

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Inter-American Commission on Human Rights

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 35/15, and the Inter-American Commission on Human Rights.

In this connection, we would like to bring to the attention of your Excellency's Government information we have **received concerning excessive use of force, including shoot-to-kill policing tactics that resulted in killings by the state in the context of joint military police and armed forces operations in Rio de Janeiro targeting poor neighbourhoods where a majority of residents are people of African descent.**

Similar concerns regarding extrajudicial killings in favelas of Rio de Janeiro in the context of police anti-drug operations were raised in a joint communication sent to you Excellency's Government on 30 August 2017 (BRA 7/2017) by the Working Group of Experts on people of African Descent; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur of everyone to the enjoyment of the highest attainable standards of physical and mental health. We regret that we have not yet received a reply to this communication.

According to the new information received:

On 25 January 2019, a man, 27, was shot while riding a motorcycle in the locality of Korea, Manguinhos, Rio de Janeiro. Testimonies indicate that at approximately 18h40 the victim was shot in the lower back from a tower inside the police headquarters (Cidade da Polícia). The victim was then transferred to an Emergency Care Unit (UPA Manguinhos), but did not survive his injuries.

On 29 January 2019, a man, 37, was shot in the chest while riding a motorcycle in the same location in Manguinhos. In addition, the autopsy indicates that the projectile followed a downward trajectory. A reconstruction report prepared by experts from the Homicide Police Precinct identified two viewpoints from the tower overlooking the region where the victims were hit. On 14 February, the Group of Specialized Action in Public Security (GAESP) formally opened an investigation into these cases.

On 8 February 2019, during an operation by the Military Police's Special Operations Battalion (BOPE) and Choque Battalion, 15 people were executed following their surrender to police at Morro do Fallet-Fogueteiro in Santa Teresa, located in Central Rio de Janeiro. Information received indicate that many of the

victims were shot in the back, indicating that the rounds fired by security forces were not in self-defence. According to press information, this was the deadliest operation using lethal violence in the state of Rio de Janeiro in 12 years.

In another incident, evidence gathered by civil police found that at least 128 bullets had been fired inside a house where nine young men, including two minors had taken shelter. Prior to their killing, some of the victims would have been shot in the legs and beaten as they pleaded for their lives. Some victims sustained additional knife-inflicted injuries. Allegedly, the autopsy report omits to mention the evisceration with a knife of one of the victims. Additionally, it was reported that the victims' clothes, which were torn and then discarded, should have been preserved as material evidence.

Civil society organizations reported that the police agents prevented relatives from approaching the house with the use of tear gas and pepper spray, and that they also destroyed cell phones of those who tried to film the scene. In addition, residents reported that the bodies of the victims were removed from the scene by the police themselves, before evidence gathering could be conducted by the criminal science unit. They informed that the officers then transported the nine bodies in the back of a police vehicle to the Hospital; however, the Municipal Secretary of Health reported that all of the victims had arrived dead.

According to publicly available information, on 7 April 2019, a Brazilian Army patrol was informed of a car robbery allegedly committed by three unidentified armed individuals in the neighbourhood of Guadalupe, Rio de Janeiro. During the chase to the alleged assailants, the patrol armed soldiers fired 257 rounds towards a white Ford Ka and the identified stolen car, using machine guns and pistols. Of the shots fired, 62 hit a nearby car, in which there was a family of five, two of them children aged 7 and 13. According to the Military Public Prosecutor's office, the driver of the bystander vehicle was hit and became unconscious, and was subsequently shot another 8 times by machinegun fire. In addition, a man who attempted to rescue the injured driver was fatally shot and died 11 days later due to injuries to the thorax and left lung. No weapons were found on the victims. The case is currently under investigation by the Military Public Prosecutor's Office.

On 5 May 2019, a police operation was carried out in the city of Angra dos Reis, in which the Governor of Rio de Janeiro participated. The operation was live streamed on social media from a helicopter, during which shots were reportedly fired at tents used by a religious group, on the grounds that the tents would be hiding suspects.

On 6 May 2019, eight people were killed during a police operation in the Complex of Maré, Rio de Janeiro, several of whom had reportedly surrendered but were executed by the police. According to information received, during the operation, police officers had also fired from a helicopter in an area with high population density, near schools and other public facilities, where a significant number of passers-by are children.

The information received also includes the use of low flying helicopters shootings, the presence of police towers and snipers in civilian areas and continuing encouragement of police use of excessive force by state officials in the context of the so-called war on drugs. For example, on 1 March 2019, at an inauguration ceremony of the Secretary of State for the Military Police, the Governor of Rio de Janeiro publicly recommended the police execute possible criminals by stating, "[The police] will aim at the head and fire, so there is no mistake".

According to figures of the Rio de Janeiro Public Security Institute, from January to March 2019, 434 individuals were killed by state officials, which represents an increase of approximately 18% as compared to 2018. The main victims of these policies which are officially justified to combat violent crime, are reportedly young black men who live in favelas. The Inter-American Commission on Human Rights and the UN Special Procedures have highlighted the racial discrimination in the police use of excessive deadly force against young black men. During the same period, 13 military officers were killed (3 on duty, 7 off-duty and 3 after they retired).

Information received also points to a disproportionate numbers of killings caused by police in certain areas in the city of Rio de Janeiro, in particular areas both inside the city and in the favelas surrounding it and in the Baixada Fluminense.

Official encouragement of what appears to be a deliberate shoot-to-kill policy in the context of anti-drug and anti-crime efforts was reportedly expressed in recent public declarations by Governor of Rio de Janeiro, Wilson Itzel.

While we do not wish to prejudge the accuracy of these allegations, should they be confirmed, they would point to what appears to be a deliberate policy of excessive use of lethal force against suspected offenders in disregard of their right to life in violation of Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR); Article 6 of the Convention on the Rights of the Child; Article 3 of the Universal Declaration of Human Rights (UDHR); and Article 4, Article 7 (1) of the American Convention on Human Rights.

The IACHR and several UN Special Procedures mandates have previously underscored their concern¹ in the form of public statements, as well as communications,

¹ Some of the most recent concerns expressed include, but are not limited to:

1. CIDH expresa profunda preocupación por el aumento de la violencia contra personas afrodescendientes en Brasil. 26 September 2018 <http://www.oas.org/es/cidh/prensa/comunicados/2018/209.asp>
2. Brazil security forces who shot dead 14-year-old schoolboy must face justice, says UN expert. 30 July 2018 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23419&LangID=E>

about the increasingly militarization of civilian police forces involved in combating criminal activities. These concerns include what appears to be a frequent racial profiling in the targeting of suspected offenders and victims; the type of training received; the operation protocols used; and the widespread impunity of police officers and hierarchy, whereby police officers who are guilty of abuse or excessive use of force are seldom held criminally liable or prosecuted.

The IACHR and the UN Special procedures are calling on the Government's attention to the responsibility to protect against arbitrary deprivation of life, which applies to the entire State structure — including federal, state, and local government entities — and to all actions of police officers. Police use of force must be guided by the principles of legality, necessity and proportionality, and lethal force should be used only when other, less harmful and not fatal methods have been exhausted and failed. Medical assistance, when necessary, should be provided as soon as possible to the victims of such use of force.

UN Special Procedures and the IACHR wish also to remind the government of Brazil that laws and practices which have a discriminatory effect (disparate impact) contravene international human rights law. We call upon the Government to bring its domestic law in line with international standards in this regard, especially concerning public security policies or practices that negatively impact suspected criminals, including Afro-descendant persons.

We are calling upon the Government to take the necessary steps to halt the militarization of public security, and examine and review its policing policies and practices in this field, so as to determine the extent to which they may be discriminatory vis-à-vis certain communities, especially Afro-descendants.

In this regard, it would seem that the immunity from prosecution or other sanctions of the police, and its related impunity for acts of violence against alleged offenders of Afro-Brazilian descent is allegedly widespread. A large number of deaths of members of that community resulting from police interventions are reportedly not registered or investigated as homicides. Instead, these deaths are often registered as a “resistance followed by death” (autos de resistência), indicating that a person was killed while committing the crime of resisting arrest or other lawful orders. The classification

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3. Brazil: UN experts alarmed by killing of Rio human rights defender who decried military intervention. 26 March 2018
<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22901&LangID=E>
 4. Brasil: preocupa a ACNUDH y CIDH intervención federal en Rio de Janeiro. 13 March 2018
<http://www.oas.org/es/cidh/prensa/comunicados/2018/047.asp>
 5. Arbitrary police violence can amount to torture, even in public spaces, UN expert warns. 13 October 2017
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22235&LangID=E>
 6. ONU Derechos Humanos y CIDH rechazan de forma categórica proyecto de ley que expande la jurisdicción de tribunales militares en Brasil. 13 October 2017
<http://www.oas.org/es/cidh/prensa/comunicados/2017/160.asp>

implies that the police acted in self-defence and that the use of lethal force was a necessary and proportionate response to a threat posed by the person killed. Although not mandated by law, the registration of killings as “resistance followed by death” remains a widespread practice throughout Brazil.

In this regard, we express our most serious concern that the lack of thorough and impartial investigations into extrajudicial killings of suspected offenders, and in particular in the case of Afro-Brazilian youth, may result in the impunity of perpetrators, encourages further excessive use of force, including lethal force and perpetuates violations of the fundamental right to life, as well as the denial of adequate remedies and reparation for the families of the victims.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned events.
2. Please provide detailed information on the rules of engagement of both police and armed forces deployed in public security operations on the use of lethal force, as well as on the competent jurisdiction over such cases.
3. Please provide information regarding existing measures to ensure a prompt and exhaustive investigation of the above-mentioned killings;
4. Please provide information regarding existing measures taken by the State to prevent the recurrence of lethal action and other misconduct by the police;
5. Please provide information regarding measures that have been or will be taken by the State in order to align national policing policies and practices with international human rights law in the area of use of force and in particular deadly force, with due respect to the principles of exceptionality, necessity, proportionality, and legality.
6. Please provide information regarding measures by the State in order to require that all law enforcement agents receive human rights based professional training, with particular regard to the state obligation to respect and protect fundamental rights, such as the rights to life and personal integrity.
7. Please provide information regarding existing measures to see to it that that there is no racial bias in the use of force, including lethal force by the police against persons of Afro-Brazilian descent.

8. 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.
9. Please also provide detailed information on the progress in the implementation of the recommendations of the Working Group of experts on people of African descent following its country visit to Brazil (A/HRC/27/68/Add.1), particularly in regards to combatting racial discrimination faced by people of African descent.
10. Please also provide detailed information on the progress in the implementation of the recommendations of the Inter-American Commission on Human Rights (Preliminary Observations), following its country visit to Brazil in November 2019, particularly in regards to the increasing militarization of public security forces and its disparate on Afro-descendant and poor communities.

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 that all necessary interim measures be taken to halt the above-mentioned violations and prevent their re-occurrence and in the event that the investigations support or suggest the received information to be correct, to ensure the accountability of any person(s) responsible for those facts.

We may publicly express our concerns in the near future as, in our view, the information upon which is the information received is sufficiently reliable to indicate a matter warranting immediate attention. We believe that the wider public should be alerted to the potential human rights implications of these practices, should they be confirmed. Any public expression of concern on our part 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.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Maria Claudia Pulido
Assistant Executive Secretary
Inter-American Commission on Human Rights

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the information above suggests a non-compliance with international obligations regarding 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; Article 3 of the Universal Declaration of Human Rights (UDHR); Article 4, Article 7 (1) of the American Convention on Human Rights, ratified by Brazil on 9 July 1992

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, it is concerning 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 neighbourhoods and favelas. Therefore, military operations conducted in the context of public security should be strictly limited and properly supervised by civil authorities.

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 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-defence or defence 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.

We reiterate that 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, we wish to recall that, during the Universal Periodic Review (UPR) of 2017, Brazil was urged to promote Ethnic-racial equality (Recommendations 31, 50, 51, 138, 162), and increase their efforts in investigation of violence, taking action against abuses or power by law enforcement and actively reduce the number of victims of a black poor youth background. Previously, in 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. Brazil committed to ensure that all killings by law enforcement personnel are properly recorded and independently investigated. 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.

We also wish to recall that any investigation on the events 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.

Likewise, only in exceptional circumstances that necessitate the use of force to protect life, may State official use firearms and claim self-defence or defence 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.

The IACHR and the Special procedures are aware of the complexities States face in safeguarding the security of their citizens, 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.

We also 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).

We would further like to remind your Excellency's Government of the Durban Declaration and Programme of Action (2001) and the Programme of Activities of the International Decade for People of African Descent (A/RES/69/16). These documents urge States, including their law enforcement agencies, to eliminate racial profiling; to design and fully implement effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers and other law enforcement personnel which is motivated by racism, racial discrimination, xenophobia and related intolerance; and to prosecute perpetrators of such misconduct.

With regards to the high rates of extrajudicial executions targeting Afro-Brazilian youth, we would like to remind your Excellency's Government of its obligations under ICERD. In accordance with article 2(1), States Parties undertake to engage in no act or practice of racial discrimination.

In this context, we would also like to underline that the Committee on the Elimination of Racial Discrimination has made it clear that profiling on the basis of race or ethnicity is contrary to the provisions of ICERD, particularly articles 2, 4, 5, and 7. In its general recommendation No. 13 on the training of law enforcement officials, the Committee stressed that these provisions rely on national law enforcement officers who should be properly informed of, and trained on, their State's obligations under the Convention as well as the Code of Conduct for Law Enforcement Officers (see General Assembly Resolution 34/169, annex). The Committee reiterated the importance of awareness raising and training for public officials in its 2004 concluding observations. The Committee recommended that Brazil "[...] improve the awareness and training programmes regarding the existence and treatment of racist crimes on the part of the persons engaged in the administration of justice, including judges, public prosecutors, lawyers and law enforcement officials" (See CERD/C/64/CO/2, para.18).

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.