

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights

REFERENCE:
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4 February 2020

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; and Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, pursuant to Human Rights Council resolutions 34/18 and Article 41 of the American Convention on Human Rights.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the new threats against the journalist Glenn Greenwald and their damaging effects on the exercise of his right to freedom of expression.

Threats against Mr. Glenn Greenwald were the subject of a communication sent to your Excellency's Government on 3 July 2019 (UA BRA 10/2019). We thank your Excellency's Government for its response from 6 September 2019, but we remain concerned in light of the new information received.

According to the new information received:

On 21 January 2020, the Brazilian Public Prosecutor's Office filed a complaint against journalist Glenn Greenwald, director of the newspaper *The Intercept-Brazil*, charging him with participation in hacking a device, illegal interception of communications, and criminal association.

The Intercept published in 2019 several articles based on a series of conversations between [REDACTED], and the prosecutors of the so-called "Operation Lava Jato", exposing alleged irregularities and adducing an improper conjunction in the aforementioned judicial process. These conversations were on a messaging application and were allegedly leaked to the journalist by a confidential source.

It is reported that following the publication of these conversations, the Federal Police initiated an investigation regarding the leaks, through which a group of people were identified and accused of the alleged commission of several cyber-crimes, among them the hacking of the conversations between [REDACTED] and the prosecutors of the Lava Jato case. Following a rigorous investigation, the Federal Police stated in December that they had found no evidence to suggest that Mr. Greenwald had been involved in the crime.

However, on 21 January 2020, prosecutor ██████████ ██████████ alleged the existence of messages between Mr. Greenwald and ██████████, in which the journalist allegedly suggested ██████████ to delete the messages he had presumably sent to The Intercept. On that basis, he alleged that the journalist "aided, abetted and guided" the group of hackers during the cell phone intercepts, suggesting actions "to obstruct the investigations and reduce the possibility of criminal responsibility". Mr. Greenwald denies these allegations.

The complaint filed by the Public Prosecutor's Office ignores the August 2019 Decision of the Federal Supreme Court Minister, ██████████, in which he had determined that Mr. Greenwald could not be investigated or held responsible by public authorities and administrative or criminal investigation bodies for "receiving, obtaining or transmitting" information published in the press. At the time, the Minister stated that freedom of expression could not be undermined "by acts of investigation directed against the journalist in the regular exercise of his profession" and that "the restriction of the individual freedoms of the journalist for the purpose of revealing the confidentiality of his source, even when it occurs through institutionalized means of persecution, may constitute an unequivocal act of censorship".

The Rapporteurs also recall with alarm that in July 2019, the President of the Republic, H.E. Mr. Jair Bolsonaro, following the publication of the above-mentioned articles, stated that Mr. Greenwald could end up being incarcerated and had suggested that the journalist had married a Brazilian citizen to avoid deportation.

The Office of the Special Rapporteur of the IACHR and the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, had already expressed concern in July 2019 about the threats, the disqualifications by authorities and the harassment received by Glenn Greenwald, following the dissemination of information and reports of public interest. They had also called on the State to establish a prompt investigation into these threats.

Through this communication, the Special Rapporteurs reiterate their concerns at the situation of Mr. Glenn Greenwald. They reiterate that journalists who investigate cases of corruption or improper actions by public authorities should not be subjected to judicial or any other types of harassment in retaliation for their work.

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 and the IACHR, 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 information on the legal and factual basis underlying the charges against Mr. Greenwald.
3. Please provide information regarding measures taken to identify and remedy the threats reported at the time by Mr. Greenwald.

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 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(s) responsible for the alleged violations.

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.

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

Edison Lanza
Special Rapporteur for freedom of expression of the Inter-American Commission on
Human Rights

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we recall that States must ensure that criminal investigations do not become a threat to the work of journalists and the media, and must refrain from prosecuting journalists based on generic or disproportionate charges that criminalize legitimate journalistic practices protected by the right to freedom of expression. Judicial operators must apply criminal legislation under the principle that free speech and circulation of information about public officials should not be criminalized. Criminal charges of this nature could cause a chilling effect on the press in general.

Faced with any circumstances that may affect the exercise of freedom of expression, States must ensure compliance with international standards that provide, among other things, that restrictions on what may be disseminated through the media should be imposed only in accordance with the test to impose restrictions under international law. Such test establishes that the restrictions must be provided for by law, serve one of the legitimate interests recognized under international law, and be necessary and proportionate to protect that interest. When limits on freedom of expression are established by criminal laws, the Inter-American Court of Human Rights has pointed out that the principle of strict legality must also be fulfilled (OEA/Ser.L/V/II. CIDH/RELE/INF 2/09, paragraph 72 and A/HRC/29/32, paragraph 56). In this regard, we reiterate that the arrest, detention, and prosecution of individuals for exercising their human rights constitutes a violation of the State's obligations under ICCPR articles 9 and 19, and also under Brazil's concurrent obligations under ACHR articles 7 and 13. Likewise, the lack of information about the facts on which a criminal charge is based could also be contrary to the requirements of article 14 of the ICCPR and article 8 of the ACHR.

We would also like to draw attention to the fact that the protection of journalistic sources is a principle that is part of the right to freedom of expression, given its inestimable value for society's access to information of public interest. Without this protection, information of high interest would hardly be transmitted to the public. Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression establishes that "every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential". Furthermore, at the international level, the confidentiality of sources is derived from the guarantees of the right to seek, receive, and impart information, which is enshrined in article 19 of the Covenant and article 13 of the American Convention