

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

Ref.: AL BRA 11/2022
(Please use this reference in your reply)

12 January 2023

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 and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 45/24, 44/5, 44/13 and 43/36.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged killing of Mr. [REDACTED], a 14-year-old Afro-Brazilian child, on 27 October 2022, during a police operation in the Complexo do Chapadão in Rio de Janeiro, allegedly carried out by agents of the Federal Highway Police.** Information was also received about allegations of tampering with evidence, the lack of an effective forensic investigation into the case, and acts of harassment and intimidation against witnesses to the incident and persons associated with [REDACTED]. The operation was allegedly carried out despite a freeze on arrests during government elections and in violation of a recent Supreme Court ruling that ordered authorities to limit the number of police operations in communities in the city of Rio de Janeiro.

Deaths of individuals in the course of police operations have been the subject of several previous communications addressed to your Excellency's Governments, most recently [AL BRA 9/2022](#), sent on 27 June 2022, concerning the excessive use of force during a police raid in the Vila Cruzeiro community, Rio de Janeiro, leading to the death of at least 23 individuals and the alleged killing of Mr. Genivaldo de Jesus Santos by the Federal Highway Police; [AL BRA 7/2022](#), sent on 20 June 2022, concerning the alleged killings of 69 individuals, reportedly by members of law enforcement including in the course of police operations; and [AL BRA 14/2021](#) sent on 13 December 2021 concerning an incident in November 2021.¹ We thank you for the replies submitted on [7 July 2022](#), [6 September 2022](#) and on [15](#) and [21](#) February 2022 respectively. We note the repeated commitment of your Excellency's

¹ *AL BRA 14/2021 also refers to other previous communications. It notes: 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 Janeiro¹ ([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.*

Government to conduct impartial, independent and transparent investigations within the national legal framework and the mechanisms indicated for this purpose, as well as the indicated commitment to protect the rights of Afro-Brazilian persons. **As a follow-up to these exchanges, we respectfully request further information on the preventive steps taken to minimize the risk posed to human life by police actions; whether autopsies were performed on the persons killed; what reparations, including compensation, public apologies, and psychosocial support, if any, were provided to victims, their families, and other affected community members; details of the status of investigations into all allegations of misconduct and violations by members of the security forces, as well as on the precise sanctions taken against the identified perpetrators, and the steps taken within such measures to guarantee non-repetition of violations.**

According to the information received:

Circumstances surrounding the death of Mr. [REDACTED]

On 27 October 2022, a member of the Federal Highway Police (Polícia Rodoviária Federal (PRF)) was killed in an attempted armed robbery at the Transolímpica overpass. The Military Police (Polícia Militar (PM)) pursued one of the two vehicles, a Kia/Cerato, whose drivers were involved in the killing, exchanging gunfire. The police officers involved suspected that the car belonged to residents of the Vila Kennedy community, a low-income neighborhood in the western part of the city of Rio de Janeiro, where the majority of residents are Afro-Brazilian.

Immediately after the pursued vehicle was found abandoned, the PRF launched an operation first in Vila Kennedy and subsequently in Complexo do Chapadão, in the northern part of the city of Rio de Janeiro. Over 60 members of the PRF were involved in the operation, which was carried out with the support of helicopters and armoured vehicles known as “caverão”, commonly used by special operations teams of the PM. However, after searching the entire region, no perpetrators were located in Vila Kennedy.

At nightfall, PRF officers received an anonymous alert indicating that one of the vehicles involved in the killing of the policeman might be located in the Chapadão area. When the PRF entered the community late at night, they were fired upon by over 30 unidentified persons, according to the PRF’s own report.

At around 11.30 p.m., [REDACTED] a 14-year-old Afro-Brazilian child, resident of Vila Kennedy, was fatally shot by agents of the PRF. The latter arrested two other minors without arrest warrants in the course of the operation in another part of the Complexo do Chapadão.

On the day of his death, [REDACTED] was reportedly working as a food delivery worker in his neighbourhood and had finished his duty 300 metres from his house when the police operation took place. At the time of the shooting, [REDACTED] was traveling on a motorcycle with a friend and had his back turned to the shooting police officers when he died. Police officers attempted to immediately remove [REDACTED] body from the scene, however, this was thwarted by protests from local residents who demanded a proper investigation through the arrival of a forensic team at the scene. When this did not arrive

even after several hours, PRF officials took [REDACTED] body in a private car to the nearby public hospital Carlos Chagas on the morning of 28 November 2022.

After the incident, the PRF indicated that [REDACTED] had shot at them when he saw their car. According to the PRF, the two arrested minors had stated that they belonged to the local drug trade and that they had been “on duty” with [REDACTED] in the “boca de fumo” at the time of the police operation. It is further indicated that the police officers confiscated two pistols and narcotics that the minors carried with them. Both minors had allegedly confirmed that they knew [REDACTED] and that he belonged to a gang involved in drug trafficking.

The information in the police statement about the death of [REDACTED] was based solely on the police officers' version of events, was not corroborated by the evidence, and contradicted eyewitness accounts. The boys that were detained on 27 October 2022 recanted their statements noting they had been under duress and subjected to ill-treatment to make these claims and that they did not know [REDACTED]

Investigation into the circumstances of the death of Mr. [REDACTED]

Currently, the killing of [REDACTED] is the subject of a police investigation being conducted by the Civil Police of the State of Rio de Janeiro. In addition, a criminal investigation has been opened by the Federal Public Prosecutor's Office on the basis of the documents provided by the Public Prosecutor's Office.

The police officers on duty after the incident failed to preserve the integrity of the scene of [REDACTED] death. Basic measures such as immediate isolation of the scene and its investigation in the presence of the body were not taken. To date, no report of the forensic examination of the deceased's body has been released to persons associated with [REDACTED] or the Public Defender's Office, despite repeated requests.

Representatives of the PRF allegedly threatened and harassed witnesses to the alleged murder in order to cover up the circumstances that led to the death of [REDACTED]. Police officers allegedly tried to intimidate community residents into making false statements indicating that [REDACTED] was involved in local drug trafficking and was armed at the time of his death, which the residents denied.

Persons associated with [REDACTED] reportedly do not have access to medical and investigation reports of the case. In addition, there is no information about internal administrative procedures to advance the investigation related to the killing. The letter from the Public Defender of the State of Rio de Janeiro, as legal representative of persons associated with [REDACTED] requesting a copy of the police investigation conducted by the Homicide Department of Rio de Janeiro, has not yet been answered, nor have the two letters to the Afrânio Peixoto Forensic Institute (Rio de Janeiro), which were refused on the pretext of the alleged confidentiality of the documents.

Context of the PRF police operations

The PRF holds a legal mandate to monitor highways and ensure their safety. Since 2019, the Ministry of Justice has issued a series of resolutions expanding the PRF's scope of action to include joint operations with other federal, state or municipal bodies to combat criminal activity. Between January and September 2022, the PRF was reportedly involved in 38 police operations. The PRF's conduct of the operation in Complexo do Chapadão on 27 and 28 October 2022 allegedly failed to respect important aspects of Brazilian national legislation, including,

- a) the ruling ADPF no. 635 by the Supreme Court imposing restrictions on the conduct of police operations in the municipalities of the State of Rio de Janeiro during the pandemic and stating that investigations would be conducted by the Public Prosecutor's Office if there were suspicions that agents of the public security organs were involved;
- b) the Controle Externo da Atividade Policial do Ministério Público (External Control of Police Killing as a Function of the Ministry of Public Security), which sets out the minimum requirements for prosecutorial action in the external control of investigations of deaths resulting from police intervention, including requiring police authorities to isolate the crime scene and advance the forensic examination of the crime scene;
- c) the Lei Orgânica Nacional de Defensoria Pública (National Organic Law of Public Defender's Office), which grants its members the prerogative to request from public authorities or their agents investigations, certifications, expert opinions, inspections, investigations, procedures, documents, information, clarifications and determinations as may be necessary for the exercise of its powers.

To date, there is no evidence that the prosecutor's office was informed in advance of the PRF's deployment to the Complexo do Chapadão. The PRF seems to have acted alone in this operation and not in support of other forces. In addition, there were no federal highways in the vicinity of the incident, meaning that the PRF was reportedly not acting within its mandate when conducting the operation that led to the killing of [REDACTED]

Fears were expressed that further police operations might be carried out in the same municipality in Rio de Janeiro. A sense of fear reportedly shared by residents and potential witnesses prompted individuals and families to move from their usual residences to distant locations to hide from police agents, fearing reprisals and retaliation in the event that they sought further investigation into the alleged killing of [REDACTED]

Without prejudging the accuracy of the information received, we express our grave concern about the alleged killing of 14-year-old [REDACTED] on 27 October 2022; the reported irregularities regarding the investigative steps taken immediately after his death, including forcing false testimony; the reported alteration of the scene of the killing; and the alleged threats and harassment against witnesses to the killing, and other persons associated with [REDACTED] seeking further investigation

into his death.

We also express concern that the death of [REDACTED] does not appear to be an isolated case but a recent incident in what appears to be a pattern of killings of Afro-Brazilian persons and/or residents of marginalized neighborhoods in Rio de Janeiro and other Brazilian metropolises, in the context of law enforcement operations that do not appear to have adhered to international standards for the use of force. Most disturbing appears to be the fact that [REDACTED] was only 14 years old at the time of his death.

Should the facts alleged above be confirmed, they would amount to a violation of multiple provisions enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the International Convention on the Elimination of Racial Discrimination (ICERD), ratified by Brazil on 24 January 1992, on 24 September 1990 and on 27 March 1968 respectively.

We understand with concern that the PRF does not hold a constitutional mandate for judicial police functions, including the conduct of investigations, nor to carry out operations on municipal roads. We are also troubled by the fact that the police operation was carried out at night, in a densely populated residential area, by the support of a high number of officers, heavy weapons and armoured vehicles, and that according to witness reports, [REDACTED] had his back turned to the shooting officers when he was killed. In this regard, we recall that lethal force can only be used by law enforcement in order to protect lives. 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.

The alleged irregularities in the investigation procedures are also a concern. If proven true, they would not only violate the relevant domestic legal framework in Brazil, but also be in stark contrast with applicable international human rights law. We are concerned by the fact that the statements of two arrested minors indicating that [REDACTED] was part of a criminal group were made while they were in the custody of officers involved in the alleged killing; that the crime scene was allegedly not adequately isolated and protected to allow a proper investigation, and that persons associated with [REDACTED] have not been given access to the autopsy report and other information relating to the investigative steps taken by the State authorities. In this regard, we recall the decision of the Inter-American Court of Human Rights in the Case of Favela Nova Brasília v. Brazil, which underlined the State's duty to adopt legislative or other measures necessary to allow the victims of crimes or their relatives to participate formally and effectively in the investigative processes conducted by the police or the Public Prosecutor's Office.²

Ultimately, we underscore the importance of conducting investigations into all suspected unlawful killings in line with international standards, particularly the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the *Minnesota Protocol on the Investigation of a Potentially Unlawful Death* (2016)).³ We reiterate that we stand ready to support your Excellency's Government efforts in this regard and remain available for any technical assistance we may be able to provide to the authorities

² https://www.corteidh.or.cr/docs/casos/articulos/seriec_333_ing.pdf.

³ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

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 detailed information about the compatibility of the measures taken to assess the use of force that led to the killing of [REDACTED] with the principles of legality, proportionality and necessity, in particular as [REDACTED] was allegedly with his back facing the police officers at the time of his death.
3. Please provide information on any investigation conducted into the killing of [REDACTED] and the extent to which the investigations complied with Brazil's international human rights obligations, and were following the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989) and the aforementioned Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).
4. Please provide detailed information about the outcomes of these investigations, including any available data about the remedies, including compensation, provided to victims, as well as any administrative and/or criminal sanctions applied to perpetrators.
5. Please provide information on the measures taken to investigate the allegations that witnesses to the killing and other harassment to deter them to share with the relevant authorities what they know; and what measures are in place or are being taken to ensure the protection and safety of these persons.
6. Please provide information on any measures, including precautionary measures, to ensure and protect the inviolable right to life and security in the context of any type of police interventions, especially raids. Please also indicate how these safeguards provide special protection for minors.
7. 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 and to address racial bias, particularly against Afro-Brazilians, amongst law enforcement officials.

8. Please provide information on the measures taken to further implement the recommendation of the Supreme Court in ruling ADPF no. 635, in particular in relation to the requested limitation of the number of police operations in communities in the city of Rio de Janeiro, the establishment of a police lethality reduction plan and the use of body cameras during police operations.
9. Please provide detailed information on the human rights components included in the Code of Conduct/Guidelines of the PFR and, if these are currently lacking, when they will be (re)introduced. Are use of force and human rights trainings provided to law enforcement officers to ensure that all police units operating in favelas are aware of relevant human rights standards?

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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

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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"; and article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) 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 refer to Human Rights Committee, General Comment 36.

It notes that the right to life is the supreme right from which no derogation is permitted (paragraph 2). 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. We note that the General Comment indicates the obligation of the State to provide specific protection for children. In its paragraph 23, it states that "The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence", including children. The General Comments makes clear that the right to life must be respected and ensured without distinction of any kind, including race.

Considering that [REDACTED] was a child at the time of his death, we would like to make specific reference to article 24 (1) of the ICCPR, which provides that "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." We also refer to the provisions enshrined in the CRC, particularly articles 2 and 6.

Paragraph 1 of article 6 of the ICCPR provides that no one shall be arbitrarily deprived of life and that this right shall be protected by law. 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 State.

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 force. 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.

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. In addition, states hold the duty to ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms according to the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989) (para. 2).

According to these instruments, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. **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.**

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the aforementioned Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and 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), 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. 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.

We also refer to the report on Medico-legal Death Investigations (MLDIs) (A/HRC/50/34) by the Special Rapporteur on extrajudicial, summary or arbitrary executions, indicating that the bereaved families and next of kin should be informed in a timely and appropriate manner about the investigation into the death of their loved one, its progress and its findings and that should be protected from any threat resulting from their participation in the investigation (paras. 92 and 94).

In this regard, we emphasize that in cases where existing investigative procedures prove inadequate because of a lack of expertise or impartiality, or because of the apparent existence of a pattern of abuse, and in cases, where there are complaints from the family of the victims about these shortcomings or other serious reasons, States must continue the investigation through an independent commission of inquiry or similar procedure in accordance with the above-mentioned Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (para. 11).

In light of allegations that witnesses to the alleged killing of [REDACTED] have been subjected to threats and acts of intimidation, we recall that it is an indispensable obligation of States that complainants, witnesses, those conducting the investigation, and their families be protected from violence, threats of violence, or any other form of intimidation, and that legal representatives and victims' families have access to any hearing, as well as to any information relevant to the investigation, and are entitled to present further evidence. (Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, para. 15 and 16).

We wish to bring your attention to 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. Moreover article 2 (3) of the ICCPR makes clear that victims of violations of rights under the Covenant are entitled to access remedy, as determined by competent judicial, administrative or legislative authorities.

We would also like to recall that article 2 of the International Convention on the Elimination of Racial Discrimination (ICERD) 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, States 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.