

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls

Ref.: AL BRA 3/2023
(Please use this reference in your reply)

2 February 2024

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 situation of human rights defenders; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 52/9, 52/4, 50/7 and 50/18.

We would like to bring to the attention of your Excellency's Government information we have received concerning **the criminalisation of Brazilian journalist and woman human rights defender Ms. Schirlei Alves.**

Ms. Alves is a freelance journalist known for her data-driven journalism. Her reporting on a high-profile rape trial in 2020 led to significant judicial reforms, including the enactment of Law 14.245 2021, which protects victims and witnesses of sexual crimes in the context of trials.

According to the information received:

In December 2020, Ms. Alves was accused of defamation and sued by [REDACTED] and [REDACTED]. The defamation suit stemmed from Ms. Alves' article published by The Intercept Brazil, which exposed excerpts from the investigation and trial proceedings of a rape trial in 2020 in which a businessman was acquitted of raping a female influencer.

In the article, Ms. Alves reported on the alleged embarrassment and sexism inflicted on the influencer during the trial. Ms. Alves' investigation revealed that [REDACTED] allegedly failed to appropriately intervene when the defence lawyer made suggestive remarks about the influencer's profession and social media pictures during the trial.

In a preliminary ruling in December 2020, a court ordered The Intercept and other media outlets to "rectify" their reporting after Mr. Oliveira accused Ms. Alves of defamation. Ms. Alves then added specific language highlighting that [REDACTED] did make interventions to maintain order and that [REDACTED] warned the defence lawyer about his line of questioning.

As a result of her reporting, Ms. Alves was subjected to widespread harassment and received various threats from unidentified persons, which negatively impacted her ability to work as an independent journalist and ultimately led to her decision to temporarily shut down her social media.

On 15 November 2023, almost three years after she was accused, Ms. Alves was convicted of defamation. The 5th Criminal Court of Florianópolis, southern Brazil, sentenced the journalist to one year in prison and ordered her to pay a fine of 400,000 Brazilian real (approximately 81,692 USD). Ms. Alves has appealed the decision.

Without prejudging the accuracy of the information received, we wish to express our concern about the prosecution and conviction of Ms. Alves on charges of criminal defamation in connection with her work as an investigative journalist and woman human rights defender. Such action appears to be an attempt to intimidate and silence her for denouncing, criticising and exposing misconduct by the judiciary. We believe the facts revealed by Ms. Alves, do not appear to seek to defame the prosecutor or the judge, especially given her readiness to clarify the text in December 2020 following a judicial order. Her reporting provided valuable public information which contributed to an important debate about women's rights and the rights of victims of sexual violence, leading to the approval of Law 14.245 2021. In our view the public interest of reporting outweighs the State's interest in prosecuting for defamation in this case and respectfully urge your Excellency's government to withdraw the charges against Ms. Alves.

We wish to remind Your Excellency's Government that while international law permits the restriction of the right to freedom of expression in order to protect the rights and reputation of others against defamation, article 19(3) of the International Covenant on Civil and Political Rights makes it clear that such restrictions must scrupulously respect the principles of legality, necessity and proportionality. The use of criminal defamation to prevent criticism of public figures is contrary to these principles and undermine media freedom. At several instances, the Special Rapporteur on freedom of opinion and expression has called for a global ban on criminal defamation and seditious libel laws criminalising the criticism of State institutions and officials. The Human Rights Committee in general comment 34 has called on States to consider the decriminalisation of defamation, stating that criminal laws should only be used for the most serious cases and that imprisonment is never an appropriate penalty.

We are particularly concerned about the broader significance and negative implications that the targeting of Ms. Alves has for the overall freedom of expression and freedom of the media in Brazil, inter alia through the chilling effect on individuals, and especially on women, including journalists, media workers, and women human rights defenders in the exercise of their journalistic duty of informing the public.

We remind your Excellency's Government that free and independent journalism is essential to a democratic system and the rule of law.

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 as to the legal and factual basis for the charges of defamation brought against and subsequent conviction of Ms. Schirlei Alves and whether the public interest in reporting on sexual and gender-based violence and discrimination and the conduct of public officials was taken into account.
3. Please indicate what measures have been taken to ensure that journalists covering sexual misconduct and rape cases in Brazil can operate in an enabling environment and can carry out their legitimate reporting without fear of harassment, intimidation, stigmatisation or criminalisation of any kind.

We would appreciate receiving a response within 60 days. Past 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, 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.

Irene Khan

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Dorothy Estrada-Tanck

Chair-Rapporteur of the Working Group on discrimination against women and girls

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 following human rights norms and standards applicable to the case, specifically article 19 of the Universal Declaration on Human Rights (UDHR) and article 19 the International Covenant on Civil and Political Rights (ICCPR), acceded to by Brazil on 24 January 1992, which protect the right to freedom of opinion and expression.

In the general comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Furthermore, in paragraph 9, the Human Rights Committee affirmed that "no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual perceived or supposed opinions", and that "it is incompatible with paragraph 1 to criminalise the holding of an opinion".

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3) of the ICCPR, that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant.

In this respect, we would like to refer to the Human Rights Council resolution 45/18 on safety of journalists adopted on 6 October 2020, in which the Council expressed "deep concerns about all attempts to silence journalists and media workers, including by legislation that can be used to criminalise journalism, by the misuse of overbroad or vague laws to repress legitimate expression, including defamation and libel laws, laws on misinformation and disinformation or counter-terrorism and counter extremism legislation, when not in conformity with international human rights standards, and by business entities and individuals using strategic lawsuits against public participation to exercise pressure on journalists and stop them from critical and/or investigative reporting". The resolution also recognised that the development of national legal frameworks that are consistent with States' international human rights obligations are an essential condition for a safe and enabling environment for journalists.

Attacks on journalism are fundamentally at odds with protection of freedom of expression and access to information. Governments have a responsibility not only to respect journalism but also to ensure that journalists and their sources have protection through strong laws, prosecutions of perpetrators and ample security where necessary. (A/HRC/71/373 para. 35).

In her 2021 report on the subject of gender justice and the freedom of expression, the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, highlighted the disproportionate risks faced by

female journalists, and their subjection to sexual and gender-based violence, both online and offline (A/76/258). The Special Rapporteur outlined that attacks on female journalists violate not only their freedom of expression, but also society's right to be informed by diverse media and represent a gendered attack on media freedom (A/76/258, para. 46).

In her 2021 report "Disinformation and freedom of opinion and expression", the Special Rapporteur on freedom of opinion and expression called for the abolition of criminal defamation stating "Criminal law should be used only in very exceptional and most egregious circumstances of incitement to violence, hatred or discrimination. Criminal libel laws are a legacy of the colonial past and have no place in modern democratic societies. They should be repealed." (A/HRC/47/25). In her 2023 report "Gendered disinformation and its implications for the right to freedom of expression" Ms. Khan further highlights that "Criminal defamation is a disproportionate response and is open to abuse, including against women" (A/78/288).

Furthermore, we would like to draw your Excellency's attention to the General Assembly resolution 68/181, which urges States to acknowledge publicly the important and legitimate role of women human rights defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning violence and discrimination against them (OP7). We also invite you to refer to the Human Rights Council resolution 31/32, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves (OP5, 19 and 20).

Moreover, we would like to remind your Excellency's Government of article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Brazil on 1 Feb 1984, which provides that states parties will take all appropriate measures to eliminate discrimination against women in political and public life.

As emphasised by the Working Group on discrimination against women and girls in one of its reports (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as human rights defenders, leaders, community workers and politicians. Women defenders are often the target of gender-based violence, including verbal abuse, sexual abuse, rape, intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

In addition, another report (A/HRC/41/33) by the Working Group on discrimination against women and girls, stressed that women human rights defenders,

perceived as challenging traditional notions of family and gender roles in society, (A/HRC/40/60, para.28), are increasingly at risk of facing criminalization and detention as a result of their legitimate public activism (see A/HRC/16/44 and Corr.1). Women who seek to participate in political, economic, social or cultural leadership in their communities or nations may be acting in defiance of stereotypes obliging women to stay quiet and invisible and defer to male governance. They may thus be stigmatized, or even criminalized or confined, to prevent them from speaking out or taking action (see A/73/301).

We would also like to refer 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration, which state that everyone has the right 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. We would further wish to stress the following articles of the Declaration:

- article 6(b), which guarantees the right all persons to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- article 6(c), which guarantees the right to study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and to draw attention to these matters; and
- article 12, paragraph 2, which holds that States shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration.