

**Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 Independent Expert on the enjoyment of all human rights by older persons**

REFERENCE:  
AL BRA 2/2018

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Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Special Rapporteur in the field of cultural rights; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 Independent Expert on the enjoyment of all human rights by older persons, pursuant to Human Rights Council resolutions 36/23, 37/12, 35/15, 34/9 and 24/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged use of excessive force during the forced eviction of one family and the imminent threat of forced eviction of more residents of the Horto Florestal in the Botanical Gardens neighborhood of Rio de Janeiro. People have resided in the neighborhood for over 200 years, where they have created, developed and protected their cultural heritage.**

This situation was already subject of a communication (case no. BRA 14/2012) dated 12 November 2012 sent by 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, which referred to alleged forced evictions in the context of urban reforms in various cities in Brazil. We regret that to date no response has been received from your Excellency's Government to that letter so far.

According to the new information received:

The origin of the Horto Florestal community reveals a rich history dating back to colonial times. The neighborhood can trace its origins to the 16th century sugarcane plantation that occupied the land before it was expropriated by King João VI in 1808, first to build a gunpowder factory and later to establish the Botanical Gardens. The first residents in the area in the 16th century were the plantation's indigenous enslaved persons who were soon replaced by an enslaved labor force brought from Africa. The oldest surviving building in Horto is estimated to date back to 1575. At the beginning of the 19th century, the Horto neighborhood was founded by enslaved persons and workers of the Royal Botanical Garden of Rio de Janeiro, who were granted permission to settle with their families on the land adjacent to the park. Their descendants have been living

in the area for more than 200 years, where they have since created and developed their historical and cultural heritage. In Horto, workers cultivated saplings and plant species to forest the gardens and the adjacent Tijuca National Park. Throughout the 20th century, Horto was a leading site of Brazilian forestry, used to produce and experiment with various plant species.

The neighborhood is located between the Botanical Gardens and Tijuca National Park, in one of the most expensive areas in Rio de Janeiro, and is surrounded by many trees, giant bamboos, waterfalls, trails, and wild animals. It is currently composed of modest but adequate houses built in brick and concrete, some of them listed by the Institute of National Historic and Artistic Heritage (Iphan), and is home to approximately 2000 people, the majority of whom are of African descent. The 621 concerned families are living throughout 11 localities: Caxinguelê, Chacara do Algodão, Clube dos Macacos, Dona Castorina, Grotão, Hortão, Major Rubens Vaz, Morro das Margaridas, Pacheco Leão, Solar da Imperatriz and Vila São Jorge.

Horto residents began a process of revitalizing their history as part of the “Nossa História” (Our History) collaborative project initiated in 2001. Oral history classes were provided to young people and the oldest residents were interviewed in an effort to rebuild knowledge and give visibility to their local culture. In 2010, the Museum of Horto (Museum do Horto) was created by local residents to document the group’s origins. The museum currently does not have a physical space, as the social club where it was located was forcefully evicted in November 2014. The Horto community is recognized by many for its important role in preserving the cultural heritage of afro-descendant groups in Brazil.

The Botanical Gardens form part of the site “Rio de Janeiro: Carioca Landscapes between the Mountain and the Sea”, which was registered in the UNESCO World Heritage List in 2012.

Despite their well-documented history and ties to the land, the residents of Horto face the risk of removal. Since the 1990s, they have been threatened with forced evictions as a result of a legal claim over their community lands presented by the administration of the Botanical Garden Institution, which wishes to expand its research activities there. Residents contend that real estate speculation in one of Rio de Janeiro’s most expensive districts also motivates the eviction plans.

In 2006, the Federal Government’s Secretariat of Patrimony of the Union initiated a land tenure regularization project, aiming at defining the boundaries between the Horto residential space and the Botanical Gardens, and the urban planning of the Horto region which should consider the residents’ needs. The project was carried out by the Housing Laboratory at the Faculty of Architecture and Urbanism of the Federal University of Rio de Janeiro. It proposed an expansion of the Botanical Gardens’ area to 80% of the 142 hectares and a regularization of the residents on 8% of the land, representing a densification of the neighborhood and the reduction

of its land from 19.3 hectares to 11.1 hectares. The project was rejected by the Association of Residents and Friends of the Botanical Gardens which decided to take the case to the Brazilian Federal Court of Accounts (TCU).

In 2012, a judgment of the TCU determined the “immediate suspension of the land regularization program” and decided to entrust the Horto neighborhood lands to the Botanical Garden. In May 2013, the Federal Minister of Environment announced the redefinition of the limits of the Botanical Gardens, according to which 520 of Horto’s families would be removed to increase the Botanical Garden Institute research area. The decision represented a change in the Federal Government’s position, which until 2012 was supportive of the land regularization project. The decision was largely criticized for denying the historic importance and contribution of the Horto residents over decades to cultivating and preserving the federally owned Botanical Gardens and surroundings, as well as for lacking any participation or dialogue with the concerned population.

Following the government’s decision, the Horto residents were ordered to evacuate the area by the end of 2016, and forced evictions were carried out with excessive force in November 2016. On 7 November 2016, military police evicted one of the families that had received an eviction notice from their home. The family had not received any formal warning and only found out two days prior to the date of the eviction. In the process, military police officers threw tear gas into the house and used pepper spray and rubber bullets to force those inside to evacuate. They also threw tear gas bombs into the crowd that had gathered to protest the eviction, which included children and older persons. It is reported that injuries were sustained as a result of the use of tear gas but the level of these injuries or the number of persons affected remains unclear. Due to an active local mobilization and media coverage, only a small number of residents were displaced and most were able to remain in Horto.

In June 2017, the Brazilian Supreme Court (STF) confirmed the 2012 TCU judgment. Since that time, the residents of the Horto neighborhood are at imminent risk of forced eviction.

We express serious concern at the alleged excessive force used by military police on a family and crowd that included children and older persons, by the use of tear gas, including in a closed space, pepper spray and rubber bullets, during the forced eviction of 7 November 2016. Serious concern is equally expressed at the imminent threat of further forced evictions of residents of the Horto neighborhood, which would have a deleterious impact on their right to adequate housing and on their right to participate in cultural life and to enjoy and access their cultural heritage. We are further concerned that the decision of eviction was taken without any prior consultation of the concerned people and that it seems to have a disproportionate impact on people from African descent, who make up a large proportion of the neighborhood’s population. Moreover, we are concerned that the displacement and dismantling of the Horto neighborhood could lead to the destruction of

cultural heritage of great importance to the inhabitants of the neighborhood as well as to the deletion of an important part of the history of Rio de Janeiro and Brazil.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations to ensure the right to an adequate standard of living and housing, and the right to take part in cultural life, which includes the right to access and enjoy cultural heritage, as guaranteed by various international human rights instruments to which Brazil has adhered, in particular the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the force used by military police during the above-mentioned forced eviction of 7 November 2016, in particular as to its legality vis-à-vis the requirements of necessity and proportionality, and the number and level of injuries sustained by those that were part of the crowd protesting the forced eviction and the family concerned.
3. Please indicate if all feasible alternatives to eviction have been explored in consultation with the Horto residents and if so, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable.
4. Please provide information on the measures taken to guarantee the consultations with the population of Horto.
5. Please indicate if the local authorities have undertaken an assessment of the impact that the planned evictions and displacement would have on the right of Horto residents to adequate housing and to participate in and maintain their cultural practices, cultural heritage and ways of life.
6. Should the involuntary resettlements occur, please indicate what resettlement programs have been considered, how they comply with international standards relating to access to adequate housing and participation in cultural life, and whether such programs have been developed in conjunction with the affected population?

7. Please indicate what measures have been considered in order to protect and respect the cultural and historical value of Horto neighborhood should the eviction plan be implemented.
8. Please provide information about the reasons for evicting the premises where the museum was located and if any alternative location has been provided to maintain and ensure accessibility of all to the museum and the historical information and cultural heritage it represents.
9. Please indicate what legal remedies and procedures are available, including access to legal aid, for the residents to challenge the eviction and displacement plan.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

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Chair-Rapporteur of the Working Group of Experts on People of African Descent

Karima Bennoune  
Special Rapporteur in the field of cultural rights

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Independent Expert on the enjoyment of all human rights by older persons

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns and without prejudging the accuracy of these allegations, we would like to bring to the attention of your Excellency's Government article 15 of the Covenant on Economic, Social and Cultural Rights (CESCR), which was ratified by Brazil in 1992, and which states that everyone has the right to take part in cultural life. In General Comment No. 21, the Committee on Economic, Social and Cultural Rights noted that the right to take part in cultural life is interdependent with other rights enshrined in the Covenant, including the right to an adequate standard of living (E/C.12/GC/21 para. 2). It also indicated that States should adopt appropriate measures or programmes to support minorities or other groups in their efforts to preserve their culture (para. 52.f), and should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk (para. 55). The Committee further noted the obligation of States to respect and protect cultural heritage in all its forms. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures (paragraph 50. a)).

We draw your Excellency's Government's attention to the reports of successive Special Rapporteurs in the field of cultural rights relating to the right of access to and enjoyment of cultural heritage (A/HRC/17/38) and to the intentional destruction of cultural heritage (A/71/317). As cultural heritage represents values linked with the cultural identity of individuals and groups, the right to access and enjoy cultural heritage also includes "contributing to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes". Hence, consultation with all concerned is essential before deciding on the destruction of sites of cultural or religious significance (A/HRC/17/38, para. 58 and 79; A/71/317, paras. 13 and 58). The mandate holders in the field of cultural rights have recommended that States recognize and value the diversity of cultural heritages present in their territories and under their jurisdiction. The current Special Rapporteur in the field of cultural rights has emphasized that given the largely irreversible nature of the destruction of cultural heritage, which is a *prima facie* violation of cultural rights, effective efforts must be made to prevent and stop it. (A/71/317, para. 5).

The former Special Rapporteur stressed the duty of States not to destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned populations, as well as their duty "to take measures to preserve/ safeguard cultural heritage from destruction or damage by third parties" (A/HRC/17/38, paras. 78 and 80 a) and b)). Furthermore, the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage stresses the responsibility of States to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, *inter alia*, the 1972 Convention for the Protection of the World Cultural and

Natural Heritage, ratified by your Excellency's Government on 1 September 1977, the 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works, the 1972 Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage and the 1976 Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (Section IV), as well as not to intentionally destroy their own heritage, "whether or not it is inscribed on a list maintained by UNESCO or another international organization" (Section VI).

Furthermore, we would like to draw your attention to the right to an adequate standard of living and housing, as defined in article 11 of the (ICESCR). The Committee on Economic, Social and Cultural Rights commenting on the right to adequate housing in its General Comment No. 4, stressed 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. 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. Indeed, housing is not adequate if it does not respect and take into account the expression of cultural identity.

We would also like to refer to the Committee on Economic, Social and Cultural Rights' General Comment No. 7 on forced evictions, which stipulates that procedural protections are essential in relation to forced evictions, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid (paragraphs 15 and 16). We also wish to call your attention to the Basic Principles and Guidelines on Development-based Evictions and Displacement, prepared by a former Special Rapporteur on adequate housing, which provides guidance on the States' obligations before, during and after development-based evictions.

In this regard, we would also like to draw your Excellency's attention to the United Nations Principles on Older Persons and the comprehensive report of the Independent Expert on Older Persons (A/HRC/33/44), in which the mandate-holder stressed that housing is an essential aspect of the ability of older persons to live an autonomous life (para. 71).

Further, we would like to draw your Excellency's attention to article 6 of the International Convention on Civil and Political Rights (ICCPR), acceded to by Brazil in 1992, which guarantees the right to life and not to be arbitrarily deprived of one's life. In its General Comment No. 6 (1982), the Human Rights Committee noted that the "right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures". The Special Rapporteur on extrajudicial, summary or arbitrary executions has in this regard linked the right to life with the realization of socioeconomic rights and held that the failure on the part of States to address, through positive measures, systematic violations of socioeconomic rights, including homelessness, could amount to a violation of article 6 of the ICCPR (A/HRC/35/23, para.

81). This concept of a “dignified life” (or “vida digna”) was first developed by the Inter-American Court of Human Rights in its landmark decision on “street children”<sup>1</sup>, in which it held that “the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence” (see also A/HRC/35/23, para. 82).

As regards the reported use of excessive force, we would in addition like to draw the attention of your Excellency’s Government to the relevant international legal standards governing the use of force by law enforcement authorities. According to international law, law enforcement officials shall avoid the use of force and firearms or, where that is not practicable, restrict it to the minimum extent necessary. The only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or serious injury, and such use shall be subject to the principles of necessity and proportionality (A/HRC/27/28, paras. 58 to 60). The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990) Code of Conduct for Law Enforcement Officials (adopted by General Assembly resolution 34/169 of 17 December 1979), while not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement officials. According to these instruments, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent ones. Force used must be proportionate to the legitimate objective to be achieved. Moreover, restraint must be used at all times and damage and/or injury mitigated. If the information received is found to be correct, it would indicate that the force used might have posed a threat to the lives of the protesters and family which was neither necessary nor proportionate, and thus excessive. Of particular concern is the report that tear gas was thrown into a closed space while the residents were still inside.

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<sup>1</sup> See Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juarez, Mexico*, OEA/Ser. L/V/II.117. Doc. 44 (7 March 2003), para. 51.