

**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 and the Special Rapporteur on extrajudicial, summary or arbitrary executions**

Ref.: AL BRA 9/2022  
(Please use this reference in your reply)

27 June 2022

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 and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 43/36, 45/24 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **recent alleged incidence of excessive and lethal use of force by law enforcement officials in Brazil. This includes the use of such force during a police raid in Favela Cruzeiro, Rio de Janeiro, leading to the death of at least 23 individuals, the majority of whom are reported to be Afro-Brazilians.** It also includes the **case of Mr. Genivaldo de Jesus Santos an Afro-Brazilian individual who is alleged to have been subjected to lethal force in the context of a traffic stop.** Such allegations are the most recent manifestations of alleged patterns of the sustained and systemic use of excessive and lethal force resulting in the arbitrary deprivation of life in Brazil, with a disproportionate impact on Afro-Brazilians and continuing impunity for such violations.

Such excessive and lethal use of force and its disproportionate impact on Afro-Brazilians have been the subject of several previous communications, including BRA 14/2021; BRA 16/2004; BRA 10/2018; BRA 9/2019; BRA 4/2021 and BRA 7/2022. We extend thanks to your Excellency's Government for responses to the relevant previous communications sent by the special procedures.

According to the information received:

**Favela Cruzeiro police raids**

On 24 May 2022 a police raid took place in the Favela Cruzeiro, Complexo da Penha, Rio de Janeiro, a residential area. The purported aim of this raid was to capture individuals alleged to be involved in drug cartels.

The alleged police action took place despite a 2020 Supreme Court ruling that police raids in economically marginalized areas in Rio de Janeiro should be suspended during the COVID-19 pandemic still being in effect.

Once police forces entered the Favela Cruzeiro area, a war-like scenario ensued, with continuous rounds of machine gun fire being fired within areas

densely populated with civilians. Residents of the area report that armed police officers entered their homes on the purported basis of searching for alleged criminals. Further reports by residents suggest that machine gun fire was directed at their homes, many of which are poor quality and precarious forms of accommodation, increasing the vulnerability of residents to the force exercised. When individuals tried to make their civilian status clear, police officers used derogatory slurs about residents of economically marginalized areas and continued their heavy machine gun fire. The heavily armed police on the ground were supported by an armored helicopter, operated by the Military Police.

As a result of such police violence, at least 23 individuals were killed, the majority of whom are Afro-Brazilians. Minors, including those of African descent, were amongst those killed. Police officers also reportedly exerted other forms of violence against individuals. At least one victim was tortured before they were killed with additional reports of civilians, including children, being fatally stabbed by police officers.

The violence within the Favela Cruzeiro marks one of the deadliest police raids in Brazil, against a backdrop of escalating rates of excessive and lethal use of force by law enforcement and security services. In 2021, 195 civilians were killed by police officers, compared to 170 in 2020. Such force has become part of the daily lives of the poor and black populations of the Greater Rio de Janeiro region, affecting many of the neighborhoods in this metropolitan region.

### **The death of Mr. Genivaldo de Jesus Santos**

According to the information received, on May 25, 2022, Mr. Genivaldo de Jesus Santos, a neuro-divergent, Afro-Brazilian individual, was stopped by the Federal Highway Police, whilst riding his motorcycle along Highway BR-101, in the municipality of Umbaúba. The stop was carried out with hostility, with the Highway Police officers cursing at Mr. Genivaldo de Jesus Santos. When Mr. Genivaldo de Jesus Santos was approached by police officers he raised his hands and shirt to show he possessed no weapon. Despite demonstrating that he was unarmed, when Mr. Genivaldo de Jesus Santos displayed discomfort with the hostile behaviour of the Highway Police, he was violently immobilised by three officers.

With his legs and arms tied, Mr. Genivaldo de Jesus Santos was attacked with pepper spray and forced into the rear of the vehicle of the Highway Police. Whilst Mr. Genivaldo de Jesus Santos was being pinned down by officers in the rear of the vehicle, smoke started to come from the vehicle, and he could be heard screaming in pain. The wife of Mr. Genivaldo de Jesus Santos, who was present at the scene, asked police officers to ventilate the car but was told by officers it was already sufficiently ventilated. Mr. Genivaldo de Jesus Santos was unconscious when officers left the scene but was not offered any kind of assistance. When the vehicle arrived at the police station, Mr. Genivaldo de Jesus Santos was offered assistance but he died within an

hour of being stopped by the police.

According to the report of the Medico-Legal Institute (IML), the death of Mr. Genivaldo de Jesus Santos was caused by mechanical asphyxia and acute respiratory failure. Further examinations, which have not yet concluded, are also being carried out on the cause of death. In Police Occurrence Communication, no. 1510422220525111006, officers confess that they had to "use immobilization techniques, without success, evolving to the use of technologies of less offensive potential", such as "pepper spray and tear gas." This was justified on the basis of the "agitation of the approached". Following the repercussion of the case, the Highway Police stated that Mr. Genivaldo de Jesus Santos "actively resisted an approach" and that, for this reason, "immobilization techniques and instruments of less offensive potential were employed for his restraint".

While we do not wish to prejudge the accuracy of the information received, we wish to express our grave concern at the alleged excessive and lethal use of force, resulting in the death of multiple individuals, predominantly of African descent and including children.

We are troubled by the reports of the excessive use of force, in a seemingly disproportionate and unnecessary manner. In this regard, we wish to remind your Excellency's Government that under international law 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. We are seriously concerned that the allegations received indicate that the violence used in the context of the aforementioned police raid in Vila Cruzeiro and in the course of the arrest of Mr. Genivaldo de Jesus Santos does not comply with international human rights standards.

We would like to highlight the importance of conducting independent, impartial, prompt, effective, thorough and transparent investigations into all potentially unlawful killings in accordance with international standards, particularly the United Nations Revised Manual for the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions (The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)). We stand ready to support your Excellency's Government in this regard and remain available to provide any relevant technical assistance.

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 any comment you may have on the above-mentioned allegations.
2. Please describe the planning process for the police raid in Favela Vila Cruzeiro, including explicating what steps were taken to minimize the risk that planned police actions pose to human life. Please include any information on what steps have been taken in the course of this planning process in order to ensure that the above-mentioned police raid in Vila Cruzeiro complies with the requirements of legality, necessity and proportionality as set out in international legal provisions governing the use of force and the obligations of prevention and protection inherent to the right to life.
3. Please explain why the police raid in Favela Vila Cruzeiro took place despite a Supreme Court ruling that such police raids in Rio de Janeiro should be suspended during the COVID-19 pandemic still being in effect.
4. Please provide information about whether investigations into the deaths in the Favela Vila Cruzeiro raid, including detailing which authority is leading the investigation and how their impartiality and independence will be upheld. Please include whether autopsies of those killed have been undertaken. Please also include information on the compliance of these investigations with international standards including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016). Please include information on whether the bodies of the killed individuals were examined by a medical and forensic doctor to determine the cause and circumstances of their death and if so, please provide information on the findings. Please also provide information on how these investigations took into consideration the chain of command. If no investigations have yet been undertaken, or if they have been inconclusive, please provide information for the reasons.
5. Please provide any findings that are currently available from any such investigations, including steps that have been taken or are foreseen to pursue criminal sanctions against law enforcement officers implicated and/or provide remedies, including compensation, public apology and psycho-social support to victims, their families and other affected community members.
6. Please provide any available disaggregated data on the number of those injured and killed during the raid.
7. Please provide information about why Mr. Genivaldo de Jesus Santos was stopped by Highway Police officials, explaining how objective criteria and reasonable suspicion applied to the circumstances.
8. Please provide detailed information about the use of force exercised by officials at the scene, including physical restraint, pepper spray and tear

gas, and explain how the use of such force meets the principles of legality, necessity and proportionality. Please also clarify whether the use of such force was used as a last resort and if attempts were made by officers to de-escalate the situation. In addition, please discuss whether such practices are in line with the operational guidelines of the Federal Highway Police.

9. Please provide information about the current civil and/or criminal investigations that have been instigated into the death of Mr. Genivaldo de Jesus Santos and how the compliance of these investigations with international standards including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), is being ensured.
10. Please provide any findings that are currently available from any such investigations, including steps that have been taken or are foreseen to pursue criminal sanctions against law enforcement officers implicated and/or provide remedies, including compensation, public apology and psycho-social support to Mr. Genivaldo de Jesus Santos's family.
11. Please provide information about the measures taken to ensure access to remedies provided to previous victims of excessive and lethal force by law enforcement officials in Brazil, including those addressed in communications BRA 14/2021; BRA 16/2004; BRA 10/2018; BRA 9/2019; BRA 4/2021; and BRA 07/2022. Please specify the steps taken within such measures to guarantee non-repetition of violations.
12. Please provide information on the measures taken to prevent the excessive and lethal use of force, in line with relevant international standards, including Human Rights Committee General Comment No. 35, Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and Guidance on the Use of Less Lethal Weapons. Please also elaborate on measures, taken or foreseen, to de-militarize the police in Brazil.
13. Please provide information about steps taken to address racial bias, particularly against Afro-Brazilians, amongst law enforcement officials in Brazil, in line with relevant international standards, including the Durban Declaration and Programme of Action and the Committee on the Elimination of Racial Discrimination's General Recommendation 31. Please include information about any relevant human rights training on anti-racial discrimination, as well as any legislation, standards, policies and/or protocols in place to prevent racial profiling.

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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xenophobia and related intolerance

Catherine Namakula  
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw the attention of your excellency's Government to the right to life, as enshrined by article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Brazil on 24 January 1992. The right to life constitutes an international customary and *jus cogens* norm, from which no derogation may be made under any circumstances as provided for in article 4(2) of the ICCPR.

We wish to refer to Human Rights Committee, General Comment 36 on the right to life. In particular, we wish to stress that the right to life is the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies that threaten the life of the nation. 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 rights. The General Comment No. 36 also makes clear that article 6 should be ensured without any form of distinction, including race. The General Comment explicates the obligations of State parties to the ICCPR to prevent the arbitrary deprivation of life by law enforcement officials. This obligation includes a duty to put in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life and that mandatory reporting, review and investigation of lethal incidents and other life-threatening incidents.

General Comment No. 36 also indicates that the obligation to protect the right to life requires States Parties to take special measures to protect persons in vulnerable situations whose lives have been placed at particular risk by specific threats or pre-existing patterns of violence, including children (CCPR/C/GC/36, para. 23).

The General Comment No. 36 further draws attention to the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These standards provide that Law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties (article 3 of the code). The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means (principle 4). Force used must be proportionate to the legitimate objective to be achieved (principle 5). Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary (principles 5 and 10). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked

to justify any departure from these basic principles (principle 8). Moreover, it highlights the importance 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 force. In this regard, we would also draw attention to Guidance on the Use of Less Lethal Weapons, published by the Office of the High Commissioner for Human Rights (OHCHR) in 2020.

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 allegations of excessive use of force with lethal consequences.

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by the Economic and Social Council resolution 1989/65 of 24 May 1989, and the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), 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 subordinates and ensure a clear chain of command over all officials authorized by law to use force and firearms pursuant to paragraph 2 of the abovementioned Principles. 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 future. A failure to investigate violations of the ICCPR and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 15).

We also wish to highlight that article 2 (1) of the ICCPR, which makes clear that State parties should ensure that all provisions of the Covenant, including articles 6 and 7, are upheld without distinction of any kind, including race. With regard for the alleged disproportionate impact of the excessive and lethal use of force on Afro-Brazilians, we would like to recall that article 2 of the International Convention on the Elimination of Racial Discrimination (ICERD), which Brazil ratified on 27 March 1968, establishes the prohibition on all forms of racial discrimination. Under ICERD, State parties, including Brazil, have committed to pursuing the realization of a domestic and international community free of all forms of racism. Article 2 of ICERD requires that in order to facilitate the substantive realization of racial equality, State parties must ensure that they neither take part in any act of racial discrimination nor further programs that lead to racial inequality. Furthermore, where racism, racial inequality, or racial discrimination exist, they have an obligation to take effective and immediate action. This obligation to act is absolute. State parties' obligations to prevent racial inequality and racial discrimination require them not only to undertake remedial action, but also preventive action. Obligations to achieve racial equality and ensure non-discrimination extend to all areas of governmental policy and influence,

including all law enforcement and security services. States must ensure that racial and ethnic groups enjoy the full scope of their human rights, as encompassed in ICERD article 5 and in each human rights treaty, including the rights to life and freedom from cruel, inhuman or degrading treatment or punishment. Article 5 of ICERD obligates States Parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of a number of rights. This includes the 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 addition, article 4 of ICERD calls for immediate positive measures to address discrimination or incitement to discrimination based upon the on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin. Article 4 of ICERD explicates that the scope of positive measures should include upholding the impermissibility of public authorities or public institutions, national or local, promoting or inciting racial discrimination of any kind.

The Committee on the Elimination of Racial Discrimination General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system elucidates an obligation to develop, through appropriate education programmes, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials. It also makes clear that State parties to ICERD should take steps to foster dialogue and cooperation between the police and judicial authorities and the representatives of the various groups referred to in the last paragraph of the preamble, in order to combat prejudice and create a relationship of trust. In addition, paragraph 71 of the Durban Declaration and Programme of Action (DDPA) urges States, including their law enforcement agencies, 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.

We also wish to refer to article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment, as well as to article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Brazil ratified on 28 Sep 1989. Article 2 of CAT 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 CAT established a duty to submit cases of alleged to competent authorities for prosecution and article 12 obligates State parties to ensure prompt and impartial investigation by competent authorities.

In this context, we would like to make clear that victims of human rights violations have a right to remedy under relevant international legal provisions. Article 2 (3) of the ICCPR elucidates that victims of violations of their rights under the Covenant are entitled to access remedy, as determined by competent judicial,

administrative or legislative authorities. Article 6 of the ICERD conveys a duty to provide protection against racial discrimination and to ensure access to remedies for all acts of racial discrimination. In addition article 14 of the CAT makes clear that victims of torture are entitled to redress, including compensation and rehabilitation.

The 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law set out five main elements of remedy and reparations for human rights violations: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The guidelines explicate that the principle of guarantee of non-repetition plays a part in preventing human rights violations. Guarantee of non-repetition has been interpreted as an obligation not only to ensure that individual victims do not suffer the same treatment again but also to systematically ensure through measures, such as legislation and training and awareness raising, that similar violations to others do not take place in the future.<sup>1</sup>

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<sup>1</sup> William A Schabas, Nowak's CCPR Commentary 3rd Revised Edition (2019), article 2 CCPR, para.85.