



# BRAZIL

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 27TH SESSION OF THE UPR WORKING GROUP, APRIL/MAY 2017

### FOLLOW-UP TO THE PREVIOUS REVIEW

During its second Universal Periodic Review (UPR) in May 2012, 170 recommendations were made to Brazil by other Member States.<sup>1</sup> Of these, Brazil accepted 159 recommendations, partially accepted 10 and rejected one recommendation.<sup>2</sup>

Amnesty International welcomes Brazil's commitment to protect the rights of Indigenous Peoples, including their rights to traditional lands, territories and resources and to be consulted on issues that affect them directly.<sup>3</sup> However, since the 2012 UPR, Indigenous land has continued to be appropriated without the free, prior and informed consent of the Indigenous populations affected. Moreover, despite Brazil's commitment during its previous review to continue the demarcation process of Indigenous lands, progress has been slow.<sup>4</sup>

In 2012, the authorities accepted several recommendations to ensure the implementation of the National Programme for the Protection of Human Rights Defenders and take steps to effectively protect human rights defenders.<sup>5</sup> Since Brazil's previous review, the government has failed to allocate sufficient resources to implement the Plan effectively and high numbers of defenders continue to be killed and threatened.

During its previous review, Brazil supported recommendations to take measures aimed at ending extrajudicial executions by the security forces and ensure that force is used only when necessary and proportionate, in accordance with international law and standards.<sup>6</sup> Brazil also committed to ensure that any killings by law enforcement personnel are properly registered and independently investigated.<sup>7</sup> Amnesty International research reveals that killings at the hands of the police have continued, particularly in the context of the so-called "war on drugs".<sup>8</sup>

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<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Brazil*, A/HRC/21/11, 9 July 2012, paragraph 119.

<sup>2</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Brazil (addendum)*, A/HRC/21/11/Add.1, 13 September 2012.

<sup>3</sup> A/HRC/21/11, recommendations 119.163 (Netherlands), 119.164 (Norway), 119.166 (Peru), 119.167 (Slovakia), 119.168 (Poland), and 119.169 (Germany); A/HRC/21/11/Add.1, paragraph 21.

<sup>4</sup> A/HRC/21/11, recommendation 119.165 (Norway); A/HRC/21/11/Add.1, paragraph 21.

<sup>5</sup> A/HRC/21/11, recommendations 119.79 (Netherlands), 119.80 (Norway), 119.81 (Spain), 119.82 (Switzerland), 119.83 (Timor-Leste), 119.84 (United Kingdom), 119.85 (Australia), 119.86 (Belgium), 119.87 (Poland), 119.88 (Czech Republic), 119.89 (France); A/HRC/21/11/Add.1, paragraphs 13 and 14.

<sup>6</sup> A/HRC/21/11, recommendations 119.62 (Australia) and 119.65 (Spain); A/HRC/21/11/Add.1, paragraphs 15 and 18.

<sup>7</sup> A/HRC/21/11, recommendations 119.120 (Slovakia), 119.123 (Germany) and 119.59 (Namibia); A/HRC/21/11/Add.1, paragraph 15.

<sup>8</sup> Amnesty International, *You killed my son: homicides by the Military Police in the city of Rio de Janeiro* (Index: AMR 19/2068/2015).

Counter-narcotic operations, particularly in *favelas* (urban slums), have been accompanied by the use of force by law enforcement officials and other state agents, which, in many instances, has resulted in unnecessary and excessive use of force and other human rights violations, including extrajudicial executions, threats against favela residents and human rights defenders, unlawful raids, thefts and physical assaults. Law enforcement has adopted militarized techniques, including through training and equipment, and the armed forces have on some occasions undertaken tasks related to public safety. The lack of regulation and inappropriate use of heavy weapons (such as rifles) and armoured vehicles in densely populated urban areas have increased the risk to residents, particularly in poor marginalized neighbourhoods and *favelas*.

Extrajudicial executions, carried out by both civil and military police during counter-narcotic operations in *favelas* and other marginalized neighbourhoods, are rarely investigated and most go unpunished. In many cases, the authorities register these deaths as “killing resulting from police intervention” or “resistance followed by death”, terms used to justify the use of unnecessary or excessive force. The vast majority of the victims receive no form of reparation.

In the 2012 review, Brazil supported recommendations to guarantee the independence and autonomy of the national preventive mechanism in line with its obligations under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>9</sup> Brazil’s national preventive mechanism, the National System to Fight and Prevent Torture, was created by law in 2013; however, it does not comply with international standards in terms of its independence. Brazil further committed to take measures to combat and prevent torture and other ill-treatment, including by holding perpetrators to account.<sup>10</sup> However, torture and violence remain endemic in Brazil’s prisons as do severe overcrowding and degrading conditions.

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

### Human rights defenders

Despite the establishment of a National Programme for the Protection of Human Rights Defenders in 2004,<sup>11</sup> shortcomings in its implementation and a lack of resources have meant that high numbers of human rights defenders continue to be killed or threatened (often by gunmen hired by landlords) in the context of conflicts over land and natural resources. In July 2016, the suspension of several agreements between governments at federal and state levels to implement the Programme and cuts in spending under the Programme have further undermined its effectiveness. The Programme has been established by decree only, and lacks further legal support.

The Federal Constitution of 1988 includes clear provisions on safeguarding the right to land, and specifies that rural property can be appropriated by the state based on “social interest for agrarian reform, if the property is not fulfilling its social role”.<sup>12</sup> A National Plan for Agrarian Reform has been in place since 1985; however, this has not been adequately implemented.

### Rights of Indigenous Peoples

The 1988 Constitution states that all Indigenous Peoples’ lands must be demarcated and titled within a time period of five years, i.e., by 1993.<sup>13</sup> However, the demarcation process has been extremely slow, despite the fact that the federal

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<sup>9</sup> A/HRC/21/11, recommendations 119.11 (Sweden), 119.12 (United Kingdom), 119.13 (Australia), 119.14 (Denmark); A/HRC/21/11/Add.1, paragraphs 15 and 16.

<sup>10</sup> A/HRC/21/11, recommendations 119.63 (Uzbekistan), 119.64 (Indonesia), 119.66 (Netherlands), 119.68 (Slovenia) and 119.122 (Czech Republic); A/HRC/21/11/Add.1, paragraph 15.

<sup>11</sup> <http://www.sdh.gov.br/assuntos/combates-as-violacoes/programas/defensores-dos-direitos-humanos-1>

<sup>12</sup> Federal Constitution, Chapter I, Article V, Par. XXIII, Chapter III, Articles 184 – 191. <http://english.tse.jus.br/arquivos/federal-constitution>.

<sup>13</sup> Indigenous Peoples’ rights are included in Chapter VIII, Articles 231 – 232 of the Federal Constitution. The five years’ period for concluding the demarcation is established in Article 67, page 184 <http://english.tse.jus.br/arquivos/federal-constitution>. Article 231 of the Constitution and Article 67 of the Temporary Constitutional Provisions Act.

government has the legal authority, under the Constitution, and the financial means to progress the process. Several demarcation processes are pending, and have been blocked by legal challenges, which can stay deadlocked in the courts for years. Others are awaiting approval by the executive, or are still at the stage of technical assessment by FUNAI,<sup>14</sup> which lacks the resources to complete them within the constitutional timeframe. Some have completed the process, but the communities are unable to take possession of the land because the previous owners will not leave.<sup>15</sup>

Attacks against members of Indigenous communities are common and those responsible are rarely brought to justice. The identity of the attackers is often not known, but they are usually armed men allegedly hired by land-owners.<sup>16</sup>

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### Unlawful killings by security forces

Brazil has long had some of the highest numbers of homicides in the world, and records show these numbers continue to increase.<sup>17</sup> In 2014, over 58,000 people were killed in the country, with the national average homicide rate reaching 29 per 100,000 people. Of the 56,000 victims in 2012, 30,000 were aged between 14-29 years old and of that group, 77% were black.<sup>18</sup> The Federal Government has yet to establish and implement an effective national plan to reduce homicide in the country.

Over 70% of homicides in Brazil involve the use of firearms; however, there are no plans to reduce or control gun violence in the country.<sup>19</sup> Rather, proposals are under discussion in Congress to revoke the Disarmament Bill, which would make access to firearms more readily available.

Amnesty International's research reveals that police officers are responsible for a significant percentage of killings. In 2015 in the city of Rio de Janeiro, the police were responsible for one in every five killings<sup>20</sup> and in São Paulo, one in every four.<sup>21</sup> Between 2006 and 2015, over 8,000 cases of killings by on-duty police officers were registered in the state of Rio de Janeiro. The majority of the victims killed during police operations in Rio de Janeiro are young black men. According to data from the Institute of Public Security, out of 1,275 registered killings by on-duty police officers, between 2010 and 2013 in the city of Rio de Janeiro, 99.5% of victims were men, 79% were black and 75% were aged between 15 and 29.

Police forces have often justified excessive use of force and extrajudicial executions as acts of self-defence in response to high levels of violent crime. Most of these killings are registered as "acts of resistance" or "resistance followed by death", and accordingly few are effectively and independently investigated or brought to justice.

Amnesty International's research indicates that registering cases as "homicides resulting from police intervention" often

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<sup>14</sup> National Indian Foundation (Fundação Nacional do Índio)

<sup>15</sup> Interview with Flavio Máchado, CIMI; Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil, A/HRC/33/42/Add.1, 8 August 2016, pp7-8

<sup>16</sup> Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil, A/HRC/33/42/Add.1, 8 August 2016, pp6-7; Amnesty International Urgent Actions: Indigenous Group in Critical Situation, 10 September 2010; Indigenous People threatened in Brazil, 23 September 2013; Indigenous Teacher missing in Brazil, 13 November 2009; Indigenous Leader Killed, 21 November 2011

<sup>17</sup> "Violence map" monitors lethal violence every year in Brazil using information from DATASUS, the national health system database <http://www.mapadaviolencia.org.br/>

<sup>18</sup> "Violence map" <http://www.mapadaviolencia.org.br/>

<sup>19</sup> "Violence map" <http://www.mapadaviolencia.org.br/>

<sup>20</sup> Institute of Public Security, Public Security Secretary of Rio de Janeiro

<sup>21</sup> <http://g1.globo.com/sao-paulo/noticia/2016/04/uma-em-cada-4-pessoas-assassinadas-em-sp-foi-morta-pela-policia.html>

covers up extrajudicial executions by the police.<sup>22</sup> The so-called “war on drugs”, intended to curb the illicit drug trade, particularly in *favelas*, and the lack of regulation of the use of heavy weapons and armoured vehicles in densely populated urban areas, increase the risks to the local population.

Amnesty International’s review of the status of 220 investigations initiated by the civil police in 2011 of cases of police killings in the city of Rio de Janeiro, revealed that by July 2015 only one of these investigations had led to a police officer being charged. As of April 2015, 183 of the 220 investigations were still ongoing.<sup>23</sup> The lack of adequate investigation, prosecution and conviction of police perpetrators of killings risks sending a message that these crimes are tolerated by the authorities, which can further fuel the cycle of violence.

Currently, a law is pending before the Brazilian Congress aiming to reduce extrajudicial executions by the police and increase external oversight and accountability for unnecessary and excessive use of force by the police.<sup>24</sup>

### **Torture and other ill-treatment, prison conditions and the juvenile justice system**

Amnesty International continues to receive reports of torture and other ill-treatment at the time of arrest, during interrogation at police stations and in detention centres and prisons in several states in Brazil.

Brazil’s National System to Fight and Prevent Torture was established in law in 2013;<sup>25</sup> however, it has yet to be fully implemented. Although the System does not fully comply with international standards with regard to its independence, it represents an important step towards fulfilling Brazil’s obligations under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>26</sup> In March 2015, 11 expert members of the National Mechanism to Prevent and Fight Torture were nominated by the President. The group, which is mandated to visit and inspect places of where persons are deprived of their liberty, is part of the National System to Prevent and Fight Torture.

Severe overcrowding, degrading conditions, torture and violence remain endemic in Brazil’s prisons. In Pedrinhas prison, in the northern state of Maranhão, 60 detainees were killed by other detainees in 2013, and at least 18 were killed in the prison between January and October 2014.<sup>27</sup>

Brazil has one of the highest number of prisoners worldwide, with over 620,000 people in prison in December 2014.<sup>28</sup> In light of current efforts to curb the illicit drug trade by, among other things, increasing the terms of imprisonment for several drug-related offences, it is likely that this number will continue to increase. Overcrowding, degrading conditions, torture and violence are also prevalent in juvenile detention centres.

### **Freedom of expression and peaceful assembly**

Amnesty International remains concerned at the lack of clear protocols and training, including specific guidance on the use of force and “less lethal” weapons, in relation to policing of peaceful assemblies. The police often responds to peaceful protests in a violent and abusive manner. Military police units often disperse protests using unnecessary and excessive force, including with so-called “less lethal weapons”, including tear gas, stun grenades and rubber bullets. Amnesty International has identified this pattern of abuse in different states in Brazil and on different occasions.<sup>29</sup>

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<sup>22</sup> Amnesty International, *You killed my son: homicides by the Military Police in the city of Rio de Janeiro* (Index: AMR 19/2068/2015).

<sup>23</sup> Amnesty International, *You killed my son: homicides by the Military Police in the city of Rio de Janeiro* (Index: AMR 19/2068/2015).

<sup>24</sup> Law proposal PL4471/2012 sets out measures to ensure a thorough and independent investigation of all cases of on-duty police killings.

<sup>25</sup> Law 12.847 from 2 August 2013 [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2011-2014/2013/Lei/L12847.htm](http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12847.htm)

<sup>26</sup> Brazil ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2007.

<sup>27</sup> Amnesty International, *Amnesty International Report 2014/15 - Brazil*, 25 February 2015,

<sup>28</sup> Ministry of Justice <http://www.justica.gov.br/noticias/populacao-carceraria-brasileira-chega-a-mais-de-622-mil-detentos>

<sup>29</sup> Amnesty International, ““They use a strategy of fear”: protecting the right to protest in Brazil” (Index: AMR 19/005/2014).

Dozens of peaceful protesters have been charged under The Law on Criminal Organisations<sup>30</sup> and the National Security Law.<sup>31</sup>

In 2013, hundreds of thousands of people protested in the streets against increases in public transportation fares and demanding better education and health services, in different cities. The police frequently responded with unnecessary and excessive use of force. Hundreds were injured, including a photographer who lost an eye after being hit by a rubber bullet.<sup>32</sup> Hundreds more were indiscriminately rounded up and detained, in some cases under laws targeting organized crime,<sup>33</sup> without any indication that they have been involved in criminal activity.

In the weeks leading up to, and during, the 2014 World Cup, protests against the negative impact of the World Cup and high expenditures and demands for better services took place in the host cities. The police responded with unnecessary and excessive use of force, including the misuse of "less lethal weapons" and some peaceful protesters were arbitrarily detained.<sup>34</sup>

Similarly, in 2016, in the lead up to, and during, the Olympic Games, Amnesty International documented the use of unnecessary and excessive force by the security forces in Rio de Janeiro and other cities to repress largely peaceful protests and demonstrations denouncing the negative impact of the Olympic Games and demanding better health and education services.<sup>35</sup>

### Human rights defenders and Indigenous Peoples

Landowners controlling large quantities of land<sup>36</sup> have become major players in determining the distribution of public resources and, as a result, a significant amount of the national budget is invested in policies and programmes that benefit so-called "agri-business".<sup>37</sup> In addition, landowners have formed a powerful lobby (the so-called "ruralist" lobby) which wields huge influence in the political system to put pressure on the Parliament, including by financing the election of Executive and Legislative representatives and, through them, influencing laws that benefit the "agri-business".<sup>38</sup>

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<sup>30</sup> Law 12.850 [http://www.planalto.gov.br/ccivil\\_03/ato2011-201](http://www.planalto.gov.br/ccivil_03/ato2011-201)

<sup>31</sup> Law 7170 [http://www.planalto.gov.br/ccivil\\_03/leis/l7170.htm](http://www.planalto.gov.br/ccivil_03/leis/l7170.htm)

<sup>32</sup> Sergio Silva, photographer, lost his left eye after being shot at by the military police in a protest in São Paulo in 2013. The case is documented in Amnesty International report, "*They use a strategy of fear: protecting the right to protest in Brazil*" (Index: AMR 19/005/2014).

<sup>33</sup> Law 12.850 [http://www.planalto.gov.br/ccivil\\_03/ato2011-201](http://www.planalto.gov.br/ccivil_03/ato2011-201) and Law 7170 [http://www.planalto.gov.br/ccivil\\_03/leis/l7170.htm](http://www.planalto.gov.br/ccivil_03/leis/l7170.htm)

<sup>34</sup> Amnesty International "Final overview: protests during the World Cup 2014" (AMR 19/008/2014)

<sup>35</sup> Amnesty International, "*A legacy of violence: killings by police and repression of protests at Rio 2016 Olympics*" (Index: AMR 19/4780/2016).

<sup>36</sup> According to the NGO Articulação Xingu Araguaia, large-scale land-owners (*fazendeiros*) own an estimated average of 740 hectares per person in Brazil, or 37% of the country's land mass; *As 10 mentiras mais contadas sobre os indígenas* (The ten lies most often told about Indigenous Peoples), 2 December 2014, available at <http://www.axa.org.br/reportagem/as-10-mentiras-mais-contadas-sobre-os-indigenas>

<sup>37</sup> An industry that controls large portions of land in Brazil, going back to the donation of land in colonial times and to the modern financial investments on land market and agricultural production.

<sup>38</sup> For example, the proposed PEC 215 bill would shift ratification of demarcation of Indigenous lands from FUNAI – an autonomous body set up by government to protect the interests of Indigenous Peoples – to Congress. This would almost certainly lead to even further delays in titling of lands, as the *ruralista* lobby is strongly represented in Congress (REDD Monitor, *Não a PEC 215! Proposed change to Brazil's constitution would leave indigenous peoples "in the hands of the multinational corporations"*, July 2015, <http://www.redd-monitor.org/2015/07/15/nao-a-pec-215-proposed-change-to-brazils-constitution-would-leave-indigenous-peoples-in-the-hands-of-the-multinational-corporations/>)

Conflicts over land and natural resources lead to the murder of dozens of human rights defenders every year in Brazil, and death threats and attacks against rural communities and their leaderships by landowners.<sup>39</sup> Killings, threats and attacks against human rights defenders are rarely investigated and the perpetrators go largely unpunished, in a climate of impunity.<sup>40</sup>

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

**Amnesty International calls on the government of Brazil to:**

### *Extrajudicial executions by security forces*

- Implement a plan, with concrete goals and milestones, to reduce homicides in the country, especially among black youth, and reduce gun violence and extra-judicial executions by the security forces;
- Repeal any proposals to revoke the “Disarmament Bill”, Law 10.826 from December 2003;
- Carry out thorough, independent and impartial investigations into all homicides, including those that can be attributed to police forces, and bring the perpetrators to justice;
- Approve proposed law PL 4471/2012, aimed at ending extra-judicial executions by the police and establishing effective oversight and accountability mechanisms to curb the unnecessary and excessive use of force by the security forces;
- Incorporate into national law international principles and standards on the use of force in law enforcement, particularly those set out in the United Nations Code of Conduct for Law Enforcement Officials and in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Ensure that the military police adopts – and makes public – operational protocols for the use of force and firearms that comply with international law and standards, and give regular training to officers in the use of these protocols.

### *Torture and other ill-treatment, prison conditions and the juvenile justice system*

- Implement the recommendations made by the UN Special Rapporteur on Torture and the recommendations by the Subcommittee on the Prevention of Torture, following their visits to Brazil in 2015;
- Fully implement the National System to Fight and Prevent Torture and guarantee its independence in accordance with OPCAT, and implement the recommendations made by the National Mechanism to Fight and Prevent Torture;
- Reject the proposed constitutional amendment PEC 171 which seeks to lower the age at which children can be tried as adults from 18 to 16 years.

### *Freedom of expression and peaceful assembly*

- Reject the introduction of any new laws that criminalize peaceful protest or violate the rights to freedom of expression and peaceful assembly;
- Put in place clear and effective public accountability mechanisms to investigate allegations of human rights violations by all security forces responsible for policing public protests, and ensure that those responsible for human rights violations are subject to disciplinary and criminal proceedings;

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<sup>39</sup> In 2015, the Pastoral Land Commission registered 50 murders, 144 threats and 59 attempted murders related to agrarian conflicts. CPT, *Conflitos no Campo Brasil 2015*, available at: <http://www.cptnacional.org.br/index.php/component/jdownloads/send/41-conflitos-no-campo-brasil-publicacao/14019-conflitos-no-campo-brasil-2015>

<sup>40</sup> Referring to attacks on Indigenous persons, the UN Special Rapporteur on the rights of Indigenous Peoples noted that “In most cases, impunity allows violent practices by private security forces, armed mercenaries and State forces to continue unabated”, Report of the Special Rapporteur, op. cit., p7.

- Ensure that the military and civil police, as well as other security forces, receive adequate and effective training for policing public demonstrations, including on the appropriate use of “less-lethal” weapons and on international standards relating to the use of force.

#### *Human rights defenders*

- Immediately restore the National Programme of Protection for human rights defenders, including by reinstating suspended agreements and designating adequate human, institutional and financial resources;
- Fully recognize and support human rights defenders and protect them and their communities from death threats, attacks and killings;
- Ensure that the deaths of human rights defenders are promptly and thoroughly investigated, and that those found to be responsible are brought to justice;
- Implement the 1988 Federal Constitution provisions on Agrarian Reform, particularly those stating an obligation to assure land rights aiming at social and sustainable development purposes and comply with the social function of property and the procedures for expropriation based on “social interest for agrarian reform, if the property is not fulfilling its social role”;
- Establish consultation mechanisms with human rights defenders and the civil society organizations working to support them.

#### *Indigenous Peoples*

- Implement the recommendations by the UN Special Rapporteur on the rights of Indigenous Peoples made following her visit in March 2016;
- Ensure that Indigenous peoples are protected from threats, attacks and forced evictions;
- Ensure that killings of Indigenous leaders are promptly and thoroughly investigated and those responsible brought to justice;
- Expedite the demarcation process and transfer of lands belonging to Indigenous communities in accordance with constitutional obligations;
- Ensure FUNAI<sup>41</sup> has the necessary resources and political independence to carry out its work effectively, particularly relating to demarcation of Indigenous lands.

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<sup>41</sup> National Indian Foundation (Fundação Nacional do Índio)