

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 35/15.

I would like to bring to the attention of your Excellency's Government information I have received concerning a security operation carried out in the Favela da Maré in June 2018. In this connection, I would also like to raise my concerns about the draft law N° 352/2017.

According to the information received:

Security operation in the Favela da Maré

On 20 June 2018, the civil police of the State of Rio de Janeiro and the Brazilian army carried out a joint operation in the Vila dos Pinheiros Community, Maré Complex, which is located in the Northern Zone of the city of Rio de Janeiro and is an area reputed to be a stronghold of crime and drug trafficking. The operation allegedly resulted in the killing of seven people. Among them was a young student named Marcos Vinicius da Silva, who was 14 years old at the time of his death.

The Civil Police of Rio de Janeiro and the Brazilian Army deployed helicopters as part of this operation which flew over the Maré community and from which shots were fired. These forces also entered the area in armoured vehicles ("caveirão," or tanks). Approximately 100 officers were involved in the operation, whose reported aim was to enforce twenty-three arrest warrants related to the alleged murder of the chief of investigations of the Drug Enforcement Office on 12 June 2018.

The joint operation began at approximately 9:00 am at a time when many people were on the streets. Marcos Vinicius da Silva was shot in the stomach. He was wearing his school uniform when hit. Marcos received emergency first aid on site and subsequently was transferred to Getúlio Vargas Hospital, where he underwent surgery. It is reported that his ambulance took close to an hour to arrive at the hospital. Despite the efforts of his surgeons, Marco subsequently died of his injuries.

A number of joint operations of the Rio de Janeiro civil police and the Brazilian Army reportedly have taken place in recent times, involving among

other elements, the use of helicopters allegedly opening fire above inhabited areas.

Draft law n° 352/2017

On 26 September 2017, draft law n° 352/2017 was presented to the Federal Senate Plenary. It is currently pending before the Senate's Commission on Constitution, Justice and Citizenship. The draft law amends Article 25 of Decree-law no. 2848 of 7 December 1940 by stating that self-defense is presumed when a public security officer kills or injures anyone who illegally and ostensibly carries a restricted-use firearm.

While I do not wish to prejudge the accuracy of these allegations, the information above suggests a *prima facie* violation of the right of every individual to life and security and not to be arbitrarily deprived of his life or liberty, as set forth in Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Brazil on 24 January 1992; Article 6 of the Convention on the Rights of the Child, ratified by Brazil on 24 September 1990; and Article 3 of the Universal Declaration of Human Rights (UDHR).

Pursuant to relevant international principles and norms governing the use of force by law enforcement authorities, any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. In this light, I am gravely concerned when, as appears to be the case here, law enforcement deploys militarized operational techniques or when armed forces undertake tasks related to public policing security.

Military forces are primarily formed and trained to defend the country against external military threats. They are not civilian police forces, and are trained to operate differently than the latter. For instance, they use heavy weapons designed for warfare, armoured vehicles and helicopters in densely populated urban areas and their potentially indiscriminate effects on the population living therein expose the residents to higher risk of harm, particularly in poor marginalized neighborhoods and favelas. Therefore, military operations conducted in the context of public security should be strictly limited and properly supervised by civil authorities. On this, I echo the concerns already expressed by the High Commissioner for Human Rights in March 2018.¹

The requirements for a justifiable use of force by State officials are set forth in the Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990). These instruments provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to them, intentional lethal use of firearms may be

¹ See: [ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22772&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22772&LangID=E))

strictly permitted when it is unavoidable to protect life and necessary to carry out law enforcement duties. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance, when necessary, should be provided as soon as possible.

Likewise, only in exceptional circumstances that necessitate the use of force to protect life, may State official use firearms and claim self-defense or defense of others as a justification for their decision to use force. However, if possible to avoid the threat without resorting to force, the obligation to protect life includes the duty of law enforcement to utilize alternative non-violent and non-lethal methods of restraint and conflict resolution.

I am further concerned that draft law n° 352/2017 may allow for an expansive interpretation of the right to self-defense by creating a legal presumption of legitimate defense in all cases when public security agents kill or injure those who carry firearms of restricted use anywhere, anytime.

In a context where the excessive use of force and extrajudicial executions by police forces have often been justified as acts of self-defense in response to high levels of violent crime, particularly in relation to anti-drug and anti-crime operations in favelas, this draft law carries the risk of suggesting that these crimes are somehow tolerated by the authorities. This would likely further fuel tensions, even violence, and thus undermine rather than improving public security and is a concern of added pertinence given the cases I raise above.

States are under a human rights obligation to safeguard the security of their citizens. I am aware of the complexities that this entails, particularly in the context of the fight against organized crime or in situations of high violence generated by criminal gangs. Nonetheless, restoring and guaranteeing law and order remains a central responsibility of the State. It must be discharged in a manner that upholds the rule of law, prevents abuses and combats impunity. In this regard, I wish to recall that the Code of Conduct for Law Enforcement Officials stipulates that law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. Furthermore, I wish to recall that, during the Universal Periodic Review (UPR) of 2012, Brazil accepted recommendations to take measures to end extrajudicial executions by security forces and to ensure that force is used only when necessary and proportionate, in accordance with international law and standards. To this end, consideration should be given to the withdrawal of military forces from public safety operations. Adequate legislation, standards and protocols to regulate the use of force by the army and all police forces should, in any event, be adopted in accordance with the principles of necessity, proportionality, legality and full observance of human rights. Furthermore, mechanisms to ensure effective coordination among the authorities responsible for public safety should be established.

I also wish to recall that any investigation on the allegations mentioned above should be aimed at bringing those responsible to justice, promoting accountability, combating impunity and preventing similar occurrences from happening again in the future. Such investigations must always be independent, impartial, prompt, thorough, effective, credible and transparent, and in the event that a violation is found, full reparation must be provided to victims and their families. In this regard, I would recommend that the apparent extrajudicial execution of Mr. Marcos Vinicius da Silva be investigated in conformity with the *Minnesota Protocol on the Investigation of Potentially Unlawful Death (United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions)* updated in 2016.

I wish to stress that, pursuant to Article 2 (3) of the ICCPR, any person whose rights or freedoms recognized in the Covenant are violated shall have an effective remedy (see also Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular Principle 9). I also wish to recall that during the UPR of 2012, Brazil committed to ensure that all killings by law enforcement personnel are properly recorded and independently investigated.

In relation to this, I also wish to reiterate the concerns already expressed by the Regional Office for South America of the United Nations High Commissioner for Human Rights (OHCHR) and the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) over the adoption of Law n. 13.491/17 which established the competence of military courts to investigate and try intentional killings of civilians allegedly committed by agents of the armed forces (see http://www.oas.org/en/iachr/media_center/PReleases/2017/160.asp).

Investigations and trial in military courts of alleged human rights violations committed by members of the military, preclude the possibility of an independent and impartial investigation carried out by judicial authorities not linked to the command structure of the security forces. The military justice system should try only members of the military accused of crimes of an exclusively military nature or breaches of military discipline. Civilian courts should retain jurisdiction over all unlawful killings cases, irrespective of the alleged perpetrator.

In light of the seriousness of the above-mentioned allegations, I would appreciate a response on the initial steps taken by your Excellency's Government to protect the life, security and physical integrity of the population living in the Maré complex. We also urge your Excellency's Government to ensure that draft law n° 352/2017 addresses the concerns expressed above and is consistent with relevant international norms and standards.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and comments you may have on the above mentioned allegations.
2. Please provide any information on whether any investigation has been or is being conducted into the conduct of the operation described above, and the apparent arbitrary execution of Mr. Marcos Vinicius da Silva; on the results of such an investigation in terms of accountability of police and army personnel involved; and on steps taken to ensure, where appropriate, accountability and reparation, including compensation to the victim's next-of-kin.
3. Please provide detailed information on the rules of engagement of both police and armed forces deployed in public security operations for the use of lethal force, as well as on the competent jurisdiction over such cases.
4. Please provide detailed information on the progress in the implementation of the recommendations formulated in the country visit report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2/Add.2), particularly in relation to police and security forces conduct and accountability.
5. Please articulate in detail how draft law n° 352/2017 is consistent with international norms and standards on the use of force by State officials and the principle of self-defence, and what are the measures provided for therein in order to protect against any possible abuse.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken to halt any alleged violations and prevent re-occurrence. In the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible.

I am considering to publicly express the concerns outlined in this letter in the near future as, in my view, the information at hand appears to be sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential human rights implications of the above-mentioned allegations. Any public statement on my part will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions