



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Brazil under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Brazil under article 29 (1) of the Convention¹ at its 362nd and 364th meetings,² held on 13 and 14 September 2021, in a hybrid format owing to the coronavirus disease (COVID-19) pandemic. At its 379th meeting, held on 23 September 2021, the Committee adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission by Brazil, albeit seven years late, of its report under article 29 (1) of the Convention. It also welcomes the information provided by the State party that it published a draft of the report online and conducted an online public consultation to enable civil society to contribute to the text.³ Moreover, the Committee thanks the State party for its written replies⁴ to the list of issues.⁵

3. The Committee welcomed the opportunity for constructive dialogue with the delegation of the State party on the measures taken to implement the Convention.

B. Positive aspects

4. The Committee commends the State party for having ratified or acceded to almost all the United Nations core human rights instruments and their optional protocols, and the Inter-American Convention on Forced Disappearance of Persons and the Rome Statute of the International Criminal Court.

5. The Committee welcomes the measures taken by the State party in areas related to the Convention, including the adoption into law of the National Policy for Finding Disappeared Persons and the creation of the National Register of Disappeared Persons, by Law No. 13812/2019, and the establishment of the National Truth Commission, by Law No. 12528/2011.

6. The Committee welcomes the fact that the State party has extended a standing invitation to all special procedures of the Human Rights Council to visit the country, and encourages it to consider positively the request for a visit made by the Working Group on Enforced or Involuntary Disappearances on 8 April 2020.

* Adopted by the Committee at its twenty-first session (13–24 September 2021).

¹ [CED/C/BRA/1](#).

² [CED/C/SR.362](#) and [CED/C/SR.364](#).

³ [CED/C/BRA/1](#), paras. 12–13.

⁴ [CED/C/BRA/RQ/1](#).

⁵ [CED/C/BRA/Q/1](#).



C. Principal subjects of concern and recommendations

7. The Committee considers that, at the time of the adoption of the present concluding observations, the legislation in force in the State party for preventing and punishing enforced disappearance, for guaranteeing the rights of victims and for ensuring the performance of certain authorities was not in full compliance with the Convention. The Committee encourages the State party to implement its recommendations, made in a constructive spirit of cooperation, with the aim of ensuring that the existing legal framework and the manner in which it is implemented by the authorities are fully consistent with the Convention. It invites the State party to take advantage of the process under way in relation to Bill No. 6240/2013 for the purposes of implementing the relevant recommendations contained herein.

1. General information

Urgent action procedure

8. While noting that only one request for urgent action has been transmitted to the State party, the Committee regrets the regular delays in the State party's responses to its communications on follow-up to that request (art. 30).

9. **The Committee calls upon the State party to enhance its cooperation within the framework of the urgent action procedure and to take all measures necessary to guarantee the immediate processing of and timely follow-up to its communications regarding the transmitted request for urgent action. It also invites the State party to disseminate information about the urgent action procedure among civil society actors and the general public.**

Individual and inter-State communications

10. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention respectively. While noting that extensive internal consultations are taking place in that respect, the Committee regrets the State party's affirmation that there was no sign that the State party would recognize such competence in the near future (arts. 31 and 32).

11. **The Committee encourages the State party to recognize the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention respectively, with a view to strengthening the framework for protection from enforced disappearance provided for in the Convention.**

2. Definition and criminalization of enforced disappearance (arts. 1–7)

Statistical information

12. The Committee regrets that the State party did not provide disaggregated statistical information on disappeared persons, including on cases of enforced disappearance within the meaning of article 2 of the Convention. In this respect, it notes with interest the information received during the dialogue concerning the creation of the National Register of Disappeared Persons, by Law No. 13812/2019, which is currently being implemented and is due to become operational in the coming months. In particular, it welcomes the State party's affirmation that the National Register would encompass all possible forms of disappearance, including enforced disappearance, and would be linked, inter alia, to the National System for Locating and Identifying Disappeared Persons (arts. 1, 3 and 12).

13. **The State party should take the steps necessary to swiftly generate accurate and up-to-date statistical information on disappeared persons, disaggregated by sex, age, nationality, place of origin and racial or ethnic origin. Such statistical information should include the date of disappearance; the number of persons who have been located, whether alive or deceased; and the number of cases in which there may have been some form of State involvement within the meaning of article 2 of the Convention. In this connection, the Committee recommends that the State party speed up the**

implementation of the National Register of Disappeared Persons, ensuring that it contains, at a minimum, all the information referred to in the present recommendation.

Offence of enforced disappearance

14. The Committee is concerned that the State party has not yet adopted an autonomous offence of enforced disappearance. It notes that Bill No. 6240/2013 has not yet been approved, and that, while it provides for aggravating circumstances, the envisioned penalty of 6 to 10 years' imprisonment fails to reflect the gravity of the offence, in particular if mitigating circumstances are applied. The Committee also notes the State party's assertion during the dialogue that the Convention could not be applied to cases already covered by the Amnesty Law (No. 6683/1979) because they predated the entry into force of the Convention. Nonetheless, and taking into account the continuous nature of enforced disappearance, the Committee is concerned about the limitations on the application of the offence of enforced disappearance, once adopted, that the Amnesty Law would impose (arts. 2, 4, 7 and 8).

15. **The Committee recommends that the State party take the measures necessary:**

(a) **To speed up the adoption of an autonomous offence of enforced disappearance, ensuring that its definition is fully compatible with article 2 of the Convention and that it provides for appropriate penalties that take into account its extreme seriousness;**

(b) **To ensure that the application of the adopted offence in cases of enforced disappearance that commenced prior to its entry into force but continued thereafter is not subject to any limitations, including those that may be imposed on the basis of the Amnesty Law.**

Enforced disappearance as a crime against humanity

16. The Committee notes the State party's affirmation that the Rome Statute was "in full validity" in its judicial system⁶ – that is, it is applied by the courts – and that since, under the Statute, enforced disappearance was classed as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, the domestic legal system treated it in the same way. However, the Committee regrets the lack of clarity as to whether domestic criminal courts may directly apply the Statute, including the penalties provided for therein, to ensure the prosecution and sanctioning of individuals suspected of having committed crimes against humanity (art. 5).

17. **The Committee recommends that the State party take the measures necessary to explicitly recognize enforced disappearance as a crime against humanity in its domestic legislation.**

3. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)

Military jurisdiction

18. The Committee notes the State party's affirmation that the existing legal framework, including Law No. 13491/2017, ruled out military jurisdiction for cases of enforced disappearance.⁷ However, the Committee observes that, under certain conditions specified in this law, jurisdiction is transferred from civil to military courts in cases of intentional crimes against life committed by military personnel against civilians. The Committee also notes that, according to the State party, in the absence of an autonomous offence, cases of enforced disappearance are dealt with under other criminal offences, including intentional homicide. In view thereof, the Committee is concerned that cases in which enforced disappearance is investigated as an offence such as intentional homicide could fall under the jurisdiction of military courts. In this respect, it is concerned about information that, in 2018, Bahia State Court of Justice ruled, precisely on the basis of Law No. 13491/2017, that the case of the alleged enforced disappearance of David Fiúza in the Bahia State in 2014 fell under military

⁶ CED/C/BRA/RQ/1, para. 13.

⁷ Ibid., paras. 27–28.

jurisdiction. The Committee reaffirms its position that, as a matter of principle, all cases of enforced disappearance must be dealt with only by the competent ordinary civil authorities (art. 11).

19. **Recalling its statement on enforced disappearance and military jurisdiction,⁸ the Committee recommends that the State party swiftly take the measures necessary to ensure that the investigation and prosecution of cases of enforced disappearance is expressly excluded from the competence of military courts.**

Prevention of acts that may hinder the progress of investigations

20. The Committee notes of the State party's affirmation that persons accused of a crime would not be able to participate in the investigation of that crime and would be suspended for the duration of the procedure.⁹ However, it regrets that it has not received any clarification regarding the legal framework for establishing a mechanism to ensure that law enforcement authorities or security forces do not participate in the investigation into an allegation of enforced disappearance when one or more of their officials are suspected of having been involved in the commission of the offence (art. 12).

21. **The Committee recommends that the State party establish a mechanism to ensure that law enforcement authorities or security forces, whether civil or military, whose officials are suspected of having committed enforced disappearance are prohibited from participating in any stage of the investigation.**

Allegations of enforced disappearance

22. The Committee notes the State party's affirmation during the dialogue that there was no clear indication that enforced disappearance had occurred, at least on any significant scale, under the Brazilian democracy. However, the Committee is concerned about reports received concerning enforced disappearance allegedly perpetrated in recent times, mostly against persons of African descent and persons living in slums or on the peripheries of large cities. It is also concerned about allegations that progress in the investigation of cases of enforced disappearance is limited, thus contributing to impunity for such crimes. The Committee is also concerned about reports of cases of enforced disappearance that allegedly commenced before the entry into force of the Convention for the State party, in December 2010, in particular between 1964 and 1985, which are ongoing as the disappeared persons have not been located. The Committee regrets the lack of engagement by the State party in relation to those cases during the reporting process. In that regard, the Committee recalls its statement on the *ratione temporis* element in the review of reports submitted by States parties under the Convention.¹⁰ With respect to the cases of enforced disappearance allegedly perpetrated between 1964 and 1985, the Committee welcomes the creation of the National Truth Commission and of the Special Commission on Political Deaths and Disappearances, and their important work. However, it is concerned about reports relating to the lack of accountability for such cases of enforced disappearance, mainly due to the application of the Amnesty Law, and regrets that it has not received sufficient information on the progress achieved so far in efforts to locate and, in the event of death, identify the persons disappeared during that period (arts. 1, 2, 8, 12 and 24).

23. **The Committee recommends that the State party adopt the measures necessary to guarantee the rights to justice, truth and reparation of all victims of enforced disappearance, regardless of when the disappearance commenced. In this respect, it recommends that the State party:**

(a) **Ensure that all cases of enforced disappearance are investigated promptly, thoroughly and impartially, even in the absence of a formal criminal complaint, and**

⁸ A/70/56, annex III.

⁹ CED/C/BRA/RQ/1, para. 43.

¹⁰

https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/1_Global/INT_CED_SUS_7250_E.pdf.

that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the seriousness of their acts;

(b) Remove any legal impediments to the investigations into enforced disappearances perpetrated during the military regime that have not yet ceased, in particular with respect to the application of the Amnesty Law;

(c) Redouble its efforts to tackle discrimination against certain targeted vulnerable groups as a means for preventing their disappearance and ensuring full access to their right to justice;

(d) Encourage and facilitate the documentation and submission of complaints by civil society actors and the participation of relatives in investigations, and ensure that relatives are regularly informed about the progress and results of investigations;

(e) Speed up its efforts to locate and, in the event of death, identify all persons subjected to enforced disappearance whose fate has not yet been clarified; and ensure that its efforts to search for disappeared persons, including under the National Policy for Finding Disappeared Persons, are aligned with the Committee's guiding principles for the search for disappeared persons;¹¹

(f) Ensure that there is effective coordination and cooperation between all the organs involved in the investigations and searches, that they have the necessary financial, technical and human resources to perform their duties expeditiously and effectively, and that they have effective and timely access to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present and to all documentation and other relevant information in the possession of State agencies, including the armed forces;

(g) Guarantee that all victims receive adequate reparation that is sensitive to their specific needs.

4. Measures to prevent enforced disappearance (arts. 16–23)

Registers of persons deprived of their liberty

24. The Committee is concerned about the information received during the dialogue that an inspection carried out at Alcaçuz prison following a riot in 2017 had found that the records of entries and exits from that detention facility were incomplete. In this respect, it notes that in 2019 the National Justice Council had approved a system of electronic tagging (arts. 17 and 22).

25. **The Committee recommends that the State party ensure that all instances of deprivation of liberty, without exception and from the outset, are entered in official registers and/or records, including, as a minimum, the information required under article 17 (3) of the Convention; that such registers and/or records are filled out and updated promptly and accurately and are subject to periodic checks; and that in the event of irregularities, the officials responsible are adequately sanctioned.**

Training

26. The Committee notes with interest the information provided by the State party about training given to certain public officials.¹² It welcomes the information received during the dialogue that compulsory training would be provided under the auspices of the National Policy for Finding Disappeared Persons to all public officials who might come into contact with disappeared persons, and that training was provided by the Ministry of Justice and Public Security on, inter alia, techniques for locating disappeared persons and for assisting relatives. Nonetheless, it notes that no specific and regular training on the provisions of the Convention, in accordance with its article 23, is currently dispensed (art. 23).

¹¹ CED/C/7, annex.

¹² CED/C/BRA/1, para. 126, and CED/C/BRA/RQ/1, para. 76.

27. **The Committee recommends that the State party ensure that all law enforcement and security personnel – whether civil or military – medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1). The State party may consider providing this specific and regular training as part of training activities under the auspices of the National Policy for Finding Disappeared Persons.**

5. Measures to protect and guarantee the rights of victims of enforced disappearance (art. 24)

Definition of victim and right to receive reparation and prompt, fair and adequate compensation

28. The Committee welcomes the definition of disappeared persons provided for in Law No. 13812/2019. Nonetheless, it regrets that it has not received any clarification on whether the State party's domestic law provides for a definition of victim that encompasses the disappeared person and any individual who has suffered harm as the direct result of enforced disappearance, in accordance with article 24 (1) of the Convention. The Committee notes the forms of compensation provided for in the Civil Code for victims of crimes and their relatives;¹³ the psychosocial support provided to the families of disappeared persons under Law No. 13812/2019; and the support provided by the Reference Centres for Social Assistance and the Specialized Reference Centres for Social Assistance. Nonetheless, the Committee regrets that the information provided does not clarify whether domestic legislation provides for a comprehensive system of reparation that is fully in line with article 24 (4) and (5) of the Convention (art. 24).

29. **The Committee recommends that the State party adopt the measures necessary to ensure that all individuals who have suffered harm as the direct result of enforced disappearance can fully exercise the rights enshrined in the Convention, in particular the rights to justice, truth and reparation. In this respect, the Committee:**

(a) **Invites the State party to adopt a definition of victims that is in line with that in article 24 (1) of the Convention;**

(b) **Recommends that the State party take the measures necessary to ensure that its domestic legislation provides for a comprehensive system of compensation and reparation that is fully compliant with article 24 (4) and (5) of the Convention and other relevant international standards, that is under the responsibility of the State, that is applicable even if no criminal proceedings have been initiated, and that is sensitive to the specific needs of the victim, in view of, inter alia, their sex, sexual orientation, gender identity, age, ethnic origin, social status or disability.**

Civil society actors

30. The Committee regrets the statements made by the State party during the dialogue questioning the credibility and quality of the reports submitted to the Committee by civil society actors. The Committee would like to recall the important role of civil society organizations in the eradication and prevention of enforced disappearance, and in the provision of assistance to victims (art. 24).

31. **The Committee encourages the State party to guarantee that all State agents engage constructively with civil society actors in attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons and assisting victims, with the aim of combining efforts to prevent and eradicate enforced disappearance.**

¹³ CED/C/BRA/1, para. 139.

6. Measures to protect children from enforced disappearance (art. 25)

Wrongful removal of children

32. While noting the information concerning the offences that would be applicable to the wrongful removal of children,¹⁴ the Committee is concerned that domestic legislation does not specifically criminalize the conduct described in article 25 (1) (a) of the Convention. In addition, the Committee recalls the concerns expressed by the Committee on the Rights of the Child relating to reports of enforced disappearance of children (art. 25).¹⁵

33. **The Committee recommends that the State party take the measures necessary:**

(a) **To incorporate as specific offences the conduct described in article 25 (1) (a) of the Convention, providing for appropriate penalties that take into account the extreme seriousness of the offences;**

(b) **To swiftly search for and identify disappeared children and ensure that they are returned to their families of origin and that their identities are re-established if they have been victims of identity substitution.**

Adoption

34. The Committee notes with interest the thorough information provided by the State party during the dialogue concerning procedures applicable to domestic and international adoptions. Nonetheless, it regrets that it has not received any information about the legal procedures in place to review and, where appropriate, annul any adoption or placement of children that originated in enforced disappearance, as specifically required under article 25 (4) of the Convention (art. 25).

35. **The Committee recommends that the State party take the measures necessary to ensure that its domestic legal system includes specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship of children that originated in enforced disappearance, and for re-establishing their true identity, taking into account their best interests.**

D. Fulfilment of the rights and obligations under the Convention, dissemination and follow-up

36. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures that it adopts are in full accordance with the Convention and other relevant international instruments.

37. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. In this context, the Committee places special emphasis on the need for the State party to ensure that gender issues and the specific needs of women and children are systematically taken into account in implementing the recommendations contained in the present concluding observations and all the rights and obligations offset out in the Convention.

¹⁴ CED/C/BRA/1, paras. 150–152.

¹⁵ CRC/C/BRA/CO/2-4, para. 35 (a).

38. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the recommendations contained in the present concluding observations.

39. In accordance with the Committee's rules of procedure, the State party is requested to provide, by 27 September 2022, information on the implementation of the recommendations contained in paragraphs 13 (statistical information), 15 (offence of enforced disappearance) and 19 (military jurisdiction) of the present concluding observations.

40. Under article 29 (4) of the Convention, the Committee requests the State party to submit, by 27 September 2027, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention.¹⁶ The Committee encourages the State party to involve civil society in the process of preparing this information. The Committee recalls that, under article 29 (4), it may also request the State party to provide additional information on the implementation of the Convention.

¹⁶ [CED/C/2](#), para. 39.