

Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur in the field of cultural rights; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL BRA 4/2020

29 June 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur in the field of cultural rights; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/7, 37/12, 36/6, 35/15 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged renewed public remarks made by President Jair Bolsonaro and members of his Government denying the existence of a military dictatorship in Brazil between 1964 and 1985, positively assessing the events occurred during this period, and trivializing the violations committed, as well as concerning the alleged interference with the work of existing transitional justice mechanisms.

We would like to recall previous communications from Special Procedures concerning presidential remarks about the events and violations committed during the 1964-1985 dictatorship in Brazil. In particular, we would like to recall AL BRA 5/2019, of 28 March 2019, concerning commemorations to celebrate the 1964 military *coup*, and AL BRA 12/2019, of 13 August 2019, concerning the remarks made by President Bolsonaro about the enforced disappearance of student and activist Mr. Fernando Augusto de Santa Cruz Oliveira in 1974.

We note your Excellency's Government reply to AL BRA 5/2019 of 3 April 2019 stating that "the President has reaffirmed on a number of occasions that there had not been a *coup d'état*, in the country but a legitimate political movement" and his understanding that it "was necessary to stave off the growing threat of a communist takeover of Brazil". We also take note of your reference to the Regional Federal Court's statement that the President's decision was consistent with the prerogatives of his high office and is compliant with national and international laws. In this regard, we would like to refer your Excellency's Government to the concerns and legal standards specified below regarding revisionist and negationist theories of past human rights violations. In addition, we encourage you to respond substantially to the remaining communication.

According to the information received:

On 30 July 2019, President Bolsonaro criticized the work of the National Truth Commission, which in 2014 concluded that the dictatorship was responsible for 434 murders and disappearances and hundreds of cases of arbitrary detention and torture.

On 1 August 2019, the government changed the composition of the Special Commission on Political Deaths and Disappearances, replacing persons with recognized experience in the field of transitional justice with an advisor with unknown expertise in this field, and two members of the armed forces with a reported history of defending the military dictatorship, which could in turn impede their effective and impartial work. The changes took place a week after the Commission had documented the disappearance and death of Fernando Augusto de Santa Cruz Oliveira as a violent death caused by the State.

On 8 August 2019, President Bolsonaro called Carlos Alberto Brilhante Ustra a “national hero”. Mr. Brilhante Ustra was the head of DOI-CODI (Detachment of Information Operations-Internal Defense Operations Center, the intelligence agency responsible for repressing opponents during military rule) from 1970 to 1974. He was the first public official to be convicted for the crimes of kidnapping and torture committed during the country’s dictatorship.

On 1 March 2020, President Bolsonaro reportedly stated that “torture allegation is a scam to earn compensations”.

On 31 March, on the anniversary of the military coup, President Bolsonaro again claimed that there had not been a *coup d’état* in Brazil in 1964 and stated that this was a “Liberty Day”. On the same day, Brazil’s Vice-President stated that in 1964 the Armed Forces “intervened in national politics to face disorder, subversion and corruption”.

On 4 May, President Bolsonaro met with Major Curió, a retired army lieutenant colonel responsible for the repression of the Araguaia Guerrilla in the 1970s. On 5 May, the Presidential institutional communication channel published a text and photo of the meeting, calling Major Curió a hero of Brazil, in contravention to a decision of the Inter-American Court of Human Rights in the case of Gomes Lund ordering Brazil to recognize and publicize the violations committed against the Araguaia Guerrilha during the military dictatorship (1964-1985).

On 7 May, Brazil’s Special Secretary of Culture stated in reference to the period of dictatorship: “*to be charging for things that happened in the 60s, 70s and 80s [...] People, let go [...]*”. She subsequently sang a military regime jingle stating “*wasn’t it good when we sang this?*”. In response to a journalist’s question regarding torture, she replied “*There has always been torture*” [...] “*I don’t want to drag a cemetery on my back. I don’t want this for anyone. I’m light*”.

We express grave concern at the public remarks made by President Bolsonaro, and members of his Government criticizing the work of the National Truth Commission and denying the existence of a military dictatorship in Brazil from 1964 to 1985, as well as positively assessing the events that occurred during this period, which included serious human rights violations, and trivializing such violations. We express further concern at the repeated glorification of persons convicted of having participated in the commission of crimes against humanity or who are under investigation for such crimes. In addition, we note with concern that the aforementioned remarks do not appear to constitute isolated actions but rather a sustained narrative that undermines existing efforts to memorialize Brazil's abusive past and provide recognition to victims and their families.

In this regard, we would like to recall that the denial of past violations and the deliberate disinformation about past events that gravely affected a society, are contrary to the duty of States to ensure the full disclosure of the truth and the preservation of memory about past violations, as enshrined in numerous international human rights standards. Such remarks inflict suffering on victims and their families, and lead to their re-victimization. In addition, they undermine efforts to prevent the recurrence of past violations and may constitute a serious threat to the maintenance of peaceful and democratic societies.

We express further concern at the alleged interference with the work of existing transitional justice mechanisms such as the Special Commission on Political Deaths and Disappearances, which may further jeopardize Brazil's efforts to address past human rights violations and prevent their recurrence. These concerns were previously brought to the attention of Your Excellency's Government through a General Allegation transmitted by the Working Group on Enforced or Involuntary Disappearances on 31 October 2019 (A/HRC/WGEID/119/1, para. 23 and Annex I), to which your Excellency's Government replied on 29 January 2020 (see A/HRC/WGEID/121/1, forthcoming) noting that article 5 of Law 9140/95 establishes the composition of the Commission, including a member of the armed forces, and the process of selection of its members by the President of the Republic.

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 provide information on the measures taken to ensure that human rights violations committed during the Brazilian dictatorship continue to be acknowledged and that such information is widely disseminated among

the population in order to ensure that the collective memory about these violations is preserved, and its recurrence prevented.

3. Please provide information about the reasons for the replacement of the members of the Special Commission on Political Deaths and Disappearances, and about the selection process and suitability of the new members. Please indicate how these measures comply with international standards in this field. Please indicate how the composition of the Commission and the process of selection and appointment of its members, as set out in Law 9140/95, complies with international standards regarding the establishment and work of truth seeking commissions, particularly the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (see annex).

We would appreciate receiving a response within 60 days. After this date, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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

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

Karima Bennoune
Special Rapporteur in the field of cultural rights

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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.

In this regard, we would like to recall the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. Principle 2 establishes the inalienable right of all persons to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led to them. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

In addition, principle 3 establishes the duty of States to preserve memory about those violations and their responsibility in the transmission of such history. It underscores that "people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights [...] and to facilitate knowledge of those violations". Such measures shall aim at "preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments". Interpretation of past events that have the effect of denying or misrepresenting violations are incompatible with the aforementioned obligations of the States.

We would further like to refer to Human Rights Council Resolution 33/19 on human rights and transitional justice that notes with concern that attempts to deny or to justify gross violations of human rights and serious violations of international humanitarian law may risk undermining the fight against impunity, reconciliation and efforts to prevent such crimes, (pp. 12). It further recognizes that justice processes, memorialization processes, and the preservation of archives and other reliable evidence concerning gross violations of human rights and serious violations of international humanitarian law [...] ensure that such crimes are never forgotten and contribute to the prevention of their recurrence.

In addition, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by General Assembly resolution 60/147 recalled that memorialization processes are also part of the right to reparation. Principle 22 specifies that satisfaction should include, *inter alia*: verification of the facts and full and public disclosure of the truth; an official statement or a judicial decision restoring the dignity, reputation and rights of the victim and of persons closely connected with the victim; a public apology, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims; and the inclusion in training and educational material of accurate information on the violations that occurred.

As noted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, in his report to be presented to the 45th session of the Human Rights Council in September 2020 (A/HRC/45/45), “memory as part of transitional justice must have a human rights focus and be consistent with it. Good uses of memory aim to establish ‘a dialogical truth’ that is, to create the conditions for a debate within society about the causes, direct and indirect responsibilities, and consequences of past crimes and violence, which will allow it to limit the spectrum of permitted lies. The aim is to enable victimized populations to explain a brutal past - without justifying it - thus easing existing tensions and allowing society to live more peacefully with the legacy of past divisions. Without falling into a dangerous relativism or creating a homogeneous thought, different narratives and interpretations of past violence can coexist in a democratic society; in this way, they cooperate with the dynamics of social reconstruction. However, this process should never result in denial or relativization of the violations committed; nor should it give rise to statements against the conclusions of truth commissions and/or judicial proceedings, which provide a proven record of violations. [...] The voices of the victims of human rights violations must occupy a privileged space in the construction of memory, avoiding the manipulation that can be claimed from the place of the perpetrators”.

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 (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations.

In addition, we would like to bring your Excellency’s attention to Principle 7 of the Updated Set of Principles, according to which commissions of inquiry into past violations must be established through procedures that ensure their independence, impartiality and competence. To this end, they should be constituted in accordance with criteria making clear to the public the competence and impartiality of their members, including expertise within their membership in the field of human rights and humanitarian law. In addition, the irremovability of their members during their terms of office must be guaranteed, except on grounds of incapacity or behavior rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations.

We would like to recall the operative paragraph 16 of the judgment of the Inter-American Court of Human Rights in the case *Gomes Lund*, where the Brazilian State was called to “develop the search initiatives, and systematization and publication of all the information on the *Guerrilha do Araguaia*, as well as the information regarding the human rights violations which occurred during the military regime, guaranteeing access thereto...”.¹

¹ IACtHR, *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219. Operative paragraph 16.

Furthermore, we would like to recall that international human rights law recognizes that until the fate and whereabouts of a disappeared person are established, enforced disappearance 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

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, 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”.⁴ 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”.⁵ 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”⁶

We also draw the attention of your Excellency’s Government to the reports of the Special Rapporteur in the field of cultural rights on the issue of historical and memorial narratives in divided societies, relating to a) history textbooks (A/68/296) and b) memorials and museums (A/HRC/25/49). History teaching and memorial practices should foster critical thought, analytic learning and open spaces for debate. States and other stakeholders should neither engage in nor support policies of denial that prevent the construction of memorialization processes. (A/HRC/25/49, §105.)

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 Art. 1(2).

⁵ WGEID, ‘General Comment on the Right to the Truth in Relation to Enforced Disappearances’, art.4

⁶ 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.