

Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL BRA 15/2018

31 December 2018

Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on violence against women, its causes and consequences and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 36/23, 35/15, 34/3, 34/18, 32/32, 34/5, 35/19, 34/35, 32/2, 32/19 and 32/4.

In this connection, we would like to reiterate our concerns on the killing of Ms. Marielle Franco and her driver, which took place on 14 March 2018 in Rio de Janeiro, and we would like to request further information on the status of the investigation.

The killing of Ms. Marielle Franco and her driver were already the object of a joint letter of allegation sent by UN Special Rapporteurs on 22 March 2018 (ref. BRA 3/2018). We thank your Excellency's Government for the replies provided on 23 March 2018, 27 March 2018 and 12 September 2018. We take note that, at the time of your Government's latest reply, information on the status of the investigation could not be disclosed. We further take note of the National Policy for the Protection of Human Rights Defenders (PNPDDH) and the Federal Program of Assistance to Threatened Victims and Witnesses (PROVITA).

We acknowledge that on 7 November 2018, a parliamentary committee of the Chamber of Deputies of Brazil approved a petition requesting Federal authorities to exercise jurisdiction on the investigation and stated that an official letter would be sent to the Office of the Attorney General of the Republic, an administrative body of the Federal Public Ministry, responsible for directly requesting a final decision from the Superior Court of Justice. We note that several arrest warrants were recently issued regarding suspects involved in the killings.

We would like to emphasize that the ammunition and weapon used for the killing of Ms. Franco and her driver were reportedly of restricted use and therefore only allowed for security and military forces and specific categories of members of the criminal justice system. Although your Excellency's Government confirmed that the ammunitions belonged to a lot which was stolen from the Federal Police of Brasilia, we regret that no further information were provided on the details of the loss or deviation of the stolen lot.

We are concerned by the statement given on 21 November during a media interview by the Minister of Public Security concerning the existence of a plot to try to impede the investigations, and the opening of a parallel investigation.

We wish to reiterate that we are concerned that the killings may be related to Ms. Franco's legitimate exercise of her right to freedom of expression, to her participation in political and public life, to her human rights work for residents living in informal settlements and for denouncing excessive use of force by the Police, extrajudicial killings and increasing militarization of policing that disproportionately impact Afro-Brazilians. We further recall our concern that Ms. Franco may have been targeted as a result of racial discrimination against her as an Afro-Brazilian woman defending the human rights of women, LGBTI persons and Afro-Brazilians, in the context where the austerity measures have significantly reduced the capacity and resources of Federal and State institutions fighting against racial, sex and gender-based discrimination.

Serious concerns are also expressed on the current grave context of violence, threats and killings in which human rights defenders carry out their work in Brazil. UN human rights mechanisms have repeatedly expressed their concern on the aggravated risks faced by people who defend human rights in the country and have recommended that the State of Brazil take urgent measures to guarantee their effective protection. In particular, we are concerned about the threats received by human rights defenders associated with the work of Marielle Franco.

In connection with the above concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to this case.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide detailed information on the ongoing investigation of the killing of Ms. Marielle Franco and her driver, and on the main lines of investigation.
2. Please indicate which measures have been adopted to protect the integrity of the investigations in order to avoid allegations of obstruction by third parties;
3. Please indicate which measures have been adopted to guarantee special protection measures for the witnesses of the case in compliance with international standards.
4. Please indicate what measures are being taken to ensure that human rights defenders are able to carry out their legitimate work without fear of threats or acts of intimidation and harassment of any sort.
5. Please provide detailed information about the measures taken by the authorities to protect those who participate in political and public life against violence.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge your Excellency's Government to take the necessary measures to ensure an impartial, diligent and thorough investigation, taking into account timely logical lines of investigation..

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Michal Balcerzak
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan Pablo Bohoslavsky

Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst

Special Rapporteur on the situation of human rights defenders

Philip Alston

Special Rapporteur on extreme poverty and human rights

E. Tendayi Achiume

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Victor Madrigal-Borloz

Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Ivana Radačić

Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

The above mentioned allegations appear to be in contravention of article 6 (1) of the International Covenant on Civil and Political Rights, acceded by Brazil on 24 January 1992, which provides for the right to life, security and not to be arbitrarily deprived of life.

In its General Comment 6, paragraph 3, the Human Rights Committee noted that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts as well as to prevent arbitrary killing by their own security forces. In addition, in its General Comment No. 31, the Committee stated that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by private persons or entities, which includes the duty to take appropriate measures to prevent, investigate, prosecute and punish those responsible and repair the damage caused by private persons or entities (CCPR / C / 21 / Rev.1 / Add.13, paras. 8 and 18). The Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, require that relevant State institutions have the responsibility to undertake thorough, prompt and impartial investigations in all suspected cases of extra-legal, arbitrary and summary executions. A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR. In general Comment 35, the Human Rights Committee recalled that the right to personal security obliges States parties to take appropriate measures to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.

With regards to excessive use of force and extrajudicial killings targeting Afro-Brazilians, we would further like to remind your Excellency's Government of its obligations under the the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Brazil on 27 March 1968. Article 2(1) prohibits States Parties from engaging in any act or practice of racial discrimination and obliges them to ensure that all public authorities on the national and local levels act in conformity with this obligation. Article 5(b) requires States Parties to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. This includes the right to personal security and protection by the State against violence or bodily harm, regardless of whether harm is inflicted by government officials or by any individual group or institution. Pursuant to article 6, States must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims or their families.

We moreover refer to the right to freedom of opinion and expression, guaranteed under article 19 of the ICCPR. We highlight in this regard Human Rights Council

resolution 12/16 which calls upon States to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence and to bring to justice those responsible to combat impunity.

Furthermore, we would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. We additionally take note of Article 12 of this Declaration, which requires States “to take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”

Moreover, we refer to Article 1 of the Declaration on the Elimination of Violence against Women which defines "violence against women" as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 7 (c) of the Convention on the Elimination of All forms of Discrimination against Women further requires that States Parties “take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, [...] ensure to women, on equal terms with men, the right [...] to participate in non-Governmental organizations and associations concerned with the public and political life of the country”. In this context, we also refer to General Assembly resolutions 68/191 and 70/176 on taking action against gender-related killing of women and girls. We also refer to the report of the Special Rapporteur on violence against women, its causes and consequences, on gender-related killings (A/71/398).

Finally, we refer to article 3 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which provides that “Every woman has the right to be free from violence in both the public and private spheres”; and article 4 that provides for every woman “the right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making”.