

# Analysis on the compliance with the rules set forth in the International Covenant on Economic, Social and Cultural Rights by Brazil

**HUMAN RIGHTS AND CITIZENSHIP SPECIALIZED CENTER of the PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO's Report to the 74th Session of the Committee on Economic, Social and Cultural Rights (CESCR)**

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# SUMMARY

## PRESENTATION 3

### Report to the 74th Session of the Committee on Economic, Social and Cultural Rights (CESCR) 5

#### MEASURES ADOPTED FOR THE PROGRESSIVE IMPLEMENTATION OF THE RIGHTS OF PERSONS IN STREET SITUATION (ARTICLE 2) 5

- a.* Lack of data/census regarding people experiencing homelessness 5
- b.* Federal Decree 7,053/2009 and absence of a specific law 6

#### RIGHT TO SOCIAL SECURITY (ARTICLE 9) 6

#### RIGHT TO AN ADEQUATE STANDARD OF LIVING (ARTICLE 11) 7

- a.* Right to adequate food 7
- b.* Access to water and sanitation 8
- c.* Right to adequate housing 9

## CONCLUSION 10

# INTRODUCTION

## **COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)**

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THE PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO is a permanent institution, essential to the State's jurisdictional function. Article 134 of the Constitution states that the Public Defender's Office is an expression and instrument of democracy, and has among its duties the legal guidance, the promotion of human rights and the defense of individual and collective rights of those in need, in all judicial and extrajudicial instances. As an autonomous institution, the Public Defender's Office is not part of the government, but a body composed of legal professionals selected through a rigorous public process, to whom it is also granted functional independence. The Constitution ensures functional and administrative autonomy (paragraphs 2 and 3 of the above-mentioned article), making it, therefore, a public and independent human rights monitoring body. In accordance with this essential role, federal legislation (Complementary Law n. 80/1994) enables the Office of the Public Defender to act before international human rights mechanisms.

In that sense, Article 4, VI, of the mentioned federal law states as one of its institutional functions to access the international systems of human rights protection, postulating before their bodies.

The HUMAN RIGHTS AND CITIZENSHIP SPECIALIZED CENTER is a body of the PUBLIC DEFENDER'S OFFICE whose main mission is to promote human rights of vulnerable group. Among its duties are the receiving of denounces regarding violation of human rights so adequate measures can be taken. Its coordination is composed of three public defenders elected by the Superior Council for a two-year term, allowed one reconduction, and seventeen members with right to vote in all proceedings. It is worth noting that public defenders have functional independence, meaning that there is no State interference.

Historically, the Human Rights and Citizenship Specialized Center has been working with three main axes: (I) State violence, including torture, enforced disappearance, truth and memory; (II) vulnerable groups, comprehending people experiencing homelessness, refugees, solid waste collectors; (III) right to health, focusing on implementation of public health equipment, alcohol and other drugs policies and therapeutic communities (rehabilitation centers). In this report, we would like to stress the situation of people

experiencing homelessness in Brazil, from the experience of São Paulo State, which concentrates the highest rates of people living in this condition<sup>1</sup>, and the policies and deficiencies towards this group.

Considering the 74th Session of the Committee on Economic, Social and Cultural Rights during which Brazil's report will be analyzed on its implementation of the Covenant, the HUMAN RIGHTS AND CITIZENSHIP SPECIALIZED CENTER of the PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO respectfully present this brief document to the Committee.

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<sup>1</sup>According to a study promoted by "Observatório Brasileiro de Políticas Públicas com a População em Situação de Rua", half of all people experiencing homelessness in Brazil are in the State of São Paulo: <https://www.cartacapital.com.br/cartaexpressa/sao-paulo-concentra-quase-metade-da-populacao-em-situacao-de-rua-no-pais-aponta-pesquisa/>

# Report to the 74th Session of the Committee on Economic, Social and Cultural Rights (CESCR)

## MEASURES ADOPTED FOR THE PROGRESSIVE IMPLEMENTATION OF THE RIGHTS OF PERSONS IN STREET SITUATION (ARTICLE 2)

### a. Lack of data/census regarding people experiencing homelessness

The State Party's report stated in paragraph 137 that there are currently 230 Specialized Reference Centers for Homeless Population in Brazil. These Centers are essential as they are responsible for including people in social security policies, such as food and income programs as well as providing shelter for those in need. However, there is no national data in regard to how many people are currently homeless, impeding formulation of public policies to this group. It is not possible to affirm that 230 Specialized Center are enough to meet the demand.

As a recognition of the importance of producing data, the Committee asked the State Party to provide information for the last 10 years on the proportion of persons living below the poverty line (LOI, item 7). However, in the State Party's reply there is no specific information about people experiencing homelessness, who also live below the poverty line.

The National Policy for People Experiencing Homelessness created by Federal Decree n. 7,053/2009 foresees among its objectives the "implementation of an

official counting of people in street situations" (article 7, III) and formulation, systematization and publishing of data regarding exiting public services for this group, including social, economic and cultural indicators (article 7, IV).

Despite fourteen years had passed since this legislation, in Brazil there is no national official counting of people experiencing homelessness, which is a clear obstacle for thinking about public policies for this group. Public managers are not aware of how many people are homeless, neither their gender, age, nor reason for being on the streets.

The last national census indicated that there are 203 million people living in Brazil<sup>2</sup>. The research took under consideration quilombola and indigenous populations, but its methodology does not count people who are not domiciliated, so it does not indicate homeless population. Locally, the city of São Paulo implemented a census for people in street situation<sup>3</sup>, which appointed in 2021 a total of 31.884 persons living in the street. In 2023, the Brazilian Observatory for Public Policies to People in Street Situation from the Federal University of Minas Gerais<sup>4</sup> estimated that 52.226 homeless persons were in the city of São Paulo. The source of these two research differs and there is no clear methodology to deal with this subject, which is a violation of the Federal Decree n. 7,053/2009 and the rights of people in street situations.

<sup>2</sup> <https://censo2022.ibge.gov.br/>

<sup>3</sup> <https://app.powerbi.com/view?r=eyJrIjojZWE4MTE5MGltZjRmMi00ZTcyLTgxOTMtMjc3MDAwMDM0NGI1IiwidCI6ImE0ZTA2MDVjLWUzOTUtNDZIYS1iMmE4LThINjE1NGM5MGUwNyJ9>

<sup>4</sup> <https://obpoprua.direito.ufmg.br/>

**In this matter, we urge the Committee to recommend the State Party to collect and publish disaggregated data on people experiencing homelessness and their use of public services, including on the basis of race, gender, sexual orientation, geographic area, use of public shelter, access to income programs and other public policies related to its conditions.**

**The State Party should also develop a transparent methodology that takes into consideration the characteristics of this group so they can be counted in the next national census.**

#### **b. Federal Decree 7,053/2009 and absence of a specific law**

The Federal Decree 7,053/2009 mentioned in the State Party's report, paragraph 41, creates the National Policy for People Experiencing Homelessness and was enacted under the President's competence to organize the federal administration bodies, as foreseen in article 84, VI, "a" of the Constitution. It is not a law, and it has not been considered by the legislature. Moreover, the Federal Decree can be revoked at any time by the President in the grounds of convenience and opportunity<sup>5</sup>.

The State Party effort to create a National Policy must be recognized. However, its form is not adequate to its purpose and there is no sufficient legal certainty necessary for this sensible matter. The scope of the National Policy must also include guidelines for local policies. It is also necessary that the State's effort is directed to implementing

public policies at all federal levels, specifically because the municipalities are competent to most of the public services needed for people in street situation.

**In this sense, the Committee should recommend the State Party to adopt a comprehensive legislation and policy framework assuring specific rights and policies to people experiencing homelessness, according to this group specificities, inspired but not limited to the content of Federal Decree 7,053. The State party should also undertake the necessary measures to assure that the Federal legislation replicates in States and Municipality legislation, according to their constitutional competences.**

#### **RIGHT TO SOCIAL SECURITY (ARTICLE 9)**

The Bolsa Família Program (PBF) was mentioned in the State Party's report in paragraphs 117-124 as the main social security policy to overcome poverty. The income supplement program, however, does not have a specific approach towards the vulnerabilities of people experiencing homelessness and this group is often not covered by this program. There is no other national specific income program oriented to persons in street situation and the State did not make progress to replace or supplement existing social protection systems with a universal basic income ("basic income"), as recommended by the Special Rapporteur on extreme poverty and human rights<sup>6</sup>.

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<sup>5</sup> This is not merely a possibility, since in 2019 six articles of the Decree regarding the Monitoring Committee for People in Street Situation Policies were revoked and altered by the Decree 9,894.

<sup>6</sup> Available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc3526-report-special-rapporteur-extreme-poverty-and-human-rights>

In 2023, the Bolsa Família Program (PBF) law was altered to expand its scope and financial aid, maintaining the policies undertaken during the Covid-19 pandemic. Nonetheless, this program is not oriented to people experiencing homelessness, since they usually face difficulties regarding access to such program for not having adequate documentation or access to the means to schedule an appointment to register at CadÚnico<sup>7</sup>. A study made by the Observatory for Public Policies to People in Street Situation showed that registration renovation rate in São Paulo for people in street situation is 53%, while the national rate of renovation is 71%<sup>8</sup>. Without the periodic renovation, the PBF is suspended.

In a public hearing that took place in the City Council of São Paulo in August 2022, the social movements denounced the difficulties for homeless people to access social workers to renew their registration<sup>9</sup>. The representative for the National Movement in Defense of People in Street Situation (MNPR) stated that there is a daily limitation to social assistant appointments, making them insufficient to the demand presented<sup>10</sup>, and, at one point, it was being requested to the homeless people a proof of residence. The Human Rights and Citizenship Specialized Center often receives denunciations of persons with problems with their Individual Registration (CPF), making it impossible to them to access such programs and aggravating their condition of homelessness and undocumented persons.

**For this reason, it is essential that the Committee recommends the State Party to ensure that all persons experiencing homelessness are registered in CadÚnico to receive Bolsa Família Program income and guaranteeing preference treatment to this group, including facilitated access to appointments to renovation and registration and abstaining from requesting unnecessary documentation, such as proof of residence. It is also desirable that the State Party creates a specific income program for this group, considering their aggravated vulnerability and deprivation of other rights.**

## **RIGHT TO AN ADEQUATE STANDARD OF LIVING (ARTICLE 11)**

### **a. Right to adequate food**

The Committee requested the State Party to describe the “changes brought about as a result of the constitutional recognition of the right to food in the delivery of food-related policies” (LOI, paragraph 23). As stated in paragraph 143 of the State Party’s report, promotion of access to food is being addressed with income programs. This strategy, however, is insufficient to assure access to adequate food for homeless people.

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<sup>7</sup>This obstacle is not exclusively to persons in street situation and in May 2022, 497.292 families were waiting in line in São Paulo to register in CadÚnico:

<https://www1.folha.uol.com.br/mercado/2022/07/procura-por-cadastro-do-auxilio-brasil-dispara-e-cria-fila-da-fila.shtml>

<sup>8</sup>[https://obpoprua.direito.ufmg.br/dialogos\\_praticas\\_locais.html](https://obpoprua.direito.ufmg.br/dialogos_praticas_locais.html)

<sup>9</sup><https://www.saopaulo.sp.leg.br/blog/cadastro-unico-de-moradores-em-situacao-de-rua-e-debatido-na-comissao-de-direitos-humanos/>

<sup>10</sup>This obstacle is not exclusively to persons in street situation and in May 2022, 497.292 families were waiting in line in São Paulo to register in CadÚnico:

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During the Covid-19 pandemic it became more evident the struggles that people in street situation had to deal with, mainly the uncertainty of the availability of food. The closure of popular restaurants, a state program which offers meals for an affordable price, raised concern with the absence of other policies towards access to food for vulnerable groups, especially those who does not have access to kitchens or other ways to prepare food.

After the reopening of popular restaurants, the violations remained, since this group has no power to choose what to eat and frequently eat in inadequate conditions. The reduced fee can also be an obstacle for those in extreme poverty. As a recognition of this problem, the State of São Paulo provided free meals for people experiencing homelessness during the pandemic<sup>11</sup>, which is an initiative that should be expanded to other states and not limited to the pandemic context. Also, the State Party should ensure that the registration of people who can benefit from this policy occurs with the frequency and in suitable locations to this group.

**In view of the above, the State Party should be recommended to adopt measures to ensure free access to food for persons in street situation, regardless of their use of public shelters, providing three daily meals according to their individual needs, expanding network of popular restaurants to places with higher concentration rates of this group.**

#### **b. Access to water and sanitation**

The access to clean and safe drinking water and improved sanitation was a point of concern brought in item 25 of LOI. The State Party's report described in paragraphs 160-161 the current scenario regarding Brazilian households' access to the water supply network. There is no information about access to water and sanitation for people who are not living in households.

The Human Rights and Citizenship Specialized Center has been working in the defense of access to clean and drinkable water and bathroom facilities for people experiencing homelessness in São Paulo. It was brought to our attention the obstacles that this group encounters to have their basic needs for personal hygiene satisfied. The daily struggle was described in the BBC's article "A saga dos moradores de rua em São Paulo por um copo d'água"<sup>12</sup> published in August 2018. According to the piece of news, most of the people in street situation in São Paulo state that they are deprived of access to water on a daily basis, especially during the night or weekends, when local shops are closed. In the city, there are no public drinking fountains nor bathroom facilities with running water, causing this group to rely on the goodwill of third parties.

A study called "Cartography of Access to Water"<sup>13</sup>, carried out by Centro de Convivência É de Lei, Fórum Aberto Mundaréu and Coletivo Paulestinos published in July 2021, came to the conclusion that there is a lack of a public policy in regard to access to water for consumption and hygiene for people experiencing homelessness. The survey identified 20 public bathrooms in São Paulo city center, where most of homeless people are concentrated. It represented one bathroom for 513 persons experiencing homelessness or one bathroom for 8,000 inhabitants of that district.

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<sup>11</sup><https://www.desenvolvimentosocial.sp.gov.br/bom-prato-passa-a-servir-refeicoes-gratuitas-para-pessoas-em-situacao-de-rua-cadastradas-durante-a-pandemia-da-covid-19/>

<sup>12</sup><https://edelei.org/portfolio/cartografias-do-acesso/>

<sup>13</sup><https://edelei.org/portfolio/cartografias-do-acesso/>



Another study promoted by Rosália lamamura and Ricardo Moretti from ONDAS (Observatório Nacional dos Direitos à Água e ao Saneamento) in 2011 pointed out that there were more public bathrooms in São Paulo city center in the 1990's when the population was 200,000 inhabitants, than today with a population of 12 million people<sup>14</sup>.

This scenario poses a serious threat to the rights of vulnerable groups, not only regarding water and sanitation, but also related to public health, which was aggravated during the Covid-19 pandemic. It is clear that these rights should be implemented in other contexts besides households.

**That being said, the State Party should adopt measures to ensure access to drinking water in public spaces and oriented to people experiencing homelessness, not limited to public shelters and public equipment. It is also necessary that the State Party make efforts to assure access to public bathrooms where personal hygiene can be made by persons in street situation.**

### c. Right to adequate housing

Brazil argued in paragraph 175 of its report that there have been important results in relation to housing deficit with the implementation of Minha Casa Minha Vida Program (PMCMV). The Committee then requested in LOI item 24 more information about the availability and

extent of the program. The profile of people experiencing homelessness is not covered by this housing policy, even though adequate housing is often appointed as the most important factor to overcome homelessness<sup>15</sup>.

The main violation to people experiencing homelessness is the absence of a home. However, public housing policies tailored to this specific group are scarce. PMCMV is oriented to low-income families and requires proof of income. Furthermore, there is a preference for families composed of more than one person. On the other hand, the average person experiencing homelessness does not have a stable income and usually lives by themselves, with no other family members.

Researcher Luiz Kohara studied PMCMV and diagnosed that since 2009, 4.4 millions of housing units have been built and 1.5 million of those units were intended to families with an income of R\$ 1,800.00, more than the minimum wage in Brazil. Only 200 units were assigned to persons in street situation<sup>16</sup>.

The importance of housing policies for people experiencing homelessness as a first step to overcome vulnerability has been discussed and adopted as a model by institutions that work with this subject. Facing Forward to End Homelessness, a Chicago based institution, describes Housing First

<sup>14</sup> <https://ondasbrasil.org/wp-content/uploads/2021/07/Higiene-para-resid%C3%A2ncia-artigo.pdf>

<sup>15</sup> This information refers to São Paulo census for people in street situation of 2015, when 37% to 30% of the persons interviewed defined as most relevant to overcoming homelessness access to permanent housing, followed by stable employment (36 to 26%). Fundação Instituto de Pesquisas Econômicas – Fipe; SMADS – Secretaria De Assistência e Desenvolvimento Social da Prefeitura Municipal de São Paulo. Pesquisa Censitária Da População Em Situação De Rua, Caracterização Socioeconômica Da População Adulta Em Situação De Rua E Relatório Temático De Identificação Das Necessidades Desta População Na Cidade De São Paulo – Produto XV. São Paulo: 2015, p. 32.

<sup>16</sup> KOHARA, Luiz Tokuzi. Relatório Técnico Final do Projeto de Pesquisa Pós-Doutorado Senior – Processo N°114656/2016- 9: A Moradia é a base estruturante para a vida e a Inclusão Social da População em Situação de Rua: Pesquisa sobre os desafios para a efetivação do direito à moradia digna da população em situação de rua: estudo de experiências de atendimento público nas cidades de São Paulo, Belo Horizonte, Salvador e Fortaleza. UFABC: São Paulo, 2018, p. 118.

model as “an effective and long-term solution to chronic homelessness. It stems from the fact that individuals must have basic needs, such as food and shelter, met before they build stability in other areas of their lives and address the inter-generational effects of chronic homelessness”<sup>17</sup>.

The State Party recognizes the importance of housing first policy to deal with the vulnerabilities of homeless population<sup>18</sup>. Federal Ordinance n. 2.927 enacted on August 2021 by the then called the Ministry of Women, Family and Human Rights establishes a Housing First Project in the Ministry, however there is no public policy implemented yet. Within local governments, there is doubt whether this subject is a matter of housing or social assistance policies. In São Paulo city, public shelters are the only housing policy offered to people in street situation. This is mainly due to the lack of communication between the municipal Secretariat for Social Assistance and the Secretariat for Housing. Meanwhile, in the absence of an intersectional and coordinated public policy, people who experience homelessness spend many years institutionalized and unable to overcome the cycle of vulnerability and misery associated with the status of being homeless.

**The Committee should recommend the State Party to evaluate and implement a housing policy oriented to people experiencing homelessness, inspired by the housing first ideals, which requirements suits the profile and reality of this group, as a means of providing access to other fundamental rights.**

## CONCLUSION

In conclusion, considering the information and arguments above and the intersectional vulnerabilities of persons in street situation, the HUMAN RIGHTS AND CITIZENSHIP SPECIALIZED CENTER of the PUBLIC DEFENDER OFFICE OF THE STATE OF SÃO PAULO respectfully urges the COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR) to adopt the recommendations sustained above.

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<sup>17</sup> <https://www.ffchicago.org/what-we-do/#our-approach>

<sup>18</sup> The Federal Government published an official document in 2019 comparing experiences with housing first: [https://www.gov.br/mdh/pt-br/navegue-por-temas/populacao-em-situacao-de-rua/DHUM0117\\_21x26cm\\_WEB4Pg.Separadas.pdf](https://www.gov.br/mdh/pt-br/navegue-por-temas/populacao-em-situacao-de-rua/DHUM0117_21x26cm_WEB4Pg.Separadas.pdf)