

**Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context**

REFERENCE: UA Housing (2000-9)  
BRA 1/2012

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/8.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding alleged forced evictions and house demolitions in the Pinheirinho settlement in the city of São José dos Campos in the State of São Paulo. In light of the seriousness of the situation I would also like to inform your Excellency's Government that I intend to issue a statement expressing concern about this situation.

According to information received:

Residents of the Pinheirinho settlement, home to roughly 6,000 people, have been living in this area since 2004 and they have been in legal proceedings to formalize this settlement since then.

At the end of 2011 the residents received an eviction order issued by Judge Marcia Loureiro from the 6th Civil Court of Sao José dos Campos at the demand of the landowner (the bankrupt company Selecta). The residents contested this order. On 22 January at approximately 06:00 am, the Sao Paulo's military police entered the settlement to execute the eviction and this contrary to a decision to suspend the eviction taken on 20 January 2012 by the Tribunal Regional Federal da 3a região,

It is reported that the police used tear gas bombs and rubber bullets against the residents, who were resisting the eviction. During these events 20 residents were reportedly injured, one severely, and 30 residents were arrested.

The evictees were not allowed to pack their belongings and they were not provided with any alternative housing solution. Reports indicate that the area is currently still under siege, that the authorities are demolishing the settlement

and that the lawyers acting for the residents have not been allowed to enter the area.

While I do not wish to prejudge the accuracy of these allegations, I would like to remind your Excellency's Government of article 11.1 of the International Covenant on Economic, Social and Cultural Rights, of which Brazil is a party, that holds that "the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

As stated repeatedly, including in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute prima facie violations of a range of internationally recognized human rights, and large-scale evictions may only be carried out under exceptional circumstances and in full compliance with international human rights law.

I would also like to draw the attention of your Excellency's Government to General Comment No. 7 on forced evictions, adopted by the Committee on Economic, Social and Cultural Rights in 1997. The Committee stated that:

"13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.

"15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

"16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."

Moreover, the Committee recalled that "owing to the interrelationship and interdependency which exists among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in

the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.”

I therefore urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected.

I would greatly appreciate detailed information from your Excellency’s Government concerning the allegations summarized above and about the steps taken by the competent authorities in compliance with the provisions contained in the international legal instruments.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on such situations to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Could you please explain why the affected residents have reportedly not been able to formalize the settlement since 2004?
3. Could you please indicate the reason for the eviction?
4. What measures were taken to ensure that the evictions were in accordance with Brazil’s obligations under international human rights law? In particular, please provide information on:
  - a) Any consultation undertaken with those affected;
  - b) Measures foreseen by the authorities to ensure that the forced eviction does not result in homelessness of the affected persons. In this framework, please provide information on what was foreseen in terms of alternatives for those affected and if relocation sites have been designated, please provide details on the exact location, including on access to public services and livelihood;
5. Could you please provide information on the current situation of the persons affected by the alleged evictions?
6. Could you please provide information on the alleged, possibly excessive, use of force during the eviction and whether any investigation has been undertaken in that regard.
7. Could you please indicate the legal basis for the alleged arrest of 30 of the evicted persons? Have legal charges been filed against them?

I undertake to ensure that the response of your Excellency's Government to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Raquel Rolnik

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context