

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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Thursday, April 20, 2017

H.E. Mr. Michel Temer, President of the Federative Republic of Brazil

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Dear President,

Re: Mr. Érik Silva - Defamation lawsuits in Brazil used to constrain journalist's right to freedom of expression and information

Lawyers Rights Watch Canada (LRWC) is a committee of lawyers and others 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 Mr. Érik Silva, chief editor of the newspaper Folha MS, has been unlawfully charged with a defamation lawsuit for publishing information on the excessively high salary received in March 2016 by a civil servant of the Town Hall of Corumbá, Mato Grosso do Sul.

According to information received, in April 2016 Mr. Silva published a story about the high salary earned in March 2016 by the accountant of the Town Hall of Corumbá, which surpassed the salary cap for government employees and was even higher than the salary of the justices of Brazil's Supreme Court. The story, which was published on the website of the newspaper Folha MS, revealed information obtained from the transparency section of the Government's website and did not mention the name of the civil servant whose salary was under analysis. Before publishing the story, our sources say Mr. Silva tried to contact the civil servant, who did not respond to his requests, and the president of the Town Hall, who said he would not give any declarations on the matter.

A few days after the publication, Mr. Silva was sued by the civil servant whose salary was the focus of the news story, Mr. Julio Cesar Bravo, under allegations of unfairly accusing him of committing a crime, tarnishing his reputation and offending his dignity

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(articles 138 to 140 of the Brazilian Penal Code). The judge responsible for Mr. Silva's lawsuit in the first instance ruled in favour of the journalist, but Mr. Bravo appealed from the decision, forcing Mr. Silva to spend countless time and resources to defend himself.

LRWC believes that the lawsuit against Mr. Silva is being used to curtail his right to freedom to expression and information and to prevent him from continuing his work as a journalist denouncing possible government irregularities. The case confirms an alarming trend of judicial action being used to intimidate journalists and prevent them from publishing information of public interest. Indeed, the umbrella organization for regional labour unions, the National Federal of Journalists (Fenaj) published a report in January revealing that the number of cases of journalists being sued for their work in Brazil went from 9 in 2015 to 18 cases in 2016.

The use of judicial action to intimidate journalists who seek to publish information on government activities constitute a violation of the Brazilian Constitution, which determines that "the expression of intellectual, artistic, scientific, and communications activities is free, independently of censorship or license" (art. 5, IX), and that "access to information is ensured to everyone (...)" (art. 5, XIV). The Brazilian Constitution further establishes that the "manifestation of thought, the creation, the expression and the information, in any form, process or medium shall not be subject to any restriction, with due regard to the provisions of this Constitution" (art. 220).

Failure to safeguard journalists and to investigate attempts to intimidate them would also constitute an egregious breach of Brazil's international obligation to ensure the right to freedom of expression. This legal duty arises from the *International Convention on Civil and Political Rights* (ICCPR), ratified by Brazil in 1992, which states that

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (art. 19.2).

Furthermore, as a member of the United Nations, Brazil is bound to respect the *Universal Declaration of Human Rights*, which similarly to the ICCPR states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (article 19).

The duties to guarantee the right to freedom of expression and information of Mr. Silva and to prevent the intimidation of journalists also arise from Brazil's obligations as a member of the Organization of American States, namely from the *American Declaration of the Rights and Duties of Man*, adopted by the Ninth International Conference of American States in Bogota in 1948, which establishes that "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever" (art. IV). Also at the regional level, the *American Convention on Human Rights*, which Brazil ratified in 1992, establishes that

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of

frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice (art. 13.1).

The Convention further establishes that

The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions (art. 13.3).

Freedom of expression is a fundamental right through which individuals exercise their right to receive, impart and seek information. It is therefore essential for the functioning of representative democracy. Therefore, given the seriousness of the facts described above, LRWC respectfully calls on the government of Brazil to take swift and effective action to ensure:

1. the protection of the right to freedom of expression and information of Mr. Érik Silva and of all journalists in Brazil who work to publish information of public interest;
2. the prevention and investigation of acts of intimidation against journalists through judicial actions and any other means, with the appropriate punishment of perpetrators and due compensation to victims;
3. that Mr. Silva and other journalists are able to carry out their legitimate activities without any hindrance or fear of reprisals or intimidation;

Finally, LRWC respectfully requests the results obtained through the investigation to be made public.

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

Sincerely,



Luiza Teixeira, LLM, MSc.
LRWC Brazil Monitor

Copied to:

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