**QUESTIONNAIRE**

**“Violence and its impact on the right to health”**

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolution 42/16.

I would like to invite you to respond to the questionnaire below. Submissions received will inform my next thematic report on “Violence and its impact on the right to health”, which will be presented to the Human Rights Council in June 2022.

The questionnaire on the report is available at OHCHR website in English (original language) as well as in French, and Spanish: (<https://www.ohchr.org/EN/Issues/health/pages/srrighthealthindex.aspx>).

All submissions received will be published in the aforementioned website, unless it is indicated that the submission should be kept confidential.

There is a word limit of 750 words per question. Please submit the completed questionnaire to ohchr-[srhealth@un.org](mailto:srhealth@un.org). The deadline for submissions is: **18 January 2022.**

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

**Contact Details.**

[smdhvida1979@gmail.com](mailto:smdhvida1979@gmail.com)

[apaulagomes.76@gmail.com](mailto:apaulagomes.76@gmail.com)

[ulissestertonetoadv@gmail.com](mailto:ulissestertonetoadv@gmail.com)

[s.wills@ulster.ac.uk](mailto:s.wills@ulster.ac.uk)

Please provide your contact details in case we need to contact you in connection with this survey. Note that this is optional.

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| --- | --- |
| Type of Stakeholder (please select one) | Member State  Observer State  x Other (please specify):  Two Brazilian NGOs (one with ECOSOC status and the other representing mothers whose children have been killed by police) and  Two Professors of Human Rights Law (a Brazilian Human Rights Defender; and a Member of the ILA Committee on Global Health) |
| Name of State  Name of Survey Respondent | Brazil  Sociedade Maranhense de Direitos Humanos  Mães de Manguinhos  Professor Ulisses Terto Neto, Goiás State and Ulster Universities  Professor Siobhán Wills, Director of the Transitional Justice Institute, Ulster University, and Member of the ILA Committee on Global Health. |

# Background

Within the framework of Human Rights Council resolution 42/16, the Special Rapporteur on the highest attainable standard of physical and mental health has identified sexuality, gender based violence and femicide as one of her priorities during her tenure (See [A/HRC/47/28](https://undocs.org/A/HRC/47/28) paras 50-64). In compliance with her mandate and in line with this priority she has decided to devote her next thematic report to the 50th session of the Human Rights Council in June 2022 to the theme of “Violence and its impact on the right to health.”

# Objectives of the report

The Special Rapporteur intends to shed light on who is seen as victims of violence, and who is affected by what type of violence, with emphasis on the violence experienced by women, children, LGBTI persons and conflict related gender based violence. She will also explore the role of men as perpetrators and their experience as victims of violence. Her analysis will look into the responses that survivors of violence receive with a focus on good practices, as well as the obligations, responsibilities, and protections that arise under the right to health framework and other relevant human rights in this connection. She will also report on emerging trends related to the impact of COVID-19 on all forms of violence and related responses.

In her report, the Special Rapporteur will address, inter alia, issues related to gender based violence, (including inter-personal and intimate violence), as well as structural violence. She will also assess the impact of the criminalization of sex work, same sex relations, transgender persons, abortion, drug use etc. on the enjoyment of the right to health. The Special Rapporteur would like to identify good practices and examples of comprehensive health responses to survivors of violence, and to identify lessons learned at the community, national, regional and international levels.

# Key questions

*You can choose to answer all or some of the questions below. (750 words limit per question).*

When responding to the questions below, please use the glossary with definitions at the end of the questionnaire, and refer to all or some of the forms of violence in focus for this study as applicable in your country, countries or region in focus:

1. Please describe, share data and information on the characteristics, number of cases, and the profile of victims and perpetrators in your country/ies or region(s) regarding:
   1. gender based violence against women
   2. gender based violence and other forms of violence against children:
   3. gender based violence against LGBTI or other persons based on real or imputed sexual orientation, sex characteristics, and gender identity:
   4. violence against persons with disabilities, including GBV.
   5. gender based violence against men
   6. conflict gender based violence, including sexual violence
   7. Please share analysis and available evidence on the impact of COVID on the above
2. Please describe whether the legal framework prohibits and sanctions these forms of violence and the definitions and forms of violence included in the legal system. Please explain redress options for survivors of violence, (the pathway they go through if they decide to file a complaint), levels of impunity and if access to comprehensive physical and mental care for GBV-survivors is recognized as a form of reparation.

In addition to the text of the Universal Declaration of Human Rights, it is possible to find a set of Brazilian laws dealing with anti-discrimination policy, civil documentation, crimes of torture and the national human rights program: Civil Documentation. Anti-Discrimination Policy. Torture Crimes. Universal Declaration of Human Rights. National Human Rights Program. Brasília: Ministry of Justice, National Secretariat for Human Rights, 1998. Content: Law No. 9.454, of 7 April 1997; Law No. 9.465, of 7 July 1997; Law No. 9.534, of 10 December 1997; Law No. 7.716, of 5 January 1989; Law No. 7.853, of 24 October 1989; Law No. 9.029, of 13 April 1995; Decree No. 914, of 6 September 1993; Law No. 9.455, of 7 April 1997.

In Brazil, among the various Brazilian Constitutions, from the Constitution of 1824 to the updated Constitution of 1988, one can see the presence of provisions that express and declare the guarantee of fundamental rights, enshrined internally by the aforementioned constitutions, as well as observance of the human rights, extracted from positive values ​​at the international level. One can observe the text provided for in article 4, item II, of the 1988 Constitution, which stipulates that the Federative Republic of Brazil shall govern its international relations through the prevalence of Human Rights. In view of this regulation, it is observed that Brazil adopts the individual rights and guarantees provided for in the international documents to which it is a signatory, as portrayed in article 1, item III.

The 1988 Constitution also provides in its article 37, § 6o, that the State is responsible for the damages that its agents, in this capacity, cause to third parties. In other words, we adopt the theory of administrative risk, as long as the elements of damage, conduct and the causal nexus between both are demonstrated. There is no question of whether the agent is at fault. In this way, the Brazilian legal system is primarily guided by human dignity, a synthesis principle of a series of existential values, which the State is based on in order to establish a free and fair society, in which nefarious acts such as torture are repudiated, especially in view of the degrading situation that subjugate human beings.

On the other hand, Brazilian security forces are repeatedly accused of systematically violating people's rights and that there is a system that ensures impunity for these violations. An argument commonly used by the "military" police about the accusations made against them about the multiple deaths they cause is that they are carried out in self-defense or in the strict performance of duty. While it is true that in many states there is a situation of delinquent violence, there is evidence that the police reaction not only exceeds the legal and regulatory limits, but in many cases police officers use their power, organization and weapons to illegal activities. When the authorities decide to investigate cases of police violence, they encounter enormous difficulties in gathering evidence that identifies those responsible for human rights violations. One of these causes is the misconception of police corporatism that covers up the violence practiced by its members through the obstruction of justice.

Internal control of state police action is carried out by the Internal Affairs Departments of each State, which are basically responsible for monitoring and inspecting the regularity of the services provided by the civil and "military" police in each State and for verifying, by means of an inquiry determined by the Secretary of Security, the irregularities in which civil and "military" police officers have been involved, indicating the penalties that fit them and instituting the due administrative processes.

External control of police action, both civil and military, must be exercised by the Prosecution Office (Article 129, VII, CF) and by the Judiciary. As a residue of its creation under the military regime, it is up to the State Military Prosecution Office, the competence to promote public criminal action before the Military Justice, being also responsible, among other attributions, to initiate the military police investigation and exercise the external control of military police activity. This means, in the opinion of the Commission, a critical failure of the system of guarantees for police action, since the civil Prosecution Office is deprived of control of the common police action (in charge of the "military" police), which are precisely those to which the greater number of human rights violations are attributed.

1. Please share examples of the types of structural and institutional violence with origins within the State, (perpetrated or condoned by the State) or perpetrated by those not representing or affiliated to the state in your country/ies of region, and who is affected. In particular, describe structural/institutional violence in medical settings against women and girls, LGBTI persons and persons with disabilities or any other individuals or groups relevant in your country/ies or regions.

This contribution addresses the impact of structural violence, in particular police violence, on the mental health of residents of Brazil’s favelas, especially women and children. Carlos da Souza, Vice-President of Brazil’s *Rede Nacional de Operadores de Segurança Pública LGBTQI -* formed to ‘guarantee the right to freedom of sexual orientation and gender identity of police officers who face institutional LGBTI phobia’ - has stated that:

public security in our country is exercised from the exacerbation of characteristics considered to be masculine: bellicosity, bravery, virility, pushing back the possibilities of their effectiveness in the territory of care and protection for third parties. This uniqueness can be seen in the performance of police agencies in hills and favelas, by spectacularizing the use of powerful weapons and violating the rights of vulnerable groups, especially women, LGBTQI + and children. (*letter available on request*)

Christen Smith writes ‘we do not have a full understanding of the extent of how the trauma of police violence kills over time. Black women are dying slowly from police violence, particularly after losing a child or parent in a police killing.’ (C. Smith, ‘Lingering Trauma in Brazil: Police Violence Against Black Women’ (2018) 50 *NACLA Report on the Americas* 369)

In 2019 we filmed interviews with victims and experts. We ask that you view these clips:

1. A one-minute clip of an interview with General Heleno, Minister for Institutional Security in Brazil in which he advocates a shoot to kill policy of any armed person committing or about to commit a crime, including stealing goods: <https://vimeo.com/manage/videos/597057095> (password Juliana)
2. A 2.30-minute clip of an interview with police officer Janiana Matos, describing human rights violations routinely committed by police officers <https://vimeo.com/manage/videos/597055047>
3. A two-minute clip of an interview with community activist Cris dos Pazeres describing the impact of police violence on children in school. She describes how, ‘when there is an operation, we throw everyone on the floor and wait for it to pass...These children will live for days in trauma, with sleep disturbance, hearing shots that are not there.’ <https://vimeo.com/579075590/8e353cbccc>

This is a child’s drawing of her house in Rio’s Maré favela. She says ‘I don’t like the helicopter because it shoots down, and people die. This is wrong.’

Diagram

Description automatically generated

Interviewed in 2019, Valcler Rangel, chief of staff at the Oswaldo Cruz Foundation, said that because of the frequency and scale of policing operations in Rio’s favelas ‘children who go to school, people who go to medical care, people who leave for work, people who go out for fun, stop doing this type of activity and that has a consequence for the whole of life, and for mental health.’ Fiocruz researchers report that Rio’s violent policing policy is a significant causal factor in the high levels of depression, anxiety, nervousness, and other effects such as nightmares, hypervigilance, flashback, emotional anaesthesia, and withdrawal from social life seen amongst Rio’s favela residents. They report traumatic effects of police operations on some of the children living in the favelas. After one eight-year-old girl who witnessed police violence against her father, ‘She couldn't see a strange car entering the street, because she was terrified, she started to close the door, to close the window, and she started crying all the time, wanting her father, because she already thought that everything would happen again, everything again.’ The mother of a nine-year old girl, who witnessed a police shoot-out, said, ‘she lost interest in activities she liked before the incident, such as playing with dolls and watching television.’ (Ribeiro, Silva, Serpeloni (2020) *Notes on Armed Violence and Mental Health in Rio de Janeiro,* Fiocruz).

Tania Koller, a psychoanalyst at Brazil’s National Observatory on Mental Health, Justice and Human Rights, reports that in Rio’s favelas in recent years there has been a marked ‘increase in cases of deaths from suicide, excessive consumption of alcohol or drugs, cancer, or even from perfectly treatable diseases, denoting levels of psychological distress with almost epidemic characteristics.’ Moreover:

The same police operations that affect favela residents also impact on health and social assistance professionals who work there…They are also affected directly or indirectly by the murder of their family members/neighbors/friends, or even by the pain and impotence to deal daily with the victims of such atrocious crimes.

(Koller, in O.M. Françozo, *Clínica Política: a experiência do Centro de Estudos em Reparação Psíquica “lá em Acari”* 2018, 161-163.)

1. Please also share information on the impact of criminalization of sex work, same sex relations, transgender persons, abortion, drug abuse, harmful practices in obstetric care, female genital mutilation on the violence experienced by the affected individuals and their enjoyment of the right to health.

1. Please share information on the health and other type of responses provided by the State and/or other actors in your country/ies or regions in focus to survivors of each/some of the aforementioned forms of violence. Please assess what works well and not so well, and whether COVID-19 impacted the response and how.

There are a number of public health providers, such as the CAPs clinics in Rio de Janeiro, that offer counselling and psycho-social support to those suffering from mental trauma and other psychological disorders. The availability of high-quality mental health care and treatment is improving. However, there is virtually no work being done at state level to address the causes of state violence-related trauma.

Violence by Rio’s armed gangs also causes trauma but armed violence by the police constitutes a unique category, due in part to the fact that armed police have a state sanctioned authority to use violent means to control peoples’ behaviour. Since the police are part of the state system that should protect them, violence by the police undermines peoples’ sense of security and trust. Cases of police violence are difficult to prosecute and frequently take a very long time. Recommendations handed down by the Inter-American Court of Human Rights in *Favela Nova Brasilia v. Brazil* (2017) to reduce police violence have had little impact.

The effect of militarised policing on the mental health of favela residents and police officers is never taken into account when planning operations. Interviewed in 2019 officer Janiana Matos said that she believes that policing should not be militarised because:

you cannot have a police force that thinks it is normal to enter and treat the population itself as if it were a war enemy …What happens when a police officer joins the corporation willing to do a citizenship work, a human rights work, an intelligence work, is that they are bombarded, contaminated with oppressive ideas that they have to oppress, they have to hit, they have to shoot, because otherwise they are not a proper police officer. And then, in a short time, you have a person who no longer believes in human rights, who no longer believes in people's citizenship, who does not believe even that some people are human, that who they call a goose, a thug, can be killed, is not human.

Brazil’s Constitution recognizes that ‘Health is a right of all and a duty of the State and shall be guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at the universal and equal access to actions and services for its promotion, protection and recovery.’ Brazil is also party to both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and to the Protocol of San Salvador which recognise the right of every person to mental health. Human rights experts, including Special Rapporteurs Hunt, Puras, and Mofokeng, and the ICESCR committee, are clear that this includes a right to the social determinants of health. However, human rights cases and reports on police violence rarely emphasise mental health issues as priority concerns, and those that do address mental health tend to treat violations of the right to mental health as secondary consequences of other human rights violations, rather than as violations of an independent right.

Mental trauma is sometimes cited as a subsidiary consequence of the killing or assault of a loved one but without referencing the right to mental health (*Favela Nova Brasilia v. Brazil*, Inter-Am. Ct. H.R. (Series C) No. 333, 2 (Feb. 16, 2017), paragraphs 269-272). We have not found any cases or reports that address potential violations of the right to mental health of people who were not in a direct relationship with someone who was killed or assaulted (e.g., as a relative or witness), but who suffered trauma as a result of the proximity, scale, or frequency of operations in which people are killed or injured. Nor have we found any cases that address potential violations of the right to mental health following a police operation in which no one was killed but that have caused or exacerbated psychological stress because they are part of a pattern of violence – e.g., trauma as a result of frequently hearing shots; of schools being closed and children having to stay home alone because of operations; of mothers at work unable to get home and worried about their children when they learn that an operation is taking place; of stress to teachers who are responsible for protecting frightened children and who try to teach them not to run because running is likely to get them shot.

1. Please specify the budget allocated in your country/ies in focus, to health related response to survivors of all/some forms of violence mentioned above. Please indicate the percentage of the national budget devoted to this; the percentage of the international aid provided or received for this. Please explain the impact of Covid 19 to the funding of responses to all/some forms of violence in your State/institution.
2. Please describe the needs of survivors of the abovementioned forms of violence as identified by your State/institution. Please share survivor-self identified needs and those of their families, with a focus on health emergency and long-term needs.
3. Please share examples of good practices and examples of comprehensive health responses to survivors of violence and indicate efficient multi-sectorial efforts at the community, national, regional and international levels by State or non-State actors.
4. Please describe State and other actors initiatives and measures to prevent these forms of violence, specific budget allocated to prevention, and good practices in this regard.

**Glossary of definitions for the purpose of this questionnaire**

* Gender based-violence, is violence directed toward, or disproportionately affecting someone because of their gender or sex. Such violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. Examples include, sexual violence, trafficking, domestic violence, battery, dowry related violence, coerced or forced use of contraceptives, violence against LGBTI people, femicide, female infanticide, harmful practices and certain forms of slavery and servitude. Gender-based violence may be perpetrated against women, girls, men, boys, and non-binary persons. Gender-based violence, including sexual violence, may linked to a conflict.
* Gender based violence against women (including girls) refers to violence that is directed against a woman because she is a woman or that affects women disproportionately. (CEDAW, [General recommendation 19](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/3731&Lang=en), 1992). It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence affect women to different degrees depending on their experience of varying or intersecting forms of discrimination including on the basis of ethnicity/race, socioeconomic status, age, disability, being lesbian, bisexual, transgender or intersex, etc. [(CEDAW, General recommendation 35, 2017).](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=enhttps://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en)
* Violence against children refers to all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse against children. (CRC, [General Comment No. 13](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en), 2011). Violence experienced by boys and girls may also be a form of gender-based violence.
* Gender based violence perpetrated against LGBTI or other persons based on real or imputed sexual orientation, gender identity, and /or sex characteristics includes killings, imposition of death penalty for homosexuality, death threats, beatings, corporal punishment imposed as a penalty for same-sex conduct, and/or transgender persons, arbitrary arrest and detention, abduction, incommunicado detention, rape and sexual assault, humiliation, verbal abuse, harassment, bullying, hate speech and forced medical examinations, including anal examinations, and instances of so-called “conversion therapy” and forced/coerced medically unecessary procedures on intersex children and adults. (Report of the Independent Expert on protection against sexual orientation and gender identitiy, ([A/HRC/38/43](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/43), 2018, [OHCHR, Born Free and equal](https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf), OHCHR, [Background note on human rights violations against intersex perople).](https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf)
* Conflict related gender-based violence: Conflict can result in higher levels of gender-based violence against **women and girls**, including arbitrary killings, torture, **sexual violence** and forced marriage. Women and girls are primarily and increasingly targeted by the use of sexual violence, including as a tactic of war. M**en and boys** have also been victims of sexual violence, especially in contexts of detention. *Conflict related sexual violence* refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. That link may be evident in the profile of the perpetrator, (often affiliated with a State or non-State armed group, which includes terrorist entities); the profile of the victim, ( frequently an actual or perceived member of a political, ethnic or religious minority group or targeted on the basis of actual or perceived sexual orientation or gender identity); the climate of impunity, (generally associated with State collapse, cross-border consequences such as displacement or trafficking, and/or violations of a ceasefire agreement). The term also encompasses trafficking in persons for the purpose of sexual violence or exploitation, when committed in situations of conflict”. (Report of the Secretary General [S/2019/280](https://undocs.org/en/S/2019/280), 2019.)
* Systemic or institutional violence refers to institutional practices, laws or procedures that adversely affect groups or individuals psychologically, mentally, culturally, economically, spiritually, or physically. This violence has its origins within or outside the state, and is a major obstacle for the realization of the right to health, a right which is interconnected with rights to the underlying determinants of health.