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Inputs to the 53rd session of the Human Rights Council

**Combating glorification of
Nazism, neo-Nazism and other
practices that contribute to
fuelling contemporary forms
of racism, racial
discrimination, xenophobia
and related intolerance**

Contributions from

The Federal Public Defenders' Office of Brazil



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From the Federal Public Defender's Office

To the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Reference: 53rd session of the United Nations Human Rights Council - Combating glorification of Nazism, neo-Nazism and other practices that contribute to fueling contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Resolution 77/204 adopted by the General Assembly on 15 December 2022 A/RES/77/204).

- The effectiveness of measures taken by Brazilian States – in law and policy – with a view to preventing and combating such incidents and demonstrations, in accordance with international human rights obligations, in particular Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Beginning with the analysis of the international legal framework, regarding the Federative Republic of Brazil's (hereafter 'Brazil' or 'the State') legal framework, the main human rights treaties in the universal protection system have been signed and ratified. Among the referred treaties are the detailed below: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); International Covenant on Civil and Political Rights (CCPR); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); International Covenant on Economic, Social and Cultural Rights (CESCR); Convention on the Rights of the Child (CRC); Convention for the Protection of All Persons from Enforced Disappearance (CED) and the Convention on the Rights of Persons with Disabilities (CRPD). [1]

Furthermore, Brazil has signed and ratified the Convention Relating to the Status of Refugees of 1951 and its Protocol of 1967. Also, the State has signed the Convention Relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961. Concerning individual complaints procedures, Brazil has also accepted the following legal instruments: CAT, Art.22, CCPR-OP1, CEDAW-OP, CERD, Art.14, CRC-OP-IC and the CRPD-OP. And, with respect to inquiry procedures, the State has also accepted the following legal instruments: CAT, Art.20, CEDAW-OP, Art. 8-9, CRC-OP-IC, Art.13 and CRPD-OP, Art.6-7. [2]

Racism is present in individual relationships in several ways, among them, the institutional ones stand out, through the classification between best and worst, who and where each individual can reach. Racial differences have been present in Brazilian society since the Portuguese invasion, since it is possible to verify the Brazilian structure as a kind of pyramid, which black people constitute the base of the pyramid

and the white elite stays at the top, producing and reproducing over the centuries their power structures. [3]

Professor Antonia Brioso points out that racism produces hierarchies and asymmetries in society, since it is related to the cultures that call themselves “hegemonic” and “dominant”, which have a higher hierarchy. Racism is an offense, which leads to humiliation and damages the subjective honour of the victim. [4]

In this sense, the current President of the Republic, Luiz Inácio Lula da Silva, on January 11, 2023, sanctioned Law No. 14,532/2023 to equate racial insult, previously provided for in article 140, paragraph 3 of the Penal Code, to the crime of racism, currently provided for in article 20, paragraph 2-A of Law 7,716/1989, which expressly became a form of the crime of racism.

Thus, *novatio legis in pejus* occurred in relation to racial injury, since, with the purpose of combating racial discrimination, the penalty for offenses based on race, which was 1 to 3 years of imprisonment and a fine, became 2 to 5 years of imprisonment and a fine. The Criminal Prosecution used to be conditioned to complaint, according to article 145 of the Penal Code: "(...) *In the crimes provided for in this Chapter, proceedings are only initiated upon complaint* (...), it became unconditioned criminal prosecution.

In addition, the provisions of article 3, sole paragraph, Law 7.716/1989, also states that the same penalty of 2 to 5 years is incurred by those who commit discrimination based on race, colour, ethnicity, religion or national origin.

It should be noted that the penalty will be increased by half if the crime is committed by means of conspiracy, that is, when committed by two or more people, whose cause of increased penalty will be applied in the third phase of the dosimetry of the penalty.

In the case of racial abuse committed in the context of sports, religious, artistic or cultural activities, the penalty is "2 (two) to 5 (five) years, and prohibition to attend, for 3 (three) years, places intended for sports, artistic or cultural public activities".

Thus, racial insult was considered, by the Superposition Courts, imprescriptible. However, the Penal Code highlights that if there was no complaint within six months, there would be the extinction of punishability, according to (article 38 of Code of Criminal Procedure): "(...) *the offended party or his legal representative shall lose the right to complain or to be represented if they do not exercise such right within six months* (...), the punishability will be extinguished, due to the statute of limitations (article 107, item IV, of Penal Code): " *The punishability is extinguished (...)* by prescription, decadence"(...);. [5]

Regarding the statute of limitations, the crime with the previous wording had a period of limitation of 8 (eight) years, as provided for in article 109, item IV, of the Penal Code: "*in eight years, if the maximum penalty exceeds two years and does not exceed four*". [6]

Currently, the term is imprescriptible, since it is a species of the genus racism, and Article 5, item XLII, of the 1988 Constitution of the Federative Republic of Brazil must be applied. [7]

In relation to bail, it was previously possible for the defendant to answer to the crime of racial insult at liberty, since it was arbitrated by the Chief Civil Police Officer, as it had the maximum penalty of deprivation of liberty not exceeding 4 (four) years, according to article 322, head provision, of the Code of Criminal Procedure: "*The police authority may only grant bail in cases of infraction whose maximum deprivation of liberty penalty does not exceed 4 (four) years*". [8]

However, currently, the aforementioned constitutional provision should be applied, which foresees the crime as a non-bailable offence: "*the practice of racism constitutes a non-bailable offence* (...)".

Therefore, the imprescriptibility was already recognized by the precedents of the Superior Courts, considering the racial insult as racism. The non-bailability also stemmed from this understanding (article 5, item XLII, of the Federal Constitution). [9]

There was also a change in the definition of the crime of recreational racism, which consists of offences supposedly made as "jokes" or "pranks", in context or with the intention of relaxation, fun or recreation, but which have a racist character. For these cases, the penalty was increased by one-third to one-half.

In relation to the fight against Nazism, article 20, paragraph 1 of Law 7.716/1989, provides as elementary to the crime "*to manufacture, sell, distribute or disseminate symbols, emblems, ornaments, badges or propaganda that use the swastika for the purpose of disseminating Nazism*" with a prison sentence of 2 to 5 years and a fine. [10]

- Comments on measures taken to prevent and combat hate speech, including online, and incitement to violence based on racial superiority and hatred towards persons or groups of persons belonging to national or ethnic, religious or linguistic minorities.

Hate speech becomes dangerous the larger its audience. The internet as a means of disseminating information with a high power of reach to the most different audiences works as a potentiator of the dissemination and continuity of this type of discourse. Extremist groups make use of social media to spread their ideas to *Mainstream* communication. [11]

This leads to the creation of fake news, mixing true facts with untruths that are later disseminated in forums and blogs. As they generate repercussion, they are reproduced in more popular sites until they reach social media and finally generate a national discussion. [12]

Brazilian parliamentarians and governors, following the global trend and because they are often targets of violence on social media, have approved and suggested new laws against hate speech on the internet. On April 4, 2018, Law 13,642/2018 was published in the Official Gazette, which delegates to the Federal Police the responsibility to investigate crimes of misogyny in internet messages. Brazil has approved a law that establishes principles, guarantees, rights and duties for the use of the Internet.

Article 1, Head provision of article 1 of [Law No. 10.446 \(May 8, 2002\)](#) , shall come into force with the addition of the following item VII:

(...)

"VII - any crimes committed through the world wide web that spread misogynistic content, defined as those that propagate hatred or dislike of women". [13]

The Brazilian Civil Framework of the Internet (Law No. 12,965, of April 23, 2014) had extensive popular and institutional discussion with organizations representing civil society and internet providers. Among the various issues addressed, such as net neutrality, privacy, among others, there was much discussion so that fundamental guarantees, such as freedom of expression were broadly preserved. In its text, provided for in article 19 it is defined that:

Article 19. In order to ensure freedom of expression and prevent censorship, providers of Internet applications can only be civilly liable for damages resulting from content generated by third parties if, after specific court order, they do not make arrangements to, in the scope and technical limits of their service and within the indicated time, make unavailable the content identified as infringing, otherwise subject to the applicable legal provisions.

In this sense, it establishes that internet providers are not liable for any criminal conduct, including hate speech, by their users. They will be subject to applicable penalties if they fail to comply with court decisions regarding such content. What is classified as improper or not is for the courts to decide. However, the same article does not prevent the provider, when faced with an adverse situation, from taking its own initiative and moderating the contents present in its services.

Now, referring to the national public institutions that assist and enforce compliance with the legal measures established by the State, the Federal Constitution of Brazil establishes in its article 134 that the Public Defender's Office (DPU by their acronyms in Portuguese) is an essential institution to the jurisdictional function of the State and is responsible for the judicial guidance and the defence, in all levels, of vulnerable people. DPU "is a permanent institution, essential to the jurisdictional function of the State, being entrusted, as an expression and instrument of the democratic regime, fundamentally with legal guidance, the promotion of human rights and the defence, at all levels, judicial and extrajudicial, of individual and collective rights, in full and free of charge, to those in need."

Therefore, amongst its institutional functions, DPU assists individuals and non-profit organizations who request help through their representative, residing throughout the national territory (economic, social and cultural criteria are considered). Also, DPU works in the defense and promotion of human rights and may plead before the bodies of international human rights systems. In order to fulfill these functions, the DPU is organised into multiple thematic working groups. [14]

As regards this report, the Brazilian Constitution, supreme law, establishes in its article 5, item XLII that "the practice of racism is a non-bailable crime, with no limitation, subject to the penalty of

confinement, under the terms of the law.” At this point, it should be noticed that one of the key provisions criminalising racism in Brazil is Law No. 7716 of 1989 also called Racism Law (Lei do Racismo). [15]

The referenced Law defines and punishes all kinds of discrimination or prejudice based on race, colour, ethnicity, religion or national origin in employment relations and public life. In that sense, it also prohibits the manufacture, distribution and use of symbols that disseminates Nazism (art.20). Besides, it determines that victims of crimes of racism must be accompanied by a lawyer or public defender in all procedural acts (art.20-D).

Law No. 7,716 (January 5, 1989), which defines crimes resulting from racism, had an important update in its articles by the Statute of Racial Equality (Law No. 12,288 of 20 July 2010) by including the occurrence of discrimination through the World Wide Web, allowing judges to request the interdiction of pages and messages.

Moreover, Article 20, paragraph 2 of Law 14.532/2023 provides that incitement to discrimination or prejudice based on race, colour, ethnicity, religion or national origin is qualified when *the practice is carried out (...) through mass media, social network or publication of any nature*. The sentence has a new minimum level of two years and a maximum level of five years, in addition to the imposition of a fine.

- The effectiveness of measures taken by States to promote political, social and cultural tolerance and prevent the promotion of hate speech, including online, or incitement to violence based on racial superiority and hatred against persons or groups of persons belonging to national or ethnic, religious or linguistic minorities in political or public discourse.

As it relates to the inter-American system for the protection of human rights, Brazil has signed and ratified the American Convention on Human Rights and the Protocol of San Salvador. Also, other human rights treaties concerning the subject-matter of this report like the Inter-American Convention to Prevent and Punish Torture, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Inter-American Convention on the Elimination of All Forms of Discrimination against Person with Disabilities, Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance and Inter-American Convention on Forced Disappearance of Persons has been signed and ratified.[16]

In line with article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, the State has adopted a new legislation that updates Law 7716 of 1989. The mentioned law punishes the conduct of injuring someone, offending their dignity, inducing or inciting discrimination or prejudice due to race, colour, ethnicity, or national origin. Also, it criminalizes the conduct of preventing or employing violence against any religious manifestations or practices. [17]

Furthermore, the referred Law severely sanctions the support or dissemination of ideas and symbols linked to Nazism. Beyond these provisions, Law No.14532 of 2023 determines that the judge must consider as discriminatory any attitude or treatment given to the person or to minority groups that causes embarrassment, humiliation, shame, fear or undue exposure, and that usually would not be dispensed to other groups due to colour, ethnicity, religion or origin when applying such provisions related to racism.

In relation to political actions, Decree No. 9. 586/ 2018, which institutes the National System of Public Policies for Women, which provides for the National Plan of Policies for Women in order to promote actions in the educational process for gender, race, ethnicity and sexual orientation equity, as well as to stimulate the implementation, in the Comprehensive Attention to Women's Health, of actions that meet the specific needs of women in the different stages of their life cycle, covering black women, those with disabilities, indigenous women, incarcerated women, rural and urban workers and those of different sexual orientations, contemplating issues related to gender relations; [18]

Justice Edson Fachin of the Federal Supreme Court, when judging RHC 222.599, as Judge-rapporteur, on February 6, 2023, [19] understood that the material scope of the Non-prosecution Agreement (ANPP) should not encompass racial crimes (nor racial insult, provided for in article 140, paragraph 3, of the Penal Code, nor the offenses provided for in Law 7.716/89).

In this regard, the Supreme-Court Justice highlighted the express provision in the constitutional text that **“the law will punish any discrimination that violates fundamental rights and freedom”**. Emphasizing that:

regarding the possibility of proposing a Non-Persecution Agreement (ANPP), the ordinary legislation, in a correct manner, I believe, has removed its application in crimes committed in the scope of domestic or familiar violence, or committed against women due to the condition of feminine sex, in favour of the aggressor (item IV of article 28-A of the Code of Criminal Procedure). **Following the teleology of this exceptionality, however, and not its literalness, this reservation should not be understood as the only one.**

After all, the Supreme-Court Justice points out that, it is not a singular hypothesis to demand the recognition of the incompatibility of the ANPP with the constitutional system of protection of fundamental rights and with all the commitments assumed by the Brazilian State for the preservation and strengthening of human rights with the international community.

It is recalled, in particular, because of the criminal conduct, which, recently, on February 19, 2021, was published in the Official Gazette of the Federal Senate, Legislative Decree No. 1/2021, approving the text of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, adopted in Guatemala (on the occasion of the 43rd Ordinary Session of the General Assembly of the Organization of American States, held on June 5, 2013), a document more comprehensive than the International Convention on the Elimination of All Forms of Racial Discrimination (approved by the United Nations (UN) in 1967 and ratified by Brazil in 1969), since it reprimands discriminatory practices also in private environments, in addition to being forceful in committing States to combat structural and institutional racism.

The ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance **reaffirms the decision of the Brazilian State to repress racism more severely, in line, moreover, with our Federal Constitution**, which inhibited the granting of bail and the application of the statute of limitations for crimes motivated by racial discrimination.

As a result of the provisions of Article 4 of the international text, Brazil has committed itself to prevent, eliminate, prohibit and punish, in accordance with its constitutional norms and with the provisions of the Convention, all acts, and manifestations of racism, racial discrimination and related forms of intolerance.

Therefore, Article 10 of the aforementioned Convention, in turn, requires Brazil to guarantee victims **(i) equitable and non-discriminatory treatment, (ii) equal access to the justice system, (iii) agile and effective process and (iv) fair reparation in the civil and criminal spheres, in what is pertinent to the case.** [20]

The Judge-rapporteur also recalled that it was on this spectrum that the Plenary of this Supreme Court, on October 28, 2021, when judging Habeas Corpus 154248, **decided that the crime of racial insult is also imprescriptible.**

Furthermore, on this occasion when the material scope for the application of the "decriminalizing" agreement is being defined, for the purpose of inhibiting criminal prosecution, the interpretation in conformity with the Constitution constitutes the necessary mark and limit for the preservation of the fundamental right to not racial discrimination, operated by the set of stereotyped meanings that circulate and attribute to black people an inferior position in a perverse hierarchy of humanities.

With regard to the well-known advantages recommended by the new convention brought by the Law 13.964/2019, we highlight the fundamental rights guaranteed to black people (as well as to women) as devoid of equal consideration and respect.

Disregarding the necessary protection of this undeniably vulnerable population, this "decriminalizing" criminal policy ends up reverberating in the recognition that the harming of certain legal goods, even if criminally protected, does not constitute a sufficient status to call for more rigorous state repression (which, as seen, is exactly the opposite of what is required by the constitutional text and the commitments assumed by the Brazilian State internationally).

Even if, so far, under the quantitative point of view, racial crimes are punished with reprimands that meet the objective requirements for the proposal of a Non-Prosecution Agreement. The protected legal goods, **dignity and racial rights cannot be the object of any legal deal**, under penalty of the pedagogy inserted in the construction of the process of reducing racial inequalities to lose its substantial north: **that of annihilating any signification of black people as inferior or subordinate.**

To "decriminalise" racially discriminatory acts, at this historical moment, is to go against

the already insufficient effort to construct racial equality, carried out in the repression of acts founded on despicable meanings fed, on a daily basis, by concrete and symbolic behaviours that objectify black people.

Therefore, it is in these terms that the Supreme-Court Justice points out: **the material scope of the ANPP should not cover racial crimes (nor racial insult, provided for in Article 140, paragraph 3, of the Penal Code, nor the offences under Law 7.716/89).** [21]

- Any civil society-led initiative to address Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

At a seminar held at the Chamber of Deputies on March 23, 2022, on the trivialisation of the Holocaust, debaters reinforced the importance of combating Nazi and hate speech. The event was organised by the Israeli Confederation of Brazil (Conib), with support from the National Congress.

The Holocaust was the genocide or mass murder of millions of Jews during World War II. The bill amends the Racism Law.

The Associate Justice of the Superior Court of Justice, Joel Ilan Paciornik, also cited the Law of Racism in assessing that the country has a good body of legislation:

Brazil has adhered to several international treaties on anti-discrimination. We have a specific law as well that punishes crimes stemming from race prejudice, but there are still things to improve.

(...)

It is in this type of event that a solid and consistent debate arises so that these changes can be proposed in the legislative houses.

The seminar “Hate Speech and the Trivialization of the Holocaust”, organized by the Israeli Confederation of Brazil, with the support of the National Congress, was attended by representatives of Itamaraty and entities such as the “Auschwitz Institute for Peace and Reconciliation” and others that gave institutional support, such as the “Memorial to the Victims of the Holocaust” of Rio de Janeiro, the “Memorial of Jewish Immigration and the Holocaust” of São Paulo, the “Holocaust Museum of Curitiba” and the “Brazil-Israel Parliamentary Group”. [22]

- Lessons learned, both positive and negative, from measures taken to combat and eliminate any form of racism, xenophobia and related intolerance.

The 134 years since the official abolition of slavery in Brazil will still be remembered this May 13th under a worrying scenario. Data from the Atlas of Violence 2021 points out that 77% of men and 66% of women murdered in Brazil are black. The numbers (much higher than the representativity of this population, which reaches 56% of Brazilians), expose the perpetuation of racial inequality, rooted in Brazil in historical, cultural and socio-economic dimensions.

Many movements that fight for equality for the black population are expected to protest against this situation. May 13th is also the National Day of Denunciation Against Racism (a way of emphasising that abolition has not produced all the effects it should have produced).

Brazil has been evolving towards racial policies, but there is still a long way to go, according to Paim:

It was almost 400 years of slavery in a country that is only 522 years old and whose history records the imprisonment and enslavement of black and indigenous people. This dehumanising process strengthened the neglect of these racial groups by the state and its institutions, and the myth of racial democracy prevailed. The first step for public policies to promote the creation and implementation of racial equality is to recognise that racism exists and move to combat it.

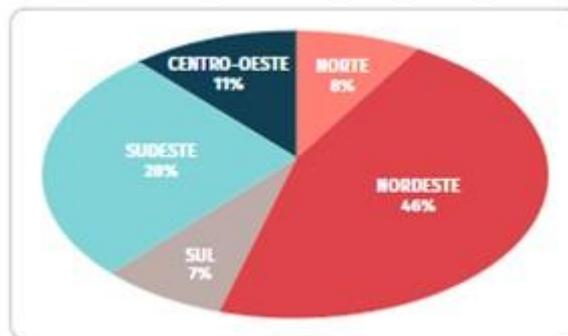
As for public policies aimed at reducing discrimination, the importance of the Law on Quotas for admission to universities (which will complete 10 years in force in 2022), according to data from the IBGE, stands out:

Between 2010 and 2019, the number of black students in higher education grew by almost 400%. Of all those enrolled, 38.15 % are black, a still low rate for a group that corresponds to 56.% of the Brazilian population.

According to the Higher Education Census, between 2013 and 2019 the total number of enrolments in Higher Education was 56,549,230, of which, 8,603,824 are from federal institutions. In addition, it appears that enrolments in places reserved for black people in federal universities in the 2013-2019 interval total 164,156, a small number compared to the total enrolments reported by the Census.

Even considering the comparison of data from federal universities alone with enrolments in the whole system (i.e. including federal institutes), this percentage reveals a modest proportion. Moreover, it represents only 2% of total enrolment in higher education between 2013 and 2019. That is, the impact of the enrolment of black quota students in the universe of higher education places is still quite limited. [23]

Gráfico 7: Proporção de cotistas raciais formados(as) por região brasileira, 2013 a 2019



Fonte: DPU/ABPN

From the point of view of the admission of black students, the data highlights that Law No. 12.711/2012 meant an important increment in federal universities, since the expansion of Brazilian Higher Education between the 1960s and 2000 had been configured as a space of exclusion of the black and indigenous population.

In this sense, Public Policies to combat this discrimination began to be adopted between 2003 and 2012, leading to an important impact on the presence of black people in higher education.

Furthermore, Federal Law No. 12,711/2012, regulated by Decree No. 7,824/2012, represents a milestone in the definition of inclusive parameters for the access to Brazilian federal universities, foreseeing the importance of the measure as a means of technical and educational improvement of future black professionals.

In this context, in 2012, through the Action for Breach of Fundamental Precept (ADPF) No. 186/DF, the Supreme Court declared the constitutionality of the affirmative action policy. The Supreme-Court Justice Luís Roberto Barroso understood that the law is motivated by a duty of historical reparation arising from slavery and structural racism in Brazilian society. [24]

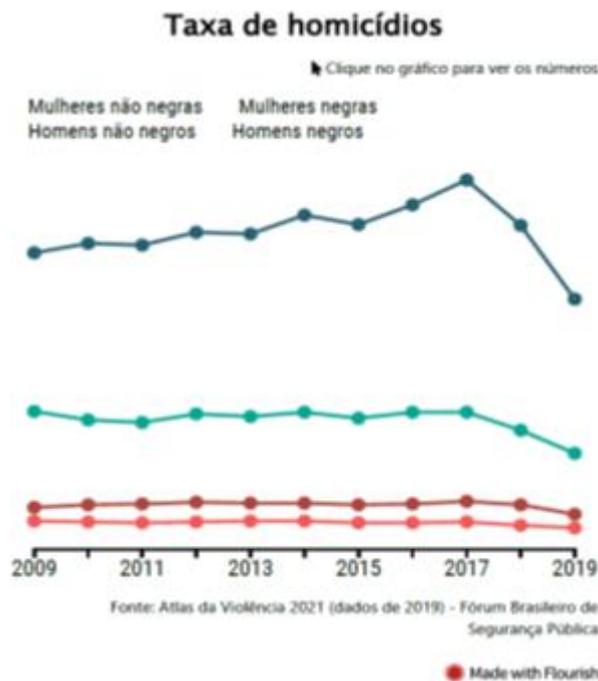
Regarding the effectiveness of the quota law, it "*changes lives, offers opportunities, strengthens hope and provides mobility, not only for young people who are attending university, but for a nation that cries out for rights*", as pointed out by Paim.

It is asserted that for there to be greater effectiveness of Law No. 12.711/2012, it is essential to mobilise civil society actors who fight for the end of racism, in favour of social control over decisions that guide affirmative policies, in addition to the engagement of universities and the student class in processes of feeding public and transparent databases (FREITAS et al, 2020), as well as normative improvements efficiently.

Regarding violence against black people, in relation to legislative initiatives, this practice against black people is continuous and draws attention by the alarming racist acts, which not rarely culminate in the loss of human lives.

While the general homicide rate in Brazil in 2019 was 21.7 victims for every 100,000 inhabitants (figures from the Atlas of Violence 2021), in the case of black men, this rate rises to 29.2 for every 100,000, almost triple the rate recorded for non-blacks (yellow, white and indigenous), which stands at 11.2 victims for every 100,000.

This means, according to the Brazilian Public Security Forum (FBSP) survey, that the chance of a black man being murdered is 2.6 times higher compared to a non-black man. For black women, this rate is 1.7. When comparing the period from 2009 to 2019, homicide rates had a reduction of 15.5% among black people and 30.5% among yellow, white and indigenous people. In other words, the percentage drop for non-blacks is 50% greater than that corresponding to the black population.



Therefore, it is essential to engage public and private security agents in the anti-racist struggle. There are thousands of cases of racism that happen routinely throughout Brazil.

This shows that it is possible to combat all forms of prejudice through education. Including these contents in training and further education processes has the potential to revolutionise the practices and routines of these agents, contributing to make them actors of transformation, and no longer of reproduction of the structural racism of Brazilian society. [25]

- Disaggregated data on victims, perpetrators, and incidence of hate speech, including online, hate crime and other violent activities based on racial superiority and hatred against persons or groups of persons belonging to national or ethnic, religious or linguistic minorities.

For specialists and scholars dedicated to investigating hate speech in Brazil, the lack of clear laws against abhorrent practices, such as apologia for Nazism and other intolerances, is the main obstacle for these crimes to stop happening in the country. Not only that, but cells of neo-Nazi groups have also increased and expanded to all 5 regions in Brazil in the last 3 years.

Anthropologist **Adriana Dias**, who has been researching neo-Nazism in Brazil since 2002, points out that **there are at least 530 extremist nuclei**, a universe that **could reach 10,000 people**. This represents a growth of 270.6% from January 2019 to May 2021. [26]

Adriana explains that they have similarities between them:

*"They always start with masculinism, meaning they have a **hatred of the feminine** and therefore a **toxic masculinity**. They have **antisemitism**, they have **black hatred**, they have **LGBTQIAP+ hatred**, **Northeasterners hatred**, **immigrants hatred**, **holocaust denial**."*

It highlights that **the lack of clear legislation against hate speech in Brazil is the main obstacle** for these crimes to be exemplary punished. Moreover, the murder of black people in the country reflects what she calls "*structural racism contradictorily entrenched in the roots of a deeply mixed country*", since Brazil was one of the last countries in the world to abolish slavery and still maintains today "*remnants of the slavery period*".

In this sense, we highlight the case of a black man who was killed by the aggressions suffered by security guards at the exit of a supermarket in Porto Alegre:



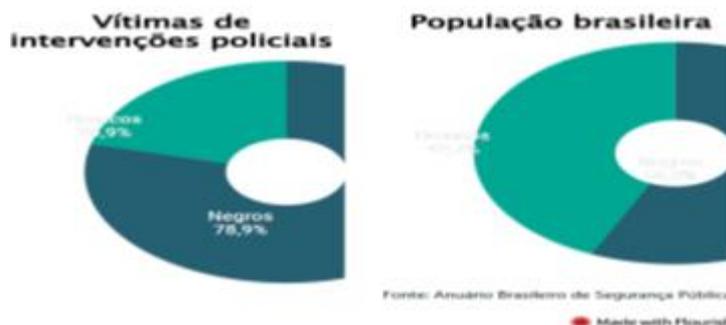
João Alberto foi morto em agressão de seguranças de um supermercado de Porto Alegre (fotos: Reprodução/Redes sociais)

Thus, the Brazilian Yearbook of Public Security points out that in 2020, 78.9% of the victims of police interventions resulting in death were black. Police lethality is still more racially selective than overall, according to the FBSP researcher.

Black people make up 56.3% of the total Brazilian population, but account for 73.6% of all intentional violent deaths, which include, in addition to those caused by police action, murders, armed robberies and bodily injuries followed by death.

Examining the picture from another angle, the police lethality rate among blacks is 4.2 victims per 100,000, while among whites it is 1.5 per 100,000, **which is equivalent to saying that the police lethality rate among blacks is 2.8 times higher than the rate among whites.**

Therefore, Brazilian society is characterized by structural racism, highly unequal. The fact that the policeman sees a young black man can no longer be confused with seeing an outlaw. The police cannot convict based on outdated methods, such as viewing photos, even faded ones, or performing personal recognition in a way that meets the requirements of Article 226 of the Code of Criminal Procedure.



Taxa de letalidade policial

(a cada 100 mil habitantes)



Fonte: Anuário Brasileiro de Segurança Pública

Made with Flourish

Racial discrimination affects even the police themselves, according to the records of intentional lethal violent crimes (CVLI):

"The data collected in 2020 indicate the maintenance of the prevalence of deaths of black people (62.7%). In 2019, they were 65.1 % of the victims, and it is pertinent again to highlight that the data available from SENASP's Public Security Professionals Profile Survey (2019) shows that the composition of Brazilian police forces is 56.8 % white people and 42 % black people. As in the general population, black police officers are more vulnerable to lethal violence."

Thus, intentional lethal violent crimes are intentional homicide, robbery, and bodily injury followed by death.

The case of Brazilian player Vinícius Júnior, a Real Madrid (Spain) and Brazilian national team athlete, stands out, since he was the victim of a racist attack in the capital of the European country hours before a match against Atletico Madrid, on January 26, 2023, as a doll wearing the shirt with the player's name and number was hung on a bridge, as if he had been hanged. [27]



Next to the doll was a banner with the colours of Atletico, with the phrase “[the city of] Madrid hates Real”, which led to infer that it was a “provocation” of supposed fans of the team to the Brazilian player who plays in the rival team.

This is not the first time that Vinícius has been the victim of attacks by Atlético fans. In September last year, during a match for the Spanish Championship, he heard a series of racist offences (such as "you are a monkey") and even death threats. This time the threats increased the level of offensiveness.

In addition, the case of Globo Journalist, Maju Coutinho, who received the following offences through the social media Facebook: “she only got a job at JN because of the quotas, black monkey”

and “I don't have colour TV to look at this black woman, no”, as well as suffered sexist attacks, in comments that questioned her appearance and called her a “slut”. [28]

In reaction to the Journalist's case, the judges of the 13th Chamber of Criminal Law of the Court of Appeals of São Paulo upheld the conviction of two men for racism and racial injury due to attacks and offences against the journalist, Maju Coutinho, hostess of the show Fantástico, of TV Globo. [29]

The judges followed the vote of the Judge-rapporteur, Augusto de Siqueira, who considered that the defendants' responsibility for the crimes was 'fully demonstrated'. Finally, he asserted that the offences reached “*an undetermined number of people*”, not just Maju, “*so that they constitute the crime of racism*”. It is undeniable that the defendants wished to practice and incite discrimination, through messages against a collective, based on race and skin colour.

In conclusion, this input highlights the Brazilian legal framework, which includes provisions from both the universal system of human rights protection and the Inter-American system. Although Brazil has signed and ratified most of the conventions, it is still necessary to review issues related to the subject-matter of this contribution, especially hate speech on social media and data records that provide information that make racism patterns visible for the design of suitable policies.

Concern is raised about the use of arguments linked to “freedom of expression” to shield hate speech. An appeal is made to the International Agencies to pronounce themselves on the matter. Finally, incitement to hatred is one of the roots of the violence suffered by certain already fragilized groups and should be condemned in the strongest terms, including by the United Nations Human Rights Council.

[1] Available at

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN

[2] Report of the Working Group on the Universal Periodic Review – Brazil (A/HRC/52/14)

[3] Scientific article: Uma sociedade desigual. LOURENÇO, CRISTIANE. FEB, 2023: reflexões a respeito de racismo e indicadores sociais no Brasil. Available at:

<https://www.scielo.br/j/ssoc/a/mqwfdScR8phfpRJ4tJW68Rz/?lang=pt>

[4] <https://portal.ufpa.br/index.php/ultimas-noticias2/13490-dia-internacional-para-eliminacao-da-discriminacao-racial-reforca-o-combate-ao-racismo-no-brasil-e-na-amazonia>. Accessed on 16.02.2023 at 10:20 a.m.

[5] Available at: <https://www.conjur.com.br/2023-jan-30/william-akerman-tipificacao-racismo-injuria-racial>. Accessed on 16.02.2023 at 11:14 a.m.

[6] Available at: https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm. Accessed on 16/02/2023 at 11:46 a.m.

[7] Available at: <https://www.conjur.com.br/2023-jan-11/lula-sanciona-lei-equipara-injuria-racial-crime-racismo>. Accessed on 16/02/2023 at 11:51 a.m.

[8] Available at: <https://mppr.mp.br/Noticia/Entenda-Direito-Injuria-racial-e-equiparada-ao-racismo>. Accessed on 16/02/2023 at 12:06 p.m.

[9] Available at: <https://www.conjur.com.br/2023-jan-30/william-akerman-tipificacao-racismo-injuria-racial>. Accessed on 16/02/2023 at 1:06 pm.

[10] *Idem*.

[11] “Aquilo considerado normal, que tem aceitação da maioria das pessoas” (MAINSTREAM, 2018).

[12] The aforementioned group of experts are organized according to the following topics: 1) Migration, Statelessness, and Refugee; 2) Ethno-Racial Policies; 3) Indigenous Populations; 4) Assistance and Protection of Human Trafficking Victims; 5) Assistance of Victims of Labour Analogous to Slavery; 6)

People Experiencing Homelessness; 7) Women; 8) Assistance to the Elderly and People with Disabilities; 9) Prison Population and Fight Against Torture; 10) Housing and Land Conflicts; 11) Ensuring Food and Nutritional Security; 12) Gender Identity and LGBTQI+ Civic Awareness; 13) Healthcare; 14) Recyclable Material Collectors; 15) Traditional Communities.

[13] Available at https://www.planalto.gov.br/ccivil_03/leis/l7716.htm

[14] Available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basic_documents.asp

[15] Available at https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Lei/L14532.htm#art1

[16] KLEIN, Adam G. Como o ódio online se infiltra nas redes sociais e na política. 2017. Available at: Accessed on 23/02 /2023.

[17] Agência Senado. Publicadas duas leis para combate à violência contra a mulher. 2018. Available at: Accessed on 23/02 /2023.

[18] Available at: https://bvsms.saude.gov.br/bvs/publicacoes/pnpm_compacta.pdf. Accessed on 23/02

[19] Available at: <https://www2.mppa.mp.br/noticias/caodh-esclarece-recente-alteracao-legislativa-sobre-injuria-racial.htm>. Accessed on 24/02/2023

[20] Available at: <https://www.direitopenalbrasileiro.com.br/urgente-stf-entende-que-nao-e-possivel-anpp-em-crimes-de-racismo-e-injuria-racial/>. Accessed on 23/02/2023

[21] Available at: <https://www.direitopenalbrasileiro.com.br/urgente-stf-entende-que-nao-e-possivel-anpp-em-crimes-de-racismo-e-injuria-racial/>. Accessed on 23/02/2023

[22] Available at: <https://www.camara.leg.br/noticias/860574-debatedores-reforcam-importancia-de-combate-a-discursos-nazistas-e-de-odio/>. Accessed on 23/02/2023

[23] Available at: https://www.dpu.def.br/images/2022/Pesquisa_GTPE_sobre_Cotas_Instituicoes_Nacional.pdf. Accessed on 06/03/2023

[24] STF confirma validade de sistema de cotas em universidade pública. Published on: 09/05/2012. Available at: <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=207003>

[25] Available at: <https://www12.senado.leg.br/noticias/infomaterias/2022/04/projetos-elegem-educacao-como-arma-contr-o-racismo>. Accessed on 23/02/2023

[26] Available at: <https://g1.globo.com/fantastico/noticia/2022/01/16/grupos-neonazistas-crescem-270percent-no-brasil-em-3-anos-estudiosos-temem-que-presenca-online-transborde-para-ataques-violentos.ghtml>. Accessed on 23/02/2023

[27] Available at: <https://www.brasildefato.com.br/2023/01/26/vinicius-jr-e-alvo-de-ataque-racista-na-espanha-boneco-com-nome-do-jogador-e-enforcado>. Accessed on 23/02/2023

[28] Available at: <https://www.gazetadopovo.com.br/viver-bem/comportamento/jornalista-da-globo-sofre-ataques-racistas-no-facebook/>. Accessed on 23/02/2023

[29] Available at: <https://www.correiobraziliense.com.br/diversao-e-arte/2022/01/4978747-justica-mantem-condenacao-de-dois-homens-por-racismo-e-injuria-contr-maju-coutinho.html>. Accessed on 23/02/2023

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