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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC AND CULTURAL RIGHTS, INCLUDING
THE RIGHT TO DEVELOPMENT**

**Report by the Special Rapporteur on extrajudicial, summary or
arbitrary executions, Philip Alston**

Addendum

**MISSION TO BRAZIL*
(4-14 November 2007)**

* Late submission.

I. INTRODUCTION

1. I visited Brazil from 4 to 14 November 2007 to investigate the phenomenon of extrajudicial executions. Unfortunately, many of the types of killings that I investigated in 2007 have continued in 2008. One issue on which I focused was killings by police during large-scale policing operations in the favelas of Rio de Janeiro. As detailed below, despite such an operation in June 2007 in the Complexo do Alemão area of Rio de Janeiro resulting in the deaths of 19 people, it was declared a model for future action by State Government officials. Indeed, it appears to have become such a model: on 30 January 2008, 6 people were killed by police in a large operation; on 3 April, 11 were killed; and on 15 April 2008, 14 were killed. After the last operation, a senior police official reportedly compared the dead men to insects, referring to the police as the “best social bug spray”. These recent events highlight the continuing and urgent need for reforms to policing approaches and the criminal justice system.

2. During my visit in 2007, I met with a wide range of Government officials at all levels. I also met with many of the key Government human rights actors and the United Nations country team. I received detailed briefings from civil society representatives, victims, witnesses and families of executed persons. I visited a prison in São Paulo, a civil police station and a military police battalion in Rio de Janeiro, a favela in Rio de Janeiro and a settlement in Pernambuco. I am very grateful to the Federal Government and to the State Governments of São Paulo, Rio de Janeiro and Pernambuco for the unqualified cooperation extended to me.

3. I recognize that my visit took place within the context of widespread community concern about criminal violence. Cities in Brazil face enormous challenges in keeping their residents safe from the violence of gangs involved in drug trafficking, arms trafficking and other organized crime. I should emphasize that human rights law not only prohibits Governments from committing extrajudicial executions, but that it also requires them to protect their people from murderers. Indeed, one of the central pillars of the idea of human rights has always been the right to life and the freedom from fear. Human security is a part of, and not in competition with, human rights. In the Brazilian context in particular, my findings show that the issues of ending human rights abuses by the police and ensuring effective crime prevention by the police are tightly linked. A key reason for the ineffectiveness of the police in protecting citizens from these gangs is that they all too often engage in excessive and counterproductive violence while on duty, and participate in what amounts to organized crime when off duty.

4. My visit convinced me that, in Brazil, there are many powerful forces for good. While my focus is on the “disaster areas”, this should not be seen to imply non-recognition of the many positive developments in this society.

II. KEY CONCERNS

5. The major problems identified included the very high rate of homicide and the high rate of impunity. Homicide is the leading cause of death for persons between 15 and 44 years of age. For some time now, between 45,000 and 50,000 homicides are committed every year in Brazil. Although these killings have sown widespread fear and insecurity among the general population,

remarkably little is done in the vast majority of such cases to investigate, prosecute and convict the culprits. In Rio de Janeiro and São Paulo, only about 10 per cent of homicides are tried in the courts; in Pernambuco, it is about 3 per cent. Of the 10 per cent tried in São Paulo, about 50 per cent are actually convicted.

6. Killings by vigilante groups, death squads, extermination groups and militias are another major concern. In Pernambuco, a reliable estimate is that 70 per cent of all homicides are committed by death squads. Death-squad activity generally consists of off-duty police involved in (a) contract killing; (b) extorting money from residents, often under threat of death; and (c) killing or issuing death threats on behalf of landowners to landless workers or indigenous persons as a result of land disputes.

7. Another major problem is posed by prison killings. In Pernambuco, 61 prison deaths were reported during the first 10 months of 2007. Throughout Brazil, prison killings include (a) inmates killing other inmates; (b) security guards killing prisoners; and (c) inmates killing security guards. This issue is discussed in detail below.

8. The police in Brazil clearly operate at significant risk to their lives in many situations. The number of police killed is totally unacceptable and all appropriate lawful measures need to be adopted to prevent such deaths. There is, however, also a need to look carefully at the figures. In 2006, in Rio de Janeiro 146 police were killed, but only 29 of those were killed while on duty. A very significant proportion of those 117 killed off duty were likely to have been engaging in illegal activities when killed.

9. There is also the major problem posed by killings by police. These killings can be broken down into two categories: (a) extrajudicial executions by on-duty police; and (b) extrajudicial executions by off-duty police. Each of these is discussed in detail below.

A. Extrajudicial executions by on-duty police

10. In most cases, killings by on-duty police are registered as “acts of resistance” or cases of “resistance followed by death”. In 2007, in Rio de Janeiro, the police recorded 1,330 resistance killings, a figure which accounts for 18 per cent of the total number of killings in Rio de Janeiro. In theory, these are instances in which the police have used necessary force proportionate to the resistance of criminal suspects to the orders of law enforcement officers. In practice, the picture is radically different. Whether an extrajudicial execution or a lawful killing has occurred is first determined by the policeman himself. Only rarely are such self-classifications seriously investigated by the Civil Police. I received many highly credible allegations that specific “resistance” killings were, in fact, extrajudicial executions. This is reinforced by studies of autopsy reports and by the fact that the ratio of civilians killed to police killed is astonishingly high.

11. This and other problems are well illustrated by the large-scale police operation conducted in the Complexo do Alemão community of Rio de Janeiro on 27 June 2007, resulting in the deaths of 19 individuals. Those responsible for directing the operation and investigating the killings provided me with no evidence that any sustained investigation had been undertaken. Though they claimed that nearly all of those killed had criminal records. This could not have

been known positively by the police when they killed the individuals, and it was firmly denied in statements made to me by families of victims, including that of a 14-year-old boy. Even if each of the victims had had a criminal record, the appropriate response was arrest, not execution.

12. I asked the head of the Civil Police in Rio de Janeiro about the findings of an independent autopsy report that strongly suggested that some of the individuals had been extrajudicially executed by the police. He failed to give me a scientifically credible response to the report.

13. As noted above, many State officials in Rio de Janeiro considered the operation in Complexo do Alemão to be a model for future action. The actual results of the operation are, however, noteworthy. The most important drug dealers and traffickers were not arrested or killed, and few weapons and drugs were seized. Not a single policeman was killed and few were hurt, but the resistance encountered apparently necessitated the killing of 19 people.

14. To the extent that the Complexo do Alemão operation reflects the main strategy of the State Governor, it is politically driven and amounts to policing by opinion poll. It is popular among those who want rapid results and shows of force. The irony is that it is counterproductive. Various senior police officers with whom I spoke were highly critical of the “war” approach. The military police forces involved have had little relevant training in the use of non-lethal weapons, there has been no attempt to develop community-based policing in this area, and almost no sustained social services are provided by the State to the people of the community affected.

B. Extrajudicial executions by off-duty police

15. State police, especially State military police, routinely work second jobs when off duty. Some form “death squads” or militias that engage in violence, including extrajudicial executions, which occur for several reasons. First, their protection rackets, in which shopkeepers and others are coerced into paying money to the group, are violently enforced. Second, to prevent gangs from undermining their control, persons suspected of collaborating with gangs are killed. Third, while such groups do not generally begin as death squads, the already illicit relationship that they have developed with the more powerful elements of the community frequently results in their engaging in murder for hire.

C. Prison violence

16. The frequency of riots and killings in prisons is the result of a number of factors. Severe overcrowding in prisons contributes to inmate unrest and the inability of guards to effectively prevent weapons and cell phones from being brought into prisons. Low levels of education and work opportunities also contribute to unrest, as does the failure to ensure that inmates are transferred from closed to open prisons when they are entitled to do so. Delays in processing transfers, combined with warden violence and poor conditions, encourage the growth of gangs in prisons, which can justify their existence to the prison population at large by claiming to act on behalf of prisoners to obtain benefits and prevent violence.

17. There are many bodies with the power to investigate prison conditions, but none does its job adequately. This lack of external oversight permits poor conditions and abuses to continue. Requirements in some places to identify with one gang faction facilitate the growth of gang identification and gang-related activity. While some role for factions in the prison system may be unavoidable in the short term, this situation contributes to the growth of gangs and elevates crime rates more generally.

D. Response of the criminal justice system to extrajudicial executions

18. A reform necessary to address the problem of extrajudicial executions committed by the police is to change the strategies and culture of policing. Another equally important approach is to ensure that, when extrajudicial executions occur, the policemen responsible are convicted and imprisoned, the victims get justice and the guilty cannot kill again. It is therefore disturbing that very few homicides result in convictions. A successful conviction for murder is the end result of a process handled by a number of institutions: the Civil Police, the technical-scientific police, the Ministério Público and the courts. If any institution fails to act in an effective manner, the whole process is a failure. The bad news is that one or more institutions generally do fail.

19. The good news is that all of the institutions include a significant number of competent personnel, and that some of the institutions generally function quite well. For example, I was especially impressed with the professionalism and dedication of the Ministério Público. Similarly, while the witness-protection programmes suffer from both funding shortfalls and institutional defects, they do succeed in protecting a large number of witnesses.

20. In my final report, I will make a number of specific recommendations regarding how the criminal justice system should be reformed. As a preliminary observation, however, I would note that although the criminal justice system is in desperate need of large-scale reform, such reform is completely feasible. Brazilian society should feel a sense of great urgency in making these reforms, but it should also feel confident that if it acts with urgency, it will succeed.

III. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

21. My report will include detailed recommendations for the federal and State Governments for reforms in approaches to policing the functioning of the criminal justice system. This preliminary note highlights a few of the main recommendations:

(a) **Police pay.** Low pay for police leads to a lack of professional pride and encourages police to engage in corruption, to take second jobs and to form death squads and other groups to supplement their pay. Reforms must include higher salaries;

(b) **Investigations into police killings.** The Civil Police and the police internal affairs services must effectively investigate killings committed by the police. In many States, the current system of immediately classifying police killings as “acts of resistance” or cases of “resistance followed by death” is completely unacceptable. Every killing is a potential murder and must be investigated as such;

(c) **Forensics.** Forensics police and institutions must be better resourced and provide more independence;

(d) **Witness protection.** Witnesses to extrajudicial executions committed by the police and organized crime legitimately fear reprisals for testifying. This fear is increased when the police remain on duty throughout the investigations. There is much that is impressive about the current witness-protection programmes, but their inadequacies must also be candidly recognized and urgently addressed;

(e) **Ombudsmen.** In the States that I visited, the police ombudsmen lacked true independence or the ability to gather facts on their own. This must be changed: the police require genuine external as well as internal oversight;

(f) **Public prosecutors.** The Ministério Público is a dedicated and professional body. It must play a key role from the very outset in the investigation of every single incident involving killing by the police;

(g) **Prison monitoring.** The many institutions required by law to monitor prison conditions, most notably including judges of penal execution, are unable or fail to play this role in any adequate manner. The number of such judges must be increased, and the manner in which they work must be greatly improved;

(h) **Prison administration.** Prisons must be run by the wardens, not by the inmates. The practice in Rio de Janeiro of forcing new prisoners who have never belonged to any gang to choose one upon entry into the system is cruel and causes the size of gangs to swell.

22. The people of Brazil did not struggle valiantly against 20 years of dictatorship or adopt a federal Constitution dedicated to restoring respect for human rights only to make Brazil free for police officers to kill with impunity in the name of security. It is imperative that the Federal and State Governments implement sustained reforms in the directions I have indicated to enhance the security of ordinary citizens and promote respect for human rights.
