

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

Ref.: AL BRA 14/2021
(Please use this reference in your reply)

13 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Working Group of Experts on People of African Descent; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/36, 45/24, 44/5 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 allegations of human rights violations that occurred on 20, 21 and 22 November 2021, in the Salgueiro Complex in the city of São Gonçalo, in the Metropolitan Region of Rio de Janeiro. We have also received information concerning systematic violent action by the police in operations carried out in the favelas of Rio de Janeiro, which has resulted in several killings, including the disproportionate killing of Afro-Brazilians. We would like to remind your Excellency's Government that Special Procedures mandate holders have raised similar concerns several times in the recent past. In May 2021, we expressed our alarm about the killing of at least 26 people during a police operation in the Jacarezinho neighbourhood of Rio de Janeiro ([AL BRA 4/2021](#)). In addition, in 2019 and 2018 we also expressed similar concerns in communications ([AL BRA 9/2019](#)) and ([AL BRA 10/2018](#)). We thank your Excellency's Government for the [response](#) and annexes received on 21 July 2021 to AL BRA 4/2021, the [response](#) received to AL BRA 9/2019 on 27 August 2019 and the [response](#) received to AL BRA 10/2018 on 6 February 2019. We take note of the information that has been provided by your Government on the measures taken to investigate some of such cases. In particular, we welcome the actions taken by the Public Ministry of the State of Rio de Janeiro to initiate an investigation of the allegations of the events that of May 2021 in Jacarezinho neighbourhood of Rio de Janeiro. We also take note of the preventive measures adopted such as the Strategic Plan for the Federal Intervention on the field of public security, the Legacy Plan and the State Plan for the Promotion of Racial Equality. However, we regret that the responses provided do not have detailed information on the measures taken to ensure the impartiality of such investigations; the result of such investigation and the concrete actions taken to prevent the recurrence of such human rights violations.

According to the information received:

On 21 November 2021, the Military Police of Rio de Janeiro carried out another killing in the Salgueiro Complex, the sixth in the region this year. The police action took place after the death of a police sergeant during a patrol in the Itaúna neighbourhood in the Salgueiro Complex. This timing indicates that the police

action may have been part of a “revenge operation” against the residents of the Complex. The police operation resulted in at least 8 deaths.

On 22 November 2021, residents of the region found bodies in a forested area of São Gonçalo. Family members of the victims entered the water to locate and retrieve the bodies. According to the information received, the bodies had bullet holes and signs of torture. One person reported that a family member was taken from home and executed in the woods. Some persons are still missing, and there is a suspicion that more bodies could be found in the area. The Military Police notified the Civil Police of the State of Rio de Janeiro about the deadly outcome of the operation, indicating that it was long and took place in dense woods with poor visibility. The spokesperson of the Military Police also indicated that the operation was “successful” and managed to “stabilize” the area.

The Homicide Precinct of Niterói, São Gonçalo and Itaboraí and the Forensic Medical Institute arrived at the scene 32 hours after the police action and were accompanied by the Military Police. According to the information received, the Public Defender’s Office of the State of Rio de Janeiro expressed its concern regarding the fact that the Military Police did not immediately notify the Civil Police and the State Attorney’s Office of the presence of the bodies, and it also noted that there were no precautionary measures put into place in the area after the police action.

In November 2019, an Action for Non-Compliance with Fundamental Principles was filed before the Brazilian Supreme Court. The Action aimed to contest violent law enforcement operations in the favelas of Rio de Janeiro. During the pandemic, the number of law enforcement operations, as well as their lethality and violence, has increased exponentially. In June 2020, an injunction was issued to suspend these police operations in Rio de Janeiro during the public health crisis generated by COVID-19.

In March 2021, the State Attorney’s Office dismissed the Group of Specialized Action in Public Security, which until then had focused on external oversight and control of police activity. A new body called the General Public Security Coordination was created, which does not have competence to investigate and file complaints on individual cases of police abuse, nor to open civil inquiries and initiate other actions involving police practices.

Since 2014, there has been a significant increase in deaths due to police interventions. In 2018, the deaths resulting from police interventions increased 19.6% from 2017, and 11% of intentional violent deaths in the country were the result of encounters with law enforcement. 75.5% of the victims of these violent encounters were Afro-descendants.¹ Since 2019, law enforcement operations have become more intense, with increasing brutality and violence used by police forces. This has had a disproportionate impact on people of African descent. During a public hearing by the Inter-American Court to monitor the compliance of the judgment against Brazil of 16 February 2017, some judges highlighted

¹ The Brazilian Public Security Yearbook, 2019, accessible at https://forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL_21.10.19.pdf

that the disproportionate number of black victims represents a serious obstacle to national integration and social coexistence.

Although murders by the police officers have been committed across the country, some reports raise particular concern about killings in the State of Rio de Janeiro. Between 2007 and October 2021, 941 operations have been carried out in the metropolitan area of Rio de Janeiro as retaliation against murders or attacks against State agents. These operations are known as “revenge operations”. 401 deaths are estimated to have occurred due to these operations. Civil and military police, as well as the State Government, operate under the notion of “the reality of war” in Rio de Janeiro, creating a permanent justification for police incursion into sensitive areas and routinizing militarized police violence in such a way that it has merged with regular police activities.

At the 47th session of the Human Rights Council, the High Commissioner for Human Rights presented her report entitled “Promotion and protection of human rights and fundamental freedoms of African and people of African descent against excessive use of force and other human rights violations by law enforcement officers”. In this report, she referred to the case of a young boy who was murdered in the Salgueiro complex in May 2020.² In addition, she has indicated that: “According to the Brazilian Forum for Public Security, ‘the mortality rate in 2019 due to police interventions was 183.2 per cent higher for people of African descent than for white people’”.³

In August 2021, the Committee on the Elimination of Racial Discrimination also addressed allegations that the police carried out two violent operations in the favelas of Rio de Janeiro in violation of a June 2020 Supreme Court ruling which temporarily banned police operations in the communities of Rio de Janeiro for the duration of the COVID-19 pandemic. The Committee noted that the police have allegedly ignored the prohibition, as the number of police operations has increased between October 2020 and the first half of 2021.

In 2021, the Salgueiro Complex was the target of 20 police operations between January and October, and 26 individuals have been killed in this area. São Gonçalo is the region of Rio de Janeiro with the highest death rate as a result of state violence. This municipality has the fourth highest rate of black people killed by the police in Brazil. The latest survey by the Brazilian Public Security Forum indicates that 78.9% of the victims of police brutality in Brazil are black.

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. These acts and omissions 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 Articles 1, 2 and 16 of the Convention

² A/HRC/47/53, para 30

³ A/HRC/47/53, para 26

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Brazil in 1989.

In addition, we also concerned that these actions by the police are part of persistent systemic and historical racial discrimination against Afro-Brazilians. These activities could amount to a violation of the prohibition of racial discrimination and of the principle of equality before the law established in articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was ratified by Brazil on 27 March 1968. In particular, we note that article 5(b) calls for racial equality in respecting “[t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”. In a report on the situation of human rights in Brazil, published in February 2021, the Inter-American Commission on Human rights noted that “the cycle of racial violence is rooted in pervasive cultural patterns of ethnic and racial belittling and subjugation throughout Brazilian society that have generated historical structural discrimination, prejudice, and inequality that in turn have perpetuated a perverse culture of racial domination expressed in an unending cycle of violations”.⁴

Furthermore, we are alarmed that the majority of these allegations have not been duly investigated in line with international standards, including the United Nations *Minnesota Protocol on the Investigation of Potentially Unlawful Death*⁵ and are concerned by the recent dismissal of the body that monitored police activities. In a letter addressed to your Excellency’s Government, on 25 August 2021, the Committee on the Elimination of Racial Discrimination expressed concern about the failure of your Excellency’s Government to hold police forces accountable for violent and racist acts against Afro-Brazilians, which has resulted in the repetition of similar acts and perpetuates the structural racism prevalent in Brazilian law enforcement. We note with concern the information received about the newly created General Public Security Coordination, which may not be equipped to carry out independent monitoring and investigation into crimes involving police officers.

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.

⁴ [Report on the situation of Human Rights in Brazil](#), Inter-American-Commission on Human Rights, para 27

⁵ Available at: <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

2. Please provide information on whether any investigation has been launched into the conduct of the Military Police operations reported above, including in relation to the disproportionate and systemic killings of Afro-descendants in Brazil.
3. Please provide updated information on the status of such investigation(s), 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. Please include information on the extent to which investigations into any suspected unlawful killings complied with the United Nations *Minnesota Protocol on the Investigation of Potentially Unlawful Death*. If no investigation has been launched yet, please explain the reasons why.
4. Please provide information on the measures taken to prevent the excessive use of force, ill-treatment and abuse of authority by all law enforcement actors against vulnerable populations, in particular Afro-Brazilians, as well as information on trainings conducted on the use of force and human rights training for law enforcement officials.
5. Please provide information on measures taken to ensure that victims of excessive use of force by law enforcement officers have access to effective remedies and compensation, and do not face retaliation or reprisals for reporting such violations.
6. Please provide information on the mandate and functions of the General Public Security Coordination. In particular, please indicate whether this mechanism can undertake independent investigations of police abuse and crimes involving police officers.

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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Dominique Day
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Nils Melzer
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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". Article 6 (1) of the International Covenant on Civil and Political Rights, acceded by Brazil on 24 January 1992, 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 its effective protection is also the fundamental prerequisite for the enjoyment of all other human rights, and its content is informed and infused by other human rights.⁶

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 law.⁷ Accordingly, States parties have a duty to refrain from engaging in conduct resulting in arbitrary deprivation of life, and they 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 State.⁸

In particular, in its General Comment N° 36 on " article 6: right to life", the Human Rights Committee has reiterated that States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials. This includes adopting 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 measures to supply forces responsible for crowd control with effective, less-lethal means and adequate protective equipment in order to obviate their need to resort to lethal force.⁹

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 life and other human rights.¹⁰

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%2fGBLmVrGmT01On6KBQgqmxPNljrLLdefuuQjjN19BgOr%2fS93rKPWb CbgoJ4dRgDoh%2fXgwn>

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

An important element of the protection afforded via 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 alleged excessive use of force with lethal consequences.¹¹

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 they must be aimed at ensuring that those responsible are brought to justice, 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 subordinates.¹² Investigations 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 future.¹³

We also wish to refer to article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹⁴ ratified by Brazil on 28 September 1989. Article 2 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 (...)”. 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”.

We would also like to remind your Excellency’s Government that whenever absolutely unavoidable, any use of force by law enforcement officials must meet the following four requirements: 1) Legality: any use of force must pursue a lawful purpose and respect equal treatment of all persons before the law in accordance with the principle of non-discrimination; 2) Necessity: force must only be used when, and to the extent, strictly necessary for the achievement of a lawful purpose, noting that lethal force may only be used when unavoidable to protect against grievous bodily harm or an imminent threat to life; 3) Proportionality: the harm likely to be inflicted by the use of force must not be excessive compared to the benefit of the lawful purpose pursued, and 4) Precaution: law enforcement operations must always be planned, prepared and conducted so as to minimize, to the greatest extent possible, the resort to force and, whenever it becomes unavoidable, to minimize the resulting harm. Even exceptional circumstances such as internal political instability or any other public emergency may

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

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

not be invoked to justify any departure from these basic principles.¹⁵ Failure to meet one or several of these requirements amounts to cruel, inhuman or degrading treatment and may violate the right to life and, therefore, is absolutely prohibited in all circumstances without exception.

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 must 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 law enforcement. The Committee also directed 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 indicated 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. In General Recommendation N° 35, the Committee has also reminded States parties that “[t]he identification, prevention and combating of the practice of racial profiling by law enforcement officials is integral to the achievement of the objectives of the International Convention on the Elimination of All Forms of Racial Discrimination. The practice of racial profiling by law enforcement officials violates fundamental principles of human rights, which rest on: (a) non-discrimination based on grounds of race, colour, descent, or national or ethnic origin, or other intersecting grounds; and (b) equality before the law. It may also violate due process and fair trial rights. These principles and rights are the anchors of the Universal Declaration of Human Rights (arts. 2 and 7) and the Convention (arts. 2 and 5 (a)).”

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

¹⁵ Principle 8, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

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.