

Mandates of the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

REFERENCE:
AL BRA 12/2019

13 August 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 36/6 and 36/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the remarks made by President Bolsonaro about the enforced disappearance of Mr. Fernando Augusto de Santa Cruz Oliveira.

According to the information received:

On 29 July 2019, while commenting on the performance of the Federal Council of the Brazilian Bar Association (OAB), the President of Brazil, Jair Bolsonaro, made the following remarks regarding the disappearance of Mr. Fernando Augusto de Santa Cruz Oliveira, father of the president of the OAB: "one day, if the president of the OAB wants to know how his father disappeared during the military period, I will tell him ". He added: "He won't want to hear the truth. I tell you it is not my version, but it is because my experience led me to these conclusions at that time. His father was part of the Popular Action, the bloodiest and most violent guerrilla group in Pernambuco and disappeared in Rio de Janeiro".

The enforced disappearance of Mr. Fernando Augusto de Santa Cruz Oliveira was investigated by the National Truth Commission (CNV), the Special Commission on Dead and Disappeared Political Persons and the Amnesty Commission. The National Truth Commission concluded that Mr. Oliveira was "arrested and murdered by agents of the Brazilian state and is still missing. His enforced disappearance took place in the context of systematic human rights violations perpetrated by the military dictatorship established in Brazil in April 1964.

We would like to express our concern at the public remarks made by President Bolsonaro concerning the enforced disappearance of Mr. Fernando Augusto de Santa Cruz Oliveira, which inflict pain and confusion on the relatives of the victim, and lead to their re-victimization. We would like to recall that enforced disappearance is a complex crime which not only affects the person who disappeared but also inflicts suffering on the family of the victim. International law makes it clear that the continued deprivation of the truth regarding the fate of a disappeared person constitutes cruel, inhuman and degrading

treatment against the close relatives of that person. For this reason, denying such information could imply participating in the cruel, inhuman and degrading treatment suffered by the family.

We express further concern at the fact that the information purportedly known by President Bolsonaro appears to have been withheld from the family of the victim and from the pertinent authorities for investigation, which could entail a breach of the State's obligation to investigate and provide all available information concerning cases of enforced disappearances. In this regard, we would like to recall that enforced disappearance is a continuous crime, which is considered to be perpetrated while the fate of the victim remains unknown and the State withholds information about it. Withholding information about a disappearance is, therefore, a constitutive part of the crime of enforced disappearance. Government authorities are under the obligation to provide all available information concerning an enforced disappearance to the relevant authorities to assist the investigations and help shed light on the circumstances surrounding the disappearance, and to inform the relatives. Any person who obstructs investigations or withholds such information can be held responsible for the continued commission of an enforced disappearance.

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 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/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate if President Bolsonaro has provided or plans to provide to the relevant authorities all pertinent information concerning the circumstances surrounding the disappearance of Mr. Fernando Augusto de Santa Cruz Oliveira.
3. If the information has already been shared with the pertinent authorities, please indicate which authorities have received this information and what measures have been taken by then to process and investigate it.
4. Please indicate what information, if any, has been shared with Mr. Oliveira's family.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we call on President Bolsonaro to provide without delay any information he may have concerning the fate of Mr. Fernando Augusto de Santa Cruz Oliveira to the pertinent authorities to facilitate the investigations into his continued disappearance. We further call on the relevant authorities to keep the family of Mr. Fernando Augusto de Santa Cruz Oliveira apprised of any relevant information that stems from the investigations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, 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.

Principle 2 of the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity establishes the inalienable right of all persons to know the truth about past events concerning the perpetration of heinous crimes, including enforced disappearances, and about the circumstances and reasons that led to them.

We would also like to refer to the obligation to investigate and punish human rights violations and to combat impunity for such crimes. In this regard, we would like to recall that, as established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, including enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties.¹ Impunity for such violations can be an important element contributing to the recurrence of violations.

Furthermore, we would like to recall that international human rights law recognizes that until the fate and whereabouts of a disappeared person are established, it amounts to a continuing crime². As indicated by the Working Group on Enforced or Involuntary Disappearances, the act begins at the time of the abduction and extends for the whole period of time that the crime is not complete, that is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.³

In addition, the Declaration on the Protection of all Persons from Enforced Disappearance states that whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to the competent authorities for investigation and that no measures shall be taken to curtail or impede the investigation. It further indicates that any investigation should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.⁴

We would further like to recall that international law presumes close family members of a victim of enforced disappearance to be themselves victims of torture or ill-treatment. The Declaration on the Protection of all Persons from Enforced Disappearance,

¹ Paragraph 18

² Declaration on the Protection of all Persons from Enforced Disappearance, art. 17; International Convention for the Protection of All Persons from Enforced Disappearance, art. 8.b

³ Working Group on Enforced or Involuntary Disappearances, 'General Comment on Enforced Disappearance as a Continuous Crime', article 1.

⁴ Articles 13.1 and 13.6

recalls that “[a]ny act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families”, and that it “constitutes a violation of the rules of international law guaranteeing, inter alia ... the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment”.⁵ In this regard, the Working Group on Enforced and Involuntary Disappearances has stressed that enforced disappearance causes suffering to the family that reaches the threshold of torture and indicated that a State “cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives”.⁶ Similarly, the Inter-American Court on Human Rights has held that “the continued deprivation of the truth regarding the fate of a disappeared person constitutes cruel, inhuman and degrading treatment against close next of kin”⁷

⁵ Art. 1(2).

⁶ WGEID, ‘General Comment on the Right to the Truth in Relation to Enforced Disappearances’, art.4

⁷ IACtHR, *Anzualdo Castro v. Peru*, para. 113; also IACtHR, *Trujillo-Oroza v. Bolivia*, Reparations and Costs, Judgment, 27 February 2002, (Ser. C) No. 92, para. 114.