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**Contribution by Reporters Without Borders (RSF),
a non-governmental organization with special consultative status,
on freedom of the media and information in Brazil**

A Paris-based NGO that has promoted media freedom worldwide since 1985, Reporters Without Borders (RSF) has consultative status with the United Nations. Its national sections, its bureaux in ten cities and its network of correspondents in 130 countries enable it to closely monitor freedom of information and expression all over the world. In 2015, RSF opened a new regional bureau for Latin America in the Brazilian city of Rio de Janeiro. Brazil is ranked 104th out of 180 countries in RSF's 2016 World Press Freedom Index.

Prepared for the third cycle of Brazil's Universal Periodic Review, this contribution offers recommendations on freedom of information and expression, especially as regards the protection of journalists, pluralism, access to information, defamation legislation and online rights and freedoms.

1. Journalists' safety: one of the world's most dangerous and deadly countries for media personnel

From January 2012 to August 2016, RSF registered 22 cases of Brazilian journalists who were murdered in direct connection with their work. During this period, Brazil became Latin America's second deadliest country for journalists, behind Mexico. Most of the victims, who included reporters, radio programme hosts and bloggers, had been investigating and covering stories linked to corruption, public policy or organized crime, especially in small or mid-sized towns where journalists are more vulnerable.

The increase in the number of murders, noticeable since 2010, is unfortunately not the only threat to journalists' physical integrity. The big demonstrations of 2013 were marked by frequent violence against journalists. Reporters covering the protests were systematically targeted by the police, who attacked them or arbitrarily placed them in temporary detention. This trend continued during the protests and unrest that accompanied the FIFA World Cup matches held throughout the country in 2014.

During the 13th Universal Periodic Review session in 2012, Brazil accepted France's recommendation (A – 119.89) that it should take all necessary

measures to ensure the physical integrity of journalists and human rights defenders.

In October 2012, the federal government created a Working Group attached to the Secretariat for Human Rights (SDH) that was asked to analyse cases of violence against journalists and propose measures to ensure that they are protected in future. The Working Group's final report, which took two years to compile with the help of representatives of the ministries of communication and justice and civil society organizations, said that 321 journalists had been the victims of violence from 2009 to 2014 and that the local authorities were directly involved in many of these cases.

Among its proposals, the Working Group said the government should create a Public Observatory on Violence against Journalists in partnership with the United Nations; extend the Protection Programme for Human Rights Defenders to journalists and bloggers who have been the target of threats or murder attempts; put the federal authorities in charge of all investigations into crimes of violence against journalists; and establish good conduct procedures for the police in order to guarantee the safety of journalists during demonstrations. The government has implemented none of these recommendations.

2. Pluralism limited by heavily concentrated media ownership

The 1962 telecommunications law (Lei 4417/62) has undergone no significant changes in the half-century since its adoption and continues to be the main legal instrument for regulating broadcast media frequencies and licences. This clearly outmoded law no longer complies with international norms, which regard media pluralism as a key component of freedom of information and expression.

Long dominated by the private sector, Brazilian media ownership is extremely concentrated and unevenly distributed, limiting the diversity of views represented in the media. Article 220 of the 1988 federal constitution bans monopolies and oligopolies in the communications sector but congress has yet to define what constitutes a monopoly or oligopoly. So there is no explicit norm restricting horizontal or vertical ownership in the media. Similarly, article 54 of the federal constitution bans senators and deputies from owning TV channels or radio stations but 40 parliamentarians control at least one TV channel or radio station either directly or indirectly. The media therefore suffer from deeply entrenched conflicts of interest and a marked lack of independence from the centres of power.

On 24 June 2016, RSF and the UN and OAS rapporteurs on freedom of expression voiced concern about government intervention in the management of the state broadcasting company, the EBC, after then Interim President Michel Temer issued a decree firing the EBC's director-general. This violated the 2008 law creating the EBC, which provides for a four-year term of office for each director-general regardless of political or electoral developments. Brazil's president cannot fire the director-general or appoint a new one until the existing one has completed his or her four-year term. This provision was intended to guarantee the impartiality and independence of the EBC, which has had to wage several battles to maintain its independence vis-à-vis the government since its creation.

The process of allocating licences to community broadcast media is meanwhile regarded as excessively slow and restrictive. Community TV and radio stations that decide to keep broadcasting in the hope of eventually obtaining a licence or getting an old licence renewed are very often the victims of violent raids, confiscation of equipment and arbitrary prosecutions.

The allocation of broadcast licences does not sufficiently respect the criteria of transparency and fairness, and takes no account of civil society grievances. Parity in the share-out of licences between community, state and private sectors is not respected.

And the 1998 legislation regulating community broadcasting imposes ridiculously low limits on the power of transmitters – 25 watts for community radio stations and 100 watts for community TV stations. Most community broadcasters regard the law as obsolete and completely inappropriate.

3. Criminalization of defamation and arbitrary prosecutions

In 2009, the Federal Supreme Court, Brazil's highest court, finally overturned a 1967 press law inherited from the military dictatorship that provided for severe and completely disproportionate penalties in cases of defamation in which a person's "honour" was deemed to have been questioned. This was a significant but nonetheless inadequate step because Brazil's penal code still allows for criminal proceedings against journalists for defamation and related offences.

The criminalization of disrespect (*desacato*), defamation, insult and slander continue to have a disastrous impact on media freedom in Brazil. The Inter-American Commission on Human Rights (IACHR) has repeatedly deplored the fact that public officials constantly use these provisions to deter criticism. The IACHR has urged OAS member states to decriminalize defamation in order to comply with international norms.

The case of the journalist José Cristian Góes is a good example of the dangers of these provisions. Góes posted an opinion piece on his Infonet blog in May 2012. Entitled "Me, the colonel in me," it was a fictional tale in which an imaginary "colonel" complained about Brazil's current democracy. It criticized political practices in general but mentioned no names, dates, places or public positions. The vice-president of the Aracaju high court nonetheless bought civil and criminal defamation proceedings against Góes and he was sentenced to seven months and 16 days in prison on 4 July 2013 – a sentence that was immediately commuted to community service.

In February 2016, the *Gazeta do Povo* newspaper published a series of reports claiming that judges in the state of Paraná were being paid too much. Dozens of the state's judges and some prosecutors reacted by filing a total of 42 libel suits against five of the newspaper's employees, including three journalists. A total of more than 1.4 million reais (350,000 euros) in damages was demanded. Supreme Federal Court justice Rosa Weber finally suspended all the suits and hearings against *Gazeta do Povo's* journalists in July but the case illustrated how public officials can abuse the law to silence their critics.

4. More progress needed on access to information

The law on access to public information that took effect in May 2012 is an exemplary piece of legislation. But the government must ensure that it is properly implemented by the public entities concerned. Implementation is still posing many problems, especially at the state and municipal level. The non-response or incomplete response rate to requests for information is still too high. Furthermore, the principle of active transparency envisioned by the law is not always respected. Much information that should automatically be made available to the general public is not. More progress is needed on this law's effective implementation in order to reinforce public sector transparency and fully guarantee the right to freedom of information in Brazil.

5. Online freedom: established rights now threatened

RSF salutes the *Marco Civil da Internet* (Internet Civil Framework), a 2014 law that regulates the Internet and protects online privacy and free speech. It put Brazil at the forefront of online civil rights protection in Latin America by affirming such key principles as "Net neutrality," which bans Internet service providers from giving preferential access, thereby preventing the creation of a "multi-speed Internet" and differential treatment of users. The *Marco Civil* also protects personal data and makes it impossible to block content without a court order. And it says that, except in cases of non-compliance with a court removal order, website hosts cannot be held legally responsible for the content posted by users. This means that hosts do not have to decide for themselves whether content is legal or illegal.

This law and the universality of Internet access are unfortunately now threatened by the aggressive commercial practices of telecom giants and by proposed draconian laws to combat cyber-crime. The final report of the Parliamentary Commission of Enquiry on Cyber-Crime, approved on 4 May 2016, proposes new laws that would violate the principles established by the *Marco Civil*, giving more leeway to police and judicial investigators at the expense of the rights of users. They would, for example, make it easier to block websites and online apps, and remove content. Brazil must do everything possible to preserve the online rights and freedoms that have already been established.

Recommendations

In the light of these observations, RSF urges the Brazilian authorities to:

- Rapidly implement the Human Rights Secretariat Working Group's recommendations, creating an effective mechanism for protecting news providers and an Observatory on Violence against Journalists in partnership with the United Nations.
- Respect the principles of the UN Human Rights Council resolution of 18 March 2016 on promoting and protecting human rights during protests. Brazil must establish good conduct procedures for the police in order to guarantee the safety of journalists covering demonstrations.

- Overhaul and update all media legislation, which is completely obsolete. Particular attention must be paid to media ownership provisions and to the definition of monopolies and oligopolies.
- Pass a new telecommunications law that is adapted to contemporary realities and includes a mechanism for allocating broadcast frequencies fairly, so that the still under-represented community sector is given the frequencies it needs. The process of allocating broadcast licences must respect transparency criteria, consult civil society and guarantee parity between the community, public and private sectors. The Brazilian authorities could use the legislation recently adopted in Argentina and Uruguay as a model.
- Decriminalize disrespect (*desacato*), defamation, insult and slander.
- Ensure proper implementation of the law on access to public information and the transparency of the actions of state institutions.
- Ensure that the *Marco Civil da Internet* is fully respected and reject proposed laws that endanger Net neutrality, the free flow of information online and the protection of personal data.

Reporters Without Borders (RSF)

Contacts:

Emmanuel Colombié

Head of the Latin America desk

Tel: +55 21 9 7368 8558

Email: ameriques@rsf.org

Contact Geneva

Hélène Sackstein

079 696 6133

sackstein@rsf-ch.ch