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**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates 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; the Special Rapporteur on extreme poverty and human rights; and the Independent Expert on minority issues.**

REFERENCE: AL Housing (2000-9) Poverty (1998-11) Minorities (2005-4)  
PRT 1/2013

28 March 2013

Excellency,

We have the honour to address you in our capacities 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; Special Rapporteur on extreme poverty and human rights; and Independent Expert on minority issues pursuant to Human Rights Council resolutions 15/8, 17/13, and 16/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **alleged forced evictions of 49 persons living in a situation of extreme poverty in Bairro de Santa Filomena, located in Amadora and the threat of eviction of additional families living in the same settlement.**

From the onset, we would like to refer to a previous communication sent to your Excellency's Government on 23 July 2012 regarding these evictions. We would like to thank you Excellency's Government for the detailed reply to our communication dated 11 September 2012.

According to updated information received:

7 families (27 people), including children and persons with disabilities, were forcibly evicted from the settlement of Bairro de Santa Filomena, Amadora, on 26 and 27 July 2012 and their homes subsequently demolished. On 19 November 2012, 22 additional residents, including elderly people and children, were evicted from this settlement. According to information received the settlement has been inhabited mainly by individuals originally from Caoe-Verde, Sao Tome e Principe, Guinea, Angola and Brazil, who have settled in Portugal for many years and some have acquired Portuguese nationality including their children who were

born there. We are informed that one of the evicted women suffered a stroke during the eviction and was hospitalized.

No notice was provided to the residents with regard to the eviction date and the police arrived unexpectedly in the early hours of the morning of the eviction in order to carry out the evictions. Reportedly, no alternative accommodation was offered to the affected families and their belongings were damaged during the eviction. Social workers from municipal authorities had meetings with a number of residents prior to their evictions. However it is reported that these meetings were used to convince residents leave their homes rather than explore solutions and support them and not adequate notice of evictions was provided during these meetings.

Since these evictions were conducted, some of the evicted families have been living with relatives or friends. Some of the families were offered to stay in a pension as a temporary housing solution. We are also informed that some of the families were offered financial assistance for one month rent. Allegedly, the families that accepted this offer have yet to receive the money and are currently struggling to meet the cost of their new accommodation. Reportedly, no such offer was made to the families evicted in November.

Additional families living in the Bairro de Santa Filomena settlement remain under threat of eviction and additional evictions were scheduled to take place during the coming months.

Uncertainty remains as to the number and fate of families excluded from the *Programa Especial de Realojamento* or PER (Special Re-Housing) programme, which provides for alternative long-term housing options for people residing in informal settlements. Your Excellency's letter indicates that one of the criteria for the *Programa Especial de Realojamento* is permanent residence since 1993, based on a census that was conducted then. Documents from the municipality allegedly estimate excluded families from the settlement to be around 110. Were these families to be evicted they would be in particular dire circumstances as they would not be eligible for alternative accommodation.

Finally, it is alleged that the situation in Santa Filomena is not an isolated case but reflects a broader problem in other neighborhoods of Amadora municipality.

While we do not wish to prejudge the accuracy of these allegations, we would like to remind your Excellency's Government of the applicable international human rights norms and standards relevant to this case.

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Portugal is a party, states that "the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself

and his family, including housing, and to the continuous improvement of living conditions”.

With respect to the right to adequate housing, the Committee on Economic, Social and Cultural Rights (CESCR) stressed in its General Comment No. 4 that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one’s head; rather, it should be seen as the right to live somewhere in security, peace and dignity. With “due priority to those social groups living in unfavourable conditions,” the right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. The Committee also added that “the right to housing should be ensured to all persons irrespective of income or access to economic resources” (para. 7-8). The Committee also stressed (para. 6), that the enjoyment of the right to adequate housing must not be “subject to any form of discrimination”, in accordance with article 2(2) of the Covenant.

As repeatedly stated, including in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute gross violations of a wide range of internationally recognized human rights and large-scale evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law. According to the General Comment No. 7, by the CESCR:

“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.”

In view of this, we wish to recall the existence of the Basic principles and guidelines on development-based evictions and displacement (contained in document A/HRC/4/18) that aim at assisting States in developing policies and legislations to prevent forced evictions at the domestic level. Your Excellency's Government may find useful in the current circumstances the sections of the guidelines that focus on State obligations prior to, during and after evictions.

In addition we wish to draw the attention of your Excellency's Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 4(1) of the Declaration establishes that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law." The proposed eviction may have additional serious implication including with regard to the health and welfare of affected individuals, those suffering from illness or people with disabilities, as well as the right to education of affected children. In this regard we would like to seek further information and assurances from your Excellency's Government.

Furthermore, article 2(1) of the International Covenant on Economic, Social and Cultural Rights obligates each member State to ensure the immediate satisfaction of, the very least, minimum essential levels of all economic, social and cultural rights, including: basic shelter and housing, for all members of society (General Comment 3, para. 10).

Furthermore, according to article 2(1), States parties must devote the "maximum available resources" to ensure the "progressive realization" of all economic, social and cultural rights. In General Comment 3 (para. 9), the Committee on Economic, Social and Culture Rights stressed the existence of a strong presumption that deliberately retrogressive measures that affect the level of enjoyment of economic, social and cultural rights are in violation of the State's obligation under article 2(1). In adopting retrogressive measures, States must demonstrate that they have been introduced after "the most careful consideration" of all alternatives and that they are "fully justified by reference to the totality of the rights provided for in the Covenant".

We further wish to draw your Excellency's attention to the principles of non-derogation and non-retrogression with regard to economic, social and cultural Rights. In its General Comment 16, the CESCR specifically noted that "article 3 sets a non-derogable standard for compliance with the obligations of States parties as set out in articles 6 through 15 of ICESCR." (para 17) The CESCR has also concluded that "[i]f any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State Party's maximum available resources." (General Comment 15).

We would also like to draw the attention of your Excellency's Government to the existence of the guiding principles on extreme poverty and human rights (contained in document A/HRC/21/39), adopted by the Human Rights Council by consensus at its 21<sup>st</sup> session (resolution 21/11). The General Assembly, at its 67 session, encouraged Governments to consider the guiding principles in their policy formulation and implementation (A/67/457/Add.2 draft res. III). Your Excellency's government may find para. 51-60 of the guiding principles (dealing with implementation requirements), and para. 67-68 and 79-80 (dealing with equality and the right to adequate housing), particularly relevant in this case.

As it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Were official eviction notices provided to the residents, including information on the date and process of the eviction? If not, why not?
3. Your Excellency's letter indicates that one of the criteria for the *Programa Especial de Realojamento* (PER) is permanent residence since 1993, based on a census that was conducted then. Most of the evicted families, although they have been living in the settlement for a long time, arrived there after 1993 and hence not eligible to apply for the programme. Has your Excellency's Government envisaged updating the list of people eligible for the PER programme, given that the programme was created in 1993 and does not include individuals who arrived after 1993?
4. In your Excellency's Government reply dated 11 September 2012 it is indicated that 40 families have been excluded from the PER programme. However, alternative information received indicates that around 110 families have been excluded from this relocation programme. Please indicate the exact number of families that have been excluded from the PER programme and have been evicted or remain to be evicted.
5. Please provide information on measures foreseen by the authorities to ensure that the evictions do not result in the affected persons being made homeless. What has been envisaged in terms of long-term housing alternatives for the families that have been excluded from the PER programme?
6. Have additional evictions been carried out in Bairro de Santa Filomena since November 2012? If so – please provide details of the families evicted and their current location and situation.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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