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Her Excellency Dilma Rousseff,
President of Brazil
Brasilia, BRAZIL

Dear President Rousseff,

We are writing to share Human Rights Watch's serious concerns regarding the counterterrorism bill approved by Congress on February 24, 2016. The bill contains overbroad and vague language that will endanger basic human rights such as freedom of association and expression in Brazil. We urge you therefore to veto the entire draft law.

While we understand that by introducing the original draft bill in Congress your government sought to comply with the recommendations of the Financial Action Task Force on Money Laundering, the current version of the bill is not consistent with international human rights standards.

The United Nations General Assembly has urged countries to "ensure that their laws criminalizing acts of terrorism are...formulated with precision."¹ Similarly, the Inter-American Commission on Human Rights has warned that laws that prescribe "a comprehensive definition of terrorism that is inexorably overbroad and imprecise" violate the principle of legality.² According to the Inter-American Court of Human Rights, "definitions of crimes must clearly describe the criminalized conduct, establishing its elements, and the factors that

¹ United Nations General Assembly, Resolution 66/171, December 19, 2011, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/66/171(accessed February 29, 2016), para. 6 (m).

² Inter-American Commission on Human Rights, "Report on Terrorism and Human Rights," October 22, 2002, <https://cidh.oas.org/Terrorism/Eng/part.j.htm> (accessed February 29, 2016), para. 261.

distinguish it from other forms of conduct that are either not punishable or punishable with non-criminal measures.”³

The bill approved by Congress, 2016-F from 2015, does not meet this standard. Article 2 of the bill defines terrorism acts as those carried out “for reasons of xenophobia, discrimination or prejudice based on race, color, ethnicity and religion; when committed with the purpose of creating social terror or generalized terror; [and] endangering a person, property, the public peace or public safety.”

Although there is no universally established definition of terrorism in international law, international standards provide that the term should not be used to criminalize acts that lack the elements of intent to cause death or serious bodily injury, or the taking of hostages.⁴ Yet, the bill does precisely that, by defining as “terrorist” acts that expose people or property “to danger” without requiring a showing of intent to cause bodily harm. Moreover, “endangering” a person or property, “public peace,” and “public safety” are vague concepts that are not defined in the draft law. A person convicted of one of these vaguely-defined terrorist acts would face between 12 and 30 years in prison, even if no injury or death occurred or was threatened.

In cases of serious bodily injury, the penalty would increase by one third, and in cases of death, by one-half.

Under Article 2 of the bill, damaging any public or private property, and “taking over” various sites, including schools and bank offices, can be considered terrorist acts. This broad provision also does not specify any requirement that those actions involve an intent to cause death or serious bodily injury. Brazil

³ Inter-American Court, García-Asto and Ramirez Rojas case, Judgment of November 25, 2005, Inter-Am Ct.H.R., (Ser. C) No. 131 (2005), para. 188.

⁴ In 2010, the then-UN special rapporteur on the protection of human rights while countering terrorism, Martin Scheinin, set forth a model definition of terrorism that is narrowly defined. He defined terrorism as “an action or attempted action where”

1. The action:
 - (a) Constituted the intentional taking of hostages; or
 - (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or
 - (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and
2. The action is done or attempted with the intention of:
 - (a) Provoking a state of terror in the general public or a segment of it; or
 - (b) Compelling a Government or international organization to do or abstain from doing something; and
- (3) The action corresponds to:
 - (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or
 - (b) All elements of a serious crime defined by national law.

See Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Human Rights Council, 16th Session, A/HRC/15/51, December 22, 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-51.pdf>

already has laws in place to protect against offenses such as unlawful trespass and criminal damage, which carry penalties including prison terms of up to three years if there is damage to property.

Article 3 establishes the crime of “promoting,” “forming,” “joining” or “aiding” terrorist organizations without providing a definition of what constitutes a “terrorist organization.” The crime is punishable with a prison sentence of five to eight years. Given the bill’s overbroad definition of “terrorism” this provision could be used against peaceful advocacy groups.

Article 4 establishes the crime of “advocating” terrorism without any explanation of what “advocating” entails. The crime carries a prison sentence of four to eight years, which can be increased by up to two-thirds if it is committed on the internet. Consequently, an individual who makes a comment on social media that could be interpreted as supporting a terrorist could potentially face up to 13 years in prison. Such a broad provision threatens freedom of expression.⁵

Article 5 makes it a crime to carry out “actions in preparation” of a terrorist act, without any explanation of what type of actions those may be. This crime carries a prison sentence of six to 23 years. Combined with the overly-broad definition of “terrorism,” this provision could make it possible for the state to prosecute and impose a severe penalty on people who engage in legitimate protest activity.

The bill does include an important safeguard in article 2 that states that its definition of terrorism does not apply to political demonstrations, social movements, unions, and religious and professional movements that engage in the defense of “constitutional rights, guarantees, and freedoms.” However, this clause would be open to interpretation by judges, who might rule that a legitimate cause promoted by a group does not fit this category and the group is therefore not protected from the other overly broad provisions of article 2. In addition, the safeguard does not apply to acts which are not described in article 2, such as “advocating” terrorism or carrying out “actions in preparation” of a terrorist act.

In sum, by failing to narrowly define the scope of the acts it criminalizes, the proposed terrorism draft law does not provide sufficient precision and clarity so

⁵ The Inter-American Commission has stated that “laws that broadly criminalize the public defense (apología) of terrorism or of persons who might have committed terrorist acts, without considering the element of incitement to lawless violence or to any other similar action, are incompatible with the right to freedom of expression.”

Report on Terrorism and Human Rights, Inter-Am. C.H.R., OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. (2002), <http://www1.umn.edu/humanrts/iachr/terrorism-ch3censorship.html> (accessed March 03, 2016), para. 323

that its application is foreseeable, or allow people to regulate their conduct with certainty to comply.

Thank you for your attention to this very important matter.

Sincerely yours,



Maria Laura Canineu, Brazil Director



Letta Tayler, Senior Researcher, Terrorism/Counterterrorism

Cc:

Michel Temer, Vice-President of Brazil

Jaques Wagner, Minister-Chief of Staff of the Presidency

Ricardo Berzoini, Minister Head of the Secretariat of Government of the Presidency

Nelson Henrique Barbosa Filho, Minister of Finance

Marivaldo de Castro Pereira, Executive Secretary of the Ministry of Justice

Nilma Lino Gomes, Minister of Women, Racial Equality and Human Rights

José Eduardo Cardozo, Federal Solicitor General

Rogério Sottili, Special Secretary for Human Rights

Contra-Almirante Noriaki Wada, Special Advisor of the Nacional Defense Council

Rodrigo Janot Monteiro de Barros, General-Attorney of the *Republic*

Ricardo Lewandowski, President of the Supreme Court