

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 12/2018

14 September 2018

Excellency,

We have the honour to address you in our capacities 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 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the conviction on 16 July 2018 of 23 human rights defenders for belonging to a political organization called *Frente Independente Popular* and for exercising their rights to freedom of peaceful assembly and of association during protests which happened in Brazil in 2013 and 2014, among others the "Ocupaba Cabral" demonstration (taking place in Rio de Janeiro from December 2012 to July 2013) and the "Ocupa Camara" demonstration (taking place in Rio de Janeiro from August 2013 to October 2013).

The 23 human rights defenders are:

1. Elisa De Quadros Pinto Sanzi, also known as "Sininho";
2. Luiz Carlos Rendeiro Junior, also known as "Game Over"
3. Gabriel Da Silva Marinho;
4. Karlayne Moraes Da Silva Pinheiro, Also Known As "Moa"
5. Eloisa Samy Santiago
6. Igor Mendes Da Silva
7. Camila Aparecida Rodrigues Jourdan
8. Igor Pereira D'icarahy
9. Drean Moraes De Moura Corrêa
10. Shirlene Feitoza Da Fonseca
11. Leonardo Fortini Baroni Pereira
12. Emerson Raphael Oliveira Da Fonseca
13. Rafael Rêgo Barros Caruso
14. Filipe Proença De Carvalho Moraes, Also Known As "Ratão"
15. Pedro Guilherme Mascarenhas Freire
16. Felipe Frieb De Carvalho
17. Pedro Brandão Maia, also known as "Pedro Punk"
18. Bruno De Sousa Vieira Machado
19. André De Castro Sanchez Basseres
20. Joseane Maria Araújo De Freitas

21. Rebeca Martins De Souza
22. Fábio Raposo Barbosa
23. Caio Silva De Souza

In 2013 and 2014, a series of large demonstrations (the largest in Brazil in 20 years) took place in major Brazilian cities, including Rio de Janeiro and São Paulo, most of them in a peaceful manner. Protestors initially demonstrated against rising public transportation fees, which went into effect on 1 June 2013. Protestors furthermore called for better public services and an end to alleged corruption, as well as demanded police to stop the excessive use of force and asked the authorities to address social inequalities. Protestors also raised concerns about the preparations for the World Cup that Brazil hosted in 2014 and the impact of such mega-event on local communities. For the most part, these peaceful demonstrations were reported to have been violently dispersed by the police.

On 26 June 2013, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders sent to your Excellency's Government communication BRA 3/2013 on alleged excessive use of police force against peaceful demonstrators protesting in major Brazilian cities in June 2013. We regret that to this date we have not received a response to the above communication.

On 25 August 2014, the same Special Rapporteurs sent communication BRA 7/2014 on the alleged violent dispersal of peaceful demonstrations, excessive use of violence and arbitrary arrests of protestors. Regrettably, to date we have not received a reply to that communication either.

According to the new information received:

On 4 July 2013, the Public Prosecutors Office and the Civil Police internet crime division launched an investigation related to the 2013-2014 protests mentioned above, against the listed above owners of social network profiles, on the suspicion of propagating and instigating a practice of crimes during the demonstrations.

On 10 July 2014, an arrest order for the 23 human rights defenders was issued on charges of criminal association (Art. 288 of the Penal Code) and corruption of minors (Art. 244-B of the Children and Adolescents Statute). The pre-trial detention was revoked on 15 July 2014 by the Rio de Janeiro States Appeal Court. On 18 July 2014, the Judge re-ordered the detention of all the 23 human rights defenders. Finally, the Appeal Court determined the release of the 23 human rights defenders on 22 July 2014 under the following conditions: to appear before the Court monthly, not to leave the city of Rio de Janeiro without judicial authorization, and to turn in their passports within 24 hours. On 12 August 2014, another condition was added: to not to attend any public demonstrations while they await trial.

On 2 December 2014, the judge re-ordered the arrest of Elisa de Quadros Pinto Sanzi, Igor Mendes Da Silva and Karlayne Moraes Da Silva Pinheiro for attending a peaceful protest that had taken place on 15 October 2014. Elisa de Qadros Pinto Sanzi and Karlayne Moraes Da Silva went into hiding to avoid prison. Igor Mendes Da Silva was arrested and remained in detention for seven months at the security facility of Bangu. On 23 June 2015, the Brasilia Superior Court of Justice restored the liberty of the three human rights defenders while awaiting the result of the investigation and their trial.

As a result of the investigation, on 16 July 2018, the 23 human rights defenders were sentenced to terms of imprisonment varying from 5 years and ten months to 7 years. Two of them (Camila Aparecida Rodrigues Jourdan and Igor Pereir D'Icarahy) were also found guilty of possessing explosive devices, which increased their sentences to 13 years imprisonment.

Grave concern is expressed at the conviction of the 23 human rights defenders which appear to criminalize the legitimate exercise of the rights to freedom of peaceful assembly and of association, as well as freedom of expression.

General concern is also expressed at the shrinking of civic space in Brazil. The criminalization of the right to protest and the media depiction of protestors as violent individuals responsible for public disorder prevent the full enjoyment of the rights to freedom of peaceful assembly and of association.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information concerning the evidence used to convict the 23 human rights defenders. Please also explain how the legal basis for the conviction is compatible with the international human rights norms and standards, listed in the provided annex. In particular, please explain the legal grounds for mapping social network connections and how it constitutes sufficient basis for the conviction of criminal association. In

addition, please explain the legal grounds for the moral arguments used by the Judge and how these constitute a sufficient basis for issuing the highest sentences for criminal association and corruption of minors provided by law.

3. Please indicate what measures have been taken to ensure that the legitimate rights to freedom of peaceful assembly and of association, as well as the related right to freedom of expression are guaranteed for all Brazilians.
4. Please explain what measures have been taken to ensure that all human rights defenders in Brazil can carry out their peaceful and legitimate activities without fear of criminalisation, judicial harassment, violence, or other restrictions.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge your Excellency's government to consider the international human rights standards mentioned below for the appeal presented by the 23 human rights defenders.

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

Clement Nyaletsossi Voule
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 above alleged facts and concerns, we would like to refer to articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) that Brazil acceded on 24 January 1992, which guarantee respectively the right to freedom of opinion and expression, the right to freedom of peaceful assembly, and the right to freedom of association.

We would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In addition, we refer your Excellency’ Government to Human Rights Council resolution 23/39, and in particular operative paragraph 72 that “stresses again the utmost importance of new communication technologies, including the Internet and mobile phones, in organizing peaceful assemblies” and notes that “individuals who post on social media organizers’ calls for assemblies should not be considered as organizers (...)”.

In addition, we 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 the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.