



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General  
28 April 2023

Original: English

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## Committee against Torture

Seventy-sixth session

### Summary record of the 1980th meeting\*

Held at the Palais Wilson, Geneva, on Wednesday, 19 April 2023, at 10 a.m.

*Chair:* Mr. Heller

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\* No summary record was issued for the 1979th meeting.

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*The meeting was called to order at 10 a.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention (continued)**

*Second periodic report of Brazil (CAT/C/BRA/2; CAT/C/BRA/Q/2)*

1. *At the invitation of the Chair, the delegation of Brazil joined the meeting.*
2. **Mr. de Almeida** (Brazil), introducing his country's second periodic report (CAT/C/BRA/2), said that the report had been prepared by the previous Government and did not honestly reflect the reality of the practice of torture in the country. Institutionalized violence, directed in particular against black Brazilians and other marginalized groups, was the consequence of violations that dated back to the colonial period. Even now, police violence was still chiefly directed against black Brazilians, who constituted more than half the country's population. From 1964 to 1985, a military dictatorship had persecuted, tortured and killed campesinos, Indigenous Peoples and political dissidents.
3. Brazil was currently in the process of reconstructing its human rights policy, following a period in which the country had been led by a president who had revered torturers and endorsed the abuse of power by the public authorities. A new chapter in national history had now been opened, and the first task facing the current Government was that of recognizing the challenges that the country faced. The struggle for truth, memory and justice, launched in the wake of the dictatorship, was far from being won. The priorities of the new Government included reviewing the composition of the Amnesty Commission, relaunching the Special Commission on Political Deaths and Disappearances and acting on the conclusions of the National Truth Commission, which had completed its work in 2014. During the recent "Never Again Week" to mark the 1964 coup that had led to two decades of dictatorship, he had met relatives of persons who had disappeared or been killed during that time, many of whom had been subjected to torture.
4. The prison system stood in dire need of reform and, in particular, of humanization. To that end, the Ministry of Human Rights and Citizenship had recently launched the "Mandela Project", which aimed to address systematic human rights violations in the country's prisons, in line with international norms including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the American Convention on Human Rights. The Project envisaged intersectoral cooperation with civil society groups to promote the human rights of persons deprived of their liberty, protect them against torture and guarantee their right to due process.
5. The Government was especially concerned about children and adolescents who were deprived of their liberty. Although the rights of children and adolescents were comprehensively protected under national legislation, they frequently faced violence and violations of their rights in the socio-educational system. The Government was currently taking steps to re-establish an intersectoral commission that had previously been responsible for oversight of the socio-educational system. The commission had played an important role in setting socio-educational policies for children in conflict with the law, but it had been abolished by the previous Government. In the current context of national political renaissance, the delegation looked forward to engaging in an honest and constructive dialogue with the Committee and to receiving the Committee's views and recommendations, which it would use to reinforce its commitment to combating torture.
6. **Ms. Maeda** (Country Rapporteur) said that she appreciated the frank and self-critical approach taken by the State party in its periodic report. Brazil was to be commended for having ratified or acceded to most of the United Nations core human rights treaties and for extending a standing invitation to all special procedure mandate holders of the Human Rights Council. While welcoming the creation of the Federal Public Defender's Office, she regretted that it was not accredited as a national human rights institution by the Global Alliance of National Human Rights Institutions (GANHRI) and wished to know if any plans were afoot to establish such an institution in accordance with the Paris Principles.
7. She welcomed the enactment of Law No. 12,847 of 2013, establishing the National System to Prevent and Combat Torture, which encompassed the National Committee to

Prevent and Combat Torture and the National Mechanism to Prevent and Combat Torture. She would, however, appreciate clarification of how the National Committee and the National Mechanism worked in practice. She was concerned that court rulings governing visits to detention facilities were preventing the National Mechanism from exercising its mandate to the full and that a lack of human and financial resources meant that it was operational in only four states. For its part, the National Committee did not appear to have operated since 2021. In the light of those concerns, she would be grateful if the delegation would provide information on measures being taken to ensure that the National System to Prevent and Combat Torture had sufficient support and resources to function independently, effectively and without fear of reprisal.

8. She was concerned about a ruling of the Superior Court of Justice according to which the practice of torture by police officers amounted to “an act of administrative improbity” and wished to know whether such acts were equivalent to crimes. She would also like to know what actions Brazil was taking to ensure that crimes against civilians committed by military personnel were tried by civilian courts, particularly in the light of reports that Law No. 13,491 unreasonably extended the jurisdiction of military courts to cover crimes of torture committed against civilians. Although the Superior Court of Justice had ruled that offences committed by officers who were not acting in their official capacity did come under the jurisdiction of the civilian courts, the overall perception of increased impunity and lack of accountability among members of the military needed to be addressed. In that connection, the Committee had been disappointed to learn that the Brazilian Supreme Court had ruled that the amnesty law (Law No. 6683 of 1979) was constitutional and that the Law remained in force and had been cited by courts when dismissing torture charges against former agents of the military dictatorship. The statute of limitation had also been cited in such cases. She would like to hear what steps were being taken to prevent torture from being subject to a statute of limitations, amnesty or other similar provision that could lead to impunity. It would also be interesting to know whether perpetrators of torture could be held civilly liable, even if they had not been prosecuted or convicted.

9. The Committee would be interested to know what safeguards were in place to ensure that arrested persons were promptly informed of their rights and of the charges against them in a language they could understand; how their right to consult a lawyer, to notify a relative of their arrest and to challenge the lawfulness of their detention was guaranteed; and whether they received a confidential medical examination by a physician of their choice. Did the authorities keep detention registers up to date? What steps were taken to provide effective legal assistance and to ensure that the duration of police custody did not exceed 48 hours?

10. She commended the State party for enacting Law No. 13,167 of 2015, which established criteria for separating convicted persons in places of deprivation of liberty. However, the Law failed to tackle the underlying problem of prison overcrowding. According to reports, in fact, some places of detention had occupancy rates in excess of 200 per cent, and the problem of overcrowding was being exacerbated by the State party’s current anti-drug policies, which had increased incarceration rates, especially for women. She recognized, nonetheless, that the use of pretrial detention hearings was significantly reducing the amount of time persons were spending in police custody. In that context, she would appreciate information on any structural reforms being contemplated to further reduce overcrowding in places of detention and to improve prison conditions more generally, as well as any plans to establish alternative measures to imprisonment in conformity with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), including in the context of drug crimes.

11. The Committee was concerned about the living conditions of children and adolescents deprived of their liberty and about reports that they suffered torture and abuse, including sexual abuse. She wished to know what was being done to stop such abuse; to prevent corporal punishment, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); and to provide human rights training to persons who worked with juvenile offenders. She would also like information on the number of recorded cases of abuse and ill-treatment of children in detention, the number of prosecutions of perpetrators and the penalties handed down.

12. The Committee would like to hear about any extradition proceedings related to the crime of torture and about extradition agreements concluded with other States. It would also like to know what action had been taken to ensure that the Convention could be invoked as a legal basis for extradition when the State received an extradition request from another State with which it had no agreement. In addition, the Committee would appreciate clarification regarding the basis for the claim made in the periodic report that no one had ever been extradited from Brazil to a country where they risked being subjected to torture. Had the Government received diplomatic assurances in that regard and had subsequent monitoring been conducted? It would be helpful to know if universal jurisdiction in respect of the crime of torture was recognized under national law and to hear details about any criminal proceedings conducted in the country's courts on the basis of universal jurisdiction. In that connection, the Committee would appreciate an explanation of the correlation between article 5 of the Constitution and article 5 (2) of the Convention.

13. She was looking forward to hearing about measures to respond to a reported lack of documentation on cases of torture, ill-treatment and death in custody. Training for forensic medical staff remained a concern, particularly given the disquiet expressed by the Special Rapporteur on torture in 2016 about the independence of forensic medical examiners and a lack of training on international forensic medical standards, such as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). She welcomed the introduction of a new protocol to be followed in forensic examinations in cases of alleged torture. It was particularly commendable that the protocol was based on the Istanbul Protocol; however, the Committee wished to know what measures were in place to ensure that medical examinations in cases of alleged torture were carried out only by specifically trained doctors. In that connection, she wished to commend the State party for a series of institutional improvements that had led to capacity-building programmes for law enforcement personnel, prosecutors, judges, prison staff and doctors. She hoped the delegation could provide updated information about the status of those programmes and about how they incorporated the issue of torture prevention.

14. The Committee was deeply concerned by reports of the excessive use of force by law enforcement and military personnel against Brazilians of African descent. According to the State party's own statistics, more than 84 per cent of victims of police violence in 2021 had been Brazilians of African descent. In fact, violence against Brazilians of African descent was so prevalent that it should be treated as a public health crisis. Moreover, there was a worrying trend of impunity for the officers involved in the violence. The Committee would like to be informed of steps taken to ensure that all law enforcement personnel received effective and frequent training on the importance of proportionality, legality and necessity in the use of force and on standards relating to racial equality and to ensure that less-lethal weapons were deployed during policing activities, particularly in densely populated areas, including those where persons of African descent were concentrated. The Committee would also welcome information on action taken to strengthen independent oversight of law enforcement agencies, to ensure prompt and effective investigation of all cases where the use of force by law enforcement officials resulted in the death or injury of civilians, and to amend laws that were hindering accountability in such cases.

15. The Committee wished to know what specific measures were taken to ensure that rules and instructions governing custody and interrogation were duly respected. It would also appreciate information about any plans to review those rules and about how civil society could be involved in the review process. The Committee was concerned by reports that in-person pretrial detention hearings had not yet resumed, although all restrictions relating to the coronavirus disease (COVID-19) pandemic had been revoked in November 2022. Another source of concern was the differentiated disciplinary regime used in prisons, which was reportedly harsh, degrading and inhuman and which could, moreover, be imposed practically indefinitely. She hoped the delegation could provide data on the number of persons to whom that regime applied, disaggregated by ethnic origin, age, sex and type of offence, and indicate whether the regime was subject to any legal review or oversight.

16. In 2016, the Special Rapporteur on torture had reported that the country's socio-educational centres for children in conflict with the law seemed, in practice, to function

similarly to adult prisons and had expressed concern at government plans to lengthen the maximum time of detention in such centres from 3 to 10 years. The Committee was anxious to know whether the centres had sufficient financial, technical and human resources and whether detained children had access to educational, recreational and vocational services. More generally, it would be useful to learn more about the State party's efforts to meet the needs of women and minors in detention.

17. Lastly, the Committee would like disaggregated statistical data on inter-prisoner violence and on deaths in custody. It would also like to know how those deaths were investigated and what measures were taken to prevent similar cases from occurring in the future. Information on the procedure for informing relatives of the deceased and providing compensation would also be appreciated.

18. **Mr. Liu** (Country Rapporteur) said that Brazil had made great progress in strengthening the rule of law and protecting human rights. He particularly wished to commend the State party for its efforts to promote a social culture against torture and enhance public understanding of human rights violations such as domestic violence. Nonetheless, formidable challenges remained. Brazil had the third highest number of incarcerated persons in the world and there were persistent concerns about the militarization of law enforcement and the privatization of prisons. Discrimination against Indigenous Peoples and persons of African descent needed to be eliminated, and policies to combat serious crimes such as drug trafficking and human trafficking were in serious need of review.

19. The Committee was aware that the State party lacked an adequate system for collecting and collating data on accusations, investigations and convictions relating to torture by public officials. That was of particular concern inasmuch as, according to the periodic report, 22 per cent of accused persons suffered some form of violence at the moment of arrest. He therefore wished to know whether the Government intended to establish a national database on allegations, investigations and convictions relating to torture; what specific difficulties the authorities faced in producing such statistical data; and what assistance they required.

20. The Committee would welcome clarification regarding the use of punishment (*castigo*) cells, which were alleged to be places where prison inmates were subjected to severe corporal punishment and were held in cruel and inhuman conditions of detention, such as solitary confinement. The Committee also wished to know more about the investigative powers of the Public Prosecutors' Office and, specifically, whether the Office had the authority to investigate allegations of torture committed by the military police or other public officials. Could the delegation inform the Committee whether amendments to the Code of Criminal Procedure envisioned the institution of the judge responsible for procedural safeguards (*juiz das garantias*)?

21. The Committee was concerned by reports indicating that, in a quarter of cases where accused persons alleged that they had been assaulted, judges did not pursue the matter or seek further details. In most cases prosecutors apparently did not intervene and, when they did, more than half of the time it was with the intention of delegitimizing the allegation. In that connection, now that the restrictions relating to the COVID-19 pandemic had been lifted, it was vital to return to in-person hearings so that accused persons could report police violence to the courts in a secure environment.

22. Law No. 13,491 of October 2017 provided for an unprecedented expansion of military jurisdiction in the State party. The incompatibility of that legislation with international human rights standards had been criticized by a number of international human rights bodies. He would like to know whether there were any plans to amend Law No. 13,491 to bring it into line with international human rights standards.

23. Police ombudsman offices had been established throughout the country to monitor police activity. However, there were reportedly concerns regarding their lack of independence, close ties with the Government and lack of a dedicated budget. He would be interested to learn whether the State party had any plans to enhance the independence of those offices and grant them a dedicated budget. He would be grateful if the delegation would outline the legal or policy documents under which the police ombudsman offices exercised their functions, with an indication of whether their functional role, purpose and working

methods were clearly defined. Information would be welcome on the number of complaints against police officers, the investigations initiated, the number of complaints rejected and the results of the investigations conducted. It would also be useful to have further details regarding the measures proposed by the National Forum of Human Rights Ombudsmen on issues related to torture by police, public security and prison system officials.

24. He wished to know whether the State party had any plans to unify the procedures and standards for ensuring the confidentiality of complaints of human rights violations and protecting the identity of complainants. With regard to the Federal Program for Assistance to Victims and Threatened Witnesses, he would like to know how the procedure for offering protective measures to victims and witnesses was initiated and whether it was upon the request of the parties involved or decided by the institution that received the complaint; whether decisions to reject applications for protective measures could be appealed; which department was responsible for deciding upon and carrying out protective measures and what sorts of measures were implemented; what role non-governmental organizations played in implementing protective measures; and what results had been achieved. He would also welcome statistics on the protective measures taken.

25. The delegation was invited to provide updated information on steps taken to protect human rights defenders, including the establishment of programmes to protect them at the state level and information on any mechanisms to evaluate the effectiveness of such programmes. He wished to know whether the State party was planning to adopt a specific law to protect human rights defenders. In addition, it would be helpful to have updated information on the use of the motion for a change of jurisdiction in cases of human rights violations.

26. He wondered whether the State party might consider reopening the military archive in relation to events that had occurred between 1961 and 1988. The military dictatorship had been marked by widespread torture and killings, but perpetrators were protected by an amnesty law. He would like the delegation to explain how the State party planned to address the human rights violations perpetrated during the dictatorship and whether any prevention efforts were being made based on lessons learned from that period. It would be interesting to learn more about how Brazilian laws prohibiting the use of evidence obtained by illicit means were implemented. Could the delegation provide specific examples?

27. He would appreciate an explanation of why the rate of imprisonment of women was increasing more quickly than that of men. He wondered whether it might be related to the increase in human trafficking crimes and the incarceration of victims of trafficking. He would welcome statistical information and examples of assistance measures for victims of human trafficking and the results of those measures. The delegation was invited to indicate the strategy and any measures taken to stop trafficking in children and assist children who had survived trafficking. It would also be useful to learn whether the current system for collecting information on trafficking gathered and mapped disaggregated data on victims, motives for the crime and other information that could inform the development of effective policies.

28. Reports received by the Committee indicated that legal abortion services were not available in a large part of the country and that rates of pregnancy and rape among young adolescent girls were high. Those data indicated a pattern of forced pregnancy that might amount to systematic gender-based torture perpetrated against women and girls. He would welcome clarification of the situation from the delegation. He wondered whether the State party might consider reforming its laws and policies in line with the 2022 World Health Organization guidelines on abortion care.

29. He invited the delegation to comment on reports that large numbers of children in a street situation had been killed and that many had also experienced or were highly vulnerable to sexual violence and exploitation, torture, enforced disappearance, recruitment by gangs, and drug and substance abuse. He would also like to hear the delegation's comments on reports that children in street situations had been arbitrarily placed in institutions for young offenders without the judicial authorizations required by law and that such children had experienced violence at the hands of police officers, including forcible eviction and the confiscation of their belongings. How did the State party plan to address those issues?

30. It would be useful to learn whether any measures had been taken to strengthen the implementation of the 2022 law that offered protections for children and adolescents against domestic violence. He wondered if any measures had been taken to guarantee the registration of births, including those of Indigenous children, and, if so, what results had been achieved.

31. While it was commendable that the International Labour Organization had identified the State party as an example of best practice in combating modern slavery, the issues of forced labour and other slavery-like practices remained complex. He wondered whether the State party was taking comprehensive measures to combat such practices, including by implementing severe penalties for forced labour in factories in rural areas. Information on the new national plan to address the issue would be appreciated.

32. The excessive use of force by police was reportedly widespread in the country and disproportionately affected Afro-Brazilians. He would like the delegation to outline the current situation in that regard and to indicate whether the State party had any plans to adopt legislation or regulations on the use of force by police. He would also like information on violence against Indigenous and Quilombola communities and on any measures taken to resolve problems such as gender-based violence and violence in the context of the protection of Indigenous lands and the defence of human rights.

33. The bill to amend the counter-terrorism law reportedly broadened the definition of terrorism and included provisions that could criminalize the activities of human rights defenders and civil society organizations. He would appreciate clarification in that regard. He also wished to hear about the progress made in investigating the human rights violations identified by the national preventive mechanism in psychiatric hospitals and providing remedies to victims.

34. He would like to know what measures had been taken to improve protection against attacks, including violent attacks by law enforcement officials, motivated by religious intolerance and to reduce impunity for attacks and discrimination against persons who practised Afro-Brazilian religions. He wondered what the State party was doing to combat corruption in criminal proceedings and places of deprivation of liberty and to prevent torture, ill-treatment and judicial injustice. He would like to have information on how the Government had upheld prisoners' right to health during the COVID-19 pandemic. Lastly, he would be interested in hearing what measures had been taken to address school exclusion, which had been exacerbated by the pandemic and which had left children at greater risk of ending up in a street situation.

35. **Mr. Touzé** said that he would like to know what specific action had been taken in response to two reports of the Inter-American Commission on Human Rights which made alarming allegations of ill-treatment of children detained in socio-educational centres.

36. **Ms. Racu** said that she would appreciate information about access to health care for juveniles in detention, including access to feminine hygiene products for girls. She wished to hear about juvenile detainees' access to a complaint mechanism and to know how the mechanism worked in practice. She wondered whether the staff in institutions where juveniles were detained were adequately trained and whether there were sufficient psychologists, teachers and, where necessary, psychiatric specialists. She would welcome more details on programmes for reducing violence in juvenile detention institutions. It would also be useful to have more information about the alternatives to detention applicable to minors and to learn whether the Government was considering expanding such alternatives.

37. She would be interested to hear the delegation's views on staffing levels and staff training in prisons. Information on the legislative and practical measures taken to protect prison officers from violence, including hostage-taking, would also be useful. She would appreciate clarification on the budget allocated to ensure well-motivated and appropriately salaried staff, including psychiatric and other medical staff, sufficiently trained in modern investigation techniques and in dealing with violent incidents, crowd control and human-rights based approaches.

38. She would also appreciate up-to-date statistics on femicide and sexual violence. It would be useful to know what measures had been taken to prevent gender-based violence, including domestic violence, and what progress had been made in that regard, particularly in

terms of investigating cases and protecting survivors. She wished to know how many specialized shelters for survivors of domestic and gender-based violence were fully functional and able to provide services, including legal aid and psychosocial assistance.

39. **Mr. Tuzmukhamedov** said that he would like to know how many and what type of prisons were privately managed. He wondered whether such prisons employed their own guards and, if so, whether they were authorized to use equipment that could cause bodily injuries. If such private guards existed, he wished to know how the federal or state government oversaw their selection, training and performance, including compliance with international standards.

*The meeting was suspended at 12.20 p.m. and resumed at 12.40 p.m.*

40. **Mr. de Almeida** (Brazil) said that the former Ministry of Women's Affairs, Family and Human Rights had been restructured to create three new ministries, the Ministry of Racial Equality, the Ministry of Women's Affairs and the Ministry of Human Rights and Citizenship. The name of the latter indicated the Government's concern with the human rights dimension of citizenship, especially in relation to access to economic rights. For example, policies relating to homeless persons fell under the responsibility of the Ministry. The new Ministry had the objective of ensuring compliance with national and international human rights standards, instruments and laws.

41. The current Government had increased the human rights budget to rectify the deliberate underfunding practised by the previous Administration and would need to increase funding still further. It was committed to providing the necessary resources so that human rights policies could be implemented, not only by the Ministry of Human Rights and Citizenship but also by other ministries not directly concerned with human rights, such as the Ministry of Economic Affairs and the Ministry of Planning.

42. **A representative of Brazil** said that the transition to democracy following the period of dictatorship, when torture had been institutionalized, remained incomplete, and incidents of torture continued to occur. Transitional justice was thus a cornerstone of torture prevention for the future. Although the Supreme Court had ruled that the amnesty law for the perpetrators of crimes committed under the dictatorship was constitutional, other aspects of the transitional justice system ensured that they were held to account, through both criminal and civil proceedings.

43. Further measures taken included institutional reforms, public policies and truth and memory measures. A number of recommendations of the National Truth Commission, including the establishment of torture prevention mechanisms, had been implemented. The Government had relaunched the Amnesty Commission and the Special Committee on Political Deaths and Disappearances, which provided reparations to the families of victims of human rights violations. Additional accountability measures had been taken as part of the "Never Again Week" organized by the Ministry of Human Rights and Citizenship.

44. **A representative of Brazil** said that, in addition to the National Committee to Prevent and Combat Torture and the National Mechanism to Prevent and Combat Torture, the national torture prevention system included the National Council on Criminal and Prison Policy and the National Secretariat for Prison Policy. The Ministry of Human Rights and Citizenship was responsible for overall coordination of torture prevention efforts at the federal level and worked to ensure that state-level mechanisms had the necessary administrative structure and budgets to fulfil their mandates independently. The Ministry also organized national conferences for the exchange of experience and best practices.

45. State-level torture prevention committees had been established pursuant to laws or decrees in 15 of the country's states. Seven of them did not meet the minimum criteria for effective operation established by the federal Government, namely the organization of frequent periodic meetings, the publication in the official gazette of the members' names and the establishment of dialogue with the Ministry. Three states had established preventive mechanisms and one had an inactive mechanism that was currently being revived.

46. Inspection and monitoring bodies faced barriers to access to prisons. In addition to torture prevention committees and mechanisms, those bodies included public defenders, public prosecutors, community councils and the judiciary, all of which had faced access

restrictions imposed by local administrations, often without any legal basis, which had made it difficult to carry out their inspection mandates.

*The meeting rose at 1 p.m.*