Answer for UN Thematic Report on the right to adequate housing

Being a youth focused initiative led and organised by a network of organisations around Brazil working with street connected children and adolescents, *Criança Não é de Rua National Campaign* and *São Martinho Beneficent Association* – which is an active organisation participating of the National Campaign aforementioned – have responded to the “Questionnaire for National Human Rights Institutions, UN agencies and civil society organisations in general” with a focus on their area of expertise: street connected youth in Brazil and more specifically in the city of Rio de Janeiro.

Street Child United, an Anglo-Brazilian charity and global movement for the rights of street connected children and adolescents, has offered its support on preparing and translating the following retorts.

**1.**

*Criança Não é de Rua (Children are not from the Streets) Brazilian National Campaign* uses the same definition given by the government which can be found in the National Policy for Street Population Inclusion being grounded on results from a survey led in 70 Brazilian cities with populations greater than 200,000 inhabitants collecting data from just over 30,000 people on the streets over 18 years. The document defines homeless as:

"Heterogeneous population group, characterized by its extreme poverty, the interruption or fragility of family ties and lack of regular conventional housing. These are people compelled to move to public places (streets, squares, cemeteries, etc.), degraded areas (sheds and abandoned buildings, ruins, etc.) that might occasionally use shelters and hostels for the night."

In Brazil, each city collects its own data and prepares its own census on their homeless population. The last national survey on the subject was held in 2008 by the Ministry of Social Development and Hunger Alleviation, which is part of the federal tier of government[[1]](#footnote-1).

Within the city of Rio de Janeiro, the latest research carried out was the "2013 Homelessness – A Right to the City"[[2]](#footnote-2) counting with 650 interviewers visiting 96 different areas in the city for 4 days in a row on alternate schedules in order to map the socioeconomic profile of the homeless population. The nominal and simplified questionnaire containing 12 questions used criteria such as gender, age, educational level, demographic characteristics, length of time on the streets, existence of disease and disability, among others. Children and adolescents aged 0-17 years old represented 6.7% of the city’s homeless population, totalling about 364 people.[[3]](#footnote-3)

**2.**

The experiences of the street residents in the city of Rio de Janeiro have been documented by the Institute for Labour Studies and Society for the Municipal Social Development in Rio de Janeiro, an executive body of the municipal tier of government.

When analysed, the profile of homelessness situation Rio suggests most are men (81%), aged 25-59 years (69.6%), born in the city of Rio de Janeiro (64.42%) and attended up to middle school level of education (75.11%). It is not possible to determine how many of these are children/adolescents, nor their race, economic status and substance abuse given the survey did not analyse given information.

**3.**

We must recognize from the implementation of CRFB/88 – Brazilian National Constitution – there have been significant improvements. However, the progresses in the legislation of the right to housing did not affect positively housing conditions and access to urban services for the population. "The results are below expectations with housing deficit estimated at about 7.9 million homes. In the country there is still a set of unmet housing needs, which constitute violations of the right to housing, affecting – above all – the poorest of the population and those living in precarious settlements. In Brazilian urban areas there are still 54.6 million Brazilians who live with at least one type of housing inadequacy ", says Maria da Piedade Morais, coordinator of Urban Sector Studies of IPEA (Institute of Applied Economic Research – Federal Public Foundation under the Ministry of Planning, Budget and Management)[[4]](#footnote-4). The main components of housing inadequacy refer to the sanitation deficit that still affects 30 million urban residents, followed by water deficit, with 13.8 million people affected.

Despite the problems outlined above, Brazilian housing scene recorded significant improvements. Among the important actions is the increase of resources available to the sector during the administration of President Luiz Inacio Lula da Silva, including budget allocations and changes in the rules of the banking system to increase credit supply for housing construction purposes. According to Maria da Piedade, the Growth Acceleration Program (PAC) symbolises the expansion of investments in urban infrastructure and “slum” settlements in recent years, in addition to the recently announced program ‘My House, My Life’, that aims to be the biggest action for construction of housing units, with the goal of reaching one million houses built in the coming years.

The analysis of the data available crosschecked with the range of income per capita and race/skin colour allows us to clearly understand the housing issue patterns in Brazil. Although the factors for each individual might be different, all are related to deep social inequality and concentrated in the poorest sections of the population. "Access to clean water and sanitation has always been high for those who are at the top of the social pyramid," said Maria da Piedade.

IPEA figures show that racial inequalities decreased, but are still very high, as 74.1% of whites have adequate housing, while the match between blacks and browns was only 56%: a disparity of more than 18%. "Facing this reality poses many challenges. We need housing and urban policies that go beyond their main objective, constituting social policies with strong educational components, increasing employment and income rates in addition to reducing violence,"[[5]](#footnote-5) says Maria da Piedade. Initiatives aimed at housing need to be integrated with other government policies.

**4.**

In Rio de Janeiro, Brazil, discrimination and stigmatization towards street situation can also be referred as “compulsory round-ups”. These rounds-ups are government led operations of moving these individuals from the streets to government organised shelters and are supported by Resolution 20/2011 from the Municipal Secretariat of Social Assistance.

A way of putting an end to these violations is the implementation of Policy to care for children and adolescents living on the streets, which has been approved at a Municipal Council for the Rights of Children and Adolescents (CMDCA-RJ) meeting in June 22, 2009. Unfortunately, such policy has not been fully observed.

**5.**

Homelessness is recognised as a serious violation of human rights in Brazil. The right to adequate housing is enshrined in the federal constitution. For children and adolescents this right is provided for in the Statute of Children and Adolescents. In the case where a Brazilian citizen has nowhere to live, either given economic reasons or due incidence of natural disasters, the Brazilian government is obliged to provide free housing provisionally, until the situation is solved (as in the case of “social” rentals) or permanently (as in the case of the programme “My House, My Life”).

The lack of inspection from the national justice agencies in implementing measures to ensure that the executive complies with its legal obligation has perpetuated the homelessness situation of many families.

**6.**

For Administrative purpose, *São Martinho Beneficent Association* can appeal to the sanctions of the Councils of Rights, more specifically CEDCA and CMDCA - State Council and Municipal Council for Children and Adolescents’ Rights respectively, that work in equal numbers, with the representative bodies of the State Power and Civil society together to create and implement public policies that challenge the failure or omission by the government or private entities in the ineffectiveness of combating homelessness, i.e. the violation of human rights to housing and protection. Councils have the task of overseeing the public or private agencies with responsibilities on the implementation of shelter programs and even being able to deliberate on the shelter in certain cases.

Another important player in in the development of shelters’ policy in the municipalities are the "Guardianship Councils”, permanent and autonomous agencies that are non-jurisdictional, entrusted by society with ensuring the rights of children and adolescents, as defined in Law No. 8069 / 1990 on the Brazilian Statute of Children and Adolescents, Article 131[[6]](#footnote-6).

In the judicial sphere, one of the main instruments to combat the lack of legal provision is the constitutional remedy is called "Court order of Injunction" as defined by Article 5 on LXXI of CRFB[[7]](#footnote-7) (Constitution of the Federative Republic of Brazil): "An injunction will be granted whenever the absence of a regulatory norm makes it impossible to exercise constitutional rights and freedoms and the prerogatives inherent to nationality, sovereignty and CITIZENSHIP ".

**7.**

To answer this question, São Martinho and the National Campaign ground themselves onto legal precepts: Legal Standards and Guidelines issued by the three levels of Brazilian government – Federal, State and Municipal – mainly by Resolution No. 763/09 AS from the Municipal Council for the Rights of Children and Adolescents (CMDCA), part of the Municipal Department of Social Services.

CMDCA-Rio (Municipal Council for the Rights of Children and Adolescents in the city of Rio de Janeiro) establishes guidelines based on intersectoral public policies, covering spheres of social promotion, prevention and protection. Ensuring dialogue and integration between these policies and the various Government Departments as well as the relationship between the executive, legislative and judiciary is central to the indissolubility of Human Rights, Economic, Social and Cultural Rights.

We present the assumptions set as the basis for this street child and adolescent care policy, ensuring the defined protection principles:

1) **On the Constitution of the Federative Republic of Brazil 1988 Art 227:** "It is the duty of the family, society and the State to ensure children and adolescents, with absolute priority, the right to life, to health, to food, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, and safely safeguard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression";

2) **On the United Nations Convention on the Rights of the Child, 1989, Article 3:** "In all actions concerning children, whether undertaken by public or private institutions of social welfare, courts, administrative authorities or legislative bodies, should be a primary consideration the best interests of the child";

3) **As per the Federal Law No. 8069, the Statute of Children and Adolescents, 1990, Art. 5:** "No child or adolescent shall be subjected to any form of negligence, discrimination, exploitation, violence, cruelty and oppression, punished in accordance with the law any attempt by act or omission, of their fundamental rights" and **Art. 7:** "The child and adolescent have the right to protection of life and health, through effective implementation of policies that allow the birth and healthy and harmonious development and in dignified conditions of existence";

4) **As per the Organic Law of Social Assistance - LOAS, 1993, which sets among its objectives:** "Social assistance is a citizen's right and duty of the state, is a Social Security Policy, providing minimum social standards, carried out through an integrated set of public and society initiative actions, to ensure the fulfilment of basic needs";

5) **The National Plan of Sexual Violence against Children and Youth, 2002 aims to:** "Establish a set of coordinated actions that allow the technical-political and financial intervention to combat sexual violence against children and adolescents";

6) **The Single Social Assistance System – SUAS – 2003**, regulates and reorders the network of social assistance services throughout the country and defines the powers and responsibilities between federal, state and municipal levels, aimed at strengthening families. In its guidelines, the care of children and adolescents living on the streets is part of the Special Social Protection services, which are classified into two levels: medium and high complexity;

7) **The National Plan in Support of Children and Adolescents for the Promotion, Protection of the Right to Family and Community, 2006**, has among its general objectives: "To expand, coordinate and integrate the various policies, programs, projects, services and activities of social and family support for the promotion, protection and defense of the rights of children and adolescents to family and community life ";

8) **The National System of Socio-Educational Services - SINASE, 2006** is a document outlining "[...] the skills and general responsibilities of the three levels (Federal, State and Federal District and Municipalities), listing the expertise, assignments and recommendations to decision-making, management and implementation bodies in regards to socio-educational policy and control, also mentioning directly or indirectly involved entities in the care of adolescents in conflict with the law, from the verification process, to implementation and enforcement of socio-educational measures";

9) **The National Population Policy for Social Inclusion of Homeless Individuals, 2008**, aims to "[...] embrace key issues concerning the population that makes the streets their main survival space and identity order ".

The aforementioned legal basis has as its main goal to guarantee all children and adolescents have their fundamental rights safeguarded and are granted access to a network of services and efficient social facilities that respond to their needs, desires, strengths and – ultimately – that provide protection and shelter. Thus, we recommend the use of the term "in situation of the streets" – as defined in this policy – for any actions and diagnostics relating to such public.

The *National Campaign* and *São Martinho Beneficent Association* work towards eliminating any violent act and vexatious action, including the negative stigmas and social prejudices, around people – mostly youth – living on the streets.

Their recommendations are the following:

* Each Secretariat Programme within Brazilian government should avoid to cater exclusively to children and adolescents living on the streets.
* The relationship between Government Departments, Child Protection Councils and NGOs in developing actions to the public should be guided in order to ensure a coordinated and complementary care.
* CMDCA-Rio will promote this policy objective of wide dissemination to all stakeholders in the Law System of Warranties and society in general, giving priority to the formulation and implementation of public policies (programmes, projects and activities) in the social areas related to the protection of children and adolescents, with priority to those "in the situation of the streets".
* In case of failure to comply with these recommendations, the Public Ministry, “a permanent, independent and autonomous body” thus defined by the Brazilian Federal Constitution, will be activated to verify and act upon the non-compliance with this Resolution.

These recommendations are issued within unlimited time and the responsible bodies may – at any time – request information on the attainment level of each related government party.

1. National Research about Street Population: <http://www.criancanaoederua.org.br/pdf/Pesquisa%20Nacional%20Sobre%20a%20Popula%C3%A7%C3%A3o%20em%20Situa%C3%A7%C3%A3o%20de%20Rua.pdf> [↑](#footnote-ref-1)
2. <http://www.rio.rj.gov.br/web/smds/exibeconteudo?id=4607334> [↑](#footnote-ref-2)
3. População de Rua 2013 – Um Direito à Cidade: <http://www.rio.rj.gov.br/dlstatic/10112/4576565/4118206/PesquisaCenso.pdf> [↑](#footnote-ref-3)
4. DESAFIOS DO DESENVOLVIMENTO – IPEA Magazine. Article: Direito só no papel - Falta de moradia afeta milhões de brasileiros. 07/06/2009. [↑](#footnote-ref-4)
5. Muito mais que um simples teto. Liliana Lavoratti; <http://www.ipea.gov.br/desafios/index.php?option=com_content&view=article&id=1237:catid=28&Itemid=23> [↑](#footnote-ref-5)
6. BRASIL. Lei nº 8.069, de 13 de julho de 1990. Estatuto da Criança e do Adolescente. Diário Oficial da União 17 jul 1990; seção I: p. 13563. [↑](#footnote-ref-6)
7. BRASIL. CONSTITUIÇÃO (1988). Constituição da República Federativa do Brasil de 1988. Brasília, DF: Senado Federal. Available on <http://www.planalto.gov.br/ccivil\_03/constituicao/constitui%C3%A7ao.htm> [↑](#footnote-ref-7)