

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
BRA 7/2014:

25 August 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

We would like to bring to the attention of your Excellency's Government information we have received alleging violent dispersal of peaceful demonstrations, excessive use of violence, and arbitrary arrests of protestors, including human rights defenders and lawyers, **in the cities of São Paulo and Rio de Janeiro.**

Ms. Eloisa Samy is a Brazilian human rights lawyer and active defender of the rights to peaceful assembly and association in Brazil.

Mr. Filipe Peçanha is a Brazilian journalist at Mídia Ninja, an independent media organization that monitors demonstrations in Brazil.

The reported limitations to the right of peaceful assembly were the subject of an earlier communication sent on 4 April 2014 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the rights to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, case no. BRA 3/2014. The reported excessive use of force during peaceful demonstrations was the subject of an earlier communication sent on 27 June 2013 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the rights to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism, see A/HRC/25/74, case no. BRA 3/2013.

The Special Rapporteurs regret that the Government of Brazil has not responded to their communications to date. They consider responses to their communications to be

an important part of the cooperation of Governments with their mandates and urge the authorities to provide as soon as possible detailed responses to all the concerns raised in their previous communications.

According to information received:

Since June 2013, a series of peaceful demonstrations have taken place in the streets of the main cities of Brazil demanding, amongst others, better public services, and protesting against Government corruption and mismanagement of public funds. For the most part, these peaceful demonstrations were reportedly violently dispersed by the police.

On 1 July 2014, a peaceful public assembly was organized at the Roosevelt Square in the city of Sao Paulo to protest against the recurrent violent policing of assemblies and the arbitrary arrests of peaceful protestors. The police reportedly violently dispersed protestors, using tear gas, pepper spray and rubber bullets in a disproportionate and indiscriminate manner, and arbitrarily arrested two lawyers known for their activism in monitoring cases of unlawful arrests during peaceful protests. It is further alleged that one of them was subjected to severe beatings while in detention.

On 10 July 2014, a judge from the 27th Criminal Court in the city of Rio de Janeiro allegedly issued arrest warrants for 30 individuals, including human rights defenders, suspected of conspiracy and belonging to a criminal association. The investigations that led to the arrests are reportedly classified. Most of the individuals reportedly did not know each other and the arrests were merely intended to intimidate critical voices and discourage participation in public demonstrations. Out of these 30 individuals, 19 were reportedly arrested on 12 July, including Ms. **Eloisa Samy**, and charged with conspiracy and belonging to a criminal association. On 15 July, their cases were brought to the court and on 17 July they were released pursuant to a habeas corpus mandate. Ms. Samy reportedly failed to appear in court on 18 July and requested asylum for political persecution at the Embassy of Uruguay on 21 July.

On 13 July 2014, a peaceful demonstration was organized in the region of the Saens Pena Square in Rio de Janeiro to demand better use of public resources. The police allegedly cordoned off the area and blocked the access to media professionals. They subsequently used wooden batons, rubber bullets, tear gas and pepper spray to disperse the protestors and arrested over ten protestors, who were released later the same day. In the course of the arrests, the police have reportedly beaten journalist **Mr. Filipe Peçanha**. Moreover, they have reportedly confiscated and damaged equipment of at least 10 journalists and media activists present at the Saens Pena Square.

We express grave concerns at the allegations of excessive use of force by the police against peaceful protestors, amongst them human rights defenders and a journalist.

Serious concerns are expressed at the allegations of mass arrests and detentions during peaceful protests. Concerns are expressed at the allegations of preventive arrests of human rights activists ahead of peaceful demonstrations. Similarly, concern is expressed at the use of national security interests to justify measures and acts aimed at suppressing opposition or repressive practices against civil society that exceed limitations set for in international human rights law. Concerns are also expressed at the allegations that the police have blocked the access of media professionals and activists to areas of assemblies and have censored their recordings.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.

2. Has a complaint been lodged by or on behalf of the alleged victims regarding the allegations of excessive use of force during the peaceful protests, including the case of Mr. Filipe Peçanha?

3. Please provide information concerning the reason for the arrests warrants issued against 30 individuals, the arrest of 19 of them, including Ms. Eloisa Samy. Please also provide information concerning the charges pressed against any of these individuals, including Ms. Samy. Moreover, please explain the reason for the arrests carried out on 1 July in São Paulo and on 13 July 2014 in Saens Pena Square in Rio de Janeiro and if any charges were pressed. Please indicate in each case how such measures are in accordance with international human right standards.

4. Please provide information on the regulations and operational procedures for law enforcement agents concerning the use of force in the context of law enforcement during assemblies and whether it is compatible with international standards on the use of force and firearms.

5. Please indicate what measures have been taken to ensure that the legitimate right to assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

6. Please explain what measures have been taken to ensure that all human rights defenders and journalists in Brazil can carry out their peaceful and legitimate activities without fear of criminalisation, judicial harassment, violence, or other restrictions.

We would appreciate a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to International Human Rights Law

In connection with the above alleged facts and concerns, we would like to refer to the articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR) that Brazil acceded on 24 January 1992, which guarantee the right to freedom of opinion and expression and the right to freedom of peaceful assembly.

We would further like to refer to the fundamental rights enshrined in the Universal Declaration of Human Rights, in particular articles 9, 19, 20 (1) and 29 (2), which guarantee the rights to freedom of peaceful assembly and association and to freedom of opinion and expression, and to not have those rights restricted unless as determined by law in the purpose of securing the freedoms and rights of others, as well as to not be subjected to arbitrary arrest or detention.

We would also like to refer 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, in particular articles 1, 2 and 12 (2) and (3). Article 12 (2) and (3) of the mentioned Declaration 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Moreover, we would like to refer to the Human Rights Committee General Comment No.34 that emphasised that "... [not] under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress" (CCPR/C/GC/34, para 23).