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PROMOTION AND PROTECTION OF HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS

**Report submitted by the Special Representative of the Secretary-General
on the situation of human rights defenders, Hina Jilani**

Addendum

**MISSION TO BRAZIL
(5-21 December 2005)**

PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

**REPORT OF THE SPECIAL REPRESENTATIVE OF THE
SECRETARY-GENERAL ON THE SITUATION OF HUMAN
RIGHTS DEFENDERS ON HER VISIT TO BRAZIL
(5-21 December 2005)**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 3	3
I. THE COMMUNITY OF HUMAN RIGHTS DEFENDERS IN BRAZIL	4 - 7	3
II. POSITIVE STEPS BY THE GOVERNMENT IN RELATION TO HUMAN RIGHTS DEFENDERS	8 - 10	4
III. ISSUES OF CONCERN FOR HUMAN RIGHTS DEFENDERS IN BRAZIL AND PRELIMINARY RECOMMENDATIONS	11 - 22	4

Introduction

1. The Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, carried out a visit to Brazil at the invitation of the Government. She thanks the Government for the invitation and for the excellent cooperation extended to her in preparation of and during the mission.
2. During her mission the Special Representative visited, in addition to Brasilia, several locations in the states of Para, Bahia, Pernambuco, Sao Paulo and Santa Catarina and had the opportunity of meeting with government authorities, members of federal and state legislatures and the judiciary. She also met with human rights defenders engaged with a range of human rights issues in the fields of civil and political rights as well as social, economic and cultural rights and exchanged views with the diplomatic community.
3. Since the deadline for submitting reports to the sixty-second session of the Commission on Human Rights came before the visit, the Special Representative hereby submits her preliminary conclusions and recommendations and will submit her complete report on the visit in the course of 2006. Her present submission does not limit the scope of the analysis, conclusions and recommendations that she will include in her full report.

I. THE COMMUNITY OF HUMAN RIGHTS DEFENDERS IN BRAZIL

4. In the course of her visit, the Special Representative met with a host of civil society representatives remarkable for their number, enthusiasm and level of collective organization. The Special Representative was extremely impressed to see how vibrant the human rights movement has been in Brazil, despite difficult circumstances. She notes that human rights defenders reported that the fight against dictatorship greatly contributed to building awareness of civil and political rights, and extensive networks of NGOs were formed. Human rights organizations continued to proliferate with the beginning of the political opening, and in particular in the 1990s. While organizations initially concentrated their efforts on reporting violations of civil and political rights, they gradually expanded the scope of their mandate and have incorporated diverse human rights causes, particularly in relation to economic, social, environmental and cultural rights and to discrimination based on race, sexual orientation and gender.
5. Brazilian defenders come from varied backgrounds, including human rights activists, members of the clergy, relatives of victims, community leaders, trade unionists, environmental activists, students, academics, lawyers, journalists and some civil servants.
6. While many defenders work within civil society organizations, the Special Representative notes that much of the human rights defenders' activity in Brazil is rooted in grass-roots social movements which have organized at the state and federal levels to enhance their impact on the local and national policies. In view of the growing number of NGOs and the diversity of issues they deal with, several thematic human rights networks have been put in place; in particular, the Special Representative notes the existence of a national network on human rights defenders.

7. The Special Representative had the opportunity of examining the situation of defenders involved in social movements, such as those for the rights of landless rural workers, peasants, indigenous communities and people of African descent, sexual minorities, the homeless, and people affected by dams. She believes that these social movements are an asset and add value to Brazilian democracy. They have developed modes of social action and participation and are evolving rules of engagement that limit the possibility of the use of violence in social action. She believes that this aspect of the role of defenders in social movements must be projected by the State as well as the media. In addition, universities have recently started to include human rights in their agendas and curricula, playing an increasing role in the production of reliable statistics and research studies.

II. POSITIVE STEPS BY THE GOVERNMENT IN RELATION TO HUMAN RIGHTS DEFENDERS

8. The Special Representative notes with appreciation the Government's in-depth understanding of the problems facing human rights defenders. She is greatly encouraged by its efforts to overcome the hurdles in improving the environment to ensure that human rights defenders can carry out their activities unimpeded and in full safety. She notes the policies and initiatives on human rights adopted by the Government, in its efforts for better implementation of the strong legal framework provided by the 1988 Constitution for the protection of human rights.

9. The Special Representative notes that the work of human rights defenders is generally respected within the governmental structures and that authorities do engage the civil society and seek its participation and involvement in the design and implementation of human rights initiatives.

10. The Special Representative particularly commends the Government's positive response to civil society demands for the establishment of the Special Secretariat on Racial Equality and for the restoration of ministerial status of the Special Secretariat for Human Rights. She acknowledges the potential for advancement of human rights through these initiatives. She particularly notes the sensitivity of the Special Secretariat for Human Rights on the issue of security for defenders and the significant role that this institution can play in the formulation and implementation of a strong human rights agenda, including measures that provide an enabling and safe environment for defenders to conduct their work freely in all fields of human rights in which they are engaged.

III. ISSUES OF CONCERN FOR HUMAN RIGHTS DEFENDERS IN BRAZIL AND PRELIMINARY RECOMMENDATIONS

11. However, despite government initiatives and the efforts of an active and experienced civil society, serious concerns regarding the situation of human rights defenders persist because of a wide gap between the declaration of policy and its implementation on the one hand, and the creation of mechanisms and their effectiveness, on the other.

12. The damage that incidents of violence and threats have caused to the security of human rights defenders, many of whom have had to flee their homes and have been living away from their families for a long time, is of very grave concern. Such a situation has perpetuated a climate of distrust and lack of faith in existing mechanisms and initiatives for human rights.

13. In their efforts to attain social, economic, environmental and cultural rights, in seeking to expose human rights violations and to end impunity for these violations and in resisting discrimination or marginalization, human rights defenders often experience extremely serious harm. Their right to life, liberty and physical security continues to be threatened. The Special Representative notes with the gravest concerns the numerous reports of assassinations and attempts on the lives of defenders in Brazil. In this context, the uncountable number of threats which defenders face and the persisting high level of impunity for such crimes result in a climate in which defenders fear for their lives and for those of their relatives. In some cases, she met with defenders who have had to leave their homes and families and abandon their work to go into hiding in order to ensure their own safety.

14. The Special Representative notes that much of the violence against defenders is rooted in conflicts over land and environmental protection and is perpetrated by powerful non-State actors who, in certain instances, reportedly benefit from the collusion of local State authorities. Nevertheless, she notes that killings and threats against defenders also occur in a number of urban settings at the hands so-called “extermination groups”, which are reported to have links with certain elements of the security forces.

15. The Special Representative is also concerned about information attesting to the criminalization of social action by human rights defenders. She notes that human rights defenders have been subject to unfair and malicious prosecution, repeated arrests and vilification as retaliatory action by State as well as by powerful and influential non-State entities. Leaders and supporters of social movements, in particular, have suffered and are placed at serious risk for activities in defence of human rights. Nevertheless, in certain instances even government functionaries performing their tasks have not been safe. In particular, the Special Representative received reports of labour inspectors and civil servants who were targeted.

16. The Special Representative was greatly disturbed by reports indicating that, when human rights activists organize, they are accused of forming criminal gangs and when they mobilize for collective action to protest violations of rights they are accused of creating public disorder. While she does not discount allegations made by some state governments of violence accompanying collective action in some instances, she notes, with grave concern, that peaceful public action for defence of human rights has frequently been met with disproportionate use of force. She is particularly concerned at the use of “non-lethal weapons” such as rubber bullets by security forces in their operations during such events. In response to her questions, authorities in certain states could not satisfy her as to the procedures that streamline authorization and monitoring of such use. She also notes the serious allegations of violence against defenders and abuse of powers by the State Military Police. In her estimate, Federal Police and other mechanisms for the administration of justice enjoy a relatively higher level of trust among the population.

17. She believes that more uniformity of commitment and complementary efforts to implement human rights policies by the federal and state governments could mitigate many of these concerns. She senses an urgent need for critical adjustments in the role of the judiciary in order that the social policy of the State, enunciated in the Constitution, have a stronger assurance of practical implementation. In this context she recommends constitutional interpretations and

judicial action which ensure not only equal respect for economic, social and cultural rights but also removal of any superficial conflict with regard to the enforcement of different rights guaranteed by the Constitution.

18. The human rights committees of the Parliament and state legislative assemblies are generally active on these issues and are accessible to human rights defenders. However, the legislature as an institution needs to be more sensitive to human rights issues and assign more priority to the protection of activities for the defence of human rights in their legislative agenda. The Special Representative is also aware of fears that political polarization within the legislative bodies has undermined many human rights-related initiatives and impeded efforts to address structural issues at the root of the social conflicts. These efforts are necessary to ensure the prevalence of a conducive environment for human rights defenders.

19. While security arrangements for the protection of defenders at risk is a necessary measure of an immediate and interim nature, it is not a solution to the problem. The Special Representative urges the Government to adopt more comprehensive strategies for the protection of human rights defenders, together with ending impunity for violations affecting them and by unambiguously articulating support for activities in defence of human rights. She welcomed the investigation and prosecution for the killing of Sister Dorothy, but hoped that this step at removing impunity will not end with this case and other similar incidents will be effectively addressed.

20. In view of the urgency to address the problem of criminalization of human rights activity, the Special Representative of the Secretary-General recommends that the Special Secretariat for Human Rights and the Federal Ministerio Publico make joint efforts to collect and analyse the cases brought against human rights defenders in order to propose legislation or policy guidelines to prevent prosecution of defenders for carrying out activities in defence of human rights.

21. She also recommends a more proactive role of the State in addressing social conflict and in legitimizing defenders' participation and intervention on behalf of local movements. In particular, she draws attention to the responsibility of the State to ensure that defenders not be left isolated in their struggle or support for social justice against powerful or influential social entities and economic interests.

22. She strongly recommends a review of existing mechanisms for the monitoring and accountability of the State security apparatus, particularly the State military police. There is a general lack of confidence in the competence, vigilance and independence of the existing mechanisms.
