

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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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 pursuant to Human Rights Council resolutions 25/2 and as Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights pursuant to 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 intervention in the Brazilian Broadcasting Corporation (Empresa Brasileira de Comunicação, EBC) and the extinction of the Federal Controllers Office (Controladoria Geral da União, CGU)** which undermine the work of institutions promoting the right to access information in Brazil.

According to the information received:

Intervention in the national public broadcasting

The Brazilian Broadcasting Corporation, Empresa Brasileira de Comunicação, EBC, is established and regulated by law 11.652/2008. The law establishes editorial autonomy for the Corporation, establishing that the chief executive officer position of the EBC has a term of four years and responds only to the EBC board.

On 17 May, the interim President of Brazil ordered the removal of the chief executive officer of the EBC, Mr. Ricardo Melo. Mr. Melo was appointed to this position on 3 May by the previous Brazilian president. On 20 May, the interim President appointed Mr. Ricardo Rimoli to substitute Mr. Melo.

It is alleged that upon taking up his new function, Mr. Rimoli prepared a list of journalists to be fired from the EBC based on their perceived political orientation. On 23 May, the new president of the EBC fired journalists Ms. Tereza Cruvinel and Mr. Paulo Moreira Leite, who had publicly expressed criticism of the process of impeachment of the Brazilian President. Furthermore, it was reported that several TV shows were cancelled and at in at least two occasions, news reports covering demonstrations against the interim Government were not aired after editorial interventions.

On 2nd June, Supreme Court justice José Antonio Dias Toffoli ordered the return of Mr. Ricardo Melo as chief executive officer of the EBC in response to Mr. Melo's appeal against his firing. This order is temporary and may be reviewed by the Supreme Court in plenary.

It is further reported that the interim federal administration is now considering fully extinguishing the EBC or thoroughly revising the law regulating its functioning, significantly reducing its capacity to work as a public broadcaster.

Intervention regarding the Federal Comptroller's Office

On 12 May, an executive order by the interim presidency extinguished the Federal Comptrollers Office (Controladoria Geral da União, CGU) and established the Ministry of Transparency, Oversight and Control (Ministério da Transparência, Fiscalização e Controle).

It is reported that the CGU played a key role in the promotion of the right to access to information, promoting normative and institutional development at various levels of the public administration. Due to its direct attachment to the President's Office, the CGU was able to play a key role as an oversight entity above other Ministries. It frequently received appeals against the refusal of access to information by all other institutions within the Federal Government structure.

Reportedly some auditors working for the CGU resigned protesting against the change in status. It was also reported that the current authority in charge of the CGU, the Minister of Transparency, Mr. Torquato Jardim, declared in an internal meeting that the staff in the Ministry who disapproved the interim administration should leave their positions.

Serious concern is expressed at the removal of the chief executive officer of the EBC and the reported initiatives taken by the temporary administration of the EBC to intervene in the functioning of the national public broadcast, in particular by firing journalists considered to be critical. These measures are incompatible with international human rights standards of the right to freedom of opinion and expression. We take note with appreciation the reported re-installment of the chief executive director by the Supreme Court, but we remain concerned at the possible revision of this decision and that new measures may be taken, including the possible extinction of the EBC.

Concern is also expressed with regard to the change of the status of the CGU and its impact on its autonomy and capacity to oversee all federal institutions, especially considering its known role in the promotion of the right to access to information in Brazil. Additional concerns are expressed at the reports of alleged threats to technical staff expressing disagreement with the interim President.

While we do not wish to prejudge the accuracy of these allegations, 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 particular, we would like to refer to article 19 the International Covenant for Civil and Political, ratified by Brazil in 1992, which provide for the right to freedom of opinion and expression, and to Article 13 of the American Convention on Human Rights, ratified by Brazil also in 1992 which provide for the right to freedom of expression and thought.

With regard to the reported interference in the functioning of the public broadcasters we would like to make reference to the Human Rights Committee's General Comment 34 on Article 19 of the ICCPR which indicates that "States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom." Similarly, the Inter-American Commission on Human Rights has stated that "for public media really to be able to perform their role, they must be independent of the executive branch; truly pluralistic; universally accessible; with funding adequate to the mandate provided for by law; and they must provide community participation and accountability mechanisms at the different levels of content production and distribution".

We also refer to the Joint Declaration on Diversity in Broadcasting by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur for Freedom of Expression and the African Commission on Human and Peoples' Rights published in 2007. Accordingly, "Special measures are needed to protect and preserve public service broadcasting in the new broadcasting environment. The mandate of public service broadcasters should be clearly set out in law and include, among other things, contributing to diversity, which should go beyond offering different types of programming and include giving voice to, and serving the information needs and interests of, all sectors of society."

With regard to the extension of the CGU and inclusion of its structure into the recently established Ministry of Transparency, we recall that Article 19 of the ICCPR, paragraph 2 embraces a right of access to information held by public bodies. In particular, we refer to the report of the Special Rapporteur on Freedom of Opinion and expression (A/68/362) which concludes that "the effective implementation of national laws on information continues to be limited by the reluctance of public bodies and officials to comply with the new norms and the continued acceptance of multiple grounds for secrecy" and recommends that "States should, in particular, consider the appointment of a focal point, such as an information commissioner, to assist in the implementation of national norms on access to information or the creation of a State institution responsible for access to information. Such mechanisms could be mandated to process requests for information, assist applicants, ensure the proactive dissemination of information by public bodies, monitor compliance with the law and present recommendations to ensure adherence to the right to access information."

Furthermore, the Inter-American Commission on Human Rights has asserted that a fundamental aspect of the proper implementation of the OAS Member States' regulatory frameworks pertaining to access to information lies in the establishment of a specialized administrative body created to oversee the enforcement of the law and to resolve the disputes that arise between the right to access to public information and the

State's interest in protecting certain information on the basis of the limitations established by law.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the independence of the Brazilian Broadcasting Corporation.

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.

It is our responsibility, under the mandate provided to us by the Human Rights Council and the Inter-American Commission on Human Rights, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the reasons for removing the chief executive officer of the ECB, the subsequent dismissal of journalists and canceling of programmes, and the compatibility of these measures with the above referred international standards.
3. Please indicate in what terms the mandate of the Ministry of Transparency, Oversight and Control will now provide for the enforcement and promotion of the right to access information in Brazil. Especially, the independent review, in appeal, of refusals of access to information by other institutions within the Federal Government structure.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

It is our intention to publicly express our concerns through the press release attached as, in our view, the information upon which the press release is based indicates a matter warranting immediate attention. The press release indicates that we have been in contact with your Excellency's Government to clarify the issues in question.

Please accept, Excellency, the assurances of my 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