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Reimagining Policing - Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement

Introduction

The International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement will present its second report at the 54th session of the Human Rights Council in September 2023. In order to collect information in preparation for such a Report, the Expert Mechanism called for inputs that could contribute to its relevant mandate.

The following input aims to share relevant information gathered by the Research Group “Núcleo de Direitos Humanos” concerning the situation in Brazil.

“Núcleo de Direitos Humanos” is an academic institution within the Law School of Pontifical Catholic University of Minas Gerais, Brazil. It is composed by Law and International Relations undergraduates and coordinated by professors Roberta Cerqueira (Ph.D), Cíntia Garabini (Ph.D) and Maria de Lourdes Albertini (Ph.D).

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Contributions

Race remains a determining factor in law enforcement due to a persistent history of racial discrimination. In Brazil, despite promising initiatives, police action in black communities replicates this discriminatory pattern. Statistics indicate that law enforcement officers use excessive and disproportionate violence, negatively impacting these communities¹.

¹ RAMOS, Silvia et al. Negro trauma: racismo e abordagem policial no Rio de Janeiro. Rio de Janeiro: CESeC, 2022. Available at: https://cesecseguranca.com.br/wp-content/uploads/2022/02/CESEC_elemento-suspeito_final-3.pdf

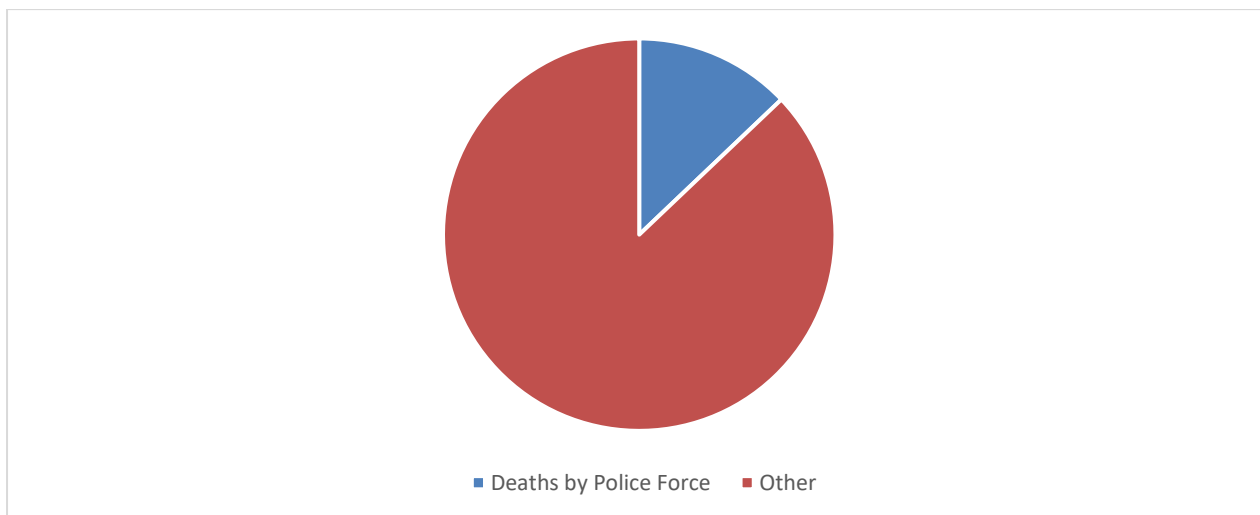


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In 2021², the Inter-American Commission on Human Rights (IACHR) urged the Brazilian State to contain police violence against people of African descent, encouraging measures that combat, investigate, and punish such practices. The Commission highlighted that impunity reinforces police racism and brutality.

Moreover, UN parameters³ also indicate that States should adequately and transparently investigate cases of use of force and firearms, holding agents accountable for abuses and human rights violations.

Brazilian Forum on Public Security shows that 12.9% of all Intentional Violent Deaths in 2021⁴ resulted from police actions. Among the victims, 84.1% were black, 99.2% were men and 52.4% were, at its oldest, 24 years old.



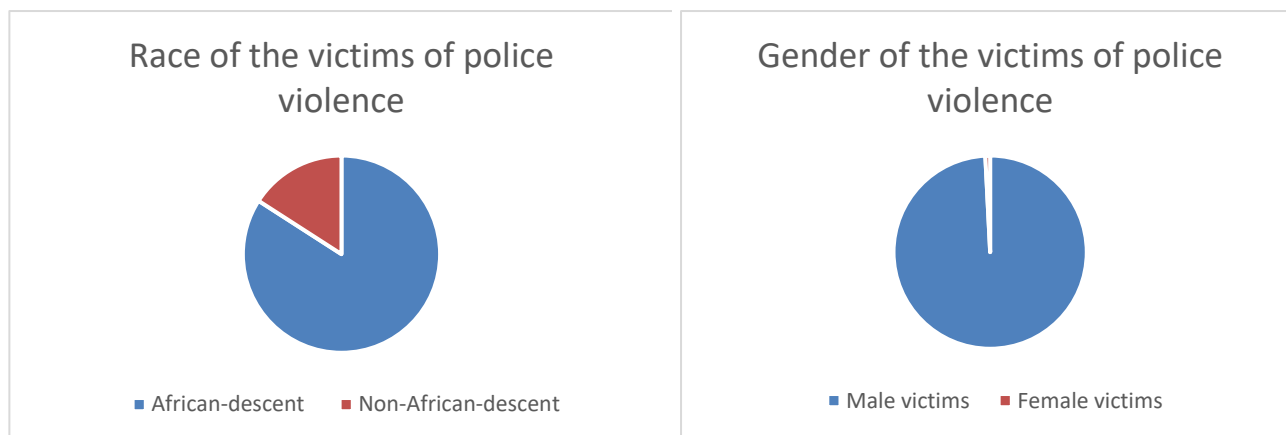
² CIDH, Situação dos direitos humanos no Brasil, OEA/Ser. L/V/II. Doc. 9, 12/2/2021. Available at: <https://www.oas.org/pt/cidh/relatorios/pdfs/brasil2021-pt.pdf>.

³ UNITED NATIONS. Resource book on the use of force and firearms in law enforcement. New York: UNODC, 2017. Available at <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf>.

⁴ Anuário brasileiro de segurança pública 2022. Fórum Brasileiro de Segurança Pública, 16^o ed, 2022, p.28, 82 a 84. Available at <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>



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Police acts with more violence and lethality against black and young men. In Brazil between the years 2021 and 2022, there was an increase of 8.9% in the total number of deaths by the police, with 1.356 victims in this period⁵.

For instance, in the case of Rio de Janeiro, police were responsible for 28.5% of the intentional violent deaths in 2021, with levels of brutality worsening according to the region's economic index. Police operations and shootings are more frequent in the north, west and lowlands of Rio de Janeiro, areas of greater social vulnerability. Compared to the previous year, there was an increase in police killings in the Baixada Fluminense (+25%) and North Zone (+27%). This growth coincides with the expansion of territorial control by the militias, formed mostly by police and other law enforcement agents. The West Zone had an increase of 313.2% in armed territorial control between 2006 and 2021, while the South Zone, the capital's most affluent neighborhood, had an increase of only 5.2%⁶.

Law enforcement operations are more violent in vulnerable communities than in richer neighborhoods, violating the constitutional commandment and the State's international obligations to guarantee legal equality⁷. In Brazil, it has become common sense to say "a good criminal is a dead criminal" propelling the idea that a person identified as a "criminal" should not have the same rights as those identified as "worker". Thus, police brutality practiced in vulnerable areas, often criminalized, and described as

⁵ RAMOS, Silvia et al. *Pele alvo: a cor que a polícia apaga*. Rio de Janeiro: Rede de Observatórios da Segurança/CESeC, 2022, p.6. Available at: <https://cesecseguranca.com.br/livro/pele-alvo-a-cor-que-a-policiaapaga/>

⁶ FOGO CRUZADO. *Relatório Anual Região Metropolitana do Rio de Janeiro 2022*. Rio de Janeiro: Fogo Cruzado/GENI/UFF, 2022, p.5. Available at: <https://geni.uff.br/relatorios/>

⁷ RAMOS, Silvia; MUSUMECI, Leonarda. "Elemento suspeito": Abordagem policial e discriminação na cidade do Rio de Janeiro. *Boletim Segurança e Cidadania*, Rio de Janeiro, n. 8, p. 2-3, nov. 2004. Available at: <https://cesecseguranca.com.br/wp-content/uploads/2016/03/boletim08.pdf>

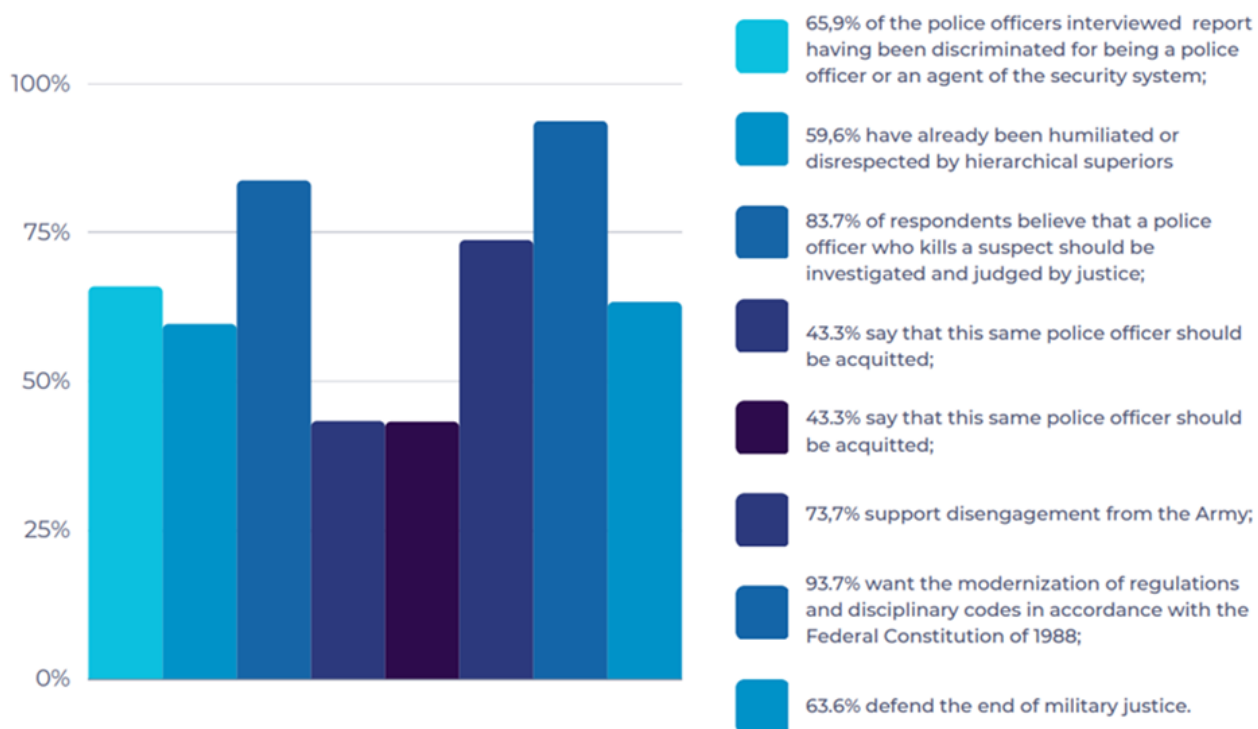


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violent, tend to be socially valued as positive. This dehumanization of the black communities, stereotyped as criminals, normalizes and makes them the main targets of State induced violence.

On the other hand, police brutality reproduces a culture of violence seen in law enforcement institutions. Getúlio Vargas Foundation⁸ shows that more than half of police officers were victims of abuse by hierarchical superiors, and almost 70% of them have already suffered social discrimination for being police officers. See below:

RESEARCH PUBLISHED IN 2014 BY THE COORDINATION OF OF
APPLIED LEGAL RESEARCH "(CPJA)" OF "GETÚLIO
VARGAS" FOUNDATION (FGV)



This situation can be partly attributed to the authoritarian history that pervaded the creation of the Military Police and that still impacts on the training and structure of this force. The Military Police came from the army, and aimed to guarantee the protection of the government, not the people, through violent and lethal actions.

⁸ FGV, 2014. Available at: <https://portal.fgv.br/noticias/pesquisa-fgv-direito-sp-aponta-nivel-satisfacao-policiais-brasileiros>.



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The training incorporated aggressive military behavior, maintaining a violent *modus operandi* that focuses on repression tactics. This institutional culture results in hostile policing that gradually weakens the bonds of trust between the police and the citizens.⁹

We will now answer the questionnaire introducing some promising practices that should be reinforced to overcome this violent and racist state of affairs in Brazil.

The questionnaire

- **Laws, policies, guidelines, and procedures compliant with the international legal framework governing the use of force and firearms by law enforcement officials.**

The American Convention on Human Rights (1969) and the International Covenant on Civil and Political Rights (1966) are two of several international legal instruments that establish the fundamental freedoms that must be protected by States. They establish the right to life, liberty and personal security, so that the use of force by law enforcement officers should be limited and proportionate, applied as a last resort and in accordance with the principles of legality, necessity, proportionality and impartiality.

In that context, the Code of Conduct for Law Enforcement Officers (1979) was created to establish parameters for the proportionate use of force and firearms by public security officers. In Brazil, in 2010, the Guidelines on the Use of Force and Firearms by Public Security Agents, issued by the Ministry of Justice, provided more detailed guidance on the use of these mechanisms, regarding human dignity and the Law 13.060/14, that disciplined the use of equipment of lesser harmful potential by police forces.

The International Convention on the Elimination of All Forms of Racial Discrimination (1965), in turn, establishes the obligation of States to adopt effective measures to eliminate racial discrimination in all its forms. Thus, the importance of public policies and affirmative action to combat racism and racial discrimination in the political, economic, social, cultural and other fields is highlighted. In Brazil, Law 7.716/1989 defines crimes of racial and color prejudice and the National Policy for the Promotion of Racial Equality, established by Law 12.288/2010, aims to promote racial equality through public policies, programs and affirmative action.

Finally, we highlight Law 13.869/19 (abuse of authority), which sought to hold accountable agents who abuse their power in the exercise of their functions. Existing laws, policies and guidelines, while fundamental, have been insufficient to curb police violence.

⁹ ASSIS, Danieli; COSTA, Jaider. A reestruturação do modelo de segurança pública brasileiro: polícia comunitária e as barreiras para sua inserção. *Brazilian Journal of Development*, v. 9, n. 2, p. 7004-7013, 2023. Available at: <https://ojs.brazilianjournals.com.br/ojs/index.php/BRJD/article/download/57178/41864>



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- **Promising initiatives and positive or good practices being taken to address systemic racism in law enforcement and the criminal justice systems beyond individual violations, including in an institutionalized police culture.**

It is a recurrent situation in Brazil for police officers to approach black people without justification. Francisco Cicero dos Santos Júnior, was one of them. Accused of drug trafficking for carrying 1.53 g of cocaine, he was convicted to a sentence greater than that of a simple homicide. Being characterized by the police officer as "black individual in typical scene of drug trafficking", his defense claimed, before the Federal Supreme Court, the nullity of the conviction due to racial profiling.¹⁰

CESeC Institute¹¹ indicates that, in Rio de Janeiro, 48% of the population is black or brown, while 51% is white. However, 63% of police approaches occur with people of color. The approaches that should be governed by well-founded reasons, as mandated by the Brazilian Criminal Procedure Code, do not follow population curves, indicating a possible association between the profile of the black man and the criminal.

To minimize the impacts of racial profiling, we can identify the custody hearing, implemented in 2015, as an advance. The person arrested must be presented before the magistrate within 24 hours of the arrest in order to decide on custody, allowing judicial control of the police action. Even though it is a good practice, the hearings can be biased and inefficient, keeping the arrests even when the defendant meets the requirements for freedom.

The Law 12.711/2012, which makes mandatory the allocation of 50% of the vacancies in universities and federal institutions of technical education of secondary level for blacks, browns, indigenous, people with disabilities and public school students, is another good practice. The law promoted a significant increase of black students in educational institutions, allowing change in the society's symbolic structure, facilitating the access of this part of the population to prestigious functions and positions, including in the judicial system, previously occupied mostly, if not exclusively, by whites.

Lastly, we highlight the National Council of Justice initiative¹² to establish the National Forum of the Judiciary for Racial Equity (NFJRE), whose main objective is to elaborate studies and propose concrete measures to deal with the theme.

- **Promising initiatives and positive or good practices on prevention and accountability measures for human rights violations by law enforcement. These may include oversight,**

¹⁰ Habeas Corpus 208240. Available at

<https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=503418&ori=1>

¹¹ RAMOS, Silvia et al. Negro trauma: racismo e abordagem policial no Rio de Janeiro. Rio de Janeiro: CESeC, 2022. Available at: https://cesecseguranca.com.br/wp-content/uploads/2022/02/CESEC_elemento-suspeito_final-3.pdf

¹² BRASIL. Conselho Nacional de Justiça. Resolução n. 490, 8 de março de 2023. Institui o Fórum Nacional do Poder Judiciário para a Equidade Racial (Fonaer). Brasília. Available at: <https://atos.cnj.jus.br/files/original14432720230313640f368fb5323.pdf>



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monitoring, and reporting of violations, gathering and publishing comprehensive disaggregated data, human rights training, recruitment, and retention processes, and awareness-raising.

The introduction of body cameras in the uniforms of military police officers was a measure implemented by the Secretariat of Public Security in the states of Santa Catarina, São Paulo and Rondônia. Images are transmitted to a command center that monitors police operations in real time and can be used as evidence in trials of police officers involved in abusive actions.

In São Paulo, this practice began in July 2020 and decreased police lethality by 40%. In Santa Catarina, the cameras were implemented in July 2019 and data from the military police point to a 48% reduction in contempt charges and 56% in occurrences with lethal and non-lethal weapons¹³.

Human rights training is also a way to curb the violence of police operations. In Brazil, the National Curricular Matrix determines that the discipline of human rights be approached in a transversal way in police academies¹⁴. Programs focused on the understanding and construction of social reality, as well as on the rights and duties related to individual and collective life are mandatory in the curriculum. The [non]incorporation of this training in the daily activities of the police, however, is influenced by several factors, such as: personal predispositions of those involved; profile of leaders; and the institutional culture¹⁵.

Decree 11.444/2023 created the Interministerial Working Group¹⁶, composed of 14 ministries, the General Secretariat and the Civil House of the Presidency of the Republic. This group will be responsible for analyzing the situation of lethal violence and social vulnerabilities that impact the young black population, as well as developing guidelines and actions for the Living Black Youth Plan, which will cover agendas such as public security, access to justice, education, guarantee of the right to the city and appreciation of territories.

¹³ OBSERVATÓRIO PARLAMENTAR DE REVISÃO PERIÓDICA UNIVERSAL. Relatório sobre segurança pública, [S. l.], 1 jul. 2022 Available at <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/infografico-seguranca-publica>

¹⁴ BRASIL. Secretária Nacional de Segurança Pública. Matriz Curricular Nacional para os Cursos de Formação e Atualização dos Profissionais de Segurança Pública. Brasília, 2014. Available at: <https://www.bibliotecadeseguranca.com.br/wp-content/uploads/2021/01/matriz-curricular-nacional-para-aco-es-formativas-dos-profissionais-de-area-de-seguranca-publica.pdf>

¹⁵ SANTOS, M. N.; OLIVEIRA, R. S. A incorporação dos direitos humanos na formação policial: análise de um caso no Brasil. Revista Brasileira de Segurança Pública, São Paulo, v. 9, n. 1, p. 57-75, 2015. Disponível em: https://www.scielo.br/scielo.php?pid=S1982-20152015000100057&script=sci_abstract&tlng=pt.

¹⁶ BRASIL. Decreto n. 11.444, de 21 de março de 2023. Institui Grupo de Trabalho Interministerial para elaboração da proposta do Plano Juventude Negra Viva. Available at: http://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/decreto/D11444.htm



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Lastly, we highlight Law 14.532/2023¹⁷ that equates the crime of racial slur to the crime of racism, making the penalties stricter and the crime imprescriptible. This addresses the judicial treatment of those historically discriminated against, promoting anti-racism in trials and emphasizes legal aid to victims of racism.

- **Good practices, challenges and lessons learned on alternative methods of policing, strengthening institutional oversight, and closing trust deficits.**

As discussed above, the military police are ostensible institutions of public security, auxiliaries of the Brazilian army. Police officers have a military hierarchy and answer to military justice, not to a civilian court. Thus, the demilitarization of the police emerges as an alternative to reduce violence and the deficits of society's trust in this institution.

Demilitarization would allow, among other things: the transformation of the military into a civilian institution, bringing it closer to the citizens; policing based on human rights; accountability in civilian courts, reducing impunity and corporatism; and peaceful policing alternatives.¹⁸

Debates about demilitarization encounter resistance in Brazil, but some alternative methods of policing, based on the demilitarized culture, have shown promise, such as community police and the "Olho Vivo" (Live Eye) program. See below:

¹⁷ BRASIL. Lei n. 14.532, de 11 de janeiro de 2023 e Decreto-Lei nº 2.848, de 7 de dezembro de 1940. Available at: https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/lei/14532.htm

¹⁸ PONTES, Jorge. Hora de falarmos em desmilitarização das polícias. Veja, 2023. Available at: <https://veja.abril.com.br/coluna/jorge-pontes/hora-de-falamos-em-desmilitarizacao-das-policias>



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Community Police	
Purpose	<ul style="list-style-type: none">● Approximation between the police and the community
Policing	<ul style="list-style-type: none">● Peaceful conduct● Defensive approach● Foot patrol● Uniformed● Armed
Population	<ul style="list-style-type: none">● Constant communication with the police and headquarters (information, guidance and complaints)● Strengthening the relationship between the police and the population● Increases public confidence level

The "Olho vivo" program consists of monitoring and live transmission of specific points of the city, in order to help in the recognition of suspects, criminal investigations and police monitoring. The number of deaths resulting from police intervention decreased by 57% compared to the previous period, before the implementation of the program¹⁹. In addition, injuries resulting from police intervention fell by 61%.

¹⁹ MONTEIRO, Joana; FAGUNDES, Eduardo; GUERRA, Júlia. Câmeras corporais nos uniformes policiais: o caso de São Paulo. FGV, 2023. Available at: <https://portal.fgv.br/artigos/cameras-corporais-uniformes-policiais-caso-sao-paulo>



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Project "Olho Vivo"	
Definition	<ul style="list-style-type: none">• Monitoring camera with real-time transmission to headquarters
Functions/ Actions	<ul style="list-style-type: none">• Survey of escape routes used• Identification of license plates, brands, vehicle colors, clothing details and facial expressions of people in circulation• Behavioral pattern analysis• Investigative support for the Civil Police• Tool to combat drug trafficking
Population	<ul style="list-style-type: none">• Website: olhovivo.trans.com.br - can be accessed by any citizen• Creates a bond with the community, increases the population's confidence level