

Letter n. JG 14/14

Rio de Janeiro, April 10th 2014

Mrs. Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers

Mrs. Raquel Rolnik, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Via e-mail: SRindependenceJL@ohchr.org, srhousing@ohchr.org, urgent-action@ohchr.org

Ref.: Urgent Appeal – Violation of Public Defenders Independence and Internal Interference in Rio de Janeiro’s Public Defender’s Office, Ongoing Risk regarding housing rights in poor communities

Dear Mrs. Special Rapporteur,

Justiça Global hereby presents an urgent appeal regarding a recent episode of violation of Public Defenders independence in Rio de Janeiro’s Public Defender’s Office and the ongoing risk of its repetition, hampering the legal defence of housing rights for poor communities threatened with forced evictions in Rio de Janeiro.

Perpetrator: *General Public Defender for Public Defender’s Office of the State of Rio de Janeiro (Mr. Nilson Bruno) and Land and Housing Specialized Unit Coordinator (Sr. Alexandre Angeli)*

Requesting organization: *Justiça Global*

Affected by the episode: *Vila Autódromo, Indiana and Providencia communities; Public Defenders from Rio de Janeiro’s Public Defender’s Office Land and Housing Specialized Unit (in Portuguese, Núcleo de Terras e Habitação – NUTH).*

Circumstances: *Undue interference developed by the General Public Defender and NUTH’s coordinator in judicial suits carried out by all public defenders acting in NUTH (except for Indiana community, which belongs exclusively to another jurisdiction), in clear opposition to the ensurance of technical defense at all times of the prosecution (“defensor natural da causa” principle) and to the public defender’s functional independence, as detailed below*

Background: the Brazilian Public Defender's Office

Throughout the Brazilian history, there have been several legal provisions guaranteeing the right to free legal aid in both criminal and civil jurisdiction. However, only with 1988 Federal Constitution did the country establish a nationwide model, supported by the State. The Public Defender's Office is today the institution which allows the State to provide free legal advice and guidance to the part of the population that can't afford to pay for the service. Since 2004, with the Constitution's amendment number 45, the Public Defender's Office enjoys functional and administrative autonomy, in equal footing with the Judiciary and the Public Prosecutor's Office¹.

Public defenders are selected through a strict public competitive examination, comprised of tests and titles. After taking possession, public defenders hold public prerogatives to ensure autonomy and participative action in favor of the beneficiaries of its judicial actions. In this context, the Public Defender General, chief representative of the institution, is usually nominated through a two-step procedure that involves the elaboration of a three-name list (the names are voted by the public defenders themselves) and the appointment by the Executive. The current General Public Defender of the State of Rio de Janeiro, Mr. Nilson Bruno Filho, was appointed to a first mandate (2011/2012) and reappointed for a second one (2013/2014).

Urban Land Conflict and the performance of Rio de Janeiro's Public Defender's Office Land and Housing Specialized Unit (NUTH)

As a result of the mobilization of the 80s in the fight against the dictatorship's authoritarianism and its forced evictions, the Public Defender's Office of the State of Rio de Janeiro created in 1989 its Land and Housing Specialized Unit (NUTH), with the responsibility to follow urban land conflicts suits, protection of the right to adequate housing and land tenure regularization in slum communities. From 2007 on, with the expansion of its team, NUTH started to act in defense of about 200 communities in Rio de Janeiro.

¹ Art. 134, Par. 2: The public legal defense of each state shall be ensured of functional and administrative autonomy, as well as the prerogative to present its budget proposal within the limits set forth in the law of budgetary directives and in due compliance with the provisions of article 99, paragraph 2.

The case of Vila Autódromo community is paradigmatic and illustrates the persistence of urban land conflict in Rio de Janeiro. The attempt to remove the community's families dates from 1993, when the Municipality claimed "aesthetic and environmental damage" to remove Vila Autódromo from Barra da Tijuca, a neighbourhood that was emerging as a promise of great profit to the real estate market. Not only the community withstood the onslaught, but also legalized its land plots, with the support of NUTH. From the 90s to the present day, there have been several attempts to remove the community (all unsuccessful), the most recent of them related to the preparations for the Olympic Games that will take place in Rio de Janeiro in 2016.

In 2010, political and real estate pressure towards Vila Autódromo was such that NUTH wrote to the International Olympic Committee (IOC) denouncing the violation of international law and ethical principles explicitly advocated by the Committee. As a result of these efforts, the IOC sent two letters questioning the Mayor of the city of Rio de Janeiro and the Governor of the state of Rio de Janeiro, causing embarrassment to both State Representatives. With the possession of new General Public Defender Mr. Nilson Bruno, NUTH started to suffer threats of significative personnel reduction, internal political pressure and lack of support for their work.

After taking possession, the new General Public Defender announced that NUTH's team would be reduced. Social movements and civil society protested against this reduction, recalling the recently awarded Tiradentes Medal to NUTH Staff by Municipal Legislative in recognition for his important work in defense of the right to adequate housing. Due to the forced removal of one of NUTH's public defender, sponsored by the General Public Defender, the defenders who worked in the organ choose to handover the post altogether, to express the lack of reasonable work conditions. The General Public Defender's response was the dismissal of all NUTH's trainees and administrative staff, as well as the initiation of administrative proceedings against public defenders who had expressed their opposition to the intervention.

After this strong crisis, NUTH was restructured into a smaller team, comprised of three public defenders appointed by the General Public Defender and three other Public Defenders chosen through internal contest. In spite of that, through their daily performance, NUTH continued to work in cases regarding Vila Autódromo, as well as in other relevant cases such as Providência and Indiana (Tijuca), obtaining important judgments against the Municipality and compelling it to submit urbanistic projects previously to the resettlement, to attend public hearings and to suspend demolition of houses in the disputed area.

Public Defenders' Office of the State of Rio de Janeiro acting in breach of its legal duties and in favour of the Municipality

Since he assumed the post in 2011, every time when a conflict of interest with the Executive occurred, the General Public Defender Mr. Nilson Bruno would act in breach of the principle of public defender's functional autonomy. Some examples of this favoritism are: he personally joined the City Hall in the activity "Public Defender' Office and City Hall: together for the World Cup and Olympics," in spite of the acknowledgement of the relationship between these two events and the communities' forced evictions; he also attended events organized by the Government exalting the evictions' projects (despite NUTH's previous actions to prevent the same evictions' projects). In other words, the head of the public body responsible for the legal defense of communities threatened with eviction expressed himself, in public and several times, in favor of the City Hall's evictions projects. This fact in itself demonstrates that the General Public Defender was taking a stand against the very people who were defended by the Public Defenders' Office, which demonstrates an attempt to hamper the Public Defenders' Office jurisdictional assistance.

The culmination of this process occurred last March 25th, when the General Public Defender, along with NUTH's current coordinators, requested the suspension of an injunction that had been obtained by the Public Defenders' Office in the context of a judicial suit regarding Vila Autódromo. The argument used to suspend the injunction was to assure the rights of the residents who wanted to leave the community and supposedly were unable to do so due to the injunction. It is important to register that the challenged injunction didn't prevent these residents to move out. The injunction had been obtained some days before (March 21, 2014) and aimed at preventing the demolition of the houses until the Municipality provided a list of the residents of Vila Autódromo who voluntarily accepted the resettlement.

It is also worth mentioning that NUTH's coordination itself, together with the Public Defender in charge, held regular meetings with Vila Autodromo's Residents Association and with those who wished to remain in the community, in order to ensure that both sides would have its rights assured: those who wished to remain in the community and those who wanted to leave.

Thus, the role of NUTH' coordination bringing down the injunction, based on false argument and promoting the confrontation among Vila Autodromo's residents, confronted the interest of its beneficiaries by law (in this specific case, the residents) and was highly questionable from all points of view, but especially from the point of view of ethics in advocacy. It's important to highlight that the President of the Association of Residents (who wish to remain in the territory), as well as its director or other resident were never invited to a conversation on the topic or communicated about the injunction's suspension.

In this sense, there is great concern about the repetition of this situation in similar cases, such as Providência and Indiana communities, where there are also injunctions conditioning houses demolitions to the handling of papers by the Municipality. In the case of Providência, NUTH' coordinator signed an agreement with the Municipality, despite the Public Defenders in charge, the Residents Commission and the Technical Advise Body disagreement about it. As for Indiana community, there is evidence that the same strategy will be used to hamper public defender in charge independent and autonomous functional role.

The International Human Rights violations due to Public Defenders Office Act in breach of its legal duties

The Public Defenders' Office main function is to ensure access to justice and legal defense, thereby safeguarding the Rule of Law and the protection of human rights. Indeed, the right of access to justice is established in various International Human Rights Law instruments, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). The access to justice is of such importance that its breach means a human rights violation in itself, but also the basis for the use of international human rights systems.

During his visit to Brazil in 2004, the Special Rapporteur on the Independence of Judges and Lawyers highlighted as core weaknesses of the Brazilian justice system the difficulty of access to justice based on social, economic, cultural or exclusion grounds (Doc. A/CN.4 / 2005/60/Add. 3 of 22 February 2005). At that time, he also noted that the situation is exacerbated in the case of social movements, “who are doubly victimized by a judicial system that reproduces in the administration of justice the discrimination they already suffer in society”. (Idem, p. 2). Finally, in this document the then Rapporteur Leandro Despouy highlighted the role of a strong Public Defense Office , in the context of a very unequal country with a significative part of the population under the poverty line.

Although there is no international standard under the Universal Human Rights System addressing specifically the role of the Public Defenders Office, the Guidelines on the Role of Prosecutors², Basic Principles on the Independence of the Judiciary³ and Basic Principles on the Role of Lawyers⁴ offer an important

² Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

³ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

guidance. In these three documents, their acting free of intimidation and of undue interference is guaranteed.

In the case of prosecutors, the Guidelines establishes that “States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability”⁵ and the first of the Basic Principles treats the independence of the Judiciary as a duty of all institutions and governments, banning “any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”⁶ and “any inappropriate or unwarranted interference with the judicial process”⁷. As to the Lawyers' performance, “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”⁸.

The concern about undue interference in the performance of judges and lawyers had already been expressed by this Rapporteur⁹. The respect granted by international norms to judges and prosecutors' independence should be extended likewise to public defenders. The concern expressed by the Rapporteur about guaranteeing the independence inside the Judiciary, preventing the internal hierarchy to hamper functional independence (“independence of judges needs to be protected both from outside and internal interference. For both, adequate structures within the judiciary are decisive”¹⁰) should also be applied to Public Defenders Office¹¹, through analogy with the “natural judge” principle¹² allowing for the Public Defender in charge (selected according the internal rules cases distribution) to act free of undue interference.

⁴ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)

⁵ Art. 4, Guidelines on the Role of Prosecutors

⁶ Principle 2, Basic Principles on the Independence of the Judiciary

⁷ Princípio 4, Basic Principles on the Independence of the Judiciary

⁸ Princípio 16, Basic Principles on the Role of Lawyers

⁹ UN, Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2004/60, 31 de dezembro de 2003), par. 48.

¹⁰ UN, Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy (A/HRC/11/41, 24 de março de 2009), par. 48.

¹¹ In the same line, par. 6 of Beijing Statement disposes that: “In the decision-making process, any hierarchical organisation of the judiciary and any difference in grade or rank shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgement in accordance with Article 3 (a). The judiciary, on its part, individually and collectively, shall exercise its functions in accordance with the Constitution and the law”. Beijing Statement of Principles of The Independence of The Judiciary In The Lawasia Region, released following the 6th Biennial Conferences of Chief Justices of Asia and the Pacific, held in 1995, and amended at the 7th Biennial Conference, held in Manila, 1997.

¹² Basic Principles on the Independence of the Judiciary, Principle 5.

As to the right to adequate housing, the then Special Rapporteur on the topic, Miloon Kothari, stated the following regarding its visit to Brazil in 2004: "the need for faster progress with respect to the realization of land rights and land reforms; greater attention to the linkages between land, rural and urban poverty and the realization of the right to adequate housing; the very great extent of inadequate and insecure housing and living conditions prevailing in many urban and rural areas".

While analysing the content of the right to adequate housing, the Economic and Social Rights Committee has identified one aspect (among many other pre-requisites): legal security of tenure. As expressed in General Comment n. 4, "Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups".

In General Comment n. 7, specifically about forced evictions, the CESCR understood that: "The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions", which clearly it's not the case in the present situation.

To weaken and distort the Public Defender's Office is the easiest way to impede the right to access to justice, especially when human rights defense against State arbitrary actions are at stake. By acting in contradiction with the functional autonomy and independence ensured by Brazilian Law and, even implicitly, by International law, the General Public Defender and NUTH's coordinator deviated from its role of advocate for the most needed to that of Advocate for the Executive Power in charge. This situation represents both a breach of national and international Law.

Given the unequivocal occurrence of human rights violations and the imminence of serious damages to the rights of access to justice and of adequate housing regarding the inhabitants of Vila Autódromo community, Indiana community and Providência community, we respectfully request an urgent action to demand the Brazilian State to:

1. Offers explanations on the facts above narrated;
2. Adopt urgent measures to prevent the occurrence of further violations.

We also request the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on adequate housing:

3. That the facts described are made public through a press release;
4. That, once the proper investigations are developed, its results are included in its respective annual reports to the Human Rights Council.

If you need any further information on the facts described above, please contact us by phone (+55-21-25442320) or via e-mail (juridico@global.org.br, marisa@global.org.br, eduardo@global.org.br).

Yours sincerely,



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