



For immediate release – 16 December 2010

## STATEMENT

### **Brazil: State Violated Right to Information of Families of Disappeared**

**On Tuesday 14<sup>th</sup> December, the Inter-American Court of Human Rights (IACHR) ruled that between 1972 and 1974, Brazil was responsible for the forced disappearance of at least 70 peasants and Araguaia Guerrilla activists, who fought against the ruling military dictatorship. The IACHR also concluded that Brazil had violated the right to freedom of thought and expression protected under article 13 of the American Convention on Human Rights by denying the victims’ families the right to seek and receive information and to know the truth about what happened to their loved ones.**

*“ARTICLE 19 applauds the Inter-American Court sentence. After many years waiting in vain for justice, the families of the peasants and guerrilla members have finally been heard. This is a major victory for all families of disappeared persons in Brazil and around the world. It is a victory for the right to know and the right to truth and another demonstration and consolidation of the pivotal role played by the right to information in securing all human right,”* said Dr Agnes Callamard, Executive Director ARTICLE 19.

In the case presented by the Inter-American Commission and others, the petitioners affirmed that Brazil was unlawfully restricting the families’ right to access information on four grounds: (i) there was no legitimate reason that justified the non-disclosure of information about the case, (ii) judges and independent authorities responsible for evaluating the grounds for non-disclosure should have been given access to the information in order to rule over the legitimacy of the ground; (iii) not knowing the truth about what happened to their loved ones and where the bodies are buried amounted to torture; (iv) the right to freedom of information was essential to ensure that families were able to exercise their right to know, to justice and to reparations.

The petitioners also affirmed that the Brazilian legal framework for the protection of the right to information was inadequate and did not comply with international standards on freedom of expression and information. .

The State replied to the petitioners’ allegations by affirming that the documents about military operations in the region of Araguaia had supposedly been destroyed and, therefore, there was no information available to be provided to the families. The State also argued that there was no proof that such information ever existed.

The Inter-American Court ruled that in cases concerning human rights violations, confidentiality based on State secret, national security and public interest cannot be justified to deny to the judicial and administrative authorities in charge of investigations access to relevant information.

The Court also stated that Brazil could not justify its failure to provide information simply on the grounds that there was no proof that the required information exists. In order to fulfill its international obligations, the State has to indicate all measures taken to confirm whether or not the information exists or ever existed. This is in order to avoid generating legal uncertainty in relation to the exercise of the right to information.

The Court reiterated that all States should adopt all necessary measures to guarantee adequate access to information under its control, including through the adoption of legislation drafted in accordance with international standards. This legal framework should include access to appeal mechanisms and effective remedies in case of conflicts. Access to information regimes should work under the presumption that all State-held information is public and accessible, subject to a limited regime of exceptions. An adequate procedure needs to be established to attend information requests.

In this sense, the Court saluted Brazil's initiative to adopt an access to information dedicated legislation that will optimize and strengthen the legal framework for the protection of the right to freedom of expression and information in Brazil.

ARTICLE 19 calls on the Brazilian government and legislators to demonstrate their commitment to democracy and human rights, putting behind the years of repression and secrecy by:

- Fully implementing the Inter-American Court ruling and in particular;
- Disseminating widely, through mass media, the content of the Inter-American sentence;
- Providing information on the disappearances of the 70 peasants and activists of the Araguaia Guerrilla to their families, including the circumstances of their disappearances and the location of the bodies;
- Seeking, systematizing and publicizing info about the Araguaia Guerilla, the years of dictatorship, and more generally, about human rights violations, ensuring free access to such information;
- Ensuring that the families are provided with the medical and psychological support, reparation and indemnity they are entitled to;
- Organizing a public act publicly recognizing responsibility in the case, and Establishing the crime of forced disappearance in relevant legislation;
- Adopting Draft Bill 41/2010 on access to information, currently under review by the Senate.

**FURTHER INFORMATION:**

- For more information please contact: Paula Martins, Brazil Coordinator, paula@article19.org, +55 11 3057 0042.
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.