



FEDERAL PUBLIC DEFENDERS' OFFICE IN BELÉM/PA
Rua dos Mundurucus, 1794 - Bairro Batista Campos - CEP 66033-718 - Belém -
PA entre Av. Serzedelo Correa e Tv. Padre Eutíquio

RECOMMENDATION No. 5703068 - DPU PA/GABDPC PA/DRDH PA

To his Excellency Mr.

VALMIR CLIMACO DE AGUIAR

Mayor of Itaituba

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To his Excellency Mr.

RÔMULO RODOVALHO GOMES

Secretary of Health of the State of Pará.

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SUMMARY: Results of the Fiocruz survey on mercurial contamination of Munduruku indigenous people. Compulsory notification and inclusion of data in the Notifiable Diseases Information System (SINAN).

Reference: PAJ No. 2022/003-03263

WHEREAS, the Federal Public Defenders' Office is a permanent institution essential to the State's judicial function, constitutionally entrusted, as an expression and instrument of the democratic regime, with providing legal advice, promoting human rights and defending individual and collective rights at all levels, in full and free of charge, to those in need, as per Articles 5, Item LXXIV, and 134 of the 1988 Constitution of the Federative Republic of Brazil;

WHEREAS, Article 4 of Supplementary Law No. 80/1994 establishes the functions of the Public Defenders' Office, including the promotion and awareness of human rights, civic duties and rights, and the Brazilian legal system, as well as the comprehensive defence of the fundamental rights of those in need, encompassing their individual, collective, social, economic, cultural, and environmental rights;

WHEREAS, the Public Defenders' Office is responsible for protecting the rights and interests of individuals who are hyposufficient, which involves not only the economic aspect but also other specific types of vulnerability, such as legal, administrative, and circumstantial (ADI 3.943/DF, STF, Plenary, Rapporteur Justice Cármen Lúcia, decided on 7 May 2015, DJE of 6 August 2015; and EREsp 1.192.577/RS, STJ, Special Court, Rapporteur Justice Laurita Vaz, decided on 21 October 2015, DJE of 13 November 2015);

WHEREAS the Pará Regional Human Rights Defender's Office (DRDH/PA) is processing Legal Assistance Case (PAJ) No. 2022/003-03263, concerning the right to health of the Munduruku indigenous people, in the face of mercury contamination;

CONSIDERING the Rules on Access to Justice for Persons in a Situation of Vulnerability (100 Rules of Brasília), approved by the XIV Ibero-American Judicial Conference in March 2008, which define persons in a situation of vulnerability as those who, due to their age, gender, physical or mental condition, or social, economic, ethnic, and/or cultural circumstances, face significant difficulties

in fully exercising the rights recognised by the legal system before the justice system;

WHEREAS the 100 Rules of Brasília consider indigenous people to be individuals in a situation of vulnerability, and they also outline the role of the Public Defenders' Office in defending and safeguarding their rights and interests;

WHEREAS Article 4, Item II, of Supplementary Law No. 80/1994 mandates the Public Defenders' Office to prioritize the extrajudicial resolution of disputes, and Article 11, Item II, of Resolution No. 183/2021, of the High Council of the Federal Public Defenders' Office (CSDPU), establishes that, in the course of collective legal assistance proceedings, whenever feasible, measures should be taken to resolve disputes administratively, including issuing recommendations;

CONSIDERING the protection conferred by Article 231, among others, of the Federal Constitution, to indigenous peoples, recognizing their social organization, customs, languages, beliefs, and traditions, as well as their civil capacity, in addition to safeguarding their lands, which are considered essential for their well-being and physical and cultural preservation (Paragraph 1, Article 231, Federal Constitution). This aligns with Convention No. 169 on Indigenous and Tribal Peoples of the International Labour Organization (ILO) and the Universal Declaration of Human Rights of the United Nations (UN), international legal instruments pertaining to indigenism that stipulate that these peoples must fully enjoy human rights and fundamental freedoms, without obstacles or discrimination;

WHEREAS, according to Convention 169 (ILO), incorporated into the Brazilian legal system by Decree No. 5.051/2004, "*governments shall assume responsibility for developing, with the participation of traditional peoples, coordinated and systematic action to protect the rights of these peoples and ensure respect for their integrity*" (Article 2.1). Still according to Convention 169 (ILO) governments should also promote the "*full realisation of the social, economic, and cultural rights of these peoples, while respecting their social and cultural identity, their customs and traditions, and their institutions*" (Article 2.2, Item 'b');

WHEREAS the same Convention establishes that the State has a duty to "*ensure that adequate health services are made available to the peoples concerned or to provide them with the means to organise and provide such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health*" (Article 25);

WHEREAS Article 196 of the Federal Constitution guarantees "*health as a right for all and a duty of the State, ensured through social and economic policies aimed at reducing the risk of disease and other illnesses, and universal and equal access to actions and services for its promotion, protection, and recovery*";

WHEREAS Law No. 8.080/1990 establishes that "*Health is a fundamental human right, and the State must provide the indispensable conditions for its full exercise*" (Article 2) and that "*The Unified Health System (SUS) will promote the coordination of the Subsystem established by this Law with the bodies responsible for Indigenous Policy of the Country*" (Article 19-D);

WHEREAS it is widely acknowledged that the indigenous territories traditionally inhabited by the Mundurucu people have adversely affected by illegal mining, particularly mercury contamination;

CONSIDERING the research conducted by the Oswaldo Cruz Foundation (Fiocruz) in the Sawré Muybu, Poxo Muybu and Sawré Aboy Villages (all located in the Sawré Muybu Indigenous Land, in Itaituba, Pará), titled "*Impact of mercury on protected areas and forest peoples of the Eastern Amazon: An integrated health-environment approach*";

WHEREAS all the indigenous people tested in this research exhibited levels of mercury in the hair samples provided for analysis;

WHEREAS the same survey revealed that 6 out of 10 indigenous participants had mercury levels exceeding the acceptable thresholds established by regulatory agencies (such as Anvisa, FAO/WHO - Food and Agriculture Organisation/World Health Organisation - and EPA-US Environmental Protection Agency);

WHEREAS the research also identified symptoms of chronic mercury exposure in the indigenous people tested, including: alterations in the deep Achilles reflex; distal nociception deficits; distal thermal sensitivity deficits; distal deep sensitivity; polyneuropathy, and distal neuropathy;

WHEREAS, as Fiocruz has also found, contamination is more pronounced in areas most affected by illegal mining, particularly in villages situated along the affected rivers. In these locations, nine out of ten participants exhibited elevated mercury levels;

WHEREAS 15.8 per cent of the indigenous children tested displayed neurodevelopmental issues;

WHEREAS, when there is confirmation of a public health problem or event, **mandatory notification is required**, in accordance with Article 8 of Law No. 6.259/1975 and Article 3 of Ordinance No. 204/2016 of the Ministry of Health;

WHEREAS the Annex to Ordinance No. 204/2016 of the Ministry of Health includes the condition "*Exogenous Poisoning (by chemical substances, including pesticides, toxic gases, and heavy metals)*", which includes mercury contamination;

WHEREAS mandatory notification should be carried out by the notifying agents affiliated with the Epidemiological Surveillance Units (as per the Paragraph of Article 7 of Decree No. 78.231/1976), taking into account the local health agencies (Article 7, Item IV), and that the Epidemiological Surveillance Units are designated by the state Health Departments (Article 6);

WHEREAS Article 6 of Ordinance No. 204/2016 of the Ministry of Health stipulates that "*Mandatory notification, regardless of the method used, shall also be recorded in the health information system and shall follow the sharing flow between the management spheres of the Unified Health System (SUS) established by SVS/MS*";

CONSIDERING Official Letter No. 115/2022/ENSP/GAB/FIOCRUZ/MS, forwarded to this DPU, reporting that a dossier on the aforementioned research project was sent to SESAI on 26 November 2021, reporting on the procedures carried out and the results obtained, but without any discernible action taken by SESAI or the Municipal Health Secretariat to address the issue of mercury contamination;

CONSIDERING that in Official Letter No. 1553/2022/RT/DSEI/SESAI/MS, the Rio Tapajós DSEI informed this DPU that it had dispatched Exogenous Poisoning Notification forms, which document the cases of mercury contamination in question, to the Itaituba/PA Health Secretariat, on 5 May 2022 (Official Letter No. 561/2022/RT/DSEI/SESAI/MS), for inclusion in the Notifiable Diseases Information System (SINAN). However, it failed to receive a response from the municipal health body;

WHEREAS DSEI Rio Tapajós reiterated its request to the Itaituba Health Secretariat and the Itaituba City Hall to include mercury contamination data in SINAN on 29 July 2022 (Official Letter No. 978/2022/RT/DSEI/SESAI/MS) and on 8 September 2022 (Official Letter No. 1225/2022/RT/DSEI/SESAI/MS), as well as via telephone contact on 22 July 2022, without unsuccessful;

WHEREAS the constitutional principle of publicity (Article 37, Federal Constitution), applicable to the performance of Public Administration, aims to ensure transparency and broad access to data of public interest that serve as basis for planning and developing public policies – particularly health policy, in this case;

CONSIDERING the purpose and significance of the Notifiable Diseases Information System (SINAN), as a tool for identifying the epidemiological reality of a given region, thereby aiding in the formulation of health policy based on concrete realities, while also ensuring transparency and democratisation of information with profound social relevance;

WHEREAS, consequently, the failure to include data from mandatory notifications in the SINAN hinders the very purpose of the tool, rendering such data ineffectual in contributing to the health assessment of a given region and reducing the effectiveness of the health measures implemented;

WHEREAS Article 19 of the Ministry of Health's Normative Instruction No. 2/2005 states that "***The notifying municipality must include data into SINAN concerning cases detected in its jurisdiction, regardless of whether the individuals reside in that municipality or in other municipalities***" [emphasis added];

WHEREAS Article 5 of Normative Instruction No. 2/2005 of the Ministry of Health assigns municipalities the responsibility of "*gathering and consolidating data from notifying units*"

" and *"forwarding the data to the state level, adhering to the flows and deadlines established by the states and SVS/MS"*;

WHEREAS Article 24 of Normative Instruction No. 2/2005 of the Ministry of Health also assigns responsibility to the state health secretariats regarding the inclusion of data in SINAN, as articulated in *"Municipalities that have not implemented electronic data processing via SINAN must forward the Notification and/or Investigation forms to the State Health Secretariats, according to the established protocol"*;

WHEREAS Article 4 of Normative Instruction No. 2/2005 of the Ministry of Health states that it is the responsibility of the states to *"regularly transmit the data to the SVS/MS, observing the deadlines established in this Ordinance"*, and to *"inform other federated units of the occurrence of cases that require mandatory notification identified in their territorial jurisdiction (residents in other federated units), as well as the occurrence of outbreaks or epidemics with a potential for nationwide dissemination"*;

WHEREAS Normative Instruction No. 2/2005 of the Ministry of Health states that failure to input data into SINAN will result in the suspension of the transfer of financial resources from the Primary Care Floor, pursuant to Article 28 thereof;

WHEREAS, thus, given access to the results of the research developed by Fiocruz, it is the duty of the Municipality of Itaituba to include this data into SINAN, and it is likewise the responsibility of the Pará State Health Secretariat to undertake electronic data processing of this information;

The FEDERAL PUBLIC DEFENDERS' Office, based on Articles 4, Items II, VIII, X and XI, of Supplementary Law No. 80/1994, and on Article 8, Items I, III, VI, XI and XII, Article 7, Items II and IV, and Article 12, Paragraph 1, of Resolution No. 127/2016-CSDPU, HEREBY RECOMMENDS:

1. To the Municipality of Itaituba, through its Epidemiological Surveillance Unit, the following actions: (i) incorporate into SINAN the data concerning all cases of mercury contamination confirmed by the aforementioned Fiocruz survey, and (ii) include in SINAN all future data collected concerning mercury contamination that are of mandatory notification per the terms of Law No. 6.259/1975, Decree No. 78.231/1976, Normative Instruction of the Ministry of Health No. 2/2005, and Ordinance of the Ministry of Health No. 204/2016.

2. To the Secretary of Health of the State of Pará, if the inertia of Itaituba City Hall continues, the following actions: (i) integrate the data collected by Fiocruz into SINAN through its own institutional framework, in accordance with Article 24 of the Ministry of Health's Normative Instruction No. 2/2005, and (ii) include in **SINAN all future data collected concerning mercury contamination that are of mandatory notification**, while also fulfilling its other duties as defined in the relevant legislation.

A period of 10 days is granted for your comments on whether on the acceptance or rejection of this recommendation, and you are hereby advised that appropriate legal measures may be pursued to safeguard the rights herein mentioned.

Regarding the effectiveness of this Recommendation, although it is not legally binding or obligatory, (i) it serves as a voluntary and amicable extrajudicial means of preventing legal action, (ii) failure to comply with the recommended measures may render the addressee subject to legal consequences (Article 397, Paragraph 1 of the Civil Code), and (iii) it may be utilized as evidence in legal proceedings.

This recommendation does not signify the conclusion of the work of the Federal Public Defenders' Office or that of other relevant collegiate government bodies on this matter. It also does not preclude future recommendations or initiatives, including those involving bodies and institutions not mentioned in this document.

We kindly request your response to be sent to the email direitoshumanos.pa@dpu.def.br. Belém/PA, *date of electronic signature*.

ELISÂNGELA MACHADO CÔRTEZ

Federal Public Defender



Document electronically signed by **Elisangela Machado Cortes, Federal Public Defender, on 9 December 2022**, at 16:14, according to Paragraph 2 of Article 10 of Provisional Measure No. 2,200-2 (24 August 2001).



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