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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) Terrorism (2005-4)
BRA 3/2014

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to Human Rights Council resolution 16/4, 24/5, 16/5, and 22/8.

We would like to bring to the attention of your Excellency's Government information we have received **concerning actions and laws – including draft laws – which contravene international human rights law and standards.**

On 13 September 2013, the UN Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression and the Special Rapporteur for freedom of expression of the OAS Inter-American Commission on Human Rights issued a joint press release on the manner in which some State authorities had reacted to protests in the Americas. On 27 June 2013, we sent your Excellency's Government the communication 3/2013 concerning the alleged excessive use of force against protestors in vast demonstrations in June 2013. We regret that we have not received a response to this communication to this date. On 7 May 2013, we sent the communication 1/2013 on the allegations of infiltrated agents investigating the activities of Xingu Vivo, a collective of indigenous organizations, social movements and environmentalists in the regional of Altamira. However, regrettably, we have not received a reply to date. Furthermore, other human rights mechanisms spoke out early in 2014 on the resort to violence in the context

of social protests in Brazil and requested thorough investigations into reported excessive force.

According to information received:

Clampdowns on peaceful assemblies

In February 2014, in the context of a protest sparked by a bus fare increase in Río de Janeiro, the police reportedly used excessive force and arbitrarily detained protestors, including professionals from the media covering the events. On 6 February 2014, during the protest, an unidentified violent group allegedly assaulted Mr. **Santiago Ilídio Andrade**, a media professional and filmmaker. He reportedly received an explosive device in the head and died from his injuries on 10 February 2014.

In October 2013, the police reportedly violently repressed massive protests taking place throughout the country against corruption and high public spending in the context of soccer events. On 15 October 2013, the police allegedly used excessive force against peaceful protestors and carried out 200 arrests in Río de Janeiro. Some protestors were reportedly charged with participating in a criminal organization and facing up to eight years of prison.

In August 2013, teachers from the public education system reportedly organized several peaceful protests in Rio de Janeiro against a new norm of the educational system being debated in Parliament and for better salaries and working conditions. In the following two months, protests reportedly spread throughout the country and met with excessive use of force and violence from police officers managing the demonstrations.

In June and July 2013, Brazil reportedly registered a countrywide wave of protests mainly against corruption, high government spending on sporting events and lack of adequate social services. On 10 July 2013, in Rio de Janeiro and São Paulo, 29 people were reportedly arrested and two detained during peaceful protests in support of striking teachers and against police violence. Two peaceful protestors: **Mr. Luana Bernardo Lopes**, a 19 year-old student, and **Mr. Humberto Caporalli**, a 24 year-old painter and artist, were reportedly arrested and charged under the Law on National Security 7.170 (14/12/1983).

We express grave concerns about the alleged indiscriminate and excessive use of force against protestors, including media workers, resulting in at least one death. We express similar concerns concerning arbitrary arrests, and the physical and psychological integrity of those in detention.

Law and draft laws referring to peaceful assemblies

Allegedly, the national Chamber of Deputies (*Câmara dos Deputados*) has been discussing draft law 5.964/13. Its article 2 reportedly prohibits the use of any means that prevent the identification of protesters, including the use of masks, hoods, covers, costumes, face paint, substance or another feature that would alter facial contour.

On 11 September 2013, the Rio de Janeiro State reportedly adopted the law 6528/13 -so-called “masks law”- that provides for the detention of demonstrators wearing masks.

We express concerns that the above mentioned law 6528/13 and draft law 5.964/13 may impose additional limitations to the right to freedom of peaceful assembly in contravention with international human rights law. Violent acts are already outlawed by domestic legislations and the legitimate aim to prohibit violent acts during peaceful assemblies cannot legitimate additional restrictions than the ones outlined in international human rights law. Furthermore, we express concerns on the excessive limitations provided by legislation and draft legislation banning face-coverings during assemblies. Such disproportionate measures could be used to target particular groups and unduly curtail their right to freedom of peaceful assembly and freedom of opinion and expression.

Law referring to criminal organizations

On 2 August 2013, the President allegedly sanctioned the publication of the Law 12.850 on Criminal Organizations. This law -which amends the criminal code- reportedly defines a criminal organization as any organization of four or more individuals that aims to commit a crime, and increases offenses penalties. It is further reported that, under this law, the Prosecutor General could access land and mobile phones, internet, banks, credit cards and travel records and intercept phone lines of individuals under investigation. In addition, the police could infiltrate into the alleged criminal organization to obtain evidence of a criminal offense.

The law 12.850 was reportedly used to investigate, arrest and prosecute demonstrators and members of civil society organizations. On 24 February 2013, Xingu Vivo members allegedly discovered an infiltrated agent investigating their activities. Xingu Vivo is a collective of indigenous organizations, social movements and environmentalists in the regional of Altamira.

We express concerns that the broad powers of investigation and potential abuse of such powers under law 12.850 may put the independence of associations and the safety of their members at risk, and may unduly interfere with the exercise of the right to freedom of association.

Laws and draft laws referring to terrorism

The Constitution reportedly repudiates terrorism in its article 4, and denies the perpetrators of this crime bail, pardon or amnesty. However, neither the Constitution, nor federal legislation, namely the Act on Heinous Crimes (8.072/90) have reportedly defined this crime, leaving it to specific legislation to define the precise acts of terrorism. Similarly, the National Security Act (7.170/83) refers to “terrorist acts” in article 20 without providing a definition.

A number of draft laws criminalizing acts of terrorism are reportedly currently under discussion in the Parliament, in particular draft laws 728/2011, 499/2013 and 236/2012.

The draft law 728/2011 has been reportedly presented to the Federal Senate and provides definition of crimes and administrative offenses. It is allegedly aimed at enhancing the security of the 2013 FIFA (Fédération internationale de football association) Confederations Cup and the 2014 Football World Cup. It reportedly provides celerity and specific precautionary measures, and regulates the right to strike in the period preceding and during these events, among other measures. Moreover, the draft law 728/2011 reportedly defines terrorism in article 4 as the act to provoke or disseminate terror or widespread panic through offenses against the physical integrity of a person or the deprivation of his or her liberty, for reasons that are ideological, religious, political, racial, ethnic or xenophobic.

Draft law 499/2013 reportedly establishes the crime of terrorism and the competence of the Federal Courts to hear, process and judge upon such crimes. It reportedly defines terrorism in article 2 as the action to provoke or infuse terror or widespread panic through offense, committed or attempted, against life, physical integrity, health or deprivation of liberty of an individual.

Draft law 236/2012 is reportedly intended to reform the penal code and provides for a definition of terrorism in Chapter I of Title VIII as the action to cause terror on the population through the conducts described in the subsequent paragraphs when they (1) are aimed at forcing public authorities, either national or foreign, or other persons acting on their behalf, to act in a manner not obliged by the law or refrain to act in a manner not prohibited by the law; (2) are aimed at obtaining resources for the maintenance of political organizations or armed groups, either military or civil, that perform acts against the constitutional order and the rule of law; (3) are motivated by prejudice based on race, colour, ethnicity, religion, nationality, sexual orientation or identity, or for political, ideological, philosophical or religious reasons. Paragraph 1 reportedly refers to the conduct of kidnapping, paragraph 2 to using or threatening to use, transport, store, hold or have under one’s possession explosives or other means capable of causing damage

or mass destruction, paragraph 3 to setting fire, dilapidating, looting, exploding or invading public or private property, paragraph 4 to interference with, sabotaging or damaging informatics systems and databases, paragraph 5 to sabotaging the functioning or taking over upon serious threat or violence against individuals of means of communication and transport, ports, airports, railway stations or bus stations, hospitals, health centres, schools, stadiums, public premises or places where essential public services, power generation or transmission facilities and military facilities function. Paragraph 7 provides an exclusion of the crime if the crime was committed for social or revindicatory purposes, as long as the means are compatible and adequate to the respective objective.

We express concerns that the current lack of definition of terrorist acts and the proposed broad definitions contained in the aforementioned draft laws may unduly limit human rights and fundamental freedoms, in particular, the rights to freedom of peaceful assembly and of association.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2. In particular, we would like to refer to article 12, paras 2 and 3, of the mentioned Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would further like to refer your Excellency's Government to the following provisions of the International Covenant on Civil and Political Rights, which Brazil accessed on 24 January 1992 (ICCPR), which Brazil acceded on 24 January 1992:

- article 19: "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.";

- article 21: "Everyone shall have the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those

imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.; and

- article 22: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”.

We further wish to reiterate the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Regarding the aforementioned legislative developments,, we would like to refer to resolution 22/6, adopted on 21 March 2013 by the Human Rights Council, which explicitly indicates that domestic law and administrative provisions, and their application, should facilitate the work of human rights defenders, including by avoiding their criminalization or stigmatization, or by any impediments, obstructions or restrictions of their work. It is recognized in the resolution that there is an urgent need to address, and take concrete steps to prevent and stop the use of legislation to hinder or unduly limit the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law. Moreover, the urgent need to create a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity, at the national level and in all sectors of society including by extending support to local human rights defenders is underlined by this Resolution. (A/HRC/RES/22/6, PPs 10-13).

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) of the Special Representative of the Secretary-General on the situation of human rights defenders and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human

Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials”.

While being conscious of the fact that States’ obligations to protect and promote human rights requires them to take effective measures to combat terrorism, we would like to draw your Excellency’s attention to General Assembly Resolution 68/178 and Human Rights Council Resolution 19/19, whose paragraphs 1 reaffirms “that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.”

With regard to the aforementioned draft laws providing definitions of terrorism, we would like to draw the attention of your Excellency’s Government to the report of the Special Rapporteur on Ten areas of best practice in countering terrorism, which specifies that “Counter-terrorism laws, policies and practices must be limited to the countering of terrorism, as properly defined” (A/HRC/16/51, para. 26). In that report, the Special Rapporteur specifies that domestic counter-terrorism provisions should, in the absence of a comprehensive international definition of the crime of terrorism, adhere to the three-step cumulative characterization according to which an act, in order to be classified as terrorist, must have been: (a) Committed against members of the general population, or segments of it, with the intention of causing death or serious bodily injury, or the taking of hostages; (b) Committed for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act; (c) Corresponding to all elements of a serious crime as defined by the law (A/HRC/16/51, para. 28)

In addition, we would like to draw your Excellency’s Government’s attention to the principle of legality in criminal law, enshrined in several international human rights instruments such as article 15 of the International Covenant on Civil and Political Rights and made non-derogable in times of public emergency, which implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct.

As the mandates provided to us by the Human Rights Council require us to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Are the facts alleged above accurate?
2. Please provide information on the regulations and operational procedures for law enforcement agents concerning the use of force in the context of law enforcement

during assemblies and whether it is compatible with international standards on the use of force and firearms.

3. Please provide information concerning the charges brought against Mr. Luana Bernardo Lopes and Mr. Humberto Caporalli, and how such measures are compatible with international human rights norms and standards as mentioned above.

4. Please indicate or confirm the legal basis of the sentences applied against demonstrators, and how such measures are compatible with the above mentioned international human rights norms and standards .

5. Please indicate the legal basis of the arrests of professionals from the media, including journalists, during protests in Rio de Janeiro on 6 February 2014.

6. Please indicate the legal basis for the infiltration of the organization Xingu Vivo and how such measures are compatible with international human rights norms and standards as mentioned above. Please indicate if a complaint has been lodged by or on behalf of the aforementioned association and its members. Please provide information on powers of investigation provided under law No. 12.850 and its compatibility with international human rights norms and standards.

7. Please provide details, and where available results, of any inquiries, medical examination, and judicial or other inquiries carried out in relation of the death of Mr. Santiago Ilídio Andrade. If no inquiries have taken place, or if they have been inclusive, please explain why. Please clarify whether compensation has been made available to the family of the victim.

8. Please provide information on the aforementioned legislation, including the status of draft laws, regulating to peaceful assemblies and their compatibility with international human rights norms and standards, in particular with the principle of proportionality.

9. Please provide information on the status of the aforementioned draft laws providing a definition of terrorism, and their compatibility with international human rights norms and standards, in particular their compatibility with the principle of legality.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and to ensure that in the event your investigations support or suggest the above allegations to be correct, any person responsible for the alleged

violations should be held accountable. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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freedom of opinion and expression

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