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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque**

Addendum \*

**Mission to Brazil: comments by the State on the report of the Special  
Rapporteur**

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## **Comments of Brazil on the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, following her mission to Brazil**

**(9 to 19 December 2013)**

1. The Special Rapporteur on the human right to safe drinking water and sanitation, Mrs. Catarina de Albuquerque, paid an official visit to Brazil, from December 9 to 19, 2013, for the purpose of evaluating the improvements and the challenges the country faces in promoting the human right to safe drinking water and sanitation. At that time, she held meetings with many public agencies, institutions and civil society organizations and undertook field visits, activities through which the Special Rapporteur could gather elements to elaborate the “Report of the Special Rapporteur on the human right to safe drinking water and sanitation” on her field visit to Brazil, hereafter named the “Report”.

2. The present document contains comments of the Brazilian government regarding the content of the Report and is organized in the following manner:

- I. General comments;
- II. Constraints regarding the sample space and the duration of the field visits;
- III. Specific comments on the report, following its structure.

3. The Report was submitted for analysis and comments to all public entities and institutions involved in the meetings and/or visits made by the Special Rapporteur. Therefore, the views contained in this document were guided by suggestions and recommendations received from a wide range of institutions, which encompasses:

- Ministry of Planning, Budget, and Management
- Ministry of National Integration
- Ministry of Social Development/ National Secretariat for Food and Nutritional Security
- Federal Prosecution Office
- Ministry of External Relations
- Secretariat for Human Rights of the Presidency of the Republic
- National Health Foundation – FUNASA / Ministry of Health
- National Water Agency (ANA)
- Rio de Janeiro Municipality
- São Paulo Municipality
- Fortaleza Municipality
- Belém Municipality
- Federal District Company for Water and Sanitation - CAESB
- Rio de Janeiro State Company for Water and Sanitation - CEDAE
- São Paulo State Company for Water and Sanitation – SABESP
- Ceará State Company for Water and Sanitation - CAGECE

- Pará State Company for Water and Sanitation – COSANPA
- Belém State Company for Water and Sanitation - SAAEB
- Rural Water and Sanitation Integrated Systems - SISAR
- Rio de Janeiro State Energy and Basic Sanitation Regulatory Agency – AGENERSA
- Ceará State Regulatory Agency for Delegated Public Services – ARCE
- National Association of Municipal Sanitation Services - ASSEMAE
- Brazilian Association of Private Concessionaries of Water and Sewage Public Services - ABCON
- Members of the Technical Committee on Environmental Sanitation of the National Council of Cities

## I. General comments

4. The Report contains a critical view as regards the realization of the human right to safe drinking water and sanitation. The Report, however, does not spell out the ongoing progress achieved through public policies and the recent evolution of basic sanitation indicators registered throughout the country.

5. It would also be important to mention the significant commitments the Brazilian Government has made regarding investments in the sector in the recent past.

6. Strictly speaking, considering that the Report is restricted to water and sanitation sewage –the latter understood as “sanitation”, according to the United Nations – one should bear in mind that those actions implemented by the Brazilian government have a broader scope. This is based on the fact that the Brazilian Government considers the concept of “basic sanitation”, as stated in Law 11.447/2007, in broader terms than the concept employed by the UN. According to the referred law, “basic sanitation” includes a set of services, infrastructures and operational installations for supplying safe drinking water, sanitary sewage, urban cleaning, and handling of solid wastes and drainage of the urban pluvial waters.

7. Therefore, it is important to point out that the term “sanitation sewage”, instead of “basic sanitation”, is the correct terminology when referring to the Brazilian experience. As explained above, the concept of sanitation sewage adopted by Brazil has a broader meaning than the concept of *basic sanitation* as applied by the UN (also named *improved sanitation*) – which focuses on the immediate removal of wastes (the focus is not on the process – collection, treatment, and final disposition in the environment, but on the sanitation equipment of households). In this sense, it is not possible to establish a clear comparison between the efforts the Brazilian Government has made to ensure the right to sanitation sewage with those of other countries, even when these countries make an effort to implement water and sanitation networks, for example.

8. What should be highlighted – and this is the singular contribution of Brazil in the international context – is the extent to which the right to sanitary sewage, as applied in Brazil, is both a legal and institutional progress (as to include the entire sanitary sewage process chain) and, also, the extent to which the concept of *basic sanitation* adopted in the country is even broader, so as to include water management, sanitation sewage, cleaning/waste handling and drainage. This means that the broader the content of the right to water and sanitation is, the greater the effort must be to ensure its fulfillment. Brazil expects this explanation to be properly considered in the evaluation of the Report.

9. It is also worthwhile to remember, in this case, that many of the principles of the Basic Sanitation Law are similar to the principles of the human right to safe drinking water and sanitation. In this way, the Brazilian legislation precedes the recognition of these rights by the UN.

10. The federal government is conscious that a significant portion of the population is not provided with the above mentioned services, and it has carried out initiatives towards universalizing access to basic sanitation. In order to achieve this goal, it has adopted measures to improve its planning and management and has supported state governments to carry out physical infrastructure projects in order to make effective progress in terms of the coverage and quality of the services provided.

11. In the last few years, the Federal Government has considerably expanded its investments in basic sanitation, allocating resources from the National Budget– OGU. These resources correspond to subventions provided by the Federal Government to expand the services, and they are not reimbursed by the states, cities, and service providers. Such investments, therefore, do not impact on the costs for supplying or on the fees for such services.

12. Besides the resources provided by the OGU, budgets from special funds were also increased, such as the Severance Pay Funds (FGTS) and Workers Welfare Fund (FAT), for the purpose of expanding investments in safe drinking water and sewage infrastructure. It is useful to remember that resources for investments from FGTS and FAT are contracted with subsidized interest rates, below the normal market rate. Regarding FGTS, it should also be pointed out that the Law that creates the fund establishes that its resources must be applied to investments in the fields of housing and sanitation. Such measures seek to guarantee and stimulate financing and, thus, implement and expand the infrastructure for supplying safe drinking water and sanitation sewage with a smaller impact on the prices.

13. This process was intensified, especially by means of the Growth Acceleration Program – PAC launched in 2007, which marks the resumption of public investments in basic sanitation, with a considerable increase in resources applied to the sector. For the purpose of comparison, between 2000 and 2006, R\$18.4 billion was destined to basic sanitation (at an annual average of R\$2.6 billion in investments), while between 2007 and 2013, after launching the PAC, R\$83.9 billion was channeled to basic sanitation (at an annual average of R\$12 billion). It is possible to perceive a significant progress, as the annual budget destined to basic sanitation more than quadrupled between the two analyzed periods.

14. Such contributions seek to correct the greatest *deficits* registered and they are aligned with the priority placed on the realization of the human right to safe drinking water and sanitation, as pointed out on the Report. Consequently, a great increase in the service coverage is expected to follow the conclusion of the projects.

15. These investments demonstrate the effort of the Federal Government to progressively reach, in partnership with Brazilian states and cities, the universalization of basic sanitation services, in such a way as to promote social inclusion and to make it possible for the Brazilian population to have substantial improvements in the quality of their lives. In the following topics, more data is presented to demonstrate the progress achieved by Brazil in this field.

16. Besides the increase in public investments in basic sanitation, government expenditure in other fields has also increased. In the last decade, there were progressive increases in the minimum salary, an amount used as a reference for social security and welfare programs, and for the expansion of cash transfer programs. More recently, the Plan "Brazil without Extreme Poverty" (PBSM), a strategy to eradicate poverty and extreme poverty, was implemented. The PBSM places its focus on families whose *per capita*

income is less than R\$ 70.00 (seventy reais) per month and it is based on three axes: basic income guarantees, urban and rural productive inclusion and access to public services, such as water and sanitation sewage. There has been an increase in the amount paid for 'Bolsa Familia' (or "Family Grant", a direct cash transfer program), which is part of the PBSM, besides the increase in the number of families attended by it. Besides that, the PBSM increases access to water supply and sanitary sewage services through building houses and cisterns for supplying dispersed rural areas with rain water.

17. Another important social initiative, which directly impacts on access to basic sanitation services, is the "My House, My Life (MCMV)" program, implemented by the Federal Government to meet the historical lack of adequate housing among lower income families in the country. In its first stage, which began in 2009, the Program contributed to the construction of 1 million houses. Currently, its second phase is underway, whose aim is the construction of another 1 million houses. The program causes positive impacts on basic sanitation, considering that, in order to build the houses, the government requires that water and sewage supply services are provided. Furthermore, providing adequate housing represents, per se, a great leap forward in terms of environmental conditions and life quality for low income and marginalized groups.

18. The results from the PAC, MCMV and PBSM demonstrate progressive reduction in the number of people in poverty and extreme poverty and the progressive expansion in access to safe drinking water and sanitation services, whether the beneficiaries live in rural or in urban areas. Sectorial policies, plans, and programs for women, elderly, indigenous people and traditional populations, such as maroons, have also been designed and are being implemented, establishing goals to enlarge the access by these groups to services of safe drinking water and sanitation. The main evidence of this is the indicators on access to these services, the physical growth of the systems (water management and sewerage networks and connections), the increase of individual solutions – especially of cisterns for collecting rain water – and the increase of the percentage of treated sewage in Brazil.

19. Recent measures were also implemented to reduce electric energy fees in percentages varying according to the sector benefited (the productive or the domestic consumer sector). For the productive sectors, the reduction can be up to 32% and, for residences, up to 18%. A reduction in the cost of safe drinking water and sanitation for service providers is expected. Moreover, the reduction in family expenses with electric energy will make more income available for expenses on safe drinking water and sewage services.

## **II. Constraints regarding the sampling space and the duration of the field visits**

20. Brazil is a country with a large territory, regional diversity and countless peculiarities. It is the largest country in South America and the fifth largest in the world, with a territory equivalent to 47% of the entire South America. According to the Brazilian Geographic and Statistical Institute – IBGE, its population has already exceeded 200 million inhabitants, spread in five regions. In these regions, there are 5,570 cities, dispersed among 26 states and the Federal District.

21. To give an accurate account of this scenario is challenging, particularly when it comes to providing information on such a complex field as basic sanitation. To elaborate scenarios in order to better understand situations of different regions across the country, considering their characteristics and peculiarities, would require more research and field investigation, with a longer duration and more representative sampling space.

22. It is understood that a field visit is not enough to undertake a research study with these characteristics. On the other hand, it is important to stress that these limitations in the research study bear an impact on the Report, as it could be seen on generalized conclusions contained in parts of the document.

### III. Specific comments on the report, following its structure.

#### A. Legal and institutional framework

23. The assessment according to which the actions of the PAC are not aligned with the Basic Sanitation Program of the Multiannual Plan (PPA) is not accurate. Three sections integrate the National Basic Sanitation Plan (PLANSAB): Integrated Sanitation, Rural Sanitation, and Structural Sanitation. Those sections are fully in accordance with the Basic Sanitation Program of the Multiannual Plan (PPA) 2012-2015. Their goals are in line with principles, challenges, and federal strategies for the realization of the right to safe drinking water and sanitation, as pointed out below.

24. It is appropriate to point out that the Multiannual Plan – PPA, as described in article 165 of the Federal Constitution, regulated by the Decree 2.829, from October 29<sup>th</sup> 1998 - is a medium term plan that establishes Guidelines, Objectives, and Goals to be followed during the following four years. Each PPA enters into force in the second year of the presidential mandate and lasts until the end of the first year of the following mandate. It also defines the role to be played by the Government, during the aforementioned period, through programs of continued duration already instituted or to be instituted in the medium term. The objectives of the PPA have been defined as guidelines for implementing public policies.

25. After the adoption of the PPA, it became mandatory for the Government to plan all its actions and budget in such a way as not to breach the guidelines contained in the Multiannual Plan. In other words, the Government could only make investments in strategic programs described in the PPA for a specific period. The PPA is divided into action plans, and each plan must contain the following items: an objective, the Government entity that is responsible for executing the project, price, time period for conclusion, financing sources, indicators for defining the situation the plan seeks to change, the need for goods and services for the full realization of the plan, actions which were not planned in the Union's budget, regionalization of the plan, etc. The Decree that regulated the PPA provides for the integration of the public branches (federal, state, and municipal) and for the integration of these with the private sector.

26. It is appropriate to point out that some of these objectives established in the PPA explicitly seek to reach the most vulnerable populations and regions, as mentioned in the following statements:

- **Objective 0353** – Implement structuring measures that seek to improve management in basic sanitation, comprising the organization, planning, service providing, regulations, and inspection, participation and social control;
- **Objective 0355** – Expand the coverage of the actions and services of basic sanitation in rural, traditional, and special communities (maroons, agrarian reform settlements, indigenous people, and others), and the dispersed rural population, prioritizing solutions which enable service sustainability;
- **Objective 0610** – Expand the coverage and improve the quality of the sanitation services in urban areas, by means of implementation, expansion, and structuring improvements of the safe drinking water supply, sanitation sewage, drainage, and

handling of pluvial water, and urban solid wastes, focused on populations in need in urban clusters and small-sized towns located in pockets of poverty.

27. The scope of these objectives comprises, among others, many goals of the PAC which reflect the distinctive strategies of the Federal Government in order to expand access to services, such as:

- Contracts of R\$ 600 million for carrying out projects and plans in the field of basic sanitation;
- Implementation of sanitation projects in 750 rural, traditional, and special communities, and in 375 communities of maroons ("quilombolas");
- Contracts of R\$ 1.3 billion and R\$ 960 million to support investments in sanitation sewage and safe drinking water supply in towns with populations under 50 thousand inhabitants;
- Contracts of R\$ 14.5 billion and R\$ 6.5 billion to support investments in sanitation sewage and safe drinking water supply in towns with low access rates to these services or insufficient treatment services.

28. The Brazilian Government considers that the Report could be improved by treating more precisely the federal strategies underway to eradicate inequalities related to the access to sanitation services in rural areas. The PAC and "Brazil without Extreme Poverty", for instance, are important innovations in planning and management which reinforce the impact of policies to guarantee the access to safe drinking water and sanitation and the inclusion of vulnerable populations. Among the initiatives adopted to improve the conditions for implementing policies, one should keep in mind the following: the expansion of investment, the combined work of different government sectors to implement policies, the rising number of agreements between the federal, state and local governments and the creation of a specific procedure for decentralized use of resources allocated from the federal budget – transfers involved in these procedures were qualified as mandatory and non-contingent, thus increasing the number of cities capable of having access to these resources. It is also worth recalling the reduction of financial compensations and the flexibility of limits for indebtedness of states and cities (which provided federal units with no capacity to invest with access to financial resources), the availability of standardized projects and the financial support for their drafting, the creation of a Differentiated Contracting Regime (RDC), which reduces time required for bidding process, the active search for those in extreme poverty to provide services, as well as intensive monitoring of the contracted operations.

## **II. The human right to safe drinking water and sanitation in Brazil**

### **A. Water availability**

#### **Priority for personal and domestic uses**

29. In paragraph 49 of the Report, the Special Rapporteur refers to the concern expressed by civil society organizations regarding the real objectives of the Integration Project of the São Francisco River Basin – PISF. Environmental licensing and the authorization for using the hydric resources do not contemplate uses other than meeting the needs of human beings. The proposal for the revitalization of the São Francisco river basin is also an answer to the social concern about the capacity for providing support to the continued use of the project. As far as social participation is concerned, it is also important

to say that the project was discussed by the São Francisco River Basin Committee (CBHSF), in the National Council of Hydric Resources (CNRH) – integrated by representatives from Ministries and Special Secretariats of the Presidency of the Republic, hydric resources State councils, hydric resource users (irrigators; factories; concessionaries and companies authorized to operate hydroelectric power plants; fishermen, and users of water for recreational and tourism purposes; public service providers of safe drinking water and sanitation services and waterway transport) and representatives from civil society organizations (committees, consortiums, and inter-municipal associations of river basins; technical and research organizations with interest in the field of hydric resources; and non-governmental organizations). Moreover, many public hearings were held by the Brazilian Institute for the Environment and Renewable Natural Resources - IBAMA at the time environment licenses were granted.

## **B Physical accessibility**

### **Informal settlements**

30. While recognizing the challenge portrayed in the Report to improve the quality of life of people living in substandard clusters, it is also worth recalling the Government's growing effort to expand access to sanitation by citizens who live in these areas. The Adequate Housing Program of the PPA 2012-2015 has the specific objective to “Improve the living conditions of low income families who live in precarious settlements, develop initiatives necessary to urban and rural regularization, to the promotion of safety and health conditions and to improve housing conditions, by means of carrying out integrated housing initiatives, infrastructure, and social-environmental inclusion”. To achieve this objective, the goal of “Making R\$ 30.5 billion available through public bids to urbanize precarious settlements” was established.

31. Through PAC, initiatives to urbanize precarious settlements have significantly increased, by means of their association with integrated sanitation projects and collaboration to increase the amount of budget and non-budget resources invested in their realization. Accordingly, an agreement has been achieved to promote an overarching federative agenda of investments (around R\$ 21.5 billion) with the aim of providing such settlements with adequate housing, safe drinking water and sewage services, garbage collection, urban revitalization and environmental protection. The greatest portion of investments (around R\$ 19 billion) has been assigned to 178 towns and cities which correspond to over 90% of the households located in the 6300 precarious settlements identified in 323 towns and cities in the 2010 Census performed by IBGE. It is also appropriate to underline the goal of the Basic Sanitation Program to “Contract R\$ 3 billion to support the integrated sanitation interventions in towns and cities with low indexes of access or unsatisfactory quality in two or more components of sanitation”, whose aim is to serve the needs of precarious settlements.

32. While recognizing the challenge pointed out in the Report on the constraints that land tenure imposes on access to sanitation, it is also worth mentioning innovative measures adopted in the scope of PAC to make more flexible the presentation of documents to prove land ownership, therefore allowing to implement and to accelerate the performance of projects. Furthermore, it is useful to keep in mind the great effort made to advance the national legislation on the regularization of lands of social interest. For example, one should bear in mind the amendments made to Law 11.977, of 2009, and Law 10.188, of 2001, which made it possible that transactions of "My House, My Life" projects funded by FAR resources (Residential Leasing Fund) be used to purchase properties which have not yet concluded its expropriation process, which allows the expansion of the program and benefits especially urbanization and regularization projects in precarious settlements; and



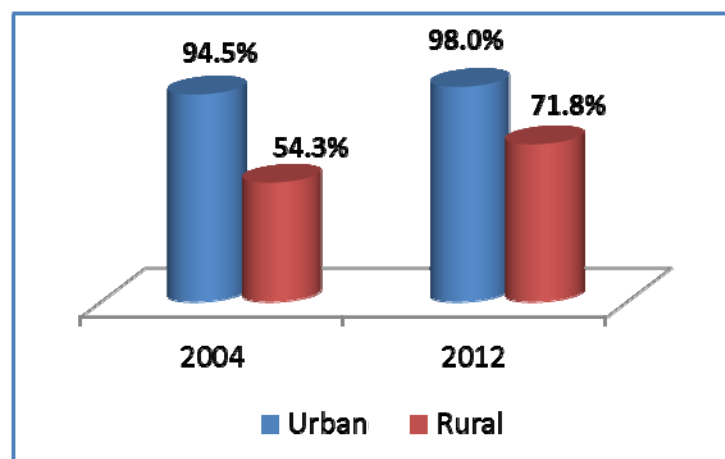
the amendments to Law 6.015, of 1973, with the aim of adjusting and detailing the procedures for regularizing urban land settlements (these procedures were provided for by Law 11.977, of 2009), as well as facilitating the mechanisms of individualization of public properties and its registration in real estate registry offices, for the purpose of making the regularization of occupations and their urbanization possible through My House, My Life Program.

### Rural areas and the drought problem

33. The Special Rapporteur, at the end of paragraph 65 of the Report, states that “it is essential that the government, in allocating cisterns to populations in the semiarid regions, takes into account the specific composition of each household, not relying simply on averages, in order to accommodate the number of cisterns distributed to the actual size of each family group”. The “Cistern Program”, in order to make access to water universal, is based on statistics regarding the average composition of family units in the semiarid region. The average was based on studies which show that this solution is appropriate for most families. At the operational level, the adoption of the average family unit as a standard allows the Program to achieve faster and more comprehensive results. Large family units (such as the one composed of 14 members, as referred to by the Special Rapporteur) have been the exception, not the rule, in the region. Once universalization is achieved, the Program will be able to develop mechanisms to deal with specific cases, based on other criteria.

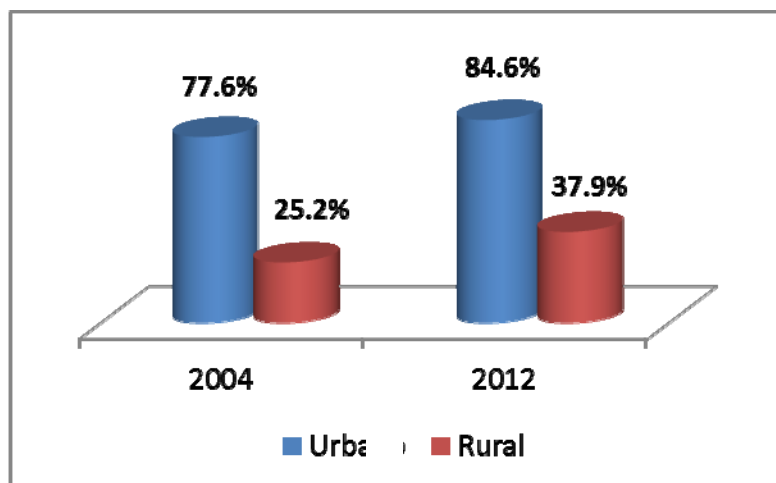
34. Regarding rural areas and the drought issue, the recent evolution of indicators related to access to sanitation can help put in context the challenge of guaranteeing the enjoyment of such right to the rural population. Although great inequalities between rural and urban areas persist, there has been a reduction in the gap regarding access to water and sanitation sewerage over the last years, which indicate improvements and reduction of inequalities, as shown in the following graphs:

35. Percentage of people living in households with piped water in at least one room, based on territory - 2004 and 2012



Source: PNAD/IBGE

**Percentage of people living in households equipped with a bathroom or toilet connected to a network or septic tank, based on territory - 2004 and 2012**

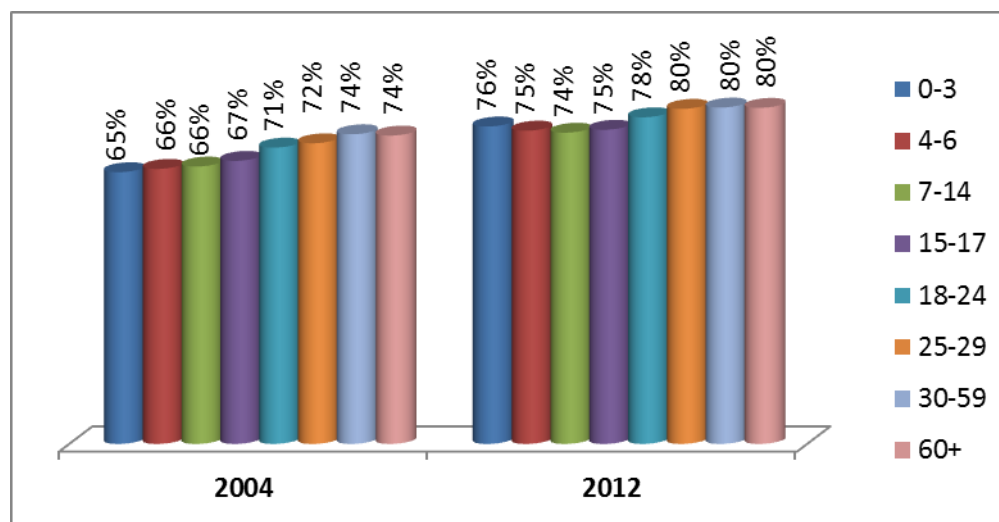


Source: PNAD/IBGE

**Water and sanitation quality**

36. In this topic, the Report deals with the negative impacts of the lack of sanitation on people's health, pointing out the vulnerability of children under 5 years old. This challenge could also be analyzed in the light of recent improvements in the reduction of the gap regarding access to sanitation sewage based on age criteria (see the following graph). The most significant progress took place in the age groups between 0 to 3 and 4 to 6 year-olds.

**Percentage of people living in households equipped with a bathroom or toilet connected to a network or septic tank, based on age groups (years) - 2004 and 2012**



Source: PNAD/IBGE

### III. Participation and Social Oversight

37. In the paragraph 96, the Report alleges that, in the scope of the PAC, some priority investments in the water and sanitation sectors have been chosen without significant and active people's participation. This statement is questionable, since the PAC has been developed and implemented through the creation of an open dialogue with the federative units in order to choose and define investments. In this context, the principle of the autonomy of federative units and municipalities must be respected in the formulation and execution of interventions, in the light of legal guidelines regarding the participation of local communities. At the federal level, people's participation in planning and monitoring the works of the PAC is also a constant practice under the scope of the "Council of the Cities" ("Conselho das Cidades") of the Ministry of Cities and their Technical Committees. The PAC monitoring procedures include public periodic evaluation. The Program has also a website (<http://www.pac.gov.br/>), making possible greater transparency and allowing more social control and scrutiny over the interventions made under its scope.

### IV. Conclusions and Recommendations

38. **Although universal access to sanitation in Brazil remains a great challenge, qualifying last years' achievements as "limited" (paragraph 99 of the Report) does not seem accurate. Good results have been reached regarding indicators of access to sanitation over the past years. The improvements are significant nationwide and also regarding more vulnerable populations and territorial inequalities, taking into account macro-regional sections of the country, as well as other criteria based on race, on rural or urban areas, on situations of extreme poverty, and on age. Such achievements have been promoted by innovative programs, such as the PAC, and "Brazil Without Extreme Poverty", which have improved sanitation policy focusing on greater outreach, greater efficiency, and also on placing priority on more vulnerable populations and therefore empowering its impact on reducing social and territorial inequalities.**

39. Taking this into account and considering that the PAC is an exponent program of these innovations as well as one of the axes of the national strategy of development, established in the PPA 2012-2015, the recommendation stated under letter "e", item VI, of the Report has already been observed by the federal Government:

*e) The implementation of PAC investments take place in the existing legal framework, also taking account of the priorities delineated for the sector in the context of existing annual planning.*

40. Concerning the recommendation stated in letter "j", the Decree 5.995/2006 established the Project Management System for the Integration of the São Francisco River, and its respective Management Council, which has seats for representatives from River Basin Committees. Overall, the federal government has taken a strong stance towards placing priority on the supply of water for human consumption in all the actions implemented under the scope of the São Francisco River Basin Integration and Recuperation Project (PISF).

41. Concrete actions of the Brazilian Government are being implemented in the country, under legal frameworks, through public policies, plans and programs, with a strong commitment to reaching universal access to water and improvement of the quality of sanitary services. Such actions reduce inequalities and guarantee the fulfillment of the human right to water and sanitation.

42. **These are the preliminary comments of the Brazilian government concerning the recommendations contained in the Report. The final comments will be made after the Brazilian government receives the final version of the Report and they will be based on the debates to be held with all stakeholders in the sanitation sector in Brazil.**

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