

Lawyers' Rights Watch Canada

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BRAZIL: INDEPENDENCE AND SAFETY OF JUDGES AND LAWYERS

by Isabela Piacentini de Andrade

In Brazil, attacks of judges and lawyers are mostly connected with investigations of corruption, extrajudicial killings and abuse of force committed by the police or powerful groups such as landowners and members of the government implicated in criminal activities.

Attacks on judges and lawyers include murder, threats, intimidation tactics, and criminalization of the lawyers' work. Such attacks do not result from a repressive policy of the State - judges and lawyers face no formal obstructions to their work, but the negligence of the State in combating those practices and punishing the perpetrators has lead to a situation where the independence of judges and lawyers, especially those dealing with issues of police violence and land conflicts, is compromised.

CASES IN RELATION TO POLICE VIOLENCE

The fight against drug and weapon trafficking, gang control and criminal violence in big cities has been used as an excuse by the police to increase the use of violence, especially against the population living in slums. Operations carried out by the police, such as the police invasion of the Complexo do Alemão (slum area) in Rio de Janeiro in 2007, result in killings that are often treated as "resistance" deaths but that should be rather characterized as extrajudicial executions.

There are on-duty but also off-duty police abusive practices – such as corruption, extortion, participation in death squads and militias – that are not investigated properly, leading to a culture of impunity and tolerance that is an incentive to the perpetuation of such behaviors.

As duly noted by the Special Rapporteur on extrajudicial, summary and arbitrary executions, Philip Alston, on his last visit to Brazil, "members of the police forces too often contribute to the problem of extrajudicial executions rather than to its solution. In part, there is a significant problem with on-duty police using excessive force and committing extrajudicial executions in illegal and counterproductive efforts to combat

crime. But there is also a problem with off-duty police themselves forming criminal organizations which also engage in killings."¹

Lawyers representing victims of police violence, prosecutors that investigate criminal activities of police members as well as the judges who are in charge of those cases are subject to persecution, threats and murder.

Joao Tancredo: On 19 January 2008, the human rights lawyer Joao Tancredo, president of the Institute of Human Rights Defenders and ex-president of the Human Rights Commission of the Brazilian Bar Association, survived an attempt on his life. His armoured car was shot at four times by two unidentified men on a motorcycle. Joao Tancredo was returning from a meeting with residents of the favela Furquim Mendes (Rio de Janeiro), where he was listening to testimonies about killings that have allegedly been carried out by a policeman known as the 'Predator'. Joao Tancredo's car was bulletproof because he had received threats in the past. On 4 February 2008, the Special Rapporteur on the situation of human rights, Ms. Margaret Sekaggya, sent an urgent appeal to the Government of Brazil concerning Mr. Tancredo, expressing concern that his attempted killing might be directly related to his work in defense of human rights, particularly his criticism of alleged human rights violations perpetrated by members of the police forces.²

Another strategy to undermine the lawyers' work is to criminalize human rights defenders that denounce criminal practices of the police or powerful groups, for example by filing a defamation lawsuit against them.

Roberto de Oliveira Monte: On 24 January 2008, the Military Public Prosecutor filed a complaint with the Military Court against Mr. Roberto de Oliveira Monte, founder of the National Movement for Human Rights, former General Coordinator of the State Program for Education in Human Rights, and member of the National Committee of Human Rights and the Centre of Human Rights and Popular Memory, and the State Council of Human Rights. Mr. Monte was accused of incitement to disobedience and offence to the Armed Forces because of a lecture he gave at an event organized by the Association of Soldiers of the Brazilian Army, where he promoted respect for the rule of law and the human rights within the armed forces, objected to the ban of unionization for soldiers and identified registered cases of internal human rights abuses within the army. On 31 July 2008, the Special Rapporteur on the independence of judges and lawyers, together with the SR on the situation of Human Rights Defenders and the SR on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal to the Government expressing concern that the charges brought against Mr. Monte may be

¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum, Mission to Brazil, A/HRC/11/2/Add.2, 23 March 2009, p. 6, para. 5.

² Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum, Advance Unedited Version, A/HRC/10/12/Add.1, 4 March 2009, p. 62, para. 288

related to his legitimate activities in the defense of human rights, in particular his activities to promote human rights within the armed forces.³

CASES IN RELATION TO LAND CONFLICTS: INDIGENOUS PEOPLES AND LANDLESS WORKERS

The land conflict in rural and indigenous areas is also a source of violence and has resulted in several killings of members of the social movement of the landless workers (MST) and indigenous activists fighting for their rights to ancestral lands.

Violence and intimidation against these activists is carried out by private security companies or death squads hired by powerful individuals or companies, especially landowners whose lands have been occupied. Members of the landless workers and indigenous peoples organizations are victims of murders, intimidation, discrimination and forced evictions while those responsible for these practices remain unpunished.

The Special Rapporteur on extrajudicial, summary or arbitrary executions reports that "Land conflicts form the context in which these murders take place. But it is not the case that executions inevitably follow from conflicts over land. Executions occur because those who order and carry out the murders know that they will get away with it. Brazil must ensure that reported death threats are investigated and the perpetrators punished."⁴

Impunity is indeed an incentive for the continuation of the situation, especially the impunity of powerful or wealthy people who benefit from a discriminatory legal system that is strict with the poor and indulgent with the rich. An example of that is the recent acquittal of the farmer Vitalmiro Bastos de Moura accused of being the intellectual author the murder of the environmental and land activist Dorothy Stang in 2005, for which he had already been convicted and sentenced to a 30-year prison sentence. The acquittal was widely condemned by, among others, President Lula and other government officials. The Public Prosecutor lodged an appeal against the acquittal.⁵ The people accused of carrying out the murder were nonetheless convicted.

Lawyers representing landless workers and judges trying to fight against the impunity of such perpetrators have faced death and serious threats.

Henri Burin de Rozières: On 4 February 2008, the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, sent an urgent appeal to the Government concerning Frei Henri Burin des Rozières, a lawyer from the Pastoral Land Commission of Xinguara, Para State, an organization which works with small farmers to access land in the region. In October 2007, a witness reported overhearing plans being made to kill Mr. de Rozières, who has benefited from the police protection program for Human Rights

³ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum, 3A/HRC/11/41/Add.1, 19 May 2009.

⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum, Mission to Brazil, A/HRC/11/2/Add.2, 23 March 2009, p. 23

⁵ Amnesty International Report 2009 – State of the World's Human Rights.

Defenders of Para State since 2005. One of his personal security guards also received information that three gunmen had been ordered to assassinate Mr. de Roziers. The SR expressed concern that the threats against Mr de Roziers may be directly related to his work in defense of human rights, and that his physical and psychological integrity as well as that of the witness might be in danger. The Government responded by noting that Mr. de Roziers had benefited from police protection since 2005 and that a meeting had been held to hear Mr. des Roziers demands and to discuss how to better implement the protection program.⁶

The 2009 World Report of Amnesty International acknowledges that "there were attempts to criminalize movements that support landless people in their efforts to secure land and agrarian reform." Corruption and discrimination within the criminal justice system has lead to the paradox that, while the murderers of landless workers and indigenous persons remain unpunished, lawyers and leaders of social movements are convicted.

José Batista Afonso: On 26 march 2009, the Brazilian NGOs Justiça Global and Terra de Direitos, together with the Brazilian Bar Association of Pará State, issued a public note to protest against the conviction of the lawyer José Batista Afonso in the Federal Court of Maraba. He was sentenced to 2 years and 5 months imprisonment on a charge of private incarceration. In 1999, he mediated a negotiation between government authorities and rural workers claiming land redistribution; after hours waiting to negotiate, the workers had entered the INCRA government building and prevented government members from leaving the building before an agreement had been reached. José Batista Afonso is a lawyer of the Pastoral Land Commission and human right defender in Para State and was honoured in 2009 with the Chico Mendes Resistance Medal granted by the Torture Never Again Group - Grupo Tortura Nunca Mais (GTNM) because of his work as a defender of rural workers rights in Para state. According to Justiça Global, Terra de Direitos and the Brazilian Bar Association of Para State, this attempt to criminalize Mr Batista Afonso reveals a lack of impartiality in the judiciary and is part of a strategy to criminalize social movements and its leaderships in order to dismantle them.⁷

FINAL OBSERVATIONS

The Report produced in 2005 by the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy on his mission to Brazil clearly identifies the main problems of the Brazilian judicial system, which include corruption, long delays due to the number of remedies available and lack of resources, lack of access to justice and prejudice suffered by groups that are marginalized and discriminated against⁸. The reform of the judiciary system that took place in 2004 partially addressed some of these

⁶ Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum, A/HRC/10/12/Add.1, 4 March 2009, p. 61, para. 284.

⁷ Nota Publica. Criminalização: o caso do advogado José Batista Afonso, condecorado com a medalha Chico Mendes, 26 march 2009,

<http://www.cptnac.com.br/?system=news&action=read&id=3128&eid=8>

⁸ Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, Addendum, Mission to Brazil, E/CN.4/2005/60/Add.3, 22 February 2005.

problems, but much remains to be done. The Amnesty International Report 2009 points out that Brazil's criminal justice system continues to be characterized by negligence, discrimination and corruption. It also reports that in December 2008, the federal police arrested the president of the Espírito Santo State Supreme Court along with judges, lawyers and a member of the prosecution service, for alleged involvement in the selling of judicial decisions.

The National Council of Justice, an institution established in 2004, is playing an important role in combating corruption. It must be assured that its members, as well as other institutions such as the federal police and the public prosecutor, can perform investigations in independence and safety. Judges that do not accept bribes and that try to perform their judicial duties honestly may be faced with threats and murder when dealing with difficult cases. In his fight to dismantle drug trafficking along the Brazil-Paraguay border, Judge Olilon de Oliveira from Mato Grosso do Sul State had to live under police protection and was compelled to sleep for some months within the court building because of death threats from drug dealers.⁹

The negligence of the State in investigating and punishing perpetrators is one of the main causes of impunity. The Brazilian Bar Association of the Pernambuco State (OAB-PE) held a public protest 14 July 2009 to protest the lack of transparency and slowness of the investigation of the murder of five lawyers this year: Mr. Manoel Bezerra de Mattos Neto, Mr. Luiz Antônio Esteves de Britto, Mr. Antônio Augusto de Barros, Mr. José Marcos Carvalho Filho, and Ms. Karina Ligia Cruz Amorim.¹⁰

In order to enable judges, prosecutors and lawyers to act independently and safely, it is recommended that Brazil end impunity by investigating and punishing all the attempts on the lives and physical and psychological integrity of lawyers, judges and prosecutors; that the National Program of Protection of Human Rights Defenders be fully developed and implemented throughout the country; and that human rights education and training be provided to police and security forces.

Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights. LRWC engages in research and education, campaigns for advocates in danger because of their human rights advocacy and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

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⁹ Simas Filho, Mario. Um juiz sem liberdade, Revista Isto é, 5 december 2007.

¹⁰ Cinco advogados mortos no Estado este ano, Folha de Pernambuco, 3 July 2009, available at <http://www.oabpe.org.br/comunicacao/oabnamidia/1263-oab-pede-e-delegada-e-designada-para-o-caso.html>; Ato publico contra morte de advogados reúne dezenas de pessoas na OAB-PE, available at <http://www.oabpe.org.br/component/content/article/12-outdoor/1445-ato-publico-contra-morte-de-advogados-reune-dezenas-de-pessoas-na-oab-pe.html>.