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MOST URGENT

Nº. 479/2015

The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, in response to the letter addressed to the Permanent Representative of Brazil to the United Nations Office in Geneva by the Chief, a.i., of the Special Procedures Branch on the 28th of October – which relays a joint communication co-signed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and association; the Special Rapporteur on the situation of human rights defenders; and the the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – has the honor to provide the information contained in the annex to this note.

2. The Permanent Mission of Brazil kindly requests the Office of the High Commissioner for Human Rights to convey that annex to the immediate attention of the aforementioned Special Procedures, without prejudice to the presentation of additional information on the points contained in the joint communication.

The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurance of its highest consideration.

Geneva, October 30th, 2015

To the Office of the High Commissioner for Human Rights

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FEDERATIVE REPUBLIC OF BRAZIL

**WITH REFERENCE TO THE JOINT COMMUNICATION SIGNED BY
THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION
OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION,
THE SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF
PEACEFUL ASSEMBLY AND ASSOCIATION,
THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS
DEFENDERS AND
THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE
COUNTERING TERRORISM
OCTOBER 30TH, 2015**

PD

The joint communication addressed to Brazil on the 28th of October, co-signed by the Special Rapporteurs (SRs) on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and association, on the situation of human rights defenders and on the promotion and protection of human rights and fundamental freedoms while countering terrorism, contains inaccuracies that should not be reflected in an eventual press release to be issued.

2. In paragraph 1 of the joint communication it is stated that draft law 101/2015 would run counter to international human rights law standards, specifically with regard to the freedoms of peaceful assembly and association. This interpretation does not take into account the fact that these rights are guaranteed by Article 5 of the Federal Constitution and cannot be revoked by ordinary law. This was the understanding of the Commission of Foreign Affairs and National Defense (CRE) and the Commission of the Constitution, Justice and Citizenship (CCJ) of the Senate, both of which had the opportunity to debate and assess that draft law, in September and October 2015. It is worth recalling that both Commissions deemed the draft law to be in conformity with their respective mandates, which include, in the case of the CCJ, to assess the compatibility of any draft law with the Federal Constitution.

3. In paragraph 5, items 1 and 2, it is suggested that the interest of the Brazilian Government in passing a law on terrorism is connected to protests which occurred during the Confederations Cup in 2013 and related to the FIFA World Cup 2014 and the 2016 Olympic Games. This assertion is incorrect. The Brazilian Government's efforts to pass legislation in this matter began, in fact, several years ago and gained momentum after September 11th 2001 attacks in the US and the subsequent adoption of UNSC Resolution 1373, which establishes, in its first article, that countries should criminalize the financing of terrorist acts. Furthermore, Brazil is a party to the main multilateral instruments on the prevention of terrorism. That includes the International Convention for the Suppression of the Financing of Terrorism, enacted in 2005, which also establishes the State's commitment to criminalize the financing of terrorism.

4. In the last two decades, Brazilian Government has been committed to promoting discussions on the definition of terrorism as a criminal offence. Among the Brazilian Government's initiatives, it stands out, as an example, one of the objectives of the

National Strategy to Fight against Corruption and Money Laundering, which is to “propose legislative changes in draft laws that [...] criminalize terrorism and financing of terrorism”.

5. It is also worth noting that Resolution n. 1, adopted on the 14th of July, 2008, by the Commission of External Relations and National Security of the Chamber of Deputies, created the Inter-Ministerial Technical Group to elaborate a “draft law on the Defense of Sovereignty and the Rule of Law” to replace Law n. 7.170/83, in order to address, among other issues, terrorism and its financing.

6. In paragraph 5, item 5, the statement according to which the involvement of the Minister of Finance in the subject is related to the upcoming evaluation of Brazil by the Financial Action Task Force (FATF) in 2016 is inaccurate. Brazil has been reviewed by that Task Force since 2004, when it recommended that the country criminalize the funding of terrorism. This recommendation was reiterated in the evaluation of Brazil in 2010 and in the subsequent evaluation processes.

7. In fact, Brazil's efforts to comply with FATF recommendations started in 2000, when the country joined the Group, and were enhanced after 2004. Particularly since mid-2014, when Brazil was placed in a targeted follow-up process, Brazil has been constantly monitored by FATF, and has reported its advances in the criminalization of terrorism financing at every meeting of the FATF, held three times a year.

8. It should be noted that, unlike what is stated in paragraph 5, item 6, Draft Law 2016/2015 was submitted to the National Congress on the 18th of June, under the regime of constitutional urgency.

9. Regarding the comments in paragraph 5, item 7, it is noteworthy that the regime of constitutional urgency does not imply the non-compliance with legislative procedures. On the contrary, it is a regular procedure laid down in Article 64 of the Constitution.

10. In this regard, it should be noted that the assertion in paragraph 7, according to which the regime of constitutional urgency “sidesteps the democratic process by circumventing the scrutiny of committees within the Senate and leaving out civil society actors” is inappropriate. As noted, the regime of constitutional urgency is a regular and democratic legislative procedure that guarantees the scrutiny of the relevant Commissions of the Federal Senate, as mentioned above. The status of a legislative process can be followed online by any citizen, who can provide comments on the initiative.

11. With regard to paragraph 9, the concern that "any broad form of violence, including verbal abuse, could be characterized as terrorism" does not seem adequate. Draft Law 101/2015 is clear in defining and restricting the cases considered as terrorism.

12. Finally, draft law 101/2015 has been voted, on 28th October, approved in the Senate, and sent for further consideration at the Chamber of Deputies. It cannot, therefore, be considered a final text, as it is still subject to alterations within the National Congress.

13. More information as required in the joint communication shall follow this note.

October 30th, 2015

