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THE URBAN POOR:
PROBLEMS OF ACCESS TO HUMAN RIGHTS

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1. This paper seeks to provide a framework to allow us to consider the research questions posed regarding access to human rights for the urban poor. The primary lens through which we address these issues is a case study in Brazil, in particular, of poor *favela*, or shantytown residents in Rio de Janeiro. The case study considers the principal problems faced by these residents, their strategies for addressing these difficulties and the measures taken by civil society groups to respond to their needs. Throughout the paper, however, I refer to examples from other parts of the world.

DEFINITIONS

Access to human rights

2. To begin our inquiry, we must establish a working definition of access to human rights. By the term human rights, I understand the full range of human rights guaranteed in international instruments. Thus, this includes, at a minimum, both civil and political, as well as economic, social and cultural rights (ESC). Indeed, it includes developing collective rights, such as the right to a clean environment, to development and so forth. While I address these rights briefly, I focus primarily on the first two sets of rights, in turn.

Urban poverty

3. In the same vein, we will need to define urban poverty in order to respond to the questions posed. We should understand poverty in terms of the deprivations it entails, rather than merely as a measure of income level. Recent definitions of poverty from developmental organisations,

¹ With research assistant by Adrian Alvarez.

for example, have shifted their focus in this way. According to the Asian Development Bank, for example, “poverty is a deprivation of essential assets and opportunities to which every human being is entitled....Beyond income and basic services, individuals and societies are also poor — and tend to remain so — if they are not empowered to participate in making the decisions that shape their lives.”²

4. Based on this definition of poverty, we should expect that poverty itself — designed as deprivation of access to income and services — implies lack of access to rights. While somewhat circular, this view of poverty will help us to understand the limitations that the urban poor face in gaining access to human rights.

Civil and political vs. economic, social and cultural rights

5. When we pose the fundamental questions of why the poor are often excluded from full enjoyment of human rights, we find that our inquiries and responses differ greatly based on the particular right or the type of right we address. The reasons for exclusion from enjoyment of economic, social and cultural rights are at the very heart of the poverty that defines the urban poor. In market-based systems, to define a person as poor is to define her or him as lacking the resources necessary to access fundamental economic, social and cultural benefits. A good deal has been written on the closely related, though distinct topic of poverty reduction from a development perspective. While I address this analysis at several points, it is important that we focus on *denial* of rights as such and not the maintenance of poverty, however related the two may be in practice. Still, increasingly, rights-based analysis has become a central element of development work. As such, much of what has been written on urban poverty alleviation through empowerment, particularly legal empowerment, is relevant to our inquiry.
6. While one may imagine a society in which the state guarantees fundamental economic, social and cultural rights to all, regardless of their income levels, such models (a well-structured welfare state or socialist state) are in decline on a worldwide basis. Further, welfare state models, to the extent they have operated in the developing world, have routinely failed to provide even the most basic ESC rights to the poorer classes. Even in the developed world, one finds the welfare state in decline. Thus, it has always been a general truism, *and perhaps more true today than ever*, that lack of access to wealth equates with a lack of access to ESC rights, principally in developing societies.
7. Yet we must go beyond that truism to understand the dynamics of the deprivation of fundamental rights suffered by the urban poor. We need address what particular constraints operate to facilitate and cause this denial. In this regard, there are two fundamental questions we must address.

What external and internal obstacles prevent many people, in particular those vulnerable to exclusion, poverty and discrimination, from obtaining rights and benefits to which they are entitled?

8. There is probably no internationally guaranteed human rights access, which is not limited in some degree by poverty. This paper will examine some (though not all these rights), focusing on the external and internal obstacles to full enjoyment of human rights for the urban poor. Given the limits imposed on this paper, we consider only a handful from among the basic human rights whose access is limited for the urban poor.

² See, Asian Development Bank, *Fighting Poverty in Asian and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank* (R 179-99), p. 3, para. 12 cited in Asian Development Bank, *Legal Empowerment: Advancing Good Governance and Poverty Reduction*, Overview Report, 2001.

9. First, I set out, in summary form, three civil and political and two economic, social and cultural rights and consider the external and internal obstacles to their enjoyment. I next address these issues in more detail, focusing on the example of the urban poor in Rio de Janeiro, Brazil.
10. *Right to life* — Obstacles to the enjoyment of the right to life include reduced public security (due to a lack of adequate security services provided by the state) as well as more direct violations by state agents (summary executions committed by police and security forces). In addition, the failure to ensure and respect economic and social rights related to the right to life (such as the right to food, the right to health, etc.), to which the urban poor are more commonly subjected may result in a violation of the right to life. In the words of Antonio Augusto Cançado Trindade, renowned jurist and Justice of the Inter-American Court of Human Rights:

The right to life entails not only the negative obligation to not deprive anyone of life arbitrarily, but also the positive obligation to take necessary measures to assure that this basic right not be violated. This interpretation of the right to life, such that it includes positive measures of protection by the state, finds support in international jurisprudence and doctrine. It may no longer be doubted that the fundamental right to life belongs to the domain of *jus cogens*.³

11. *Right to physical integrity* — In addition to the security issues addressed above (lack of provision of services by authorities, increased chance of being victimised by police shootings), we find that the poor are more likely to be subjected to torture and other physical abuses at the hands of police and security forces. Further, when the urban poor are subjected to such abuses, state agents routinely fail to investigate (I discuss this below, with reference to Brazil) their allegations as seriously as those made by other, more affluent segments of society.
12. *Due process rights* — Right to justice: this refers to the host of access restrictions suffered by the urban poor, that range from complete inability to gain access to the formal justice system to limited access and less desirable results once the poor have entered into the system. When the poor enter the criminal justice system as defendants, they are frequently subject to severe limitations on their due process rights, including lack of adequate representation.
13. *Right to education* — Lack of available, affordable schools within reasonable distance from home; poorer quality education (for children of poor that are enrolled); difficulties in gaining access to institutions of higher education; inability to pay matriculation or other fees; inability to study (pressure to assist family income).
14. *Right to Adequate Housing* — In order to live close to areas where they are more likely to find employment, urban poor frequently reside in sub-standard, overcrowded, irregular housing. Authorities routinely fail to provide even minimal services to these communities of urban poor, thus enhancing chances of health and other problems. Urban poor, many of whom are squatters, also run the risk of forced eviction without relocation.
15. Because the urban poor (and poor in general) live in precarious settlements, they are also most vulnerable to global processes such as rapid urbanisation, climate change and pollution, and economic globalisation — all associated with economic, social, cultural and environmental rights.

³ Series C No. 63. Inter-American Court of Human Rights, *The “Street Children” Case. (Villagrán Morales et al.)*. Judgement of November 19, 1999, Ser. C., No. 63 (Concurring Opinion of Justices Cançado Trindade and Abreu), para. 2 (our translation). The original text in Spanish reads:

El derecho a la vida implica no solo la obligación negativa de no privar a nadie de la vida arbitrariamente, sino también la obligación positiva de tomar las medidas necesarias para asegurar que no sea violado aquel derecho básico. Dicha interpretación del derecho a la vida, de modo que abarque medidas positivas de protección por parte del Estado, encuentra respaldo hoy día tanto en la jurisprudencia internacional como en la doctrina. Ya no puede haber duda de que el derecho fundamental a la vida pertenece al dominio del jus cogens.

For example, a World Bank study showed that the poor are most vulnerable to pollution in Dhaka, Bangladesh.⁴

16. *Internal Obstacles: ignorance, disbelief and fear* — A fundamental obstacle to enjoyment of human rights by the urban poor concerns the lack of a developed culture of demanding rights. The urban poor frequently are ignorant of their rights and, even when they know of their existence, hesitate to demand they be respected due to (i) lack of belief in mechanisms for rights defence and (ii) fear of retaliations. We consider these issues in more detail in the case study on Rio de Janeiro.

Why do official and non-official institutions fail consistently to deliver services and rights to large groups of people, even when they have statutory obligations to do so?

Low levels of public resource investment

17. Again, we find here that states routinely fail to meet their obligations (under both international law and their own domestic law) to provide ESC rights to their citizens (and others under their jurisdiction by failing to invest adequate resources to ensure their implementation for poor communities). Often, state failure to discharge duties is a function of response to varied political pressures. Typically, the poorest and most excluded sectors of society have the least political impact. Resource distribution by state authorities tends to track closely political power (which in turn tracks private resource distribution).

Responding to more powerful constituents and lobbies excludes the urban poor

18. Even where authorities have good intentions, the pressures to which they respond often relegate the needs of the urban poor to a secondary status. For example, analysis of educational budgets within many societies — including those in the developed world — demonstrate gross inequalities in the per capita expenditures for different communities within the same urban area. For many urban poor, no school exists within a reasonable travel distance from their homes, schools that do exist are routinely of poor quality, and school fees, even when minimal, pose serious obstacles to matriculation. Authorities frequently respond to pressure from middle class groups to allocate assets in their neighbourhoods.
19. In developing countries, we find another set of issues when we consider university education. Unfortunately, free public universities have become the domain of the children of the wealthiest. In Brazil, for example, the government spends somewhere between fourteen and twenty times per capita on university education than it spends on grammar school education. The result is that public primary schools offer low quality education. Wealthy families routinely send their children to high quality, private primary schools. The majority of students at the best public universities come from a handful of private primary and high schools; students from private schools have twice the chance of entering public universities than do students from state-run public schools.⁵ The legitimate demand for free university education thus leads to a massive educational subsidy for the most wealthy.

⁴ International Bank for Reconstruction and Development, World Bank Group, “Project Appraisal Document: Air Quality Management Project,” Dhaka, Bangladesh, 25 July 2000.

⁵ See Comissão de Defesa da Universidade Pública, Instituto de Estudos Avançados (IEA), University of São Paulo, “A Presença da Universidade Pública” http://www.geocities.com/andre_lira/ipes.htm. Students from a third class of primary educational facilities, known as federal technical schools, a small group of highly specialised institutes, have an even higher chance of entering public universities. The overwhelming majority of the urban poor, however, have access only to state and local public primary schools.

Privatisation excludes the urban poor and may lead to derivative violations

20. We must also note another important structural limitation related to the nature of privatisation imposed by the dominant model of economic organisation. The push to privatise state-owned or run business often produces direct adverse effects on poorer, urban communities. When public services are privatised, they provide services to those best able to afford them. Here, there is little or no mediating force (the state) to guarantee that the least wealthy will be able to afford such services. For example, during the first summer following the privatisation of the Rio de Janeiro electricity provider, Light, a wave of blackouts struck the poor urban areas on the outskirts of the city. These blackouts were traced to a lack of investment by the newly-privatised company in these communities, which offered lower potential for profits than upper and middle class neighbourhoods.
21. Another clear example highly relevant to the rights to life and physical integrity considered here has been the privatisation of security services. Over the past two decades in Brazil (and many other countries which have experienced similar surges in criminality), there has been a rapid, geometric increase in private security firms. Brazilians, both private citizens and businesses, invest many millions of dollars each year in private security services. As a consequence of this privatisation, there has been an increased polarisation of security services. Wealthier neighbourhoods and businesses routinely rely on private security forces and thus have become less concerned with the quality of public security services.
22. At the same time, there has been a drain on the best police officers and commanders, who are drawn away from their low paying, public service positions to higher paying jobs in the private sector. Even more directly, many of the security guards in private firms are police officers by day. In Brazil, many private security firms hire off duty police officers to avoid firearm regulations and because they have “good relationships inside the police ‘to clean up any major problems’ (i.e. murder)...”⁶ Another result of their double shift (in which their private positions pay much more than their public sector employment) has been decreased attention to their public security (police) duties. The consequence of this, in turn, is a reduction in the quality of police service for the poorest segments of society that are unable to afford private security services.
23. Finally, and still more worrisome, faced with lack of adequate state security agents in their communities and disturbed by the corresponding uncontrolled violence this permits, poor urban communities often turn to vigilantes or death squads, often with the tacit or express support of state authorities, to provide security. In Nigeria, for instance, the growth of such groups as the OPC and the Bakassi Boys,⁷ and the official support they enjoy from provincial authorities, illustrate this phenomenon, as does the multiplication of *grupos de extermínio*, or death squads, in Brazil who prey on poor, urban criminal suspects with broad popular and governmental support.⁸

⁶ Teresa Caldeira, *City of Walls: Crime, Segregation, and Citizenship in Sao Paulo* (University of California Press) 2000, p. 205.

⁷ Human Rights Watch/CLEEN, *The Bakassi Boys: the Legitimization of Murder and Torture*, Volume 14, Number 5(A), May 2002.

⁸ According to Teresa Caldeira, those who cannot afford private security hire vigilante groups to deal with crime. Caldeira, writes, “Feeling that the regular police does not protect them, and unable to afford other private security services, many people, especially merchants on the periphery, turn to the *justiceiros*. Sometimes local merchants will pay to keep order in the neighbourhood; sometimes groups formed by residents of a neighbourhood take the task of keeping order into their own hands.” Caldeira, Teresa, *City of Walls: Crime, Segregation, and Citizenship in São Paulo*, (Berkeley, University of California Press, 2000), p. 206.

Active bad faith by authorities

24. We should not discount the possibility of active bad faith, whether driven by corruption or contempt for the poor, which may characterise the actions of public officials. According to the Asian Coalition for Housing Rights, an Asian umbrella NGO from Thailand, police in Bangladesh have worked with state housing agencies to evict thousands of families settled on public lands through intimidation and outside legally established limits. The organisation reported that in January 2002, the Ministry of Housing and Public Works issued an eviction order for the inhabitants of public land which the government sought to use for office buildings.⁹ Ain-O-Shalish Kendra, a human rights NGO filed a law suit against the agency, and the High Court issued a “show cause” notice to the Ministry of Housing and Public Works and the police on 9 February 2002. The court ruled that the Ministry had to provide alternative accommodations for the squatters. The housing authorities and police raided the shacks at night and arbitrarily arrested the areas inhabitants to intimidate the families off the land. The Asian Coalition for Housing Rights reported that as of April 2002, only a few shacks remained in the settlement.¹⁰

What solutions to problems of access does the human rights approach offer in theory, and what solutions to problems of access might it offer in practice?

25. By human rights approach, I consider strategies that focus on the human being and her legitimate rights as defined in international human rights instruments as the starting and focal point for efforts to respond to the needs of the urban poor. Development strategies, by contrast, tend to focus on means of improving the social indicators of groups or classes of people. As such, developmental approaches have not focused primarily on *rights* but rather on goods, benefits, or services (from which the poor, including the urban poor, have historically been excluded). Although a difference in approaches has characterised developmental and human rights theory and practice, in recent years, the gap between these two approaches has been bridged. Mainstream development theorists and practitioners, including the leading International Financial Institutions, have advocated rights-based approaches to development.¹¹ As a result, a good deal of the work done by development groups may be evaluated from a human rights perspective.
26. In our context, in both theory and practice, the great advantage offered by rights-based approaches in general, or to development, is their focus on the urban poor as agents of change. A human rights approach seeks to ensure that the individual and collective rights of the urban poor are respected in practice. In theory, human rights approaches guarantee that the urban poor themselves, through exercise of their rights to free speech, political organisation and association, become agents of change to bring about on a permanent basis advances in the levels of enjoyment of human rights by their communities. The idea here is that the exercise of human rights themselves is the means to guarantee advances in the level of respect for other human rights.
27. According to SPARC, an Indian NGO which is a member of the Slum/Shack Dwellers International social movement and works to capacitate local community groups working for squatter’s rights, “One common objective of community groups was to develop leadership amongst the urban poor so that they themselves could lead the negotiations with the state and its

⁹ Lankatilleke, Lalith, “Urban Cleansing in Dhaka,” *Asian Coalition for Housing Rights* web site, http://www.achr.net/new_page_10.htm, April 2002, (internet search 18 November 2002).

¹⁰ Ibid.

¹¹ While development agencies and IFIs espouse the principles of rights-based approaches to their work, the issue of how far that approach is followed in practice remains a separate question.

agencies to extend and obtain entitlements.”¹² Other NGOs, stress the importance of politicising NGOs, *e.g.* bringing the *favela* to the state. According to Rio de Janeiro Viva Rio, “The Balcão de Direitos projects seeks to contribute to the formation of a society able to exercise its rights and duties, in a civic, democratic fashion. The project seeks to diminish the distance between the world of formally established rights and the other worlds that, excluded from their fundamental rights, the urban poor develop as alternative, local, community-based approaches to justice.”¹³

28. A number of studies have confirmed the relationship between enhanced protection of individual rights and improvement in living conditions, *i.e.*, in the level of enjoyment of fundamental human rights. A recent study by the Asian Development Bank (from a development perspective) on three legal empowerment programs that work to counter gender discrimination and to train NGOs on their rights in Bangladesh concludes that all three:

are all helping to improve the quality of life of the poor. To varying degrees, each organisation is off-setting gender inequalities by equipping women with critical knowledge, access to services and avenues to advance their interests and to obtain justice when legal rights are violated. In addition, the NGOs are helping (i) to improve community recognition of the role and status of women and the importance of citizen-government engagement; (ii) to increase the confidence of the poor generally, and women in particular, regarding their capacity to effect change; and (iii) to mobilise local communities to articulate their interests and to successfully apply the law and advocacy techniques, to lessen the exploitation and marginalisation of the poor.¹⁴

29. The study demonstrated — with statistical data — that NGO assisted communities understood the law better, had greater access to lands and reduced dependence on elites to resolve problems, when compared to similarly structured but non-NGO assisted control communities.¹⁵

CASE STUDY: DENIAL OF ACCESS AND CIVIL SOCIETY RESPONSE IN RIO DE JANEIRO'S FAVELA COMMUNITIES

Overview of the context

30. While the Brazilian economy routinely ranks among the world's ten largest, the radically unequal distribution of wealth in the country (Brazil has consistently ranked among the ten most unequal countries) has assured extremely low levels of income for the country's poor. While these are not as low as levels experienced by the rural poor, in terms of denial of services, residents of *favelas* and other urban poor in Brazil suffer extreme deprivation.
31. One of the issues that has marked *favelas* in Rio de Janeiro have been the extremely high levels of violence. From 1980 to 1994, the homicide rate in Rio de Janeiro tripled. While the overall rate for the state and the city are quite high (ranging from forty to eighty per 100,000 over the past several years), the rates in poor urban areas has reached shocking levels: close to 200 killings per year per 100,000 residents in some areas of Rio.¹⁶

¹² Patel, Sheela, *et al.* “Slum/Shack Dwellers International (SDI) – foundations to treetops,” *Environment & Urbanization*, Vol. 13 No 2, October 2001, p. 47.

¹³ Botafogo *et al.*, *op cit.*, p. 18.

¹⁴ Asian Development Bank, *Legal Empowerment: Advancing Good Governance and Poverty Reduction* (2001), Appendix 2: The Impact of Legal Empowerment on Selected Aspects of Knowledge, Poverty, and Governance in Bangladesh: A Study of Three NGOS, http://www.adb.org/documents/others/law_ADB/lpr_2001_Appendix2.pdf.

¹⁵ *Ibid.*

¹⁶ See, *e.g.*, Human Rights Watch, *Police Brutality in Urban Brazil* (New York, Human Rights Watch, 1997). In particular, that report notes:

In the past two decades, drug related violence has become an increasingly serious problem in Rio de Janeiro, where the lower levels of trafficking hierarchy are dominated by organised crime gangs ensconced in the favelas. Battles

32. A 1998 study of shootings involving police in Rio de Janeiro demonstrated that *favela* residents were significantly more likely to be victims of such incidents. The study focused on the “lethality index” a measure of the number of persons killed rather than injured in such incidents, an indicator of the fatal intent of the police officer in the shooting. While this figure was extremely high for the entire city during the period study, the report demonstrated it to be twice as high in *favelas* as other, less economically deprived parts of the city. The implication here is clear: police were twice as likely to enter into conflict with residents of *favelas* shooting to kill than in other parts of the city. The threat to right to life of poor, *favela* residents is clearly greater than the threat posed by police in other areas of the city.
33. The same holds true for the right to physical integrity. Tragically, in ordinary Brazilian parlance, in particular among the police it is common to speak of those who are *torturável* and those who are not. The term *torturável* means, literally, “one who may be tortured.” Guaracy Mingardi, a sociologist and former member of the Brazilian civil police, in a classic study of that police force in São Paulo, affirms that the civil police select those who may be subjected to severe physical abuse, as well as the means of torture employed, using criteria clearly tied to the social class of the potential victim. Mingardi writes, “(i) the right way of torturing is the *pau-de-arara*,¹⁷ because other forms may leave marks...(ii) people of the upper classes and those without criminal records should not be tortured. (iii) A person with a criminal record and money is not tortured if payment for release is offered at the outset.”¹⁸ The police logic reflects the extent to which financial privileges guarantee individuals’ rights in practice. Finally, the police logic speaks to the high level of impunity and a justice system unable to regulate police use of force. Caldeira writes, “Because the boundaries between the legal and the illegal are unstable and because police abuses are committed with impunity, not only are the police forces feared, but the justice system is also deligitimated and perceived as unreliable for the just settlement of disputes.”¹⁹
34. In addition to the enhanced chance of suffering violations of the right to life and physical security, poor urban residents are unlikely to ever access the courts to seek redress for abuses suffered through civil suits. Extremely few cases seeking civil damages are filed on behalf of poor urban residents of police violence, primarily due to the lack of successful criminal prosecutions of police for killing residents of impoverished urban communities, regardless of the circumstances of the killing.²⁰ A recent study that tracked over one thousand incidents of homicide from 1993 to 1996 in Rio de Janeiro was able to locate just 301 cases in which investigations had begun in the military justice system.²¹ Of those, 295 were dismissed before charges were filed. In the remaining six cases, all were dismissed after proceedings had begun. The result was complete and absolute impunity for all officers involved in these killings over a period of three years.
35. In addition to greater risk of violence at the hands of authorities, Rio de Janeiro’s urban poor find themselves caught in a cross-fire between powerful drug lords and the police. Given the

for turf and control among the gangs have been frequent and, thanks to a thriving illegal arms trade, violent. Confrontations between the police and traffickers have often been marked by indiscriminate shooting. Electronic version available at <http://www.hrw.org/reports/1997/brazil>.

¹⁷ The *pau de arara*, literally, “parrot’s perch” is form of torture in which the victim is hanged over a bar, with his feet tied to his hands and then subjected to abuses including near drowning and electric shock. These methods of abuse ordinarily do not leave marks on the victim.

¹⁸ Mingardi, Guaracy, *Tiras, Gansos e Trutas: Cotidiano e Reforma na Polícia Civil*, São Paulo: Editora Scritta, 1992, pp. 55-57. Cited in Caldeira 2000, pp. 110-111.

¹⁹ Caldeira, *op cit.*, p. 157.

²⁰ Although Brazilian law permits a civil suit for damages independent of the result of parallel criminal investigations and prosecutions, in practice, it is extremely difficult to win a civil suit when no determination of liability has occurred in the criminal matter. As a result, very few lawyers are willing to file such actions, rightly believing them to be a significant investment of resources with virtually no chance of return.

²¹ Ignacio Cano, *Letalidade da Ação Policial no Rio de Janeiro* (Rio de Janeiro, ISER, 1997).

historic lack of investment by the state in public services in *favelas*, drug traffickers have been able to garner the support of a significant proportion of local residents. This “benevolence,” in conjunction with the near total abandonment by the state, has allowed drug traffickers in many *favelas* to impose a parallel system of law.

Viva Rio and Balcão de Direitos

36. Viva Rio is an NGO in Rio de Janeiro, which emerged in the early 1990’s in response to the city’s growing violence. Viva Rio arose as a broad coalition of business and community interests in response to a series of high profile incidents of violence including the massacre of eight street children in the downtown Candelaria neighbourhood and the police killing of twenty-one residents of the Vigário Geral *favela* in Rio de Janeiro, both in 1993. In 1997, the NGO formed the *Balcão de Direitos* (literally, the “Rights Stand”) program to help victims of violence in poor urban slums seek justice. During the program’s first year, lawyers and law students, working with a “citizen agent,”²² provided direct legal advice and services in six *favelas*. They hoped to restore law and order by bringing the state to the *favelas*.²³

Answering the questions with reference to Rio de Janeiro: What external and internal obstacles have prevented the urban poor in Rio de Janeiro, persons particularly vulnerable to exclusion, poverty and discrimination, from obtaining rights and benefits to which they are entitled?

37. According to Pedro Strozenberg, Viva Rio’s coordinator for public security and human rights, people who live in *favelas* follow both “general laws” and “local laws.”²⁴ General laws refer to the gamut of rules and norms codified in official (State) statutes while local laws are *de facto* rules and norms which govern a community through extralegal means such as community consensus or coercion. For example, both police and drug traffickers subject *favela*-dwellers to local laws such as illegal roadblocks, arbitrary killings and other forms of summary justice.
38. After the programme’s first year, staff members realised that providing legal services was not sufficient to bring justice to victims of violence. For one, they had not made structural changes to the Brazilian legal system. The judiciary was still as slow and inefficient as before and the language which it used was still inaccessible to many *favela*-dwellers.²⁵ Moreover, many individuals did not want the kind of justice that an absentee state could potentially provide. Many sought alternative solutions to their problems: channels to dialogue and confront their assailants.
39. For many victims, restorative justice — return of stolen goods was more important than punishment of the transgressor. In family disputes, women seeking intervention sometimes sought separations but wanted their male companions to maintain active contact with their children in their communities.²⁶ The NGO realised that in the state’s absence, new legal codes and norms, which differed significantly from institutionalised laws had emerged. In response to these reflections, the programme expanded to include a civics and citizenship capacity building program to develop local community leaders.²⁷ Thus, the idea of “bringing the state to the *favelas*” was turned upside down: Viva Rio would “bring the *favelas* to the state.” The key obstacle

²² The citizen agent (*agente da cidadania*) is a person from the *favelas* who acts as a liaison between the lawyer and the individual seeking legal assistance. According to Strozenberg, the citizen agent’s role is fundamental because it is through his/her connections or reputation that people in the *favelas* decide to seek assistance from the Balcão.

²³ Interview with Pedro Strozenberg, Coordinator for Public Security and Human Rights, Viva Rio, Rio de Janeiro, 6 November 2002.

²⁴ Interview with Strozenberg, *op cit.*

²⁵ Interview with Strozenberg, *op cit.*

²⁶ *Ibid.*

²⁷ *Ibid.*

in gaining access to justice for Rio's urban poor thus went beyond merely facilitating entrance into the formal legal system. *Favela* residents, by and large, had lost interest in obtaining the type of substantive justice that ordinary courts could provide them. The Balcão de Direitos project thus altered its form to provide alternative dispute resolution within the communities and to train community leaders to demand that their values be recognised by formal justice systems.

40. The Balcão de Direitos story highlights many of the obstacles, which prevent the urban poor from accessing rights and privileges to which they are entitled. The urban poor are subject to both institutionalised and non-institutionalised centres of authority. Viva Rio states, "In *favelas*, unlike institutionally integrated neighbourhoods, basic services and formal legality cease. This, in addition to the absence of the state, leads to the emergence of territories privatised by parallel, non-state forces and legal and ethical codes different from those that dominate the rest of society."²⁸
41. Low education levels and limited exposure also shape individuals' knowledge of institutionalised rights and benefits. The Nucleus for the Study of Violence at the University of São Paulo conducted a study on public perceptions of crime in poor urban communities, which showed that the *defensoria pública* (public legal aid) was one of the least known Brazilian public institutions.²⁹ Brazilian legalist Antônio Celso Alves Pereira writes, "It is difficult to educate citizens about their rights in a country with a sizeable (eighteen per cent) illiterate populations."³⁰ Finally, cultural factors also influence people's understanding of rights and personal well-being. For example, some individuals do not have a clear conception of their own individual well-being as distinct from that of others. Moreover, what people say they want often depends on what they think is possible.

Why do official and non-official institutions fail consistently to deliver services and rights to large groups of people, even when they have statutory obligations to do so?

42. In theory, the urban poor should have greater access to justice, by virtue of the fact that they live in cities, where a greater number of public and private entities mandated to concretise rights guaranteed by law are concentrated. Despite geographical proximity to justice institutions, these institutions consistently fail to deliver services to marginalised groups.
43. One reason why official institutions have failed to deliver services and rights to Rio de Janeiro's urban poor is because they are not institutionally committed to specifically safeguarding the rights of those who are most vulnerable to abuses. For example, Viva Rio's Strozenberg says that while some individuals within the Brazilian Office of the Public Prosecutor are committed to promoting human rights but that the institution as a whole has not shown such determination.³¹
44. Many institutions that are ostensibly created to safeguard rights, like the police, or public utilities are often predators to the urban poor and are used by the elites to control society. Caldeira describes how the elites in Brazil and other societies have historically used the police to control and subordinate undesirable members of society during democratic and undemocratic periods alike. She writes, "Not only in Brazil, but in rapidly growing cities all over the world, the main

²⁸ Botafogo, Adriana Aloe, *et al.*, *Balcão de Direitos: 5 anos de compromisso social*, (Rio de Janeiro: Viva Rio, 2002), p. 7.

²⁹ Cardia, Nancy, *Primeira pesquisa sobre atitudes, normas culturais e valores em relação a violência em 10 capitais brasileiras*, Brasília: Ministério da Justiça, Secretaria de Estado do Direitos Humanos, 1999. p. 79.

³⁰ "Num país com uma massa considerável de analfabetos-18,9% da população-, torna-se realmente difícil informar o cidadão sobre os seus direitos." Pereira, Antônio Celso Alves, "Acesso a Justiça e Direitos Humanos: O problema no Brasil," *Revista da Faculdade de Direito da UERJ*. Rio de Janeiro n. 2, 1994, p. 130

³¹ Interview with Strozenberg, *op cit*.

mandate of the police was to control a poor population considered to be dangerous.”³² Far from protecting freedoms and liberties, police forces have also been used to maintain social hierarchies.

45. Even in democratic societies, the police continue to play an important role in maintaining structures of dominance which counter egalitarian principles. In many countries, violence against the urban poor and other marginalised groups such as racial and ethnic minorities, continue to be an integral part of the police’s *modus operandi*. Police abuse has become a banal component of police work because of widespread impunity.³³

Public opinion and media-driven pressures

46. High urban crime rates also limit institutions, which provide justice to individuals insofar as they yield to public opinion that calls for tough order law. For example, in 1982, André Franco Montoro ran for governor of São Paulo on a pro-human rights platform. During the campaign, he stated that he would dismantle ROTA, a highly repressive special division of the military police force, which terrorised communities on the periphery. Montoro’s proposal ignited a wave of protests.³⁴ A survey in one of São Paulo’s largest daily newspapers indicated that eighty-five percent of the population believed that ROTA was needed to reduce violence.³⁵ Public support for harsh order policies limited Montoro’s policy options. By the end of his term in office he had changed the secretary of public security three times, but had not been able to abolish ROTA.

What solutions to problems of access does the human rights approach offer in theory, and what solutions to problems of access might it offer in practice?

47. The rights based approach employed by the *Balcão de Direitos* has emphasised the proactive role that communities must play in advancing their own legitimate claims to greater respect for their fundamental rights. Unfortunately, comprehensive data on the effectiveness of the *Balcão de Direitos* model in reducing rights abuse in the communities in which the program is active are not available. Still, according to staff from the project, a visible decrease in abuse may be observed in communities engaged in the project. In my own experience documenting rights abuse in Rio de Janeiro’s *favelas* over the past decade, I have observed that the better organised communities are least likely to suffer the most egregious forms of abuse.
48. Further, the development of community leaders, through the human rights approach, such as the work of the *Balcão dos Direitos* has helped these communities to press for public services to advance their rights. For example, the same community leaders engaged in the alternative dispute resolution efforts of the *Balcão dos Direitos* programme, have also organised to press authorities to provide fundamental services, such as sewage treatment, and to curtail police abuse. By so doing, these groups, through a human rights approach, have advanced the quality of life in their communities and the respect for their own rights to physical security, housing and health.

³² Ibid. p. 147.

³³ A 1998 Human Rights Watch report on police brutality in United States cities, affirms that although officers who repeatedly commit human rights violations are a small minority, they are “protected routinely, by the silence of their fellow officers and by flawed systems of reporting, oversight and accountability.” See Human Rights Watch, “Overview,” *Shielded from Justice: Police Brutality and Accountability in the United States*, 1998, <http://www.hrw.org/reports98/police/uspo14.htm>. Internet search October 19, 2002.

³⁴ Rota, (*Rondas Ostensivas Tobias de Aguiar*). See Caldeira 2000 p. 170.

³⁵ Ibid. p. 171.