

ADVANCE UNEDITED VERSION

Distr.: Generale
27 September 2021

Original: English

Committee on Enforced Disappearances**Concluding observations on the report submitted by Brazil under article 29, paragraph 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 which took place on 13 and 14 September 2021 in a hybrid format due to the COVID-19 pandemic remaining restrictions. 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 that the State party has published the draft report and has 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 welcomes the opportunity given to have the 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 become a party to almost all the United Nations core human rights instruments and their optional protocols, as well as to the Inter-American Convention on Forced Disappearance of Persons and to the Rome Statute of the International Criminal Court.

5. The Committee also welcomes the measures taken by the State party in areas related to the Convention, including the establishment of the National Policy for the Search of Disappeared Persons and the creation of a National Registry for Disappeared Persons by Law No. 13812/2019; and the establishment of a National Truth Commission by Law No. 12528/2011.

6. The Committee welcomes 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 adoption of the present concluding observations, the legislation in force for preventing and punishing enforced disappearances and for guaranteeing the rights of victims as well as the performance of certain authorities were not in full compliance with the Convention. The Committee encourages the State party to implement its recommendations, which are 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 of the State party are fully consistent with the Convention. It invites the State party to take advantage of the process under way in relation to Bill 6.240/2013 to implement the relevant recommendations contained in these concluding observations.

1. General information

Urgent action procedure

8. While taking note that only one urgent action request has been transmitted to the State party, the Committee regrets the regular delays in the responses to the communications related to the follow-up of the urgent action (art. 30).

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

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. While taking note that extensive internal consultations are taking place in that respect, the Committee regrets the affirmation by the delegation that there is no sign that the State party will recognize such competence “in the very 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, 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 disappearances 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 for Disappeared Persons by Law No. 13.812/2019, which is currently being implemented and will have its first version in the coming months. In particular, it welcomes the affirmation that this Register will encompass all possible forms of disappearances, including enforced disappearances, and will be linked to *inter alia* the System for Locating and Identifying Missing 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 specify the date of disappearance; the number of such 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 for Disappeared Persons ensuring that it contains at least all the information described 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 Draft Bill No. 6240/2013 has not yet been approved, and that, even if it provides for aggravating circumstances, the penalties envisioned for the offence from 6 to 10 years are low, in particular if mitigating circumstances were applied. In addition, the Committee notes the position of the State party during the dialogue that the cases encompassed under Amnesty Law No. 6.683/1979 are not covered by the Convention because they precede its entry into force. Nonetheless, and taking into account the continuous nature of enforced disappearance, the Committee is concerned about the limitations that the Amnesty Law would impose to the eventual application of the offence of enforced disappearance once adopted (arts. 2, 4, 7 and 8).

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

(a) **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 which take into account its extreme seriousness;**

(b) **Ensure that the application of the adopted offence to cases of enforced disappearances 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 affirmation by the State party that the Rome Statute “is in full validity” in its judicial system,⁶ that is enforced by courts, and that, since the Statute treats enforced disappearance as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, the Brazilian legal system treats it the same way. However, the Committee regrets the lack of clarity as to whether domestic criminal courts could directly apply the Rome Statute, including the penalties it provides for, to ensure the prosecution and sanction of suspects of crimes against humanity (art. 5).

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

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

Military jurisdiction

18. The Committee takes note of the affirmation by the State party that the existing legal framework would rule out military jurisdiction for cases of enforced disappearances, including Law No. 13.491/2017.⁷ However, the Committee observes that, under certain conditions set up in this law, jurisdiction is transferred from civilian 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 disappearances are dealt with other criminal offences, including intentional homicide. In view thereof, the Committee is concerned that cases of enforced disappearances investigated *inter alia* as intentional homicides could fall under the jurisdiction of military courts. In this respect, it is concerned about information that, in 2018,

⁶ CED/C/BRA/RQ/1, para. 13.

⁷ CED/C/BRA/RQ/1, paras. 27-28.

the Bahia Court of Justice ruled that, precisely on the basis of Law No. 13.491/2017, the military jurisdiction was competent in the case of the alleged enforced disappearance of Davi Fiuza in the state of Bahia in 2014. 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 civilian authorities (art. 11).

19. Recalling its statement on enforced disappearances 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 takes note of the affirmation that persons accused of a crime “will not be able to participate in the investigation of such crime and will be suspended during the course of the procedures”.⁹ However, it regrets not receiving clarification as to the legal framework that would establish a mechanism to ensure that law enforcement or security forces do not participate in the investigation of an alleged enforced disappearance when one or more of its members 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 or security forces, whether civilian or military, whose members are suspected of having committed an enforced disappearance, cannot take part in any stages of the investigation.

Allegations of enforced disappearances

22. The Committee notes the affirmation during the dialogue that there is no clear indication that enforced disappearances have occurred “during Brazilian democracy”, at least in any significant scale. However, it is concerned about reports received concerning enforced disappearances allegedly perpetrated in recent times, mostly against persons of African descent and people living in slums or in the peripheries of big cities. It is also concerned at allegations that the progress in the investigation of cases of enforced disappearances is limited, thus contributing to the impunity of such crimes. The Committee is also concerned at reports of enforced disappearances which allegedly commenced before the entry into force of the Convention for the State party in December 2010, in particular between 1964 and 1985, and which are ongoing as the disappeared persons have not been located. The Committee regrets the lack of engagement of 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 International Convention for the Protection of All Persons from Enforced Disappearance”.¹⁰ With respect to the enforced disappearances allegedly perpetrated from 1964 to 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 at reports relating to the lack of accountability for such enforced disappearances, mainly due to the application of the Amnesty Law No. 6.683/79, and regrets not receiving sufficient information on the progress achieved so far in the search and, in the event of death, identification of 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 disappearances, 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 if there has not been a formal criminal complaint; and

⁸ A/70/56, annex III.

⁹ CED/C/BRA/RQ/1, para. 43.

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 the 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 as well as 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 fates have not yet been clarified. In this respect, the Committee encourages the State party to ensure that the efforts it undertakes to search for disappeared persons, including the National Policy for the Search of Disappeared Persons, are aligned with its Guiding principles for the search for disappeared persons;¹¹

(f) Ensure the 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 as well as to all documentation and other relevant information that may be in 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 liberty

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

25. **The Committee recommends that the State party ensure that all deprivations of liberty, without exception and from their outset, are entered in official registers and/or records, which include, 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 takes note with interest of the information provided by the State party relating to training provided to certain State agents.¹² It welcomes the information received during the dialogue that compulsory training will be provided under the auspices of the National Policy for the Search of Disappeared Persons to all those who could be in contact with disappeared persons, and about training provided by the Ministry of Justice on *inter alia* techniques for locating missing persons and for attending family members. Nonetheless, it

¹¹ CED/C/7.

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

notes that no specific and regular training on the Convention in accordance with its article 23 is currently dispensed (art. 23).

27. The Committee recommends the State party to 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 within the framework of the training activities organized under the auspices of the National Policy for the Search of Disappeared Persons.

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

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

28. The Committee welcomes the definition of disappeared person provided for in Law 13.812/2019. Nonetheless, it regrets not receiving clarification on whether the State party's domestic law provides for a definition of victim that encompasses, besides the disappeared person, any person who has suffered harm as the direct result of an enforced disappearance in line with article 24 (1) of the Convention. The Committee takes note of the forms of indemnification and compensation provided for in the Civil Code for victims of a crime and his/her relatives,¹³ as well as of the psychosocial support for families of disappeared persons contemplated in Law No. 13.812/2019, and of the support provided by the Social Assistance Reference Centres and Specialized Reference Centres for Social Protection. Nonetheless, the Committee regrets that the information provided does not clarify whether domestic law 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 necessary measures to ensure that all persons who have suffered harm as the direct result of an 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 victim that is in line with that in article 24 (1) of the Convention;**

(b) **Recommends that the State party adopt the measures necessary to ensure that its domestic legislation provides for a comprehensive system of compensation and reparation that fully complies 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 and disability.**

Civil society actors

30. The Committee regrets the statements made during the dialogue questioning the credibility and quality of the reports submitted by civil society actors to the Committee. The Committee would like to recall the important role of civil society organizations for the eradication and prevention of enforced disappearances, as well as to assist victims (art. 24).

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

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 misappropriation of children,¹⁴ the Committee is concerned that domestic law 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 to:**

(a) **Incorporate as a specific offence the conduct described in article 25 (1) (a) of the Convention, ensuring that it establishes appropriate penalties that take into account the extreme seriousness of the offence;**

(b) **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 takes note with interest of the thorough information provided by the State party during the dialogue concerning procedures applicable to domestic and international adoptions. Nonetheless, it regrets not receiving information about the legal procedures in place to review and, where appropriate, annul any adoption or placement of the children that originated in an 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 contemplates specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship of children that originated in an enforced disappearance, and for re-establishing their true identity, taking into account their best interest.**

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

36. **The Committee wishes to recall the obligations undertaken by States upon ratification of the Convention and urges the State party to ensure that all measures it adopts are in full accordance with the Convention and other relevant international instruments.**

37. **The Committee also emphasizes the particular cruelty with which enforced disappearances affect women and children. Women victims of enforced disappearance are particularly vulnerable to sexual and other forms of gender 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 are subjected to disappearance or because they suffer as a result of the disappearance of their relatives, are particularly vulnerable to the violation of their human rights. Therefore, the Committee places special emphasis on the need for the State party to take into account systematically gender issues and the specific needs of women and children when implementing the present recommendations and all the rights and obligations of the Convention.**

38. **The State party is encouraged to disseminate widely 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**

¹⁴ CED/C/BRA/1, paras. 150-152.

¹⁵ CRC/C/BRA/CO/2-4, para 35(a).

awareness among all State authorities, civil society actors and the population at large. The Committee also encourages the State party to promote the participation of civil society in the process of implementation of 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, no later than 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 (CED/C/2, para. 39). The Committee encourages the State party to involve civil society in the process of preparing this information. The Committee recalls that under said article 29 (4) of the Convention it may also decide to request additional information at any given time.
