



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

Distr.: General
21 September 2021

Original: English

Committee on Enforced Disappearances
Twenty-first session

Summary record of the 362nd meeting

Held at the Palais Wilson, Geneva, on Monday, 13 September 2021, at 3 p.m.

Chair: Mr. Ayat

Contents

Consideration of reports of States parties to the Convention

Initial report of Brazil

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.



The meeting was called to order at 3.05 p.m.

Consideration of reports of States parties to the Convention

Initial report of Brazil (CED/C/BRA/1; CED/C/BRA/Q/1 and CED/C/BRA/RQ/1)

1. *At the invitation of the Chair, the delegation of Brazil joined the meeting via video link.*
2. **Ms. de Sousa Machado Neris** (Brazil), introducing her country's initial report (CED/C/BRA/1), said that the Brazilian Government was profoundly concerned by recent attempts to relativize the right to life, which was the first and most important of all human rights, applying from the moment of conception, and was enshrined in numerous international human rights instruments.
3. The fundamental rights of all individuals were enshrined in the Federal Constitution, as entrenched clauses, which could not be repealed. The entire institutional framework of Brazil was designed to protect human rights, which encompassed protection against enforced disappearance. Bill No. 6240/2013, by which the crime of enforced disappearance, as defined in the Convention, would be incorporated into the Brazilian legal system, had been adopted by the Federal Senate and was in the process of being adopted by the Chamber of Deputies. Enforced disappearance was currently criminalized in the ways set out in paragraphs 42 to 44 of the initial report of Brazil.
4. While integrated, federal-level statistics on the number of disappeared persons in the country were not yet available, President Bolsonaro's Government was in the process of rolling out the National Register of Missing Persons, which would include cases of enforced disappearance. Act No. 13812 of 2019, under which the National Register had been created, also laid out the National Policy for Finding Missing Persons, which served to coordinate national-level actions relating to such persons. Under the National Policy, 16 working groups responsible for, inter alia, investigating disappearances and providing psychosocial support and legal aid to victims and their families, had been set up. The National System for Locating and Identifying Missing Persons consolidated federal and state-level efforts and had helped to solve over 10,000 cases of missing persons.
5. Over the next 18 months, the Ministry of Women, Family and Human Rights would launch an application for recording missing persons, "SOS Desaparecidos"; a specific channel for reporting missing persons; and, in partnership with other public bodies, a national alert system to provide information on cases of missing persons. Despite the coronavirus disease (COVID-19) pandemic, the Federal Government had not imposed any restrictions on access to justice by or on the rights of missing persons' families. An application and a website had been created to facilitate the reporting of violations to the National Human Rights Ombudsman; violations could also be reported using various social media platforms.
6. The very structure of the Brazilian criminal justice system represented a guarantee of the independence and impartiality of the courts: there was a clear separation between the prosecutor and the judge, the Public Prosecutor's Office enjoyed complete independence in investigating and bringing charges, judges were completely independent and forensic institutions enjoyed substantial autonomy in their analysis of evidence. Officers of the various correctional bodies did not participate in investigations. In the unlikely event of a defendant interfering in administrative proceedings, the Public Prosecutor's Office could bring criminal charges.
7. As Brazil was a signatory to the Rome Statute of the International Criminal Court, enforced disappearance was treated as a crime against humanity in Brazilian law under the circumstances detailed in article 7 of the Statute. The Migration Law provided for the extradition of persons accused of offences of enforced disappearance under those circumstances, and for denial of asylum to persons accused of such offences; moreover, persons were not extradited, repatriated or deported for political reasons, or when there was cause for concern about their safety. Article 5 of the Constitution enshrined many fundamental rights and freedoms, thereby demonstrating the State's unequivocal commitment to human rights.

8. **Ms. Kolaković-Bojović** (Country Rapporteur) said that, while Brazil had been one of the first States to ratify the Convention, in 2010, it had not entered into force for the country until 2016, owing to the complexities of the Brazilian legislative process. She wished to know whether the extensive consultations mentioned in paragraph 1 of the replies to the list of issues (CED/C/BRA/RQ/1) had taken place and whether the State party now intended to make the declarations provided for in articles 31 and 32 of the Convention concerning the competence of the Committee to receive and consider individual and inter-State communications, respectively. The Committee would appreciate it if the State party could endeavour to reply to communications concerning Mr. David Fiúza, the one case outstanding under the urgent action procedure, in a more timely manner.

9. Since, according to the State party, the federal structure of the Brazilian courts made it impossible to obtain examples of case law in which provisions of the Convention had been invoked, she would be interested to hear whether there was any body competent to collect data from individual courts and to know how the Government planned to provide the Committee with data on the direct application of the Convention. The Committee would appreciate the delegation's assessment of whether judges were sufficiently aware of the Convention, and of whether the lack of data on implementation might be related to judges' lack of awareness, rather than to problems with compiling data from the courts.

10. The Committee would likewise welcome information on the status of the National Council of Human Rights and on how its independence was guaranteed. It would also be helpful to hear more about the mandate and powers of the Council and of the Permanent Commission for Monitoring and Implementation of International Human Rights Obligations, which were required to comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). She would welcome clarification of how the Council and the Commission shared their responsibilities in respect of enforced disappearance. Lastly, the delegation might shed some light on the role of the Public Defender's Office, which, as she understood it, had the potential to become a national human rights institution, and explain how it interacted with the Council and the Commission in respect of cases of enforced disappearance.

11. **Mr. Diop** (Country Rapporteur) said that he did not see why the federal structure of the Brazilian judicial system would prevent the Government from gathering statistics on offences of enforced disappearance prosecuted under another name. Was the delegation in a position to provide any such statistics? While disappearances perpetrated by agents of the State or with its acquiescence might be few and far between in Brazil, they did occur; for example, the National Penitentiary Department seemed to acknowledge that some persons had been subjected to enforced disappearance following prison mutinies, even if the Department disputed the exact figures. It would be helpful to receive information on the few cases acknowledged by the authorities and brought before the courts. He would be grateful if the delegation could provide the Committee with statistical data illustrating the impact of the measures put in place to ensure that citizens had access to mechanisms for reporting human rights violations during the pandemic (CED/C/BRA/RQ/1, para. 8). It would be helpful to hear whether those measures had met expectations and whether reporting of cases of enforced disappearance had increased. He would be interested to learn whether the joint database trialled by the National Human Rights Ombudsman had seen the light of day and, if so, whether it had met expectations and was expected to yield reliable statistics on cases of enforced disappearance.

12. With regard to the alignment of Brazilian legislation concerning the crime of enforced disappearance with international law, the State party had indicated in its written replies that it was unclear when Bill No. 6240/2013 would be adopted and enforced, since specific legislative procedures were imposed by the Constitution (CED/C/BRA/RQ/1, para. 11). It had now been under deliberation for eight years. The definition of enforced disappearance in the bill was not entirely consistent with that contained in the Convention, and the prescribed penalty of 6 to 10 years' imprisonment failed to reflect the gravity of the crime. He wished to know whether domestic courts could invoke the provisions of the Rome Statute, in particular when prescribing penalties.

13. In its reply to the Committee's enquiry about the limitations imposed by the Amnesty Law, the State party had cited article 1 of the Law, which provided no further information

regarding such limitations. The Committee would therefore welcome specific information in that regard.

14. In its initial report, the State party had indicated that offences of enforced disappearance could be perpetrated by persons or groups acting without authorization in a number of contexts, including land conflicts. Yet, according to paragraph 17 of the written replies, there was no evidence of para-State groups, let alone any groups acting with the acquiescence of the State, whose aim was to exterminate indigenous peoples. The Committee had received credible reports that groups acting without the acquiescence of the State existed. The delegation might comment on the veracity of those reports and, if they were accurate, describe the measures taken to prevent and investigate acts perpetrated by such groups.

15. **Ms. Kolaković-Bojović** said that the Committee had been informed of cases of enforced disappearance perpetrated by the military and the police, and by paramilitary groups that had been established by or that had acted with the support of State agents. The most frequent victims were indigenous peoples, persons of African descent, and poor people living in slums or remote areas. It was also allegedly difficult for civil society and family members to report such cases owing to the threat of reprisals, discrimination and the obstacles encountered by indigenous peoples in securing access to justice. Limited progress in the investigation of cases also reportedly contributed to a climate of impunity.

16. With regard to the statute of limitations applicable to continuous crimes, she understood from the ruling of the Federal Supreme Court cited in paragraph 25 of the written replies that the crime of enforced disappearance would be deemed to be continuous in nature for as long as the victims remained unaccounted for. In that connection, she would like to know whether the State party intended to ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

17. According to the report, article 2 of the Criminal Code reinforced the effectiveness of the Amnesty Law domestically, since it limited the retroactive application of laws. As the Constitution provided for the primacy of international human rights treaties, the Convention prevailed over the Amnesty Law and established the obligation to continue investigating all cases of missing persons and to provide compensation to victims.

18. Law No. 13491/2017 stipulated that human rights violations, including murder or attempted murder, committed by military personnel against civilians were to be tried by military courts. She understood that military police officers who patrolled the streets and were charged with torture and other crimes would also be tried by military courts. The Committee had received reports that approximately 1,000 cases had been transferred from civil to military courts since 2017. The Committee would be interested to learn how the case of Mr. David Fiúza illustrated the competence of the military to investigate cases of enforced disappearance.

19. She would also appreciate information on how the independence and impartiality of courts, forensic authorities and institutions responsible for the management of evidence at the local and national levels were guaranteed, and on the investigation of cases of corruption in the judiciary and the prosecution service.

20. She wished to know what categories of persons were entitled to benefit from protective measures under the Federal Assistance Programme for Victims and Threatened Witnesses and whether judges, prosecutors and other persons involved in investigations could avail themselves of such protection. She would be grateful if the delegation could provide statistics on the number of requests approved and information on the Programme's budget. She also wished to know whether there was any legal remedy available to victims if their requests for protective measures were rejected or if the quality or integrity of the measures were jeopardized.

21. The Committee would appreciate specific information on the institutional, budgetary and administrative resources enabling the State party to investigate alleged cases of enforced disappearance, including access to documentation and other relevant information. It would also welcome information on the legislative framework guaranteeing access for the competent authorities to places of detention or other places where disappeared persons might

be held, as well as access to relevant documentation, including information held by the armed forces.

22. The delegation might also indicate whether there was any mechanism in place to ensure the integrity of investigations by preventing military personnel and police officers from participating in investigations when they were suspected of having been involved in the commission of crimes.

23. The Committee wished to reiterate the obligation of States parties to investigate all cases of enforced disappearance, including those that had occurred during the dictatorship, and to provide full reparation to victims, since enforced disappearance was a continuous crime.

24. She would like to receive further information concerning the six-year gap between the State party's ratifying the Convention in 2010 and its entry into force in 2016, since international obligations arose from the date of ratification of any such treaty.

25. Lastly, she wished to learn more about the possible impact of dual criminality on requests for extradition relating to cases of enforced disappearance and the general procedures for responding to such requests.

The meeting was suspended at 4 p.m. and resumed at 4.20 p.m.

26. **Mr. da Silva Nunes** (Brazil) said that the procedure for ensuring the entry into force of an international treaty was carried out jointly by the executive and legislative branches. Article 84 of the Constitution accorded the President exclusive authority to sanction the promulgation of a law, but article 49 stated that such action also required the approval of the legislative branch. When a treaty or convention was signed, it was sent to the competent parliamentary commissions and a legislative decree was promulgated. That decree was sent to the Office of the President, which prepared another decree stating that the treaty or convention had entered into force. Unfortunately, it was a somewhat complex procedure, especially when sensitive issues were involved.

27. **Ms. de Sousa Machado Neris** (Brazil) said that Brazil was a Federative Republic based on the separation of powers between federal entities. Accordingly, many different actors were involved in implementing the National Policy for Finding Missing Persons. The National Justice Council could probably respond to many of the Committee's requests for information and data.

28. **Mr. Ramos Araújo** (Brazil) said that Brazil had not yet established a national human rights institution but was making progress in that regard. The National Council of Human Rights was a candidate and steps had been taken to align it with the Paris Principles, including by registering it as a legal entity and providing it with a separate budget. There were also plans to have the National Human Rights Ombudsman accredited as a national human rights institution. The Permanent Commission for Monitoring and Implementation of International Human Rights Obligations was composed of members of the National Council of Human Rights. It scrutinized international human rights obligations, including those flowing from the Convention, and referred them to the Council for action.

29. **Mr. Bestetti Mallmann** (Brazil) said that internal consultations were under way concerning the possibility of making the declarations provided for in articles 31 and 32 of the Convention on individual and inter-State communications, respectively. As it was necessary to consult 22 ministries, the 27 branches of the judiciary, the Public Prosecutor's Office and the National Justice Council, it was unlikely that the Committee's competence would be recognized in the near future.

30. There was no specific centralized mechanism for collecting data on cases of enforced disappearance owing to the country's vast size. However, the National Register of Missing Persons had been created in 2019 and would become operational in late 2021 or early 2022. It would record all cases of enforced disappearance, including cases where there was evidence of the involvement of a State agent, such as a police officer. The State did not have a policy of permitting or acquiescing to the commission of a heinous crime such as enforced disappearance by its officials. Bill No. 6240/2013, which, once passed into law, would criminalize enforced disappearance, had been approved by the Senate and was currently

being considered by the Commission of Constitution, Justice and Citizenship of the House of Representatives. Unfortunately, following the outbreak of the COVID-19 pandemic, the Commission had not met in 2020 and no rapporteur had been appointed. It was unclear how long it would take for the bill to be passed into law.

31. **Ms. Ferraz Monteiro** (Brazil) said that the Ministry of Justice and Public Security had started to implement the National Register of Missing Persons following the adoption of the National Policy for Finding Missing Persons, pursuant to Act No. 13812 of 2019.

32. **Ms. de Sousa Machado Neris** (Brazil) said that over 500 people had benefited from protective measures under the Federal Assistance Programme for Victims and Threatened Witnesses. Under the Programme, all victims and witnesses who had received death threats were entitled to protection on an equal footing. A national network for the protection of victims, which comprised various Government entities, was also operational. In 2021, the Programme had been allocated a budget of R\$ 12 million.

33. **Mr. Rabelo** (Brazil) said that the country's legal framework guaranteed the complete independence of the federal and civil police forces and the prosecution service, all of which were able to launch investigations in the absence of a formal complaint upon becoming aware of potential criminal acts. The Ministry of Justice and Public Security had hired a researcher to gather more solid data on cases of enforced disappearance.

34. **Mr. Pereira Carvalho** (Brazil) said that the Government categorically denied any reports of attempts to exterminate indigenous peoples, which were completely false. On the contrary, the State went to great lengths to protect such peoples and many programmes were in place to safeguard their human rights. For example, the Ministry of Women, Family and Human Rights had spearheaded efforts in cooperation with the armed forces, the National Indigenous Person Foundation and the Special Secretariat for Indigenous Health to mitigate the effects of the COVID-19 pandemic on indigenous communities.

35. Although the Convention had not entered into force for Brazil until 2016, the Amnesty Law had come into effect in 1979. The Convention could not be applied to cases where amnesty had already been granted. Furthermore, the Federal Supreme Court had declared the Amnesty Law to be valid and generally applicable.

36. **Mr. Bestetti Mallmann** (Brazil) said that, from 2016 onward, offences of enforced disappearance had been dealt with in keeping with the Convention; however, he was not in a position to answer questions about the continuous nature of offences that might have been committed before its ratification. As for Ms. Kolaković-Bojović's observation regarding the period of time between the State party's ratifying the Convention and its entry into force, he disagreed with the Committee's view that the process had been excessively long and wished to stress that the normal ratification procedure had been followed in accordance with the applicable laws.

37. **Mr. Diop** said that he wished to know whether extradition decisions rendered by the Federal Supreme Court were subject to appeal and, if so, whether such appeals had suspensive effect. He would appreciate a response to question 17 of the list of issues (CED/C/BRA/Q/1) on whether the State party accepted diplomatic assurances when there was a risk that the person concerned might be subjected to enforced disappearance. He wondered whether similar safeguards also existed to prevent the expulsion or refoulement of persons to a State where their human rights might be violated. Had the State party received any serious allegations of individuals' being expelled to countries where they might be at risk of violence?

38. He would also like to know whether persons deprived of their liberty had real and effective access to a lawyer and whether their families were immediately informed. Noting that arrest warrants issued by the judicial authorities were recorded in the National Register of Arrested Individuals, he wondered whether the details of persons deprived of their liberty were recorded in a register before the judicial authorities became involved. If any such registers existed, he wished to know whether they contained the information required under article 17 (3) of the Convention. He would be interested to learn whether the State party's national mechanism for the prevention of torture enjoyed full financial independence, what supervisory powers it had, to whom it reported, whether its reports were published and

whether it could institute proceedings against State agents accused of torture. It would be helpful to know what concrete steps had been taken to guarantee the right of every person with a legitimate interest to gain access to the information referred to in article 18 (1) of the Convention, as well as to a quick and effective judicial remedy to obtain this information without delay, including in the context of the COVID-19 pandemic. The delegation might explain how the State party intended to remedy the fact that article 655 of the Code of Criminal Procedure omitted two key aspects of article 22 of the Convention, namely, the requirement to impose sanctions for failing to record deprivation of liberty in all cases and for refusing to provide information on the deprivation of liberty of a person.

39. **Ms. Kolaković-Bojović** said that she would welcome further information, including statistical data, on the steps taken to investigate cases of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State. She would also appreciate further information on the measures taken to ensure full compliance with the judgment of the Inter-American Court of Human Rights in the case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*, especially its recommendations with regard to the Amnesty Law. In that connection, while she was aware of the State party’s position that the Amnesty Law precluded the prosecution of the alleged perpetrators of offences of enforced disappearance reported to have occurred during the military dictatorship, she wondered whether the Brazilian courts routinely recognized enforced disappearance as a continuous offence when ruling on cases not covered by the Amnesty Law. She would welcome further information on the steps taken by the State party to apply the Committee’s guiding principles for the search for disappeared persons (CED/C/7) and to bring the National Policy for Finding Missing Persons into line with them.

40. **Mr. Ravenna** said that he wished to know which public freedoms had been restricted during the COVID-19 pandemic and under what normative framework such restrictions had been imposed. He wished to remind the State party that isolated cases of enforced disappearance with the authorization, support or acquiescence of the State did still occur in democratic countries and that, under article 3 of the Convention, the State party also had a responsibility to investigate cases of enforced disappearance committed without the authorization, support or acquiescence of the State and to bring those responsible to justice.

41. **Ms. Villa Quintana** said that she would appreciate more detailed information on the training on the Convention provided to State officials. For example, was such training provided to all officials involved in the administration of justice? She would also be grateful if the delegation could clarify which body was due to be put forward for accreditation as the national human rights institution.

42. **Mr. de Frouville** said that he would be grateful if the State party could clarify whether it planned to specifically criminalize the conduct described in article 25 (1) of the Convention. He would also appreciate further information on any steps taken to investigate cases of wrongful removal of children, as described in article 25, and to punish those responsible. Lastly, he would welcome clarification of the measures taken by the State party to review and, if necessary, annul any adoption or placement originating from an offence of enforced disappearance.

43. **Ms. Kolaković-Bojović** said that she would welcome further information on the definition of “victim” in the State party’s criminal law and on whether it was in line with the definition contained in article 24 (1) of the Convention. With regard to the information contained in paragraphs 143 and 144 of the State party’s report, she would appreciate additional details on progress achieved in the implementation of the recommendations made by the National Truth Commission in its final report with respect to cases of enforced disappearance. She particularly wished to know whether a mechanism had been set up to monitor the implementation of the Commission’s recommendations.

44. She would welcome information on the activities of the Special Commission on Political Deaths and Disappearances, including whether it had sufficient resources to carry out its mandate efficiently and how the application of Decree No. 9759/2019 had affected its work. It would be useful to know how many secret graves had been discovered in Brazil, how many persons’ mortal remains had been uncovered in those graves and how many sets of those remains had been identified and returned to the victims’ families. The delegation

might also provide additional information on the State party's cooperation with the International Commission on Missing Persons on identification procedures in laboratories in Bosnia and Herzegovina and the Netherlands, and on any steps taken to uphold the right to reparation under articles 24 (4) and (5) of the Convention. In particular, she wished to know whether a national reparation mechanism had been set up, whether dedicated support services, including psychological support services, were available to victims of enforced disappearance and whether financial support was available to victims' families to cover the costs of identification procedures. It would also be interesting to learn more about existing guarantees of non-repetition and the measures taken to combat impunity for past crimes. Had the State party set about rectifying the death certificates of victims of enforced disappearance? She would appreciate more information on the results of the work of the Perus working group, especially with regard to the identification of the remains discovered in the Don Bosco cemetery.

45. With regard to the information contained in paragraph 84 of the written replies, she would appreciate further clarification of the legal situation of the relatives of disappeared persons whose fate had not been clarified and for whom a declaration of absence could not be issued until all searches and inquiries had finished. Were the relatives of that category of disappeared person required to declare the victim deceased before they could claim their welfare and property rights? Was the termination of the search procedure a precondition for the finalization of the succession process in the case of disappeared persons for whom a declaration of absence could be issued before searches and inquiries had been concluded?

46. **Mr. Albán-Alencastro** said that the absence of a specific legal classification for the crime of enforced disappearance and the fact that it was often prosecuted as a related offence could result in alleged perpetrators of enforced disappearance claiming procedural irregularities or statutory limitations as a defence during trial.

47. According to recent reports from the International Committee of the Red Cross, more than 60,000 people had been reported missing in Brazil in 2020. In view of the State party's obligation to investigate under article 3 of the Convention, he wondered how it could justify its position that the problem of enforced disappearance was not of a sufficient magnitude in Brazil to warrant the establishment of a search and investigation mechanism.

48. Lastly, given that responsibility for implementing the Convention fell to the central Government and not to subsidiary authorities, it would be useful to learn whether the Federal Government had established a policy or normative framework to assist municipal and state governments in implementing it.

The meeting rose at 6.05 p.m.