

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group of Experts on People of African Descent; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL BRA 4/2021

31 May 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group of Experts on People of African Descent; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 45/24, 44/13, 43/36 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the death of at least twenty-eight people in the course of a police operation in the Jacarezinho neighbourhood of Rio de Janeiro¹.

According to the information received:

On 6 May 2021, the civil police of Rio de Janeiro State conducted an anti-narcotics security operation named "Exceptis" in the neighbourhood of Jacarezinho, located in the northern part of the city of Rio de Janeiro. This is home to approximately sixty-thousand residents, mostly impoverished afro-descendants, living in an area of around forty hectares. The police operation reportedly involved the deployment of two hundred and fifty police officers, four armoured vehicles and two helicopters. The operation resulted in the death of twenty-eight people, including one police officer, and at least six other people were injured. The precise number of people injured however is reportedly higher but still unknown.

According to reports, the police shot indiscriminately in at least ten densely populated locations of the neighbourhood, with disregard for the lives and safety of those living there. This was aggravated by the fact that the operation took place at dawn, when residents were preparing for daily activities, with many people, including children, in the streets. Stray bullets even hit distant public transportation vehicles, injuring passengers.

¹ Concerns at the conduct of security operations, particularly in marginalised neighbourhood of Rio de Janeiro, have been raised by Special Procedures on different occasions. These include an allegation letter sent on 20 June 2019 (AL BRA 9/2019): <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24657>; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34848>; as well as a letter sent on 20 July 2018 (AL BRA 10/2018): <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23975> (thus far, no reply was received by the Government).

According to several witnesses' accounts, some of those killed were executed at point blank range after they had surrendered to the police.

Several people were arrested during the operation and some reported having suffered torture or other cruel, inhuman or degrading treatment or punishment in the hands of the police, allegations which reportedly were forensically confirmed by the Institute of Forensic Medicine (Instituto Médico Legal) of Rio de Janeiro. In addition, some of the witnesses of the events who came forward to denounce the facts allegedly received threats of reprisals and were subjected to acts of intimidation.

It is further submitted that, following the operation, the police did not take the necessary steps to adequately preserve relevant evidence at the crime scenes, including in relation to the removal of the bodies, allegedly done before ensuring proper scenes' documentation, and the appropriate cleaning of evidence, such as blood stains.

According to reports, this was one of the largest death tolls in a single police operation in Rio de Janeiro, a city that is witnessing unprecedented levels of police violence. Data released by the Network of Security Observatories² suggest that, between November and December 2020, eighteen persons were killed and five were injured in the course of monitored police operations. In the first two months of 2021, forty-seven persons were killed and fourteen injured. Overall, however, it is estimated that, from January to March 2021, the police allegedly killed four hundred fifty-three people and at least four police officers died in the course of security operations³.

On 5 June 2020, Brazil's Federal Supreme Court suspended police operations in Rio de Janeiro due to the COVID-19 health emergency. However, the Rio State government has reportedly failed to comply with the decision of the Court and police operations have continued. This has reportedly resulted in a dramatic increase of loss of life and safety risks for the many people who are confined at home, including children who are not going to school, with a particularly adverse impact on the already marginalised population of the most disadvantaged neighbourhoods.

While we do not wish to prejudge the accuracy of the information received, we wish to express our gravest concern at the above mentioned allegations which, if confirmed, would amount to a violation of the right to life, as set forth in article 3 of the Universal Declaration of Human Rights (UDHR), and in article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Brazil in 1992. They could also be in violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, established in article 5 of UDHR, article 7 of the ICCPR, and article 1 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, ratified by Brazil in 1989.

We therefore wish to echo the call of the High Commissioner for Human Rights for the conduct of an independent, thorough and impartial investigation into the reported killings in accordance with international standards, particularly the

² <https://nev.prp.usp.br/>

³ See Human Rights Watch, Raid in Rio de Janeiro Leaves 28 Dead: <https://www.hrw.org/news/2021/05/07/raid-rio-de-janeiro-leaves-28-dead>

Minnesota Protocol on the Investigation of Potentially Unlawful Death⁴. All those responsible for unlawful killings, including those who commanded extra-judicial, summary or arbitrary executions should be brought to justice and victims should have been granted full reparations, including guarantees of non-repetition. We also call on the authorities to take the necessary steps to protect witnesses, survivors and their relatives and all persons involved in the conduct of any investigation on the reported events from threats, attacks and acts of retaliation.

We also note that, during the Universal Periodic Review (UPR) of 2012 and 2017, with regard to public safety and the justice system, in addition to strengthening long-term preventive measures, such as education, income distribution and income generation programmes, Brazil expressed its commitment to ensuring that the fight against crime was carried out in compliance with its international human rights obligations and supported recommendations received to take measures to end extrajudicial executions by security forces⁵.

We stand ready to support your Excellency's Government efforts in this regard and remain available for any assistance we may be able to provide to the authorities concerned.

In connection with the above alleged facts and 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 these allegations.

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 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 allegations.
2. Please provide information on whether any investigation has been launched into the conduct of the police operation reported above, including in relation to the reported killings and the allegations of torture and other cruel, inhuman or degrading treatment or punishment. Please provide updated information on the status of such investigation, particularly in terms of steps taken, or envisaged to be undertaken, in view of ensuring accountability of those responsible and reparation, including adequate compensation, to victims' families and/or next-of-kin, as appropriate. If no investigation was launched yet, please explain the reasons why.
3. Please provide information on whether autopsies were conducted on the bodies of those killed as a result of the police operation and explain whether they were in compliance with the Minnesota Protocol, as also required by the ruling of the Supreme Federal Court of Brazil cited above.

⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27069&LangID=E> ; and as also required by the recent ruling (cautionary measure) of the Supreme Federal Court of Brazil (18/08/2020; Medida cautelar na arguicao de descumprimento de preceito fundamental 635 Rio de Janeiro).

⁵ Universal Periodic Review - Brazil: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BRIndex.aspx>

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 alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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.

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Special Rapporteur on extrajudicial, summary or arbitrary executions

Dominique Day
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Olivier De Schutter
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E. Tendayi Achiume
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Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person"; and article 6 (1) of the International Covenant on Civil and Political Rights which provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

We wish to stress that the right to life is the supreme right from which no derogation is permitted. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights⁶.

Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of life and that this right shall be protected by law⁷. Accordingly, States parties have a duty to refrain from engaging in conduct resulting in arbitrary deprivation of life; and must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State⁸.

In particular, States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials. This includes putting in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures to ensure that law enforcement actions are adequately planned to minimise risks to human life, mandatory reporting, review and investigation of lethal incidents, and supplying forces responsible for crowd control with effective, less-lethal means and adequate protective equipment in order to obviate their need to resort to lethal force⁹.

All operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life¹⁰.

An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving

⁶ Human Rights Committee, General comment No. 36, article 6: right to life (CCPR/C/GC/36): <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGG B%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBQgqmxPNIjrLLdefuuQjjiN19BgOr%2fS93rKPWb CbgoJ4dRgDoh%2fXgwn>

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

Ibid.

allegations of excessive use of force with lethal consequences¹¹.

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates¹². They must always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future¹³.

In addition, under article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Brazil in 1968, States parties have the obligation to condemn and eliminate racial discrimination in all its forms. To this end, States parties undertake to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions act in conformity with this obligation. According to article 5 of ICERD, States parties should guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably the enjoyment of the right to security of person and protection by the State. The Committee on the Elimination of Racial Discrimination, in paragraph 21 of its General Recommendation N° 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, recalls that States have the obligation to prevent and severely punish violence, acts of torture, cruel, inhuman or degrading treatment and all violations of human rights affecting persons belonging to racially discriminated groups when committed by State officials, particularly police. The Committee also stated that in cases of allegations of torture, ill-treatment or executions, investigations should be conducted in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, in its General Recommendation N° 34 on Racial discrimination against people of African descent, the Committee has also insisted that States should take measures to prevent the use of illegal force, torture, inhuman or degrading treatment or discrimination by the police or other law enforcement agencies and officials against people of African descent, especially in connection with arrest and detention, and ensure that people of African descent are not victims of practices of racial or ethnic profiling.

We also wish to refer to article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹⁴ states that: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever (...) may be invoked as a justification of torture (...)”.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

Article 7 of the CAT also states that: “The State Party (...) shall (...) submit the case [of torture] to its competent authorities for the purpose of prosecution (...)”.

Article 12 of the CAT further provides that: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”.

Article 14 of the CAT states that:” Each State Party shall ensure (...) that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. (...).”.