INPUT: Pursuant to paragraph 15 of the Human Rights Council resolution 47/21 Expert Mechanism's annual report to the Human Rights Council at its 57th Session International Independent Expert Mechanism to advance racial justice and equality in the context of law enforcement.

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Context: Brazil has The National Judiciary Pact for Racial Equity an initiative on Federal Level, which has as its central objective the strengthening of the culture of racial equity in public institutions (with the main focus on the Judiciary), with the adoption of programs, projects and initiatives to be developed in all segments of Justice, all with the objective of combating and correct racial inequalities, through affirmative measures (of a temporary nature, given that they are affirmative actions), compensatory and reparatory measures, to eliminate structural racism in Brazil, in order to ensure the representation and development of racial groups historically deprived of conditions of equal opportunities. This initiative has 4 axes: Axis 1 – Promotion of racial equity in the Judiciary; Axis 2 – Disarticulation of institutional racism; Axis 3 – Systematization of racial data from the Judiciary and; Axis 4 – Interinstitutional and social articulation to guarantee an anti-racist culture in the actions of the Judiciary. Yet, the policy encounters procedural barriers and implementation difficulties due to other Brazilian legislation, mainly with regard to the Brazilian Penal Code and its criminal procedure (with what is called "due process of law").

Based on the system flaws, we address suggestions to OHCHR.

I - On the matter of: Investigation, prosecution and sentencing, and other accountability and redress measures, including disciplinary proceedings, we input:

From the perspective addressed before and addressing the concept driven by Günther Jakobs, know as "Criminal Law to the Enemy[1]", the target of the criminal code and its proceedings made the less fortunate people to be the "enemy" pursuit by the State. In this scenario, The Security Observatory Network elaborated The Target Skin Report: The Bullet Doesn't Miss the Black Man that inform:

> • For the fourth consecutive year, monitoring shows that the black population is the biggest victim of police violence. Of 3,171 death records, with declared color/race information, black people accounted for 87.35% — or 2,770 people;

With regard to Brazilian states, the same report informs that:

> • From 2015 to 2022, deaths recorded as resulting from police violence in Bahia grew by 300%. Bahia has the most lethal state police among those monitored by the Network;
> • Seven out of ten victims in Ceara are between 18 and 29 years old;
> • For the third year in a row, Maranhão does not report data on the race/color of those killed by the police;
> • Every 14 hours, a person is killed by security agents in Pará;
> • In Pernambuco, almost 90% of victims are black;
> • In Piaui, of the 39 deaths recorded, 22 occurred in the capital Teresina, 72.72% of which were black;

[1] In Portuguese: "Direito Penal do Inimigo".

- Rio de Janeiro police killed 1,042 black people in 2022;
- In São Paulo, black people represent 40.26% of the population and 63.90% of those killed by the police.

So that, we have a need for change on the structure of the Brazilian Criminal Justice System:

1. Initially, changing the sanctions on crimes committed with no violence or other serious threats yet with patrimonial consequences, like possession of drugs for personal or minor theft, that represents a major role on the application of criminal law and has its consequences on marginalized people.
2. The instrument of pleas bargain needs to be implemented more often, so that the role of enforcing law against organized crime is directed to demetallizing, demobilizing and to prosecute the "big fish", not to incarcerate the "small fish". This approach could even impact on the diminishing corruption on police forces and departments.
3. The change needs to be directed to the sanctions on abstract risk types of crime. We need to focus sanctions on concrete risks with measurable results.
4. The Due Process of Law need to be scientific accurate. The proof on Criminal Justice System needs to be driven by scientific method and not by the conviction of Prosecutor and the Judge. The subjective and generical affirmations need to be replaced by technological methods se it will be possible to guarantee fair trials with the possibility to external observers to address racial bias, and, mainly, account Police Officers, Prosecutors, and other Judicial Authorities, for any action involving racial discrimination or intolerance, with the aim of guaranteeing rights equally for the entire population.
5. Testimony needs to be a subsidiary proof that need to be connected to other science driven elements of conviction not related to other testimony. Criminal Process are not a "narrative of facts" subjectively, they need to be based on real facts and facts are possible to be accountable by the scientific method. This is because, in the Brazilian legal system, the two pillars of support for convictions are: materiality of the crime and authorship, that is, it is necessary to have robust evidence for conviction (and not just doubt). Therefore, it must be possible to create instruments of evidence (which can also function as means of defense) to establish the materiality and authorship of the crime.
6. Reasonable Doubt need to be implemented on the early stages of a trial so that the "narrative" approach of prosecutors could be avoided and dismissed as a guarantee of a fair trial, without any type of subjectivity involved.

Given this change in scenario, the data will be able to be quantified, objectively, by external observers, and it will be possible to identify racial prejudice in judicial trials. So that there is no error in judicial processing. And, in case of its existence, the reparation needs to be optimized by a simplified civil law process against the State and the Authority that determined the sanction without the appropriate due process, which we have suggested so far.

It is, therefore, the promotion and implementation of an ethnic-racial diagnosis of the Judiciary (with constant improvement of statistical data and regulations that recognize the specificities and need of this social segment for its true inclusion), in a true front of access to democratization and

improvement of the Judiciary (which may even later lead to the implementation of other public measures in the face of discrimination of all types, such as gender, physical condition, sexual orientation, etc.).

It is expected that with the implementation of some of the initiatives, which have as their primary objective the creation of a culture of racial equity in institutions, some of the challenges related to systematic racial discrimination can be overcome. This involves creating a permanent space for democratic debate (which must also have the support of the population) to address this issue.

II - On the matter of: Ensuring that examining the role of racial discrimination, stereotypes and biases is central to accountability measures, we input:

To ensure that the role of racial discrimination, stereotypes and prejudices is central in accountability measures (involved in the face of the State and authorities, as suggested in the previous item), we suggest that the civil process carry a label with the specificity of this issue (therefore creating a procedural "mark" for this type of process, which can even guarantee a faster and more urgent process, in order to restore the dignity of the offended human person), addressing the Authority and the Department that are on trial and need to be open to the public and independent observatories. Exactly as is currently the case in cases of the Access to Information Law, in which certain data is published to meet the demand for freedom of expression and knowledge of public information.

In this sense, to guarantee the adequate application of the law, it is recommended that the authority receive an injunction of suspension by the competent judge (since, if it continues to operate, it could perpetuate actions of discrimination and racial intolerance).

The appropriate judge needs to be a “hand” of the Comptroller so that all measures that guarantee that reparation occur on a concrete basis, efficiently, and within a reasonable period, to effectively promote the restoration of dignity of everyone involved.

III - The role of victims and their families during accountability processes.

From the Perspective of the Brazilian National Council of Public Ministry[2] (all known as CNMP), its victim rights to have a series of measures that must be guaranteed by the authorities during a police investigation or legal action, whether criminal or civil. The victim cannot be subjected to procedures that are repetitive, unnecessary or that cause new damage and suffering, leading to revictimization. It should not be seen as a means of obtaining evidence or as an informant for the State. On the contrary, she must be informed about her rights, the direction of the investigation and the process and the forms of participation.

It is essential that all public agents involved in the investigation and process recognize the victim as a subject of rights.

[2] Prosecutors or District Attorneys.

These actions must be taken whether the victim is: a) the victim of a crime; or b) victim of State error during “due process”, and, in any case, may be persecuted by their families (if the victim themselves cannot do so).

The victim has the right to be informed about:

1. Their rights.
2. the places where you can obtain information.
3. available assistance and support measures.
4. progress, directions and stages of the criminal investigation and criminal proceedings, including deadlines for processing the investigation, for filing a complaint and details on all subsequent stages.
5. means of obtaining legal consultation or legal assistance (examples: Public Defender's Office, legal centers at federal universities, among others).
6. Information useful to victims must be provided at police units, at the offices of the Public Prosecutor's Office, the Public Defender's Office and the Judiciary, without any type of compensation.

From the perspective above, the victim has the right to be heard before the competent authorities to present their version of the facts and talk about their concerns, especially with regarding what happened. It is recommended that the victim is not heard repeatedly unnecessarily (so as not to "re-victimize" him/her with each hearing, causing new tremors, panic, stress). I. e., when heard in any procedure – and, mainly, in those that investigate crimes against sexual dignity – the victim must be protected in their physical and psychological integrity, under penalty of civil, criminal, and administrative liability of the responsible public agents.

In that regard, the following are expressly prohibited by law:

1. the statement about circumstances or elements unrelated to the facts being investigated in the case.

2. the use of language, information or material that offends the dignity of the victim or witnesses.

The Protection Program for Threatened Victims and Witnesses (Provita), provided for in Law 9.807, of 1999, is a Public Security and Human Rights Policy that aims to contribute to security, justice and ensure fundamental rights for threatened witnesses and victims. In addition to protection, Provita seeks the social reintegration of people at risk, in new community spaces, in a confidential manner and with the effective participation of civil society in the construction of a solidary protection network.

It is a process of social reintegration, which seeks to offer dignity to those people who suffered criminal acts.

Therefore, the victim has the right to receive support services and individualized professional treatment, through multidisciplinary teams (made up of professionals specialized in the psychosocial, legal and health areas). These teams must provide guidance and the most appropriate referral to the victim, develop prevention work and programs and other measures, in addition to providing subsidies to the Judiciary, the Public Prosecutor's Office and the Public Defender's Office. So that their human and fundamental rights can be resumed.

Another matter could be addressed and replicated as the Supreme Federal Court of Brazil defined the parameters for the Public Ministry[3] (MP) to initiate investigative procedures on its own initiative. For the Supreme Court Judges, the legislation and the Court's jurisprudence authorize these investigations, but it is necessary to guarantee the rights and guarantees of those investigated.

The prosecutors need to immediately communicate to the Judiciary about the beginning and end of criminal proceedings. Investigations must observe the same deadlines and rules set out for police investigations, and extensions must be communicated to the Judiciary.

This decision address a possibility of external overseeing or institutional control and could be a major gain for participation of families and victims, including those with are affected by racial injustice and inequality in the context of law enforcement.

IV – On the matter of independent and well-resourced oversight and complaint procedures, we suggest:

Locally, the Innocence Project Brazil https://www.innocencebrasil.org/ was founded on the year of 2016 and its part of the Innocence Network that tries to free the innocent and to prevent wrongful convictions worldwide. This project could be part of an oversight and complaint procedures as it has capillarity on part of the globe.

Internationally, founded on the year of 1961 after the publication by “The Observer” of an article entitled "The Forgotten Prisoners", the Amnesty International has on its foundation on the premises of the exercise of the freedom of speech and fighting torture. Justice inequality is a psychological and physical abuse of those who are incarcerated wrongly using racial bias. People who fight for human rights based on Justice Equality must be protected either, since institutions tend to suppress their rights.

V – On the matter of independent and well-resourced mechanisms to support victims and communities affected, we input:

In Brazil we suggest The Union Public Defenders Office (DPU) and States Public Defenders Office (each state has its own institution). The example we demonstrate is: São Paulo Public Defenders

[3] Prosecutors or District Attorneys.

Office (DPE), which, it is worth mentioning, are institutions that work daily to provide access to Justice in an equitable and fair manner, without charging any monetary value to the citizen.

Those institutions should be taken as an example of redress to victims and as a main execution of the National Judiciary Pact for Racial Equality. Their methods should be explored by the OHCHR as a framework to achieve the objectives addressed on this input.

These objectives are in perfect harmony with Sustainable Development Goal 16, created by 2030 Agenda, which provides for the promotion of peaceful and inclusive societies for sustainable development, as it must provide access to justice for all and build effective, responsible and inclusive institutions in all levels. Therefore, these suggestions are a call to action to change the world, in order to pave the way for a truly equitable society, free from all types of intolerance or racial discrimination.