

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 right to privacy

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 right to privacy, pursuant to Human Rights Council resolutions 40/16, 42/22, 46/7, 43/4, 41/12, 43/16 and 46/16.

In this connection, we express our serious concern with the amendment and expansion of anti-terrorism laws to be implemented by Your Excellency's Government and their compatibility with Brazil's international and human rights law obligations. In particular, we express serious concern with **Senate Bill No. 272/2016, which seeks to reinstate provisions in Brazil's Anti-Terrorism Law (Law No. 13.260/2016, approved on 16 March 2016) and Draft Bill No. 1595/2019, which also amends prior legislation (Laws No. 10,257, of July 10, 2001, and No. 9,807, of July 13, 1999).** The amendments to the Anti-Terrorism Law proposed in Senate Bill No. 272/2016 ("Bill 272/2016") by Your Excellency's Government includes measures that could significantly expand the definition of terrorism under domestic law. This change may lead to limitations on the exercise of fundamental freedoms, including those of opinion, expression, and association and remove protection for civil society actors and human rights defenders. Furthermore, we express our serious concern with the process of expanding the list of acts considered terrorist acts, and the enhanced sentencing for broadly or ill-defined terms like "reward or praise," and "incite", all of which when coupled with the broad use of "terrorism" makes it easier to classify many acts as "terrorist acts" but undermine the principles of legality and legal certainty in contravention of your Excellency's government international law obligations.

The legislative changes proposed by Draft Bill No. 1595/2019 ("Bill 1595/2019") significantly expand the concept of terrorism in domestic law. This change may lead to increased criminalization of human rights defenders, social movements and organizations as well as restrictions to fundamental freedoms. Additionally, Bill 1595/2019 creates a system of surveillance and monitoring, with the power for such operations being vested in new federally overseen counter-terrorism

agencies.¹ These provisions and new agencies vest significant discretion in the Executive, increasing the risk that technologically supported tools might be misused or misapplied. We are also concerned that legislation is being advanced during the COVID-19 pandemic, which does not permit in-depth public scrutiny of and engagement with the text.

We recommend review and reconsideration of certain aspects of this legislation to ensure it is in compliance with Brazil's international human rights obligations. We note that best international practice encourages States to independently review counter-terrorism and emergency law regularly so as to ensure that it remains necessary and international law compliant. We recommend that this legislation be subject to regular parliamentary process and oversight to ensure a robust, public debate, and not defined as "urgent" to speed up parliamentary process.

Overview of International Human Rights Law Standards Applicable

We refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which Brazil acceded to on 24 January 1992, and the Universal Declaration of Human Rights (UDHR). In particular, we highlight the following relevant international human rights standards under articles 9, 17, 19, 21, 22 and 25 of the ICCPR which guarantee, respectively, the right to liberty and security of the person and to be free from arbitrary detention, the right to privacy, the right freedom of opinion and expression, the right to freedom of peaceful assembly, the right to freedom of association and right to take part in the conduct of public affairs. Articles 12, 19 and 20 of the UDHR also guarantee the right to privacy, freedom of opinion and expression and freedom of peaceful assembly.

We respectfully remind Your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All of these resolutions require that States ensure that any measures taken to regulate terrorism or violent extremism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law. We would like to emphasize that any restriction on freedom of expression or information that a Government seeks to justify on grounds of national security or counter terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest.¹ While taking note 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."

Additionally, we refer your Excellency's Government to the Inter-American Convention against Terrorism (AG/RES. 1840 (XXXII-O/02), which Brazil acceded to on 26 September 2005 and ratified without reservations on 25 October 2005.

¹ Bill 1595/2019 would establish the National Counterterrorist System, the National Counterterrorist Policy, and create the Counterterrorist Strategic Units.

Particularly, to article 15, which guarantees full respect for the rule of law, human rights and fundamental freedoms, as well as full compliance to fundamental principles contained in the Charter of the United Nations, the Charter of the Organization of American States, international humanitarian law, international human rights law, and international refugee law.

Concerns Relating to Compatibility of Legislation with International Human Rights Law

Between 2013 and 2016, Brazil passed several pieces of antiterrorism legislation. One of these bills, Law No. 101/2015, was the subject of a Joint Allegation Letter² in which four Special Rapporteurs expressed their concern for the potential impact on the exercise of human rights and fundamental freedoms in Brazil. The bill was also the subject of a Press Release by the mandate holders on 04 November 2015.

Shortly after the passage of Law No. 101/2015, another piece of legislation, Law No. 13.260/16 (“Anti-Terrorism Law”), was passed. The proceedings and approval of this legislation drew concern and criticism from international organisations, such as the UN³ and the OAS.⁴ During the legislative proceedings that led to the current Anti-Terrorism Law, some debated provisions were removed from the texts after parliamentary discussions. The federal Executive Power exercised veto power in order to avoid excessively wide scope in the legal provisions and to better protect freedom of expression and peaceful protest. Senate Bill No. 272/2016 (“Bill 272/2016”), proposes to restore those vetoed provisions of the 2016 Anti-Terrorism Law. Additionally, Draft Bill No. 1595/2019 (“Bill 1595/2019”), another anti-terrorism bill, has been moved to a different committee and marked urgent. We are concerned that both Bills may be passed quickly without the requisite public debate.

In our view, Bill 272/2016 and Bill 1595/2019 unduly broadens the concept of “terrorism” and the type of actions considered to be “terrorist acts” by using imprecise language that go far beyond the settled understanding of what constitutes terrorism or terrorist acts under international law. The broad scope and imprecision of these terms makes individuals susceptible to the violation of numerous rights enumerated in the ICCPR and UDHR in undertaking legitimate activities protected by international law. Article 2 of Bill 272/2016 would be amended to include the phrase “to put pressure on the government, public authorities or government officers to do or stop doing something, for political, ideological or social reasons” thereby expanding the list of activities that are defined as the motivating factors behind terrorism. This may have adverse effects on political opposition or robust public discourse. The inclusion of these definitions in amended terrorism legislation creates imprecision as to when these acts will be applicable under Bill 272/2016 given that they are already contained in Brazil’s existent criminal law. This imprecision can lead to disproportionate sentencing for common crimes that are now deemed to constitute terrorism.

² [AL BRA 8/2015](#). State reply: [30/10/2015](#).

³ Brazil anti-terrorism law too broad, UN experts warn. Geneva, 4 November 2015. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16709&LangID=E>

⁴ “The Commission is concerned about proposed legislative changes in Act No. 13,260/16, which address ways of treating and investigating acts of terrorism. According to the information the IACHR has obtained, the proposed changes would remove article 2, section V, par. 2, which excludes social movements from the list of suspicious categories. For the Commission, the proposed changes could lead to a criminalization of social movements and of land- and environmental-rights defenders.” Preliminary Observations of IACHR’s In Loco Visit to Brazil, Rio de Janeiro, 12 November 2017.

Similarly, Bill 1595/2019 criminalizes people and groups that “appear to have the intention” of carrying out actions that may “intimidate or coerce the population or to affect the definition of public policies, ” through a wide list of actions such as “intimidation, coercion, mass destruction, murders, kidnappings or any other form of violence”. The vagueness of the concepts could thus include organized public manifestations, such as protests and strikes, as well as any action or demonstration, including individually and digitally, that may “affect the definition of public policies”. Thus, acts inherent to the democratic process, such as protests, demonstrations, marches, etc., could be framed under the terms of these provisions, and may make the free exercise of individual freedoms very challenging.

Both Bills raise concerns surrounding freedom of expression, opinion, assembly and association and the right to privacy. Bill 272/2016 includes new penalties for those who “condone terrorism” meaning those who “reward or praise” or “incite” any person, group or organisation that commits any one of the actions in Bill 272/2016 in public assembly or through media including the internet. Bill 1595/2019 introduces new monitoring techniques and surveillance mechanisms for those who are regarded as “suspicious” or “could be associated” with terrorism. The broad definition of “terrorist” and “terrorism” raises concerns that individuals may be subjected to heightened penalties for expressions or opinions that are deemed to “condone terrorism” based on arbitrary interpretation. Additionally, this could open individuals and groups to additional covert monitoring from new government agencies. This may result in a chilling effect on fundamental freedoms of opinion, expression, assembly, and privacy and result in the work of civil society organisations (CSOs) and human rights defenders being classified as criminal.

Definition of Terrorism

We respectfully remind Your Excellency’s Government, that although there is no agreement on a multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity, and proportionality. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions,⁵ the definition found in Security Council resolution 1566 (2004), and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly.⁶ We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.⁷ Those elements include:

⁵ See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; [E/CN.4/2006/98](#) paras. 25-50.

⁶ [S/RES/1566](#); [A/RES/51/210](#).

⁷ [A/59/565 \(2004\)](#), para. 164 (d).

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organisation to do or to abstain from doing any act,
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.⁸

We also bring your Excellency's Government attention to the "principal of legal certainty" found in article 15(1) of the ICCPR and article 11 of UDHR, which requires that criminal laws be sufficiently precise so that it is clear what types of behaviour and conduct constitute criminal offences and what constitute the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to ensure that their counter-terrorism and national security legislation, is sufficiently precise in order to comply with the principle of legal certainty, so as to prevent the possibility that it may be used to target CSOs and human rights defenders on political or other unjustified grounds.⁹

We consider that Bill 272/2016 adopts an overly broad definition of terrorism and terrorist acts that implicates a range of activities protected by the freedoms of opinion, expression, association, and political participation. If adopted, the main clause of article 2 would be expanded to include the following:

"Terrorism consists of the practice by one or more individuals of the acts set out in this article, motivated by xenophobia, discrimination or prejudice based on race, colour, ethnic origin or religion or any other political, ideological or social motive, when committed with the aim of provoking social or generalised terror, endangering people, property, public peace, public safety and individual freedom."

The inclusion of "political, ideological or social" motivation as a specific subjective element of a crime directly infringes fundamental rights such as freedom of expression, assembly, and association. This proposed language addition conflicts with Brazil's international obligations under ICCPR articles 19 guaranteeing the right to hold opinions without interference and article 25 guaranteeing the right to take part in public affairs. An overly broad definition can contribute significantly to the criminalization of social movements and demonstrations in general, because these often have a "political, ideological or social" motivation. Any conduct listed in this act carries strong penalties if an act can be tied to the above motivating factors. The effect is conflation with political, ideological, and social acts with terrorism.

⁸ [E/CN.4/2006/98](#), para 37.

⁹ [A/70/371](#), para. 46(b).

Bill 272/2016 expands on article 2 sec. 1 with the inclusion of new acts that can be considered “terrorist acts.” Bill 272/2016 would add the following provisions:

VI - burn, vandalize, loot, destroy or explode means of transport or any public or private property;

VII - interfere, sabotage or damage computer systems or databases

This proposed language would allow property crimes to be classed as terrorism should any “political, ideological or social” motive be claimed as associated with the act. Further, the proposed wording does not consider any distinction between the nature of the public or private property that it aims to protect, consequently any public or private property could be considered the target of a terrorist act, inconsistent with the requirement of legal certainty. Importantly, the acts listed in sections VI and VII join an extensive list already defined in the prior Anti-Terrorism Law. The Anti-Terrorism Law also does not distinguish between the seriousness of the listed acts, making them all punishable by prison sentences of 12 to 30 years. Enhanced penalties for these crimes do not seem to have been given a sufficient justification that would be rooted in and satisfy both the principle of necessity and of proportionality. Measures that restrict a right protected under the ICCPR, “must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights”, including the right to liberty.¹⁰ The attribution of “political, ideological or social” motive, coupled with the lack of distinction for the seriousness of offenses, does not demonstrate why this is necessary and is creates disproportionate outcomes.

Similarly, imprecise language can also be found in Bill 1595/2019. Article 1, para. 2 of this Bill states:

This Bill will also be applied to prevent and repress the execution of acts that, although not classified as terrorist crimes:

- a) endanger human life or are potentially destructive to critical infrastructure, essential public services, or key resources; and
- b) appear to have the intention to intimidate or coerce the general public or to affect decisions regarding public policy by means of intimidation, coercion, mass destruction, murder, kidnapping or any other form of violence.

Despite being a counter-terrorism bill, Bill 1595/2019 aims to regulate certain acts/conduct even if not considered terrorism. The imprecise language of what is considered an “essential public service”, “key resource”, or “appear to have the intention to intimidate or coerce” the general public or public policy decisions could lead to overinclusion of civil society demonstrations, advocacy efforts, or awareness campaigns as falling under the purview of this Bill and thus incur penalties.

Right to Freedom of Expression, Opinion, Assembly, and Privacy

We strongly urge your Excellency’s Government to ensure that all laws are compatible with Brazil's obligation to uphold the right to freedom of expression, opinion, assembly, and privacy. The State has the burden of proof to demonstrate that

¹⁰ [CCPR/C/21/Rev.1/Add.13](#), General comment No 31.

any restrictions of fundamental freedoms are compatible with the ICCPR.¹¹

Freedom of Expression and Opinion

We respectfully refer to Brazil's obligations regarding the protection of the rights of opinion and expression under the ICCPR. The right to freedom of opinion, enshrined in article 19 (1) is absolute, permitting no restriction. The right to freedom of expression in article 19 (2) is broad and protects even expression that may be regarded as offensive. Any restriction to the rights to freedom of expression must be made in accordance with the requirements of article 19(3). As such, any restriction must pursue a legitimate aim, be provided by law, and be necessary and proportionate. We express concern with the proposed language found in article 3-A and article 3(3) in Bill 272/2016. All three of these provisions appear to impinge on freedom of expression, opinion, and peaceful assembly by utilizing vague and imprecise language. Article 3A creates a penalty of imprisonment for five to eight years for anyone who would:

Reward or praise another person, group, organisation or association for committing the crimes referred to in this law, either in a public assembly or in the media – including the worldwide web or disclosure in writing or another means of technical reproduction.

Paragraph 1. The same penalty shall apply to anyone who incites the practice of an act defined as a crime in this Law.

These provisions carry potentially significant implications and consequences. This wording extends criminalization beyond acts or threats of lethal violence to acts protected under the freedom of expression and opinion. This penalizes those who “[r]eward or praise” or one who “incites” terrorism. The terms “reward,” “praise,” and “incite” are not defined. The requirement of legality in article 19(3) of the ICCPR necessitates any restriction to be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.” Precision is essential in the use of exceptional counter-terrorism powers, and ambiguity must be remedied to ensure adherence to international human rights obligations.

The Human Rights Committee has particularly highlighted that prohibitions on the “encouragement,” “praising,” “glorification,” or “justification” of terrorism or of extremist activity must adhere to the requirements in article 19(3).¹² Bill 272/2016 does not define what speech is prohibited consistent with the limitations required by article 19(3), and is likely to constitute an unlawful interference with the freedom of expression. Specifically, the provisions are likely to restrict journalists, human rights defenders, civil society actors and others from reporting or expressing views on anti-terrorist operations.¹³

The use of the term “incite” must also be formulated with precision. Article 20(2) of the ICCPR states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Incitement is defined as statements about national, racial, or religious groups, which create an imminent risk of discrimination, hostility or violence against persons

¹¹ [CCPR/C/GC/34](#), paras. 27 and 35.

¹² [CCPR/C/GC/34](#), paras. 25, 24, 46, 50, and 51.

¹³ [A/HRC/37/52](#), para. 47.

belonging to those groups. We accept that there are genuine cases in which exhortation to terrorism must be constrained. An undefined term like “incite” can capture a broad and indiscriminate range of expression and actors may place undue restriction on the freedom of expression as protected by international human rights law. We recommend that authorities be guided by the standards found in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, in particular the six-part threshold test set out therein.¹⁴

The broad scope of Bill 272/2016 may result in misuse or misapplication, directly or indirectly leading to the silencing of dissent and criticism of government. We express concern that this law may be used against civil society. The Human Rights Council has noted its grave concern that “in some instances, national and security and counter-terrorism legislation and other measures, such as laws regulating civil society organisations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law.”¹⁵ There are no bounds or for “reward or praise” or “incitement” and that is concerning.

Freedom of Peaceful Assembly and Association

Article 3A of Bill 272/2016 expressly prohibits “reward or praise” of terrorism in a “public assembly or in the media – including the worldwide web or disclosure in writing or another means of technical reproduction.” Given the overly broad nature of the acts already defined as “terrorism” throughout this law, we correspondingly have concerns about the manner that this article may be interpreted and applied. The article does not define what “public assembly” means. Due to the imprecise language, any group that numbers from one to thousands whose assembly and association is construed as “reward or praise” of terrorism in public is violating the law and subject to criminal sanctions. Similarly, the proposed article also does not define “media” but explicitly mentions expressions in the virtual environment, suggesting anything posted online or on social networks as inclusive of media. This effectively works to limit platforms that serve to allow online and offline assembly or association.

We respectfully refer to Brazil’s obligations regarding the protection of the rights of freedom of assembly and association under the ICCPR. Any restriction to the right of peaceful assembly must be made in accordance with the requirements of articles 21. All restrictions of the right to peaceful assembly need to fulfil the criteria of necessity, proportionality and be legally based. The ‘provided by law’ requirement means that any restriction be ‘formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.’¹⁶ Moreover, it ‘must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution’.¹⁷ We would also like to refer to Human Rights Council resolution 24/5, in which the Council “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

¹⁴ [A/HRC/22/17/Add.4, annex, appendix, para. 29.](#)

¹⁵ [A/HRC/RES/25/18](#), [A/HRC/RES/27/31](#), [A/HRC/RES/32/31](#) and [A/HRC/RES/34/5.](#)

¹⁶ [CCPR/C/GC/34](#) paras. 3 and 25.

¹⁷ *Id.* para. 25.

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.”¹⁸ We express concern that CSOs and human rights defenders assembling in the streets or advocating online could be subject to criminal sanctions under such broadly worded provisions in Bill 272/2016. This breadth of the provisions could lead to misuse or misapplication and this may lead to a chilling effect on the freedom of assembly and association.

Right to Privacy

We respectfully refer to Brazil’s obligations under article 17 of the ICCPR, which protects against arbitrary or unlawful interference with a person’s privacy, reputation, and home. Article 17 permits interference with the right to privacy only where it is “authorized by domestic law that is accessible and precise and that conforms to the requirements of the Covenant”, is in pursuit of “a legitimate aim” and “meet[s] the tests of necessity and proportionality”.¹⁹ Also see article 11 of the American Convention on Human Rights which sets out the right to privacy (essentially as per the ICCPR), and article 5 (X) of the Constitution of Brazil which formally recognises the right to privacy.

The Human Rights Committee concluded that the right to privacy requires robust, independent oversight systems be in place regarding surveillance, interception and hacking, and by affording persons affected with effective remedies in cases of abuse, including an ex post notification that they had been placed under surveillance or that their data had been hacked.²⁰

We express concern with the proposed surveillance mechanisms found in articles 5, 11, 12, 16, 19, and 23 in Bill 1595/2019. These articles create new tools and agencies - ranging from actions to control national borders to the elaboration of sophisticated strategies of intelligence, and infiltration by government agents – for the prevention and repression of the activity considered terrorist. To carry out these actions, Bill 1595/2019 would establish the National Counterterrorist System, the National Counterterrorist Policy, and create the Counterterrorist Strategic Units. These new institutions would directly report to the Federal Executive branch. The language of articles 5 and 11 are of particular concern.

Article 5 states:

Ordinary, preventive counter-terrorism actions, without prejudice to other actions described in regulations, include: (...)

III - monitoring, through intelligence operations, of facts associated to, or that could be associated to, terrorism, to identify terrorist groups’ working methods, their sources of funding and particularly, their means of recruiting, propaganda, and incitement; (...)

X – carrying out systematic strategic communications campaigns aimed at target audiences of interest to counter-terrorist actions; (...)

¹⁸ [A/HRC/RES/24/5](#), para. 2.

¹⁹ [A/69/397](#), para. 30.

²⁰ [CCPR/C/ITA/CO/6](#), para. 36, 37.

Sole paragraph. Carrying out the actions in the caput means actual participation, whenever possible, of the whole of Brazilian society, particularly regarding collaboration with public authorities in obtaining information about suspicious behaviour, in abiding by regulations and in building a safe and peaceful social environment.

Article 11 states:

Public agents working to counteract terrorists involved in preparing and acting on counter-terrorist actions will be able to use specific secret operations techniques to prevent or combat a terrorist threat.

II – the infiltration of terrorist organisations will be authorised when there are indications that preparations are being carried out regarding the crime of terrorism or the description in paragraph 2 of article 1 of this law;

We are concerned that the language of these provisions is imprecise enabling the potential for misuse. References to “suspicious behaviour”, “propaganda”, “incitement”, the monitoring of groups that “could be associated to terrorism”, the use of “secret operations techniques”, and article 11’s authorisation of group infiltration when there are “indications that preparations are being carried out”, all create cause for concern. The United Nations General Assembly has condemned unlawful or arbitrary surveillance and interception of communications as “highly intrusive acts” that interfere with fundamental human rights.²¹ Targets of surveillance suffer interference with their rights to privacy whether the effort to monitor is successful or not.²² If conducted for unlawful purposes, surveillance may be used in an effort to silence dissent, sanction criticism or punish independent reporting.²³ Privacy and expression are intertwined in the digital age, with online privacy serving as a gateway to secure exercise of the freedom of opinion and expression and has particular force when expression in the public interest is implicated.²⁴ Monitoring and surveillance create incentives for self-censorship and directly undermines the ability of journalists and human rights defenders to conduct investigations and build and maintain relationships with sources of information.²⁵ The covert monitoring, infiltration, and lack of transparency surrounding intelligence gathering techniques cause concern about the potential to undermine freedoms of privacy and stifle the work of those who may be engaged in dissent.

Any limitations to privacy rights reflected in article 17 must be provided for by law, and the law must be sufficiently accessible, clear and precise so that an individual may look to the law and ascertain who is authorized to conduct surveillance and under what circumstances. The limitation must be necessary for reaching a legitimate aim, as well as in proportion to the aim and the least intrusive option available” (see A/HRC/27/37, para. 23).

The Special Rapporteur on the right to privacy stated “checks and balances are needed to ensure that any surveillance undertaken protects a free society. Prior authorisation of surveillance and the subsequent oversight of surveillance activities is a key part of the rules, safeguards and remedies needed by a democratic society in

²¹ [A/RES/68/167](#), and [A/RES/71/199](#).

²² [A/HRC/41/35](#), para. 21.

²³ *Id.*

²⁴ [A/HRC/29/32](#); and [A/HRC/23/40](#), para. 24

²⁵ [A/HRC/38/35/Add.2](#), para. 53

order to preserve its defining freedoms.” (A/72/540, para. 7) Therefore, it is necessary that surveillance programmes or systems be expressly, exhaustively, precisely and clearly established by law; be truly exceptional; be limited to what is strictly necessary for the fulfilment of imperative purposes, and subject to rigorous independent oversight. In this sense, measures to limit the right to privacy must be proportional, in terms of the balance between the imperative and necessary objective, and the impact of the proposed limitation on the individual right. In this regard, we draw your attention to the report (A/HRC/37/62) which provides further guidance on privacy and pre and post review surveillance measures, as well as the need to ensure that oversight bodies/mechanisms are independent and resourced sufficiently to undertake their functions.

The Working Group on Arbitrary Detentions wishes to emphasize that the prohibition of arbitrary deprivation of liberty is absolute and universal.²⁶ Detention for peaceful exercise of human rights is arbitrary, according to Human Rights Council Resolution 24/5 and Human Rights Committee’s General Comment No. 35 and General Comment No. 37, as well as the jurisprudence of the Working Group.²⁷

The Working Group on Arbitrary Detentions emphasizes that laws that are vaguely and/or broadly worded may have a deterrent effect on the exercise of the rights and freedoms of individuals, as they are in breach of the principle of *lex certa*. As such, vague or broad laws can violate due process and have the potential to cause abuse, including arbitrary deprivation of liberty. This principle has been consistently applied though the Working Group’s jurisprudence.²⁸

Bills 272/2016 and 1595/2019 may lead to significant limitations on fundamental freedoms and could uniquely impact CSOs and human rights defenders. We recall the fundamental importance of ensuring that every restriction imposed on rights are fully compatible with international human rights law. We call upon the authorities to recognize, both in law and practice, freedom of expression, freedom of association, freedom of assembly, freedom of opinion, and the right to privacy as individual rights, subject only to those restrictions that are permitted under international human rights law.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information in details of how the counter-terrorism efforts of Your Excellency’s Government comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions

²⁶ See A/HRC/22/44, paras. 42-43; see also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 66.

²⁷ See A/HRC/23/40/Add.1 and Opinions Nos 79/2018; 28/2018; 83/2018; 16/2017. See Opinions Nos. 14/2020 at para 59; 10/2018, para. 55; *Fardon v. Australia* (CCPR/C/98/D/1629/2007), para. 7.4 (2). See Opinions No. 6/2020 at para 50; No. 41/2017, para. 99; No. 36/2017, para. 103; and No. 20/2017, para. 51.

49/60, 51/210, 72/123, 72/180 and 73/174, in particular with international human rights law.

3. Please provide further information of how the definition of terrorism in Senate Bill 272/2016 (and any other legislative initiative or changes made to it since the date of this communication) is narrowly construed so as to guarantee that measures taken pursuant to it do not unduly interfere with human rights and civil society while complying with the principle of legality.
4. Please explain how Bills 272/2016 and 1595/2019 (and any other legislative initiative or changes made to it since the date of this communication) are compatible with the obligations of Your Excellency's Government under articles 17, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights.
5. Please provide information on how the new counter-terrorism measures of your Excellency's government contribute toward providing a safe and enabling environment for human rights defenders in Brazil to carry out their peaceful and legitimate work.
6. Please provide information about safeguards including the creation of an independent authority which would be responsible for the oversight of surveillance including bulk processing of personal data.
7. Please provide information on the interrelationship of Bills 272/2016 and 1595/2019 with the soon to come into effect, data protection law, and the decisions by the Constitutional Court in relation to the right to data protection (STF ADIs n. 6387, 6388, 6393, 6390).

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Miriam Estrada-Castillo

Chair-Rapporteur of the Working Group on Arbitrary Detention

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Irene Khan

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Joseph Cannataci
Special Rapporteur on the right to privacy