

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)
BRA 4/2011

11 July 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 8/6, 8/3, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the situation of Ms. Fabíola Michele Moura**, a Brazilian national aged 35 years and judge of the State of Pernambuco, allegedly subjected to threats and attacks by police officers. Ms. Moura was presiding over the trial of 19 military police officers for acts of torture allegedly committed in 1998 in the town of Tabira, 400 km away from Recife, Brazil.

According to the information received:

In the evening of 4 December 1998, 19 military police officers, who arrived in three cars, assaulted a rural worker in front of his residence in the city of Tabira. According to the source, he was forced into a police car, punched by police officers and beaten with rifle butts. While continuously beating the man, the police officers allegedly forced him to confess that he had shot and injured one of their colleagues with a firearm on 1 December. He was further forced to disclose the location of his brother's home, as they believed his brother was also involved in the shooting.

Subsequently, the police officers allegedly went to the brother's home, assaulted him as well as his two sons, who were at that time below the age of 18. The police officers took the brother to a landfill site, where he was threatened with death if he did not confess having shot their colleague. Afterwards, he was taken to a public jail, where he was allegedly subjected to beatings to force him to confess the attack against the policeman.

Criminal proceedings have recently been initiated against the police officers on charges of torture. In this context, on 3 March 2011, Judge Fabíola Michele Moura denied the request for acquittal made by the defense for lack of evidence of the involvement of the police officers in the alleged attack.

On 15 March 2011, an employee of the hotel where the judge resided in Tabira, saw a person wearing a motorcycle helmet walk into the hotel's parking lot and stare at Ms. Moura's car registration number before leaving.

One month later, Ms. Moura sent a letter to the President of the Court of Justice of Pernambuco requesting police protection. On 2 June 2011, the same letter was sent to the General Prosecutor's Office, the Secretary of State for Human Rights and to the General Judge for Internal Affairs of Pernambuco, in which she requested security since a hearing on the case was scheduled on 9 June 2011.

Subsequently, Ms. Moura obtained the escort of three military policemen from the city of Arcoverde, 260 km away from Recife. On 8 June 2011, at around 8:35 p.m., accompanied by her husband, she met with the police. One of the police officers allegedly asked her whether she was scared and she replied negatively as the police would protect her. However, on the way to Tabira, Ms. Moura and her husband were reportedly caught in an ambush. It is reported that the police car ahead of hers stopped and that the three police officers stepped out of their vehicle and pointed their guns at her car.

It is reported that Ms. Moura and her husband managed to escape and find refuge in a farmer's house. Another police team rescued both and took them to Tabira, where the hearing was to take place the following day.

At the hearing on 9 June 2011, Ms. Moura reportedly wore a bulletproof vest. Following the hearing, it is further reported that Ms. Moura realized that two of the 19 defendants facing trial on charges of torture were part of the police team which escorted and attacked her the day before, and that both had presented themselves under a false name.

On 13 June 2011, the Court of Justice of Pernambuco, through its communications office, stated that Judge Moura had not presented any evidence of the attack. Additionally, it is reported that the police officer conducting the investigations on the attack, and to whom the 19 police officers facing charges of torture are subordinates, stated that it was a misunderstanding.

We have been further informed that on 5 July 2011, the National Council of Justice came to the conclusion that Ms. Moura needs further protection. She has been relocated and assigned to the town of San Jose Del Monte, situated about 150 km away from Tabira, in the same State of Pernambuco. A new judge has been assigned to the criminal case against the 19 police officers.

Concern is expressed about the security and safety of Ms. Moura, as the town she has been relocated to is situated within the same State and not very far from Tabira. With regard to the trial, given the fact that the alleged ill-treatment occurred 13 years ago, further concern is expressed about the lack of effective remedy for the victims. It is also feared that the trial may be compromised by threats and acts of intimidation against the judge recently assigned to this case.

While we do not wish to prejudge the accuracy of these allegations, we wish to stress that everyone has the fundamental right to life and security of the person as set forth in article 3 of the Universal Declaration of Human Rights (UDHR) and in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which Brazil acceded to on 24 January 1992. The right to life shall be protected by law and no one shall be arbitrarily deprived of his life. According to the information received, the attack on Ms. Fabíola Michele Moura and her husband was life-threatening. In this regard, we wish to refer to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide “effective protection through judicial or other means ... to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.”

With regard to the alleged threats to, and attack on, Judge Moura, we wish to refer to the Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985) whose principle 2 stipulates that “ [t]he judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.” As underlined by the Human Rights Committee in its General Comment No. 32 on article 14 of the ICCPR, an independent judiciary also requires protecting judges against intimidation. (CCPR/C/GC/32, para. 19).

Furthermore, we would like to draw your Excellency's Government's attention to paragraph 8 (a) of Resolution 16/23 of the Human Rights Council, which stated that “Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture.”

We would like to draw your Excellency's Government's attention to paragraph 3 (b) of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also known as the Istanbul Protocol, which states that, "alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any form of intimidation that may arise pursuant to the investigation." (General Assembly resolution 55/89 of 4 December 2000, Doc. A/55/89, Annex).

Concerning the allegations that police officers pointed their guns at Ms. Moura's car, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We wish to recall the relevant provisions of the Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979. According to para. 1, "[l]aw enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession." In the performance of their duty, they "shall respect and protect human dignity and maintain and uphold the human rights of all persons."

In addition, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto or de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, we are concerned about the delay in bringing the perpetrators of the alleged torture to justice. In our view, this contravenes article 2(3)(a) and (b) of the ICCPR, which oblige State parties to the Covenant to ensure that any person whose rights

and freedoms are violated shall have an effective remedy and that “any person claiming such a remedy shall have his [or her] right thereto determined by competent judicial ... authorities.” In its General Comment No. 31, the Human Rights Committee took the view that this right requires States parties “to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.” (CCPR/C/21/Rev.1/Add.13, para. 19).

We urge your Excellency’s Government to take all immediate and effective measures to guarantee that the rights to life and security of Ms. Moura and her family are respected. Given the concerns about the safety of Judge Moura and her family, these measures of protection may include a possible reassignment of Judge Moura to a safer location, which we would appreciate being informed of. In the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt all necessary measures to ensure that Ms. Moura, as well as the present judge presiding the criminal case against the 19 police officers, can discharge their professional duties as judges without any threats and intimidation.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Ms. Fabíola Michele Moura and her family in accordance with the above-mentioned international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary accurate?
2. Please provide the full details of the prosecution, medical examinations or other inquiries which have been undertaken in relation to the criminal case against the 19 military police officers.
3. Have any investigations been initiated into the attack on Ms. Moura and her husband? Please provide details and indicate whether any penal, disciplinary or administrative sanctions have been imposed on the alleged perpetrators.
4. Please provide detailed information on the measures taken to protect the right to life and security of Ms. Moura, her family and the judge presiding over the trial against the military police officers, and how the complaints and requests of Ms. Moura have been addressed. Please also indicate what measures are taken to ensure that both judges can discharge their functions as judges without intimidation or threats in accordance with international standards as enshrined *inter alia* in the Basic Principles on the Independence of the Judiciary.

5. Please also clarify the circumstances according to which two police officers, who are presently being tried by Judge Moura, were allegedly members of the police team entrusted with her protection.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment