

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations  
Promoting human rights by protecting those who defend them*

[www.lrwc.org](http://www.lrwc.org) – [lrwc@portal.ca](mailto:lrwc@portal.ca) – Tel: +1 604 736 1175 – Fax: +1 604 736 1170  
3220 West 13<sup>th</sup> Avenue, Vancouver, B.C. CANADA V6K 2V5

Friday, September 25, 2015

H.E. Ms. Dilma Rousseff, President of the Federative Republic of Brazil  
Palácio do Planalto  
Praça dos Três Poderes  
70150-900  
Brasília/DF, Brazil  
Email: protocolo@planalto.gov.br

Dear President,

## **Re: Killing of Mr. Semião Fernandes Vilhalva**

Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights. LRWC campaigns for advocates in danger because of their human rights advocacy, engages in research and education and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

LRWC has been informed about the killing of Mr. Semião Fernandes Vilhalva, one of the leaders of the Guarani-Kaiowá indigenous people in Brazil, an active participant in the fight for the recognition of indigenous territories and the recognition of the lands of the Guarani-Kaiowá people.

On August 29, 2015, Mr. Semião Fernandes Vilhalva was shot in the face while trying to find his son during a land recuperation operation held in the municipality of Antônio João in the western state of Mato Grosso do Sul.

On the same day, dozens of other indigenous, including women and children, were injured with sticks or by shots of rubber bullets, which left marks on the bodies. Indigenous people claimed, since the end of the 1990s the occupation of the indigenous land Ñande Ru Marangatu, now divided by five farms of livestock.

According to the indigenous people, with the arrival of the new owners, many Indians started working with the farmers and received an area near the farms, called Vila Campestre. In the late 1990, with no space for growing families, the Indians decided to return from the farms to make a new village, and clashed with the farmers. Since then, at least three indigenous people have been killed, including Durvalino Rocha, Vilhalva's brother-in-law in 2005.

On August 22, a week before Vilhalva's death, the Guarani-Kaiowá had begun the biggest process of occupation of all time. First they entered in the Primavera farm, one of the five they claimed. Then they occupied the other four areas. The following Saturday, the 29<sup>th</sup>, about sixty vans left the seat of the rural union of Antônio João. The vans traveled the highway and stopped at the Barra farm. They were welcomed by

**Re: Killing of Mr. Semião Fernandes Vilhalva**

men, women, teenagers and children screaming, with sticks and bows and arrows in their hands. Indigenous people report that, after some discussion, the men fired shots in the air and guns with rubber bullets towards them, which the farmers deny. Amid an intense rush, indigenous people's motorcycles were burned; another one was punctured by gunfire. An indigenous person was surrounded and attacked with a stick that cut his forehead. Children were lost, including the son of Vilhalva. Not long after that, the young man was found dead. The National Force, a kind of elite troop of the federal government formed by police from several states, took an hour to get there, say the Indians.

The process of demarcation of lands was already authorized, but was barred at the Federal Supreme Court in 2005. Since then, the Minister Gilmar Mendes, rapporteur of the process affirms that the theme is "too complex". The Indians remain in the rest of the area.

The Commission on human rights and minorities of the Chamber of Deputies has been following the situation and, in the exercise of their functions, charging several measures to resolve the conflicts in State of Mato Grosso do Sul, between these organs are: the Ministry of Justice, the National Indian Foundation (Funai) and the Supreme Court (STF).

The measures that are being collected are intended to grant the demarcation of traditional lands and prevent people indigenous to the region continue to suffer human rights violations.

We reiterate to the competent organ that they examine and punish those involved in the assassination and, in collaboration with another representative entities, find a way to stop these exterminations with disrespect to indigenous culture and all forms of preconception.

We respectfully ask the Brazilian State to assume its institutional role in the construction of means for the solution of such conflicts, that grants the constitutional rights of indigenous peoples and the demarcation of their territory.

Failure to protect Mr. Semião Vilhalva constitute's an egregious breach of Brazil's international law duties to ensure the right to life and other protected rights of all persons within its territory and to investigate and punish violations. These legal duties arise from the International Convention on Civil and Political Rights (ICCPR), ratified 24 April 1992 and other instruments.

As a member of the United Nations, Brazil is bound to respect the Universal Declaration of Human Rights, which states that "Everyone has the right to life, liberty and security of person" (article 3).

Furthermore, the Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on 9 December 1998, obliges Brazil's government to conduct a prompt, impartial and effective investigation to protect him Mr. Semião in the practice of his activities (article 12.2).

The Inter-American Court of Human Rights (IACtHR) hears complaints of violations of the American Convention on Human Rights (ACHR). The IACtHR has found that a State has a duty to investigate an extra-judicial killing as part of an overarching duty to ensure that all persons within the State's jurisdiction enjoy the full and free exercise of the human rights defined in the ACHR. The duty stems from Article 4(1) in combination with Article 1(1) of the ACHR. Article 4(1) states: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life." Article 1(1) states: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without

any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

Even apart from the obligations created by human rights treaties, there is a strong argument that States have a duty to investigate extra-judicial killings under customary international law. The right to life is among the most strongly protected of all fundamental human rights and is widely recognized as having reached the status of customary international law. It follows that the state duties and obligations flowing from this right must be undertaken under customary international law.

In addition, under the national law, the protection of the indigenous is specially proclaimed in the Constitution:

## CHAPTER VIII

### Indians

Article 231. Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property.

Paragraph 1. Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.

Paragraph 2. The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein.

Paragraph 3. Hydric resources, including energetic potentials, may only be exploited, and mineral riches in Indian land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law.

Paragraph 4. The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to limitation.

Paragraph 5. The removal of Indian groups from their lands is forbidden, except ad referendum of the National Congress, in case of a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country, after decision by the National Congress, it being guaranteed that, under any circumstances, the return shall be immediate as soon as the risk ceases.

Paragraph 6. Acts with a view to occupation, domain and possession of the lands referred to in this article or to the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects, except in case of relevant public interest of the Union, as provided by a supplementary law and such nullity and voidness shall not create a right to indemnity or to sue the Union, except in what concerns improvements derived from occupation in good faith, in the manner prescribed by law.

Paragraph 7. [..]

Article 232. The Indians, their communities and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution intervening in all the procedural acts.

Article 67. **The Union shall conclude the demarcation of the Indian lands within five years of the promulgation of the Constitution.**

Article 129. The following are institutional functions of the Public Prosecution: (CA No. 45, 2004)

I – [...]

II – [...]

III – [...]

IV – [...]

V – **to defend judicially the rights and interests of the Indian populations;**

It is extremely necessary, due to the facts, to adopt measures to ensure effective protection in Brazil to human rights defenders and to conduct an immediate, thorough, impartial and transparent investigation into the above-mentioned events.

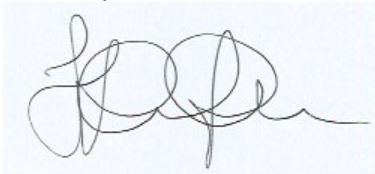
Actions requested:

1. An impartial and quick investigation of the facts, processing and punishment of the responsible, protection of all the indigenous;
2. Move forward in the processes of Guarani-Kaiowá land demarcation;
3. Guarantee in all circumstances the physical and psychological integrity of all human rights defenders in Brazil;
- 4.. Conform to the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially:

Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”;

Article 12 , which states that “everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms. 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 present 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”.

Sincerely,



Isabela Piacentini  
LRWC Brazil Monitor

Copied:

Mr. Gilberto José Spier Vargas  
Minister for Human Rights  
Setor Comercial Sul - B, Quadra 9, Lote C  
Edifício Parque Cidade Corporate, Torre A, 10º andar □

**Re: Killing of Mr. Semião Fernandes Vilhalva**

Brasília – Distrito Federal – 70308-200 Brazil  
E-mail: [direitoshumanos@sdh.gov.br](mailto:direitoshumanos@sdh.gov.br)

Ms. Izabella Mônica Vieira Teixeira  
State Minister of the Environment  
Ministry of the Environment  
Esplanada dos Ministérios - Bloco B, CEP 70068-900 - Brasília/DF, Brazil  
Fax: + 55 61 2028-1756  
Email: [gm@mma.gov.br](mailto:gm@mma.gov.br)

Mr. José Eduardo Cardozo  
Minister of Justice  
Esplanada dos Ministérios, Bloco T, Ministério da Justiça, 4º andar  
Brasília, DF. CEP: 70064-900 Brazil  
Fax: + 55 61 2025.9556

Mr. Mauro Vieira  
Minister of Foreign Relations  
Palácio Itamaraty  
Esplanada dos Ministérios - Bloco H  
CEP 70.170-900 Brasília/DF – Brazil  
Email: [sg@itamaraty.gov.br](mailto:sg@itamaraty.gov.br)

Ms. Katia Abreu  
Minister of Agriculture, Livestock and Supply  
Esplanada dos Ministérios - Bloco D  
Brasília/DF - CEP: 70.043-900 – Brazil  
E-mail: [gm@agricultura.gov.br](mailto:gm@agricultura.gov.br)

Mr. Patrus Ananias de Souza  
Minister of Agrarian Development  
Esplanada dos Ministérios Bloco A 8º Andar, Ala Norte  
Brasília/DF - CEP: 70.043-900 – Brazil  
Fax: + 55 61 2020 0050

Mr. Paulo Pimenta  
President of the Commission of Human Rights and Minorities of the Chamber of Deputies  
Câmara dos Deputados, Anexo II, Pavimento Superior, Ala A, Sala 185  
Brasília/DF - CEP 70.160-900 - Brasil  
Fax: (61) 3216-6580

Mr. Reinaldo Azambuja  
Governor of the State of Mato Grosso do Sul  
Av. do Poeta, Bloco 8  
Parque dos Poderes - bloco VIII  
CEP: 79031-350 • Campo Grande/MS - Brasil  
Fax : + 55 67 3318 1120  
Email : [gabinete@ms.gov.br](mailto:gabinete@ms.gov.br)

Profa. Rose Modesto  
Secretary of Human Rights, Inclusion and Social Assistance of the State of Mato Grosso do Sul  
Av. Desembargador José Nunes da Cunha, Bloco 3 • CEP: 79031-902  
Campo Grande-MS - Brasil  
E-mail: [sedhast@sedhast.ms.gov.br](mailto:sedhast@sedhast.ms.gov.br)

Mr. Ricardo Lewandowski  
President of the Federal Supreme Court  
Praça dos Três Poderes - Brasília - DF - CEP 70175-900 – Brasil

**Re: Killing of Mr. Semião Fernandes Vilhalva**

E-mail: [atendimento@stf.jus.br](mailto:atendimento@stf.jus.br)

Sr. Joao Pedro Gonçalves da Costa  
President of the National Foundation for the Indigenous Peoples (FUNAI)  
SBS - Quadra 02 Lote 14 Ed. Cleto Meireles  
Brasília/DF- CEP 70.070-120 - Brasil  
E-mail: [presidencia@funai.gov.br](mailto:presidencia@funai.gov.br)

H.E. Ms. Regina Maria Cordeiro Dunlop  
Ambassador  
Permanent Mission of Brazil to the United Nations in Geneva  
Chemin Louis-Dunant 15 (6th Floor)  
1202 Geneva, Switzerland.  
Fax: +41 22 910 07 51  
Email: [delbrasgen@itamaraty.gov.br](mailto:delbrasgen@itamaraty.gov.br)

Mr. José de Jesus Orozco Henriquez  
Rapporteur on Human Rights Defenders  
Inter-American Commission on Human Rights  
Organization of American States  
1889 F St., N.W.  
Washington, D.C., 20006  
USA  
Email: [cidhdefensores@oas.org](mailto:cidhdefensores@oas.org)

Sra. Rose-Marie Belle Antoine  
Rapporteur on the rights of indigenous peoples  
Inter-American Commission on Human Rights  
Organization of American States  
1889 F St., N.W.  
Washington, D.C., 20006 USA  
[cidhdenuncias@oas.org](mailto:cidhdenuncias@oas.org)

Mr. Michel Forst  
Special Rapporteur on the situation of human rights defenders  
Office of the High Commissioner for Human Rights – Palais Wilson  
United Nations Office at Geneva  
CH 1211 Geneva 10  
Switzerland  
Fax: +41(0) 22.917.90.06  
Email: [defenders@ohchr.org](mailto:defenders@ohchr.org)

Ms. Victoria Lucia Tauli-Corpuz  
Special Rapporteur on the rights of indigenous peoples  
c/o OHCHR-UNOG  
Office of the High Commissioner for Human Rights  
Palais Wilson  
1211 Geneva 10, Switzerland  
Fax: +41 22 917 92 32  
Email: [indigenous@ohchr.org](mailto:indigenous@ohchr.org)