



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9895 • FAX: +41 22 917 9008 • E-MAIL: petitions@ohchr.org

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MT/GTC/ma 2841/2016

HUMAN RIGHTS COMMITTEE

PROCEDURE OF INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

10 September 2018

Dear Ms Taixera, Mr Zanin and Mr Robertson,

We have the honour to acknowledge receipt of your submission, dated 4 September 2018, concerning communication No. 2841/2016, which you submitted to the Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Mr. Luiz Inácio Lula da Silva.

Your submission has been transmitted to the State party, for information.

Information concerning the Committee's Interim measures request of 17 August 2018

The Committee acting through its Special Rapporteurs on New Communications and Interim Measures, pursuant to rule 92 of its rules of procedure, takes note of your request for clarification in relation to the legal nature of the Committee's interim measures.

In this connection, the Committee recalled the State party that, according to its General Comment No. 33 (para. 19), "failure to implement such interim or provisional measures is incompatible with the obligation to respect in good faith the procedure of individual communication established under the Optional Protocol." Interim measures under rule 92 of



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its rules of procedure, adopted in accordance with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol, in order to avoid irreparable damage to the victim of an alleged violation. The Committee further referred to its note verbale of 22 May 2018, and recalled that it is incompatible with the obligations under the Optional Protocol for a State party to take any action that would prevent or frustrate the consideration by the Committee of a communication alleging a violation of the Covenant, or to render the expression of its Views nugatory and futile.

The Committee further recalled the State party its General Comment No. 31 (para. 4), according to which, “the obligations of the [International Covenant on Civil and Political Rights] in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party [...]. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party ‘may not invoke the provisions of its internal law as justification for its failure to perform a treaty’.”

The Committee noted that in the present case its interim measures request was issued on 17 August 2018 and notified to the State party on the same date, through the Permanent Mission of Brazil to the United Nations Office at Geneva. This request shall remain in place until the examination of the complaint, unless the Committee decides otherwise in compliance with rule 92 of the Committee's rules of procedure.

The Committee also recalled that under the individual communication procedure, the State party concerned may request the Committee to lift granted interim measures at any stage in the proceedings.



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This correspondence does not imply that any decision has been reached on the substance of the matter under consideration.

Yours sincerely,

Sarah H. CLEVELAND

Olivier de FROUVILLE

Human Rights Committee Special Rapporteurs
on new communications and interim measures

c/- Valeska Teixeira Zanin Martins & Cristiano Zanin Martins
Teixeira, Martins & Advogados
Rua Padre João Manuel 755, 19º andar
CEP: 01411-001
São Paulo - Brazil
Email: valeska@teixeiramartins.com.br / g.robertson@doughtystreet.co.uk

