



Public Legal Defense of the Union

Public Legal Defense of the Union in Minas Gerais/Defensoria Pública da União em Minas Gerais

Belo Horizonte, Capital of the State of Minas Gerais, Brazil, June 22nd, 2015

To: Ms. Leilani Farha, 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: urgent-action@ohchr.org; srhousing@ohchr.org

Re: Imminent Forced Evictions of the 8,000 People living at Isidoro Region due to a judicial decision that violates human rights

Dear Special Rapporteur Ms. Farha:

The Office of the Federal Public Defenders in Belo Horizonte respectfully submit this urgent appeal to United Nations Special Procedures on behalf of the 8,000 families living in the three urban informal settlements (Occupations Esperança, Vitória e Rosa Leão) located in the Region Isidoro, in Belo Horizonte and Santa Luzia.

The families imminently face forced eviction from their homes due to a judicial decision that violates various human rights and procedural norms, both national and international. The execution of the order by the Military Police of Minas Gerais and the Executive Power of Belo Horizonte is to happen on June 22nd or any following day.

The Federal Public Defender's Office attended a meeting at the Headquarters of the Military Police of Minas Gerais on June 19th, 2015, opportunity when the Police Commander stated that the eviction is imminent.

Today, June 22nd, the Federal Public Defender's office attended another meeting with various authorities in which the representative of the State of Minas Gerais stated that the order would not be executed within the next 15 days so that the parties involved may attempt a negotiated solution for the conflict.



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Nonetheless, the judicial order was not revoked and the authorities of the city of Belo Horizonte, directly interested in the eviction, were not present and, therefore, did not commit themselves to this agreement. It is important to call attention to the fact that, according to the Brazilian Constitution (article 34, VI), any failure to comply with a judicial order or decision is sufficient reason for the Union to intervene in the states.

Finally, we kindly inform that Coletivo Margarida Alves de Assessoria Popular submitted a previous appeal regarding the same settlements last year.

Nonetheless, this new request is necessary due to recent facts which occurred last week and constitute several serious human rights violations. We emphasize that thousands of families are threatened to lose their homes at any time, characterizing thus the urgency of the present appeal.

1. Who are the victims

The victims comprise, according to information provided by the social movement involved in the conflict, the 8,000 families living in three urban informal settlements in the cities of Belo Horizonte and Santa Luzia, both located in the state of Minas Gerais, Brazil.

Among the dwellers, there is a large number of women, many of whom single mothers, children and elderly people. All the families find themselves in conditions of extreme vulnerability given the situation of the irregular occupation itself, lack of access to basic services, and the daily fear of being violently evicted.

The settlements are called Esperança, Vitória and Rosa Leão, and all of them are located in the area known as Mata da Granja Werneck, in the region Isidoro.

The stream Isidoro, part of the Rio das Velhas drainage basin, runs through the area, which constitutes a residue of the original forest in the northern part of the city of Belo Horizonte that borders the city of Santa Luzia. The occupied areas belong to Belo Horizonte and to three private owners, including the Werneck family.



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Places available for construction in the city of Belo Horizonte are becoming more and more limited each day, and the so-called “Urban Operation of Isidoro” comprises a green area of 950 hectares. There is an enormous real state enterprise project called “Granja Werneck”, which covers approximately 350 hectares of this area and is run by a company named “Direcional.”

Altogether, according to the social movements providing political support to the occupations, there are approximately 20,000 people living in the settlements. It is estimated that around 5,000 dwellings have been built in the area thus far, where the families have been living for more than two years now. More information on each of the settlement can be found at:

<http://ocupacaoatoria.blogspot.com.br/>
<http://www.ocupacaoesperanca.blogspot.com.br/>
<http://www.ocupacaorosaleao.blogspot.com.br/>

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The exact number of families involved in the conflict remains nonetheless unknown. This office, together with the State Public Defenders’ office, urged that an independent survey be conducted to determine not only the exact amount of people involved but also their living and social conditions, consequently grounding the deriving measures to be taken. During several visits to the occupations, including one mission of the team of the Public Legal Defense of the Union, Public Defenders have clearly observed that thousands of poor people, without housing alternatives, live in the three settlements.

It is important to emphasize that the public authorities responsible for housing policies did not take any initiative to conduct a specific study aiming to clarify the exact number of people living in the area. Therefore, the decisions concerning it have been taken without any reliable data.

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To make the situation even more serious, the judicial power remains insensible to this claim. Given these circumstances, it is certain that the announced judicial measures to be put into effect against this population are NOT based on solid data that takes into account the social consequences of a conflict of this type.

The families living in these settlements are going through a period of extreme torment and distress in face of imminent forced eviction, which violates the guidelines of General Comment n. 7 of the United Nations Committee on Economic, Social and Cultural Rights regarding forced eviction, as well as various other national and international norms, as will be demonstrated next.

2. On the imminence of forced eviction without the observance of international and national laws

As widely known, the right to housing is guaranteed as a fundamental human right in various international legal instruments, namely:

1) Universal Declaration of Human Rights: "Article XXV: (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

2) International Covenant on Economic, Social and Cultural Rights: "Article 11.1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

Autore
S. C. Vieira



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3) The American Convention on Human Rights (Pact of San Jose, Costa Rica) establishes in its article 11, 2, that “2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”

4) The International Covenant on Civil and Political Rights goes beyond the previous norm and prohibits arbitrary or illegal interference with an individual's home: “Article 17. 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.”

5) The International Convention on the Elimination of All Forms of Racial Discrimination defines the guarantee of the right to housing as an obligation of the signatory state parties, according to article 5: “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (e) Economic, social and cultural rights, in particular: [...] (iii) The right to housing;”

6) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) establishes: “Article 14. [...] 2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: [...] (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

7) According to the Convention on the Rights of the Child, “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.” (Art. 16, 1)



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8) Along the same lines, Article 27, 3 of the above mentioned Convention determines that the signatory states must adopt every and all measures in order to implement the right to an adequate standard of living, providing material assistance and support programmes, particularly regarding nutrition, clothing and housing.

9) It is important to call attention to the fact that, even under conditions of war, the state which occupies the territory of another state cannot arbitrarily remove the families of the occupied area, as prescribed by article 49 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949).

10) According to the United Nations Millennium Declaration it is scope of the United Nations “ By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the "Cities Without Slums" initiative.”

As for the national legal system, it is worth mentioning:

1) The 1988 Constitution of the Republic, after the Constitutional Amendment 26, guarantees the right to housing as a fundamental social right (Article 6), along with education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute education.

2) More important though is that even before the referred Amendment, the 1988 Constitution already defined the right to housing in Article 7, IV: “Art. 7. The following are rights of urban and rural workers, among others that aim to improve their social conditions: [...] IV – nationally unified minimum wage, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodical adjustments to maintain its purchasing power, it being forbidden to use it as an index for any purpose;”

3) Furthermore, the 1988 Constitution determines in its Article 23, IX e X: “Art. 23. The Union, the states, the Federal District and the municipalities, in common, have the power:: (...) IX - to promote housing construction programs and the improvement of housing and basic sanitation conditions; X - to fight the causes of poverty and the factors



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leading to substandard living conditions, promoting the social integration of the unprivileged sectors of the population;”

4) The City Statute (Federal Law n. 10.257, 2001) regulates articles 182 and 183 of the Constitution and establishes the parameters and guidelines for the urban policy in Brazil: “Art. 182. The urban development policy carried out by the municipal government, according to general guidelines set forth in the law, is aimed at ordaining the full development of the social functions of the city and ensuring the well-being of its inhabitants. [...] Paragraph 2 - Urban property performs its social function when it meets the fundamental requirements for the ordainment of the city as set forth in the master plan.”

Notwithstanding the international covenants of which Brazil is signatory, as well as the national legislation, the Brazilian State continues to violate the right of countless citizens who cannot afford to pay for housing. These families are left with no alternative other than to occupy vacant dwellings and land, which are numerous in Brazil.

In the state of Minas Gerais alone there is a housing deficit of 474,000 units, while the number of vacant dwellings is nothing less than 585,877 units. In the metropolitan region of Belo Horizonte, where the three aforementioned settlements are located, there is a deficit of 115,000 homes and, on the other hand, 168,206 vacant landed properties. (FJP, 2008)

In this sense, the informal settlements of Isidoro (Rosa Leão, Vitória, Esperança) are part of a greater social justice issue. Given, first, the inability of the families to afford to proper housing and, second, the inefficiency of existing governmental housing programs in responding to the demands of the families in need, the urban workers and poor people have no alternative other than to occupy vacant land that does not fulfill its social function.

This is exactly the case of the area known as “Granja Werneck” where, as already mentioned before, around 20,000 people currently live in the 5,000 brick homes built by them. For these low-income families, the informal settlement became an alternative – maybe the only possible one – to have access to a home.



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In such context, the constituted powers need to develop negotiated solutions for this sector of the population, acknowledging that it is a social issue. As such, it has to be resolved with public social policy and not with police repression and violence. Unfortunately, social movements that fight for housing have been criminalized by the state.

The eviction of the families living at the Isidoro settlements was initially planned for August 2014, occasion when Coletivo Margarida Alves de Assessoria Popular submitted an urgent appeal to this special rapporteur. The referred order, then suspended due to a judicial decision issued by the Court of Childhood and Youth, is now valid again, after the favorable decision was revised by the State Court of Appeal.

At this point, it is important to mention that the State Judge responsible for the case and for issuing the judicial order to be fulfilled, Mrs. Luzia Divina de Paula Peixoto, overtly declared that social movements are “a bunch of lazybones and unemployed”. This declaration provided the necessary legal basis for an exception of suspicion against the Judge, which, unfortunately, was rejected by the State Court.

In March 2015, the Government of the State of Minas Gerais initiated a negotiation procedure with representatives of the Isidoro settlements. Nonetheless the government’s proposal does not lay down a concrete and effective plan either for temporary or definitive resettlement of the families. The plan also does not effectively demonstrate which are the criteria for resettlement as well as the families to be contemplated.

Indeed, the government’s proposal consists in a plan for constructing buildings¹ above the houses that already exist in the area, using resources from a federal housing program called “Minha Casa Minha Vida”.

According to the State government, only part of the people from the existing three settlements would be contemplated, but the State government depends on the city government to implement this policy, and the city government does not agree with it.

Besides, all the families who do not have children, such as young couples, old-aged people or individuals living alone, would not be contemplated.

¹ Containing apartments of forty seven square meters.



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As for the families with children, the plan neither really explains how they are going to be resettled nor offers any guarantee, with formal documents, that they will be contemplated.

Finally, the government does not mention how the evicted families are going to be temporary resettled, while the new buildings are built.

To add insult to injury, the government did not accept to receive the proposal made by a group of architects from the universities, which is in line with the needs of the settlements. Reason why, in fact, there was no real negotiation, in the viewpoint of this office.

It must be mentioned that to join the above federal housing program the families must prove a minimal monthly wage, which would be hard to many of them. Most of the people living at Isidoro have very low income and work in the informal sector.

Moreover, the city government is the entity responsible for keeping and managing the lists containing the names of the people who would be contemplated by the mentioned housing program. However, according to various public speeches, the city government is overtly against the social movement built around the Isidoro settlements, and has the announced intention to forcibly remove them without including them in the municipal housing policy.

Last Friday, June 19th, at the Headquarters of the Military Police of Minas Gerais, it was announced that the operation to vacate the area would take place this week. However, no concrete and detailed plan for the removal and relocation of the families was presented up until the submission of this urgent appeal, in a clear violation of the “Basic principles and guidelines on development-based evictions and displacement”.

While it was announced that the terms of a peaceful and orderly eviction were to be discussed at a meeting with the Police Commander, in fact, referred meeting was reduced to a public announcement that the order of eviction would soon be executed. Serious concerns were raised about the children living in the area and, again, the police authority simply reassured that the order would be enforced at all costs.



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The case became even more serious when the families living at Isidoro, along with social movements supporting them, were violently repressed by the police last Friday, June 19th.

During a peaceful march that was held near the headquarters of the State Government, the police attacked protestors, resulting in more than 50 people injured, including children and elderly.

Tear gas and rubber bullets were unreasonably used to contain the legitimate demonstration, as documented in videos available on the web. See for example:

<http://g1.globo.com/minas-gerais/noticia/2015/06/protesto-da-ocupacao-izidora-em-bh-e-marcado-por-confronto-na-mg-010.html>

http://www.em.com.br/app/noticia/gerais/2015/06/19/interna_gerais,659916/integrantes-de-ocupacoes-bloqueiam-mg-010-e-queimam-onibus-em-protesto.shtml

During and after this event, 30 people – under and overage – were detained, many of them social movement leaders. The detentions were arbitrary and not clearly motivated. At the present moment, according to information provided by representatives of the social movements involved, only one person remains in detention.

The use of extreme violence against the demonstration last Friday (June 19) grounds our deep worry that a possible forced eviction will be marked by serious and gross human rights violations.

In fact, as we present this urgent appeal, the families living in the settlements are being subjected to extreme psychic violence and feeling of permanent insecurity. There are helicopters monitoring the area day and night, and there is also strong (and unjustified) presence of the Military Police force.



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Despite being fearful of an unexpected eviction, the dwellers will remain in the area because no reasonable alternative has been offered to them by public officials. The alternative itself may be a new home, a temporary shelter or even a place to store their belongings. The elderly, the children and the disabled are the ones who most suffer with the situation.

The facts narrated above all contradict what is established in the “Guidelines for services in public security n. 3.01.02/2011 – CG”, which regulates the use of military police force in Minas Gerais in urban and rural occupied properties:

NATIONAL GUIDELINES FOR THE EXECUTION OF COLLECTIVE EVICTION JUDICIAL ORDERS.

[...] 6 – ON THE EXECUTION OF THE MEASURE

The judicial orders ought to be enforced during weekdays, from 6 am to 6 pm, being permitted to extend this time for the conclusion of the operation. The police authority responsible for the operation will notify the execution of the order to the workers, the petitioner and all other concerned individuals within a minimum of 48 hours.

The notification must contain:

- I – the jurisdiction, the judicial authority and the procedure in which the measure was determined;
- II – the number of families living in the area to be desocupped;
- III – the date and the time when the eviction will take place;
- IV – the identification of the police units who will function in the execution of the judicial order.

It is also important to mention the violation of State Law n. 13.604/2000, which determines that any and every forced eviction must be monitored by properly identified public servants, responsible for assuring the security of the citizens involved. These public servants should integrate a special commission, to be nominated specifically in all eviction procedures. In the present case, no special commission was created to oversee the eviction already ordered.

Art. 1st – It is hereby created a special commission to oversee all the eviction procedures in the case of areas invaded for rural or urban settlement in the state.

§ 1st – The special commission ought to be formed by three members, nominated by the governor of the state, who will represent the Three Powers, being the



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representative of the Legislative and of the Judiciary nominated, respectively, by the presidents of the Legislative Assembly and of the State Court of Appeal.

§ 2nd – The commission instituted by this law must be present in the police force operations that aim to vacate the areas invaded for rural or urban settlement.

In the international domain, the above described situation also violates the “Basic principles and guidelines on development-based evictions and displacement”, which establishes:

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B. Basic Human Rights Principles

[...] 16. All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. [...]

III. BEFORE THE EVICTIONS

[...] 43. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.

Along these lines, it is worth mentioning the 2010 Annual Report of the UN Special Rapporteur on Adequate Housing, focused on the impact of mega-events on the realization of the right to adequate housing:

32. Forced evictions are prima facie incompatible with the requirements of the International Covenant for Economic, Social and Cultural Rights and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law. The obligation of States to refrain from forced evictions applies in all circumstances, including in the context of mega-events. [...]

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33. Where evictions are justified, they must be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. Particularly, the following procedural protections should be applied: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice to be given to all affected persons prior to the scheduled date of eviction; (c) information on the



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proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, Government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Even when evictions are justified and practiced according to the appropriate procedural protections, they should not result in individuals being rendered homeless, and the State must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land is available.

Today (June 22nd), there was a meeting with deputies, representatives of social movements, and public authorities. Although the government of the state of Minas Gerais stated that a negotiation table will be reopened and the eviction order will not be enforced in the next 15 days, there was no formal agreement. Moreover, the representatives of the city of Belo Horizonte did not attend the meeting, and the judicial order of eviction remains in place.

Given the evident threat of forced eviction, already announced, without any guarantee for the people living at Isidoro, the Office of the Federal Public Defenders in Belo Horizonte pleads with this Special Rapporteur to take urgent action. The human rights of thousands of people living in the area need to be protected, as well as efforts to reopen effective negotiation with the city government should be made.

3. Conclusion

The operation for the eviction of these thousands of people is expected to happen at anytime in the next few days. It will be coordinated by the State Military Police force, upon the request of the city government of Belo Horizonte and the family Werneck to the State Judicial Power. The State Court of Appeals has already granted a provisional measure determining the eviction, in a procedure full of arbitrary and illegal acts.



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We emphasize that despite the government of Minas Gerais' announcement today that a negotiation table will be reopen and the eviction order will not be enforced in the next 15 days, no formal agreement was reached. The representatives of the city of Belo Horizonte did not attend the meeting at which this announcement was made, and there is still a judicial order of eviction.

In the present case, the eviction openly violates the guidelines for forced eviction designed by the Committee on Economic, Social and Cultural Rights (General Comments n. 7). It also offends various covenants of international humanitarian law, of which Brazil is a signatory state, as demonstrated in the reasons articulated above. The damages resulting from such an action are irreparable, and given the dwellers' commitment to defend their belongings and loved ones, violence and even death is foreseen.

Finally, it is important to clarify that there was no real specific and concrete proposal, by either state, city government or any other public authorities involved, to negotiate with the dwellers how the eviction should be conducted. The families living at Isidoro will be either evicted without an alternative housing, losing all the investment they have put into building their homes, or will be forgotten by the city government and its social assistance service, which is incapable of meeting the need of the enormous population living on the streets of Belo Horizonte.

For all that has been argued, and given the imminent possibility of a bloody eviction to take place, **(1)** we request the presence of a representative of this Special Rapporteur to oversee the actions of the city government and the police force beginning on June 22nd, 2015.

(2) Moreover, we also plead with this Special Rapporteur to issue an official note condemning the illegal operation of forced eviction of the families living at Isidoro, given that it violates national and international law.

(3) Finally, we request that a representative of this Special Rapporteur is sent to the location in order to effectively reopen the negotiation between the parties involved in the conflict.



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The Federal Public Defenders' Office, in a joint effort with the State Public Defenders' Office that is taking care of the judicial defense of the needy in the procedures running before the State Judicial Power, understanding that a negotiated solution must be articulated with federal housing policies, is available to contribute to an alternative that repels the presumed need to use force in this case.

4. Who are the perpetrators of the violations

- State Government of Minas Gerais, Governor Fernando Pimentel - Rodovia Prefeito Américo Gianetti, 3777 - Serra Verde Palácio Tiradentes - Cidade Administrativa - Belo Horizonte CEP 31.630-903 Telephone: (31) 3915-9040
- City Government of Belo Horizonte, Mayor Márcio Lacerda. General Attorney: Dr. Rúsvel Beltrame Rocha Address: Rua dos Timbiras, 628 Funcionários. 15º andar. Belo Horizonte - CEP: 30.140.060 Telephone: (31) 3277-4075 Email: rusvelb@pbh.gov.br
- City Government of Santa Luzia, Mayor Carlos Calixto - E-mail: gabinete@santaluzia.mg.gov.br; Telephone: (31) 3641-5291 Centro Administrativo - Avenida VIII, nº 50, Bairro Frimisa - Santa Luzia. MG - CEP 33.045-090.²
- Special Command of the Military Police of Minas Gerais, Commander Ricardo Machado - Headquarters of the General Command: Rodovia Pref. Américo Gianetti, nº 3701, Prédio Minas - Bairro Serra Verde - Cidade Administrativa - CEP: 31.630-900; Telephone: 31 3915 8050 / 3915 8051 E-mail: cg@pmmg.mg.gov.br Operational Headquarters: Praça Rio Branco, 100 - 3º piso (Terminal Rodoviário) Belo Horizonte/MG - Cep 30.111-050 Telephone: 31 9677.5237
- Judicial Power of Minas Gerais - Judge Luzia Divina de Paula Peixoto, 6ª Vara dos Feitos da Fazenda Pública Municipal de Belo Horizonte/MG. Avenida Afonso Pena,

² The city government of Santa Luzia is not part of the legal procedures, although the occupation is located in land that partly belongs to it. The mayor promised to support the dwellers, but has not taken any measure thus far.



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2918, 12º Andar. Belo Horizonte Email: vfazmunicipal6@tjmg.jus.br Phone number: (31)3194-7842 or 7852

5. Identification of the organization or individuals presenting the appeal

This appeal is presented by the Federal Public Defenders' Office in Minas Gerais, institution that, acting in the federal realm, according to Brazilian Constitution (articles 134 and 135), has the mission to enforce the human right inscribed in article 5, LXXIV³, providing legal assistance (before the Judicial Power and also through alternative methods of conflicts resolution, out of the Judicial Power, comprising all Law specialities) free of charge to the impoverished population of the country.

6. Public Authorities involved

All the authorities listed above are aware of the conflict.

Should you need any further information, please do not hesitate to contact us.

Estêvão Ferreira Couto
Federal Public Defender

Head of the Office of Human Rights and
Collective Action of the Public Legal Defense of
the Union in Minas Gerais

dhtcmg@dpu.gov.br

Lutiana Valadares Fernandes
Federal Public Defender

Head of the Second Office of Civil Matters of the
Public Legal Defense of the Union in Minas
Gerais

lutiana.fernandes@dpu.gov.br

³ "The State shall provide full and free-of-charge legal assistance to all who prove insufficiency of funds".