

Sao Paulo and Rio de Janeiro, August 02 2018

The following organizations present this letter of complaint for human rights violations in the sentencing of 23 activists for exercising their rights to Freedom of Peaceful Assembly and Association,

Mr. **Clement Voule**, UN Special Rapporteur on the right to freedom of peaceful assembly and association

## Contact

## Summary

We, the undersigned organisations are writing to submit to the UN Special Rapporteur an **urgent appeal** in relation to the human rights violations committed in the context of the conviction of 23 activists for exercising their rights to freedom of assembly and association.

The activists are not charged with one specific act of violence, but as members of an organized group of protesters that would attend mass demonstrations during the period of social unrest that enveloped all major cities in Brazil, pushing for better public services and against corruption. It is clear that the general accusations that resulted in the conviction configure an attempt to criminalize the right to protest.

The organisations ask the United Nations human rights specialists in the area to request, through the competent bodies, to:

- a. Provide clarification to the UN Special Rapporteurs on the case involving the 23 activists;**
- b. Issue a public statement about the case, condemning the conviction of the 23 activists;**
- c. Take the appropriate measures before the brazilian government in order to push for this decision to be overturned.**

## Introduction

In 2013 a wave of protests sparked in Brazil, especially in cities like São Paulo and Rio de Janeiro. At first protests demanded a reduction on bus fares but later emerged as protests against corruption, the public expenditure to host mega events in the country like the World Cup and the Olympics, austerity measures being debated in the Congress and finally against the police repression of peaceful protests.

In Rio de Janeiro, hundreds of thousands of protesters gathered on the streets in the city centre, near the Legislative Assembly and the Municipal Chamber, to protest against the government and its policies. The protesters occupied the square where the building of the Municipal Chamber of Representatives is located and also the street where the then governor of the state of Rio de Janeiro, Sérgio Cabral, currently serving a 100 years sentence for corruption, resided.

The case in analysis stems from a full-blown investigation launched days before the FIFA 2014 World Cup Final in Rio de Janeiro, by the Public Prosecutors Office and the Civil Police internet crime division. Finally, in July 16th 2018, the 23 defendants were sentenced to at least 5 and a half years in prison, most of them facing 7 years sentences at the harshest prison regime in Brazil. Two of the defendants were also found guilty of possession of explosive artefact, further aggravating the sentence to a total of 13 years in prison.

## List of defendants

1. ELISA DE QUADROS PINTO SANZI, also known as "SININHO";
2. LUIZ CARLOS RENDEIRO JUNIOR, also known as "GAME OVER"
3. GABRIEL DA SILVA MARINHO;
4. KARLAYNE MORAES DA SILVA PINHEIRO, also known as "MOA"
5. ELOISA SAMY SANTIAGO
6. IGOR MENDES DA SILVA
7. CAMILA APARECIDA RODRIGUES JOURDAN
8. IGOR PEREIRA D'ICARAHY
9. DREAN MORAES DE MOURA CORRÊA
10. SHIRLENE FEITOZA DA FONSECA
11. LEONARDO FORTINI BARONI PEREIRA
12. EMERSON RAPHAEL OLIVEIRA DA FONSECA
13. RAFAEL RÊGO BARROS CARUSO
14. FILIPE PROENÇA DE CARVALHO MORAES, also known as "RATÃO"
15. PEDRO GUILHERME MASCARENHAS FREIRE
16. FELIPE FRIEB DE CARVALHO
17. PEDRO BRANDÃO MAIA, also known as "PEDRO PUNK"
18. BRUNO DE SOUSA VIEIRA MACHADO
19. ANDRÉ DE CASTRO SANCHEZ BASSERES
20. JOSEANE MARIA ARAÚJO DE FREITAS
21. REBECA MARTINS DE SOUZA
22. FÁBIO RAPOSO BARBOSA
23. CAIO SILVA DE SOUZA

The case went public in a mediatic operation to serve 23 orders of arrests issued by Judge Flávio Itabaiana against activists that were present in protests in the city of Rio de Janeiro. The activists were painted in the media as violent protesters responsible for public disorder and destruction of public and private property. This came in a wave of repression against the mass demonstrations that were taking place in all major cities in Brazil, both with police brutality directly commanded by local governors and in institutional backlash that comprised rights-limiting jurisprudence and restrictive legislation.

The investigation itself was established after episodes in the context of major demonstrations labelled by police officials as “disobedience”, “resisting arrest” and “contempt of public officials”, non-violent crimes that are widely used in generic fashion to arrest people attending protests; or against any person police officers want to intimidate. The main line of investigation was mapping social network connections, specifically on Facebook, that would latter serve as the basis for the convicting ruling.

The criminal process as a whole was marked by the defence struggling to guarantee their arguments were taken into consideration and that pre-trial detention was not abused. Only days after the initial arrest order was reversed at the Rio de Janeiro Appeals Court, the judge reordered the detention, without any new facts that would justify the extreme measure. Finally, the Appeals Court determined the release of the activists, with the condition that they would not attend any public demonstration while they await trial.

On October 2014, the judge reordered the arrest of Elisa Quadros, Igor Mendes and Karlayne Moraes for attending a peaceful protest. Igor was kept for seven months in a maximum-security prison named Bangu, famous for its terrible conditions and severe overcrowding. Only when the appeal reached the Superior Court of Justice, in Brasilia, was his liberty restored and the ban on demonstrations was considered unconstitutional. However, the other defendants are still bound by this restriction, as well as others such as the prohibition to leave the city of Rio de Janeiro without judicial authorization.

The case of the prosecution is grounded on testimonials, mostly from public officers. Amongst key evidence relied upon in the sentence are the words of the deputy in charge of the investigation and a police officer that infiltrated groups of protest organizers to monitor their activities and report to the National Security Force<sup>1</sup> and the Integrated Command Centre, an intelligence body established to monitor the country in the context of the World Cup. The use of undercover police agents requires judicial authorization, which was not requested in this case, and was only regulated in law 12850/2013, the Criminal Organization Act, which is only applicable if the crimes attributed to the criminal organization are especially serious, i.e. with a maximum penalty of more than 4 years imprisonment.

At the last stage of the case, after all witness were heard and all evidence presented, the Prosecutor's Office asked for the acquittal of three of defendants – which was not accepted by the judge – and the conviction of the activists for the crimes of criminal association and corruption of minors, the latter charge not being presented in the initial complaint, further aggravating the possibility of defence.

Because of this, the defendants required a formal amendment of the indictment, which was denied by the Judge. Against this decision, on May 2015, the defendants filed a new writ of Habeas Corpus, being granted a liminar suspension of the criminal process until the final decision of the Habeas Corpus. Later on, the merits decision of the Habeas Corpus denied the request of the defendants, resuming the procedures.

Finally, on July 17<sup>th</sup> 2018, more than 03 years since the last act within the criminal procedures, judge Itabaiana sentenced all 23 activists, with penalties ranging from 05 and half to 7 years imprisonment (plus 2 of the defenders who were also found guilty of possession of explosive artefacts and therefore sentenced to 13 years imprisonment) for belonging to a alleged armed criminal organization with the employment of adolescents in criminal acts.

### **Summary of the Criminal Sentence**

The defendants were convicted for a) criminal association and b) corruption of minors. These crimes are prescribed in the following legal documents:

- a) “Criminal association” – Art. 288 of the Penal Code. “To associate 3 (three) or more persons, for the specific purpose of committing crimes: Penalty - imprisonment, from 1 (one) to 3 (three) years. Single paragraph. The penalty is increased by half if the association is armed or if there is participation of child or adolescent.”
- b) “Corruption of Minors” - Art. 244-B of the Children and Adolescents Statute. “Corrupting or facilitating corruption of a person under the age of 18 (eighteen) years, together with him or her practicing a criminal offense or inducing him or her to commit it: Penalty - imprisonment, from 1 (one) to 4 (four) years. Paragraph 1 - The penalties provided for in the caput of this article shall be those who practice the abuses therein using any electronic means, including chat rooms on the Internet. Paragraph 2. The penalties provided for in the caput of this article are increased by a third in the event that the infraction committed or induced is included in the roll of art. 1 of Law No. 8,072 of July 25, 1990”.

It is important to mention that the defendants are not charged for concrete acts of violence, making the defence quite difficult. Random episodes are scattered to illustrate the general scenario at that moment of civil unrest, without none serving as the basis of the conviction. The activists are sentenced based on testimonies

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<sup>1</sup> A federal militarized unit that is sent at the disposal of the Ministry of Justice to conduct ‘law and order’ missions in states. These forces are drafted from different security forces from around the country and have obscure accountability mechanisms – for instance Freedom of information requests are pushed from local to federal authorities and back without receiving a proper response.

that only confirm that they attended or helped to organize and maintain demonstrations; specifically one entitled “Occupy Chamber of Representatives” - a sit-in, which demanded measures to improve the quality of public education and lasted for over two months<sup>2</sup> before being violently dispersed by the police during the celebration of Teacher’s Day on October 15<sup>th</sup> 2013- as well as hearsay testimonies about some of them enticing others to commit acts of violence.

Interest in Facebook events and even Facebook reactions to pictures are used to establish the alleged union of intent and hierarchy between the activists, despite the fact that several defence witnesses made firm allegations that the defendants did not all know each other during the events, or even that their presence at said events was peaceful. Even as the State used all of its most invasive investigation tools, such as wiretapping and infiltration, only available in the most serious cases, no hard piece of evidence was presented to establish the alleged threat posed by the activists.

While the conviction was expected due to the fact that the judge was biased against the activists since the beginning of the investigation, the level of the penalty is particularly harsh. The judge established the time to be served at the maximum level permitted by law for the conduct of criminal association, meaning the activists would comprise the most dangerous type of criminal organization in the country.

The judge openly uses moral elements, political opinion and attendance to protests as elements to raise the penalty of the 23 defendants, as illustrated below:

- **Distorted personalities:** the Judge, without any psychiatric exam nor a psychology degree, refers to all defendants as having a distorted personality, since they disrespected the State. The sentence affirms the activists disrespected the Executive by facing police officers during protests and protesting at the house of the former governor<sup>3</sup>, and disrespected the Legislative by doing a sit-in at the chamber of representatives. Furthermore, the judge stated the defendants disrespected the Court by greeting the three activists arrested at the time of trial with their fists up and chanting “they shall not pass”, as they entered the courtroom.
- **Reprehensible social behavior:** the Judge states that their behaviour is unacceptable since most of them are from the middle class but chose to abandon the “honest and ethic path”;
- **Crime motivation:** the Judge also says that their intention was to “implement chaos and bring terror to society”, absolutely disregarding the claims made by the activists for better public services, as well as the civil unrest spirit that was widespread at the time of the facts.

The sentence is based on the assumption that protests bring disorder and chaos and are not a lawful democratic institution. There is no mention to international standards on the right to freedom of assembly and peaceful association, in light of the country’s obligations.

## Conclusion and Requests

The elements hereby presented point to several violations of the defendant’s human rights, some of which will be highlighted. The first set of violations relate to the Liberty and Security of Person section of the International Covenant on Civil and Political Rights<sup>4</sup> which prohibits arbitrary arrest and detention, restricts the use of pre-trial detention to a minimum and requires anyone deprived of liberty to be treated

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<sup>2</sup> Available at: <http://www.ebc.com.br/noticias/brasil/2013/08/ocupacao-na-camara-do-rio-completa-uma-semana>

<sup>3</sup> Sergio Cabral, currently serving corruption sentences of more than 80 years combined.

<sup>4</sup> Articles 9.1 and 9.3.

with dignity<sup>5</sup>. In this case, as stated, all 23 defendants were arrested, initially for 5 days, (and later convicted) with no concrete evidence to support their involvement in any criminal offenses. The judge also ordered pre-trial detention of three of the defendants for participating in a peaceful assembly (something they had been prohibited to do for the duration of the criminal proceedings). One of the defendants was imprisoned for 07 months in a maximum security facility<sup>6</sup>.

There have also been clear violations of due process and the right to a fair trial on this case<sup>7</sup>. Besides all that has been pointed out concerning the nature of the evidence used against the defendants, it should be highlighted that one (out of two) of the charges they were convicted of was only brought by the Prosecutor's Office on the very last stage of the proceedings, therefore not allowing a proper defense. The disregard for the defense's arguments and the use of infiltrated agents' testimonials as one of the main evidences are other aspects that suggest the defendants haven't been allowed to properly defend themselves.

The process, as a whole, represents a grave violation of the right of peaceful assembly and association<sup>8</sup>. Some elements, however, are overwhelming: in different instances, political affiliation was the sole base for charges of criminal association; pre-trial detention was justified by attendance to a peaceful assembly; all of the 23 defendants had their penalties raised to the legal maximum due to participating in protests (which, by the judge's own words, means they have "distorted personalities"), among others. It should be stressed, as well, that the media has been playing a pivotal role in the sort of stigmatization of demonstrations and protesters which is displayed in the sentence.

Considering this brief summary of the main issues brought by the case, we, the undersigned organizations, urge the UN Special Rapporteurship on Freedom of Peaceful Assembly and of Association to i) issue a public statement about the case, condemning the conviction of the 23 activists; ii) take the appropriate measures before the Brazilian government in order to push for the decision to be overturned.

## Signatories

This urgent appeal has been signed by the following organisations:

Conectas Human Rights

ARTICLE 19

Justiça Global

Assessoria Jurídica Popular Mariana Criola

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<sup>5</sup> Article 10.1.

<sup>6</sup> A clear violation of Article 10.2.a of the ICCPR.

<sup>7</sup> Article 14.2.b.

<sup>8</sup> Articles 21 and 22.