

Brasilia, 9 August 2016

To Mr. Executive Secretary
of the Inter-American Commission on Human Rights
Mr. Emilio Álvarez Icaza
1889 F. Street N.W. Washington, DC 20006
c/c Commissioners to the IACHR

Subject: Executive Summary of Petition and Request for Precautionary Measures on behalf of the Brazilian President Ms. Dilma Vana Rousseff.

Dear Mr. Alvarez Icaza, Dear Commissioners.

We are pleased to address this illustrious Inter-American Commission on Human Rights – hereafter Inter-American Commission, Commission or IACHR – in our condition of petitioners representing the President of Brazil, Dilma V. Rousseff, in order to deliver this Executive Summary related to the Petition presented alongside a Request for Precautionary Measures to the Commission.

I. Background preliminary

This petition presented before the Inter-American Commission is based on the impeachment procedure illegally initiated against Ms. Rousseff. This procedure aims at removing the President from office as a way to prevent the furtherance of ongoing investigations against several parliamentarians, politicians and businessmen, under the so-called "Lava Jato" investigation or the "Petrobras" case.

It has been made public and are part of criminal investigation records several discussions undertaken by representatives of the lower Chamber of Congress (*Câmara dos Deputados*) and by senators who demand the impeachment of the President in order to "stop the bleeding of the political class" emerging from such criminal investigations.

One of the best examples of these facts is the also widely known case of the former president of the Lower Chamber of Congress, Eduardo Cunha – currently suspended from office on corruption charges – who has declared that if the President did not stop the course of investigations he would start the procedure impeachment and in fact he did.

The impeachment process was kicked off based on the alleged commission of crimes of responsibility (Article 51 of the Constitution), targeting to oust the President. To do so, the reasoning was sought in two lines of alleged facts:

a) The issuing of supplementary executive decrees directed to covering additional expenses beyond administrative legislation. This was set about at the request of various government bodies and not at the initiative of the President. The initial objection stems from an entirely adverse interpretation of the historical understandings of the Federal Court of Accounts (*Tribunal de Contas da União - TCU*), which has also requested a supplementary executive decree even after its decision about the infraction. It is noteworthy that throughout the history of the Administration of the Brazilian State TCU had never objected this type of operation of issuing supplementary decrees, further the Office of the President start to abide by the new understanding that object such executive decrees. It is also important to point out that the reports of TCU need Congress' approval and that such approval has not yet been delivered.

b) The postponement of commitments made by the State through accounting adjustments, known as "Fiscal Pedaling" (*Pedaladas Fiscais*) – which were considered criminal acts by the forerunners of the impeachment process.

On both issues it has already been issued the Public Prosecutor and held that there was no crime in any of them.

II. Facts at the Lower Chamber of Representatives (*Câmara dos Deputados*)

The Chamber of Representatives of Brazil launched the impeachment process declaring its admissibility in violation of the rules and standards of the Inter-American system. After a process riddled with irregularities, it went on and was closed in that instance, and followed by its deliverance the Upper Legislative Chamber – the Senate.

This occurred after a highly irregular voting procedure obligations that was carried out in opposition to conventionality control obligations (Article 1 ACHR, e.g. case "Almonacid Arellano et al v. Chile"...). Inter-American safeguard of the victim were violated taking into account:

a) the violation of the principle of legality to the extent that impeachment with a change of contextual background regarding regular administrative practices as defined by TCU.

b) the violation of the right to a fair trial (Article 8 ACHR)

b.1. Members of the Lower Chamber voted *en bloc* and without taking individual reasoning or substantiation of arguments (art. 8.1, e.g. case "Constitutional Court v. Peru").

b.2. the arguments of the vote were alien to the subject matter. At the same time the Supreme Court (STF) admitted in lawsuits filed by the victims that the Lower Chamber representatives that could not meet due process procedures, could not be impartial and vote as required by their own constituents (art. 8.1, fairness and motivation).

b.3. The charges initially argued were not the same by which the Lower Chamber representatives based their votes (art. 8.2.), whom were not informed as soon as the procedure started (art. 8.2.a, principle of timely information and matching principle, e.g. case "Fermín Ramírez v. Guatemala").

b.4. defense lawyers were prevented from properly questioning witnesses (only being authorized to question them for three minutes), which violently transgresses Art. 8.2.f (e.g. Case "Lori Berenson Mejía v. Peru"). Experts were also prevented lend testimony, compromising the right of defense by limiting witnesses to public officials, who are subjected to harsh pressures of the current context.

B.5. The voting records of the approval of conveying the impeachment proceedings to Senate reveals that votes were casted based on unrelated issues to the facts allegedly committed (art. 8.1, fairness and motivation, e.g. Cases "Lopez Mendoza v. Venezuela", "Baena Ricardo et al v. Panama", " Constitutional Court v. Peru ").

B.6. Impossibility of appeal. Since the Supreme Court's intervention was judicially requested, the Court replied that it could not exercise jurisdiction over the case arguing that it would interfere with the division of powers. It said the arbiter of the process was the Senate, which has excluded all these allegations.

c) the violation of the principle of non-discrimination (art. 1.1) has been violated, given that, due to political reasons, this process has been set off against the President but not her successor, who faces a complaint on these same facts, however unsubstantiated.

d) the violation of political rights (art. 23.2), since the ousting of the President was carried out by Lower Chamber representatives and senators, without the intervention of competent judges or opening of criminal proceedings, much less a judicial conviction. (e.g. Case "Lopez Mendoza vs. Venezuela", and Resolution 5/2014 of the Commission "Gustavo Petro Francisco Urrego respect to the Republic of Colombia").

III. Facts at the Senate (*Senado Federal*)

Despite its obligations as custodians of the rights of the victim given their status as judges of the process, senators have effectively rejected each and every one of the requests of defense. Enabled to act in such a condition due to the Supreme Court interpretation of current norms, Senate proceeded to act and did approved – after the intervention of a commission that did not recognize party proportions and afterwards the Chamber's Plenary in the impeachment procedure against President Rouseff.

This removal from office was also adopted in violation of the Inter-American System. Particularly, Article 23.2 was violated to the extent that the ousting implied a blatant restriction on political rights, both for the victim and for the petitioners who advocated it before the judicial instance without success as well as voters, according to Inter-American case-law in the cases "Petro" and "Lopez Mendoza," among others.

Indeed, there have been no criminal charges, trial or sentence, all of which are requirements under the provisions of art. 23.2 of the ACHR.

To date, the Senate has continued to put the process forward. To this end, Senate has:

- a) approved the admissibility of the case;
- b) rejected the expert reports submitted (art. 8 2.d);
- c) refused to analyze annulments argued during the procedure before the Lower Chamber of Congress (art. 8.1.);
- d) in an internal commission, approved the "*Pronúncia*" procedure that it is immediately prior to the discussion in Plenary that ultimately will decide on the merits of the impeachment process. The only proceeding pending is the receipt of the final libels for debate in Plenary;
- e) endorsed a disqualification of any right of defense, without acknowledging current procedural law. Senate has determined that each party to the impeachment process would only be allowed to present six witnesses, a number obviously insufficient in view of the number and complexity of the facts (art. 8.2.f, the right to question witnesses and experts, e.g. Case "Lori Berenson Mejía v. Peru ").
- f) accepted charges, from the beginning, that entail the removal from office and the disqualification of exercising political rights for eight years (not restricted to running for office), all the while there notably no crime committed (Art. 23.2. e.g. "Lopez Mendoza" and "Petro");
- g) senators have publicly expressed that a decision has already been taken and that they merely waiting the formal procedure unfolding (art. 8.1, fairness and substantiation, e.g. cases "Constitutional Court v. Peru", " Chocron Chocrón v. Venezuela ", " Reverón Trujillo v. Venezuela).

IV. Intervention of the Judicial Power:

It has been required, by the petitioners and victims in more than one occasion throughout this process, the intervention of the Supreme Court (STF). The Court however has rejected all possible interventions in the events with the sole exception of setting up a

procedural framework for the impeachment process, bearing in mind the absent regulation on the matter since the constitutional reform which modified the provisions on impeachment rules. Yet the STF himself away from its commands.

In summary, we can say that the Federal High Court ruled that:

a) Lower Chamber representatives should not be ruled by sentencing criteria of impartiality and respect for the guarantees of Art. 23.2 and 8 ACHR, since this has been how the process has been brought about and carried out;

b) Senate is the central authority of the impeachment process, in accordance with the Supreme Court's decision in the ADPF 378 suit and the MS 34.193/DF suit, noting that, having been previously authorized by the Lower Chamber, Senate assumes the role of last instance or last resort court, and its decision may not be reexamined by any other body, not even by the Supreme Court;

c) that the trial is to be seen through judges vested with the status of politicians issuing votes of a political nature and that the reasoning behind their decisions is different from that adopted by the Judicial Power;

d) As the whole process of impeachment is based on a change of opinion by a technical body of public accounts that was not even approved by the same Congress that dealt with the process of impeachment, Senate will decide on the consequences of the violation of principle of legality before having issued decision on the relevance of such a change.

The Supreme Court appear to be unfamiliar with the following obligations (Article 1.1 and 2, emerging from both the text of the American Convention and the jurisprudence of the Inter-American System):

- a) Control of conventionality (case "Almonacid Arellano," among others),
- b) Protection of Political Rights (cases "Lopez Mendoza" and "Petro"),
- c) Due process and guarantees, regardless of jurisdiction (cases "Baena" and "Constitutional Court", among others),
- d) Judicial Protection (cases "Baena", "Chocrón", "Constitutional Court", "Velasquez Rodriguez" and "Claude Reyes").
- e) Right to appeal to a higher court (art. 8.1.h case "Barreto Leiva")

V. Exhaustion of domestic remedies:

Inasmuch as the Supreme Court has rejected every prospect of review required by the victim and the petitioners, and that any other pending measure is unsuited to ensure the protection of the rights in violation, no pending legal proceedings are likely to be effectively protective of the human rights set out by the ACHR.

VI. Granting of precautionary measures:

In short, the situation is as follows, with special indication of articles and international standards jeopardizes, as mentioned hereabove:

- a. The suspension of the exercise of the Presidential mandate is ongoing, imposing a clear restriction of political rights of the victim;
- b. Voters are violated in their political rights, since their choice for President is not respected;
- c. The prosecution has required in all instances the final removal from office and disqualification of the exercise of political rights; both ends are present in the constitutional text.
- d. There is no criminal case or complaint or condemnation or the possibility of it arising during the consideration of the political judgment, further it would be impossible to introduce them because of due process rules;
- e. The judges have advanced their position;
- f. It is an almost self-fulfilling prophecy conviction in the Brazilian Senate;
- g. There is no possibility of judicial review;
- h. The process will likely resume in a Presidential ousting in clear violation of political rights standards, without a proper trial or a criminal conviction;
- i. The situation compromises irreparable violations of rights;
- j. The situation requires urgent solutions, since otherwise should reverse a recall;
- k. This is assuming serious impact on a protected or on the possible effect of a pending decision in a case or petition with the Inter-American System law.

Due to arguments presented above, the Precautionary Measures should be granted requiring the State to:

- a) reinstate of the victim in office.
- b) suspend of the entire process until the petition is decided.
- c) alternatively, the suspension of proceedings in the Senate until it is demonstrated to the Inter-American Commission, the petitioners and victims that the process is to be performed

meeting all the guarantees established in the Convention, including the annulment of the steps adopted violating the standards of the Inter-American System.

We salute Mr. Executive Secretary and Illustrious Commissioners with the highest consideration.