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## المجلس الاقتصادي والاجتماعي



لجنة حقوق الإنسان

الدورة الحادية والستون

البند ١٠ من جدول الأعمال المؤقت

### الحقوق الاقتصادية والاجتماعية والثقافية

تقرير المقرر الخاص بالسكن اللائق كعنصر من عناصر الحق في  
مستوى معيشي مناسب، السيد ميلون كوثاري

إضافة

البعثة إلى البرازيل \*\* \*

\* يعمم موجز التقرير بجميع اللغات. ويعمم تقرير البعثة الوارد في المرفق بلغة التقديم فقط.

\*\* تأخر تقديم هذا التقرير لكي يعكس أحدث المعلومات.

## موجز

يقدم هذا التقرير بموجب قرار لجنة حقوق الإنسان ٢١/٢٠٠٤.

تمثل الغرض من بعثة المقرر الخاص بالسكن اللائق كعنصر من عناصر الحق في مستوى معيشي مناسب في دراسة حالة إعمال الحق في مستوى معيشي مناسب وتقديم تقرير عن ذلك، مع إيلاء اهتمام خاص لجوانب تتعلق بالمساواة بين الجنسين وبعدم التمييز. وقد سعى المقرر الخاص أيضاً للمشاركة في حوار مع الحكومة والأمم المتحدة والوكالات الدولية والمجتمع المدني، ولتحديد الحلول العملية وأفضل الممارسات في إعمال الحقوق المتصلة بولايته.

وأبدى المقرر الخاص إعجابه بما لمسه من إرادة سياسية لدى الحكومة الجديدة وبالدعم غير المسبوق الذي تلقاه من هيئات المجتمع المدني. فالتحديات جسيمة في ظل هيمنة التشرد وعدم ملكية الأراضي وقلة المساكن وحالة المساكن غير اللائقة في البلد بسبب التمييز التاريخي الذي كان يتعرض إليه المجتمع المحلي الأفرو - برازيلي والشعوب الأصلية، وهميش الفقراء. ويحاول المقرر الخاص في تقريره بالكامل أن يبرز الجوانب التي تثير قلقاً خاصاً، بما فيها النهج المحزأ إزاء وضع السياسات العامة وتخطيط البرامج؛ والفقر المدقع وانعدام المساواة؛ والآثار السلبية لعملية الخصخصة على الخدمات الأساسية للمعدين. ويشدد على ضرورة إحراز تقدم أسرع فيما يتعلق بإعمال الحق في الأرض وعمليات الإصلاح؛ وعلى ضرورة إيلاء المزيد من الاهتمام للروابط القائمة بين الأرض والفقر في المناطق الريفية والحضرية وإعمال الحق في السكن اللائق؛ وعلى ضرورة اتخاذ إجراءات تصحيحية إزاء فئات مثل الشعوب الأصلية والمجتمعات المحلية الأفرو - برازيلية. وهو يلفت الانتباه بوجه خاص إلى تأنيث الفقر وإلى ضرورة زيادة التركيز بشدة على المساواة بين المرأة والرجل في الحق في السكن والحق في الأرض؛ وإلى وجود قدر كبير جداً من المساكن غير اللائقة وغير الآمنة وإلى الظروف المعيشية السائدة في مناطق حضرية وريفية كثيرة؛ وإلى الافتقار للمشاركة الفعالة في عمليتي التخطيط والتنمية.

ويسعى المقرر الخاص في تقريره بكامله إلى إبراز التقدم المحرز والنطاق المحتمل لمواصلة العمل. ويصاغ عدداً من التوصيات، منها: وضع سياسة إسكان وطنية جديدة تركز على التزامات حقوق الإنسان؛ والتوفيق بين أهداف الاقتصاد الكلي والأهداف الاجتماعية؛ وإعادة توجيه البرامج الحالية لتمويل الإسكان كي تلبى احتياجات المعدين؛ والتشريع بهدف مواءمة وتبسيط عملية إصدار سندات الملكية؛ وزيادة التعاون بين الوزارات في مجالات مثل حقوق الإنسان للشعوب الأصلية.

## Annex

### REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING, MILOON KOTHARI, ON HIS MISSION TO BRAZIL (29 MAY-13 june 2004)

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## **Introduction**

1. At the invitation of the Government of Brazil, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living undertook a mission to Brazil from 29 May to 13 June 2004. The purpose of the mission was to examine and report on the status of realization of the right to adequate housing and other related rights in the country, with particular attention to aspects of gender equality and non-discrimination, with a view to promoting the incorporation of a human rights perspective at all levels of governance, policy-making and implementation. He also sought to engage in a dialogue with the Government, the United Nations and international agencies, and civil society, and to identify practical solutions and best practices in the realization of rights related to his mandate.
2. Based on the provisions of legal instruments, the Special Rapporteur has adopted a working definition of the right to adequate housing as “the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity” (E/CN.4/2001/51, para. 8). Based on the notion that all human rights are interrelated and indivisible, he has adopted a holistic approach to his mandate, and has sought to explore linkages with other related rights such as the rights to food, water, health, access to sanitation, work, property, the right to security of the person and security of home, and protection against inhuman and degrading treatment in all of his activities, including country missions, with a special focus on minorities and vulnerable or marginalized groups.
3. The Special Rapporteur also focused particularly on women, pursuant to his mandate under Commission resolutions 2002/49 and 2003/22 on women’s equal ownership of, access to, and control over land, and the equal rights to own property and to adequate housing. He used the questionnaire he developed in response to the resolutions to solicit information from all Member States and civil society, as a basis for the discussion with the Government and civil society in Brazil.
4. The Special Rapporteur met with a wide range of senior officials, including of the Ministry of Cities; the Ministry of Planning, Budget and Management; the Ministry of Land Development; the Ministry of the Environment; the Ministry of Justice; the Ministry for Foreign Affairs; and the Special Secretariats of Human Rights, of Policies for Women, and of Policies for the Promotion of Racial Equality. The Special Rapporteur also had the opportunity to interact with the Parliamentary Commissions on Urban Development and on Human Rights, and the Coordination of the Nation Cities Council and the National Cities Conference. At the level of state and municipal authorities, the Special Rapporteur met with the São Paulo Company for Housing and Urban Development (CDHU), the Municipal Secretary of Housing of the City of São Paulo, the Mayor of Santo André, the Municipal Secretary of Social Inclusion and Housing of Santo André, the Director of Labour and Revenue Generation of the Municipal Secretariat of Economic and Regional Development of Santo André, and with city officials from Rio de Janeiro, Fortaleza, Salvador, Recife and Bertioga.
5. The Special Rapporteur’s meetings with United Nations and international agencies included meetings with the United Nations Resident Coordinator of the United Nations Development Programme (UNDP) in Brasilia as well as representatives of the United Nations Human Settlements Programme (UN-Habitat) in Rio de Janeiro.

6. The programme for the Special Rapporteur's mission was coordinated and organized jointly by the Ministry of Cities and the Ministry for Foreign Affairs, UNDP and the National Rapporteur on the right to adequate housing, together with prominent civil society movements. The Special Rapporteur was impressed by the dedication, preparedness and mobilization they demonstrated. He would like to extend his warm thanks in particular to the Ministry for Foreign Affairs and the Ministry of Cities for their clear demonstration of political will and hard work, and to UNDP for providing valuable and highly competent assistance in organizing a complex mission. Finally, the Special Rapporteur would like to extend his sincere appreciation to the National Rapporteur and civil society groups for the unprecedented support he received during the mission. The Special Rapporteur cannot but applaud the strength and determination of social movements in Brazil.

7. During his visit, the Special Rapporteur was able to visit urban and rural areas in and around São Paulo, Brasília, Formosa, Alcântara, Rio de Janeiro, Fortaleza, Salvador, Recife, and indigenous communities in Bertioga. Seven civic forums were organized by the National Rapporteur and civil society movements, including the Brazilian Urban Reform Forum, gathering an impressive number of grass-roots representatives and testimonies.

8. There are many positive aspects to highlight, most notably the dedication of an exceptionally strong civil society and the political will of the new Government. This political will has shown itself at the federal level through the creation of, for example, the Ministry of Cities, the Special Secretariat for Policies for the Promotion of Racial Equality, the Special Secretariat for Policies for Women and the Special Secretariat for Human Rights. The establishment of an inter-ministerial working group to address the long-pending issue of the human rights of the Quilombola population in Brazil should also be highlighted.

9. New laws have been enacted, and a range of policies are in development. During his visit to Brazil the Special Rapporteur was pleased to have been able to witness the adoption of the long-awaited National Housing Fund Act by the House of Representatives. Similarly, the enactment in 2001 of Federal Law No. 10.257, the so-called Statute of the City, is welcome. The Special Rapporteur was also pleased to have been able to take part in the launching of the Brazilian Programme for Accessibility. According to the Government, the greatest challenge has been to harmonize the concept of property in the Civil Code with new needs of society, as reflected in the constitutional principle of the social function of urban real estate. The Constitution provides municipalities with tools to subordinate the exercise of property rights to the fulfilment of a social function.

10. The Special Rapporteur would like to emphasize his satisfaction with the robust commitment of the Federal Government to human rights. The Government has ratified all six core human rights treaties, including the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Elimination of All Forms of Racial Discrimination. According to the 1988 Constitution, ratified international human rights treaties have precedence over national law. The right to adequate housing was recognized through a constitutional amendment in 1996.

## I. HISTORICAL AND SOCIO-ECONOMIC CONTEXT

11. With a population of over 184 million spread over a surface of 8,514,876,599 km<sup>2</sup>, Brazil is a country of enormous proportions and great contrasts. Some of these contrasts have a direct bearing on the realization of the right to adequate housing.

12. The Portuguese colonized Brazil in the sixteenth century. It is estimated that 5-6 million indigenous persons lived on the territory at that time, although estimates vary. With the European settlement, many indigenous tribes became extinct, and many absorbed into the new population. Today there are approximately 200 indigenous groups of between 350,000 and 500,000 people, not more than 0.2-0.3 per cent of the total population.<sup>1</sup> African slaves provided slave labour from the middle of the sixteenth century. Runaway slaves created traditional village communities called Quilombos, still in existence today.

13. It is estimated that from 1960 to 1996 a total of 46 million people moved from rural areas to medium-size or large cities.<sup>2</sup> Today, about 82 per cent of the country's population lives in urban areas. The urban areas were not prepared for such rapid expansion, which brought with it a number of problems including growth of informal settlements and increasing demands on the existing infrastructure as new urban populations sought access to basic services.

14. Homelessness, landlessness, housing deficit and housing inadequacy prevail in the country as a result of historic discrimination against Afro-Brazilian and indigenous communities, and marginalization of the poor. The Federal Government has committed itself to addressing these issues, but emphasis needs to be shifted from policy-making and legislative reform to practical action. Wealth and land redistribution is of primordial importance in this respect. The country is proud - and with reason - of its Zero Hunger programme, but equal attention must be given to ensuring respect for the right to adequate housing in its widest sense, starting with families who are homeless, landless, and living in extremely precarious conditions. Given the scale of the problem, this is a matter of urgency. Also, there is a need for a progressive annual increase in budget allocations for housing. Although this could be augmented by non-budgetary resources, such resources should not be seen as a substitute for regular budget allocations.

15. The housing deficit is estimated at 7 million housing units, 80 per cent of which is in urban areas and 40 per cent geographically concentrated in the north-east. Data from the Brazilian Institute of Geography and Statistics (IBGE) reveals that 6.6 million Brazilian families do not have anywhere to live, while one third of homes are not linked to the sewage network. According to the Demographic Census of 2000, 1.6 million housing units are located in precarious settlements, including slums or favelas, where 6.6 million people live. In addition to favelas, attention should also be given to irregular and clandestine subdivisions, slum tenement houses, or *cortiços*, and degraded housing estates. Only half of all municipalities in Brazil have developed some form of housing policy. Even fewer have made serious attempts, at a practical level, to promote the right to adequate housing.

16. The external debt of Brazil, conditionality attached to loans from the World Bank, the International Monetary Fund and the Inter-American Development Bank, and the country's own self-imposed conservative financial policies have affected the country's capacity to address the housing and living conditions of the poor, the Afro-Brazilian population, indigenous peoples, women, and

other vulnerable or marginalized groups. Whereas sufficient resources exist in the country to address such problems, macro-economic limitations create obstacles to using such funds for the benefit of those most in need.

17. In this context the Special Rapporteur supports the position taken by the Government that a new paradigm is needed that excludes investments in housing and sanitation for the poor from the calculation of that fiscal deficit in developing countries. He also supports the decision of the Ministry of Cities not to accept loans from international financial institutions that do not allow for subsidies and other measures aimed at benefiting low- or no-income families. Brazil also plans to promote an international debate on the exclusion of investments related to meeting the Millennium Development Goals from the equation used to calculate developing countries' debt payments - a position also presented and supported by the Special Rapporteur during the second World Urban Forum held in Barcelona, Spain, in September 2004. In addition, the Special Rapporteur is of the view that the international credibility that President Lula and his Government currently enjoy should make it possible to reduce the budget surplus target of 4.5 per cent to 3.25 per cent, thereby releasing funds to ensure the progressive realization of economic, social and cultural rights, including housing, while still respecting the surplus conditions imposed by international financial institutions. Such funds could be utilized to augment the work programme of government entities that contribute to improving housing and living conditions of the poor, such as the Ministry of Cities, the Special Secretariats and other bodies.

## **II. A FRAGMENTED AS OPPOSED TO A HOLISTIC APPROACH**

18. In 1995, the previous administration adopted a National Housing Policy. Four main goals were identified: universal access to housing; construction of new houses and improvement of existing homes; regularization of irregular settlements; and modernization of the housing sector. However, the policy did not provide the comprehensive tools necessary to move towards the full realization of the right to adequate housing. The historical legacy of decades of racial discrimination and neglect of the poor is a gigantic challenge. Addressing it requires a holistic and comprehensive approach.

19. According to the Government, the overlapping jurisdiction between federal, state and municipal actors with regard to urban and rural housing creates difficulties and has had a detrimental impact on the effectiveness of housing policies since the mid-1980s. There is an urgent need to strengthen governance and cooperation on policy formulation and programme implementation.

20. While many of the existing projects and initiatives that the Special Rapporteur has come across are individually positive, creative and innovative, he perceives a lack of coordination and cross-linkages. As a result, positive, and even excellent initiatives become ad hoc interventions. One positive example that could be followed is the *Viva o Morro* programme in Recife, aimed at stabilizing the situation of people living in high-risk hill areas and ensuring the provision of civic services, all done in consultation with the communities involved. Through testimonies and on-site visits, the Special Rapporteur witnessed the negative implications of fragmented approaches and the use of temporary solutions. In São Paulo he visited makeshift houses in the Heliópolis favela where lodgings were built under power lines by authorities 10 years ago - an example of a temporary solution becoming permanent. In the Valley of Esperanza, outside Formosa in Goiás, he visited rural

resettlement programmes where six years after resettlement, the population is still in need of proper transport, water and health care.

21. With progressive laws and policies in place, such as the Statute of the Cities, the focus must now be shifted to implementation, with attention to the very poor and marginalized. The Statute is a progressive and visionary piece of legislation defining the policies that different levels of Government are to use to address problems of inequalities with respect to housing in urban areas. Among its promising features are guidelines for infrastructure development in areas occupied by low-income populations; regularization of land titles; neighbourhood impact studies; and the creation of “special zones of social interest”. The Statute constitutes a legally binding tool for the participatory design of development plans and the allocation of resources.

22. Worth noting is the role given to the National Cities Council. In accordance with provisional measure No. 2,220/2001 and decree No. 5,031/2004, the Council must propose guidelines for the formulation and implementation of national urban development policies, and provide guidelines and recommendations for the application of the Statute. It is the responsibility of the Council to evaluate proposals and implement regional plans elaborated by the Ministry of National Integration as well as plans for economic and social development. Although there are no regional jurisdictions, the development of regional plans is necessary in order to reduce social and economic disparities. In addition, the establishment of city councils in states and metropolitan areas, with the effective participation of diverse segments of society, ensures that issues related to gender, race and ethnicity are addressed and incorporated into urban and housing policies. The implementation of the National System of Cities would address the fragmentation between the federal, state and municipal levels of Government.

23. During his mission the Special Rapporteur had the opportunity to witness a historic moment, the adoption of the National Social Housing System Act by the Chamber of Deputies (bill No. 2710/92), originating from an initiative of national housing movements in the beginning of the 1990s. While the bill is a welcome step, in order to meet the needs of the most vulnerable, it should ideally be connected with the Workers Guarantee Fund (FGTS) and complementary funds from other sources. The bill is now awaiting Senate approval. The objective of the bill is to promote access to rural and urban housing for low-income populations by implementing a system of subsidies. Recognizing the enormous proportions of the low-income housing problem, the bill seeks to generate adequate resources via a National Popular Housing Fund. The original draft version established that money for this Fund would come from the federal budget and the FGTS. However, in the Chamber of Deputies, the use of the FGTS for this purpose was vetoed. As the National Popular Housing Fund is designed to generate funds for works of social interest for the very poor, it is of the utmost importance that sufficient resources be allocated.

24. According to the Ministry of Cities, lack of coordination is one of the main issues being discussed during the current elaboration of a new National Housing Policy, expected to be ready in 2005/06. It is hoped that the new policy will enhance cooperation between the federal level, states and municipalities, thus avoiding resource dispersion and programme fragmentation. The intention is also to integrate housing policies with policies on land and basic services, such as sanitation, under the coordination of the Ministry of Cities. A first step is to revise all federal programmes, ensuring dedicated resources for lower-income groups and improved access to loans.



### III. EXTREME POVERTY AND INEQUALITY

25. Brazil shows significant levels of inequality in the socio-economic sphere. According to the United Nations Development Framework 2002-2006, the country is among the 10 major economies in the world with a per capita gross domestic product (GDP) of approximately US\$ 4,000. According to the Institute of Applied Economic Research, 14.5 per cent of the population lived in extreme poverty in 2003, and 34.1 per cent of the population is poor. Discrepancies between urban and rural areas are marked. For instance, as of 1996, while 92 per cent of urban homes had access to water, only 15.7 per cent of rural housing had such access.<sup>3</sup> In 1997, the Inter-American Commission on Human Rights found similar disparities with respect to poverty between urban and rural areas, noting that 66 per cent of Brazil's rural population lived below the poverty line, compared to 38 per cent of persons living in urban areas.<sup>4</sup>

26. Socio-economic inequalities and exclusion also have a direct impact on housing and land. Statistics show that the housing deficit affects 83.2 per cent of low-income families earning three times the monthly minimum wage or less; only 2 per cent of families earning more than 10 minimum wages or more are affected. The high housing deficit is also a reflection of the high number of low-income households in informal settlements and familial cohabitation, where extended family members live together in the same quarters in improvised domiciles. Rates of growth for favela domiciles were significantly higher than the overall rates of domicile increase from 1991 to 2000.

27. In addition to the quantitative deficit, approximately 10 million housing units are considered qualitatively inadequate, due to lack of access to safe water, inadequate infrastructure, insufficient sewage and drainage systems, and overcrowding. With regard to sanitation, an estimated 12.1 million urban private homes, primarily inhabited by low-income families, lack basic services.

28. Statistics and social indicators related to education, income, health and housing reveal that poverty levels are intimately linked to race and gender.<sup>5</sup> Afro-Brazilians constitute 45 per cent of the population, and are highly overpresented among the poorest of the poor. Women are under-represented in decision-making and public life, including in the executive and legislative branches of all three levels of Government. They are still paid less on average than men for the same type of work and are disproportionately found in the informal employment sector or undertaking menial or hazardous labour. The number of female-headed households is increasing, but testimonies and statistics indicate that women are less likely to be accepted for loans, credit and mortgage schemes, limiting their access to formal housing.

29. There has been some progress recently. The Solidarity Credit Programme was created to assist families with a monthly income of up to three times the minimum wage to acquire construction materials and rehabilitate housing units. The Family Aid Programme (*Programa Bolsa Família*) is an income-transfer programme that aims to benefit 11 million families by the end of 2006. An interesting initiative is the Programme of Subsidies Social-Interest Housing (*Programa de Subsídio Habitação de Interesse Social*), which is the first programme offering financing for the construction of rural houses, albeit on a limited scale. Despite these initiatives, as is the case in many countries with significant levels of inequality and extreme poverty, the Special Rapporteur does not consider that Brazil has succeeded in addressing long-term needs and ensuring the rights of the 20-25 per cent of the poorest of

the poor. The Committee on Economic, Social and Cultural Rights, when examining Brazil's implementation of the International Covenant on Economic, Social and Cultural Rights in May 2003, expressed concern about the failure to provide access to, and adequate provision of, housing credit and subsidies to low-income families, especially to disadvantaged and marginalized groups, a concern shared by the Special Rapporteur (see E/C.12/1/Add.87).

#### **IV. PRIVATIZATION OF BASIC SERVICES**

30. Both civil society movements and ministries emphasized that a comprehensive approach to the right to adequate housing must be applied, ensuring livelihood, the right to water and other rights, realized in part through the provision of services such as health care, education, electricity and sanitation. That understanding has often not been translated into practical action that addresses the barriers the poor face in accessing necessary services. Testimonies often highlighted how the poor paid comparatively high prices for water and electricity, which often amounted to impossible financial burdens.

31. In 2000/02, financial investments dropped drastically and certain restrictions were imposed on the public sector, which operated 95 per cent of the sanitation services. Restrictions on credit for the public sector pose an obstacle to the implementation of urbanization programmes for the very poor.

32. While human rights law does not prevent the provision of services - including water, education, electricity and sanitation - through private companies, States have the responsibility to ensure that such privatization does not infringe on the human rights of the population.<sup>6</sup> Examples from Brazil, however, demonstrate that the financial burden on the poor - for example, as a result of privatization and the absence of differentiated tariffs for electricity - has in fact grown excessively.

33. Increasing economic integration as part of the globalization process has promoted privatization and deregulation as instruments to increase efficiency in basic service provision, traditionally in the domain of State-owned enterprises. From a human rights perspective, equality and universal access should be a priority for essential services. However, during the late 1990s, the privatization of electricity in Brazil led to a rate increase of 65 per cent for residential consumers, far higher than the rate of inflation.

34. The National Programme of Privatization (PND), in operation since 1990, aimed to improve efficiency and reduce government expenditure. By privatizing State companies the State would no longer be responsible for investment (or losses) and would be able both to reallocate those resources to other areas, such as health and education, and increase its budget surplus.<sup>7</sup> However, privatization has also meant a decline in the quality of State-provided basic services, or their complete dismantling. Testimonies from civil society, gathered during the mission, pointed out that as a result of privatization citizens have had to spend more to maintain access to the same quality and quantity of services.

35. Some housing programmes visited during the mission showed that although a comprehensive approach to adequate housing was adopted, addressing the necessary spectrum of conditions and services, affordability was not adequately considered. The programme *Viva o Morro* in Recife is an example of a partnership between federal and state government institutions to improve the

environment, control floods, develop water and sanitation infrastructure, and facilitate the resettlement of local inhabitants of the area. Education and participation are core components of the programme. Although low-income populations were involved, no differential tariffs for basic services, such as water and electricity, were applied. The best agreement authorities were able to make with the private service providers was for the refinancing of programmes for indebted families to prevent them from being disconnected.

36. Privatization also has a particular impact on women and children, especially in the case of Brazil where in 34.1 per cent of urban and 24.1 per cent<sup>8</sup> of rural households women are the main income providers, as well as the head of household. In some communities, women have had to double or triple the number of hours they work in order to be able to carry out their domestic responsibilities and to afford the rising costs of water and electricity, to the detriment of their health and quality of life.

## V. LAND REFORMS AND LAND OCCUPATION

37. The inequalities in land distribution in Brazil are to a large extent a heritage of the colonial period. Throughout the nineteenth and twentieth centuries, different movements emerged in response to land inequalities. Following the military coup in 1964, however, members of peasant movements for land reform were persecuted and killed and their movements virtually disbanded. The military regime initiated land reform in 1964 hoping to calm radical movements.

38. However, the adoption of the 1964 *Estatuto de Terra* (Land Statute) did not sufficiently address issues of idle land and large estates, instead encouraging resettlement on unused land in the Amazon. The situation was further aggravated by soy cultivation on large estates in the south,<sup>9</sup> a problem that still exists and is causing extensive deforestation, illegal land appropriation and conflict in the region. Agrarian reform was understood as a collection of measures that aim to promote a better distribution of land by modifying the traditional regime of possession and use in order to better respect the principles of social justice and increase land productivity. Prevailing land conflicts<sup>in</sup> rural areas illustrate a serious lack of implementation of the Land Statute and the agrarian reform chapter of the Brazilian Constitution.

### A. Occupation of rural land

39. Movements such as the Movimento dos Trabalhadores Rurais Sem Terra (MST) or the Rural Landless Workers' Movement emerged in response to extreme concentration of land in huge estates (*latifúndios*), the practice of land-grabbing (*grilagem*), and the process of modernization and liberalization of agriculture that forces peasants off their land. About 1 per cent of landholders own 45 per cent of all land. An estimated 5 million families do not have access to land while another 5 million rural properties are extremely small. Concurrently, according to INCRA (Institute for Rural Settlement and Agrarian Reform), there are nearly 100 million hectares of uncultivated land in the country. Another 55,000 rural properties are classified as unproductive, accounting for 120 million hectares.

40. Peasants who lost their lands, homes and means of livelihood started the "landless movement" in 1979 as a means of defending their rights. The movement spread all over the country and, often with the

support of the Catholic Church, initiated occupations to reclaim land. The movement grew and in 1984, MST was formally created to advocate for agrarian reform and broad-based structural change, including improved social welfare, employment, health care and education, and the promotion of cooperative means of production.

41. While there have been significant advances towards a land and housing policy that would allow for the reversal of social and territorial inequality, in practice progress has been slow and the strategy of occupying idle and underused land has become an important means of political pressure for land reform and regularization of settlements. The struggle has cost thousands of lives as land occupations are often met with violent opposition from landlords, but over the years MST, in collaboration with other social movements, has been responsible for allocating land to approximately 350,000 families. The settlements (*assentamentos*) provide housing along with opportunities for collective farming, education and livelihoods. According to testimonies received, the new Government, contrary to expectations and promises, has not succeeded in settling landless families and expediting agrarian reform. The Special Rapporteur visited a large MST settlement near São Paulo and would like to draw attention to the dismal housing and living conditions he witnessed and which exist, according to the information he received, in most occupied sites. Although land occupation has proved effective, the process of negotiation with the authorities is long and painful, and in the meantime families often live in grossly inadequate housing and living conditions and are subjected to violence inflicted by landholders, armed militia and the police. The lack of provisions for adequate housing and basic facilities like water and sanitation is glaring, and needs to be urgently addressed.

42. The Constitution devotes a complete chapter to agrarian reform, and article 184 stipulates that “(i)t is within the power of the Union to expropriate on account of social interest, for purposes of agrarian reform, rural property which is not performing its social function”. It has been left to the judiciary to determine the social function of rural property to resolve disputes over whether a particular property is “productive” or not. Agrarian reform processes are challenged in court on the grounds that the criteria used by the Federal Government to define whether the property in question is failing to fulfil its “social function” by being “unproductive” are illegal or unconstitutional, or, in some cases, just plain wrong. The problem is reportedly often further complicated by the lack of expertise in dealing with agrarian reform at the municipal level. The advent of, and gradual improvements in municipal master plans should address the problem through regulation of the use of rural property.

## **B. Occupation of urban land**

43. The concentration of property in the hands of a few individuals and the low productivity of land have also been some of the main reasons for large-scale migration from rural areas to cities. Around 166 million hectares belong to large, unproductive estates that occupy 60 per cent of the total rural area. Brazil has still not achieved the objectives of ensuring adequate housing and livelihoods for the rural population. This has put additional strain on urban areas.

44. Given the high level of poverty, homelessness and landlessness in the country, it is clear that land occupation will continue, and increasingly so also in urban areas where movements such as Movimento dos Trabalhadores Sem Teto (MTST) or Movement of Homeless Workers, União Nacional de Moradia

Popular (National Union for Popular Housing) and the Movimento Nacional de Luta pela Moradia (MNLN) or National Movement for the Struggle for Housing are well established. The Special Rapporteur had the opportunity to visit several MTST occupations during his mission. Once idle or abandoned rural land or urban plots, such as closed-down hospitals or marketplaces, have been identified, the organization mobilizes its landless and homeless members and occupies the site, often overnight.

45. At the MTST-occupied Água Fria site in Recife, 160 families have been occupying land formerly used for an open market belonging to the Recife City Council. For nearly two years the families have been living in the remains of abandoned market shacks and in homes constructed of waste material, without access to water, sewage or drainage. Families of four to seven people are living on an average area of 20 m<sup>2</sup>. The inhabitants earn, on average, less than one minimum wage per month and are excluded from federal funding programmes. Negotiations are currently under way between MTST, the Recife City Council and the Participatory Budget Council to see whether the provision of adequate housing and living conditions for occupants can be consolidated with the demands for the construction of health facilities on the occupied land.

46. While organized occupations by MST, MTST and others often play an important role, the unequal distribution of land and the lack of adequate housing of the very poor have also led to spontaneous occupations. In Recife, in Campo do Vila II or the so-called Vila Imperial, where 154 families have occupied a largely privately owned piece of land, the Special Rapporteur witnessed subhuman conditions that were among the worst he has seen in his work. The occupants lived among rats and serpents, and mattresses and other belongings were submerged by the rising level of water and sewage at night. Negotiations have been ongoing for the last two years between occupants and municipal authorities to find a sustainable solution to the problem.

47. The Constitution in article 183 stipulates that “[a]n individual who possesses an urban area of up to [250 m<sup>2</sup>], for five years, without interruption or opposition, using it as his or as his family’s home, shall acquire domain of it, provided that he does not own any other urban or rural property”. It allows for the recognition of legal tenure of the occupants of a private urban area. The requirements for acquisition include that the plot occupied must not exceed 250 m<sup>2</sup> and that the area must have been occupied for the purpose of housing for five years without opposition from the owner. Adverse possession is also addressed in articles 9 and 14 of the recently adopted “Statute of the City” (see paragraph 63 below), allowing for collective adverse possession in irregular settlements such as slums.

48. Notwithstanding positive legal provisions, land occupations are likely to continue in the absence of effective comprehensive measures taken by authorities to address the rights and needs of the most vulnerable, including the homeless and landless.

## VI. URBAN HOUSING AND HOMELESSNESS

49. The lack of available land forces thousands into urban areas where many live in cardboard or tin shacks (*barracos*) in the favelas. Many other low-income Brazilians live in collective multifamily buildings (*cortiços*), often in unsanitary conditions. Each family lives in one room (*comodo*), which usually measures a maximum of 8 m<sup>2</sup>. The dwellings lack basic infrastructure and are often crumbling and unstable.

50. Homelessness is growing. An estimated 10,000 people sleep in the streets of the São Paulo metropolitan area, while 2,500 are homeless in the city of Rio de Janeiro. These homeless are mostly migrants from the impoverished inland and the north-eastern region. The Special Rapporteur received numerous testimonies from homeless people who had been victims of police abuse and extreme social exclusion. The absence of proper documentation often does not permit those living in the streets to use public health and social services.

51. The attention of the Special Rapporteur was drawn to *Operação Cata-Tralha* or Operation Trash Search taking place in Rio de Janeiro. According to information received,<sup>10</sup> the garbage collection agency of Rio de Janeiro, the *Companhia de Limpeza Urbana* (Comlurb), together with the Municipal Guard and the military police, carries out regular “trash collection” exercises, which involve seizing belongings of the homeless around the city, including boxes, blankets, clothing, brooms, papers, identity cards and other official documentation, food and medication. Testimonies from the homeless indicate that violence on the part of the Municipal Guard is common. According to information received, *Operação Cata-Tralha* has been going on for several years, but the practice was stepped up in the middle of 2003 in connection with the implementation of the state government’s *Zona Sul Legal* project. The project aimed at removing homeless people living in the wealthy southern zone (“Zona Sul”) of Rio de Janeiro, which includes well-known areas such as Copacabana and Ipanema, by taking them to public shelters. The conditions in the shelters, however, proved to be unsafe and without satisfactory health and social services, and most of the inhabitants escaped and returned to the streets. With their return to the streets, *Operação Cata-Tralha* was reportedly intensified.

## VII. THE JUDICIAL SYSTEM

52. The Constitution of Brazil allows for the creation of special courts. However, no special courts have been established to resolve the increasing number of conflicts relating to urban and rural land, property and housing. Depending on the nature of the conflict, it is dealt with either by civil or state courts. However, according to the information received, including from the Ministry of Cities, a proposal was presented by the President to the Supreme Court in February 2004 according to which a special Agrarian Court should be established to handle rural conflicts. It was anticipated that the Federal Justice Council would review a bill to this effect by the end of 2004, which would then be presented to the National Congress. Special agricultural tribunals already exist in Minas Gerais, Santa Catarina and Paraíba. According to testimonies, the extent to which the human rights of marginalized and vulnerable groups are respected depends largely on individual judges.

53. The state judicial system is competent to act in matters concerning the rights of possession of private and public land belonging to states and municipalities, and to settle family disputes about possession or ownership of land, buildings and residences or those arising from marriage, inheritance or domestic violence situations. Cases concerning the issuance of title and the registry of public and private lands are the domain of specialized judges, who are organized into public registry districts.

54. According to testimonies received, the structure and operation of the judiciary have not been adequate in treating matters related to the right to adequate housing, inheritance rights involving gender considerations and urban land, the right of possession and ownership of formal and irregular settlements,

as well as in handling cases of collective occupation of land organized by social movements. Complex matters involving rights of possession and housing for socially vulnerable groups are also often settled unsatisfactorily or not at all, particularly where people's rights conflict with large-scale development projects, such as the construction of hydroelectric power stations, the extension of airports or the revitalization of run-down historic centres.

55. One of the principal reasons for these failures relates to the capacity of individual members of the judiciary. Many judges, while learned in procedural aspects of the law, do not have substantive training enabling them effectively to address social and economic aspects of their work, such as gender discrimination or poverty, when making judgements involving inheritance rights, property rights and housing for socially vulnerable groups. Poor performance in these areas is compounded by the barriers low-income populations face in accessing justice due to the prohibitive cost of legal assistance or the inadequacy of legal aid. The institution of the Public Defender provides free legal services and assistance to low-income populations, pursuant to article 134 of the Constitution. The provision applies to every level of the justice system and is thus a key element for the provision of equal justice for all citizens. Given reported inadequacies, however, the Special Rapporteur recommends that the Office of the Public Defender be strengthened so that it can better attend to demands from the vulnerable for protection of their rights. The Special Rapporteur also notes that according to the law the institution of the Public Defender should be established in all states, and he urges the three remaining states that have not complied with this provision to do so.

56. In Brazil, many groups of legal professionals are active in the field of human rights, for example the Rede Nacional de Advogados e Advogadas Populares (RENAP) or National Network of Peoples' Lawyers and the Instituto Brasileiro de Direito Urbanístico (IBDU) or Brazilian Institute for Urban Rights. Most of them argue that conflicts over housing rights, possession and ownership of land should go through new institutional/alternative methods of negotiation, mediation and resolution, such as committees or councils of justice and neighbourhood and district courts. They also recommend the establishment of circuit courts where such cases can be tried in the area where the problem has arisen and where more effective and simpler solutions can be found.

57. In matters of land management at the state level, the role of the Inspector General of Internal Affairs of Justice is of cardinal importance, as it involves inspection and supervision of the administrative criteria and procedures used by the registries. Although all state courts have jurisdiction, they operate through special regulations called "*Provimentos*" approved by the General Inspector. With a view to integrating these inspectorates with government departments responsible for land ownership regularization, the Ministry of Cities has organized a series of seminars throughout the country to improve channels of communication between them and judges, prosecutors and lawyers who handle land registry cases on a daily basis.

58. Although not belonging to the judicial branch, the Federal Public Prosecutor (*Ministerio Publico Federal*) has the task to defend the legal order, the democratic regime, and inalienable social and individual rights and interests. Among its main functions is the initiation of public criminal actions, civil law suits and public civil actions to protect social and public property, the environment and other collective interests, and to defend the rights and interests of indigenous populations before the courts. Individuals who claim that their rights have been violated may resort directly to the

*Ministerio Publico* at the State or federal level. However, there is still a shortage of resources and a relatively small number of public prosecutors, both at federal and state level, and an even smaller number working on economic, social and cultural rights.

59. Indigenous rights are judicially defended by the *Ministerio Publico Federal*. Complaints brought by indigenous individuals can also be referred to the General Board for the Defence of the Rights and Interests of Indigenous Populations, within the *Ministerio Publico*, created to receive, investigate, evaluate and refer accusations of violations of the rights of indigenous persons and their communities to competent authorities.

60. The Council for the Defence of the Rights of the Human Person (CDDPH) has the task of carrying out inquiries, investigations and studies on the effectiveness of rules that regulate rights provided for in the Federal Constitution, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and cooperating with the United Nations in all matters relating to initiatives aimed at ensuring respect for human rights.

61. In light of the testimonies received, the Special Rapporteur is concerned about indications that the judiciary and other protective systems are not sufficiently sensitive to the rights of the poor. At the same time, the Special Rapporteur is encouraged by the important role of the Public Prosecutor in defending public interests and collective goods, which has proved essential in the struggle for the realization of housing rights for the poor.

## **VIII. THE RIGHT TO PARTICIPATION IN PLANNING AND DEVELOPMENT**

62. The social struggle for the right to housing and the emerging culture of dialogue between actors in Brazil has brought with it a number of tools for enhancing participation in decision-making and planning. At the federal level, the recently created Ministry of Cities has an important constituency of social movements focused on the implementation of the right to adequate housing in general, and the “Statute of the City” in particular. The National Cities Council is another recently created body with a mandate to make recommendations to the Government related to the implementation of housing and city policies. The Council delegates are elected from the National Cities Conference with over 3,000 representatives, on a popular and participatory basis.

63. The importance given to participation in planning and decision-making is particularly evident in the “Statute of the City” (Federal Act No. 10.527/01). One of the main innovative features of the Statute is the provision of tools for the participatory design of development plans and allocation of resources at the local level, stipulating the creation of urban policy councils, city conferences, participatory budget processes, public hearings, popular initiation of bills and neighbourhood impact studies.

64. During his visit the Special Rapporteur witnessed a contradiction with respect to participatory processes. Whereas democracy and civil society movements are strong and whereas the Federal Government tries to ensure participation in decision-making through, inter alia, the holding of national conferences, there is a lack of real participation in planning and development at the local



and grass-roots level. Some positive examples of participation should nevertheless be mentioned, such as the self-construction project on the *Fazenda da Juta* (Juta Farm) in São Paulo funded by the Federal Government where 25,000 families enjoy considerably better living conditions through collective self-management. Such examples could be reproduced or adapted for use elsewhere in the country.

65. Also in São Paulo, the Municipal Housing Council was created by municipal law No. 13,425/02 as a result of a proposal approved at the First Municipal Housing Conference held in 2001 with the participation of more than 2,000 organizations and popular movements. The Council is composed of representatives of popular housing entities and other sectors of civil society - universities, NGOs, the private sector - and public authorities at all levels. The Council has both deliberative and monitoring powers and can contribute to the elaboration and supervision of municipal housing policies. The representatives of the popular housing entities were elected by direct vote of more than 31,000 people.

66. Other examples, however, point to the contrary. According to testimonies received, in cities such as Fortaleza and Salvador, civil society movements have been denied access to participation in development planning. In Fortaleza, the traditional Goiabeiras fishing community has been displaced to remote coastal regions to create space for a tourist centre. Proposals to consider the area a special interest zone have been ignored. At the time of the Special Rapporteur's visit, civil society organizations in Fortaleza were bringing a lawsuit against the municipality, via the Public Prosecutor, regarding the failure to respect the right to participation. In Salvador, inhabitants of the Pelourinho neighbourhood, a declared historic site, demand that the planning process with respect to the heritage restoration policy and the promotion of tourism in the area should also include the people living in the neighbourhood, and that no further displacement take place. The demand for full participation in the development of the city's master plan has not been fulfilled despite, in the case of Salvador, a court order to the contrary.

67. During the visit it became evident that the communities most in need of special attention because of their vulnerability (such as indigenous and Afro-Brazilian communities, and particularly women within these groups) are those not being consulted. As a result, they do not see their interests reflected or protected in the plans being developed. These groups require effective empowerment processes to be able to participate actively in decision-making.

## **IX. FORCED EVICTIONS**

68. During the Special Rapporteur's visit to Heliópolis - the largest favela in São Paulo - the long-term effects of forced eviction became evident. The first settlements took place in 1970/71, when 200 people were transferred to the area by the municipality from another slum, supposedly on a temporary basis. Fifteen years later the population had grown to 45,000 families. In 1993, police entered a section of Heliópolis in order to evict inhabitants. Though the municipality owned the land, most of the inhabitants had lived there for five years or more. The forced eviction attempt resulted in resistance by the inhabitants, clashes with armed police, arrests of community leaders, injuries and deaths. After an hour of fighting, a court ordered the eviction attempt suspended. Ten years later, the inhabitants still speak about the threat of eviction, although the section affected is no longer at risk. Today, Heliópolis is a mixture of slum dwellings - some in risk zones under power lines and close to river banks - and neighbourhoods that have been developed through joint voluntary community efforts (*mutirão*).

69. Heliópolis is divided into two parts, only one of which is covered by the municipality's urban development master plan for favelas. In the Ampara neighbourhood, which is not covered by the plan, the municipality has announced plans to construct a subway by 2006. Such construction would affect approximately 700 families, but no individual notice or eviction orders have been issued. Individual eviction orders are on the whole rare in favelas. According to testimonies, families are aware that they will be evicted but the municipality has not proposed any alternative housing. According to information received, the community proposal to resettle families nearby was ignored.

70. With respect to forced evictions more generally - including those affecting landless peasants and Quilombo communities living on ancestral lands, and evictions motivated by development for tourist resorts - 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.

71. According to the International Covenant on Economic, Social and Cultural Rights, to which Brazil is a party, legislation is an essential basis upon which to build a system of effective protection. According to general comments Nos. 4 and 7 of the Committee on Economic, Social and Cultural Rights, legislation against forced evictions should include measures that provide the greatest possible security of tenure to occupiers of houses and land, and should be designed to strictly control the circumstances under which evictions may be carried out. Legislation must also apply to all agents acting under the authority of the State or those accountable to it. Moreover, in view of declining government responsibility for housing in some States, States parties to the Covenant must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out without appropriate safeguards by private persons or bodies.

72. The establishment of procedural protections is essential, including the following: genuine consultation with those affected; adequate and reasonable eviction notice for all affected persons; information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, available in reasonable time to all those affected; presence of government officials or their representatives during an eviction, especially where groups of people are involved; proper identification of all persons carrying out the eviction; evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

## **X. SPECIAL GROUPS**

### **A. Indigenous peoples**

73. Today there are approximately 218 indigenous peoples in the country, located mainly in the northern and western border regions and in the upper Amazon Basin. Information is not available on all the indigenous peoples as some still live isolated in remote areas of the Amazon. Likewise, information is scarce about indigenous peoples living assimilated in major urban areas. The Brazilian Constitution has a special chapter on indigenous peoples. In accordance with article 231, indigenous lands are considered the property of the Federal Union, but "are intended for their

permanent possession and they shall be entitled to exclusive use of the riches of the soil, rivers and lakes". Deforestation of the Amazon is not only a serious environmental concern, but also severely disrupts the lives and livelihoods of indigenous peoples.

74. The Special Rapporteur visited indigenous communities in Bertioga, and was able to study the situation through meetings with relevant ministries and testimonies from indigenous groups. Together with the Ministry of Health, the National Health Foundation and the National Indian Foundation (FUNAI), the Ministry of Cities has started to provide housing for indigenous communities through the Solidarity Credit Programme and the Programme of Subsidies for Social-Interest Housing, targeting 200 indigenous families from the Kaiowá, Guarani and Terena tribes in the Dourados reserve in Mato Grosso do Sul. However, the slow process of demarcation of indigenous land still remains an important obstacle to the realization of housing rights for indigenous peoples, and there are indications that the process is stalling. In the 1½ years of its mandate, the current Minister of Justice only demarcated 93,800 hectares of indigenous land, whereas the previous Minister of Justice demarcated more than 11 million hectares during a similar time period. Brazil ratified Convention No. 169 of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries on 25 July 2002, and is therefore bound by its provisions to protect the human rights of all its indigenous peoples.

## **B. Quilombola communities**

75. Article 68 of the Temporary Provisions of the 1988 Constitution marked a symbolic departure from historical discrimination against slave descendants. The article guarantees the right of Quilombo communities to title to their traditional lands.

76. The Ministry of Cities and the Special Secretariat of Policies for the Promotion of Racial Equality spoke with enthusiasm about the so-called Kalunga Project, aiming to improve housing conditions for the predominantly Kalunga Quilombola communities concentrated in rural areas and the outskirts of large cities. This pilot initiative entails the provision of water and sanitation infrastructure, targeting 1,200 families during 2004 and 2005. Building on this pilot, it is envisaged that a larger-scale housing programme will be designed for other excluded ethnic and racial groups.

77. The Special Rapporteur visited Alcântara and the traditional Quilombola village of Mamuna and the resettled Marudá community. The establishment of the Alcântara Satellite Launch Centre led to the relocation of several traditional villages in the 1980s from areas expropriated by the air force. So-called Agrovilas - alternative relocation sites - were established. However, judging from the testimonies received, the Agrovilas constitute a flagrant example of short-term solutions becoming a long-term problem. The inhabitants of the Agrovilas, previously self-sufficient in their traditional villages with sufficient access to fish and fertile land, have now become dependent. Relocation, regardless of the means, is never an ideal solution. In the rare cases where such relocation can be justified, it must be done with full consultation and participation of the concerned population, in compliance with international human rights law. Only in this manner can one ensure that relocation, if unavoidable, results in an improved living situation of those affected, as opposed to a regression and loss of livelihood.

78. The Special Rapporteur is encouraged by the fact that following his mission, by a presidential decree dated 27 August 2004, an interministerial working group has been established for the sustainable development of the Municipality of Alcântara, coordinated by the Civil Office of the Presidency of the Republic but with wide ministerial participation, including the Ministry of Science and Technology and the Ministry of Defence. The interministerial working group has been divided into subgroups, one of which is specifically focusing on the environment, housing and land issues. The Special Rapporteur would like to be kept informed about the progress of the interministerial body and strongly recommends that its work be based on existing human rights obligations and that it respect the entitlements of the Quilombola communities under decree No. 4887/2003 to avoid further forced evictions and dislocation. **The Special Rapporteur would like to further recommend that the Government, in addressing the housing and living conditions of all Quilombola communities in Brazil, follow the human rights provisions of the Constitution and international human rights law, as well as the guidance offered by general recommendation XXIX on descent of the Committee on the Elimination of Racial Discrimination.**

## **XI. CONCLUSIONS AND RECOMMENDATIONS**

79. **The challenges facing Brazil in the housing and, where applicable, land sectors are overwhelming, with widespread poverty, inequalities, an enormous housing deficit, and historical discrimination against indigenous peoples and Afro-Brazilians driving a debilitating crisis related to the failure to realize the land rights of the poor. Addressing these issues from a human rights perspective, based on the principles of indivisibility and interrelatedness of human rights, will help the Government to ensure that emphasis is given to the poorest segments of society. A holistic approach to meeting international human rights obligations should inform the Government's policies and actions at all levels, including budgetary allocations and decisions regarding housing, land, water, sanitation, electricity and protection from evictions, as well as services for women and vulnerable communities on a priority basis.**

80. **The Special Rapporteur welcomes the commitment of the Government of Brazil to human rights, and in particular, the demonstrated political will of the Ministry of Cities to address his concerns. He hopes that this report will serve as the beginning of a fruitful collaboration with the Government. In the spirit of constructive dialogue, and in addition to the recommendations contained throughout the report, the Special Rapporteur respectfully submits the following recommendations for the consideration of the Government of Brazil and other concerned parties:**

(a) **In order to ensure a holistic implementation of the right to adequate housing, there is an urgent need for a comprehensive national housing policy encompassing both urban and rural considerations, and equally comprehensive national housing legislation binding together existing laws and programmes. The Special Rapporteur encourages the development of the new National Housing Policy but reminds the Government that such an overarching instrument needs to incorporate relevant international human rights law and reflect relevant general comments and general recommendations issued by human rights treaty monitoring bodies. In this regard, the Government should consider elaborating a housing allowance scheme to provide for housing improvements for the poorest segments of society. The Special Rapporteur supports the use of the**

**Workers Guarantee Fund to provide resources to the National Popular Housing Fund, and also recommends that the Ministry of Cities and the National Cities Council have the competence to determine the use of resources from the Fund;**

**(b) The process of land and agrarian reform needs to be enhanced, including through the allocation of adequate resources for the Urbanization, Regularization and Integration of Precarious Settlements Programme created to help municipalities carry out their land regularization programmes. Legislation that deals with different forms of tenure and land title must be revised in a way that will harmonize and simplify the issuance of title deeds, including in informal urban and rural settlements, indigenous lands and Quilombola communities. The Special Rapporteur supports recommendations previously made by other actors, including the Special Rapporteur on the right to food (see E/CN.4/2004/Add.1), indicating that there is an urgent need to speed up agrarian reform and related processes for expropriation and the granting of land titles. The Special Rapporteur recommends that an interministerial task force be established specifically to address the issues of redistribution of land and appropriation of large land holdings in accordance with constitutional provisions that guarantee the social function of land;**

**(c) Housing policies and programmes, including housing finance schemes, should strengthen their focus on the poor and vulnerable segments of the population. A reduction of the budgetary surplus target would release funds to ensure the progressive realization of economic, social and cultural rights, including housing, for the very poor, while still respecting surplus conditions imposed by international financial institutions;**

**(d) Urgent attention must be given to those living in distressed housing and living conditions, including the homeless, slum dwellers, and families living in temporary rural camps (*acampamentos*) without basic amenities pending the allocation of land. The Government, in addition to programmes such as the National Programme to Support Sustainable Land Regularization and the Rural Housing Programme, may wish to elaborate a national policy on the regularization of land occupations;**

**(e) The Government should proceed with utmost caution regarding privatization of housing and essential services related to the enjoyment of the right to adequate housing, such as water, electricity and sanitation. Protective measures and guarantees must be established to ensure that the National Programme of Privatization does not compromise human rights, in particular those of minorities, women and the poor;**

**(f) There is a need to strengthen interministerial cooperation to ensure that attention is focused on the human rights of indigenous peoples in Brazil. The Special Rapporteur would like to urge the Government to consider creating a special secretariat to allow for a comprehensive approach in matters relating to the human rights of indigenous peoples, including housing and land rights;**

**(g) The Programme of Subsidies for Social-Interest Housing should be expanded to include more families;**

**(h) The international community should support the efforts of the Government of Brazil to de-link initiatives relevant to meeting the Millennium Development Goals from those aimed at debt repayment;**

**(i) The Public Prosecutor should be given an explicit mandate to protect economic, social and cultural rights, including the right to adequate housing. Extensive training and awareness-building for the judiciary with respect to the right to adequate housing as a component of the right to an adequate standard of living is imperative. In addition to agrarian courts, the Government is encouraged to create special courts to deal with land-related issues including adverse possession, land demarcation and regularization conflicts, disputes over judicial records of urban and rural land conflicts, and forced evictions and displacement;**

**(j) There is need for education and training for civil servants and local government officials to ensure effective implementation of the Statute of the City. Master plans must reflect the territorial, economic and cultural realities of local communities.**

#### Notes

<sup>1</sup> World Guide 2005-2006.

<sup>2</sup> United Nations Development Framework, 2002-2006, Brazil, 13 February 2002, p. 6.

<sup>3</sup> Initial periodic report of Brazil to the Committee on Economic, Social and Cultural Rights (CESCR) (E/1990/5/Add.53), para. 502 (21 November 2001).

<sup>4</sup> Inter-American Commission on Human Rights, Special Report on the Situation of Human Rights in Brazil, OAS Doc. OEA/Ser.L/V/II.97, rev.1, 29 September 1997.

<sup>5</sup> United Nations Development Framework, 2002-2006, Brazil, 13 February 2002, p. 4.

<sup>6</sup> For detailed guidance on State obligations with respect to water and sanitation, see CESCR, general comment No. 15 on the right to water.

<sup>7</sup> "Brazil: The implicit agenda of a conservative patrimonial reform" in *Social Watch 2003 - The Poor and the Market*, Third World Institute.

<sup>8</sup> Economic Commission for Latin America and the Caribbean on-line database, 2001 (<http://www.cepal.org/>).

<sup>9</sup> Peasant Mobilization for Land Reform: Historical Case Studies and Theoretical Considerations - Discussion Paper, United Nations Research Institute for Social Development, June 1999, pp. 27-29.

<sup>10</sup> Global Justice Centre, Official Correspondence JG/RJ 226/04.

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