



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances Twenty-first session

Summary record of the 364th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 14 September 2021, at 3 p.m.

Chair: Ms. Villa Quintana

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

Consideration of reports of States parties to the Convention *(continued)*

Initial report of Brazil (continued) (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. **Mr. Bestetti Mallmann** (Brazil), replying to questions raised at the previous meeting, said that the National Policy for Finding Missing Persons had been written into law during President Bolsonaro's administration. It encompassed all types of disappearances, including enforced disappearance, even though that phenomenon was unlikely to occur in present-day Brazil. A robust institutional framework had been established in 2019 following a lengthy debate, and Decree No. 10622 had been adopted in 2021.
3. The Brazilian courts recognized that cases of enforced disappearance were not covered by the Amnesty Law.
4. Article 35 of the Convention stated that the Committee had competence solely in respect of offences of enforced disappearance which had commenced after its entry into force. Accordingly, a number of the questions raised at the previous meeting fell outside the scope of the Convention, which had entered into force for Brazil in 2016.
5. With regard to death certificates for disappeared persons, the Special Commission on Political Deaths and Disappearances dealt with cases of persons who had disappeared during the military dictatorship, and records of such cases were maintained in civil registry offices. Brazil had cooperated with the Netherlands and Bosnia and Herzegovina in identifying remains that dated from the 1970s. Thus, Decree No. 9759/2019 on the work of the Special Commission fell outside the scope of the Convention.
6. As no secret or clandestine graves had been created since the restoration of democracy, that issue also fell outside the scope of the Convention.
7. The judgment in the *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil* case dated from 2010 and had therefore been handed down long before the entry into force of the Convention.
8. With regard to progress in implementing the recommendations of the National Truth Commission regarding cases of enforced disappearance, the Commission's reports on such cases related solely to incidents that had occurred under the military dictatorship.
9. The Government had engaged in lengthy and painstaking action to support the realization of the right to truth, memory and transitional justice. It was willing to host an in-person or virtual meeting with Committee members to discuss the right to transitional justice in Brazil.
10. Act No. 13812 of 2019 defined missing persons as individuals whose whereabouts were unknown, regardless of the cause of their disappearance, until such time as they were found and positively identified on the basis of physical or scientific evidence. No official statistics were available as yet, but the National Register of Missing Persons would probably be operational by early 2022. It would include data from State Public Security Secretariats, the National Human Rights Ombudsman and the National System for Locating and Identifying Missing Persons of the Prosecutor's Office.
11. There was no indication that offences of enforced disappearance had occurred, at least on any significant scale, under the Brazilian democracy. Statistics were currently being compiled on missing persons and specific data would be provided to the Committee in the country's next report.
12. The Government was seeking to identify the causes of disappearance in general and procedures for resolving the associated problems, for instance through the adoption in 2021 of Decree No. 10622 regulating Act No. 13812 of 2019 on the National Policy for Finding Missing Persons. The Decree had led to the establishment of the National Commission for Finding Missing Persons, which was an advisory body composed of representatives of the

Federal Government, the executive branch, the Federal Prosecutor's Office, the Public Defender's Office, the scientific police force, civil society and victims' family members. The Commission had also established 16 working groups. Psychosocial and legal support, and death certificates, were provided to victims' family members, and human rights training courses focusing on enforced disappearance were organized.

13. Brazil had launched numerous local, State-level and international initiatives on missing and disappeared persons. Forensic projects encompassed forensic medicine, genetics, biometric data, facial recognition and anthropological examinations. A scene-of-crime working group had also been established.

14. A basic premise of the National Policy for Finding Missing Persons was that all federal states and districts should participate in its implementation. It was essential to take stock of the situation on the ground so that implementing entities in municipalities and states could operate as effectively as possible. The application "SOS Desaparecidos", which had been rolled out by the National Human Rights Ombudsman, would be further developed to assist the general public and law enforcement officials in finding missing persons. Steps were also being taken to establish an Amber Alert entity based on the child abduction alert systems that had been operating for some time in the United States and other countries. A missing persons hotline had been set up and the general public could report persons missing through a number of social networks. Training courses were organized for public officials, law enforcement officials, social workers and health-care workers to promote cooperation in resolving all such cases.

15. **Mr. Pereira Carvalho** (Brazil) said that declarations of absence were regulated by article 6 of the Civil Code and by the Code of Civil Procedure. Several formalities had to be completed before such a declaration could be issued, including an examination of the family interests of missing persons. The Civil Code mentioned some of the reasons for which people went missing, for instance natural disasters, such as the dam collapse in Minas Gerais in 2019. The Code likewise established deadlines for obtaining a declaration of absence.

16. The declaration of absence procedure did not affect the search for missing persons and did not interfere with the civil procedure for succession in the event that they had been declared deceased. Family members were able to inherit the property of the missing person with a declaration of absence, which safeguarded the family's rights in that regard. If a missing person could not be found after a declaration of absence had been issued, a certificate of presumed death could be obtained once the procedure provided for under the Code of Civil Procedure had been completed. The inheritance procedure could begin in parallel following the registration of the presumed death at a civil registry office.

17. The work carried out by the Special Committee on Political Deaths and Disappearances to identify the skeletal remains of around 200 people found at the Perus cemetery was in its final stages. Only three sets of remains had been linked to offences of enforced disappearance committed during the military dictatorship.

18. **Mr. Laboissiere Ambrósio** (Brazil) said that the country's databases contained the genetic profiles of approximately 1,500 family members of missing persons. In 2019, the Ministry of Justice and Public Security had launched a programme to expand the national network of databases. The Ministry had contributed equipment and planned to allocate a budget of around R\$30 million to the national network in 2022. In May 2021, the Government had launched a campaign to collect DNA samples from the families of missing persons, free of charge, at 230 locations across the country. Information about the campaign had been published by the country's main media outlets and was available on the Ministry's website. The genetic data gathered was not checked against criminal databases so as not to dissuade families from taking part. The number of registered skeletal remains and genetic profiles in the database had both tripled since 2018. Following the launch of the campaign, 33 missing persons had been identified in addition to the 87 who had been identified previously.

19. Although the National Commission for Finding Missing Persons had encouraged state authorities to incorporate the genetic profiles of skeletal remains into the national database, they could not be compelled to process those remains. The Ministry of Justice and Public

Security assisted states by providing them with funding and equipment, but too few staff were available to process the large number of samples to be gathered. Assistance agreements had been signed with various international organizations, including a memorandum of understanding with the International Committee of the Red Cross, and a data management company had been hired to help compile the National Register of Missing Persons. Information on missing persons and remains was publicly available on the Ministry's website and a report on the database was published every six months.

20. **Ms. Rangel Assumpção** (Brazil) said that only six states were still imposing pandemic-related restrictions on visits to persons deprived of their liberty. The situation was gradually returning to normal in the remaining states. All persons deprived of their liberty had the opportunity to contact their legal counsel through videoconferencing or other remote means. Restrictions imposed following the outbreak of the pandemic had resulted in relatively few deaths within the prison system. Indeed, the death rate in prisons due to COVID-19 was seven times lower than that recorded among the general public. An initiative to collect biometric data from all detainees and to ensure that all detainees had civil identification documents had been launched in collaboration with the National Justice Council.

21. **Ms. Lamego de Teixeira Soares** (Brazil) said that she was unaware of any complaints concerning illegal adoption within the past decade. Since 1999, international adoption procedures in Brazil had been regulated by the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which had equipped the country with a legal framework at the different levels of government. For example, adoption committees had been established within the court system in all states. The adoption process was stringent: prospective parents had to meet a number of criteria, including formal registration in their country of origin, and were not allowed any contact with the child until they had passed an initial assessment. The Public Defender's Office registered the personal and genetic data of prospective parents and transmitted them to the adoption authorities.

22. She had been surprised to receive questions from the Committee regarding illegal adoptions, of which there were no cases in Brazil. When a child was given up for adoption, the first step was to take the matter to the state courts, at which stage the Public Prosecutor's Office and the Public Defender's Office assessed the situation before the child was removed from the custody of his or her family. Attempts were then made to place the child with his or her biological relatives or, failing that, with adoptive parents in the child's city of residence. Only once a series of very strict criteria had been met were children eligible for international adoption. Brazil had a model adoption system and other countries sought its advice in such matters. There was no national register of illegal adoption or child abduction cases.

23. **Ms. Kolaković-Bojović** (Country Rapporteur) said that a State party's obligation to comply with the Convention began after it had deposited its instrument of ratification, which Brazil had done in 2010. The State party's failure to fulfil its obligation to conduct effective searches and investigations into all cases of enforced disappearance was therefore regrettable.

24. She wished to know which institution organized training on the Convention and which categories of State official provided and received such training. She would also like to hear more about the training courses themselves, such as when they had been developed and how many people had taken them.

25. She wondered whether victims of enforced disappearance were able to claim compensation during criminal proceedings or whether they had to institute civil or administrative proceedings to that end. It would be useful to know how long compensation proceedings typically lasted, how much compensation was awarded on average and whether the compensation awarded was proportionate to the harm suffered by victims. She would be interested to learn which bodies were responsible for providing psychological and social support to victims. Were they State institutions, non-governmental organizations (NGOs) or both? It would be helpful if the delegation could describe the procedure by which victims could gain access to psychological and social support and indicate how many victims received such support every year. She would also like to know whether there was a programme in place to help victims' associations to navigate the memorialization process.

26. Lastly, she wished to know whether there was a procedure for annulling adoptions. If so, she would like to learn under what conditions an adoption could be annulled and what steps had to be followed.

27. **Mr. Diop** (Country Rapporteur) said that the Committee had received reports of a case where a former police officer had been convicted by a São Paulo court for an offence of enforced disappearance during the military dictatorship, in which the judge had found that the statute of limitations did not apply because it was a continuous crime. He would be interested to hear the delegation's comments on that case, especially since the conviction appeared to run counter to the Federal Supreme Court ruling upholding the enforceability of the Amnesty Law. The delegation might also explain the extent to which the Rome Statute of the International Criminal Court could be used to try crimes against humanity under article 5 of the Convention.

28. **Mr. de Frouville**, noting the concerns raised by the Committee on the Rights of the Child in its 2015 concluding observations regarding reports of irregular adoption due to corruption among officials administering adoptions (CRC/C/BRA/CO/2-4, para. 47), said that he wished to know what measures had been taken to investigate cases of illegal adoption and to shed light on reports of the falsification of identities of children who had been illegally adopted in violation of article 25 of the Convention.

29. **Mr. Albán-Alencastro** said that the State party had raised the issue of the Committee's jurisdiction *ratione temporis*, indicating that the Convention had entered into force for Brazil in 2016. However, according to the State party's own national legislation, namely, Decree No. 8767/16 of May 2016, the Convention had entered into force for Brazil in 2010. He would appreciate clarification of the State party's position in that regard.

30. The Committee had access to reports from the Brazilian national mechanism for the prevention of torture regarding recent incidents in prisons during which prisoners had died or disappeared. It was alleged that, during one such incident in Alcaçuz prison in 2017, around 100 inmates had died and 71 inmates had disappeared. He wished to know what measures the Federal Government had taken to act on reports of possible cases of enforced disappearance submitted by the national preventive mechanism.

31. **The Chair** said that the Committee would appreciate an update on the status of the case of Mr. David Fiúza.

32. **Ms. Janina** said that the State party's lack of information regarding instances of enforced disappearance in Brazil was not tantamount to evidence that such incidents never occurred in the country. She would appreciate further information on the legal framework governing the responsibility of superior officials in alleged cases of enforced disappearance.

The meeting was suspended at 4.40 p.m. and resumed at 4.45 p.m.

33. **Mr. Bestetti Mallmann** (Brazil) said that Brazil had ratified the Convention in 2010. Article 35 of the Convention provided that the Committee had competence solely in respect of offences of enforced disappearance which had commenced after the entry into force of the Convention. The Committee could not point to the continuous nature of enforced disappearance, which the State party recognized, as justification for ignoring the provisions of article 35. The delegation would provide answers to the Committee's question to the best of its ability but only in accordance with the Convention.

34. With regard to reparation, victims and their families could apply for compensation for damages through the civil courts, even in cases where no conviction had been secured in the criminal courts. Regarding social support, tens of millions of requests for assistance were handled by the municipal, state and federal authorities every year. There were a number of institutions that provided assistance to families in need. It would not be possible to provide a full overview of the support system, which was very complex.

35. Training was dispensed by one of the working groups set up under the National Policy for Finding Missing Persons. In partnership with the National School of Public Administration, appropriate training would be provided to all public officials whose work touched upon the issue of enforced disappearance, including public security and law enforcement officials and health-care workers. The training would be compulsory but would

not specifically address the issue of enforced disappearance, given the lack of recent cases involving that offence.

36. **Ms. Lamego de Teixeira Soares** (Brazil) said that adoption was not an administrative process; both the domestic and the international adoption procedures were judicial in nature. Domestic adoption was regulated by the Children and Adolescents' Statute, while international adoption was governed by the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which had been applied in Brazil since 1999. Judicial authorities competent to deal with intercountry adoption had been established in the court systems of every state. Any foreign national who wished to adopt a Brazilian child was required to receive authorization from the courts in his or her country of origin. The executive branch did not intervene in the intercountry adoption process at any point; it merely monitored the activities of accredited entities that provided support to foreign applicants. She was unaware of any cases of intercountry adoption involving Brazil that fell short of the standards established in the 1993 Hague Convention. Persons who wished to adopt a child through the domestic adoption procedure were required to submit an application to the Public Defender's Office. The courts alone were competent to make the final decision on applications for adoption. Children could only be removed from their family's custody by judicial decision. In such cases, the child was assigned a guardian ad litem and placed on the register for adoption, which could be consulted only by the Public Prosecutor's Office and the judicial authorities. Brazil was an active participant in the Hague Conference on Private International Law and had ratified seven Hague conventions, in relation to which it submitted regular reports to the competent international authority. No complaints had been lodged with regard to Brazil within the context of the Hague Conference; any complaints that were received would be investigated accordingly.

37. **Mr. Laboissiere Ambrósio** (Brazil) said that the Ministry of Justice and Public Security had organized a training course on search techniques for officials of the Single Public Security System. Around 2,000 officials had already taken the course. Further courses on techniques for assisting the families of victims and the legal aspects of the search for missing persons would be organized in late 2021. The Ministry had signed a memorandum of understanding with the International Committee of the Red Cross under which training would be provided to public security officials on assisting the families of victims and forensic investigation techniques.

38. **Ms. de Sousa Machado Neris** (Brazil) said that she wished to reiterate that Brazil was committed to implementing the Convention and to combating all forms of human rights violations. The Government had taken a series of measures to improve its search techniques, its victim support programmes and its data monitoring, networking and information exchange processes. It hoped to continue to improve its public policy in areas related to enforced disappearance.

39. With regard to the process of designating a national human rights institution, the National Council of Human Rights was currently attached to the Ministry of Women, Family and Human Rights, which could raise understandable concerns with regard to its independence; nonetheless, it had fulfilled its mandate successfully since its establishment.

40. In Brazilian law, there was no statute of limitations for the investigation of disappearances, which had to continue until the missing person had been located. The Single Social Assistance System was responsible for offering psychosocial support to victims of violence, including victims of enforced disappearance; such support was available in 5,570 municipalities. Where rights violations were identified during routine meetings, such as income assessments, citizens could be referred to one of the Specialized Reference Centres for Social Assistance, which were present in all municipalities with populations in excess of 20,000. Each of those centres had a team specialized in providing psychosocial support.

41. In the light of the information provided by Ms. Lamego de Teixeira Soares, she wished to set out some Brazilian legal premises. There was no administrative interference in decisions on whether minors could stay with their families, be placed in foster care, be placed in institutional care or, as a last resort, be placed on the National Adoption Register; it was a purely judicial decision. Keeping minors with their families was the priority; the other options were taken only in exceptional circumstances. Adoption was the last resort and was only

authorized following an assessment that it was in the child's best interests. The families wishing to adopt a child far outnumbered the children currently on the National Adoption Register. Prospective parents were carefully prepared and vetted before being assigned a child.

42. **Ms. Rangel Assumpção** (Brazil) said that all detained persons were entitled to a custody hearing; in view of the COVID-19 pandemic, it had been decided that, as a last resort, such hearings could be held via videoconference. The Government was not currently aware of any detainee being held without a judicial order. If the Government became aware of such a situation, it would take the steps necessary to address it.

43. Regarding Mr. Albán-Alencastro's question on incidents in prisons, she wished to clarify that there had been incidents in prisons in at least three states in 2017. On the specific case of Alcaçuz prison, the report by the national preventive mechanism contained a number of inaccuracies. Firstly, there had been fewer than 100 deaths; most of those inmates had actually escaped. Secondly, while the failure to update prisoners' paper judicial records had raised suspicions that 71 prisoners had disappeared, 60 had later been identified; the truth was that 11 had escaped. The Government was committed to identifying all the escaped prisoners. In 2019, the National Justice Council had decided that a single system of electronic records should be used to avoid future problems with paper records, which were difficult to check.

44. **Mr. Pereira Carvalho** (Brazil), responding to Mr. Diop's request for an explanation of the extent to which the Rome Statute could be used try crimes against humanity under article 5 of the Convention, said that Brazilian judges applied the law, just as in any other democratic country. As for the question about the São Paulo court finding that the statute of limitations did not apply because enforced disappearance was a continuous crime, he wished to point out that the judgment in question had nothing to do with the Federal Supreme Court. He wished to recall that in *Challenge to Breach of Fundamental Precept No. 153*, the Federal Supreme Court had declared the Amnesty Law to be valid and that it had thus remained in force; the position of the Federal Supreme Court on the Amnesty Law had not changed.

45. **Mr. Diop** said that he still had questions concerning the expulsion, refoulement or extradition of persons to a State where their human rights might be violated. It was his understanding that appeals against expulsion and refoulement decisions were lodged with the Ministry of Justice and Public Security, while appeals against extradition decisions were lodged with the Federal Supreme Court. The Committee wished to learn whether the Ministry's decisions could be appealed before any other body. It would also be useful to know whether appeals lodged with the Court had suspensive effect.

46. **Ms. Kolaković-Bojović** said that it was usual for delegations to familiarize themselves with reports received from civil society organizations prior to the dialogue with the Committee. By asking about rules and procedures in Brazil, the Committee was not seeking to undermine the Government's work, but to assess and support it; a uniform and equal approach was applied to all States parties.

47. **Mr. Rabelo** (Brazil) said that extraditions were subject to double approval: firstly, the Federal Supreme Court had to issue a judgment stating that all the legal requirements for extradition had been met; secondly, the President of Brazil needed to take the final decision on the extradition. In order for the legal requirements for extradition to be fulfilled, the requesting State needed to submit a diplomatic request; the individual had to be accused of an act that was a criminal offence in Brazil carrying a sentence of at least 2 years' imprisonment, as opposed to an administrative offence; and the period of limitation applicable to the offence should not have lapsed in either country. Persons accused of political crimes or thought to be under threat of political or ideological persecution in the requesting State were never extradited or expelled.

48. **Mr. Bestetti Mallmann** (Brazil), responding to Ms. Kolaković-Bojović's remarks, said that the delegation had read and analysed the reports and information provided by civil society organizations. Regrettably, they were of poor quality; it was impossible to comment on events that had never taken place.

49. **Ms. de Sousa Machado Neris** (Brazil) said that President Bolsonaro's Government remained committed to implementing the National Policy for Finding Missing Persons. According to figures provided by the Federal Police, some 70 per cent of missing persons were missing out of choice. Some 30 per cent of disappearances were considered to be related to crime. The "Yellow September" campaign had been launched to address all forms of self-harm and suicide, which were often the reason for disappearances. The Government would ensure that the relevant State institutions spared no effort to locate missing persons, including any foreign nationals, migrants or refugees.

50. The information available to a State often influenced its public policies. With that in mind, the Government wished to expand its monitoring activities and to improve how it collected and consolidated data, which had been a recurrent theme during the interactive dialogue with the Committee. However, data on disappearances past and present, and the sources of those data, had to be questioned, as did judicial records inherited from previous generations.

51. Representatives of the Brazilian justice sector searched tirelessly for missing persons and had successfully used the law to resolve many disappearances. The work of the authorities charged with identifying the handful of public officials who failed to discharge their duties appropriately should also be acknowledged. The Government was seeking to set the standard for national policies for finding missing persons.

The meeting rose at 6 p.m.