

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:
AL BRA 5/2020

3 July 2020

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 Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **allegations of ongoing and planned forced evictions in the state of São Paulo during the COVID-19 pandemic**.

According to the information received:

On 28 January 2020, the Ministry of Health raised the emergency to level 2 out of 3, based on an "imminent threat" to public health. On 25 February 2020, the Ministry of Health confirmed the first case of COVID-19 in Brazil, in the city of São Paulo. On 17 March, the first death caused by COVID-19 in Brazil occurred, also in the city of São Paulo. By June 2020, one million cases and 49,000 deaths had been reported in Brazil, the second highest numbers of cases and deaths in the world after the United States.

On 19 March, 20 April, 7 and 22 May and 1 June 2020, National Justice Council, a body responsible for judicial policy, issued recommendations advising for the suspension of the judicial deadlines of all evictions, even in the case of "repossession". Following its recommendations, the High Council of the Magistracy of the São Paulo Court of Justice issued regulations suspending judicial deadlines and any order that would be incompatible with social isolation. The Public Prosecutor of the State of São Paulo issued a recommendation to the São Paulo Court of Justice advising the suspension of all "repossession" orders. The city of São Paulo suspended the payment of rentals in social housing for three months.

Despite the recommendations above, civil society organizations have reported at least seven cases of forced evictions and arson attacks in the state of São Paulo between March and June 2020, affecting over 2,000 families. Those included three extrajudicial forced evictions carried out by municipal officials, two extrajudicial forced evictions conducted by private actors and two forced evictions carried out with court orders. Additionally, six new court order authorizing evictions have been issued in the same period.

On April 14 2020, officials of the Ribeirão Preto municipality accompanied by police demolished 15 houses without a court order using a backhoe in Porto Ferreira Street in the Leite Airport area.

On 15 April 2020, a technical survey had been authorized by the 6th Civil Court of Ribeirão Preto to take place in the Locomotiva favela of Ribeirão Preto municipality. The survey was part of a “repossession” process initiated by the land’s owner Cooperative of Sugar Cane, Sugar and Alcohol Producers of the State of São Paulo (Copersucar) to end the current occupation, initiated in 2014. After the Public Defender’s asked for the suspension of the survey due to its lack of urgency and the risk of the operation spreading COVID-19 by the presence of a big numbers public officials, engineers and police officers, the survey was cancelled. Current residents are 370 low-income families who lack basic services like drainage and sanitation.

On 20 April 2020, a Federal Regional Court authorized the eviction of 77 families living in the Luiz Beltrame de Castro settlement, Gália municipality. They have been living in the site for over 11 years, and their occupation was regularized by by the Instituto Nacional de Colonização e Reforma Agrária in 2013. The land is used for housing and agriculture by members of Brazil's Landless Workers Movement (MST).

On 28 April 2020, a fire broke out in the forest around the Campo-Cidade Paulo Botelho camp where 100 families who are part of Brazil's Landless Workers Movement (MST). Residents believe that the fire was an arson attack aimed at accelerating the “repossession” process, which is currently suspended by the court due to the risks involved in relation to the COVID-19 pandemic.

On 7 May 2020, the military police and officials of the state of São Paulo and the municipality of Piracicaba evicted 50 families in Taquaral community, following a court order issued by the 4th Civil Court of the District of Piracicaba on 30 January 2020. The land had been abandoned for over 40 years, and the families had occupied it since January 2020. The operation started at 6 a.m. and the police used gas bombs. No alternative housing arrangement was offered to the evictees, rendering them homeless.

On 28 May 2020, 30 masonry houses that were being rebuilt were demolished in the favela das Mangueiras, in Vila Virgínia, Ribeirão Preto municipality, by city officials without a court order. The residents had been living on the site for over three decades.

On 1 June 2020, a local court authorized the eviction of ten families from the administrative area around the Ribeirão Preto city hall, in the Jardim Itaú district.

On 4 June, a local court authorized the eviction of 300 households in Vila Nova União Community, Ribeirão Preto municipality, against the advice of the Public

Defender's Office of the State of São Paulo, the Support Group for Judicial Reinstatement Orders of the São Paulo State Court of Justice, and the Public Ministry of the State of São Paulo. The land, which belongs to the Government, has been occupied since 2016, when its current residents settled in an abandoned plot that was covered in “bushes and trash”. Currently the organized community has a communal vegetable garden and provides free means to around 150 families. The city has announced that it will build social housing on the site, but has not provided details on the plan, nor whether the current residents will be allocated housing in it.

On 11 June 2020, the President announced that he had vetoed the suspension of authorization of new evictions for non-payment of urban property rent until December 2020, contained in Bill 1179/2020 passed by Congress. Bill 1975/2020, which establishes the suspension of compliance with all judicial or administrative measures resulting in evictions during the pandemic has not been voted on in Congress so far.

On 16 June 2020, about 900 families were forcefully evicted in Guaianases, in the eastern part of the city of São Paulo. No alternative housing was provided to the residents, rendering them homeless.

On 21 June 2020, officials of the municipality of São Paulo demolished the houses of around 400 families, without prior notice in a new occupied land in the northern part of the city. The city plans to build social housing on the site, but the project targets families of a higher income than current residents, who have not received alternative housing arrangements.

Three abandoned buildings in the central part of São Paulo city are also currently at the risk of evictions as court orders have been issued authorizing the city to carry them out, even though they may affect over 550 families. One of them has been occupied since May 2020, by families, comprising among others 20 children, four pregnant women and ten older persons. In another one, families had already invested significant resources in upgrading living conditions in the building and entered negotiations with the city to regularize the occupation.

The Governor of the state of São Paulo has suspended water cuts and stopped collecting payments for water and sewage bills for lower-income users. The National Agency of Electric Energy has suspended for 90 days, starting in March, power-cuts for all users.

Without prejudging the accuracy of the information received, we express our grave concern at the risk of evictions in the state of São Paulo. The forced eviction of hundreds of families without any alternative accommodation arrangement would constitute a grave violation of their human right housing. In the current context of a severe health crisis caused by the pandemic, rendering hundreds of families homeless could contribute to spreading COVID-19 and severely impact the rights to life and health

of thousands of persons in Brazil. I am also concerned that the evictions would be carried out without the participation of the persons affected or any of the safeguards foreseen in international human rights law.

Given the urgency of the situation of persons affected by the evictions and those at the risk of further evictions, I call upon your Excellency's Government to uphold international law and ensure that evicted persons urgently receive the necessary assistance, both in order to cover their immediate need for shelter, food, clothing, water and sanitation, and in order to provide a permanent solution that will fulfill their long-term housing needs. Such measures should start by a prompt investigation on the number of persons affected (including disaggregation by gender, age, disabilities and other factors) and their needs, while ensuring their meaningful participation in the planning and delivery of the assistance, as well as in any decision that may affect their human rights.

Due to the severity of the health crisis in Brazil and the fact that measures recommended by the Ministry of Health in relation to the COVID-19 pandemic, such as self-isolation, hand-washing, physical distancing or avoiding unnecessary movements,¹ are incompatible with evictions, we would also like to call your Excellency's Government to urgently establish a moratorium banning all evictions for the duration of the crisis.

Even though I would like to congratulate the Government for the temporary measures taken to guarantee water and energy supplies during the pandemic, those measures are not available for persons who are forcefully evicted and rendered homeless. Also, I would like to encourage the Government to take permanent measures prohibiting all water and energy cuts to users who are unable to pay for those services, as part of their human right to adequate housing.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would 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 detailed information on the evictions and demolitions conducted and authorized since March 2020 in the State of São Paulo, disaggregated by the number, gender, age, disabilities, socioeconomic status and other indicators of the persons affected.

¹ <https://coronavirus.saude.gov.br/sobre-a-doenca#como-se-proteger>

3. Please provide detailed information on any measures taken to prevent the negative human rights impact of the evictions and demolitions conducted and authorized since March 2020 in the State of São Paulo, including the rights of residents to adequate housing (both emergency shelter and long-term accommodation solutions), health, water and sanitation, food and education.
4. Please provide information on actions taken by the Government of Brazil to protect the right to adequate housing in the context of the COVID-19 pandemic, including the prevention of evictions.
5. Please provide information on the presidential veto against Bill 1179/2020 suspending the authorization of all evictions until December 2020 and its compatibility with Brazil's international obligations on the rights to health and housing.
6. Please provide information on Bill 1975/2020, which establishes the suspension of compliance with all judicial or administrative measures resulting in evictions during the pandemic. Is it currently in the legislative agenda? Is it compliant with Brazil's international obligations in relation to the rights to health and adequate housing?

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Balakrishnan Rajagopal
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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to your Excellency's Government's attention to article 11 of the International Covenant on Economic, Social and Cultural Rights, acceded to by Brazil on 24 January 1992. 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.

I would also like to refer to General Comment No. 7 of the Committee on Economic, Social and Cultural Rights on forced evictions, which stipulates that forced evictions are only permissible under international human rights law in exceptional circumstances and after all procedural protections have been met. This includes inter alia the exploration of all feasible alternatives to avoid evictions, genuine consultation with the affected residents and tenants, adequate and reasonable notice, adequate compensation for any loss of property, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights, such as their rights to water and sanitation, to health and to personal integrity. If no alternative adequate housing is provided - rendering affected individuals homeless -, they encroach also their right to life (paragraphs 13, 15 and 16).

In the same line, the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1) specify that evictions can only take place in 'exceptional circumstances'; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines also state that any settlement agreement must satisfy the criteria of adequacy, accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. Among measures that have to be taken to mitigate the impact of evictions, the Guidelines establish that they cannot take place in inclement weather, or during religious holidays.

We would also like to draw your attention to the reports of the Special Rapporteur on the right to housing relating to the human rights obligations of local governments (A/HRC/28/62) as well as her report on the right to housing and access to justice (A/HRC/40/61). The first report highlights the need for local governments to be cognizant of their human rights obligations, including in respect to the right to housing. The second report stresses that individuals must have access to justice and have their right to housing claims adjudicated by relevant judicial or quasi-judicial bodies, including those claims related to forced evictions and demolitions.