

CENTRE ON
HOUSING RIGHTS
AND EVICTIONS



SUBMISSION

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I. EXECUTIVE SUMMARY

Brazil is a country that has enshrined housing rights according to the international human rights standards in the national legislation although this advance has not necessarily resulted in more or better access to adequate housing and land by the poor population. In Brazil up to 2002, despite the existence of a few support programmes and the availability of some lines of habitation financing from municipalities, there was no integrated and comprehensive approach at the national level to the problem of informal land and housing markets. Only in 2003, recognising the scale and the implications of the informal urban development process, did the federal government (through the newly created Ministry of Cities) for the first time formulate a national policy and a corresponding national programme on this question.¹

Brazil has serious land-access problems both in urban and rural areas as can be seen from the many and varied conflicts for land possession, which affect equally urban dwellers, women, afro-descendants and indigenous communities. Despite the fact that the federal government has indeed managed to advance significantly in formulating comprehensive national housing and land policies and in creating the essential legal-institutional bases, many programmes are isolated and to a great extent ineffective. There are still many structural obstacles of a conceptual, political, institutional and financial nature to be overcome before the legal concessions become reality.

Forced evictions are a growing problem in Brazil and give rise to systemic human rights violations in blatant disrespect for the dignity of many thousands of persons. Land disputes and forced evictions continue to take place in Brazil on a large scale, a nation that has one of the most concentrated land structures in the world. About 1 percent of rural landholders own 45 percent of all land. An estimated 5 million families do not have access to land, while another 5 million rural properties are extremely small. From May 2004 to May 2006 COHRE received information of evictions implemented against 70,637 peoples and of a further 1,949 families currently threatened of forced evictions in Brazil.

In February 2005, four thousand families were forcibly evicted from the Sonho Real settlement, located in a private area at Parque Oeste of Goiania. In the course of implementing the evictions, two people were shot to death, hundreds were injured and 800 hundred were arrested. Only after the implementation of this violent and illegal eviction, the Governor of Goias considered the possibility to expropriate the area to provide accommodation to the families. To date, many of the affected persons are living in appalling condition in provisional houses. Compensation provided to the families of the people who were killed has been highly inadequate.

Forced evictions have also been violently carried out against poor population in Curitiba and the State of Parana, comprising the settlements Bairro Alto, Tatuquara, Sambaqui, Vila Sao Bras, Pedro Machado, Vitoria and Ilha do Mel. These evictions have been implemented both by the Municipal Government of Curitiba and the State Housing.

In urban areas, an increase in forced eviction cases where urban development, beautification, gentrification and planning are used as a justification to renew central areas for mega-events, for instance, the Pan-American games that took place in Rio de Janeiro in July 2007. In downtown Sao Paulo alone, 1825 families were affected as a result of the paralysis of social housing projects

¹ the Urban Reform Movement demanded from President Lula that a specific institutional apparatus be created within the federal government to deal with matters related to urban development. As a result, the Ministry of Cities was established by law in January 2003.

being implemented. Since 2005, all families living in empty buildings that had been occupied by social movements for housing purposes (Plinio Ramos, Tenente Pena, Paulo Souza, Ouvidor, and Prestes Maia), were forcibly evicted by the Judiciary, the state police of Sao Paulo, the municipality and state of Sao Paulo and/or private owners. The buildings were sealed with bricks and remain unused until now.

A significant segment of the population of Brazil lives in substandard housing, including slums; the federal government estimates that 12.4 million people live in precarious conditions in 3.2 million houses, both in rural and urban areas. There is currently a range of governmental policies addressing social housing, land regularization, slum upgrading, sanitation, public transport and building. Despite these efforts, there are major problems in the current distribution process of public land, and in practice, large numbers of people lack access.

Lack of access to developed land with appropriate and adequate services forces thousands of Brazilians into urban areas where many of them live in slums and shantytowns known as *favelas*. Many other low-income Brazilians live in *cortiços*, collective multi-family buildings without adequate sanitation conditions. Urban reforms aimed at the beautification, gentrification and renovation in down town areas, for instance in the cases of Sao Paulo, Rio de Janeiro, Salvador and Boa Vista, have led to expel of the poor to the insalubrious peripheries. At the same time, these often-central areas were re-landscaped to promote the consolidation of the capitalist real-estate market.

Although national legislation has been reformulated in order to provide legal instruments for the protection and compensation of people against forced evictions, the low-income population and leaders of urban and rural movements are criminally prosecuted for acts related to the occupation of empty plots or unproductive rural land.

Rural conflicts over land, housing, employment and food are the principal cause of the evictions and violence which afflict rural workers and the traditional and indigenous communities, especially women and children. Conflicts frequently arise between landless workers and private entrepreneurs, who engage in large-scale production of single-plant crops destined for the export market, and who enjoy the indirect support of the Government. The landowners use private militias and/or other violent means to protect property, many times safeguarded by the state police, which is the organ in charge of enforcing judicial orders to vacate the areas. The Pastoral Land Commission (Comissão Pastoral da Terra - CPT) has reported that 1349 people were killed in rural areas between 1985 and 2003. Only seventy-five cases have gone to court, however, and, of these, forty-four resulted in acquittal. Such attacks have continued to as recently as October 2007.

Violence against indigenous persons and forced evictions; forced removal from land; killings and/or threats of killings particularly related to land disputes; continue to be documented in Brazil. For about 30 years the indigenous Macuxi, Wapixana, Ingarikó, Taurepang and Patamona peoples, who live in the state of Roraima, in the Amazone region of Brazil, had been struggling for the legal recognition of their territory Raposa Serra do Sol, an area of 1.6 million hectares. The failure by the State to regularize the territory until very recently provided an enabling environment for violence by the ranchers and farmers against the indigenous population. On 23 November 2004, for instance, the Macuxi village of Jawari was attacked by private armed groups who tore down houses and set others on fire. Mr. Jocivaldo Constantino, a Macuxi man, was wounded by gunfire. The attack and destruction of the communities left 131 persons homeless without food, clothing and with their fields destroyed.

The continued attacks on landless peasants, including those of indigenous communities, in the context of land disputes and the call for agrarian reform, goes hand in hand with a marked failure by Brazilian officials and judicial authorities to investigate and try offenders and provide remedies to those affected, indicating a pattern of gross impunity and state inaction.

In some areas, the threat of forced evictions is a direct result of the lack of official recognition of property rights of remaining *quilombo* communities. The Brazilian Constitution guarantees the descendants of the *quilombo* communities property rights over the territories ancestrally occupied by them, and national legislation regulates the process to identify, demarcate, title and register such lands. Despite structural *de jure* protections for communities who have traditionally occupied these lands, most of over two thousand *quilombo* communities located in most of every state of Brazil do not hold titles to their traditional lands. Furthermore, the Brazilian government is intending to review the federal legislation (Normative Instruction n. 20/2005); that regulates the process of titling of *quilombo* lands which would result in more bureaucratic procedures causing more delays in the process.

Women are particularly affected by housing rights abuses. In Brazil the female population is 51% of the total, although their political representation in the Parliament is only 14% and, in the Senate, only 6%. Since the adoption of the Constitution of 2000, women are entitled to retirement due to rural work and to be owners of land distributed by the State. In 2001, the government put in place this norm. In urban areas women are also entitled to receive land or property titles exclusively in their name but both the Constitution and the Civil Code recognise the rights of women to have joint titles of the properties owned in conjunction with their husbands or partners. There are no specific data informing the number of land titles issued for women but the appalling conditions experienced in the slums' daily life affect women and children disproportionately. Due to the presence of the parallel power of drug traffickers within the slums, children, adolescents and women are becoming more and more vulnerable to attacks, threatens, cooptation and killings. All indicators available in Brazil highlight the feminization of poverty as they receive less income than men to do the same jobs and still fight against the stigma that their primarily place to develop their skills is the house.

II. INTRODUCTION

The Centre on Housing Rights and Evictions (COHRE) herewith offers the present shadow report to assist the UN Committee on Economic, Social and Cultural Rights in providing documentation on the occasion of that body's consideration of the Brazil report. It has the aims of providing recommendations to the State Party as well as facilitating civil society input into this procedure.

The present submission focuses in particular on right to adequate housing issues in Brazil, as well as related fundamental human rights concerns. Matters addressed include (i) widespread slum conditions and other extremely substandard housing; (ii) forced evictions from housing and/or land; (iii) persecution of housing rights defenders; (iv) concerns about discrimination in access to land and housing by urban populations and by *quilombo*² persons and communities in the

² A *quilombo* is a settlement originally created by runaway slaves in Brazil and sometimes included a minority of marginalised Portuguese, indigenous Native Americans and other non-black, non-slave Brazilians. These lands became spaces of residence, resistance and social organisation, and the majority of *quilombo* lands have been occupied and managed collectively and represent indivisible ethnic territories where the communities live, work

Federative Republic of Brazil; (v) access to water and sanitation as well as (vi) other matters. The submission also analyses in summary form outcomes and limitations of legislation and public policies, including the City Statute³ – the federal law of urban development – and the establishment of the Ministry of Cities in 2003.

Brazil is by far the largest and most populous country in South America, with an estimated population of 187 million people.⁴ Of the 38 million inhabitants still living in rural areas, 73 percent have an annual income below the poverty line (US\$260), placing the country among the worst in the world in terms of distribution of income. Within its borders, 32 million people live in extreme poverty, suffering regular hunger, and another 65 million exist in very precarious conditions. Of the 32 million people who suffer regular hunger, half live in the countryside.⁵ According to official statistics, from 1970 to 1990, about 30 million people migrated from rural areas to the cities and the number of rural workers dropped 23 percent in the years between 1985 and 2000. Today, about 85 percent of the Brazilian population lives in cities.⁶

The Brazilian urbanizing process intensified during the second half of the twentieth century and into the new millennium. The appearance and development of urban informal settlements in the medium and large cities is due to a number of causes all of which are related to social, economic and political inequalities. With the growth of urban populations has come high unemployment levels and low salaries earned by migrant workers. Heavy macroeconomic adjustments have been imposed by the international financial institutions, obliging the State to reduce or eliminate social policies.⁷ The government has also adopted regulations on urban land use and occupation, establishing exclusionary zoning standards which restrict the poor from having access to developed and serviced land.

The 1988 Brazilian Constitution recognised and enforced the democratization of the state after a period of military dictatorship which ended in 1984. The Constitution recognized the Municipalities as components and autonomous members of the Federation, together with the Union and the States.⁸ The Constitution also provided for a new legal framework which guarantees access to land and housing based on the principle of the fulfilment of the social function of the city and property.⁹ Although the principle that property ownership encompasses a

and express their cultures and beliefs. Land and its natural resources are the main source of livelihood but are also linked to social and cultural cohesion.

³ Federal Law No. 10 257 of 10 July 2001. The City Statute establishes principles and guidelines which express a new conception of urban development and land use. Public and private entities involved in the development and upgrading of urban areas are required to incorporate principles of justice, democracy and sustainability in their projects. As such, the role of Brazilian cities is now seen as one fulfilling a social function, particularly with regard to access, usage and the fair and equitable distribution of the opportunities and wealth of the urban area. The Statute of the City is supplemented by Provisional Measure No. 2 220 of 4 September 2001, which deals with the concession of public property for housing purposes – essentially adverse possession, or usufruct, of public land.

4. UN-HABITAT, 2005.

5. Valente, 2003, p. 375.

6. UN-HABITAT, 2005.

7. Public housing schemes addressing the low-income population, such as the Financial Housing System (SFH) and the National Housing Bank (BNH) in place from 1964 to 1986, were badly constructed, economically inaccessible, and poorly served by the public services and infrastructure. The buildings were constructed in peripheral areas of the larger cities and distant from the jobs.

8. In accordance with Article 18 of the Constitution. They could even approve their own Municipal constitution.

9. Articles 5, XXII e XXIII; 182 and 186. The fulfilment of the social function is the core element of the right to property as it determines the relationship between the needs of the individual owner and the needs of the society in connection with the property concerned. Eduardo Novoa Monreal developed this concept in *El derecho de Propiedad Privada* (The right to private property), in 1979. The right to the city is enshrined in Art. 182 and its core element is based on the equitable usufruct of the cities considering the principles of sustainability and social

social function has been part since the Constitution of 1934, it has never been put into practice. The City Statute¹⁰ or 2001 aims to remedy this situation. It has provided for the concrete application of taxes by the municipal governments over the urban properties that do not fulfil their social function and non-compliance by landowners will result in sanctions. All cities with more than 20,000 inhabitants, as well as those belonging to metropolitan regions, those of special interest for tourism, and those influenced by projects with a regional or national environmental impact were obliged to revise or approve their master plans until October 2006. The qualified participation of the civil society was a criterion for the master plans to be considered valid and legally binding. In the rural areas, the social function of a property must be consistent with its environmental, social, economic and cultural aspects. The implementation of the tools enshrined in the master plans are commencing to be applied and the National Forum of Urban Reform and the Ministry of the Cities are monitoring the situation. Resources to implement such instruments are made available by PAC to municipalities, states and social organisations. In the case of rural areas, expropriation of unproductive land for redistribution purposes has been undermined by the difficulty to apply out of date legal criteria determining levels of productivity. The Government and the rural social movements have been supporting the change of such criteria, but adverse political forces against agrarian land reform – especially land owners and the deputies with links to this sector – have thus far impeded changes in this area.

Property rights are regulated according to the special constitutional provisions addressing rural and urban land, indigenous people's and afro-descendants' lands, and private and public land. Those who have been in irregular possession of urban public or private areas for more than five years have the right to legalize possession and/or property.¹¹

Furthermore, there are still some national laws that must still be brought into compliance with the Constitution, the City Statute's principles and related instruments. For instance, the National Law of Urban Parcelling¹² is being revised by the Federal Chamber of Deputies¹³ to consider slum upgrading, regularization, and urban and environmental licensing within the competence of the Municipalities. This new legislation aims to integrate environmental and urban policies as a way to improve decision-making process related to land development, acquisition, management, regularization, registration and construction.

justice. This is a collective right of all city inhabitants, especially those vulnerable and disfavoured, conferring legitimacy of action and organisation in accordance with their usages and customs in the search for full exercise of the right to an adequate standard of living. In: Charter on the Right to City. Its English version can be downloaded from <http://www.hic-net.org/foundingdocs.asp>

10. The City Statute is the federal law of urban development which regulates Arts. 182 and 183 of the Constitution. It had been discussed in the National Congress for more than 10 years and was approved in 2001.
11. For private areas, the process to achieve individual or collective titling is through urban adverse possession (called *usucapião*), and for public areas the title to be granted by the state is the Special Concession for Housing Purposes, both recognized in Article 183 of the Constitution and in the civil code.
12. Federal Law no. 6766/1979.
13. By bill no. 20/2007, known as Law of Territorial Responsibility.

III. LAND AND HOUSING

1. Slums and other substandard housing

A significant segment of the population of Brazil lives in substandard housing, including slums; the federal government estimates that 12.4 million people live in precarious conditions in 3.2 million houses, both in rural and urban areas.¹⁴

There is currently a range of governmental policies addressing social housing, land regularization, slum upgrading, sanitation, public transport and building. The Ministry of Cities recently undertook to update existing data on housing construction and slums in order to better allocate the resources of the Plan to Accelerate Growth (PAC), which will finance the abovementioned area. It is expected the investment of US\$ 15 billion in 2007 and US\$ 43 billion in the next three years to benefit four million families with housing construction and slum upgrading.¹⁵

With regards to public land, the Federal Legislature approved Provisional Measure No. 335/06 (Federal Law No. 11.481) in May 2007 to regulate the use, occupation and regularization of land belonging to the federal government and located anywhere.

Despite these efforts, there are major problems in the current distribution process of public land, and in practice, large numbers of people lack access. According to the 2007 report of the Union Accounting Tribunal (TCU) there are 571 public areas which belong to the Union that are vacant or underused, which should be used for housing purposes.¹⁶ Further, the process of social housing allocation of these properties is slow as a result of the distant locations and inaccessible and inadequate conditions of these areas. Furthermore, to date there are more than 28,000 public properties being illegally possessed or used by third private parties, that need to be repossessed by the state. Besides this, with the extinction of the Federal Railway Company (Federal Law No. 11.483/2007) there are 50,000 properties in abandoned conditions, without any social function that can be developed and used for housing low-income population. In the private market there are 5.9 million empty properties, estimated by the Brazilian Institute for Geography and Statistics (IBGE) in the year 2000, almost the same number indicated by the same Institute as the housing deficit in the country.

COHRE acknowledges the Government's efforts in undertaking this process to update relevant data on slums and precarious housing, which will help to better estimate the necessary investments to tackle the housing and land shortage. However, COHRE recommends that the Government guarantee access to urban land for the low-income population and vulnerable groups to ensure compliance with international legal instruments. With regards distribution and regularization of public land, the federal government should consult with the state branches of

¹⁴ Studies were carried out in 555 municipalities in 2007, where, according to the Ministry of the Cities, 98% of precarious or irregular housing are located. The study was requested by the Ministry of the Cities, under the supervision of Ms. Junia Rosa (junia.santarosa@cidades.gov.br) and carried out by the Centre of the Studies of the Metropolis (CEM). A concept paper in Portuguese discussing the methodology applied for the research can be downloaded from <http://www.centrodametropole.org.br/pdf/2007/CEMassentMCidades.pdf>

¹⁵ For a complete Portuguese version go to http://www.planejamento.gov.br/noticias/conteudo/noticias_2007/070122_pac.htm There isn't any official information in English about PAC in the government website.

¹⁶ Report sent to the Ministry of the Cities, to the Coordinator of Rehabilitation of Central Areas, Mr. Renato Balbim. According to the report, 27% (155 properties) are buildings; 68% (388 properties) are plots and the rest 5% (28 properties) are paralysed works.

the National Secretariat of the Union Goods (SPU)¹⁷ to prepare an inventory of empty and unused areas to be allocated for social housing purposes and land regularisation, with the participation of the civil society. This participation could be through the formation of committees or working groups to discuss priorities, criteria, and processes to deliver such areas to the poor population in each state. It is also fundamental to involve the municipalities in this process in order to demand and discuss the necessary changes on master plans or local laws to establish zones of social interest (ZEIS) to guarantee the use of such areas for social housing purposes and to permit their regularization in cases where they are occupied. As an immediate action, the SPU should recover the 28,000 properties to be allocated for a social function.¹⁸

2. The National Social Housing System

Brazil has enshrined in its national legislation a broad range of the housing rights laid down in the international human rights standards, although this has not always resulted in more or better access to adequate housing and land by the poor. Since the collapse of its National Social Housing System in 1996 and the approval of its new democratic constitution in 1988, Brazil has experienced new policies and programmes aimed at promoting the right to the city and the right to housing. National programmes to support the production of social housing, land regularization and slum upgrading have been implemented by the Ministry of Cities created in 2003. Civil society, social movements and NGOs have been leading the implementation of such policies together with the Federal Government and consistent with the principles and instruments provided by the Federal Law on Urban Development — the City Statute.¹⁹

COHRE notes progress in the protection of housing rights that has resulted from the Federal Chamber of Deputies' approval of the bill creating the National Social Housing System (NSHS)²⁰

¹⁷ The SPU of the Ministry of Planning is the unit which has jurisdiction over lands belonging to the federal government, and is responsible for their registration, inspection, destination, and regularization.

¹⁸ Under Brazilian law, the concept that property ownership creates a social function “has been a fundamental principle of the Constitution since 1934, but never applied in practice because of lack of instruments and regulations.” (United Nations Human Settlements Programme (UN-Habitat) with COHRE-Americas Programme, *Law, Land Tenure and Gender Review Series: Latin America*, Doc. No. HS/792/05E (2005). p. 34.) Under Article 182 of the 1988 Constitution, the social function of urban public and private property is defined by the municipality through the Master Plan. Articles 185 and 186 of the Constitution also provide that the social function of a rural private or public property is determined by its productivity, how well its owners respect workers' rights and the environment. The social function of property entails the avoidance of speculative retention of urban and rural land, or inadequate usage of land that results in its under-usage or no usage at all, thereby guaranteeing expropriation by the federal government using bond titles and for land distribution. (See COHRE, *Housing Rights in Brazil: Gross Inequalities and Inconsistencies*, COHRE Mission Report (2003), p. 19.) The census figures for 2000 indicate that this persistent rural exodus has left more than 1.4 million rural properties unoccupied, that is, 14.6 per cent of all rural dwellings. In practice, however, compliance with and implementation of the social function of property, both by the private sector and public sector is rare, and government efforts to enforce compliance have been “at best sporadic and at times entirely absent.” (United Nations Human Settlements Programme (UN-Habitat) and COHRE-Americas Programme, *Law, Land Tenure and Gender Review Series: Latin America*, Doc. No. HS/792/05E (2005). p. 34.). While the federal government has attempted to make a needs [o]assessment in the areas of housing construction and slum upgrading, there are currently many empty properties left undistributed and the most vulnerable groups are left without housing and land solutions.

¹⁹ Law no. 10.257/2001.

²⁰ The NSHS is an articulated national housing system composed of an Executive public authority, which is the Ministry of the Cities; by the Federal Savings Bank as its operational agent; by the National City Council and the National Social Housing Fund; by housing councils and funds created in the municipal and state levels; and by housing cooperatives and community associations. The Law No. 11.124/2005 establishes the National Social Housing System to facilitate the access to rural and urban land by providing subsidies to poor people. The law provides for the transfer of funds now used to repay the foreign debt to municipal and state programmes to

and the National Social Housing Fund.²¹ The bill proposing the creation of these programs was originally tabled in 1992, signed by one million people and presented as a popular initiative of the urban social movements to the Chamber.²² This bill was finally passed into law in 2005 (Law No. 11.124/2005). It established the NSHS to facilitate the access to rural and urban land and adequate housing by the poor people by means, among others, of implementing a policy of subsidies. It creates an articulated national housing system composed of an executive public authority, the Ministry of Cities; by the Federal Savings Bank, as its operational agent; by the National City Council and the National Social Housing Fund; by housing councils and funds created in the municipal and state levels; and by housing cooperatives and community associations. It also provides for the transfer of funds now used to repay the foreign debt to municipal and state programmes to subsidise housing and land for the low-income population.

This legislation is a positive development and the central demand of the social movements.²³ One key positive feature is that the National Forum of Urban Reform²⁴ is to have direct access to financial resources of the National Social Housing Fund (NSHF).²⁵ On 13 November the Federal Chamber of Deputies passed Provisional Measure No. 387/07,²⁶ which incorporates the possibility of housing cooperatives and grassroots associations to have access to such funds through public bids, a system similar to the programmes through which municipalities and states can also obtain funds. Although this Provisional Measure was not approved by the Senate, when it was again analysed by the Federal Chamber of Deputies, the amendment was reinserted.²⁷

COHRE urges the Government to concentrate all financial resources coming from different sources (PAC, Workers' Support Fund, Social Development Fund and Fund for the Guarantee of Time of Service) into one only fund – the National Social Housing Fund – which is democratically and transparently managed by different governmental and social stakeholders.

subsidise housing and land for the low-income population. The National Social Housing Fund is managed by the Social Housing Fund Management Council (Decree No. 5.796/2006), composed of 22 representatives of whom 10 are from the government sector and 12 are from the non-governmental section (social movements, the private housing sector, trade unions, professional entities, universities and NGOs). The council members are entitled to approve the annual plan of financial investment for housing programmes considering the resources available in the National Social Housing Fund, to establish criteria for the municipalities, states, housing cooperatives and associations to access these financial resources, and to monitor the full application of such resources.

²¹ The proposal for this new law was presented in the first instance to the Chamber of Deputies in 1988.

²² According to Art.61, paragraph 2o of the Constitution, citizens may present bills of law by popular initiative. Signature of one percent of the national electorate for national projects of law is required.

²³ The most active national urban social movements in Brazil are the National Movement that Struggles for Housing (MNLN), the National Union for Popular Housing (UNMP), the Central of Popular Movements (CMP) and the National Confederation of Inhabitants Association (CONAM). There are also the Homeless Movement of the Centre of Sao Paulo (MSTC), and the Movement of the Homeless Workers (MTST) which is active in the North and Northeast regions.

²⁴ The FNRU is a coalition of social movements, NGOs, professional entities and regional coalitions that struggle for urban reform with democracy, participation and social justice.

²⁵ The National Social Housing Fund is managed by the Social Housing Fund Management Council (Decree n. 5.796/2006), composed of 22 representatives: 10 from the governmental sector and 12 from the non-governmental section (social movements, the private housing sector, trade unions, professional entities, universities and NGOs). The council members are entitled to approve the annual plan of financial investment for housing programmes considering the resources available in the National Social Housing Fund, to establish criteria for the municipalities, states, housing cooperatives and associations to access these financial resources, and to monitor the full application of such resources.

²⁶ The Provisional Measure regulates the transfer of funds from PAC to States and Municipalities and the form to operate the Social Housing Subsidy Programme in 2007 and 2008. The amendment proposed by the social movements and the FNRU provides for the possibility of housing cooperatives and grassroots associations to access such funds too, in the same conditions as the states and the municipalities.

²⁷ According to the Brazilian Legislative procedure, the Federal Chamber of Deputies has the right to re-examine the amendments excluded by the Senate from the original bill.

3. The National City Council

Genuine consultation with affected groups is a core element of the right to adequate housing, as set out under international law.²⁸ COHRE notes positively the efforts of the Government to involve civil society, including social movements, in public decision-making with regard to national urban policy through participation at the City Conferences and at the National City Council.²⁹ At the Second National City Conference held in November 2005, more than 2000 representatives of social movements, governments, professional entities, NGOs, and the private sector participated, and 86 new members that had participated at State and Municipal Conferences were elected to the Council. A range of recommendations were approved by the participants, including that the National City Council should be regulated by law as to be granted with deliberative powers over the definition of housing, sanitation, public transport and urban policies and correlative investments. In order to ensure meaningful decentralized public decision-making in national urban policy, the Government should adopt and implement the recommendations of the Second National City Conference.

The main recommendations approved by the participants in the Conference addressed subjects related to the reduction of interest on the public debt (in order to increase investments in urban and rural development); the destination of 10 percent of the public debt and 2 percent of the public taxes for sanitation and housing programmes; ensuring that the National City Council should be regulated by law and be granted with deliberative powers; the approval of the bill of law that regulates the national sanitation policy forbidding privatization of the public sanitation service; among others.

COHRE also urges the government to implement the deliberation of the 20 National Conference of the Cities (2006) so as to establish strategies and goals to meet gender parity in relation to the participation in deliberative council and other institutional spaces. COHRE also supports that a minimum quote of 30% is guaranteed for women to be members of the National City Council, already in the electoral process that will take place from 25-29 of November 2007. It is important to highlight that this quota of 30% is solely intended as a measure to move toward parity of representation between men and women in the membership of the National Council of the Cities.

4. Bill of Territorial Responsibility

The approval of Bill No. 3057/2000 of Territorial Responsibility is fundamental to regulate land development, parcelling, acquisition, regularization, management and registration, as the current legislation in place is out to date (Federal Law No. 6.766/1979). Brazil's Chamber of Deputies is in the process of approving this new national legislation.³⁰ The process has been participatory

²⁸ See in particular General Comments 4 and 7 by the Committee on Economic, Social and Cultural Rights, interpreting the provisions of Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

²⁹ The National City Council (created by Provisional Measure n. 2.220/2001 and Decree number 5.031/2004) is a consultative body that has the responsibility to propose guidelines for the formulation and implementation of national urban development policies comprising housing, transportation and sanitation; provide guidelines and recommendations for the application of the City Statute; and elaborate national and regional plans for territorial organisation. There is a National Conference of the City Council held annually to generate recommendations related to these policies and to elect the new members for the National City Council.

³⁰ The full text of the bill can be found at <http://www2.camara.gov.br/internet/comissoes/temporarias53/especial/pl305700/pl305700-241007.pdf>

and has included various stakeholders involved in the issues addressed by this law: the federal and the municipal governments, the registrar, the Federal Public Prosecutors, the real estate market, the NGOs and the social movements. The Chamber of Deputies and the Brazilian Government must guarantee the approval of this new legislation provided that the proposals made by the private sector that would undermine the efforts to regularise informal settlements and that allow for the development of land parcels with restrict access to public are removed from the Bill.³¹

5. Prevention and remedy of forced evictions

Forced evictions are a growing problem in Brazil and give rise to systemic human rights violations in blatant disrespect for the dignity of many thousands of persons. Land disputes and forced evictions continue to take place in Brazil on a large scale, a nation that has one of the most concentrated land structures in the world. About 1 percent of rural landholders own 45 percent of all land.³² An estimated 5 million families do not have access to land, while another 5 million rural properties are extremely small.³³ This extreme concentration has led to the 'Workers Landless Movement' (MST) and the practice of landless/homeless families occupying idle and underused lands to pressurise the Government to implement agrarian reform. From May 2004 to May 2006 COHRE received information of evictions implemented against 70,637 peoples³⁴ and of 1,949 families been currently threatened of forced evictions in Brazil.

While this process has been spearheaded by movements such as MST and Via Campesina, unorganised groups also participate in land occupations. MST itself has helped establish more than 1300 new rural settlements since the group was formed in 1984 and gained considerable public support.³⁵ However, this growing movement and others have faced violent opposition from landlords and human rights violations by military police that carry out forced evictions, including excessive use of force, ill-treatment, torture and extra-judicial executions.³⁶

Far from being just a rural issue, the lack of available land forces thousands of Brazilians into urban areas where many of them live in slums and shantytowns known as *favelas*. Many other low-income Brazilians live in *cortiços*, collective multi-family buildings without adequate sanitation conditions. Urban reforms aimed at the beautification, gentrification and renovation in down town areas, for instance in the cases of Sao Paulo, Rio de Janeiro, Salvador and Boa Vista, have led to expel of the poor to the insalubrious peripheries. At the same time, these often-central areas were re-landscaped to promote the consolidation of the capitalist real-estate market.

Judicial approval of forced evictions makes the crisis even more severe. The majority of evictions are executed pursuant to judicial orders, in re-possession actions, or in ownership disputes

³¹ For instance, the private sector proposes that the registry of land regularisation titles have to be paid by the benefited population while there is still a federal law in place guaranteeing its free registration.

³² Less than 50,000 rural proprietors have more than 1000 hectares and control 50% of all registered land. Some 1% of the rural proprietors hold about 40% of all the approximately 400 million hectares registered as private property and only 60 millions hectares of this are dedicated to crop production. The remainder is unused, underused or set aside as ranch land.

³³ Report by Mr. Miloon Kothari, Special Rapporteur on Adequate Housing, on his mission to Brazil, from 29 May to 13 June 2004, submitted pursuant to Commission on Human Rights resolution 2004/21, UN Doc. E/CN.4/2005/48/Add.3 at para 39.

³⁴ According to COHRE report "Desalojos en America Latina: los casos de Argentina, Brasil, Colombia y Perú". The full report in Spanish can be downloaded from at http://www.cohre.org/view_page.php?page_id=120

³⁵ Zander Navarro, "Breaking New Ground: Brazil's MST," NACLA, Volume 33 (5), March/April, p. 37 (2000).

³⁶ See COHRE, Human Rights in Brazil: Gross Inequalities and Inconsistencies, COHRE Mission Report (2003), La Via Campesina and FIAN International, Violations of Peasants Human Rights 2005 and Human Rights Watch, Brazil, World Report 2005.

and/or demands. However, these decisions ignore the international and constitutional framework that guarantees the right to housing and land. These decisions, usually based on the Brazilian Civil Code, perpetuate a view of the absolute nature of property ownership rights, disregarding the human rights of the affected population.

For instance, the violent eviction of four thousand families carried out on February 2005 from the Sonho Real settlement, located in a private area at Parque Oeste of Goiania, where they had been lived since 2004, was based in a decision of the judge of the 10^o Civil Jurisdiction, who only considered the civil code provisions to evict the families even though the landowners owed more than US\$ 1 million on property taxes to the municipality. In the course of implementing the evictions, two people were shot to death, hundreds were injured and 800 hundred were arrested. Only after the occurrence of this violent and illegal eviction, the Governor of Goias considered the possibility to expropriate the area to provide accommodation to the families. To date, many of the affected persons are living in appalling condition in provisional houses. Compensation provided to the families of the people who were killed has been highly inadequate.³⁷

Another example to be highlighted is the several evictions violently carried out against poor population in Curitiba and the State of Parana, comprising the settlements Bairro Alto, Tatuquara, Sambaqui, Vila Sao Bras, Pedro Machado, Vitoria and Ilha do Mel. These evictions have been implemented both by the Municipal Government of Curitiba and the State Housing, as recently as 2004. Some evictions were carried out without any legal decision issued by a local court and others were implemented based on judicial decisions coming up from the local jurisdiction. All of them were based on the provisions of the civil code.³⁸

In urban areas, an increase in forced eviction cases where urban development, beautification, gentrification and planning are used as a justification to renew central areas for mega-events, for instance, the Pan-American games that took place in Rio de Janeiro in July 2007. In downtown Sao Paulo alone, 1825 families were affected as a result of the paralysis of social housing projects being implemented. Since 2005, all families living in empty buildings that had been occupied by social movements for housing purposes (Plinio Ramos, Tenente Pena, Paulo Souza, Ouvidor, and Prestes Maia), were forcibly evicted by the Judiciary, the state police of Sao Paulo, the municipality and state of Sao Paulo and/or private owners. The buildings were sealed with bricks and remain unused until now.³⁹

Although national legislation has been reformulated in order to provide legal instruments for the protection and compensation of people against forced evictions, such as the Procedural Civil Code and the City Statute, the low-income population and peasants are easily convicted just for being homeless and for occupying empty plots or unproductive rural land. For instance, the systematic prosecution of leaders of the Worker's Landless Movement (MST)⁴⁰ and other groups that also participate in land occupations. They face violent opposition from landlords and victims

³⁷ Full information of this case can be found in Spanish at COHRE report "Desalojos en America Latina: los casos de Argentina, Brasil, Colombia y Perú" which can be downloaded from at http://www.cohre.org/view_page.php?page_id=120

³⁸ Complete information in English about these evictions can be found on the first and second reports of the UN Habitat Advisory Group on Forced Evictions which can be downloaded from http://www.cohre.org/view_page.php?page_id=16

³⁹ For more comprehensive information on this case, see "Human Rights Violations in Sao Paulo Down-Town: proposals and demands for public policies," Fórum Centro Vivo, Dossiê Denuncia, São Paulo, 2005 and *Second Report of the UN-Habitat Advisory Group on Forced Evictions*, available at http://www.cohre.org/view_page.php?page_id=16

⁴⁰ The prosecutions are based on the Penal Code and the accusations related to the crimes of corporal aggression by peasants against policemen (Art. 129), violation of domicile (Art. 150), theft (Art. 155), land trespassing and usurpation (Art. 161), damage to patrimony (Art. 163), and gang association (Art. 288).

of human rights violations by military police that carry out forced evictions which includes excessive use of force, ill-treatment, torture and extra-judicial executions.⁴¹

Violence against indigenous peoples and forced evictions; forced removal from land; killings and/or threats of killings particularly related to land disputes; continue to be documented in Brazil. For about 30 years the indigenous Macuxi, Wapixana, Ingarikó, Taurepang and Patamona peoples, who live in the state of Roraima, in the Amazon region of Brazil, had been struggling for the legal recognition of their territory Raposa Serra do Sol, an area of 1.6 million hectares. The failure by the State to regularise the territory until very recently⁴², provided an enabling environment for violence by the ranchers and farmers against the indigenous population. On 23 November 2004, for instance, the Macuxi village of Jawari was attacked by private armed groups who tore down houses and set others on fire. Mr. Jocivaldo Constantino, a Macuxi man, was wounded by gunfire. The attack and destruction of the communities left 131 persons homeless without food, clothing and with their fields destroyed.⁴³

The continued attacks on landless peasants, including those of indigenous communities, in the context of land disputes and the call for agrarian reform, goes hand in hand with a marked failure of Brazilian officials and courts to investigate and try offenders and provide remedies to those affected, indicating a pattern of gross impunity and state inaction.⁴⁴

COHRE acknowledges the acceptance of the Ministry of Cities, in coordination with the National City Council and the National Forum of Urban Reform, to draft a proposal for a “National Policy for Preventing and Mediating Urban Land Conflicts,”⁴⁵ which is to be considered during the 3rd National City Conference (25-29 November 2007). However, there are still a number of concerns raised by massive and violent forced evictions in both urban and rural communities.

Most forced evictions are prompted by economic development models that produce high rates of concentrated income and land, favouring private property owners, both in the countryside and in the cities. Land, instead of fulfilling its social function, serves the market by being destined to real estate speculation, maintenance of high land concentration (*latifúndios*), and founding of large enterprises.⁴⁶ For example, although the federal government has increased the average number of families settled in rural areas – from 65,548 families per month between 1995 and 2003, to 81,430 families per month between 2003 and 2005⁴⁷ – the number of expropriations made for agrarian

⁴¹ See COHRE, Human Rights in Brazil: Gross Inequalities and Inconsistencies, COHRE Mission Report (2003), La Via Campesina and FIAN International, Violations of Peasants Human Rights 2005 and Human Rights Watch, Brazil, World Report 2005.

⁴² Amnesty International Press Release, “Brazil: Key milestone in Indigenous Rights Battle”, AI Index: AMR 19/014/2005 (Public).

⁴³ FIAN International, “Brazil (Amazon): Violation of Indigenous Land Rights in Raposa Serra do Sol”, FIAN Letter Campaign. 0431HBRA.

⁴⁴ Report on Forced Evictions and Violence linked to Land and Housing Rights Violations presented by the Centre on Housing Rights and Evictions and Terra de Direitos to the UN Rights Committee in October 2005.

⁴⁵ The proposal to have such a policy was presented during the seminar “Human Rights and Prevention of Forced Evictions” held in Recife in 2006 and endorsed by the National City Council afterwards. The Seminar also approved a Brazilian Platform on the Prevention of Evictions, which was the basis for designing the proposed National Policy.

⁴⁶ Preamble of the Charter of Recife for a Brazil without Evictions, approved during a seminar on “Human Rights and Prevention of Forced Evictions” organised by a range of NGOs and rural, urban and quilombo social movements. Recife, July 2006.

⁴⁷ Full information about number of families settled and number of families still awaiting for a permanent land to live at can be found in Portuguese at <http://www.mst.org.br/mst/listagem.php?sc=9>.

reform purposes has been reduced, what means that the government is using public land to settle these families instead of the instruments envisaged in the Constitution.⁴⁸

The Brazilian Government has the responsibility to respect, protect and fulfil the right to land and adequate housing by ensuring compliance with national and international human rights laws. The Government should prevent forced evictions by third parties, and provide adequate, transparent and timely compensation if evictions must be carried out by the State in very exceptional circumstances. To fulfil its international human rights law obligations, the federal government should allocate adequate resources to ensure that the human rights to land and adequate housing are effective in practice. In this sense, the proposed change of the Procedural Civil Code to prohibit the practice of forced evictions on those lands that are not fulfilling a social function and without the consultation of the affected population is fundamental to preventing the Judiciary from issuing eviction orders inconsistent with international law.

6. Threats to housing rights defenders

Rural conflicts over land, housing, employment and food are the principal cause of the evictions and violence which afflict rural workers and the traditional and indigenous communities, especially women and children.⁴⁹ These frequent conflicts arise between landless workers and private entrepreneurs, who engage in large-scale production of single-plant crops destined for the export market, and who enjoy the indirect support of the Government. The landowners use their private militia and violent means to protect their property, many times safeguarded by the state police, which is the organ in charge of enforcing judicial orders to vacate the areas. The Pastoral Land Commission (Comissão Pastoral da Terra - CPI) has reported that 1349 people were murdered in rural areas between 1985 and 2003. Only seventy-five cases have gone to court, however, and, of these, forty-four resulted in acquittal. In 2003 alone, seventy-three rural labourers were murdered.⁵⁰ On 31 October 2007, it was reported publicly by MST⁵¹ that during an attack on the peasant's camp at the experimental field trial of Syngenta Seeds multinational (at Santa Teresa do Oeste)⁵² by an armed militia of approximately 40 gunmen, a Via Campesina man, Mr. Valmir Motta, 32, was executed with two shots to his chest. Six other rural workers were severely wounded. The State and the Judiciary have the responsibility to investigate the sanction of illegal militias, the attacks against rural workers and the illegal experiments.

⁴⁸ The Brazilian Constitution allows that unproductive lands or those which are not fulfilling the legally-required social and environmental function, be expropriated for purposes of agrarian reform with bonds of the public debt.

⁴⁹ COHRE and the national NGO Terra de Direitos submitted a comprehensive report to the UN Human Rights Committee titled, 'Forced Eviction and Violence Linked to Land and Housing Violations in Brasil' in 2005, which covers a range of cases in Para, Alcantara and Curitiba.

⁵⁰ Human Rights Watch, *World Report 2005*, 'Essential Background: Overview of Human Rights Issues in Brazil,' available at <http://hrw.org/english/docs/2005/01/13/brazil9845.htm>.

⁵¹ Full information on this case can be found in Portuguese at <http://www.mst.org.br/mst/pagina.php?cd=4401>

⁵² Syngenta has been hiring security services that act in irregular way on that region, articulated by the *Rural Society of the West Region* (SRO) and the *Movement of Rural Producers* (MPR). The field used for trialling techniques to grow Syngenta GMO soy and maize seeds on the area was occupied by peasant families in March 2006, to denounce to public authorities and civil society the illegal reproduction of such seeds.

7. Women, land and housing⁵³

In Brazil the female population is 51% of the total, although their political representation in the Parliament is only 14% and, in the Senate, only 6%. Since the adoption of the Constitution of 2000, women are entitled to retirement due to rural work and to be owners of land distributed by the State. In 2001, the government put in place this norm. In urban areas women are also entitled to receive land or property titles exclusively in their name but both the Constitution and the Civil Code⁵⁴ recognise the right of women to have joint titles of the properties owned in conjunction with their husbands or partners. There are no specific data informing the number of land titles issued for women but the appalling conditions experienced in the slums' daily life affect women and children disproportionately. Due to the presence of the parallel power of drug traffickers within the slums, children, adolescents and women are becoming more and more vulnerable to attacks, threatens, cooptation and killings.

All indicators available in Brazil highlight the feminization of poverty as they receive less income than men to do the same jobs and still fight against the stigma that their primarily place to develop their skills is the house.

COHRE recommends that the Ministry of the Cities disaggregates data on women to indicate the number of land titles and or houses built in their benefit. This will allow the government to have a better picture of the difficulties faces by women and their demands.

Women are disproportionately affected by forced evictions as they have also to find a solution to their children. Usually when they divorce or are abandoned by their husband/partners, they are evicted due to lack of rent payment or due to debts left by the men. In Brazil there is no specific legislation to protect women against forced evictions

The exposition of women to the institutional violence, practiced by the police when they occupy the slums in Brazil, and to the informal one, carried out by the drug traffickers indicates the necessity to implementing both a gender and a human rights approach to the land, housing and urban planning polices. Once they lose their houses, they are also at risk of losing custody of their children, as it is very difficult to obtain places at school if one does not have a fixed address.

Recently Law No. 11.1340/2006 (Law Maria da Penha) was approved, which provides for the protection and prevention of violence against women and establish mechanisms to halt domestic and family violence.⁵⁵ In cases in which a woman has to leave her house to protect herself against domestic violence, her property and goods will subject of restitution in case of illicit appropriation by the aggressor and of temporary prohibition to be sold, rented or transferred. COHRE urges the municipal and federal government to construct temporary housing for women and her children affected by domestic and familiar violence. COHRE also supports the proposals made by the National Forum or Urban Reform to give priority to women head of housing to access public resources and subsidies to build or repair their houses or to buy/rent land.

⁵³ Information gathered from COHRE (2006), "Evictions in Latin America: the cases of Argentina, Brazil, Colombia and Peru", pp.48-49.

⁵⁴ Art. 183(3) and Art. 1240(1) of the Civil Code.

⁵⁵ This law was passed because a decision of the Inter-American Commission (Maria da Penha vs. Brazil) recommend the state to protect and prevent the domestic and familiar violence against women. Maria da Penha was tried to be killed by her husband twice and was made paraplegic due to a shot fired by him that hit her.

8. Titling of *quilombo* territories

In some areas, the threat of forced evictions is a direct result of the lack of official recognition of property rights of *quilombo* communities. The Brazilian Constitution guarantees the descendants of the *quilombo* communities property rights over the territories ancestrally occupied by them, and national legislation⁵⁶ regulates the process to identify, demarcate, title and register such lands. Despite such structural *de jure* protections for communities who have traditionally occupied these lands, most of over two thousand *quilombo* communities located in most of every state of Brazil⁵⁷ do not hold titles to their traditional lands.⁵⁸

A lack of success in the titling process as a result of institutional inefficiency makes *quilombo* communities extremely vulnerable to threats of eviction by land owners, mining companies, and development projects which seek to take possession of their lands and its natural wealth. According to the estimate by the Pro-Indio Commission of Sao Paulo there are 129 lawsuits related the titling of 40 *quilombo* areas scattered among 14 states as of September 2007. Out of this total, 82 are still pending, 34 have already been titled and 13 are currently suspended. By denying *quilombo* communities timely access to title of their lands, the Government in flagrant violation of the precepts and regulations laid down in the Brazilian Federal Constitution of 1988, and of the Convention No. 169 of the International Labour Organization (ILO), to which Brazil is a party.

Government officials also regularly disregard judicial orders determining the demarcation and titling of *quilombo* territories, such as the case of Alcantara, where the Government intends to build a Space Port for satellite launching, and the case of Marambaia Island, where the Brazilian Navy does not recognise the *quilombos*' rights over lands, beaches and forests.⁵⁹

Further, legislation regulating land ownership has not been properly implemented by the Government in order to provide land titles and access to natural resources to the *quilombo* communities. It is also troubling that the Government is currently reviewing the by-laws (for instance Normative Regulation No. 20/2005) regulating the titling process of *quilombo* lands without carrying out proper consultations. Since the approval of the Federal Constitution in 1988 (Art. 68 of the Transitory Dispositions), which guarantees the right of property to the communities of the *quilombo* territories, the legislation regulating these norms has never been effective in actually delivering title.

Forced evictions and other forms of displacement not only deprive these communities of their natural resources but also damage or destroy their cultural identity and religious, family and

⁵⁶ Brazil is a federal republic, with a representative system and democratic regime in accordance with its Constitution of 1988. The Brazilian state is organised into one union, 26 states, 5 559 municipalities and one federal district (the capital, Brasília) and all of these units are autonomous. Land, housing, urban transportation and sanitation policies and programmes are to be implemented by the Union, the states and the municipalities.

⁵⁷ Complete and up to date information on the number of quilombo territories already titled or in process of being titled can be found in Portuguese at http://www.cpisp.org.br/acoess/html/i_resultados.html - Comissão Pró-Indio de Sao Paulo.

⁵⁸ Comissão Pró-Indio de São Paulo, *Ações Judiciais e Terras de Quilombo*, 'Resultados de Pesquisas,' http://www.cpisp.org.br/acoess/html/i_resultados.html.

⁵⁹ In 2005, during the mission of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène, to Brazil, COHRE presented a report on "Forced evictions and violations of the right to adequate housing and land of Quilombo communities of Marambaia Island – Rio de Janeiro and Alcântara, MA/Brazil". Information on the case of Alcantara can be found in the *Second Report of the UN-Habitat Advisory Group on Forced Evictions*, available at http://www.cohre.org/view_page.php?page_id=16.

economic traditions. When such references to material and cultural identity are lost, the basis of support for their ancient historical references also disappear.

In 2003, the government attempted to address some of these issues by promulgating Federal Decree No. 4.887. The Decree is designed to regulate the process for titling, demarcation, and restitution of *quilombos*' land. It is based on the ideals of self-determination, participation, equality, and social justice. It is also based on the concept of territory and respect for specific social and cultural organizational traditions in conformity with the requirements of ILO Convention No. 169. However, institutional, operational, technical and financial difficulties have impeded the Federal Government in its efforts to implement the new legislation, to issue the titles and to resolve land-ownership problems. This has contributed to the perpetuation of the human right violations, the poverty, and the social exclusion of these communities.

Further, since the State started applying Federal Decree No. 4.887 in an attempt to title *quilombos*' land, the main media vehicles such as the newspapers *Estadão*, *Folha de Sao Paulo*, *Zero Hora*, and the TV *Globo*, allied with university professors and landowners' associations, have transmitted defamatory and misleading or even fraudulent information about such processes, to intimidate the *quilombos*' social organization and to misinform the public in general about their rights.

COHRE recommends that the Government make greater efforts to implement the legislation, issue property titles to *quilombo* communities and resolve land-ownership problems. Additionally, to counter-act damage to the cultural identity and religious, family and economic traditions of the Afro-Brazilians, minorities and indigenous communities, their right to housing and land must be actively promoted by the Government. It should also respect judicial orders determining the demarcation and titling of *quilombo* territories in such case of Alcantara.

IV. ACCESS TO WATER AND SANITATION

In the last decades, the percentage of people with access to piped water supply and to basic sanitation has been continuously growing in Brazil. From 1970 to 2000, the number of urban households linked to water piped systems went up from 60.47% to 89.76%, and the households with sanitary sewage collection rose from 22.16% to 56.02%⁶⁰. In addition, recently relevant governmental initiatives are being carried out in the water and sanitation sector through the Growth Acceleration Project (PAC). Nevertheless, lack of access to water and sanitation still affects many, and in particular disproportionately low-income persons, causing serious threats to public health. As a result, 65% of instances of child hospitalization are due to lack or inadequacy of water and sanitation services.⁶¹ In 2000, more than three thousand children under the age of five died of diarrhea.⁶² Furthermore, there are gross inequalities between various regions of Brazil. The two extremes are the North and the Southeast, where the level of urban households with water piped systems are of 10.5% and 84% respectively.⁶³

The 2007 Law on Sanitation (Law 11445) establishes a rights-based approach to water and sanitation, by promoting universal access; participation by stakeholders; access to information in

⁶⁰ The Brazilian Institute for Geography and Statistics (IBGE), Demographic Census, 2000.

⁶¹ Ministry of Environment of Brazil, *Executive Synthesis of the National Water Resources Plan*. Brasilia, 2006, p. 43. http://pnrh.cnrh-srh.gov.br/temp/docs/executive_synthesis_NWRP_IN3.zip (English version)

⁶² Instituto Socioambiental, *Almanaque Brasil Socioambiental*. São Paulo, 2007, p. 305.

⁶³ IBGE, National Household Sample Survey 2006

the drawing up of plans of action; as well as the creation of regulatory agencies when services are provided by third-parties. In spite of these important principles, discrimination in access to services is still present in practice. The connection of households in informal settlements to the water and sanitation network is often considered to be unlawful by institutions such as the Ministério Público. In some cases, piped water systems are built up to the entry of the settlements, but households are not linked to them because public employees fear to be sued for administrative error. Also, there is no guarantee of a minimum supply of water essential for personal and domestic needs in case of disconnection due to lack of payment. The Brazilian Court of Appeals (Superior Tribunal de Justiça), which had formerly decided that water disconnection due to lack of payment was unlawful, has changed its position and stated that when the water provision contract is broken, the water company can enforce the debt by interrupting water provision. Law 11445 establishes that water disconnection can only occur under specific terms and conditions, which will be regulated by a Presidential Decree, which has not been drafted yet.

Even though Brazil has a significant amount of available water resources, it also has a semi-arid region where 12 million persons experience drought in some periods of the year. Aiming to address this situation, the Federal Government is carrying out the integration of São Francisco River to the basins of the northern Northeast region. The project will deviate the river course and integrate it with water sources which are not perennial. Nevertheless, the project focuses on big urban centres, leaving behind rural areas which are the most affected by drought. Meanwhile, alternative solutions for access to water in rural areas are not being addressed properly. The Project a Million Cisterns, developed by several organisations, aims to build a million of cisterns in the rural semi-arid area as a low-cost and immediate solution for lack of access to water. Since 2003, a little more than two hundred thousand cisterns have been built, mostly due to lack of support to the project.

The efforts Brazil has undertaken to promote access to water and sanitation services in informal settlements, mostly through the PAC should be recognised. Nevertheless, the State should be urged to draft the Presidential Decree which regulates Law 11445 taking into consideration human rights standards concerning water and sanitation and ensuring that under no circumstance will someone be neglected a minimum amount of water essential for personal and domestic needs. It should be also recommended that Brazilian institutions increasingly apply the Constitutional provisions which guarantee non-discrimination and equality concerning access of residents of informal settlements to water and sanitation services.

The State should also be urged to combine the integration of the São Francisco River with other appropriate measures that increase water access in rural deprived areas. Also, it should be pointed out the concerning about water availability in the region and the hope that the State will only put the integration system in operation after the environmental conditions of São Francisco's River are improved. The following matters should both be explicitly affirmed: the importance of (i) ensuring that the project will indeed prioritise water for human consumption; and (ii) extending access to water to low-income population in urban centers, without overcharging poor people for the costs of this extension.

V. CONCLUSION

COHRE is concerned that Brazil is failing to fulfill its obligations to prevent forced evictions and to protect the right to land and to housing of the poor. The majority of the widespread forced evictions in urban and rural areas carried out in Brazil constitute an ‘unlawful or arbitrary interference’ with the home which is not ‘reasonable in the circumstances’. The affected communities are normally neither consulted prior to the evictions nor given adequate notice. Legal remedies are often denied in cases of evictions while the protection afforded by the Brazilian Constitution and international law is often ignored in most cases. As highlighted by the Special Rapporteur on Adequate Housing after his mission to Brazil in 2004, “there is an urgent need for the Government to adopt measures and national legislation to ensure protection against forced evictions and to ensure that any evictions are carried out in strict conformity with existing international obligations”.⁶⁴

Even in cases in which the Government has offered a ‘public interest’ rationale for the evictions such as the construction of the Space Launch Centre in Alcantara, the scale and negative impact of the evictions over the affected population is disproportionate to the aim that they seek to achieve and alternatives to evictions are not being considered. In most cases, the government has not consulted the affected communities and has failed to provide the evictees with adequate resettlement.

Overall, forced evictions have been disproportionately affecting Afro-Brazilian communities, indigenous peoples, women and poor people. In many cases, the evictions are accompanied by excessive use of force, ill-treatment, torture, arbitrary detentions, harassment or extra-judicial executions by the military police that carry out these evictions.

The failure of the State to adequately recognise the rights of indigenous peoples and *quilombo* communities to the traditional lands that they have occupied as well as protect these communities from land grabbing and evictions by private parties represents a violation of international human rights law as it endangers the indigenous peoples’ and *quilombo* communities’ traditional means of subsistence, culture, way of life and identity.

The disparities in availability of adequate housing, services and infrastructure between the north and northeast regions of Brazil, which have disproportionately large relative populations of Afro-Brazilians and indigenous peoples, and the southeast region, which has a large percentage of persons of European descent, also suggests the continuation of both overt and subtle forms of racial discrimination. Brazil has not taken all necessary steps to combat this discrimination.

COHRE is also concerned at the high levels of violence and continued attacks on landless peasants, rural workers and activists, including those from indigenous communities, in the context of land disputes and the call for agrarian reform. The marked failure of Brazilian officials and courts to investigate these murders, attacks and threats and try offenders has set up a pattern of impunity which calls into question the State’s fulfillment of its obligation to respect and protect the right to life and personal security of these individuals and communities.

The policies and programmes will not *per se* reduce the housing deficit significantly if it is not combined with the application of instruments to guarantee access to land and property rights by the poor population. An integral, comprehensive and socially oriented approach to land, property

⁶⁴ Report by Mr. Miloon Kothari, Special Rapporteur on Adequate Housing, on his mission to Brazil, from 29 May to 13 June 2004, submitted pursuant E/CN.4/2005/48/Add.3 at para 70.

and housing rights is necessary in order to marshal the attributes and assets associated with the land sector as a key source for the improvement of the poor population's lives. Treating access to land simultaneously as a human rights concern and a development concern will be a fruitful way to implement public policies with a rights-based approach to development.

Despite the fact that the Federal Government has indeed managed to advance significantly in formulating comprehensive national housing and land policies, many programmes are isolated and to a great extent ineffective, and thus have little significant impact on the Brazilian reality. Moreover, although many municipalities have formulated their own land regularization programmes, the states have not done the same. The role of the state in land regularization processes is relevant once they have the jurisdiction to approve environmental licenses and environmental impact assessments, which are necessary to implement many slum upgrading projects. In the case of the municipalities, the effects of housing and land policies on the ground will much depend on the implementation of the new master plans recently revised or approved by the municipalities.

COHRE supports the demands of urban social movements and organizations related to the creation of state and municipal City Councils with jurisdiction to determine criteria for funding allocation, to approve the application of public budgets and investments, and to monitor the implementation of programmes and projects.

Furthermore, additional efforts are required to ensure that courts and other authorities act sufficiently to protect the rights of individuals and communities to adequate housing. There is also a need for measures to heighten awareness by all authorities of Brazil's international human rights law obligations, such that these are given all due consideration when deciding cases involving rights of possession, eviction and land conflicts affecting vulnerable people living in urban informal settlements.

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