

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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; and the Special Rapporteur on extreme poverty and human rights

REFERENCE:
AL BRA 8/2017

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 33/9, 34/9 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged multiple **human rights violations committed during and after a police intervention against residents of the neighborhood known as of 'Cracolândia', located in the center of São Paulo.**

The situation in Cracolândia was the subject of a communication sent on 11 April 2012 (BR 3/2012) jointly by the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; on adequate housing as a component of the right to an adequate standard of living and of the right to non-discrimination in this context; and on extreme poverty and human rights. The Special Rapporteurs regret that to date no reply from your Excellency's Government was received to this communication.

According to the information received:

Cracolândia is an area in the historical neighborhood of Santa Efigênia in Sao Paulo largely composed of people living in situations of high vulnerability, including children, older persons, people living with diseases and different medical conditions, and drug users, particularly, crack users. Residents of Cracolândia often experience homelessness or live in pensions and tenement buildings (short rentals) in precarious conditions.

In January of 2017, the newly-elected Mayor of São Paulo announced that Cracolândia would be "eliminated" by the end of his mandate and reported on plans to develop residential and commercial real estate projects for the area. The mayor also indicated his intention to review a harm reduction project which was being developed by the previous administration to tackle the problem of drug abuse by part of the neighborhood population. The existing programme (known as "Open Arms programme") consists in a harm reduction initiative which includes

support for drug users which subsidizes their sheltering in local pensions, provides work opportunities and social and medical assistance.

During the first few months of the new Mayor's mandate, members of civil society, as well as the Public Defender of the State of São Paulo, the Public Prosecutor Office of the State of São Paulo, and the Municipal Council on Drug and Alcohol Policy, expressed concern at the city administration's use of hostile and aggressive tactics against residents of the area in and around Cracolândia. For example, in at least two incidents on 17 January and 23 February 2017, the police carried out acts of violence against residents. It was reported that two photographers who were on the ground during the police operation on 23 February were shot with fire arms. After such incidents, concerned stakeholders were assured by the city administration that no militarized operations would be used in the Cracolândia area, and that social programs would be enacted.

Despite the administration's assurances, on 21 May 2017, without prior warning, 900 officers of the state of São Paulo police force dispersed residents, business owners, and others in the Cracolândia area, using a variety weapons. The intervention was reportedly undertaken to combat drug trafficking in the area. The police detained all those who resisted and 38 people were arrested/detained. Although arrest records do not specify the exact illicit acts alleged against each individual detained, some of whom had no criminal record, a subsequent custody hearing upheld the imprisonment for the 38 individuals detained.

On the same date, local pensions in the Cracolândia were forcefully closed by the police and their residents and persons living in the streets around the area were evicted without prior notice or any court order, street tents were destroyed by tractors and buildings sealed off with concrete, while residents' belongings were still inside. The operation generated panic and local commerce and cars were damaged by those running from the operation. The Mayor publicly announced to the media that the operations had 'eliminated' Cracolândia and the groups who used to occupy and consume drugs in the area would never return there. He also indicated his intention to end the previous harm reduction project offered to drug users.

On 22 May 2017, the city administration ordered additional evictions to surrounding areas, again without prior notice or sanction of a court. One building was destroyed with residents still inside, which caused the injury of three individuals sleeping inside. Many of these evicted residents were forced to spend the night in the street, effectively being rendered homeless, in cold weather. The Public Defender's Office has since been litigating to stop demolitions of further buildings in the Cracolândia area. The closure of buildings was justified by officials on safety grounds alleging that drug trafficking in the area caused imminent risk, and were based in a decree published by the municipality of Sao Paulo on 20 May establishing the area as a zone of special interest for the city administration.

As a result of the petition by the Public Defender's Office, on 24 May, a São Paulo trial court (3ª Vara de Fazenda Pública) issued an injunction to temporarily halt demolitions. The injunction determined that no further evictions should be carried out by the local administration without prior evaluation of the residents' situation, without allowing residents to collect all their belongings, and without providing adequate housing alternatives and health and social support to the population affected. After the injunction, it was reported that the city administration released a public announcement agreeing with the decision, which, according to them, would be fully respected. Concerns exist at the temporary nature of the injunction, which could be overturned by a higher court.

In the days following the police intervention of 21 May 2017, hundreds of people in the Cracolândia area, including children and older persons, were left homeless, lacking adequate housing and access to essential services. No alternative accommodation was offered to them. As a result, approximately 200 individuals settled in the nearby Princesa Isabel square. On 5 June 2017, 25 containers were installed by the city administration near Princesa Isabel square in order to assist and shelter some residents who were evicted from Cracolândia.

On 24 May 2017, the Municipal Human Rights Secretary resigned, citing disagreement with the way in which the city's administration dispersed residents of Cracolândia and classified the action as "disastrous". On the same date, the National Human Rights Council denounced the city administration's disproportionate use of force for 'cleansing' of the area, and gentrification purposes, in violation of Brazilian legislation on the right to housing and on drug and psychosocial care policies.

After a request by the city administration, on 26 May 2017, a São Paulo judge authorized the search and apprehension of all "drug addicts" walking the streets of São Paulo to be forcefully submitted to diagnoses and immediate confinement, if their diagnoses so called for. Two days later, on 28 May, the Court of Justice of São Paulo overturned the decision.

On 11 June 2017, the police carried out another operation against drug trafficking in Princesa Isabel square where, reportedly, street tents used by drug users in the previous area affected by the operations of 21 May were rebuilt, resulting in two arrests. Just a few hours after the operation, Princesa Isabel square was occupied again by drug users. On 21 June 2017, a group of evicted residents, allegedly mainly persons who are drug users, left Princesa Isabel square and occupied Alameda Cleveland and Julio Prestes square, near the original site of Cracolândia, where they remain to date.

Reports indicate that the police continues to persecute individuals displaced from Cracolândia, resorting to violence against individuals and mass compulsory body searches. Violence between individuals displaced from Cracolândia and police forces continue to occur, including on 14 and 17 June, and on 3 and 4 July 2017, and as a result some people have been injured. According to the information

received, the purpose of these measures is to expel these individuals from the central region of the city of São Paulo.

It is also reported that the already precarious situation of Cracolândia residents has worsened as many have been forced to leave their homes and have not been provided with alternative housing solutions. Access to emergency housing, meals and public hygiene available at the containers for those who moved to Princesa Isabel Square is difficult, due to new rules requiring prior authorization to use the facilities.

Reports received also indicate a lack of information, policy transparency and space for the meaningful participation of residents from the neighborhood and civil society more generally in the development of the new urban plans for the Cracolândia area by the municipal administration. These plans are reportedly part of a public private partnership initiative launched in 2014 by the State of Sao Paulo to build residential units in the central area of the city and improve some public institution buildings. According to zoning regulations, projects to be implemented in the area where Cracolândia is located should ensure that at least 60% of newly constructed units are dedicated to housing the lowest income population. Yet, the existing partnership lead by the State of Sao Paulo reportedly includes some housing for the low income population but also targets those with income that are slightly higher. Ultimately, concerns exist that the combined public security and urban interventions would result in the gentrification of the historical neighborhood of Santa Efigênia.

While we do not wish to prejudice the accuracy of these allegations, we would like to express our concern at the infringements to the enjoyment of the right to health and the right to adequate housing in Cracolândia during and after the São Paulo police intervention of 21 May 2017, as well as the general lack of adequate access to health care in the neighborhood. We are also concerned that the Mayor's policy to rid Cracolândia of drug users is discriminatory in its effects against those living in situation of poverty and social exclusion. In this regard, we are particularly concerned with the violent treatment and involuntary confinement of drug users, and other residents, with the alleged purpose of dispersing them from the Cracolândia area by forcefully evicting them from their homes and rendering them homeless.

We express deep concern regarding the forced eviction and demolition of homes of residents of Cracolândia without due process, adequate remedies, or any resettlement or alternative accommodation proposed by the relevant authorities. The aim to rapidly eliminate the presence of drug users from the area appears to have seriously aggravated the social and economic exclusion of an already extremely marginalized population. In this connection, we also express our particular concern over the disproportionate impact of the ongoing initiative for those living in poverty and on their potential exclusion from the area in case public and private partnerships are not adequately framed to fully ensure that housing is accessible to them.

Furthermore, we express grave concern at the disproportionate use of force in the process of displacing drug users and residents from Cracolândia by São Paulo police forces, including the use of weapons, as well as mass compulsory body searches. Finally, we express serious concern at the arrest and detention of residents of Cracolândia, including drug users, apparently without adequate specification of the exact illicit act or acts alleged against each individual.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the details and, where available, the results of any investigation and judicial or other inquiries carried out in relation to the alleged use of disproportionate force in the process of displacement of drug users and residents of Cracolândia by São Paulo police forces, including the use of weapons as well as mass compulsory body searches. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information on inquiries carried out in relation to responsibility for the alleged demolition of a building in which three individuals inside were living. Please indicate the situation of the individuals affected and measures taken to provide them with their assistance and reparation. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information on the legal grounds for the arrest and detention of Cracolândia residents, particularly drug users, and how these measures are compatible with international norms and standards as stated, inter alia, in Article 9 of the ICCPR.
5. Please provide details on measures taken to ensure that the municipal operations in Cracolândia are compatible with Brazil's international human rights obligations regarding: a) the enjoyment of the right to the highest attainable standard of physical and mental health of residents of Cracolândia, including drug users and b) the enjoyment of the right to adequate housing.
6. Please indicate if all feasible alternatives to evictions and demolitions have been explored in consultation with the persons living in Cracolândia, and

please provide details of the process and results of those consultations. Please further indicate what measures the city administration has in place to ensure alternative emergency accommodation and longer-term housing for the displaced families and individuals from Cracolândia and provide detailed information of relocation and compensation plans for those people whose homes have been or will be demolished, and of those who lost their private property and belongings as a result of the demolitions.

7. Please provide information regarding legal or other remedies available to individuals who have been forcefully displaced and/or evicted from their homes in Cracolândia.
8. Please provide details on the ongoing development of urban plans for the Cracolândia region by the State and municipal authorities, including initiatives of public private partnerships. Please describe the mechanisms for ensuring public access to information on these plans and securing the participation of civil society in their preparation. Please detail the measures taken to ensure that future housing developments are accessible to those living in poverty.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Leilani Farha

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

Philip Alston

Special Rapporteur on extreme poverty and human rights

Annex
Reference to international human rights law

Equality and non-discrimination

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the principles of equality and non-discrimination, which are core elements of the international human rights normative framework and enshrined, inter alia, in Article 2 of the Universal Declaration of Human Rights and Articles 2 of the International Covenant on Economic, Social and Cultural (ICESCR), acceded to by Brazil on 24 January 1992 and International Covenant on Civil and Political Rights (ICCPR), acceded to by Brazil on 24 January 1992. In General Comment 20, the Committee on Economic, Social and Cultural Rights noted that "place of residence" and "economic and social status" are prohibited grounds for discrimination. Thus, measures which discriminate against individuals because they live in a situation of poverty may amount to a contravention of the principle of non-discrimination.

Right to health

We would also like to refer your Excellency's Government to Article 12 of ICESCR, acceded to by Brazil on 24 January 1992, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation to create conditions that assure access to medical services and attention to all.

As noted above, Article 2 of the ICESCR, provides that States must undertake to guarantee that the rights enunciated in the Covenant are exercised without discrimination of any kind. As such, an individual's use of, or dependency on, drugs cannot constitute grounds for curtailing his or her rights.

With regard to concerns regarding the involuntary commitment of drug users, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to respect the right to health by, inter alia, refraining from applying coercive medical treatments, unless on an exceptional basis for the control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards.

In this regard, we would like to refer your Excellency's Government to the report by the Special Rapporteur on the right to physical and mental health presented to the General Assembly on the theme of informed consent (A/64/272). The report reaffirms that informed consent is an integral part of the right to health (para. 46) and lists non-consensual testing and compromised confidentiality as examples of violations to the right to health (para 76). The report also warns that clinical trials conducted to sex workers and drug users have raised a number of ethical concerns relating to, among other things, the inadequate provision of information (para.76). Further, the report states that treating

persons who use drugs as criminals is counterproductive from a right to health perspective. States should change legislation that supports criminalization based on non-consensual testing. Any routine drug or alcohol testing should be consensual to encourage appropriate conditions of counselling and treatment, and implemented in a non-discriminatory, transparent and inclusive way. In this sense, testing and treatment protocols should treat drug dependence like any other health-care condition. (para.90)

Right to housing and non-discrimination in this context

With regard to the right to adequate housing, we would like to refer your Excellency's Government to Article 11(1) of the ICESCR, which recognizes the right to an adequate standard of living, including housing, and to the continuous improvement of living conditions.

We further recall the General Comments 4 and 7 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, due process, alternative accommodation, and access to an effective remedy of those that are affected by eviction orders. In its General Comment No. 7 on forced evictions, the Committee clarified that "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 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 should not 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". The Committee has repeatedly expressed concern over forced evictions that have taken place without adequate compensation or alternative accommodations.

As the former Special Rapporteur on adequate housing noted in her guiding principles on security of tenure for the poor in urban areas (A/HRC/25/54), States should improve security of tenure, especially for vulnerable and marginalized persons and groups, including by taking a number of measures to avoid the disruption caused by evictions without adequate, participatory and effective mechanisms to prioritize in situ solutions. Principle 3 in particular underlines the need for regulations aimed at protecting public health and safety or at mitigating risk for the population should not be used as an excuse to undermine security of tenure. According to Principle 4, States should promote the social function of property, including land, and take measures to combat speculation of land while ensuring access to secure and well located land for housing for the poor.

Demolitions and destruction of property are strictly forbidden under international human rights law and standards. According to this general comments, States must explore all feasible alternatives to forced evictions and demolitions in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of the evicted persons by ensuring there is provision of adequate alternative housing facilities, resettlement and compensation for lost property.

In this context, we also call your attention to the reports of the Special Rapporteur on adequate housing on homelessness and the right to adequate housing (A/HRC/31/54) and on the role and responsibilities of subnational levels of government in the protection of the right to adequate housing (A/HRC/28/62). In her reports, the Special Rapporteur has underlined that homeless people have become a stigmatized group subject to criminalization, discrimination and social exclusion, and has underlined States obligations to eliminate the practice of forced eviction, especially where it will lead to homelessness; to combat and prohibit in law discrimination, stigma and negative stereotyping of homeless people; to ensure access to legal remedies for violations of rights.

With regard to the roles and responsibilities of municipal and State authorities in the planning and implementation of the housing initiatives in Cracolândia, as the Special Rapporteur has highlighted, the protection and realization of the right to adequate housing does not rely solely on one or the other level of government, but on their relationship. All levels of State must ensure that the right to adequate housing and related rights are protected in law, that there is a prohibition of forced evictions and that all residents have, that access to justice and effective remedies for violations of the right to adequate housing at the local level without discrimination on any ground.

Excessive use of force, and arbitrary detention

Regarding the forced displacement of Cracolândia drug users and residents, we would like to refer your Excellency's Government to Article 12 of the, which establishes that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Further, we refer your Excellency's Government to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which provide that when utilizing force law enforcement officers shall act in proportion to the seriousness of the offence, minimize damage and injury, and exercise respect for human life.

Regarding the arrest and detention of drug users and other residents of Cracolândia, we would like to remind your Excellency's Government of Article 9 of the ICCPR, which establishes that no one shall be subjected to arbitrary arrest or detention, or deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. Article 9 further provides that anyone who is arrested shall be informed, at the time of the arrest, of the reasons behind such arrest and shall be brought promptly before a judge or other authorized officer.