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

REFERENCE: AL Housing (2000-9) Poverty (1998-11) Health (2002-7)
BRA 3/2012

11 April 2012

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 Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/8, 17/13, and 15/22.

We would like to draw the attention of your Excellency's Government to the information we have received concerning alleged **human rights violations that would have been committed during a specific police operation (still on-going) in São Paulo, Brazil.**

According to the information received:

Since 3 January 2012, security forces at the São Paulo state level (primarily the Sao Paulo Military Police), in partnership with local authorities (Sao Paulo Metropolitan Civil Guard), reportedly started carrying out on-going operations in a central neighbourhood in São Paulo, Brazil, unofficially named 'Cracolândia', with the declared objective to combat drug trafficking.

The "Cracolândia" community is reportedly composed of people living in extremely precarious conditions, often inhabiting the street and abandoned buildings. Reportedly, up to 77% of the total population in Cracolândia lives on the street, and 20% of the people living on the street in Cracolândia have been living in these conditions for at least 10 years.

According to information received, the police strategy, titled “pain and suffering” (“dor e sofrimento”), entails repressive measures employed by the police, aiming at dispersing from the area any person allegedly using, buying or selling crack. However, in spite of a declared aim to combat drug trafficking, the vast majority of people affected through these operations are not drug traffickers, but drug users. Allegedly, the rationale of this policy is to impose forced abstinence for drug addicts under ostensive use of force by the police, to force drug users to leave the neighborhood, and in doing so compel them to seek help from health professionals.

Reports received indicate that during police operations in “Cracolândia” police vehicles drove directly at groups of drug users in order to scatter them and used additional intimidation techniques, including trained horses, pepper spray, and trained dogs. Allegedly, in one case, the police shot at a woman’s face with a rubber bullet and in another case a man was kicked by the police and then the police set fire to his thumb. There are also reports of drug users being taken to medical treatment, for instance to mental health institutions in sometimes precarious (and compulsory) conditions.

According to reports, police operations have worsened the already precarious situation of residents, which have been forced to leave their places of residence in the neighborhood and have not been provided with alternatives in terms of housing. The intervention is also making access to social services much more difficult for residents, as their already limited access to social services is further compromised after being forced to move to other areas of the city.

It is also alleged that the crack epidemic in the State of São Paulo has been approached as a security issue only, and that people who use drugs have not been given access to affordable and quality specialized treatment in sufficient number and without discrimination. Although the second phase of the operation formally included the provision of health treatment, the scattering of drug users, especially those living on the street, has allegedly complicated attempts by health professionals to provide necessary services. A specialized centre for drug users was reportedly expected to open only a month after the commencement of the security operations.

While we do not wish to prejudge the accuracy of these allegations, we would appreciate information from your Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of the persons mentioned above. This right is enshrined, *inter alia*, in Article 12 of the International Covenant on Economic, Social and Cultural Rights, which your country ratified on 24 January 1992 and which specifically provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all States to ensure that health facilities, goods, and services are accessible to everyone without discrimination, especially the most vulnerable or marginalized sections of the population. We would also like to draw the attention of

your Excellency's Government to Article 2(2) of the Covenant, which holds that the States Parties undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind. As such, an individual's use of, or dependency on, drugs cannot constitute grounds for curtailing his/her rights.

We also wish to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that health facilities, goods and services have to be accessible to everyone without discrimination, further elaborating that accessibility has four overlapping dimensions, such as non-discrimination, physical accessibility, economic accessibility and information accessibility (para. 12(b)). Furthermore, the General Comment states that "All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned" (para. 12(c)), adding that "health facilities, goods and services must also be scientifically and medically appropriate and of good quality" (para. 12 (d)).

We would also like to remind your Excellency's Government of article 11.1 of the same International Covenant on Economic, Social and Cultural Rights, 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."

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).

With respect to the right to adequate housing, the Committee on Economic, Social and Cultural Rights 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 include 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".

As stated in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute gross violation 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 of the Committee on Economic, Social and Cultural Rights:

“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.

We would also 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 Rights and International Covenant on Civil and Political Rights.

In its General Comment 20 (para. 34 and 35), the Committee on Economic, Social and Cultural Rights noted that “place of residence” and “economic and social status” are prohibited grounds for discrimination, implied to in the phrase “other status” in article 2 of the International Covenant on Economic, Social and Cultural Rights. 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.

The Committee also stressed that a discriminatory intent is not a necessary element of discrimination. Therefore, any measure with the purpose or effect of nullifying or impairing the equal enjoyment of human rights constitutes a violation of States' human rights obligations (para. 10 and 12).

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek and to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the above facts pertaining to the situation of affected persons accurate? Is this pattern of police repressive actions towards drug users also recurrent in other parts of the country?

2. Has a complaint been lodged by or on behalf of the alleged victims?

3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case, in particular in relation to the alleged use of force by authorities against the residents of Cracolândia. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide information in relation to legal or other remedies available to the residents allegedly affected by this operation and the reported extensive use of force in Cracolândia.

5. Please provide details on measures taken to ensure that the authorities operations in Cracolândia are compatible with human rights norms and obligations. Specifically:

a. Please provide details of any measures taken to ensure the enjoyment of the right to the highest attainable standard of health of drug users in São Paulo.

b. Please provide details of any measures taken to ensure the right to adequate housing of the groups living in Cracolândia? What has been foreseen in terms of relocation of those displaced by the police operations?

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

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

Raquel Rolnik

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