisdictional impartiality.

Furthermore, the SPOS offends various principles of public administration and

justice, including the 2nd and 5th paragraphs of the UN Chart of Basic Principles on the Independence of the Judiciary's preamble⁹, approved by its General Assembly, since SPOS neither guarantees impartiality from the competent judge nor respect to principles of justice administration, respectively.

Moreover, it figures as a violation of Chart's Principle n. 2, in the sense that it does not stimulate the Court's Presidency to act and decide "*without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason*", as the document proposes.

Therefore, we require from this Eminent Representative the sending of recommendations to the Brazilian State, urging it to alter or extinguish the mechanism of Sentence and Preliminary Order Suspension – SPOS – described above in order to transfer this Federal Regional Court's President's competence to other instances destitute of managerial function bound to the Executive Power which can often benefit from the mechanism in its condition of litigant.

3. Horizontal independence of magistrates and federal prosecutors – Pressure, intimidation, public threatens and disciplinary proceedings against judge and federal prosecutors in the rightful exercise of their positions – Guarantee of Economic, Social, Cultural and Environmental Rights of affected communities and protection of local biodiversity – UN Basic Principles on the Independence of the Judiciary: preamble's 6th and 10th paragraphs; Principles n. 1 and n. 2 – Recommendations to the Brazilian State.

The Principles of Autonomy and Independence of the magistracy were consecrated in 1988's Brazilian Federal Constitution and extended to Federal Prosecutors by the Constitutional Amendment n. 45. Such principles, in turn, represent guarantees for these public agents working in function of and on behalf of the society.

In the case of Public Civil Suits and the referred preliminary orders related to Belo

⁹ Source: United Nations website – UN – available at: <http://www2.ohchr.org/english/issues/index.htm>.

Monte Hydroelectric Power Plant, the social nature of these principles becomes evident. As a result of their effort to defend Economic, Social, Cultural and Environmental Rights – ESCER - public agents (a Judge and many Federal Prosecutors) were publicly threatened, institutionally intimidated by intelligence agents, unauthorized in their jurisdictional and *custos legis* function and denounced to the disciplinary organisms of their careers. However, the defense of social rights and interests is constitutionally attributed to them, what in the opinion of the experts (Werneck Vianna being one of them) is already sufficient to overcome any accusation of excessive judicial activism. Such repressive measures cause a great sense of outrage and uproar from society and public authorities:

“Belo Monte: Senate shall investigate ABIN’s pressure over Altamira’s judge

THU, APRIL 29th, 2010

Federal Senate’s Extern Relations and National Defense Commission will investigate denunciations of pressure from ABIN’s agents over Federal Judge Antonio Carlos Almeida Campelo, from Altamira (PA), related to the auction for Belo Monte HPP’s building by the Xingu River, Pará’s south-east”¹⁰.

Thus, the aggravating circumstance of such an unsustainable situation and which emphatically motivates the present denunciation is the fact that all of these violations were committed by agents of the Union’s Executive Power from many different organs of State and instances, which is verifiable through the interview given by the Federal Judge Antônio Carlos Campelo to the newspaper *Folha de São Paulo*:

“[...]

FOLHA – Do you feel under pressure?

CAMPELO – I was with AGU’s, Aneel’s and Ibama’s attorneys and for longer than one hour I listened to his arguments and exposed my considerations. But it was not enough to make me change my decision. I do not feel pressured but I am bothered by various demands of Abin agents which I do not see as representative of the Judiciary. I do not understand what they are investigating.

FOLHA – How and when did these “requests” occur?

¹⁰ Source: Jornal O Paraense, available at: http://www.oparaense.com.br/index.php?option=com_content&view=article&id=147:belo-monte-senado-investigara-pressao-da-abin-sobre-juiz&catid=3:brasil&Itemid=5

CAMPELO – There was no talk with ABIN agents. Two of them were at the Federal District’s Section in Altamira, looking for the decisions and willing to know when I was going to take others. They called many times to the Sub-section’s Director requesting information on the content of these decisions and the moment when I would publicize them. They asked copies of my decisions via e-mail (all were already available on the internet). [...]”¹¹

Such actions violate rules related to judicial mandate, fundament of the UN Chart of Principles on the Independence of the Judiciary in its preamble’s 6th paragraph. Besides, it offends Principle n. 1 on the independence of the Judiciary which must be enforced by the State, because of the duty of “all governmental and other institutions to respect and observe the independence of the judiciary.”¹²

Principle n. 2 as well was seriously violated, as the Executive Power clearly acted responding to “*improper influences, inducements, pressures, threats or interferences, direct or indirect*”.

In this sense the organizations which are signing the present manifestation require from Your Excellency to take all due measures requesting explanations from the Brazilian government and making recommendations to it, so as to make cease all kinds of intimidation and pressuring from Union agents in judicial proceedings and acts concerning the case of Belo Monte Hydroelectric Power Plant’s construction.

4. Requirements:

In the face of the facts and violations above mentioned, it is required of this Eminent Representative on the Independence of the Judiciary:

1. To make recommendations to the Brazilian State to restructure the mechanism of Sentence and Preliminary Order Suspension (*Suspensão de Liminares e Sentenças* – in Portuguese) which resides in Act n. 7.347/85 and has been incorporated in the Internal Regiment of Brazilian Courts, transferring the described appealing competence from the Court’s Presidency to another instance destitute of any managerial function connected to the Executive Power

¹¹ Source: Agência FOLHA, Bélem/PA, 21/04/2010. Available at: <http://www1.folha.uol.com.br/fsp/dinheiro/fi2104201008.htm>. Acesso em 26.04.2010.

¹² Source: United Nations website – UN – available at: <http://www2.ohchr.org/english/issues/index.htm>. Last access: 23/04/2010. Free translation of the authors.

as a judicial litigant which benefits from this mechanism.

2. To take all due measures and to send requests of explanation to the Brazilian government on the case of violation of the independence and autonomy of the Federal Judge and Federal Prosecutors from Altamira, as well as to make recommendations to the State so as to make cease all kinds of intimidation and pressuring from Union agents in judicial proceedings and acts concerning the case of Belo Monte Hydroelectric Power Plant's construction.

Yours faithfully,

Antonia Melo / Antonia Pereira Martins / Renata Soares Pinheiro / Ana Paula Souza

Movimento Xingu Vivo Para Sempre¹³

¹³ Movimento Xingu Vivo para Sempre (MXVPS) is composed by: Fundação Viver, Produzir e Preservar, Movimento de Mulheres Trabalhadoras de Altamira Campo e Cidade, Instituto Socioambiental, Associação das Mulheres Urbana e Rurais de Senador José Porfírio, Associação das Mulheres de Brasil Novo, Movimento de Mulheres de Medicilândia, Movimento de Mulheres de Uruará, Movimento de Mulheres do Campo e da Cidade de Placas, Movimento de Mulheres de Pacajá, Movimento de Mulheres de Anapu, Movimento de Mulheres de Rurópolis, Associação de Mulheres Agricultoras do setor Gonzaga, Associação das Mulheres do Assentamento Assurini, Prelazia do Xingu, Pastorais da Prelazia do Xingu- Comissão Justiça e Paz, Pastoral da Juventude ,CPT- Xingu, CIMI- Conselho Indigenista Missionário,Pastoral da Criança, Irmãs Franciscanas, Comitê em Defesa da Vida das Crianças Altamirenses, Associação Fundação Tocaia, Conselho Indígena de Altamira (COIA), Associação Indígena das Mulheres de Altamira (AIMA), Equipe Samaritana paróquia Imaculada Conceição, Congregação La Salle, Grupo de Trabalho Amazônico Regional Altamira, Associação Rádio comunitária de Altamira, Mutirão Pela Cidadania, Fundação Elza Marques, S.O.S Vida, SINTEPP-Sindicato dos Trabalh@res em Educação Pública do Pará sub-sede Altamira, Sindicato dos Trabalh@res Rurais, Associação Radio Comunitária de Vitoria do Xingu, Associação de Cultura de Brasil Novo, Associação Rádio Comunitária de Medicilândia, Associação Rádio comunitária de Porto de Móz, Forum da Amazônia Oriental, SDDH-Núcleo Altamira, Associação dos moradores da Reserva Extrativista do Riozinho do Anfrísio, Associação dos moradores da Reserva Extrativista do Rio Iriri, Associação dos moradores da Reserva Extrativista do Xingu, Comité de Desenvolvimento Sustentável Porto de Moz, Sindicato dos Trabalhadores Rurais de Porto de Moz, Sindicato dos Trabalhadores Rurais de Vitória do Xingu, Associação dos Indígenas Moradores de Altamira, Associação dos Pilotos de Voadeiras e Barcos de Altamira, Movimento de Atingidos por Barragem, Centro de Formação do Movimento Negro Transamazônica, SOCALIFRA, Sindicato das Domésticas de Altamira e região, Associação dos Pequenos Produtores Rurais de Altamira e Região, Pastoral da Juventude Rural, Fórum Regional de Direitos Humanos Dorothy Stang, Sindicato dos Trabalhadores em Saúde no Estado do Para sub sede Altamira, Associação Pró-moradia Parque Ipê, Associação dos Agricultores Ribeirinhos do Assentamento Itatá, Associação Casa Familiar de Altamira, Associação de Resistência Indígena Arara do Maia-ARIAN, Moradores do Bairro Açaizal, Escorpions

Darci Frigo / Luciana Pivato / Antonio Escrivão Filho / Carolina Alves / Thiago Hoshino

Terra de Direitos – Organização de Direitos Humanos

Élcia Betânia Sousa Silva / Paulo Machado Guimarães / Denise Veiga

Conselho Indigenista Missionário (CIMI)

Roberta Amanajás / Marco Apolo Santana Leão

Sociedade Paraense de Defesa dos Direitos Humanos (SDDH)

Andressa Caldas / Sandra Carvalho / Luciana Garcia / Judy Caldas

Justiça Global (JG)

Marquinho Mota

Comitê Metropolitano do Movimento Xingu Vivo (Belém – Pará)¹⁴

Erwin Krautler

Prelazia do Xingu

José Batista Afonso/ Hilário Lopes Costa/ Jane Souza da Silva

Comissão Nacional da Terra - Pará

Luciene Moraes

Rede FAOR

¹⁴ Comitê Metropolitano do Movimento Xingu Vivo is composed by: FUNDO DEMA, FASE, IAMAS, IAGUA, APACC, CPT, SDDH, MST, SINTSEP, DCE/UFPA, DCE/UNAMA, MLC, GMB/FMAP, UNIPOP, ABONG, CIMI, MANA-MANI, COMITÊ DOROTHY, FUNDAÇÃO TOCAIA, CIA. PAPO SHOW, PSOL, PCB, MHF/NRP, COLETIVO JOVEM/REJUMA, MMCC-PA, RECID, AITESAMPA, ANDES-SN, FAOR, FSPA.

Telma Monteiro

Associação de Defesa Etno-ambiental - Kanindé