

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
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 extrajudicial, summary or arbitrary executions

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27)
BRA 7/2012

5 July 2012

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 extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolution 16/4, 15/21, 16/5, and 17/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged killing of Messrs. **Almir Nogueira de Amorim** and **João Luiz Telles Penetra**.

Messrs. Almir Nogueira de Amorim and João Luiz Telles Penetra were both leading members of the Associação Homens e Mulheres do Mar – AHOMAR (Association of Sea Men) which was set up in 2009 to defend the rights of the fisher-folk working in Rio de Janeiro, in particular those affected by the planned construction of a gas pipeline by oil company Petrobras in Guaxindiba river, located within the Environmental Protected Area of Guapimirim.

AHOMAR has been the subject of two previous communications sent to your Excellency's Government on 1 December 2010 and 20 June 2012, by the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

According to the information received:

At approximately 4:00 p.m. on 22 June 2012, Messrs. Nogueira de Amorim and Telles Penetra left Ilha de Paquetá in Rio de Janeiro to go fishing in Guanabara

Bay. When they had not returned the following day, a search of the bay was carried out by local people.

On 24 June, the body of Mr. Nogueira de Amorim was reportedly found tied to his boat with bruises on his neck and holes in the hull of the boat. On 25 June, Mr. Telles Penetra's body was reportedly found on the banks of Guanabara Bay, bound with rope by his hands and feet. Preliminary investigations carried out by the Civil Police's homicide division confirmed that both men had been tied up before being drowned.

Concern is expressed that the killing of Messrs. Nogueira de Amorim and Telles Penetra may be directly related to their peaceful and legitimate human rights activities, in particular their work in the defence of fisher-folk's rights in Rio de Janeiro. In light of the allegations detailed above, concern is expressed for the security and physical and psychological integrity of all other members of AHOMAR and their family members.

While we do not wish to prejudge the accuracy of these allegations, we wish to underline that every individual has the inherent right to life and no individual shall be arbitrarily deprived of his or her life under article 6 of the International Covenant on Civil and Political Rights (ICCPR), which Brazil acceded to on 24 January 1992.

We also wish to bring to the attention of your Excellency's Government the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65) which stipulate that "[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions". Its purpose "shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death." (principle 9). Principle 18 further requires Governments to "ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice". Given the concerns for the security of AHOMAR members and their families, we wish to stress that it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats" (principle 4).

We would also 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 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to

ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 12 paragraphs 2 and 3 of the 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.

Given our concern that the killing of Messrs. Almir Nogueira de Amorim and João Luiz Telles Penetra may be linked to their advocacy work, we would further like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “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.”

The effective enjoyment of the right to freedom of association also entails the possibility of members of associations to conduct their activities without any form of intimidation, harassment or fear of being subjected to acts of violence, including attacks on their physical integrity. We appeal to your Excellency’s Government to take all necessary steps to ensure protection of the right to freedom of association, as recognized in article 22 of the ICCPR. Moreover, we reiterate that States have a positive obligation to take measures to ensure protection of fundamental freedoms. In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the rights of all individuals to... associate freely... 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 right... to freedom of... of association (is) in accordance with their obligations under international human rights law.”

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide the full details of any protective measures which may have been put in place to ensure the physical and psychological security and integrity of all other members of AHOMAR and their family members in the wake of the alleged killings outlined above and alleged violations that have been detailed in previous communications. If no measures have been taken, please explain the reasons therefor.
6. Please clarify whether compensation has been made available to the victims’ families?

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 call for a **prompt, impartial and thorough investigation into the alleged violations. We further urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of members of AHOMAR, in particular their security and that of their families, are respected.** In the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. 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.

Frank La Rue

Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions