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CIVIL AND POLITICAL RIGHTS

**Written statement* submitted by the Legal 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.

[11 February 2005]

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

THE INDEPENDENCY OF JUDGES IN BRAZIL

The Legal Advisory Office for Popular Organizations (GAJOP), NGO in Special Consultative Status with the Economic and Social Council of the United Nations since 2004, have the honour to submit his first written statement, in accordance with paragraphs 36 and 37 of ECOSOC resolution 1996/31, for the 61st session of the UN Commission on Human Rights.

At this occasion, the GAJOP, through the dhINTERNACIONAL Program (International Human Rights), project developed in partnership with the National Movement of Human Rights – Northeast regional unit, would like to state on an issue that he defined as priority for the period 2004-2005: the Independence of Judges in Brazil. This specific issue is part of a larger debate, the Reform of Judiciary, which is on the agenda of the political, social and judicial Brazilian actuality for a couple of years.

All in Brazil share the opinion that the Judiciary suffers graves dysfunctions, unacceptable for such a central institution in any democratic society, especially in relation to its function to ensure the protection and guarantee of fundamental rights of citizens. The difficulties traditionally observed are the high level of impunity, lengthy and inefficiency of justice, the weak credibility and the lack of transparency for the public opinion.

These dysfunctions are the result of a historical evolution, whose origins come from the colonial period of Brazil, strengthened by the practices of the military regime (1964-1986). The Judiciary Power, among other public institutions, has been built as an instrument at the service of the interests of dominating economic and social groups, against some discriminated groups and other minorities whose citizenship has traditionally been denied (afro-descendants populations, indigenous people, families of rural workers, etc). This had had for effect to consolidate and reproduce inequalities and historical discriminations within the Brazilian society, as well as in law as in the mentalities, with serious consequences on the judicial protection of fundamental rights of these people.

The factors that explain the threats to the principle of the independence of judges can be categorized in three different types. The first category includes external factors, that directly reach the judge, as for example, pressure and external threats, attacks, and sometimes, assassinations. The second category refers to factors internal to the judiciary, that are the result of direct actuation of the judges, who then becomes responsible, directly or indirectly, for violations to human rights. In this category we find for example factors as corruption, connivance, nepotism, or partiality in sentences. Finally, the last category includes factors of structural nature: few awareness and formation of judges in human rights, threats on financial independence of the institution, hierarchical organization, inadequate rules of nomination and promotion of magistrates¹, failed systems of internal and external control of the judiciary.

Nowadays solid legal bases are provided – either in the Federal Constitution of 1988 or in the International Treaties of Human Rights ratified by Brazil – that allow ensuring the effectiveness and the judicial protection of fundamental rights of citizens. In

¹ By the term « magistrate », we refer only to the function of judge, not to the function of public prosecutor.

that context, judges exercise a predominant role for the guarantee of these rights, especially for the vulnerable groups described above, as expressed at different occasions by the UN Special Rapporteur on the Independence of Judges and Lawyers. However, it has been observed that a significant number of human rights violations are the fact or the direct consequence of judicial decisions, denying the fundamental rights of these groups, thus strengthening their vulnerability, not only before the judicial system, but in the society in general. It is necessary for the magistrates to be closer to social reality, in order to reinforce their capacity to solve conflicts, to reduce inequalities and to adopt a minimum standard of respect of human rights.

In that context, the mission realized in Brazil by the UN Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leandro Despouy, in October 2004, was an important moment that allowed to put the debate under an international perspective, and stimulated a political discussion on the issue, through the contacts he had with different interlocutors, especially representatives of non governmental organizations. It is also interesting to note that other United Nations specialists who visited the country over the last years (Special Rapporteurs on Torture in 2000, on Summaries, Extrajudicial or Arbitrary Executions in 2003, and on the Adequate Housing in 2004), had already denounced threats to the independence of judges and made similar recommendations on the issue, among them the visit of the competent Special Rapporteur.

In addition, at the end of the year 2004, the National Congress has adopted the Constitutional Amendment n°45 (EC/45 of 08th of December 2004), on the Reform of the Judiciary, which contains provisions related to the independence of magistrates. However, it is necessary to continue to debate on deep reforms, of structural nature, to be implemented to remedy to the difficulties observed. The GAJOP considers that this debate is not reserved to agents and users of the Judiciary, but that the Brazilian civil society in a whole is fully entitled to participate. For that reason, it is fundamental that the civil society, in its amplitude and diversity, including non governmental organizations of defence and promotion of human rights, continue mobilized in order to contribute to discussions and to monitor the actuation of Brazilian government in that area.

In that perspective, the GAJOP will present at the occasion of the 61st session of the Commission on Human Rights of United Nations, the publication entitled « The Independence of Judges in Brazil »². Its goal is to provide a panorama, as complete as possible, of the situation of the independence of judges in Brazil, to identify the difficulties that magistrates meet in fulfilling their functions, and to make recommendations aiming to remedy to the problems identified. This work intervenes in the perspective of the democratization of the institution of the Judiciary, in order to divulgate as largely as possible such information: international organizations, civil society entities, agents of the judiciary, public in general.

This publication will be structured in the following way: in the first part, texts of reflexion in relation to the main issue will be presented; in the second part, a significant number of exemplary cases and situations, about 50, will be related, showing violations to the principle of the independence of judges; finally, the third part will be dedicated to the

² Two versions will be available: in English and Portuguese.

presentation of concrete recommendations addressed to national et international authorities, aiming to remedy to the difficulties raised.

This work is a contribution, that we expect to be representative of the Brazilian civil society, to the strengthening of an institution that detains a key role in the guarantee and the protection of human rights in any democratic society. For that reason, its elaboration followed a process of mobilization and a methodology of participation, involving more than twenty national NGOs, on a period of time of almost one year. These organizations, who intervene in the most diverse areas (protection of the rights of the child and adolescent, right of an adequate housing, right of rural workers, of afro-descendant people, defence of environment, associations of judges, etc), have actively participated to each step of its construction. That diversity and that plural participation reinforce the legitimacy of this action and grants credibility before the different social agents it addresses. It also contributes to raise subsequently the quality of the information included and the recommendations made.

In that way, we would like to invite formally the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leandro Despouy, and the representatives of the members States of the Commission on Human Rights, at the occasion of the launching of the publication, that will take in Geneva in parallel to the ordinary session of the Comission³, in order to present our work and to debate on the obstacles that impede a judicial service of quality in Brazil. In that perspective, we request the Commission that it requires the Brazilian government to respect and implement in short time the totality of the recommendations that will be presented by the Special Rapporteur, as well as any measure necessary to ensure the independence of judges, decisive step for the protection and the judicial effectiveness of the fundamental rights of all the citizens.

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³ Date, time and venue will be confirmed in due time.