# OFFICIAL DOCUMENT

# BARRA VELHA DO MONTE PASCOAL INDIGENOUS TERRITORY


Barra Velha do Monte Pascoal Indigenous Territory, April 12, 2024

"Where there is indigenous land, the forest remains standing, the water is pure, the fauna is alive."

**To: UN**

**Official Document**

The Barra Velha do Monte Pascoal Indigenous Territory and the Council of caciques formally request the United Nations (UN) board of directors to intervene to pressure the Brazilian Government to sign the declaratory letter of the Barra Velha Territory. The signing of this document is crucial to put an end to the territorial conflict that has persisted since 2014. We note that Minister Ruy Costa has hindered the signing process, as he maintains links with the ruralists of the State of Bahia. In addition, we request speed in the resolution of the case of the murders of young people Nawi Brito, Samuel Braz and Gustavo da Conceição. Till today, we have not received answers about those responsible for these crimes. It is public knowledge that the perpetrators were police officers, and one of them is at large, while the masterminds remain unpunished. This lack of solution and prosecution of the masterminds keeps the killers at large, generating serious concern and injustice.

In addition, we request that a request be forwarded to the Governor of the State of Bahia for agility in the signing of the declaratory letter. It is worth mentioning that the Barra Velha Indigenous Territory comprises an area of 52,748 hectares. Within this territory, 25 villages are located, 7 of which are located within the demarcated and approved area of 8,627 hectares, which includes the villages of Barra Velha, Pará, Campo do Boi, Xandó, Boca da Mata, Meio da Mata and Casiana, villages that are going through delicate times because they are experiencing shackles and undue sales. The other villages are in areas of self-demarcation within the territory, such as Bugigão, Quero ver, Cantando da Mata, Corumbalzinho, Aldeia Nova, Trevo do Parque 1, Trevo do Parque Krokuxi, Goti Merim, Aldeia Pé do Monte, Vale das Palmeiras, Vale das Águas, Jutaí, Guaxuma, Nova Esperança, Aldeia dos Kokais, Aldeia Mamaká Bom Jardim, Aldeia Bela Vista, Craveiro Village, Ãgtay Upuiba Krokix Village.

We would also like to inform you about the threats that farmers in the region have directed at the caciques, including death threats. Caciques and leaders engaged in the defense of indigenous rights have been targets of these threats.

It is worth remembering that violence against our people and territory has roots that go back to colonization. During the period of the military dictatorship, the government of Bahia, under the military regime, granted land titles in the Barra Velha territory to local farmers.

It is important to note that the police authorities, through the justice organ of the State of Bahia, tried to arrest caciques, as is the case of cacique Barural, whose arrest warrant is open due to his leadership position. In addition to this episode, other leaders are also facing death threats, including the Surui cacique and the Uruba Pataxó vice-cacique, both from the Barra Velha village, as well as the cacique Jovino Machado, the vice-cacique Maria Braz, the Jurandi

cacique from the Jitaí village, the leader Sandro, the cacique Joel Braz, the cacique Renato Jesus, the cacique Rodrigo (known as Manti), the Cacique Coati of the Quero Ver Village and the vice-president of the Council of Caciques, Cacique Avaí.

On November 26, 2023, Vice Cacique Uruba appeared before the Federal Police to file a complaint regarding the death threat she received from a faction of drug traffickers allegedly led by Vagner Pancieira. To date, a response and an adequate resolution to this situation are awaited. On the same day, the trafficker captured an indigenous man named Nino inside the retaken area of the Santa Rita Farm, subjecting him to restraint, physical aggression, as well as members of his family, including children. In addition, he sent word that he was going to take the lives of Cacique Surui and vice Cacique Uruba, because they were leaders of the indigenous movement and despite the denunciation made, nothing was done about the case that is stalled.

Also last year, in 2023, there was a visit by a federal deputy from Minas Gerais, Rodrigo Sales, during the resumption led by Cacique Adilson. During this visit, the deputy uttered offensive words to the indigenous people, calling them invaders and thieves, denying them ownership of the land and threatening the cacique Adilson of the Goti Mirim Village. The Barra Velha territory, belonging to the Pataxó people, extends from Belmonte to the São Mateus River, in Espírito Santo. However, the Pataxó are claiming only a part of this territory, which totals 52,748 hectares, and they are suffering several threats, in addition to being violently oppressed.

It is also important to highlight that the Special Secretariat for Indigenous Health (SESAI) and the Secretariats of Education have denied the opening of schools and classrooms for indigenous students within the resumption areas, as well as denying health care. If indigenous people fall ill within these areas, they do not receive medical care, under the justification that it is necessary to protect the lives of the employees. This begs the question: should we, indigenous people, die to the detriment of the safety of the servers?

The Jitaí village, led by Cacique Jurandi, was retaken more than 20 years ago and, unfortunately, still lacks basic structures such as a school and a health center. The children are required to study outdoors, under the trees, and are currently engaged in building a classroom on their own. In addition, the village faces additional challenges due to the presence of a Landless Rural Workers Movement (MST) settlement nearby, whose members frequently threaten local residents. Reports of gunshots, interruption of electricity supply and restrictions on passage have been constant, creating an environment of insecurity and tension for the indigenous community.

It is worth remembering that last year, Aldeia Nova was the target of intense attacks, resulting in an extremely dangerous situation for its inhabitants. Cacique Jovino, vice-cacique Lica, elders and children were forced to seek shelter in the forest to protect themselves. The attacks were so severe that even animals, such as dogs, were killed, as reported in press reports.

We wish to inform you about the actions of the federal prosecutor Fernando Zelada, from the district of Eunápolis, who proves to be a land grabber and acts contrary to the interests of the indigenous peoples, exclusively favoring the interests of the ruralists. This prosecutor is negligent and did not defend the decision to arrest Cacique Bacural (documentation attached).

The incident involving Cacique Bacural was a despicable and unscrupulous act, in which a farmer set a trap by handing over the key to the truck directly to the cacique and, soon after, immediately went to the Civil Police station of Itabela to report that Cacique Bacural had stolen the vehicle. Interestingly, the truck was found in the same location where the key had been handed over, as evidenced by the photos attached below.

There is an ongoing legal case against vice cacique Uruba, in which she is accused, in a prejudiced way, of calling herself indigenous. (documentation attached).

There is a program called "Zero Invasion", conceived in the Chamber of Deputies and led by the farmers here in Bahia, which threatened the spiritual leader, known as Pajé Nega, of the Pataxó hã hã hãe people. (Attached photo of the car with sticker of the movement and documentation).

On a daily basis, we are the target of attacks that occur both during the night and during the day, resulting in shots being fired at our family members. Approximately 20 days ago, at the beginning of March, an indigenous individual was attacked in the retaking of Jaqueira, in the Cassiana village. The group known as Invasion Zero perpetrated the attack, firing shots. They frequently employ drones to observe and track our people, exerting a form of intimidation. In addition, they have already been caught inside the retaking of Aldeia Nova, filming and posing as bailiffs, in order to map our territory with drones.

A significant part of the Barra Velha indigenous land, which has already been demarcated and ratified, is being subject to land grabbing. The promoter, together with the Municipality and the municipal government of Porto Seguro, intends to emancipate this portion of land, ignoring its legal condition. It is important to highlight that all the documents sent by the Council of Caciques, requesting the disintrusion and removal of the invasions, are ignored by this prosecutor, who threatens our population by informing them (Xandó) about these actions. (See attachment - invasion maps)

In the face of the invasion and land grabbing that took place during the previous government, under the administration of President Bolsonaro, a significant portion of our land was illegally

occupied, sold, and subject to intense drug trafficking activity. This situation has resulted in great damage, negative influences, and serious disruptions to our customs and traditions. As a consequence, we fear for the safety and lives of our leaders, especially the Surui cacique and the Uruba vice-cacique, who have been the target of death threats, even though they are under the protection program. Within the Barra Velha Indigenous Territory, only six leaders are currently included in the protection program, namely the vice-cacique Uruba, the surui cacique, the Everaldo leadership, the cacique Renato, the cacique Jovino and the vice-cacique Lica (Maria Braz). However, the other leaders are not covered by the program, although they are facing intense death threats.

The federal judge and the Federal Police of this region have adopted legal measures against the indigenous leaders, seeking to intimidate them and discourage them from continuing with their movements. Currently, leaders such as vice cacique Uruba, the President of the Council Surui, Cacique Avai, Cacique Barucarau and Cacique Ubiratã (White) are facing multiple lawsuits in the Federal Court. It is important to highlight that these leaders are not so directly involved in all the legal issues brought against them, but are being targeted by lawsuits simply for leading movements that are underway.

The Civil Police of Porto Seguro and Trancoso requested the arrest of cacique Surui on the grounds that he is the leader of a movement, labeling him as a terrorist and aiming to dismantle the retakes. Fortunately, lawyers were able to review the arrest warrant, preventing its execution. It is crucial to note that the Barra Velha Indigenous Territory covers an area of 52,748 hectares. FUNAI has drawn up a map that does not correspond to the reality of the territory. Recently, FUNAI issued an opinion on a retaking of territory where a farm known as Santa Edwiges is located (map attached), claiming that only 14% of the farm's area is within indigenous territory, which is not true. In fact, the entire farm is located within our territory, from the Rio Preto to the Rio Caraíva. Despite this, FUNAI has issued opinions that contradict reality. Through this statement, we urgently request FUNAI to act in accordance with its responsibilities within the Barra Velha Territory, as it has not acted as necessary. It is important to note that neither FUNAI nor the Federal Prosecutor's Office of Eunápolis are acting in cases of repossession, failing to provide the necessary support, which is within their responsibilities.

The organizations that have been active in the defense of the territory within the Barra Velha Territory include CIMI, FEPATI, MUPOIBA, indigenous organizations, the Council of Caciques, ANAI and the federal and state public defenders' offices. Unfortunately, FUNAI has acted only with pressure, as evidenced during a public trial hearing, in which a FUNAI official declared that he had no knowledge of the location of the Santo Edwiges farm within the delimited territory. The judge requested an opinion in this regard, to which FUNAI replied that only 14%

of the farm overlaps with the territory. The National Indian Foundation (FUNAI) issued an opinion declaring that the property of the Santa Edwiges Farm is not entirely within the indigenous territory, which weakens the indigenous people's claim to the area, and as previously mentioned, the farm is 100% in the territory. It should be noted that FUNAI is fully aware of the land grabbing activities that are taking place within the Xandó region, but is not adopting the necessary measures to curb this illegal practice. FUNAI's dependence on Porto Seguro to finalize the report and carry out the disintrusion is mentioned, and it alleges that the occurrence of this action would result in conflict, even though the Pataxó people are only claiming their legitimate lands. The support and intervention of both FUNAI in Brasília and FUNAI in Porto Seguro is needed to assist in the disintrusion, since a civil action has been filed since 2022 requesting measures, however, so far, there has been no satisfactory return in relation to the Barra Velha indigenous territory.

The federal judge of the district of Eunápolis filed a civil lawsuit in 2022, asking the National Indian Foundation (FUNAI), the Ministry of Justice and the Brazilian Government to carry out the demarcation of the Barra Velha indigenous land, recognizing the legitimacy of this claim. The said action has been extended until the year 2024. A copy of the corresponding document is attached. It is important to note that, as stipulated, any delay or non-compliance with said action will result in a fine (documentation attached), the amounts of which will be reverted to the benefit of the affected community. We were informed that the FUNAI employee from Porto Seguro, known as Valdir, is in charge of issuing opinions against the Barra Velha territory and the disintrusion of non-indigenous invaders within the demarcated and approved area of Xandó. (Map attached).

There is a task force created by the state government to support the issue of retaking indigenous lands, aiming to protect those involved. However, it is observed that the work of this task force has resulted, in many cases, in the oppression of indigenous peoples, having been promptly activated in response to calls from farmers. When indigenous people request assistance within the retaken areas, the task force's response is often delayed, leaving them without help at critical moments. It is noteworthy that this task force has carried out some small actions within the Comexatibá territory, near Prado. However, within the Barra Velha territory, its actions have not been adequate, being characterized, on the contrary, by practices aimed at terrorizing our people and collecting information in an intimidating manner.

On November 8, 2023, the Federal Police detained an indigenous man named Domingos Braz de Jesus, who was not inside the retaken area, but was arriving at the Santa Edwiges farm (documentation attached). This farm was identified as a place that previously served as a front for drug trafficking, where several 9mm caliber ammunition were found, apparently deployed

to unduly incriminate the indigenous person in question. At the time, the Federal Police arrested the indigenous Domingos, accusing him of being the owner of the ammunition found, even though we did not possess weapons. It is evident that only indigenous people have been fatal victims as a form of extermination. The indigenous man was forced to pay more than 5 minimum wages to obtain his freedom, and to this day he continues to respond to legal proceedings.

Therefore, we ask the UN to intervene in the process of disintrusion of non-indigenous people from indigenous lands that have already been demarcated and ratified, as is the case of Xandó, and to support us in the demarcation of the Barra Velha territory, which represents the land of our ancestry, inhabited long before 1500 by our ancestors. The blood and struggle of our people remain rooted in every tree, in our soil, and in every grain of sand and water present.

It is important to note that FUNAI is fully aware of the attached map of the territory, but has not taken measures or offered support for the disintrusion. Within our territories, we face the presence of a large company, Veracel Celulose, a partner of the Swedish giant Stora Enso, which is devastating the areas surrounding the territory with its plantations, contaminating rivers and groundwater, harming our fishing and making fish scarce, without the government taking any action. The Veracel company itself is suing the indigenous people who are on the lands invaded for the company's plantation.

We would also like to inform you that the local radio stations in the region, including those in Itamaraju, Porto Seguro, Itabela, Eunápolis and Teixeira de Freitas, such as Terra Mar (99), 88, Rádio Pataxó and Band itself, have defamed our indigenous people, labeling us as thieves, invaders and threatening us, preventing us from moving around the city and subjecting us to threats.  prejudice, racism and discrimination. The newspaper Radar 64, from Itabela, has also defamed the indigenous people of the region. In addition, local authorities, such as the mayor of Prado, councilman Anderson de Prado, and hotel owners have threatened leaders within the territory of Barra Velha, such as former cacique Patiburi and other leaders, due to their actions to retake their ancestral territories.

In addition, it is important to note that we have faced the sending of gunmen with the intention of murdering indigenous people within our territory. Our leaders no longer have peace of mind to sleep, walk or move around the territory, as they are constantly under threat. We are under constant surveillance, 24 hours a day, by gunmen, farmers and militias. Cacique Patiburi was forced to stay 1 (one) year outside the village due to death threats by gunmen, farmers and drug traffickers. Today, the drug trafficker, a gunman by the name of Tarciso, intensely threatens everyone, including the current cacique Guati who also suffers threats from the gunmen, hotel owners, such as Nogueira, Alexandre Dequesh, and other individuals. Within

the territory, there is the Brasília farm where gunmen live who work on strategies to kill and attack indigenous people, in addition to the Lindomar da Lembrança Farm (President of the farmers' association) being involved and Marcos Saliba who is suspected of having ordered the murder of Nawi and Samuel

The leaders of these militias are often identified as Brazilian police officers and politicians, who seek to exterminate our leaders linked to the indigenous movement. Former cacique Guaru was also the target of threats, due to his environmental activism and his tireless defense of our mother nature. That is why we request protection for our forest, for our lives which is being destroyed. After all, for us indigenous peoples, there is no life without territory, without forest, without fruit, without a home and without fish.

The Barra Velha Indigenous Land was demarcated in the municipality of Bahia in December 1981 and ratified in 1991 with 8,627 hectares, but a large part of the territory of traditional Pataxó occupation was left out of this demarcation and, with this, there was also concern for the future generations of the community. It was then that the indigenous people mobilized to ensure the revision of the boundaries of the area.

In **2009,** Funai published a new detailed report identifying the area, through corroborating studies, and the revised demarcation was named the Barra Velha do Monte Pascoal Indigenous Land and also corrected the boundaries of the territory, which now has **52,748** hectares, which include the previous demarcation.

Despite the victory of our people, a group of farmers and the Rural Union of Porto Seguro tried to annul the demarcation in court four years later, in 2013. They filed six writs of mandamus with the Supreme Court of Justice (STJ), requesting that the Court prevent the publication of the Declaratory Ordinance of the area by the Ministry of Justice – the next stage of the demarcation process. In the same year, the STJ granted the request in a preliminary manner, barring the progress of the administrative process in the Pataxó territory.

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In **2019**, after admitting the indigenous people as part of the lawsuit, the First Section of the STJ unanimously overturned the injunction and recognized, in a **decision on the merits**, the legitimacy and **validity of the demarcation of the Barra Velha Indigenous Land**.

The decision overturned any impediment to the publication of the Declaratory Ordinance of TI by the Ministry of Justice. However, this has not yet happened. We **urgently need** to speed up the process of signing the declaratory letter, which is in the hands of the Ministry of Indigenous Peoples. Our territory has 22 villages, around 8000 indigenous people who live in a constant state of alert and threat.

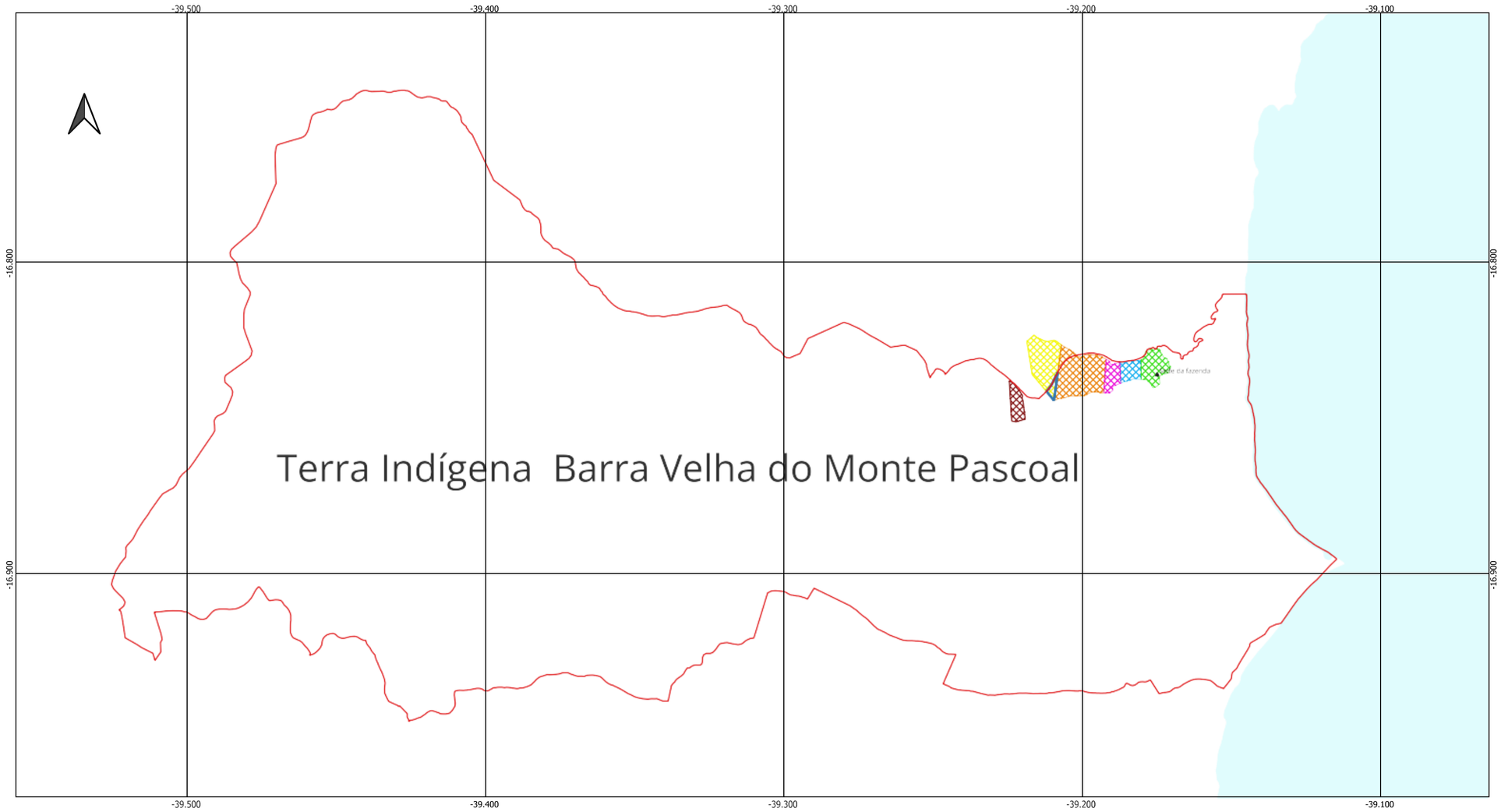
Recalling that the Constitution of the Federative Republic of Brazil guarantees all the rights mentioned above throughout its text, especially in Articles 215, §1; Articles 231 and 232. In addition, Article 5, §§2 and 3, also guarantee the validity of international treaties protecting the rights and guarantees of the indigenous peoples of Brazil, such as Convention No. 169 of the International Labor Organization (ILO), binding on the Brazilian State, in addition to the decisions of the Inter-American Human Rights System, the United Nations Declaration on the Rights of Indigenous Peoples (2006) and the American Declaration on the Rights of Indigenous Peoples (2016). among others.

It is worth noting that violence is not limited to those reported, which are more explicit. There was also a lot of veiled and more "subtle" violence – prejudiced and racist treatment by many merchants and residents of the region, fake news involving the names of indigenous people at the head of the occupation and several threats against the then cacique and leaders (phrases with hidden subjects, such as "they spoke..." without the revelation of who spoke, or

through "Fake News" denigrating the reputation of the leaders of the Village). It is important to note here that FUNAI was, almost all the time, silent in relation to the reported violence

Below are essential attachments for a good understanding of all events.

# Processo 1005155-57.2023.4.01.3310, polo ativo JOSE ROBERTO PRADO PEDRAL SAMPAIO




- Limite da Terra Indígena Barra Velha do Monte Pascoal
- Sede da Fazenda Santa Edwiges, de acordo com a sinalização encontrada in loco, ocupada pelos indígenas
- Fazenda Boa Vista, cadastrada por Jose Roberto Prado Pedral Sampaio no CAR, nr BA-2925303-594DB6110C374507936D871F7BA881AA, com área de 95 ha
- Fazenda Santa Edwiges (4099), cadastrada por Jose Roberto Prado Pedral Sampaio no CAR, nr BA-2925303-24F022C919BB4B7DBFFA931ED0B81993, com área de 50 ha
- Fazenda Santa Edwiges (3645), cadastrada por Jose Roberto Prado Pedral Sampaio no CAR, nr BA-2925303-CA40B5EC13CC45D5B80D991068CFC22B, com área de 51 ha
- Fazenda Santa Edwiges (1623), cadastrada por Jose Roberto Prado Pedral Sampaio no CAR, nr BA-2925303-AAC9635A222C45749B7F2711D5C33DD9, com área de 250,38 ha
- Fazenda Santa Edwiges (1341), cadastrada por Jose Roberto Prado Pedral Sampaio no CAR, nr BA-2925303-9869D3BC262F4CA6A70600603955C9C2, com área de 173,41 ha. O despacho da Direitoria da Proteção Territorial da FUNAI, na Ação Possessória n. 1005155-57.2023.4.01.3310, considerou apenas essa área para emitir o parecer.
- Área de 14,16 ha, enfocada no parecer da direitoria de Proteção Territorial da FUNAI como de sobreposição à Terra Indígena Barra Velha do Monte Pascoal
- Fazenda Nova Vista, cadastrada por Jose Roberto Prado Pedral Sampaio no CAR, nr BA-2925303-12C7B676190D4E9CAA112263D3FDE530, com área de 54,64 ha. Sem referência no processo.

FONTE: FUNAI, 2024; CAR, 2024; Dados de Campo, 2024
PROJEÇÃO: SIRGAS 2000
ELABORAÇÃO: ANAI

6344849 08620.014903/2023-87

**MINISTRY OF INDIGENOUS PEOPLES**

**NATIONAL FOUNDATION OF INDIGENOUS PEOPLES**

**ORDER - DPT/2024**

| | |
|---|---|
| **SUBJECT:** | **Repossession.** |
| **INTERESTED:** | **PFE-Funai** |
| **FOR THE UNIT(S):** | **PFE-Funai** |
| **ONLY FOR SCIENCE AND HIERARCHICAL FOLLOW-UP OF THE UNIT(S):** | **--** |

| **REFERRALS** | |
|---|---|
| **( ) ANALYSIS AND MANIFESTATION** | **( ) SUBSEQUENT ARRANGEMENTS** |
| **( ) FOLLOW-UP** | **( ) ARCHIVAL** |
| **( ) OTHER:** | |

**In response to the request Order No. 00029/2024/COAF-PRIOR/PFE-FUNAI/PGF/AGU (6178826) which requests from this Board of Directors subsidies for the performance of the PFE in the scope of a possessory action with a preliminary injunction request, filed by the Estate of LÉA MARIA ROCHA PAIXÃO against the NATIONAL FOUNDATION OF INDIGENOUS PEOPLES – FUNAI, of the FEDERAL UNION, ERILZA BRÁS and WELLITON RIBEIRO DE OLIVEIRA, whose object is the threat/robbery of the possession of the property called "Fazenda Santa Edwiges 1", located on the Monte Pascoal/Vila Caraíva highway, Barra Velha locality, KM-040, municipality of Porto Seguro, of which it claims to be the owner, I forward Technical Information 87 (6205834) and Technical Information 70 (6341807) with a statement from the competent technical areas.**

**In line with the technical analyses, it should be noted that *the Santa Edwiges 1 Farm, with a total area of 173.4062 ha, has approximately 14.16 ha overlapping the Barra Velha do Monte Pascoal Indigenous Land (Delimited).***

**We note that the process of identifying the Barra Velha do Monte Pascoal Indigenous Land was forwarded to the Ministry of Indigenous Peoples (MPI), with a view to the Ministry of Justice for the issuance of a Declaratory Ordinance in March 2023, through OFFICIAL LETTER No. 384/2023/PRES/FUNAI.**

**Sendo o que havia para o momento, mantemo-nos à disposição para esclarecimentos adicionais.**

**Atenciosamente,**

*(assinado eletronicamente)*
**MARIA JANETE ALBUQUERQUE DE CARVALHO**
**Diretora de Proteção Territorial**

**On February 29, 2024.**

**ASSTEC**

**Document electronically signed by Maria Janete Albuquerque de Carvalho, Director, on 02/29/2024, at 4:08 p.m., according to Brasília official time, based on article 6, paragraph 1, of Decree No. 8,539, of October 8, 2015.**

**The authenticity of this document can be checked on the website: http://sei.funai.gov.br/sei/controlador_externo.php?action=documento_conferir&id_orgao_acesso_externo=0, entering the 6344849 check code and the CRC code A780BCCF.**

6205834 08620.014903/2023-87

**MINISTRY OF INDIGENOUS PEOPLES**
**NATIONAL FOUNDATION OF INDIGENOUS PEOPLES**

**Technical Information No. 87/2024/SECART/COCART/CGGEO/DPT-FUNAI**

**Brasilia,** ***date of electronic signature***

**To the General Coordination of Geoprocessing - CGGEO**

**Subject: Repossession - Santa Edwiges Farm 1.**

**1. We refer to Order SEAD/COGAB/DPT (SEI nº 6184216), which requests the preparation of a cartographic analysis regarding the property called "Fazenda Santa Edwiges 1", located on the Monte Pascoal/Vila Caraíva highway, Barra Velha locality, KM-040, municipality of Porto Seguro, object of the possessory action with preliminary injunction request, filed by the Estate of Léa Maria Rocha Paixão in the face ofthe National Foundation of Indigenous Peoples, the Federal Government, Erilza Brás and Welliton Ribeiro de Oliveira, whose object is the threat/theft of the possession of the property.**

**2. After analyzing the geographic information provided in the Annex document - SEI 01120.000263/2023-10 (SEI No. 6033028, page 42), the geographic location of the object of the lawsuit was identified in relation to the nearest indigenous lands, as shown in the map contained in this Technical Information and in the table below:**

| | | |
|---|---|---|
| 5802 - Barra Velha do Monte Pascoal / 52,748.00 Ha / Delimited (27/02/2008 - Order No. 04, of February 27, 2008) | Distance km | Partial Incidence |
| 5801 - Barra Velha / 8.627,00 ha / regularized (03/02/1992 - matr. 14.548 lv. 2-RG fl. -) | Distance km | 0,40 |
| 501 - Águas Belas / 1,189.00 ha / regularized (11/01/2000 - Matr. 13,751 lv. RG fl. -) | Distance km | 9,76 |

**3. We inform that the Santa Edwiges 1 Farm, with a total area of 173.4062 Ha, located in the municipality of Porto Seguro/BA, has approximately 14.16 ha overlapping the Barra Velha do Monte Pascoal Indigenous Land, Delimited.**

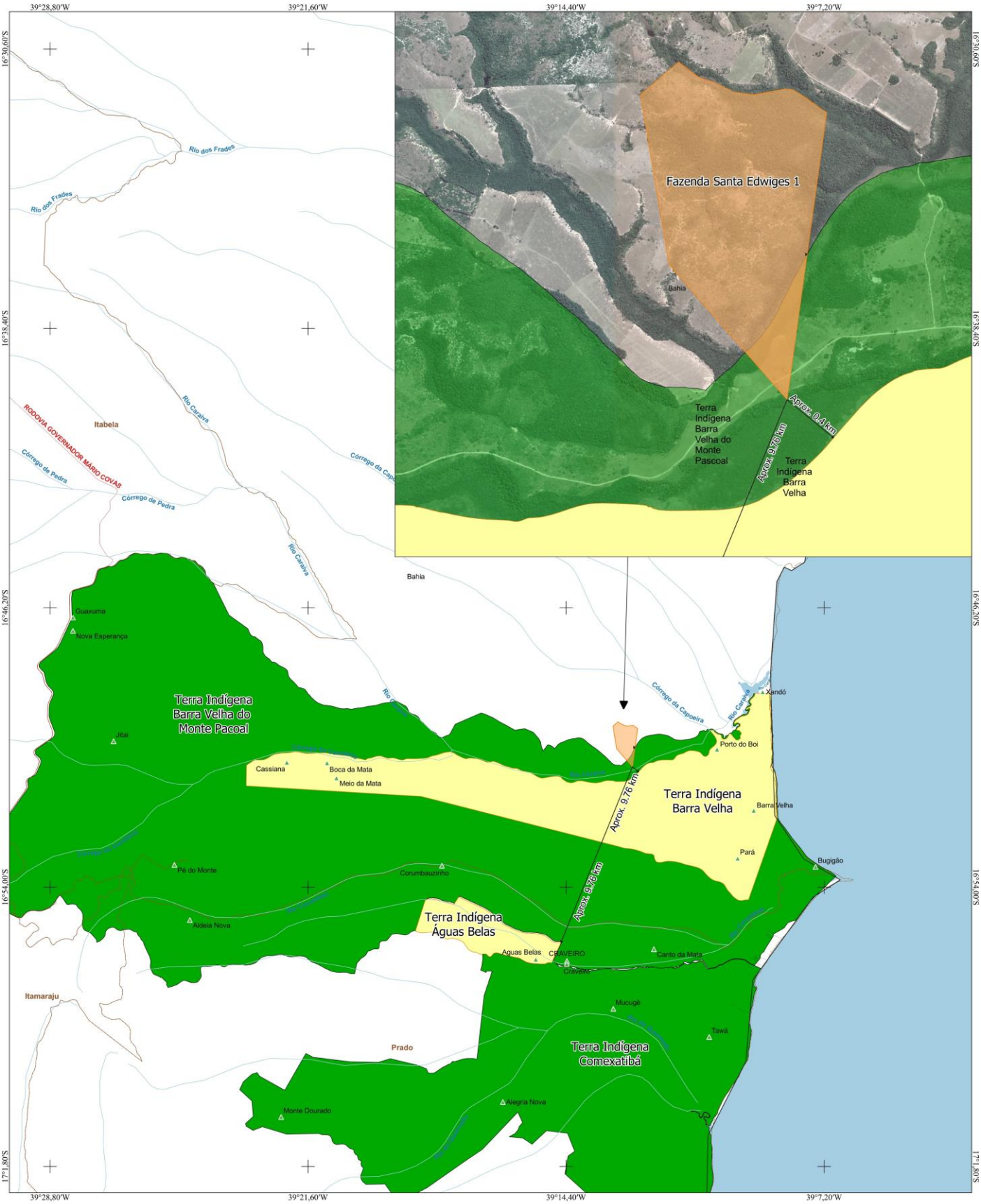
**4. Finally, it is informed that there is a record of indigenous land claims in the municipality of Porto Seguro/BA.**

**5. Without further ado, I make myself available.**

**Respectfully**

**(*Electronically Signed*)**
**ADRIANO FARIAS SIPAÚBA**
**Head of Service - SECART/COCART/CGGEO**

**Aware. Approve. Referral to CGID for further action. (*Electronically Signed*)**




LEGENDA

FUNAI
- Terra Indígena Declarada
- Terra Indígena Delimitada
- Terra Indígena Homologada
- Terra Indígena Regularizada
- Terra Indígena Reserva Indígena
- Terra Indígena Restrição de Uso
- Aldeia Indígena

Distância
- Terra Indígena em Estudo

DNIT- (Rodovias)
- Duplicada
- Em obra de Duplicação
- Em obra de Implantação
- Em obra de Pavimentação
- Implantada

ANA
- Leito Natural
- Pavimentada
- Planejada
- Travessia
- Hidrografia
- Massa D´Água

IBGE
- Sede Municipal
- Limite Internacional
- Limite Estadual
- Limite Municipal
- Imóvel

Datum: SIRGAS 2000
Base Cartográfica : FUNAI - Terras Indígenas / ANA - Hidrografia / DNIT - Sistema Viário / IBGE - Mapa Político
https://www.gov.br/funai/pt-br/atuacao/terras-indigenas/geoprocessamento-e-mapas

MINISTÉRIO DOS POVOS INDÍGENAS - MPI
FUNDAÇÃO NACIONAL DOS POVOS INDÍGENAS - FUNAI
DIRETORIA DE PROTEÇÃO TERRITORIAL - DPT
COORDENAÇÃO GERAL DE GEOPROCESSAMENTO - CGGEO

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|---|---|
| Denominação: Fazenda Santa Edwiges 1 | Informação Cartográfica n °.: 90 / 2024 |
| Interessado: AGU | Documento Referencia: 08620.014903/2023-87 |
| Municípios / UF: Porto Seguro / BA | Escala: 1:70.000 — OS 18806 |

DESENHO EM ___/___/___ — Henrique Toshio Campos Akai, TÉCNICO
CONFERIDO ___/___/___ — ADRIANO FARIAS SIPAÚBA, CHEFE DE SERVIÇO, COCART/CGGEO/DPT
CONFERIDO ___/___/___ — ROSIANE AMARAL ALVES DA SILVA, COORDENADORA-GERAL DE GEOPROCESSAMENTO, CGGEO/DPT

**OS No.: 18806. Head coach: henrique.akai - Department: COCART,**

Document electronically signed by **Adriano Farias Sipauba, Head of Service**, on 02/23/2024, at 10:43 am, according to Brasília official time, based on article 6, § 1 of Decree No. 8,539, of October 8, 2015.

Document electronically signed by **Rosane Amaral Alves da Silva, General Coordinator**, on 02/28/2024, at 10:19 am, according to Brasília official time, based on article 6, paragraph 1, of Decree No. 8,539, of October 8, 2015.

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6341807 08620.014903/2023-87

**MINISTRY OF INDIGENOUS PEOPLES**
**NATIONAL FOUNDATION OF INDIGENOUS PEOPLES**

**Technical Information No. 70/2024/COIM/CGID/DPT-FUNAI**

**On the date of electronic signatures.**

To the General Coordinator of Identification and Delimitation

**Reference: Funai Case No. 08620.014903/2023-87**
**Subject: Repossession - Santa Edwiges Farm 1.**

**1. This is Order SEAD/COGAB/DPT (SEI nº 6184216), which forwards Order No. 00029/2024/COAF-PRIOR/PFE-FUNAI/PGF/AGU (6178826), in which the Specialized Federal Prosecutor's Office at Funai refers to the possessory action with a preliminary injunction request, filed by the Estate of LÉA MARIA ROCHA PAIXÃO against the NATIONAL FOUNDATION OF INDIGENOUS PEOPLES – FUNAI, of the FEDERAL UNION, ERILZA BRÁS and WELLITON RIBEIRO DE OLIVEIRA, whose object is the threat/theft of the possession of the property called "Fazenda Santa Edwiges 1", located on the Monte Pascoal/Vila Caraíva highway, Barra Velha locality, Km-040, municipality of Porto Seguro/BA, of which he claims to be the owner.**

**2. Based on Technical Information 87 (6205834), we clarify that the Santa Edwiges 1 Farm, with a total area of 173.4062 ha, has approximately 14.16 ha overlapping the Barra Velha do Monte Pascoal Indigenous Land (Delimited). We emphasize that the process of identifying the Barra Velha do Monte Pascoal Indigenous Land was forwarded to the Ministry of Indigenous Peoples (MPI), with a view to the Ministry of Justice.**

**3. That is what we have to report.**

***(electronically signed)***
**LEONARDO FARIAS SAPORITO**
**Information and Monitoring Coordinator**

**Agreed. To the Directorate of Territorial Protection, for consideration and adoption of the appropriate measures.**

***(electronically signed)***
**NINA PAIVA ALMEIDA**
**General Coordinator of Identification and Delimitation**

Document electronically signed by Leonardo Farias Saporito, Coordinator, on 02/28/2024, at 2:40 pm, according to Brasília official time, based on article 6, Paragraph 1 of Decree No. 8,539, of October 8, 2015.

Document electronically signed by Nina Paiva Almeida, General Coordinator, on 02/28/2024, at 4:04 pm, according to Brasília official time, based on article 6, Paragraph 1 of Decree No. 8,539, of October 8, 2015.

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05/03/2024

Number: **1004568-06.2021.4.01.3310**

Class: **PUBLIC CIVIL ACTION**
Judging body: **Federal Civil and Criminal Court of the SSJ of Eunápolis-BA**
Last distribution: **12/03/2021**
Value of the case: **R$**
**1,000,000.00** Subjects:
**Indigenous Lands** Secrecy of
justice? **NO** Free Justice? **NO**
Request for an injunction or anticipation of relief? **YES**

| Parts | Attorney-in-fact/Related Third Party |
|---|---|
| **Federal Public Prosecutor's Office (AUTHOR)** | |
| **NATIONAL INDIAN FOUNDATION - FUNAI (DEFENDANT)** | |
| **FEDERAL UNION (REU)** | |
| **Federal Public Prosecutor's Office (Prosecutor's Office) (LAW ENFORCER)** | |
| **FEDERAL PUBLIC DEFENDER'S OFFICE (INTERESTED THIRD PARTY)** | |
| **PATAXÓ INDIGENOUS COMMUNITY OF BARRA VELHA (THIRD PARTY)** | |
| **COUNCIL OF CHIEFS OF BARRA VELHA (INTERESTED THIRD PARTY)** | |

| Documents | | | | |
|---|---|---|---|---|
| **Id.** | **Signature Date** | **Document** | **Kind** | **Pole** |
| 206587364 8 | 05/03/2024 08:05 | ~~Type A Sentence~~ | Type A Sentence | Internal |

JUDICIARY

FEDERAL JUSTICE

**Judiciary Subsection of Eunápolis-BA**

Federal Civil and Criminal Court of the SSJ of Eunápolis-BA

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SENTENCE TYPE "A"
**GRANT NUMBER**: 1004568-06.2021.4.01.3310
**CLASS:** CLASS ACTION (65)
**ACTIVE POLE:** Federal Public Prosecutor's Office (Attorney General's Office)
**PASSIVE POLE:** FUNDAÇÃO NACIONAL DO ÍNDIO - FUNAI and others

**SENTENCE**

## I –REPORT

This is a Public Civil Action filed by the **FEDERAL PUBLIC PROSECUTOR'S OFFICE** against the **FEDERAL GOVERNMENT** and **FUNAI** seeking the conclusion of the process of revision of the boundaries of the Barra Velha Indigenous Land, located in the municipality of Porto Seguro/BA, in view of an alleged irregularity in the creation of the Monte Pascoal National Park, which would have subtracted most of the area used for the subsistence of the Pataxós from the aforementioned Indigenous Land.

According to the MPF, "*although the Barra Velha Indigenous Land has been demarcated, there was a need to revise its boundaries, either because the initial demarcation took place by agreement between FUNAI and IBDF, without the existence of an anthropological study, or because the ongoing revisional process did not include all indigenous claims. The absence of a review that contemplates all the points addressed by the community may imply the compromise of the sociocultural reproduction of the Pataxó people, with consequent violation of article 231 of the Federal Constitution. The omission of the land claim of a revisional nature now posed, without any provision for deadlines for the conclusion of the administrative procedure by FUNAI, demands the energetic and swift presence of the Judiciary in order to ensure the sovereignty of the Constitution with the full effectiveness of its content.*"

*In short, the MPF states that there is a state delay and that there is no justification by FUNAI in the face of the violation of the principle of reasonable duration of the process.*

Based on these grounds, the plaintiff requests, including in the context of the protection of evidence, that it be determined that FUNAI and the Federal Government conclude the process of reviewing the Indigenous Land of

Barra Velha, within a maximum period of 24 months, under penalty of a daily fine of R$ 10,000.00 (ten thousand reais). It also requests, by way of injunctive relief, that the Federal Government be ordered to respect all deadlines for the conclusion of the new revisional proceeding, when it is concerned with the fact, under penalty of a daily fine of R$ 10,000.00. In addition, it makes a request that the Federal Government be ordered to pay any compensation resulting from the expropriation procedure and expenses arising from the indigenous land review procedure.

Summoned, FUNAI expressed its opinion on the request for anticipation of guardianship in id. 898312569. It denies the allegation of administrative delay. It states that the procedures for reviewing the ratifications of Indigenous Territories are suspended by a decision of the Supreme Court issued in RE No. 1,017,365.

In manifestation of id. 937627691, the Federal Government claimed its passive illegitimacy and requested the suspension of the proceeding, due to RE No. 1,017,365 in the STF.

FUNAI's objection in id. 957918669, in which it alleges the absence of a resisted claim, on the grounds that it would be prevented from finalizing the aforementioned act due to the decision in RE No. 1,017,365, within the scope of the Supreme Court.

The Federal Prosecutor's Office expressed its opinion. 1305036778.

Id. decision 1567635384 determined the suspension of the proceedings, in view of the finding of subsumption of this claim to the hypothesis dealt with in RE 1.017.365/SC (topic 1031).

Then, on 09/21/2023, the judgment of the Extraordinary Appeal (RE) 1017365, Theme 1,031 of general repercussion, which is why the case was re-processed.

Decision of id. 1877997677 granted "*the request for protection of evidence and, thus, determined that the defendants conclude the process of reviewing the limits of the TI Barra Velha, within 02 (two) years, from the filing of the present lawsuit on December 3, 2021, under penalty of a fine for non-compliance in the amount of R$ 10,000,000.00 (ten) million reais in case of non-compliance, to be reverted in favor of the PATAXÓ COMMUNITY OF BARRA VELHA.*"

The decision also ordered the parties to be subpoenaed to specify evidence.

In manifestations of id. 1930467652 and id. 1930467663, the Association of Small Rural Producers of the Terra Nova Settlement and the Rural Union of Porto Seguro informed, respectively, the filing of interlocutory appeals against the decision that anticipated the effects of the injunction.

FUNAI and the FEDERAL GOVERNMENT filed motions for clarification, in id. 1903029692 and id. 1916834175, respectively. The motions were considered by means of the decision of id. 1957616647, who rejected them.

Manifestations of Remembrance Empreendimentos Agropecuários LTDA in id. 1960685679, from the Association of Small Rural Producers of the Terra Nova Settlement in id. 1960892659 and the Rural Union of Porto Segur in id. 1960907173.

They fight for the entry into the deed, as joint venture assistants. They also request the dismissal of the initial requests and reconsideration of the protection of evidence, in a short summary, on the grounds that the conclusion of the administrative process for the expansion of the Barra Velha TI is an obstacle to legal certainty, since the original demarcation is a perfect legal act. They also sustain the need to annul the respective anthropological report, due to the alleged partiality of the anthropologist responsible for its preparation.

Communications of the Federal Regional Court of the 1st Region – TRF1 attached to id. 1971045667, id. 1971045668 and id. 1971045669, reporting on the appellate decision that suspended "*until further manifestation of this rapporteur, or of the Sixth Panel, the effects of the decision challenged by interlocutory appeals 1046765-41.2023.4.01.0000, 1046461-42.2023.4.01.0000 and 1046450-13.2023.4.01.0000,*
*including in relation to the Federal Government and FUNAI."*

**II –REASONS**

**Third-party intervention**

Lembrança Empreendimentos Agropecuários LTDA, the Association of Small Rural Producers of the Terra Nova Settlement and the Rural Union of Porto Seguro request to join the deed as joint venture assistants (id. 1960685679, id. 1960892659 and id. 1960907173).

It states that they have a legal interest in the lawsuit, since any expansion of the boundaries of the Barra Velha Indigenous Land would impinge on their property rights and local economic activities. They also argue that the conclusion of the administrative process for the expansion of the Barra Velha Indigenous Land is an obstacle to legal certainty, since the original demarcation is a perfect legal act and, in addition, they defend the need to annul the respective anthropological report, due to the alleged partiality of the anthropologist responsible for its preparation.

Well then. As can be extracted from the initial narrative and already sufficiently reported above, the purpose of the present public civil action is to continue and conclude the administrative process of revision of the Barra Velha Indigenous Land, due to the disproportionate time of its stoppage, which would, in theory, imply a violation of the legal principle of the reasonable duration of the process. The action does not lend itself to discussing the substantive issues dealt with in the context of the aforementioned administrative procedure, although its relevance has been weighed in the reasons for the request.

Therefore, the grounds brought by the private parties, who seek to dispute the indigenous traditionality of the lands to be eventually demarcated or who claim the right to exploit the areas, go beyond the limits of the demand and do not justify the intervention of third parties in the litigation.

In addition, as revealed by the applicants themselves, there is already an ongoing lawsuit in which the validity of the anthropological report that is part of the corresponding administrative demarcation process is being discussed, and it is unnecessary to initiate an equivalent discussion in this public civil action.

For these reasons, I reject the request for intervention made by Lembrança Empreendimentos Agropecuários LTDA, the Association of Small Rural Producers of the Terra Nova Settlement and the Rural Union of Porto Seguro.

In this case, there is no need to speak of a violation of the principle of isonomy, since the intervention of the Indigenous Community in the present case stems from a rule provided for in Article 6, paragraph "a", of ILO Convention No. 169, which justifies the distinction.

**The preliminary claim of passive illegitimacy of the Union**

As already decided in the decision that assessed the request for relief of evidence, the Union is a legitimate party to appear in the passive pole of the claim, and the corresponding preliminary must be dismissed.

In fact, in the lawsuits in which the possession of an area subject to a process of demarcation of indigenous lands is discussed, the legitimacy of the Union to appear as a defendant in the present case is manifest. This is because the Constitution of the Republic of 1988 expressly provides for this special category of land among the assets of the Union, destined for the exclusive possession and use of the Indians, according to article 231, paragraph 2:

> *Art. 20. The following are assets of the Union:*
>
> *(...) XI - the lands traditionally occupied by the Indians. Art.*
>
> *231*
>
> *(...)*
>
> *§2 The lands traditionally occupied by the Indians are destined for their permanent possession, and they are entitled to the exclusive usufruct of the riches of the soil, rivers and lakes existing therein.*

As if this were not enough, Article 231 of the Constitution of the Republic establishes that the Indians are recognized for their social organization, customs, languages, beliefs and traditions, and for their original rights over the lands they traditionally occupy, and it is up to the Union to demarcate them, protect them and ensure respect for all their assets.

In turn, article 67 of the Transitional Constitutional Provisions Act establishes that it is the duty of the Union to complete the demarcation of indigenous lands within five years from the promulgation of the Constitution:

> *Art. 231. The Indians are recognized for their social organization, customs, languages, beliefs and traditions, and their original rights over the lands they traditionally occupy, and it is the responsibility of the Union to demarcate them, protect them and ensure respect for all their assets.*
>
> *ADCT*
>
> *Art. 67. The Federal Government will complete the demarcation of indigenous lands within five years of the promulgation of the Constitution.*

I therefore **reject the preliminary allegation of passive illegitimacy raised by the European Union**.

**<u>On the merits</u>**

From what can be extracted from the records, there has been no change in the factual panorama since the decision that anticipated the effects of the injunction was issued. Therefore, there is no obstacle in using its grounds as reasons on the merits of this judgment.

According to article 231 of the Federal Constitution, "*the Indians are recognized for their social organization, customs, languages, beliefs and traditions, and for their original rights over the lands they traditionally occupy, and it is up to the Union to demarcate them, protect them and ensure respect for all their assets*."

In turn, article 67 of the Transitional Constitutional Provisions Act establishes that "*the Union shall conclude the demarcation of indigenous lands within five years from the promulgation of the Constitution*." In the same sense, article 65 of Law No. 6,001/1973 (Indian Statute) provides.

Ruling on the matter, Decree No. 1,775, of January 8, 1996, in view of the aforementioned constitutional determinations, and also article 2, IX, of the Indian Statute, stipulates that:

> *"Article 1 – The indigenous lands referred to in Article 17, I, of Law No. 6001, of December 19, 1973, and Article 231 of the Constitution, shall be administratively demarcated on the initiative and under the guidance of the Federal Indigenous Assistance Agency, in accordance with the provisions of this Decree.*
>
> *Art. 2 The demarcation of the lands traditionally occupied by the Indians shall be based on work carried out by an anthropologist of recognized qualification, who shall prepare, within the period established in the ordinance of appointment issued by the head of the federal agency for assistance to the Indians, an anthropological identification study.*
>
> *§ 1 The federal agency for assistance to the Indian shall designate a specialized technical group, preferably composed of civil servants of the staff itself, coordinated by an anthropologist, with the purpose of carrying out complementary studies of an ethno-historical, sociological, legal, cartographic, environmental nature and the land survey necessary for the delimitation.*
>
> *§ 2 The land survey referred to in the previous paragraph shall be carried out, when necessary, in conjunction with the specific federal or state agency, whose technicians shall be appointed within twenty days from the date of receipt of the request from the federal agency for assistance to the Indian.*
>
> *§ 3 The indigenous group involved, represented according to its own forms, will participate in the procedure in all its phases.*
>
> *§ 4 The technical group shall request, when appropriate, the collaboration of members of the scientific community or other public bodies to support the studies referred to in this article.*
>
> *§ 5 Within thirty days from the date of publication of the act constituting the technical group, the public bodies shall, within the scope of their competences, and civil entities are allowed to provide information on the area object of identification.*
>
> *§ 6 Once the identification and delimitation work has been concluded, the technical group will submit a detailed report to the federal agency for assistance to the Indian, characterizing the indigenous land to be demarcated.*
>
> *§ 7 Once the report has been approved by the head of the federal agency for assistance to the Indian, the latter shall publish, within fifteen days from the date it receives it, a summary of the report in the Official Gazette of the Union and in the Official Gazette of the federated unit where the area under demarcation is located, accompanied by a descriptive memorial and map of the area. and the publication must be posted at the headquarters of the City Hall of the situation of the property.*
>
> *§ 8 From the beginning of the demarcation procedure until ninety days after the publication referred to in the previous paragraph, the states and municipalities in which the area under demarcation is located and other interested parties may manifest themselves by submitting to the federal assistance agency*

*to the Indian instructed reasons with all the pertinent evidence, such as land titles, expert reports, opinions, witness statements, photographs and maps, for the purpose of claiming compensation or to demonstrate defects, total or partial, of the report referred to in the previous paragraph.*

*§ 9 Within sixty days following the end of the period referred to in the preceding paragraph, the federal agency for assistance to the Indian shall forward the respective procedure to the Minister of State for Justice, together with opinions regarding the reasons and evidence presented.*

*§ 10. Within thirty days of receipt of the procedure, the Minister of State for Justice shall decide:*

*I - declaring, by means of an ordinance, the boundaries of the indigenous land and determining its demarcation;*

*II - prescribing all the steps it deems necessary, which must be complied with within ninety days;*

*III - disapproving the identification and returning the case file to the federal agency for assistance to the Indian, by means of a reasoned decision, limited to non-compliance with the provisions of § 1 of article 231 of the Constitution and other pertinent provisions.*

*Art. 3 The work of identification and delimitation of indigenous lands carried out previously may be considered by the federal agency for assistance to the indigenous for the purpose of demarcation, provided that they are compatible with the principles established in this Decree.*

*Art. 4 - Once the presence of non-indigenous occupants in the area under demarcation is verified, the federal land agency will give priority to the respective resettlement, according to the survey carried out by the technical group, in compliance with the pertinent legislation.*

*Article 5 – The demarcation of indigenous lands, in accordance with the administrative procedure of this Decree, shall be ratified by means of a decree.*

*Article 6 – Within thirty days after the publication of the decree of ratification, the federal agency for assistance to the Indians shall promote the respective registration in the real estate registry office of the corresponding district and in the Secretariat of the Federal Heritage of the Ministry of Finance.*

As can be seen, in light of the provisions of Decree No. 1,775/1996 in reference, the procedure for the demarcation of indigenous lands is composed of five (5) phases, broken down as follows:

*1) constitution of a technical group (art. 2, § 1);*

*2) pronouncement of the Ministry of Justice (art. 2, § 10, item I);*

*3) physical demarcation of the Indigenous Land by FUNAI (art. 2, § 10, item I);*

*4) homologation (art. 5); and*

*6) registration in a real estate registry office (art. 6).*

In the present case, as shown by the evidence attached to the initial complaint, as well as the

technical information gathered by FUNAI in id. 898312570, although the Barra Velha Indigenous Land has already been demarcated, there was a need to revise its boundaries, either because the initial demarcation took place by agreement between FUNAI and IBDF, without the existence of an anthropological study, or because the ongoing revisional process did not include all indigenous claims. Therefore, in 1999, FUNAI constituted the first Technical Group (WG) to carry out the studies necessary to adapt the boundaries of the Barra Velha Indigenous Land to the current legislation, through Ordinance No. 685, of August 18, 1999. The surface of 52,748 hectares of the Barra Velha do Monte Pascoal Indigenous Land, a perimeter of approximately 137 km of traditional occupation by the Pataxó people, was approved by FUNAI in February 2008, through Order No. 04/2008/FunaiPres, which authorized the publication of the summary of the Detailed Report on Identification and Delimitation (RCID) in the Official Gazette of the Union (DOU) of February 29, 2008, Section 1, pages 110 to 113, and in the Official Gazette of the State of Bahia, of June 18, 2008, pages 2-5, in accordance with the provisions of paragraph 7 of article 2 of the aforementioned Presidential Decree.

There is no evidence in the case file to indicate that since then there have been significant steps or even administrative acts aimed at concluding the aforementioned demarcation process.

FUNAI, in order to justify the administrative delay, states that the elaboration of responses to the contestations implies a thorough work of analysis of the historical, anthropological, sociological and ethnological aspects, within the scope of the Coordination of Delimitation and Analysis of the CGID. It states that, subsequently, the technical opinions will be forwarded to the PFE-Funai, so that the legal aspects can be analyzed, after which they will be sent to the office of His Excellency the Minister of State for Justice, who is responsible for deciding on the issuance of the Declaratory Ordinance of the Indigenous Land, as determined by Presidential Decree No. 1.775/1996.

Now, Decree No. 1,775, of January 8, 1996, establishes that from the beginning of the *demarcation procedure until ninety days after the publication of the* Detailed Report on Identification and Delimitation (RCID), *the states and municipalities in which the area under demarcation is located and other interested parties may manifest themselves, presenting to the federal agency for assistance to the Indian reasons instructed with all the pertinent evidence. for the purpose of claiming damages or to demonstrate defects, in whole or in part, in said report. It also provides that within sixty days following the end of that period, FUNAI will forward the respective procedure to the Minister of State for Justice, together with opinions regarding the reasons and evidence presented, so that the latter, within* thirty days after receiving the procedure, may declare, by means of an ordinance, the boundaries of the indigenous land and determine its demarcation.

On this point, FUNAI argues that such deadlines are not peremptory, however, it is absolutely unreasonable for more than 10 years to elapse since the publication of the Detailed Report on Identification and Delimitation (RCID) of the Barra Velha Indigenous Land without the corresponding demarcation process having followed the flow provided for by law, and there is no reasonable justification for the administrative delay of FUNAI and the Federal Government, in a manifest affront to the legal and constitutional provisions referred to above, characterizing, in kind, the flagrant, unjustified and unacceptable inertia of the aforementioned body, in manifest violation of the principle of reasonable duration of the process (CF, art. 5, item LXXVIII).

In a similar case, the Federal Regional Court of the 1st Region ruled as follows:

> *INFRINGING EMBARGOES. APPEAL IN PUBLIC CIVIL ACTION. DELIMITATION OF INDIGENOUS AREA. INFRINGING MOTIONS GRANTED. DUTY TO DEMARCATE. FEDERAL CONSTITUTION, ART. 231. ADCT, ART. 67. STATUTE OF THE INDIAN, LAW 6001/73. DECREE 1775/96. EMBARGOES GRANTED.*

> *1. Motions for infraction filed by the Federal Public Prosecutor's Office against a judgment that, in an appeal in a public civil action seeking the identification and delimitation of the Kapotnhinore Indigenous Land, of the Kayapó ethnic group, granted the appeals and the referral to amend the sentence and dismiss the request made in the initial one.*
>
> *2. On September 27, 2004, FUNAI issued Ordinance No. 1,279, with a maximum period of 240 days to carry out the studies necessary for the identification and delimitation of the aforementioned indigenous land, and there is no notice in the records of compliance with its terms.*
>
> *3. The demarcation depends on administrative acts with the participation of representatives of various bodies of the Federal Administration, and it is up to the inter-ministerial working group to assess FUNAI's proposal which, if approved, will be forwarded to the Minister of State for declaration of indigenous occupation, through an inter-ministerial ordinance that will then be submitted to presidential approval.*
>
> *4. Despite the fact that Article 67 of the Transitional Constitutional Provisions Act establishes that "the Union shall conclude the demarcation of indigenous lands within five years from the promulgation of the Constitution", the duty to demarcate is readily enforceable, not least because it results from a succession of acts carried out by various federal agencies, impossible to be executed on the eve of the five-year period. The defendant has been persistent in defaulting on this obligation, as Law 6.001/73, article 65, granted the same deadline, long overdue, for the Executive to demarcate the area. Understanding signed by this Court in REO 96.01.08732-0/DF (Rel. Judge Mário César Ribeiro, Rel. Convened Judge Selene Almeida, Fourth Panel, DJ p.558 of 10/15/1999).*
>
> *5. "Article 67 of the ADCT does not stipulate a declining period for the performance of the measure determined therein. This is a deadline intended to promote the fulfillment by the Union of the constitutionally imposed duty to delimit and protect the areas traditionally occupied by the Indians, which are "inalienable and unavailable, and the rights over them are imprescriptible" (art. 231). Thus, the expiry of the time limit does not obviously have the effect of relieving the Government of this burden. The deadline was set for the benefit of the demarcation and the interests of the indigenous people, and not against them." (STJ, MS 10269/DF, Rel. Minister José Delgado, Rel. p/ Judgment Minister Teori Albino Zavascki, First Section, judged on 09/14/2005, DJ 10/17/2005, p. 162)*
>
> *6. Infringing motions from the Federal Public Prosecutor's Office granted.*
>
> *(EIAC 0001453-26.2005.4.01.3901 / PA, Rel. FEDERAL JUDGE SELENE MARIA DE ALMEIDA, THIRD SECTION, e-DJF1 p.330 of 05/22/2012).*

In the same sense, jurisprudential guidance of the Superior Court of Justice, *in verbis*:

> *CIVIL PROCEDURE. ADMINISTRATIVE. SPECIAL FEATURES. DEMARCATION OF INDIGENOUS LANDS. PUBLIC CIVIL ACTION. VIOLATION OF ARTICLE 535 OF THE CODE OF CIVIL PROCEDURE. NON-OCCURRENCE. SETTING A REASONABLE TIME LIMIT FOR THE CLOSURE OF THE PROCEDURE*

*DEMARCATION. POSSIBILITY. (...).*

*3. The demarcation of indigenous lands is preceded by an administrative process, through which various ethno-historical, anthropological, sociological, legal, cartographic and environmental studies are carried out, necessary to prove that the area to be demarcated constitutes lands traditionally occupied by the Indians. The procedure for the demarcation of indigenous lands consists of several phases, currently defined in article 2 of Decree 1,775/96.*

***4.** It is a highly complex procedure, which requires a considerable amount of time and various resources to achieve its objectives. **However, the authorities involved in the demarcation process, while not strictly bound by the deadlines defined in the aforementioned rule, cannot allow the excess of time for its outcome to end up restricting the right that is sought to be ensured.***

*5. In addition, item LXXVIII of article 5 of the Federal Constitution, included by EC 45/2004, guarantees to all, in the judicial and administrative spheres, the reasonable duration of the process and the means to ensure the speed of its processing.*

*6. **Hypothesis in which the excessive delay in the conclusion of the demarcation procedure of the Guarani Indigenous Land is well evidenced, considering that more than ten years have passed since the beginning of the demarcation process**, however, according to the documentation in the records, there is no prospect for its closure.*

***7. In such circumstances, the intervention of the Judiciary has been admitted, even if it is a discretionary administrative act related to the implementation of public policies.***

*8. "Administrative discretion is a duty placed on the administrator so that, in the multiplicity of factual situations, the one that best meets the legal purpose is found, among the various possible solutions. The degree of freedom initially conferred in the abstract by the rule may be narrowed down in the face of the concrete case, or even disappear, so that the administrative act, which would initially require a discretionary judgment, may revert to an act whose action by the administrator is bound. In this case, the interference of the Judiciary will not result in an offense to the principle of the separation of Powers, but a restoration of the legal order." (REsp 879.188/RS, 2nd Panel, Rel. Min. Humberto Martins, DJe of 6.2.2009)*

*9. It should also be noted that the period granted by the magistrate of the first instance of jurisdiction for the fulfillment of the obligation to do so is very reasonable, consisting of identifying and demarcating all the indigenous lands of the Guarani Indians located in the municipalities belonging to the jurisdiction of the Judicial Subsection of Joinville/SC, under the terms of Decree 1,775/96, or, in the event that it is concluded that the lands currently occupied by the communities of Guarani Indians do not exist In the said region, in the creation of indigenous reserves, in the form of arts. 26 and 27 of the Law*

> *6.001/73, especially if it is considered that such period (twenty-four months) will only begin to be counted from the final and unappealable decision rendered in the present case.*
>
> *(...).*
>
> *11. Special appeals that are partly heard and, in those parts, dismissed.*
>
> *(REsp 1114012/SC, Justice DENISE ARRUDA, FIRST PANEL, judged on 10/11/2009, DJe 01/12/2009).*

In fact, the inertia of the Public Power remains manifest, with regard to the aforementioned procedure for the review of indigenous lands, which has been dragging **on for more than 20 years (since 1999),** without any forecast or prospect of conclusion, to authorize the action of the Judiciary, to remedy this omission, and there is no need to speak of a violation of the separation of powers or in the reservation of the possible, In line with the jurisprudential orientation of our courts on the matter, as can be seen, among others, from the following judgment:

> *CONSTITUTIONAL, ADMINISTRATIVE AND CIVIL PROCEDURE. PUBLIC CIVIL ACTION. EXPLORATION AND COMMERCIALIZATION OF MINERALS (DIAMONDS) IN INDIGENOUS RESERVE (CINTA-LARGA). IMPLEMENTATION OF PUBLIC POLICIES. TRANSFER OF FINANCIAL RESOURCES NECESSARY FOR THE PERFORMANCE OF THE ACTIVITIES OF OPERATION ROOSEVELT, CREATED BY PRESIDENTIAL DECREE OF 09/17/2004. JUDICIAL REVIEW. POSSIBILITY OF ORIENTATION OF THE SUPREME COURT'S JURISPRUDENCE IN KIND. NULLITY OF THE JUDGMENT. NON-OCCURRENCE.*
>
> *(...).*
>
> *III -* ***The jurisprudential orientation already consolidated within the scope of our courts is in the sense that the action of the Republican Judiciary appears legitimate, aiming to make up for any omission of the Public Power, in the implementation of public policies, especially when it comes to the exercise of constitutional guarantee, as in this case, in which it seeks to give effectiveness to the implementation of measures established by the Public Power****, under a Presidential Decree, aimed at curbing the illegal extraction and commercialization of mineral resources (diamonds) in the Cinta Larga indigenous reserve, in the State of Rondônia. Jurisprudential precedents of the STF in the orientation of the matter.*
>
> *IV - Appeal and official remittance, considered to have been filed, dismissed.*
>
> *(AC 0002508-94.2005.4.01.4100/RO, Rel. DESEMBARGADOR FEDERAL SOUZA PRUDENTE, FIFTH PANEL, e-DJF1 p.294 of 01/10/2014).*

> *CONSTITUTIONAL AND ADMINISTRATIVE. PUBLIC CIVIL ACTION. INDIGENOUS COMMUNITIES. IDENTIFICATION AND DEMARCATION OF TRADITIONALLY OCCUPIED LANDS. FOR THE INDIGENOUS PEOPLES OF THE MIDDLE AND LOWER RIO NEGRO/AM. FAILURE TO COMPLY WITH THE DEADLINES SET FORTH IN ARTICLE 67 OF THE ADCT, ARTICLE 65 OF LAW NO. 6,001/1973 (STATUTE OF THE INDIAN) AND DECREE 1,775/96. AFFRONT TO THE*

> *PRINCIPLES OF LEGALITY, MORALITY, EFFICIENCY AND REASONABLE DURATION OF PROCEEDINGS. NULLITY OF THE JUDGMENT. MOTIVATION BY REFERRAL. VALIDITY OF THE JUDGMENT.*
> *PRELIMINARY RULING REJECTED. I - There is no need to speak of nullity of the sentence due to having reproduced the arguments presented at the time of the granting of the preliminary injunction, since "it is common ground within the scope of the STF and the STJ that it is possible to give reasons per relationem or by reference or by reference, and nullity or offense to article 93 is not considered, item IX, of the Federal Constitution, provided that the existing grounds are reproduced in the final (main) judgment" (REsp 1426406/MT, Rel. Minister MARCO BUZZI, Rel. p/ Judgment Minister LUIS FELIPE SALOMÃO, FOURTH PANEL, judged on 04/04/2017, DJe 11/05/2017), which occurred, in kind. II - Article 231 of the 1988 Federal Constitution provides that "the Indians are recognized for their social organization, customs, languages, beliefs and traditions, and for their original rights over the lands they traditionally occupy, and it is up to the Federal Government to demarcate them, protect them and ensure respect for all their assets." III - In order to ensure the rights provided for in the 1988 Federal Constitution, article 67 of the Transitional Constitutional Provisions Act and the Indian Statute (Law No. 6,001/73, article 65) stipulate a period of five (5) years for the demarcation of indigenous lands to be concluded, with Decree No. 1,775 of January 8, 1996 the deadlines for the entire administrative demarcation procedure have been established. IV - In the present case, characterized by the manifest inertia of the National Indian Foundation - FUNAI, revealed by the failure to present a conclusive report, after more than ten (10) years of the creation of the Technical Groups, for the purpose of identifying and demarcating the lands occupied by the Indigenous Peoples of the Middle and Lower Rio Negro, the violation of the legal and constitutional provisions in question appears to be manifest. as well as the principles of morality, efficiency and reasonable duration of the process (CF, articles 5, LXXVIII and 37, caput). V - Appeals by the Federal Government and FUNAI dismissed. Sentence confirmed.*
> *(TRF 1st Region, AC 0002662-81.2014.4.01.3200, FEDERAL JUDGE SOUZA PRUDENTE, TRF1 - FIFTH PANEL, e-DJF1 05/06/2019 PAG.)*

In fact, the delay in the demarcation of indigenous lands violates several fundamental rights of the indigenous community, as the Inter-American Court of Human Rights rightly ruled in the case of the ***Yakye Axa Indigenous Community Vs. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125 124***, *in verbis*:

> *In considering the content and scope of Article 21 of the Convention in the present case, the Court will take into account, in the light of the general rules of interpretation set out in Article 29 of the Convention and as it has done previously, the special significance of communal ownership of ancestral lands for indigenous peoples, including for the preservation of their cultural identity and transmission of it to future generations. as well as the steps taken by the State to give full effect to this right ... 127. In the present case, in analysing the scope of Article 21 of the Convention, the Court considers it useful and appropriate to use international treaties other than the*

*American Convention, such as ILO Convention No. 169, to interpret its provisions in accordance with the evolution of the inter-American system, taking into account the developments in this area in international human rights law. 130. ILO Convention No. 169 contains a number of provisions relating to the right to communal property of indigenous communities examined in this case, provisions that may illustrate the content and scope of Article 21 of the American Convention. The State ratified and incorporated Convention No. 169 into its domestic law by means of Law No. 234/93.*
*131. Making use of the criteria indicated, this Court has stressed that the close relationship that indigenous peoples maintain with the land must be recognized and understood as the fundamental basis of their culture, spiritual life, integrity, economic survival, and its preservation and transmission to future generations. (In a similar vein, see, among others: Case of the Mayagna (Sumo) Awas Tingni Vs. Nicaragua Community. Merits, Reparations and Costs. Judgment of August 31, 2001, para. 149; Case of the Sawhoyamaxa Indigenous Community Vs. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006, para. 118; Case of the Yakye Axa Indigenous Community Vs. Paraguay. Merits, Reparations and Costs. Judgment June 17, 2005, para. 131.) 135.* ***The culture of the members of the indigenous communities corresponds to a particular way of being, seeing and acting in the world, constituted from their close relationship with their traditional territories and the resources that are found there, not only because these are their main means of subsistence, but also because they constitute an integral element of their worldview. religiosity and, thus, their cultural identity. (In a similar vein, see, among others: Case of the Sawhoyamaxa Indigenous Community Vs. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006, para. 118.) 136.*** *The foregoing is related to the provisions of Article 13 of ILO Convention No. 169, in the sense that States shall respect "the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or with both, as the case may be, which they occupy or use in some way and, as the case may be, has for the special importance to the cultures and spiritual values of the peoples concerned. particularly, the collective aspects of this relationship." (In a similar vein, see, among others: Case of the Sawhoyamaxa Indigenous Community Vs. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006, para. 119.) 137. Consequently, the close ties of indigenous peoples to their traditional territories and the natural resources linked to their culture that are found there, as well as the intangible elements that are detached from them, must be protected by Article 21 of the American Convention. In this regard, on other occasions, this Court has held that the term "property" used in Article 21 contemplates "those material things that can be appropriated, as well as any right that may form part of a person's patrimony; This concept includes all movable and immovable property, tangible and intangible elements and any other intangible object capable of having a value". (In a similar vein, see, among others: Case of the Sawhoyamaxa Indigenous Community Vs. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006, para. (Luke 121).*

In the same vein, the Inter-American Court of Human Rights, in the case of the Yakye Axa Indigenous Community Vs. Paraguay. Interpretation of the Judgment on the Merits, Reparations and Costs. Judgment of February 6, 2006. Series C No. 142 32:

> *Paragraphs 215 to 217 of the Judgment on the Merits issued by the Court in the present case provide that the State is obliged to identify the traditional territory of the Yakye Axa Community, delimit it, demarcate it, title it, and deliver it free of charge to the Community within a maximum period of three years from the notification of the Judgment on the Merits. 34. It can be inferred, then, that the State has a series of obligations that end with the definitive handover of the traditional land to the Yakye Axa Community.* ***These State obligations, by the very nature of the internal procedure, are sequential: first the territory of the Community must be identified, which in turn means establishing its boundaries and demarcations, as well as its extension. Once the identification of the territory and its boundaries is completed, if it is in private hands, it is up to the State to initiate the procedures for its purchase or to evaluate the advisability of expropriating it, pursuant to paragraphs 217 and 218 of the Judgment on the Merits. If there are objective and well-founded reasons that make it impossible for the State to claim the territory identified as the traditional territory of the Community, it must hand over alternative lands, which will be chosen by consensus. Finally, whether the land is expropriated or consensually chosen, the State must title it and deliver it physically and formally to the Community.*** *All these steps must take place within a maximum period of three years. 35. On the other hand, the purpose of the one-year period for the creation of the fund for the purchase or expropriation of land, in the event that it is in private hands, is to ensure the State's monetary availability for the acquisition of that territory, and thus to continue the other obligations mentioned in the preceding paragraph. 36. It would be desirable for the State to have identified the traditional territory of the Community prior to the creation of the fund, so that the amount necessary for its purchase or eventual expropriation is allocated in the budget. However, if this is not possible, the State, in accordance with the Judgment on the Merits, must in any case create the fund that will provide the resource and establish an amount that will ensure that the purchase or expropriation process is not affected by lack of resources.*

In other words, in other words, the administrative delay in the demarcation of indigenous lands only intensifies the conflict over existing lands in the extreme southern region of Bahia and in the territory where the entire history of Brazil originated, Porto Seguro, causing communities and landowners to be in a legal situation of total insecurity without anything being able to be done. That is to say, the State itself stimulates conflicts indirectly, leaving the parties at the mercy of endless legal uncertainty.

In this line of understanding, the Federal Supreme Court, on repeated occasions, endorsed the actions of the Judiciary, as a way to make up for the omission of the Public Administration, as can be seen, among others, in the following judgment:

> *EXTRAORDINARY APPEAL - CHILD UP TO SIX YEARS OF AGE - ATTENDANCE AT DAYCARE CENTER AND PRESCHOOL - EARLY CHILDHOOD EDUCATION - RIGHT GUARANTEED BY THE CONSTITUTIONAL TEXT ITSELF (CF, ART. 208, IV) - GLOBAL UNDERSTANDING OF THE CONSTITUTIONAL RIGHT TO EDUCATION - LEGAL DUTY WHOSE*

*ENFORCEMENT IS IMPOSED ON THE GOVERNMENT, NOTABLY THE MUNICIPALITY (CF, ART. 211, § 2) - APPEAL DISMISSED.*

*- Early childhood education represents an unavailable constitutional prerogative, which, once granted to children, ensures, for the purpose of their integral development, and as the first stage of the basic education process, daycare and access to preschool (CF, art. 208, IV).*

*- This juridical prerogative, as a consequence, imposes on the State, as a result of the high social significance of early childhood education, the constitutional obligation to create objective conditions that make it possible, in a concrete way, in favor of "children from zero to six years of age" (CF, art. 208, IV), effective access and care in daycare centers and preschool units. under penalty of being an unacceptable governmental omission, capable of frustrating, unjustly, by inertia, the full compliance, by the Government, of the state provision imposed on it by the very text of the Federal Constitution.*

*- Early childhood education, as it qualifies as a fundamental right of every child, is not exposed, in its implementation process, to merely discretionary evaluations of the Public Administration, nor is it subordinated to reasons of pure governmental pragmatism.*

*- The Municipalities - which will act, primarily, in elementary education and early childhood education (FC, art. 211, § 2) - will not be able to resign from the constitutional, legally binding mandate, which was granted to them by art. 208, IV, of the Fundamental Law of the Republic, and which represents a factor limiting the political-administrative discretion of the municipal entities, whose options, when it comes to the care of children in daycare centers (FC, art. 208, IV), cannot be exercised in such a way as to compromise, with the support of a court of simple convenience or mere opportunity, the effectiveness of this basic right of a social nature.*

*- Although the prerogative to formulate and execute public policies resides primarily in the Legislative and Executive Branches, it is nevertheless possible for the Judiciary to determine, even on exceptional grounds, especially in the cases of public policies defined by the Constitution itself, that these are implemented by defaulting state bodies, whose omission - for importing non-compliance with the political-legal burdens that are imposed on them on a mandatory basis - It is apt to compromise the effectiveness and integrity of social and cultural rights impregnated with constitutional stature. The question pertains to the "reserve of the possible". Doctrine.*
*(RE 410715 AgR, Rapporteur: Justice CELSO DE MELLO, Second Panel, judged on 11/22/2005, DJ 02/03/2006).*

Thus, the omission of the public power regarding the adoption of protective measures for these indigenous communities is not admissible, considering the essentiality of the intended good, imposing, in kind, the intervention of the Judiciary, to ensure the right to demarcation of the lands they traditionally occupy, which are constitutionally protected (CF, arts. 5, XXXV and 231, ***caput*** and respective paragraphs 1 and 2).

Considering that the MPF intends that the demarcation issue be effectively resolved, that is, that the procedure provided for in Decree No. 1,775/96 be carried out and that the indigenous territory be demarcated/revised, as a fundamental guarantee guaranteed in our Magna Carta (CF, art. 231, §§ 1 and 2), a deadline must be set for the conclusion of the demarcation process, with a view to preventing the constitutional right of indigenous peoples from being further procrastinated by the State.

Thus, considering the lapse of more than twenty (20) years since the request for review of the demarcation of the aforementioned indigenous lands, as well as taking into account that the procedure only awaits declaratory acts from the Government, it is reasonable to impose a period of one (1) year for the conclusion of the procedure for the demarcation and titling of the lands occupied by the indigenous group described in the records.

In fact, the issue of Theme 1,031 decided by the STF does not legally modify what is contained in this decision, since in the present case the object of the request is the delay in the conclusion of the administrative demarcation procedure that has already exceeded more than two decades. The manner in which the procedure will be adopted is up to the defendants, who must follow the relevant legal procedures, observing what was decided by the STF.

Moreover, neither does Federal Law No. 14.701/2023, imposes an obstacle to the reasonable duration of the administrative process. What is being required is the completion of the demarcation, which has been going on for more than two decades, and not the observance of the relevant legal and legal aspects. In addition, when the lawsuit was filed, Federal Law No. 14.701/2023, in which it is up to the defendant to make the necessary adaptations in what is pertinent to the object of the demarcation.

I also note that, according to precedents of the Inter-American Court of Human Rights, the excessive delay in concluding the demarcation of indigenous lands violates the fundamental rights of traditional communities and is the great core of the conflicts in southern Bahia.

Accordingly, **I MODIFY** the terms of the decision of ID.1877997677, in view of the decision contained in the interlocutory appeal of ID.1971045669, so that there is a **period of 1 year**, from the intimation of the judgment, for the defendants to conclude the process of reviewing the boundaries of the Barra Velha Indigenous Land under penalty of a fine for non-compliance in the amount of R$ 10,000,000.00 (ten) million reais in case of non-compliance, to be reverted in favor of the PATAXÓ COMMUNITY OF BARRA VELHA. Thus, I RENEW the urgent relief granted, MODIFYING it only as to the deadline for compliance, given that more than two decades have passed for the demarcation process without the procedure having been concluded.

**III –DEVICE**

In these terms, **based on article 487, I, of the CPC, I grant the request** to order the defendants to conclude the process of revision of the limits of the TI Barra Velha, within 01 (one) year, from this judgment, under penalty of a fine for non-compliance in the amount of R$ 10,000,000.00 (ten) million reais in case of non-compliance, to be reverted in favor of the PATAXÓ COMMUNITY OF BARRA VELHA. I confirm the urgent relief granted in these proceedings **by RENEWING and MODIFYING** it with regard to the deadline for completion of the obligation to do, pursuant to article 1.018, § 1 of the CPC

No order for attorneys' fees, pursuant to article 18 of Law No. 7,347/1985 (REsp 1346571/PR, Justice ELIANA CALMON, SECOND PANEL, judged on 09/05/2013, DJe 17/09/2013).

The parties, including the Pataxó Indigenous Community of Barra Velha, as well as the

DPU.

Inform the Rapporteur of interlocutory appeals 1046765-41.2023.4.01.0000, 1046461-42.2023.4.01.0000 and 1046450-13.2023.4.01.0000 about this delivery of this judgment, especially the modification of the urgent relief.

Eunápolis/BA, *date of electronic signature.*

**PABLO BALDIVIESO**

*Titular Federal Judge*

*Single Court of the Judiciary Subsection of Eunápolis/BA*

NPJ
Núcleo de Práticas Jurídicas

**HIS EXCELLENCY FEDERAL PROSECUTOR DR. FERNANDO ZELADA OF THE JUDICIAL SUBSECTION OF EUNÁPOLIS/BA**

**Subject: ILLICIT LEASING OF LOTS ON APPROVED INDIGENOUS LAND**

**ALDEIA MÃE BARRA VELHA PATAXÓ,** hereby presents **a REPRESENTATION** to this attorney's office, regarding the unauthorized illicit leasing of land from the indigenous reserve of Aldeia Mãe Barra Velha Pataxó.

## 1. THE FACTS

The indigenous people of the Mãe Barra Velha Pataxó Village, an area of the traditionally occupied indigenous territory, located in the municipality of Porto Seguro/BA, are suffering possessory dispossession on lands approved for the exclusive use of the Pataxó ethnic group. The lands are being illegally advertised and sold by land grabbers and embezzlers who offer significant amounts of money to the indigenous people.

There are reports of the involvement of some indigenous people in the illegal sale of land.

This situation is not a local or exclusive problem of the Pataxó tribe, since invasions of indigenous lands are taking place in various parts of the country, as can be seen in the news reports below.

In a BBC News documentary reporting that "MPF will investigate illegal sale of land in the Amazon via Facebook revealed by the BBC". The Federal Prosecutor's Office in Rondônia will institute a procedure to investigate the illegal sale of public lands in the Amazon through Facebook, a practice revealed after an investigation by BBC News Brazil.

The report was released on 02/26/2021, on the website (www.bbc.com) and demonstrates that even areas located within environmental reserves and indigenous territories are being advertised in the "Sale of residential properties" section of MarketPlace, a Facebook space open to all users. Access through the link: <https:// www.bbc.com/portuguese/brasil-56219304>. Accessed on 05/29/2021.

In the same vein, there are ads on Facebook's Marketplace about real estate sales in the area approved for the Pataxó indigenous people, as linked below:

https://www.facebook.com/marketplace/item/772466990294442/?ref=whatsapp_share_Message

https://www.facebook.com/marketplace/item/317986276334135/?ref=whatsapp_share_Message

https://www.facebook.com/marketplace/item/444129806740985/?ref=whatsapp_share_Message

In addition to the news exposed, below are 05 (five) links to videos provided by the indigenous leaders of the Mãe Barra Velha Pataxó Village, in which land grabbers and embezzlers film the lands to post in advertisements on social networks and to send to customers. They are:

https://drive.google.com/file/d/1nkHk7tnn8E8vzy5ikyfSslealkHxsLk_/view?usp=sharing

https://drive.google.com/file/d/1EXXpISdy-cLT0jMgw6MrRthM-rgbF6Wp/view?usp=sharing

https://drive.google.com/file/d/1ujXqMz3CCEy6Jlddb99exTtgiqo6RHtt/view?usp=sharing

https://drive.google.com/file/d/1PHNhU0ETKcUM4G0IUHHOsR332R7uS1a5/view?usp=sharing

https://drive.google.com/file/d/1-yaWfaYkdvpVuxPu15hfkABEXCae-kf6/view?usp=sharing

The growing number of illegal land sales has intensified, especially after the issuance of Normative Instruction No. 9, of April 16, 2020 (Regulates the request, analysis and issuance of the Declaration of Recognition of Boundaries in relation to private properties) and Joint Normative Instruction No. 01, of Feb. 22. 2021 (Provides for the procedures to be adopted during the environmental licensing process for enterprises or activities located or developed within Indigenous Lands whose entrepreneur is indigenous organizations. 08620.001464/2021-81).

It should also be noted that the indigenous leaders of the Mãe Barra Velha Pataxó Village, in addition to suffering from land violations, have also suffered constant death threats from land grabbers and embezzlers, as well as from people from the indigenous group themselves involved in the illegalities.

That said, it is essential for the competent public authorities to act efficiently to put an end to illegal acts, as well as to guarantee the dignity of indigenous people, as established in the 1988 Citizen Constitution.

In a report published on the website of Rede Brasil Atual (RBA), it can be seen that the "Guardian" of the Constitution – the Federal Supreme Court (STF) is already acting in favor of the protection of the dignity of indigenous peoples. In the report by Cida de Oliveira of the RBA, dated 13/11/2020, it was reported: "Victories of indigenous peoples in the Supreme Court strengthen the right to land demarcation".

According to the journalist, in two recent decisions of the Supreme Court, the original right of indigenous peoples to their territories prevailed, regardless of any title. In the aforementioned RBA report, the executive secretary of the Indigenous Missionary Council (Cimi), Antônio Eduardo Cerqueira de Oliveira said that "The decision in favor of the exclusive usufruct of the territory by the Tremembé de Engenho people, in Maranhão, and the maintenance of the ratification of the demarcation of the Piaçaguera Indigenous Land, in São Paulo, signal good receptivity of the cause in the STF". Available at: < https:// www.redebrasilatual.com.br/cidadania/2020/11/vitorias-dos-indigenas-no-stf-mostram-boa-receptividade-a-causa/ >. Access 03/2021.

Therefore, it is essential for public authorities to act to curb violations of the fundamental rights of indigenous peoples, with the protection of demarcated indigenous lands, as well as those that are in the process of being demarcated, in addition to the security necessary for a dignified life.

## 2. THE LAW

### 2.1 Constitutional Protection

First, it should be noted that the dignity of the human person is the foundation of the Federal Constitution of 1988, provided for in article 1, item III. In addition, item IV of article 4 provides that it is a fundamental objective of the Federative Republic of Brazil "to promote the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination". Therefore, all persons who are in the national territory enjoy these fundamental guarantees.

Furthermore, the constituent legislator provided in CF/88, in chapter VIII, of title VIII, of the Social Order, reserved itself to deal specifically with the Indians, as can be seen in articles 231 and 232*, in verbis*:

> Art. 231. The Indians are recognized for their social organization, customs, languages, beliefs and traditions, and their original rights over the

> the lands they traditionally occupy, and it is up to the Union to demarcate them, protect them and ensure respect for all their assets.
>
> § 1 The lands traditionally occupied by the Indians are those inhabited by them on a permanent basis, those used for their productive activities, those essential to the preservation of the environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, according to their uses, customs and traditions.
>
> § 2 The lands traditionally occupied by the Indians are destined for their permanent possession, and they are entitled to the exclusive usufruct of the riches of the soil, rivers and lakes existing therein.
>
> § 3 The use of water resources, including energy potential, research and mining of mineral wealth on indigenous lands can only be carried out with the authorization of the National Congress, after hearing the affected communities, and they are assured of participation in the results of the mining, in accordance with the law.
>
> § 4 The lands referred to in this article are inalienable and inalienable, and the rights over them are imprescriptible.
>
> § 5 The removal of indigenous groups from their lands is prohibited, except, "ad referendum" of the National Congress, in the event of a catastrophe or epidemic that endangers their population, or in the interest of the country's sovereignty, after deliberation by the National Congress, guaranteeing, in any case, the immediate return as soon as the risk ceases.
>
> § 6 Acts that have as their object the occupation, dominion and possession of the lands referred to in this article, or the exploitation of the natural wealth of the soil, rivers and lakes existing therein, are null and void, except in the relevant public interest of the Union, according to the provisions of a complementary law. it does not give rise to nullity and extinction the right to compensation or to actions against the Federal Government, except, in accordance with the law, as to improvements derived from the occupation in good faith.
>
> § 7 The provisions of article 174, § 3 and § 4 do not apply to indigenous lands.
>
> Art. 232. The Indians, their communities and organizations are legitimate parties to go to court in defense of their rights and interests, with the Public Prosecutor's Office intervening in all acts of the process.

Therefore, it can be seen that the entire chapter was drafted with the aim of obtaining the protection of indigenous rights, since for a long time the indigenous population had its dignity plagued by the lack of a constitutional guarantee. Thanks to the promulgation of the Federal Constitution of 1988, indigenous peoples have obtained recognition of their dignity

of human persons, as well as subjects of rights protected by the national legal order.

Article 231 of the Federal Constitution, in its § 2, expressly states that of the land that the Indians occupy, they have exclusive usufruct of all the riches existing therein. The lands that the Indians occupy belong to the Union, for this reason, the Indians were given the usufruct.

The usufruct is nothing more than the granting of the right to use or enjoy an asset that belongs to another person, as if he were the owner. The Civil Code establishes the following:

> "Art. 1.390. The usufruct may fall on one or more assets, movable or immovable, on a whole patrimony, or part thereof, covering it, in whole or in part, the fruits and utilities."

It can be seen that the entire chapter was prepared with the intention of obtaining the protection of indigenous rights, because for a long time there was a lot of suffering of the indigenous population, but despite this, many resisted and currently the Indians are recognized as subjects of rights, which must be promoted and protected by the national legal order.

Also noteworthy is the decision of the Supreme Court of the Supreme Court that upheld the constitutional protection of indigenous rights, in the judgment of Extraordinary Appeal No. 1,017,365, of the Rapporteurship of Justice Edson Fachin, decided that:

> "On the merits, it pointed out that it is essential to establish a constitutionally adequate interpretation of the statute of indigenous land tenure in Brazil, in all its developments. He alluded to the examination of petition No. 3,388, in which the Supreme Court analyzed the issue related to the demarcation of indigenous lands, especially in the State of Roraima, with a view to assuring the Indians the lands they occupied, establishing conditions for the recognition of the traditionality of indigenous occupation in an area whose demarcation is intended, with the effect of res judicata, but without automatic incidence to the other demarcations."

Therefore, the dignity of the indigenous people is deeply linked to the preservation and sustainability of the environment, as they are original residents of this land and possessors of Brazilian ancestral culture. Thus, it is essential that the

indigenous lands are preserved because the livelihoods of the Indians are taken, basically, from the very lands where they live.

### 2.2 Statute of the Indian

Corroborating the constitutional provision, Law No. 6001 of the Indian Statute also emphasizes the guarantee of protection of indigenous lands, as can be seen in the provision of article 33 of the aforementioned legal instrument, *in verbis*:

> Art. 33. It is incumbent upon the Federal Government, through the federal indigenist agency, to protect and enforce respect for the material and immaterial assets of indigenous peoples under the terms of this law.
>
> Paragraph 1. The Union will hold non-indigenous people accountable for any acts that cause damage to indigenous lands and communities.
>
> Paragraph 2. Indigenous peoples and communities can support the Union in the protection of indigenous lands, and it is up to the Union to guarantee them the necessary resources for this purpose.

Therefore, it is the duty of the Federal Government, through FUNAI, to protect and ensure respect for indigenous lands, holding accountable people who practice acts harmful to indigenous lands and communities, and, to this end, they can count on the support of indigenous communities for the consolidation of these rights.

### 2.3 FUNAI – Normative Instructions for Indigenous Lands

First, Normative Instruction No. 9 of 2020, which regulates the request, analysis and issuance of the Declaration of Recognition of Limits in relation to private properties, provides in its articles 1 and 2, *in verbis*:

> Article 1. The issuance of the document called Declaration of Recognition of Limits will be processed in accordance with the rules established in this Normative Instruction.
>
> Paragraph 1. The Declaration of Recognition of Boundaries is intended to provide private owners or possessors with certification that the boundaries of their property respect the boundaries of approved indigenous lands, indigenous reserves, and fully regularized indigenous domain lands.


> Paragraph 2. **It is not up to FUNAI to produce documents that restrict the ownership of private properties in the face of studies for the identification and delimitation of indigenous lands or the constitution of indigenous reserves. (**Emphasis added)
>
> Paragraph 3. Indigenous communities that become, by their own means, owners of rural or urban properties must communicate the boundaries of these properties so that FUNAI can contemplate them in the analysis of the issuance of a Declaration of Recognition of Boundaries.
>
> Paragraph 4. The procedure for analyzing the overlap of FUNAI carried out by the civil servants accredited in the Land Management System (SIGEF) of the National Institute of Colonization and Agrarian Reform (INCRA) must follow the concepts and rules disciplined in this Normative Instruction.
>
> Paragraph 5. The administrative certificates already issued by FUNAI at the time of publication of this normative instruction remain valid for their legal purposes.
>
> **Article 2. The Declaration of Recognition of Limits will be issued by the President of FUNAI, and the Territorial Protection Directorate will be responsible for analyzing the processes**. (Emphasis added)

Analyzing the provisions, it can be seen that FUNAI has made it possible to recognize and regularize properties constituted in areas bordering indigenous reserves, and it is enough for the person to provide a declaration in the system, by means of a form, for a declaration to be issued by said entity.

However, this promise of land regularization has contributed to opportunistic people implementing new invasions of indigenous lands in the process of demarcation, arguing that they have been there for a long time.

Corroborating the problem of land regulation in the process of demarcation, Joint Normative Instruction No. 01/2021 was issued, which provides for the procedures to be adopted during the environmental licensing process for enterprises or activities located or developed within Indigenous Lands whose entrepreneur is indigenous organizations.

This normative instrument provides in Articles 1 and 2, *verbatim:*

> Art. 1 This Joint Normative Instruction applies to the environmental licensing process of enterprises or activities located or developed within Indigenous Lands whose entrepreneur is the indigenous usufructuaries themselves through associations, organizations of mixed composition of indigenous and non-indigenous people, cooperatives or directly via the indigenous community.
>
> § 1 The organizations of mixed composition referred to in the caput must be of majority indigenous domain, obeying the inalienability and unavailability of Indigenous Lands, and their leasing is prohibited.
>
> § 2 This Joint Normative Instruction does not apply to the use of water resources, including energy potential, to research and/or mining of mineral wealth in Indigenous Lands, as provided for in Article 231, § 3, of the Federal Constitution.
>
> § 3 This Joint Normative Instruction does not apply to enterprises and activities not subject to environmental licensing referred to in Ibama's Normative Instruction No. 15, of May 18, 2018.
>
> Article 2 By means of technical criteria and specific manifestation, Ibama may no longer require environmental licensing, taking into account the specificities, environmental risks, size and other characteristics of the enterprise or activity, according to Ibama Normative Instruction No. 15, of May 18, 2018.
>
> Sole paragraph. The unenforceability referred to in the caput does not exempt the entrepreneur from complying with all current legislation regarding the protection of physical or biotic natural resources, including the protection of biological diversity and access to genetic heritage and associated traditional knowledge, and from obtaining other licenses, authorizations, certificates or grants legally required at the municipal level. state, county, or federal, as well as comply with applicable municipal, state, district, or federal legislation.

It can be seen from the analysis of the provisions that FUNAI and IBAMA have implemented a regulation that perniciously contributes to the practice of violations of constitutional rights and guarantees. Allowing associations composed of non-indigenous and indigenous people to form a partnership to create enterprises on indigenous lands is an affront to CF/88.

In addition, if it is already a complete absurdity for FUNAI to understand in the 2020 NI, that non-demarcated land is not in its interest, perhaps when the land is demarcated, which is the case that is happening with the present complaint.

The allegations contained in the facts do not correspond to lease in the manner provided for in IN – 2021, and neither the collective nor the leaders of the Village were involved, on the contrary, they are suffering attempted murder.

**2.4 Of the assassination attempts suffered by the leaders**

According to all the facts, the indigenous people are being threatened. On 18/05/2021 an attack took place. Soon after, the Pataxó people made a manifesto that will be presented below:

**Attack occurred on 18.05.2021 – at 10 pm**


**19.05.2021 - Manifesto made by the Pataxó Nation, crying out for help:**

> "Good morning, amig@s and relatives of this collective. In line with the reflection made by our CIMI comrade, Haroldo, I want to share here what I posted in the CEPITI group. I spoke a little while ago with close leaders (from the Boca da Mata Village). The Cacique managed to escape unscathed, however, the risks

> Therefore, the agency of drug traffickers and militiamen by "good people", businessmen, real estate and tourism speculators throughout the coast has already become known to many people. Well, they are the same, now reinforced, they continue to invest in the enticement of indigenous villagers to advance against the villages. It is necessary to understand these new/old strategies of destructuring peoples and communities in order to advance on the lands. It is very similar to the strategies that thrived on the hills and communities of Rio de Janeiro. Unfortunately, this situation is not an isolated act, nor is it disconnected from the issue of the struggle for indigenous land. We also face this in the Comexatiba Indigenous Land, where, in less than six months, there have been more than a dozen murders of natives, most of them untidy. The issue of the Pequi Village is an example, in which a good part of the village was displaced and had to move. We cannot deal with this issue solely through the lens of illegal drug trafficking. It is a smokescreen on the land problem, on indigenous rights and their territories. It needs to be better studied so that the "businessmen" and the "so-called good people" who plot and have been investing in this type of weapon and attack to defend their unpronounceable interests are denounced."

According to Article 1 of Law 9807/99, victims or witnesses of crimes who are coerced or exposed to serious threat because of their cooperation with the criminal investigation or prosecution may receive protection.

> Article 1 The protection measures requested by victims or witnesses of crimes who are coerced or exposed to serious threat because of their cooperation with the criminal investigation or prosecution shall be provided by the Federal Government, the States and the Federal District, within the scope of their respective competences, in the form of special programs organized based on the provisions of this Law.
>
> § 1 The Federal Government, the States and the Federal District may enter into agreements, agreements, adjustments or terms of partnership among themselves or with non-governmental entities for the purpose of carrying out the programs.
>
> § 2 The supervision and inspection of agreements, agreements, adjustments and terms of partnership of interest to the Union shall be the responsibility of the Ministry of Justice body responsible for the execution of the human rights policy.

It appears that the indigenous people are asking for help and urgently need the leaders of the Mãe Barra Velha Pataxó Village and their families to be included in the victim protection program, they are:

- Weliton Ribeiro Oliveira – Cacique Suruí, Erilza Braz dos Santos – Vice-Cacique Uruba, and extended to parents, children and spouse.

## 2.5 Embezzlement with indigenous lands

The crime of embezzlement is provided for in the Penal Code in its article 171, as follows:

> "Article 171 – Obtaining, for oneself or for another, an illicit advantage, to the detriment of others, inducing or maintaining someone in error, by means of artifice, ruse, or any other fraudulent means:
>
> § 1 - If the offender is a first-time offender, and the damage is of small value, the judge may apply the penalty in accordance with the provisions of article 155, § 2.

As can be seen from the facts narrated, indigenous lands are being sold to private individuals by people who, according to the Brazilian Penal Code, are embezzlers.

In addition, the person who sells land that is not his/her own also falls under the provisions of article 161 of the same Code. See below:

> "Art. 161 - Suppressing or displacing a siding, landmark, or any other sign indicating a dividing line, in order to appropriate, in whole or in part, another person's immovable property:
>
> Penalty - imprisonment, from one to six months, and fine.
>
> Paragraph 1 - The same penalty shall be incurred by those who:
>
> **Usurpation of waters**
>
> I - diverts or dams, for his own benefit or for the benefit of others, the waters of others;
>
> **Possessory Theft**
>
> II - invades, with violence or serious threat, or with the concurrence of more than two persons, another person's land or building, for the purpose of possessory theft.
>
> § 2 - If the agent uses violence, he also incurs the penalty imposed on it.
>
> § 3 - If the property is private, and there is no use of violence, it is only proceeded upon complaint."

Appeal in the Strict Sense No. 0002540-33.2003.4.03.6002/MS, of the Rapporteurship of Federal Judge VESNA KOLMAR, judges, in this sense, to consider people who sell indigenous lands as embezzlers. Below is the summary of the respective Appeal.

> "SYLLABUS
> PENAL. APPEAL IN THE STRICT SENSE. COMPETENCE. FEDERAL COURT. ALIENATION OF INDIGENOUS LANDS BELONGING TO THE FEDERAL GOVERNMENT. OFFENSE TO THE PROPERTY AND INTERESTS OF THE UNION AND TO THE RIGHTS OF THE INDIGENOUS COMMUNITY. APPLICATION OF ARTICLE 109, IV AND XI, OF THE CONSTITUTION OF THE REPUBLIC. APPEAL GRANTED.
> 1. The conduct of alienation, by the accused, of indigenous lands belonging to the Union, as if they were their own, constitutes, in theory, the crime provided for in article 171, § 2, I, of the Penal Code.
> 2. The sale of the Union's assets, causing losses to it, characterizes damage to its assets and interests, which, according to Article 109, IV, of the Constitution of the Republic, is sufficient to establish the jurisdiction of the Federal Court for the prosecution and judgment of the done.
> 3. The indigenous community has also suffered damage and had its rights violated, so that Article 109, XI, of the Charter of October 109 also applies. 1988.
> 4. Appeal in the Strict Sense upheld."

**3. OF ORDERS**

**Requests the Federal Public Prosecutor's Office:**

- Immediate intervention to prevent embezzler land grabbers from continuing to advertise the sale of land in the Xandó village of the Barra Velha Indigenous Land, Caraíva District, municipality of Porto Seguro/BA;

- Immediate investigation for the resumption and repossession of indigenous lands leased or sold, in complete illegality, in the BARRA Velha Indigenous Land, of the Pataxó ethnic group;

- Initiation of criminal proceedings to indict the embezzler land grabbers identified in the evidence presented in this petition;

- URGENT inspection of the Barra Velha Indigenous Land, to investigate all land invasions by non-indigenous people that have occurred to date;

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- Investigation of all material and moral damages resulting from the action of the embezzler land grabbers in the Barra Velha Indigenous Land;

- Police protection for the leaders of the Mãe Barra Velha Pataxó Village, including their parents, children and spouses, due to the constant threats of homicide they are suffering.

- Summons from FUNAI to comment on the facts narrated and to state the reasons for its total omission to date.

Accordingly, it must

be granted.

Belo Horizonte, December 01, 2021.



**Lívia Campos de Aguiar**

**OAB/MG 105.702**

**Tássia Carolina Padilha dos Santos**

**OAB/MG 158.390**

**Bruno Scaldaferr i Lages**

**OAB/MG 77.750**

**Soraia Mônica Fonseca Murta**

**OAB/MG 74.325**

**FACULDADE DE DIREITO PADRE ARNALDO JANSSEN**

NPJ
Núcleo de Práticas Jurídicas

**Weliton Ribeiro Oliveira** — **Cacique Surui**

**Erilza Braz dos Santos** — **Vice-Chief Uruba**

**Interns**

ANDERSON BISMARK RODRIGUES DE OLIVEIRA

CAMILA FERNANDA PEREIRA SANTOS

GABRIELLY MARTINS PEREIRA RAMOS

GUSTAVO HENRIQUE RODRIGUES PEREIRA DA SILVA

JANAINA HONORATO COSTA

JENSEN HERBET JAMAR

JUNIA MARIA MONTEIRO

KLAUS EDW IN FLORIO BUSICH TOSTES

LORENA ROCHA DE VASCONCELOS PAIVA

MAJORIE FERRAZ DOS SANTOS

RAFAEL COSME FERREIRA DOS SANTOS

RINALDO CASSIMIRO FERNANDES FILHO

TAMIRIS BORGES JEREMIAS

VANESSA APARECIDA DIAS DA SILVA

VILMA AUGUSTA DE OLIVEIRA DIAS

18/03/2024

# Number: **1005252-57.2023.4.01.3310**

Class: **PROHIBITORY INTERDICT**
Judging body: **Federal Civil and Criminal Court of the SSJ of Eunápolis-BA**
Last distribution : **20/10/2023**
Value of the case: **R$ 130,000.00**
Topics: **Theft / Disturbance / Threat**
Secrecy of justice? **NO**
Free justice? **YES**
Request for an injunction or anticipation of relief? **NO**

| Parts | Attorney-in-fact/Related Third Party |
|---|---|
| ALAOR REZENDE CARVALHO (AUTHOR) | JORGE DOS SANTOS SANTANA (LAWYER) |
| ROGERIO BARROS DE CARVALHO (AUTHOR) | JORGE DOS SANTOS SANTANA (LAWYER) |
| MARIA D AJUDA BORGES DE OLIVEIRA CARVALHO (AUTHOR) | JORGE DOS SANTOS SANTANA (LAWYER) |
| PAULO ROGERIO MORAES BARROS (AUTHOR) | JORGE DOS SANTOS SANTANA (LAWYER) |
| RONALDO REZENDE CARVALHO (AUTHOR) | JORGE DOS SANTOS SANTANA (LAWYER) |
| WELINGTON RIBEIRO DE OLIVEIRA (DEFENDANT) | |
| Erilza Brás (REU) | |
| NATIONAL INDIAN FOUNDATION - FUNAI (INTERESTED THIRD PARTY) | |
| FEDERAL UNION (INTERESTED THIRD PARTY) | |
| PATAXÓ INDIGENOUS COMMUNITY OF BARRA VELHA (THIRD PARTY) | |
| COUNCIL OF CHIEFS OF THE PATAXÓ COMMUNITY (INTERESTED THIRD PARTY) | |
| FEDERAL PUBLIC DEFENDER'S OFFICE (INTERESTED THIRD PARTY) | |

**Documents**

| Id. | Signature Date | Document | Kind | Pole |
|---|---|---|---|---|
| 207791915 8 | 11/03/2024 16:31 | Ordinary Act | Ordinary Act | Internal |