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Monitor of Use of Lethal Force in Latin America and the Caribbean

Brazil | 2022

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Servicio Social Pasionista



FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA



Brazil

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1. Context.

1.1. Regulations.

At the national, i.e., federal, level, the first regulation specifically on the use of force by law enforcement agents was published in 2010: the Interministerial Decree 4226, which lays out guidelines for the use of force by public security agents and is inspired by international regulations. However, it is a legal reference only for federal police forces: the Federal Police, the Federal Highway Police, the Federal Railway Police and the National Force. For state and municipal police forces which are by far the most numerous police organizations in the country, it does not represent a legal obligation, only a recommendation. Although the federal government can condition the transfer of resources to states and municipalities on the observance of such federal guidelines (Bueno, 2014), in practice this has had a limited effect.



Decree 4226 establishes that use of force by public security agents must comply with the principles of legality, necessity, proportionality, moderation and convenience. Public security

agents must not fire firearms except in cases where they themselves or a third party face an imminent danger of death or serious injury, which represents the translation of principle 9 of the United Nations' Basic Principles on the Use of Force and Firearms by Law Enforcement Officials into domestic regulations.

Furthermore, the decree forbids the use of firearms against a fleeing person who is unarmed or who, despite being armed, does not represent an immediate risk of death or serious injury to anybody else. It is also rules out the use of firearms against a vehicle that trespasses a police block, unless, again, there is an immediate risk of death or serious injury.

More recently, Law 13,060, approved on December 22nd, 2014, regulates the use of less-lethal weapons by public security agents and determines that training courses for law enforcement personnel must include the use of such weapons.

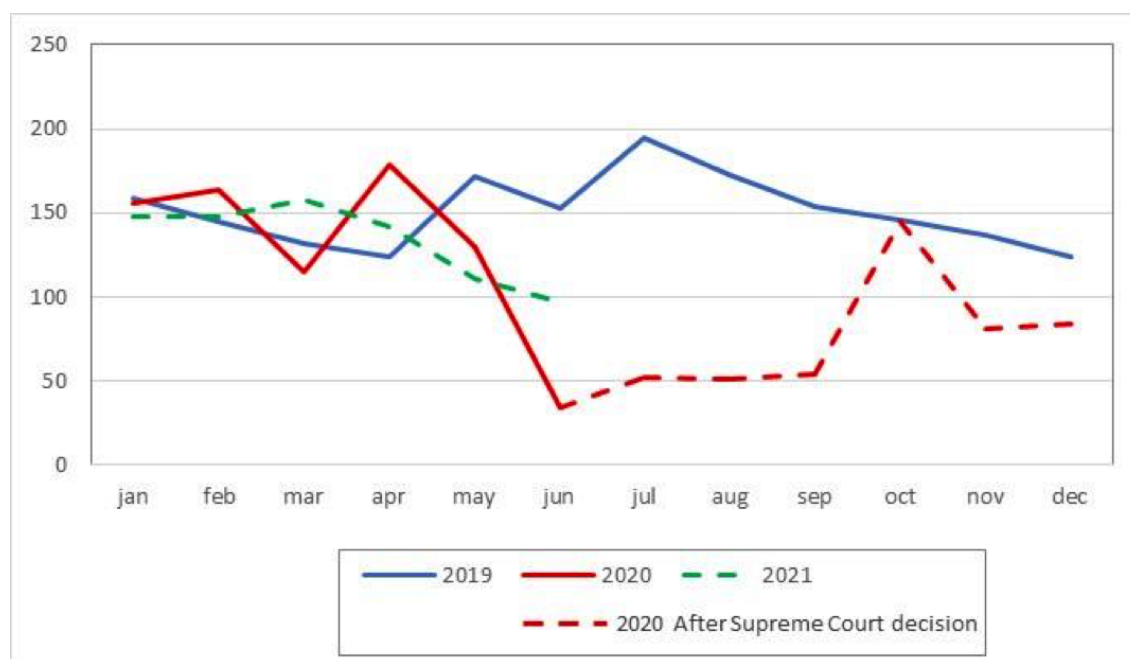
On February 16th, 2017, Brazil was sentenced by the Interamerican Human Rights Court in the case of Nova Brasilia, referring to the alleged summary execution of a total of 26 people in two police operations in the Nova Brasilia slum, in Rio de Janeiro, carried out in 1994 and 1995. Within the dispositions of the Court in this sentence, Brazil is obliged to publish a yearly report on the use of lethal force by police and the state of Rio de Janeiro must devise a programme with targets to reduce lethal force. Neither provision has yet been implemented.

In June 2020, the Supreme Court restricted police operations in Rio de Janeiro's slums, allowing them only in "absolutely exceptional" cases. The Supreme Court based their decision on the coronavirus pandemic and also referred to the Nova Brasilia sentence. The injunction caused the number of police operations to decrease. According to Hirata, Grilo and Dirk (2020)²¹, in the first four months of the injunction, an average of 18.5 police operations were carried out in the Metropolitan Region of Rio de Janeiro. This average was below the average for 2020 (26.7) and for the period from 2007 to 2019 (70.5). As a result, there was a reduction in the number of deaths by the police in the same period, as shown in Graph 1. Indeed, the number of people killed by police in the state of Rio de Janeiro in 2020 fell 31% compared to the previous year.

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²¹ HIRATA, Daniel; GRILLO, Carolina; DIRK, Renato. Operações policiais e ocorrências criminais: por um debate público qualificado. Dilemas: Revista de Estudos de Conflito e Controle Social, Rio de Janeiro, p. 1-19, 2020.

Parallel to this reduction, there was no increase in crime rates, which undermined the traditional argument that such high levels of police use of lethal force were needed in order to keep crime under control.

Graph 1. Monthly Number of Civilians Killed by Police in the State of Rio de Janeiro: January 2019 to June 2021



Source: Public Security Institute. State of Rio de Janeiro.

However, as of October 2020 numbers rose again as a result of the decision of the Supreme Court being disrespected by the police organizations.

As for the wider legal framework on the use of force by state agents, there was a recent alteration through Law n°. 13,964 of 2019, famously known as the “Anti-Crime Package”. This new piece of legislation amended article 25 of the Penal Code and inserted a new paragraph indicating that self-defence includes actions of a public security agent who confronts an aggression or the risk of aggression against a victim that is held hostage during the commission of a crime. However, this situation was already contemplated by the Brazilian legislation through other articles, so it does not alter in practice the legal basis for actions against those who hold hostages.

2. Methodology.

This study was conducted according to the general methodology agreed for all countries. However, a few specificities occurred for the case of Brazil that are detailed in this chapter.

2.1. Official Data.

Data on number of fatal victims, both civilians and state agents, plus some of the weighting variables for the indexes (police size, firearms seized), were obtained from state Secretaries of Public Security (or their equivalent) in each of the 27 Brazilian states through Freedom of Information Acts formal requests. It was necessary to follow up on these requests, since several of them exceeded the legal timeline. Eventually, all 27 States answered although not always with full information. In many cases, states not only provided official figures but also made their microdata bases available to the study team. We could then obtain figures directly from these databases, which often yielded small differences with respect from official figures. Indeed, the databases are dynamic, in the sense that changes in the investigation of incidents can result in changes of the penal types being prosecuted and hence in the totals per crime or incident. We preferred to respect the official figures that were provided by state authorities rather than calculate them from the databases in the cases we had access to them.

Only some states did provide information on wounded victims, both civilians and public security agents, so it was not possible to obtain national totals for non-lethal victims.

As for lethal victims, they were provided by all states. However, not all states differentiated between fatal victims occurred where police were on and off-duty. Likewise, not all states separated the fatal victims due to firearms, which are the vast majority of cases, from other means that caused death. Hence, few states offered the precise figure we were looking for: fatal victims of firearm in events where public security agents were on-duty. Thus, this figure had to be estimated for several states, starting from the figures that were available. The estimation proceeded as follows:

- a. calculate the proportion of fatal victims that correspond to police officers on duty over the total number of fatal victims. The respective figures

(on-duty cases and total cases²²), obtained from all states which provide both, will be added in order to compute national totals. The national total of fatal victims in cases where police officers were on duty will be divided by the national total of fatal victims, obtained from the same states. This proportion, which has to be equal to or smaller than 1, will be named the “on-duty” reduction coefficient.

- b. calculate the proportion of fatal victims that were killed by firearms over the total number of fatal victims. The respective figures (firearm cases and total cases²³), obtained from all states which provide both, will be added in order to compute national totals. The national total of firearm fatal victims will be divided by the national total of fatal victims, obtained from the same states. This proportion, which has to be equal to or smaller than 1, will be named the “firearm” reduction coefficient.
- c. The estimate of cases per firearm on duty, for each state, will be obtained through the product of the total number of fatal victims by the two mentioned coefficients: the on-duty reduction coefficient and the firearm reduction one.

For civilian fatal victims, the respective coefficients were as follows:

Table 1. Estimation coefficients for civilians killed by public security agents

	2018	2019	2020
On duty reduction coefficient	0,91	0,93	0,95
Firearm reduction coefficient	0,93	0,90	0,98

In other words, the vast majority of cases happened when public security agents were on-duty and they were provoked by firearms.

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²² If a state provided by mistake a higher figure for the on-duty cases which was higher than the total number of cases, then the former was made equal to the latter, so the ration between both would be 1.

²³ If a state provided by mistake a higher figure for firearm cases which was higher than the total number of cases, then the former was made equal to the latter, so the ration between both would be 1.

As for law enforcement agents who were fatally victimised, they were also killed mostly by firearms, but most of the incidents happened while they were off duty, as can be seen by the respective coefficients.

Table 2. Estimation coefficients for public security agents killed

	2018	2019	2020
On duty reduction coefficient	0,26	0,30	0,28
Firearm reduction coefficient	0,93	0,90	0,95

2.2. Press Data.

Press data search was carried out by a company specialized in press clippings. They used the keywords provided for the search, according to the methodology agreed for this project. The company already had a wide database of press organizations in the country, which had to be expanded to include at least two media sources for every one of the 27 Brazilian states. The search was carried out online. The company provided the research team with the links to the articles which fulfilled the search conditions and then they had to be read by the research team in order to confirm whether they indeed fulfilled the required criteria. After this, selected cases were coded and entered into a database which incorporates the main bits of information (variable). Whenever we came across cases in which the story related that there were people dressed as police officers, we considered them as such even when there was no confirmation that they were indeed police officers. We marked these cases, though, in order to consider them separately if needed. New variables were also added such as whether there was any evidence of femicide in the case.

The challenge in Brazil, a country with thousands of people who are killed by police every year, is that this is a common occurrence which, as a result, only hit the news when there are special or extraordinary circumstances. Particularly, in the main national or regional newspapers, a case of lethal force is seldom noteworthy. Hence, we tried to obtain local newspapers in order to fill the gap.

The company carried out a first test for a duration of January in 2018, and we then compared these results with official data. For a total of 14 states, we had microdata that allowed us to know the month of the death. In these 14 states, for

the month of January only 13% of cases of civilians that had been killed by police according to official sources were found in the media search. In three states, the press search was unable to uncover any single case. As a result, we decided to probe to see if we could find other media organizations in states where the press results had been underwhelming. We used the same keywords employed in the company's search in a regular Google search, adding the name of the state, in order to find other possible local news outlets that might carry such stories. After this, we asked the company to repeat the general search incorporating these possible new outlets.

However, the results were fully disappointing. For the whole year of 2018, the company's search in the press found only 183 civilians killed by firearm by public security officers while on duty. This represents only 3% of cases reported by official sources, which is a significantly lower percentage than the test that had been carried out for January. The search also found 35 civilians wounded. As expected, the number of non-fatal victims is low considering the low probability of an episode without deaths getting into the news.

The press search revealed 29 law enforcement officers killed by firearm while on duty and 26 wounded in similar circumstances. The 29 officers killed represent 38% of cases reported by official sources. Hence, this seems to confirm that there is a higher likelihood of the press reporting a public security officer killed compared with a civilian. Also, the fact that the number of law enforcement officers wounded in the press is similar to the number of them killed underlines that attacks against police are more newsworthy than attacks by police.

The number of civilians killed obtained through the press search is not only very low, compared to official statistics, but also very different from state to state, as can be seen in Table 3. In four states, not a single case of a civilian killed by police was detected through the press search. But even in the best case, which is the state of Maranhão, no more than 14% of civilians killed and officially recorded were found in the press.

Table 3. Victims obtained through the Press Search by State: Brazil, 2018

State	Region	PRESS SOURCE				% of civilians killed through the press over official number
		Civilians killed by public security agents	Civilians wounded by public security agents	Public security agents killed	Public security agents wounded	
AC	Norte	0	0	0	0	0%
AL	Nordeste	12	0	0	0	10%
AM	Norte	2	1	1	0	5%
AP	Norte	1	0	0	0	3%
BA	Nordeste	27	1	2	0	4%
CE	Nordeste	7	0	2	0	4%
DF	Centro-oeste	0	1	1	0	0%
ES	Sudeste	2	0	0	0	8%
GO	Centro-oeste	12	0	0	3	3%
MA	Nordeste	9	0	1	0	14%
MG	Sudeste	13	6	1	0	11%
MS	Centro-oeste	2	0	0	0	4%
MT	Centro-oeste	5	2	1	0	9%
PA	Norte	4	1	1	0	1%
PB	Nordeste	3	0	0	1	12%
PE	Nordeste	1	0	5	1	1%
PI	Nordeste	0	0	0	0	0%
PR	Sul	9	0	0	1	3%
RJ	Sudeste	30	10	8	14	2%
RN	Nordeste	10	7	2	2	9%
RO	Norte	0	1	0	0	0%
RR	Norte	1	0	0	0	5%
RS	Sul	3	1	2	1	3%
SC	Sul	8	0	0	0	10%
SE	Nordeste	2	0	0	0	2%
SP	Sudeste	19	4	1	3	3%
TO	Norte	1	0	1	0	9%
	BRAZIL	183	35	29	26	3%

As a result of the high unreliability of press cases, at least according to our search, results will be reported in the next section only according to official sources.

3. Results.

3.1 National Results

Due to the severe limitations of press data related above, results will only be presented for official sources.

Table 4 presents a summary of all use and abuse indicators calculated for the country in 2018, 2019 and 2020 based on official data. Data for 2017 are also shown for purposes of comparison.

**Table 4. Use and Abuse of Lethal Force Indicators by Year.
Official Sources. Brazil**

	2017	2018	2019	2020
I-1. Civilians killed (CK)	4,670	5,251	5,350	5,958
I-2. CK per 100,000 inhab.	2.3	2.5	2.6	2.8
I-3. CK per 1000 agents	7.8	9.9	10.2	11.4
I-4 CK per 1000 arrests				
I-5 CK per 1000 weapons seized	39.3	48.2	47.9	54.6
I-6. Agents killed (AK)	81	76	47	52
I-7. AK per 1000 agents	0.1	0.14	0.09	0.10
A-1. % homicides due to state intervention	7.3	9.1	11.2	12.0
A-2. Ratio between CK and AK	57.7	69.4	114.1	114.7
A-3. Civilian lethality index	-			
A-4. Lethality ratio	-			
A-5. Average of civilians killed per incident	-			

The number of civilians killed by gunshot by public security agents on duty increased over 10% in 2018 with respect to 2017 and it overcame 5 thousand victims. The figure stayed at the same level in 2019, but grew considerably again in 2020, almost reaching the threshold of 6 thousand victims.

As a result, the indexes of civilians killed by population and by the size of the police force have also increased over time accordingly. As for the index of civilians killed by weapons seized, it jumped significantly in 2018 and then declined slightly in 2019 as a result of the high number of weapons apprehended, and then went up again in 2020.

Contrary to the evolution of the victimisation of civilians, the number of public security agents fell in 2019 (47 victims) and then remained almost stable in 2020 (52). In this last two years, the figure is considerably smaller than that of 2017 (81 victims) and 2018 (76).

The ascending trend of fatal civilian victims can be detected in the indexes of abuse. The proportion of homicides attributed to police intervention climbed in 2018 (9.1) and in 2019 (11.2) and again in 2020 when it reached 12%. In these last two years the index exceeded the acceptable limit of 10%, thereby pointing at an excessive use of lethal force by police in Brazil.

The evolution of the only other index of abuse that could be computed, considering that non-fatal victims were not recorded, was even more dramatic. In 2017, there were 57.7 civilians killed for every police officer killed in similar circumstances (on duty and through firearms). This was already well above the accepted threshold of 10. However, in 2018 this index rose to 69.4 and in 2019 and 2020 to a whopping 114 civilians killed per law enforcement officer killed. This reveals that there is an excessive and abusive use of force on the part on the Brazilian police. Lethal force is not merely used to protect other people's lives since the risk of public agents is minuscule compared to that of civilians.

3.2 Results by state.

3.2.1 Incidence.

Only three states account for around half of the 5,958 people killed by on-duty police officers by intentional gunshot in Brazil in 2020, although they contain only 37% of the Brazilian population: Rio de Janeiro (1,156 victims), Bahia (1,056), and São Paulo (756).

The national rate in 2020 corresponds to 2.8 civilians killed by on-duty police officers by gunshot for every 100 thousand inhabitants. Nine of the 27 Brazilian states have a rate higher than the national average: Amapá (12.1), Goiás (8.2),

Sergipe (7.8), Bahia (7.1), Rio de Janeiro (6.7), Pará (5.4), Rio Grande do Norte (3.8), Mato Grosso (3.4), and Paraná (3.0).

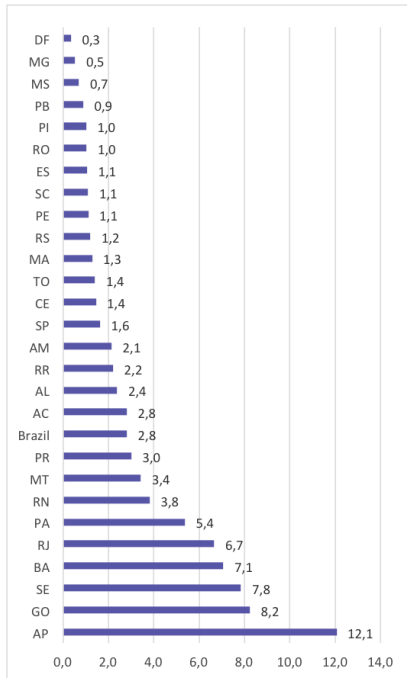
Compared to 2019, the national rate increased by 11% in 2020 and only seven states experienced a decline. Meanwhile, according to the *Anuário Brasileiro de Segurança Pública 2021* (Brazilian Yearbook of Public Security, 2021), intentional homicides increased by 4.0% between 2019 and 2020 in the country.

As for the rate of people killed by on-duty police officers by gunshot for every 1,000 officers, the state of Goiás had the highest rate, over three times the national rate (11.4). Indeed, the same 9 states reported rates above the national average: Goiás (36.2), Bahia (28.6), Sergipe (28.5), Pará (24.9), Amapá (22.4), Rio de Janeiro (21.8), Rio Grande do Norte (15.0), Paraná (15.0), and Mato Grosso (11.9).

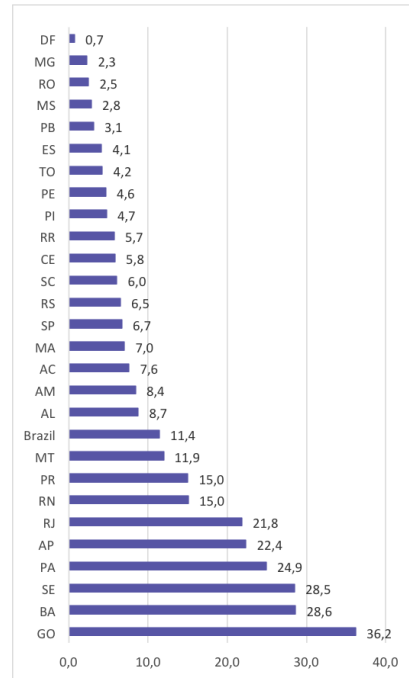
In 2020, 109,137 weapons were seized by state police forces in Brazil, at a national average of 53.5 weapons for every 100,000 inhabitants. This rate ranged from 20.0 in Rio Grande do Norte to 126.8 in Minas Gerais. The rate of civilians killed by every 1,000 weapons seized is extremely high in Sergipe (298.8), more than five times the national rate (54.6), followed by Bahia (270.1), Amapá (243.6), Rio Grande do Norte (190.2), and Rio de Janeiro (179.5). At the other end, rate is very low in Minas Gerais (4.1), precisely as a function of the high number of weapons that were confiscated.

A total of fifty-two on-duty public security agents were killed by intentional gunshot in Brazil in 2020, which represents a rate of 0.10 victims for every 1,000 police officers. Thirteen states registered rates above the national average. Four of these 13 states are also among the ones with the highest rates of people killed by police: Rio de Janeiro (0.22 police officers killed per 1,000 agents), Pará (0.19), Rio Grande do Norte (0.15), and Sergipe (0.13). Three states had no on-duty public security agents killed by intentional gunshot in 2020: Amapá, Rio Grande do Sul, and Tocantins.

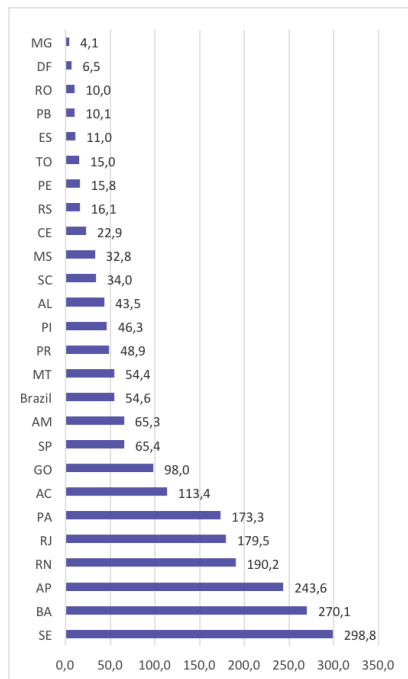
I-2: Number of civilians killed by on-duty public security agents, by intentional gunshot, for every 100,000 inhabitants (rate) - 2020



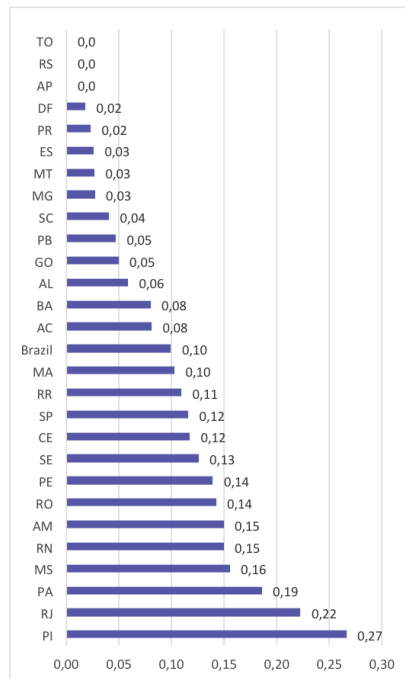
I-3: Number of civilians killed by on-duty public security agents, by intentional gunshot, for every 1,000 public security agents (rate) - 2020



I-5: Number of civilians killed by on-duty public security agents, by intentional gunshot, for every 1,000 weapons seized (rate) - 2020



I-7: Number of on-duty public security agents killed in homicides, by intentional gunshot, for every 1,000 public security agents (rate) - 2020



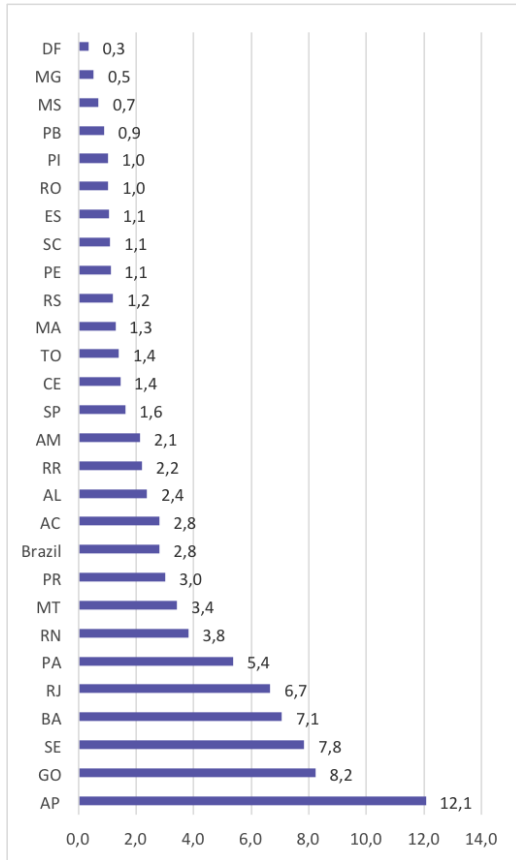
3.2.2. Abuse

As already indicated, the proportion of total intentional homicides that correspond to homicides by gunshot caused by on-duty police officers in Brazil in 2020 was 12%. In some states, deaths by police represent almost a third of all intentional homicides. In Amapá, for example, this proportion is 29%. Other states above the national rate are Goiás (27%), Rio de Janeiro (23.6%), Sergipe (18.4%), São Paulo (18.2%), Pará (16.5%), Bahia (15.8%), Paraná (13.9%), and Mato Grosso (12.2%). Between 2019 and 2020, the proportion of intentional homicides caused by on-duty public security agents by gunshot increased by 6.3% nationwide and 20 of the 27 states experienced an increase.

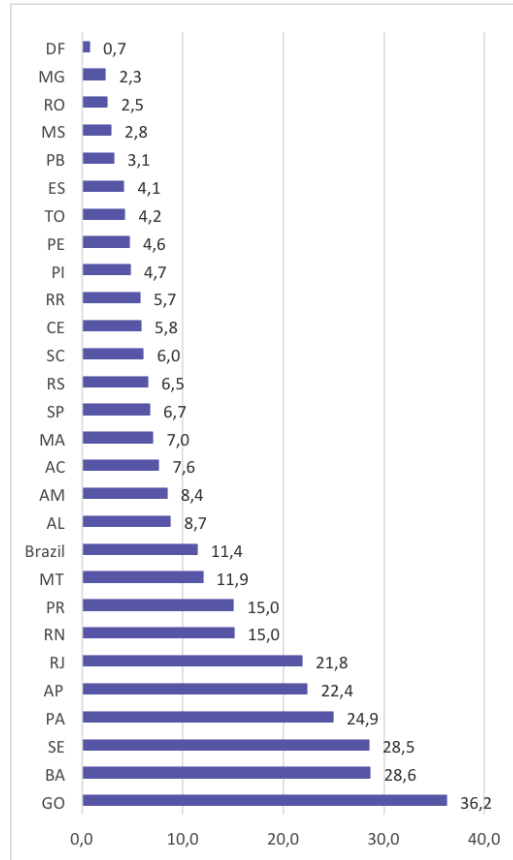
As for the ratio between civilians killed by intentional gunshot by on-duty police officers and public security agents killed by intentional gunshot in homicides while on duty, it was 114.7 in 2020. Many of the states with the highest rates of people killed by on-duty agents by gunshot by 100,000 inhabitants are also among the states with the highest ratio between civilians killed by police and police killed by civilians: Goiás (729.6), Paraná (646.9), Mato Grosso (451), Bahia (358.6), Sergipe (226.6), and Pará (134).

The ratio of civilians killed to public security agents killed was extremely high for Brazil as a whole in 2020 (114.7). Several states, such as Goiás, Paraná, Mato Grosso, Bahia and Sergipe exceed the level of 200 to 1, to the point that the index becomes very unreliable considering that there are hardly any case of state agents killed. Indeed, the lowest index is 17.3 in Rondônia, well above the acceptable threshold of 10, which points at the fact that excessive use of force seems to be a pervasive phenomenon in Brazil.

A-1: Proportion of total intentional homicides that correspond to homicides by gunshot caused by on-duty public security agents' interventions - 2020



A-2: Ratio between civilians killed by intentional gunshot by on-duty public security agents and public security agents killed by intentional gunshot in homicides while on duty - 2020



4. Conclusions

Brazil has seen an increase in the number of civilians killed by public security agents in 2018 with respect to 2017 and again in 2020. The number of civilian fatal victims exceeded five thousand both in 2018 and 2019 and almost reached six thousand in 2020. As a result, all incidence indicators rose over this period.

In contrast to this, the number of public security agents killed in the line of duty diminished in 2019 and 2020 with respect to the level of the two preceding years. In other words, as the risk for civilians intensified, the apparent risk for law enforcement officers was reduced, which would not warrant a higher degree of use of lethal force.

Hence, abuse indicators reached very worrying levels. The proportion of homicides due to police interventions exceeded the threshold of 10 for the whole country in 2019, and it was of course much higher in some states, such as Goiás and Rio de Janeiro, where it was more than 20%. Even more concerning, the ratio of civilians killed to public security officer killed, which already went over the acceptable threshold of 10 in 2017, by far, kept on growing and doubled in 2019 and 2020 (with respect to 2017). More than a hundred civilians die for every officer dead. In some states, the figures are so high that they become unreliable because of the very small denominator. In other words, the small risk to officers does not justify such an intense use of force against civilians. And this is true for all states, although figures are more dramatic in some of them.

Thus, indicators show that Brazilian police officers make an excessive use of force and that this trend is deteriorating over the last few years.

5. Recommendations

- a. The sentence of the Interamerican Court of Human Rights must be executed, with emphasis on three of its determinations:
 - + **a1)** Brazil must publish a yearly report on use of lethal force by its law enforcement agents. This report should be elaborated by an independent body such as the *Conselho Nacional do Ministério Público* (National Council of Prosecutors). The National Council, for its part, must demand national reports on use of lethal force by each of the 27 state Prosecutor's Offices;

- + **a2)** Investigations on cases of people killed by public security agents must be carried by another agency, namely the Prosecutor's Office, and not by the police themselves;
- + **a3)** the state of Rio de Janeiro must introduce policies to reduce use of lethal force, with clear targets to be achieved.

As already indicated, these are not mere recommendations, but legal obligations for Brazil, since the competence of the Interamerican Court was recognised by the country in 1998.

- b. Every death resulting from the intervention of a law enforcement agent has to be counted as such, separating cases that occurred on duty and off duty. However, the legal classification, according to Brazilian law, has to be intentional homicide, even when it is in self-defence and therefore legitimate. In any case the legality of the intervention has to be determined by a thorough investigation and cannot be presumed beforehand.
- c. Police officers involved in actions resulting in the death of civilians must receive immediate psychological counselling and be kept out of operational activity for a minimum period of three months.
- d. Public security institutions must create internal administrative commissions to study events that result in the death of civilians and/or police officers to propose measures (training, selection, protocols, etc.) that attempt to prevent fatal outcomes. These commissions must be of a technical nature, different from the agencies that have a disciplinary or criminal responsibility, so as to maximize cooperation from police officers. These commissions should also monitor the use of lethal force by individual agents (number and nature of events, amount of ammunition used, etc.) so that agents and units that stand out for their high use of lethal force can be detected and preventive measures adopted.
- e. Whenever police units or individual officers are rewarded with bonuses for their performance, which happens in several Brazilian states, these policies have to contemplate use of lethal force so as to minimize it. Furthermore, no action that result in loss of life should be rewarded with acknowledgements or bonuses.

