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CIVIL AND POLITICAL RIGHTS

**Written statement* submitted by the Legal Advisory Office for Popular
Organizations (GAJOP), a non-governmental organization in special consultative
status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2006]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

The disrespect by the Brazilian Government of the recommendations made by the organs of the Commission on Human Rights

The GAJOP, through its International Human Rights Program, carried out in partnership with the National Movement for Human Rights, North-eastern section, would like to express its concern in relation to the lack of receptiveness by the Brazilian Government to the recommendations made in the last years by the different Committees and Special Rapporteurs of the Commission on Human Rights.

Since the re-democratization of the State twenty years ago, the successive governments have maintained a diplomatic posture favourable to the promotion and universal defence of human rights, which has come with the progressive ratification of most of the main international instruments of protection. In 2001, Brazil issued a standing invitation to all thematic mechanisms of the Commission on Human rights to visit the country. Since 2000, it has received eight Special Rapporteurs, who made series of recommendations to the authorities in their respective fields of expertise. Furthermore, the current Government is progressively fulfilling its obligations with the treaty bodies in matter of periodical reports. In this way, last reports due to CESCR and CERD were submitted in 2003; to CHR and CRC in 2004; and to CEDAW in 2005.

However, Brazilian State is still very far from fulfilling its international obligations in matter of human rights. We list here few of the items that concern us and prove that Brazil has failed to respect some of the recommendations made by the UN bodies.

1. The persistence of high rates of police violence

Several reports prepared by GAJOP during the year 2005 and submitted to the Special Rapporteurs on Summary and Arbitrary Executions, Torture, Racism and Human Rights Defenders, as well as to the Committee against Torture, point out that members of police forces continue to kill and to practice acts of torture in large scale in Brazil. These are committed, either on duty (abuse of function), or in the context of private police activities – despite these are prohibited by law – and even criminal activities (death squads, drug and arm trafficking). A high number of these violations are committed within detention centres, as the situation of Brazilian prisons still remains very worrying.

However, it remains impossible to assess the real extend of the phenomenon in the absence of any trustable and exhaustive database on the commitment of these crimes and their judiciary developments. This not only violates the UN recommendations but also hinders the elaboration of any efficient and integrated public policy able to combat this phenomenon.

In addition, police corporations are reluctant to include human rights dimensions in their internal functioning, that remains too much opaque. For example, the practice of temporarily suspending police members suspected or accused of crime against human rights is not automatic. There is not any law or norm that may rule this situation at national level.

2. The impunity continues to prevail

Most of the crimes of summary executions and torture remain unpunished. When administrative or police inquiries are opened, they hardly succeed in identifying, or

charging the authors of the crimes. Various motives explain those difficulties: police forces maintain a strong corporative tradition, which tends to protect and preserve their members; the organs that intervene during the investigation (Forensic institutions; *ouvidorias*, police ombudsman; and *corregedorias*, internal oversight office) are too much dependant from the local governments and do not have the means to carry out their duties; crimes witnesses are frequently threatened and left without any assistance; and derisory means attributed to the Office of the Public Defender (*defensoria pública*) do not allow it to fulfil its constitutional mission of free judicial assistance; amongst other factors.

The interaction of these elements makes much more difficult the collection of evidences against the authors of crimes, and jeopardizes the chances of success of the judicial actions and the possibility of condemnation. These obstacles become insuperable for the poorest victims families, especially when they are not supported by any lawyer or non governmental organisation. The incapacity of the Brazilian justice system in responding to the demands of the population reinforces the impunity of the violators and encourages them to pursue their activity, as well as it raises the vulnerability of the potential victims. The Torture Act, approved in 1997, is still under-used by the judiciary actors.

Despite the advances of the Judiciary Reform, approved in December 2004, especially the federalization of crimes against human rights, it is also extremely urgent to strengthen the attributions of the Public Prosecutor's Office, for example by expressly recognizing, through constitutional reform or legislative approval, the power to carry out its own investigation in criminal matters. The initiatives of the federal government, as the SUSP (Single Public Security System) were too much sparse and separate, and no follow-up measure has been planned to monitor the efficiency of the SUSP's actions.

3. The victimisation, discrimination and criminalization of certain vulnerable social groups

During his visit in Brazil last October, the Special Rapporteur on Racism, Mr. Doudou Diène, could observe that violations to human rights reach almost always the same sectors of the population. For example, police violence affects in particular young, poor and black people. The exposure to danger dramatically rises when these people are detained, either in police stations, or in prisons. In the rural zone, indigenous people are particularly discriminated. Women are also very exposed to violations. Risks considerably rise for those who, beyond the fact they belong to the specific groups described, openly assume and act in favour of the defence of their group's rights.

In that context, defenders of economical, social and cultural rights (for example, of indigenous people and traditional communities, of landless or roofless families) are particularly exposed, being targets of intimidations, threats, harassment campaigns, as well as persecutions and violations to their life and physical integrity.

Furthermore, as Mr. Despouy observes in the report of its mission in the country in October 2004, an overwhelming part of the Brazilian population simply does not have access to the justice system. Consequently, people from the most vulnerable social groups are doubly victimized, as they do not have the opportunity to obtain reparation in justice for the violations they suffer due to their social exclusion.

4. The insufficiency of the protection plans offered to people under threat

Despite the recommendations of the Special Rapporteurs on Torture and Summary Executions, and of the CAT, the Government has not responded to the civil society's expectations in the assistance to witnesses and victims of violence, as well as to human rights defenders. In the first case, in addition to the budgetary restrictions imposed to the Witness Protection Program (PROVITA) since 2003, the various public institutions involved, especially Polices and Judiciary Power, have not collaborated as they should in the execution of the Program, both at the federal level as well as in the states.

Moreover, the current National Protection Plan for Human Rights Defenders under situation of risk has not convinced the civil society organisations. Either in terms of methods – characterized by many hesitations from part of the Secretariat for Human Rights –, or due to the lack of strong legal, political and budgetary bases, the proposed plan does not seem to be able to ensure the effective protection of defenders under threat and to guarantee the continuity of their activities.

Human Rights are actually far from being a priority for the Government, which is not very disposed to address the problems posed and to implement public policies able to guarantee and increase the access of the population to human rights. This attitude results in the increase of the exposure of vulnerable social groups and creates favourable conditions to the practice of additional violations against them.

We request to the Commission on Human Rights that it presents the following recommendations to the Brazilian government:

- To employ all the necessary means to implement the recommendations made by the competent bodies of the United Nations;
- To ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the two Optional Protocols to the International Covenant on Civil and Political Rights, and to recognize the competence of the Committee against Torture (article 22 of the Convention) to receive communications from Brazilian individuals against their State;
- To recover the National Human Rights Plan and to adopt a plan of actions aiming at progressively attaining its goals.

We also insist before the High Commissioner for Human Rights on the necessity of a closest follow-up of the implementation, by Brazil, of the recommendations made by the Special Rapporteurs, in close collaboration with local NGOs, if needed by undertaking a visit in the country and by setting up a local office of the High Commissioner in Brazil
