

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

REFERENCE:
AL BRA 8/2021

7 September 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolution 45/10.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged inaction of the government of the state of Sao Paulo to comply with the 2014 decision of the Council for the Defence of the Historical, Archaeological, Artistic and Tourist Heritage of the state of Sao Paulo (Condephaat) requesting the preservation of the former facilities of the Department of Information Operations - Centre of Internal Defence Operations system (DOI-CODI) and the establishment therein of a place of memory of the serious human rights violations committed there during Brazil's dictatorship.

According to the information received:

During the military dictatorship in Brazil (1964-1985), the services of political repression were coordinated by the Armed Forces within the Department of Information Operations - Centre of Internal Defence Operations system (DOI-CODI). The city of Sao Paulo hosted the largest of these centres, which became notorious as the main site of human rights violations under the military regime in the country. More than 7,000 people were imprisoned at the Sao Paulo DOI-CODI, the majority of which were subjected to physical torture. At least 64 people were murdered or disappeared in the custody of this service, according to the Public Federal Ministry and the National Truth Commission. In its judgement on the case of Herzog et Al. V. Brazil of 15 March 2018, the Inter-American Court of Human Rights affirmed that crimes against humanity were committed at this centre.

In 2014, the Council for the Defence of the Historical, Archaeological, Artistic and Tourist Heritage of the state of Sao Paulo (Condephaat) decided that the former facilities of the DOI-CODI (and of its predecessor, Operation Bandeirante – OBAN) should be preserved, as part of the cultural heritage of the state, and as a place of memory of the serious human rights violations committed.

After four years of inaction on the part of the state government and its lack of compliance with the decision of the Council, in 2018 the Public Prosecutor's Office of the State of Sao Paulo opened a civil enquiry to demand from the State of São Paulo the establishment of a memory space about the military dictatorship and the human rights violations committed in that period in the former premises of DOI-CODI. However, the extrajudicial negotiations with the State government did not reach a useful result. In 2021, following consultations with civil society and victims' organizations, the Public

Prosecutor responsible for the case, initiated a lawsuit to force the State of Sao Paulo to comply with the duty to establish a memorial in the premises (Public Civil Action - Case 1034665-31.2021.8.26.0053).

The judge in charge of the case issued interim measures to compel the State to guarantee the maintenance of the space and determined that a conciliation hearing between the parties be held on 9 September 2021 at the former DOI-CODI headquarters, where a police station currently operates. In this opportunity, the government of Sao Paulo must manifest if it accepts the requests of the Public Ministry to transfer the buildings currently under the possession of the Secretariat of Public Security to the Secretariat of Culture and Creative Economy, with a view to establishing the memorial site and deactivating the police station.

I express serious concern at the lack of implementation of the 2014 decision of the Council for the Defence of the Historical, Archaeological, Artistic and Tourist Heritage of the state of Sao Paulo (Condephaat) requesting the preservation of the former facilities of the Department of Information Operations - Centre of Internal Defence Operations system (DOI-CODI) and the establishment therein of a place of memory of the serious human rights violations committed there during Brazil's dictatorship. I would like to recall that States were serious human rights violations have taken place have a duty to preserve and transmit to current and future generations the memory of those violations, including the actions and responsibilities that led to them and the harm suffered by victims, in order to guard them from extinction and contribute to the prevention of their recurrence.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 about the reasons for the lack of implementation of the 2014 decision of the Council for the Defence of the Historical, Archaeological, Artistic and Tourist Heritage of the state of Sso Paulo (Condephaat), requesting the establishment of a memory site in the premises of the Department of Information Operations - Centre of Internal Defence Operations system DOI-CODI.
3. Please provide information on the measures taken by the relevant authorities to ensure that the human rights violations committed during the Brazilian dictatorship, including in the state of Sao Paulo and in DOI-CODI premises, are adequately memorialized to ensure the preservation of the collective memory of those violations, the acknowledgment of the harm suffered by victims, and the prevention of the recurrence of past violence.

I would appreciate receiving a response within 60 days. Passed this delay, 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, I urge that all necessary interim measures be taken to ensure that the rights of victims of serious human rights violations and the pursuit of truth, justice, reparation, memory and guarantees of non-recurrence in connection to those violations are not jeopardized and can be effectively implemented in the immediate future.

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

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, I 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, I 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.

I would further like to refer to Human Rights Council Resolution 33/19 on human rights and transitional justice that 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. It further 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

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 in my report 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”.

I 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.)