

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Governor of the State of São Paulo
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Dear Governor and Secretary;

Re: Arbitrary arrest and assault of lawyers DANIEL BIRAL AND SILVIA DASCAL HIRSCHBRUSH.

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 campaigns for advocates in danger because of their human rights advocacy, engages in research and education and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

I am writing, as a member of LRWC, in response to information obtained indicating that Brazilian lawyers Daniel Bira and Silvia Daskal Hirschbrush have been abused in the exercise of their legal profession when, during a peaceful protest in the city of São Paulo, they were arbitrarily arrested and assaulted by police officers after questioning one of the officers about her lack of identification during public order operations.

According to information received, the lawyers were attending a public assembly with around 500 other people that took place at Praça Roosevelt in the city of São Paulo. The purpose of this public assembly was to discuss and protest against the abuses committed by São Paulo military and civil police during recent protests, including the arbitrary detentions of two protesters, Fábio Hideki Harano and Rafael Lusvardi. Before the event started, military police special troops had already surrounded the area to stop and search citizens gathered

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there. Police officers asked for identification documents in order to intimidate protesters and arbitrarily arrested at least six of them, including the two lawyers. In addition, military police used excessive force, including deploying tear gas, rubber bullets, and pepper spray from a short range towards protesters and journalists in order to break up the peaceful protest.

After being arbitrarily arrested, Daniel Biral was assaulted by officers inside a police car while being transported to a police station. He was beaten on the head, which caused him to faint, and was dragged to São Paulo's 78th police station. The police chief refused to accept his charges against the police officers and only registered the military police's statement. Daniel Biral was released later that evening but is now under investigation for "contempt for authority" (*desacato*) based on his questioning of a police officer's failure to provide identification when breaking up the peaceful protest. Besides Biral, Silvia Daskal Hirschbrush was also arbitrarily arrested during the protest.

In response to the arbitrary detention and assault of these lawyers, the Secretary of Public Security clarified that (a) the supposed victims should register the incident and undergo an examination of *corpus delicti* to prove their allegations; (b) it is important that the lawyers also inform the Military Police Ombudsman so that the alleged crime can be investigated; (c) since they have a legal background, the lawyers are aware that they are responsible for proving the accusations made against the police officers; (d) the affirmations made by Mr. Biral that he was prevented by the police from registering the accusation of torture are unfounded; and (e) all proceedings for the elaboration of a report on the facts have been followed by a representative of the BAR Commission of Rights and Prerogatives.

The acts described above represent a clear violation of the Brazilian Constitution, which establishes that Brazil is a Federal Republic based on the rule of law (article 1). The Constitution furthermore states that lawyers are indispensable to the administration of justice and, as such, cannot be violated for acts and manifestations done in the exercise of their professional functions (article 133). In addition, the Statute of Lawyers of Brazil establishes several rights that lawyers have, including the free exercise of their profession (article 7, I).

Besides violating Brazil's domestic legal framework, the above-mentioned facts constitute an egregious breach of Brazil's duties under binding international laws and principles. Indeed, as a member of the United Nations General Assembly, Brazil is bound by the *Basic Principles on the Role of Lawyers*, welcomed by the UN General Assembly in 1990, which states that "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" (article 16). The *Basic Principles on the Role of Lawyers* furthermore states that "[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities" (article 17).

In addition, the *Declaration on Human Rights Defenders*, adopted by the General Assembly of the United Nations on 9 December 1998, obliges Brazil's government to conduct a prompt, impartial and effective investigation of the shocking threats made against the two lawyers (articles 9.5 and 11) and to protect them in the practice of their profession (article 12.2).

Given the seriousness of the facts described above, LRWC respectfully calls for an immediate and thorough investigation into the arbitrary arrest and assault of lawyers Daniel Biral and Silvia Daskal Hirschbrush and to:

1. ensure their present and future safety, and

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2. investigate their arbitrary arrest and assault with the goal of identifying the person(s) responsible and bringing them to trial.

LRWC further requests the results obtained through the investigation to be made public and for those responsible to be brought to justice.

LRWC awaits your response. Thank you for your attention to our concerns.

Sincerely,



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LRWC Brazil Monitor

Copied to:

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