



# Using Class Actions in Brazil to protect the homeless

Prof. Dr. CLEBER FRANCISCO ALVES


Professor at Universidade Federal Fluminense (UFF) and at Universidade

Católica de Petrópolis

Rio de Janeiro Public Defenders Office, Brazil

PhD in Law (PUC-Rio)

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**PUBLIC DEFENDERS AND  
THE PROTECTION OF SOCIAL RIGHTS  
OF VULNERABLE PEOPLE,  
THROUGH LEGAL AID  
AND CLASS ACTION  
- THE CASE OF "SOCIAL RENT"  
PROGRAM IN RIO DE JANEIRO -**



Before the Law stands a doorkeeper on guard!




**Housing rights in the Brazilian Law :  
a right promised but not fully  
guaranteed**

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- Right to housing – part of the right to an adequate standard of living - recognized in many international rights documents.
  - Brazil enshrines in its Federal Constitution (Article 6) a right to housing, among several other social rights.
  - It is a responsibility not only of the federal government but also of the state and municipal government


- It is a “justiciable” right, from which derive positive and negative obligations
- Even if it does not imposes “immediate duties” to government, there is a consensus that progressive obligations derive from it, “including some kind of program for ensuring emergency relief” (Cass Sustein)
- The enormous rate of housing exclusion in Brazil (lack of consistent public policies to provide adequate houses, after the “rural exodus” linked to the industrialization of the country) : growth of favelas/slums

- Measures/programs aimed to make effective the right to housing to low income people:
- Federal program “Minha Casa, Minha Vida! (My home, my life!), launched in 2009
- Social Rent Programs, as a transitory benefit to be paid (by the State or Municipalities) in cases of emergency situations (natural disasters, for example) or in cases of serious need to remove dwellers from their houses (public interest works, risk prevention, etc)



**Threats and violations  
of the right to housing  
of the most vulnerable  
people in  
Rio de Janeiro**






In the first decade of the twenty-first century, Rio de Janeiro began a period of enthusiasm with prospects of urban renewal and improvement of its infrastructure, in order to prepare for a succession of worldwide mega-events:

- Pan American Games, in 2007,
- World Youth Day of the Catholic Church, in 2013,
- 2014 World Cup final,
- 2016 Olympics.

This movement was boosted by a period of significant economic development, especially due to the discovery of huge oil and gas reserves in Brazil, most of them on the coast of the State of Rio de Janeiro.




- In 2010, it was launched the "Morar Carioca" (Carioca Dwelling) program, aimed at the urbanization of favelas/slums, supposedly focused on the right to adequate housing, sanitation and urban equipment

- "Morar Carioca" has become a label associated with forced evictions, as the Municipal Government came to use the program's positive brand to "get away" with evictions in a number of communities

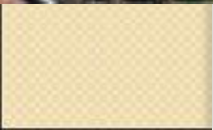
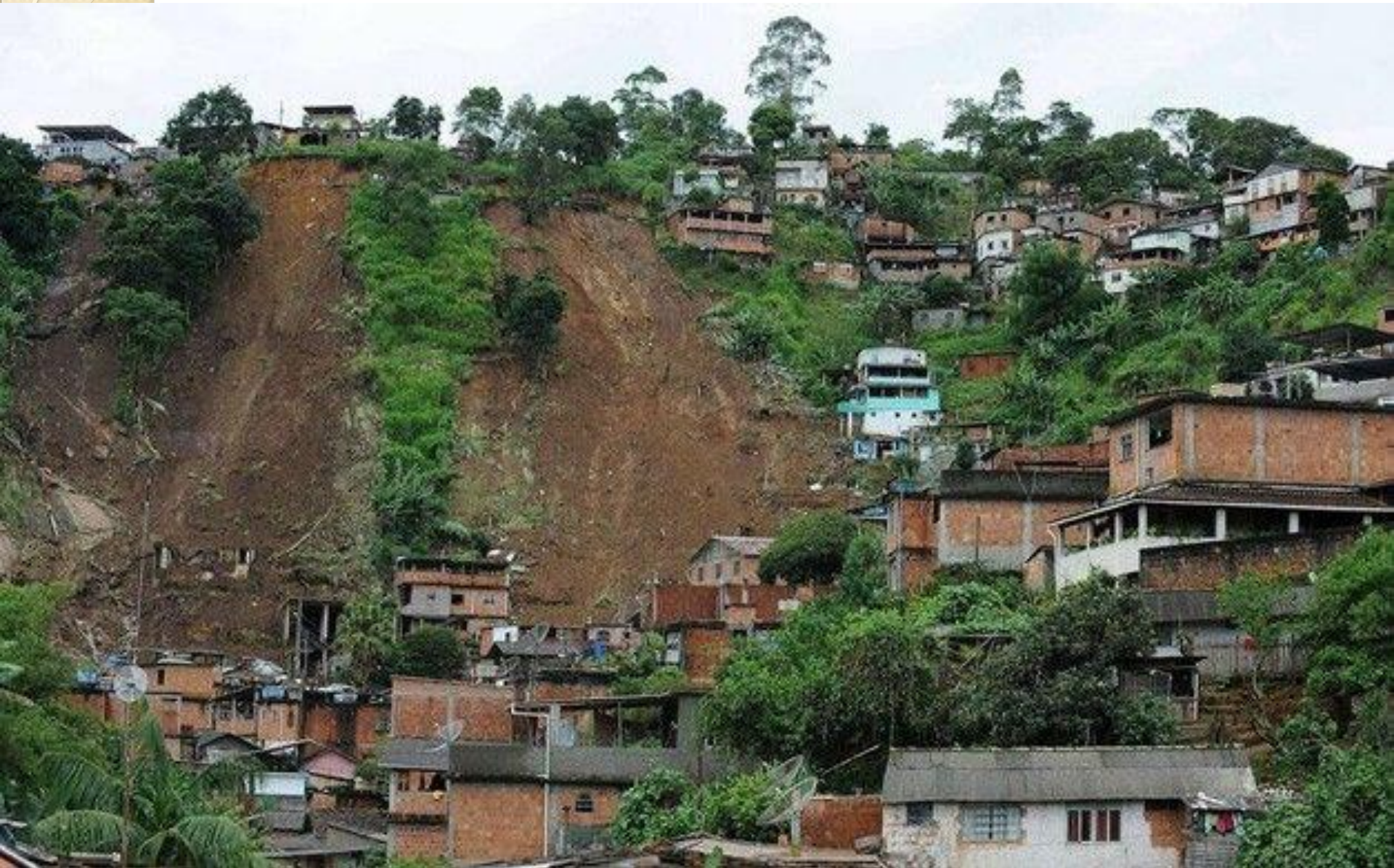
(behind all this it was possible to see a strong movement of real state speculation: Vila Autódromo case!)



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- Also in 2010, the State of Rio de Janeiro Government launched the “Morar Seguro” (Dwell Safely) program aimed to improve housing quality, safety and availability and to reduce settlement pressures on risk areas, decreasing the likelihood of disasters.
  - Due to the unavailability of funds to cover all the major works being carried out and, in parallel, to invest in the construction of new houses for families whose removal was of interest to the municipal and state authorities, the solution found was the expansion of rent financial aid programs (**social rent programs**).


- The social rent programs expanded also due to the need to assist families who lost their houses, after torrential rains that hit the State of Rio in the year of 2010 and, even more seriously, in the year 2011. See: <http://www.dailymail.co.uk/news/article-1264601/Brazil-floods-Rio-De-Janeiro-mudslide-kills-200-people.html>.
- The Morro do Bumba case
- The “country’s worst-ever natural disaster”: floods and landslides in the mountainous region of the State of Rio de Janeiro






- The social rent program represented an expense that was comfortably supported by the public budget of the State of Rio de Janeiro during the period of 'bonanza'. However, already in the year before the Olympics, Brazil and the State of Rio de Janeiro began to face turmoil in the political and economic scene, which implied a drastic reduction of budget revenues. There was a fear that this financial constraint would even prevent the holding of the Olympics in 2016. See: <http://www.telegraph.co.uk/news/2016/06/17/rio-declares-state-of-calamity-amid-cash-crisis-ahead-of-olympic/>.








**The Public Defender's  
Office and its actions in  
the protection of the  
rights to housing**

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- The role of the NUTH - Núcleo de Terras e Habitação” (Land and Housing Center), specialized branch of the Rio de Janeiro’s Public Defender’s Office, whose proposal is to meet mainly the collective demands related to the right to land and housing;
  - The work conducted by this organ was based on the idea of “advocacy techniques”/ “strategic litigation”, combined with the judicial litigation in *strict sense*, with mechanisms of social participation, dissemination of legal information to promote the empowerment of the population whose rights should be protected.



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- Financial chaos faced by the State of Rio de Janeiro, since 2016, that resulted in successive delays in the payment of “social rent” to the more than 10,000 families that received the benefit.
  - In June, exactly during the Olympic Games in the city of Rio de Janeiro, the NUTH had to file a class action whose main request was to oblige the State Government to immediately pay the social rent overdue instalments. The Court granted the request, at the outset, as that the decision was not effectively complied with by the Governor within the time limit set, the Court authorized the arrest of the amounts necessary for payment in the State Government bank accounts.

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- A few months after the filing of such a class action, in November 2016, the governor of the State of Rio de Janeiro, Mr. Luiz Fernando Pezão, issued a decree determining the summary extinction of the “social rent” benefit, which should occur from June 2017.
  - The Public Defender’s Office, issued a "technical note" demonstrating the unconstitutionality of the Decree. Intense work began towards the members of the State Parliament in order to persuade Members to exercise a prerogative guaranteed by the Constitution: it establishes that the Legislative Branch may nullify a Decree issued by the Executive Branch when considered incompatible with constitutional norm.

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- The result of these actions was very positive: although the political parties supporting the Governor had a majority of the seats in the State Parliament, the arguments presented in the "technical note" were accepted and by a large majority of Members.
  - The benefit of the social rent was maintained, and budgetary provision was foreseen to ensure its payment in 2017. These measures avoided the need to file thousands of individual lawsuits, which would be necessary to guarantee the rights of the homeless.