



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

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## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Brazil under article 29 (1) of the Convention\*

#### I. General information

1. Please indicate whether the State party envisages making 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.
2. In relation to paragraph 20 of the State party's report (CED/C/BRA/1), please provide examples, if available, of case law in which any of the provisions of the Convention have been invoked before or applied by courts or other relevant authorities.
3. Please provide information on measures taken to ensure that the National Council of Human Rights is fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). In addition, please provide information about the competence of the Council in relation to enforced disappearances and about the activities it has carried out relating to the Convention.

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

4. Please provide up-to-date statistical information on the number of disappeared persons in the State party, disaggregated by sex, age, nationality, place of origin and racial or ethnic origin, specifying the date of their disappearance, the number of such persons who have been located and the number of cases in which there may have been some form of State participation within the meaning of article 2 of the Convention (arts. 1 and 12).
5. Given that the prohibition of enforced disappearance is absolute and cannot be derogated from, including within the framework of measures related to any public emergency and other exceptional circumstances, please provide information on steps taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and actions comply with its obligations under the Convention, in particular with the obligations set out in articles 12 and 24 (arts. 1, 12 and 24).
6. Please update the Committee on the current status of Bill No. 6240/2013, including the timetable envisaged for its adoption and entry into force, and explain what limitations are imposed by the "Amnesty Law" referred to in paragraph 36 of the State party's report. With respect to paragraph 53 of the State party's report, please clarify whether national legislation specifically criminalizes enforced disappearance as a crime against humanity as

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\* Adopted by the Committee at its eighteenth session (4 May and 7 September 2020).



defined in applicable international law and, if so, please provide information about its definition and the penalties foreseen for committing the offence (arts. 2, 4 and 5).

7. With regard to paragraphs 27 and 32 of the State party's report, please provide additional information about measures taken to investigate the commission of acts defined in article 2 of the Convention by persons or groups of persons acting without the authorization, support or acquiescence of the State, including in relation to land conflicts occurring throughout the territory and in particular in indigenous traditional territories, and to bring those responsible to justice. Please also specify the measures taken by the State party to prevent, investigate and sanction disappearances allegedly committed by mercenaries and by members of paramilitary groups and/or death squads. Please include statistical information on these issues (art. 3).

### **III. Judicial procedure and cooperation in criminal matters (arts. 8–15)**

8. In relation to paragraph 69 of the State party's report, and while the adoption by Congress of Bill No. 6240/2013 remains pending, please clarify whether the statute of limitations for criminal proceedings relating to cases of enforced disappearance would commence when the offence ceases, taking into account its continuous nature, or from the moment when the initial deprivation of liberty commences (art. 8).

9. With regard to paragraphs 24 and 40 of the State party's report, please clarify whether military authorities would be competent to investigate and/or prosecute alleged cases of enforced disappearance. In addition, please provide information about the guarantees that exist to ensure the independence and impartiality of courts, forensic institutions and all institutions in charge of the management of evidence, at both the local and state levels (art. 11).

10. With reference to paragraphs 95 to 97 of the State party's report, please provide additional information about the Federal Assistance Program for Victims and Threatened Witnesses (PROVITA), in particular: (a) the type of protection and reintegration measures that can be granted; (b) the procedures to grant them; (c) whether persons in need of protection participate in the process of determining the protection and reintegration measures; and (d) measures taken to ensure that the Program is fully functioning throughout the territory of the State party and that sufficient resources are allocated for its effective functioning. Please clarify whether, besides victims and witnesses, all the other persons listed in article 12 (1) of the Convention can benefit from the Program. In addition, please indicate whether there are any persons connected to cases of enforced disappearance who currently benefit from the Program (art. 12).

11. Please indicate whether national legislation provides for the possibility of competent authorities to initiate an investigation into an enforced disappearance even if there has been no formal complaint, and clarify, in reference to paragraph 48 of the State party's report, whether any administrative proceedings need to be fulfilled before initiating such an investigation. Please also report on measures taken to ensure in law and in practice that competent authorities: (a) have the powers and resources necessary to conduct the investigation into allegations of enforced disappearance effectively, including access to the documentation and other information relevant to their investigation; (b) can have access to any place of detention or any other place where there are reasonable grounds to believe that disappeared persons may be detained; and (c) have access to relevant documentation, including that belonging to the armed forces (arts. 12 and 24).

12. Please report on measures taken to ensure that persons suspected of having committed an enforced disappearance are not in a position to influence the progress of an investigation. In particular, please indicate whether: (a) the law provides for suspension from duties, from the outset and for the duration of an investigation, when the alleged offender is a State official; and (b) there are any mechanisms in place to ensure that law enforcement authorities or security forces do not participate in the investigation into an allegation of enforced disappearance when one or more of their officials are suspected of having been involved in the commission of the offence (art. 12).

13. In relation to paragraph 98 of the State party's report, please indicate whether the National Ombudsman's Office has received any complaints of cases of enforced disappearance comprising the three constitutive elements of the offence as specified in article 2 of the Convention since the entry into force of the Convention for the State party (i.e. 29 December 2010) and, if so, please provide information on measures taken in that respect and their outcome, including in terms of ensuring accountability (art. 12).

14. In relation to paragraph 33 of the State party's report, please clarify whether the decision to convict the police officers for the enforced disappearance of Amarildo Dias de Souza is final and provide information about measures taken, and their results, to search for and locate him. While taking note of the information provided by the State party that due to the lack of criminalization of enforced disappearance as an autonomous offence there is no systematic or formal data, the Committee would appreciate it if the State party could indicate whether, apart from the case of Mr. Dias de Souza, other cases of enforced disappearance comprising the three constitutive elements of the offence as specified in article 2 of the Convention have been reported since the entry into force of the Convention for the State party (i.e. 29 December 2010). In addition, please provide information about efforts undertaken, and the results thereof, to investigate the cases of enforced disappearance allegedly perpetrated between 1964 and 1985, bring those responsible to justice, search for and locate the disappeared persons and provide full reparation to the victims (arts. 12 and 24).

15. In relation to paragraphs 102 and 106 of the State party's report, please clarify whether the absence of an autonomous offence of enforced disappearance in national legislation may have an impact on requests for extradition received by the State party relating to cases of enforced disappearance (art. 13).

16. Please indicate whether, in accordance with national legislation, any limitations or conditions could be applied in relation to requests for legal assistance or cooperation in the terms set out in articles 14, 15 and 25 (3) of the Convention. Please also indicate whether the State party has made or received any requests for legal assistance or cooperation as provided for in those provisions (arts. 14, 15 and 25).

#### **IV. Measures to prevent enforced disappearances (arts. 16–23)**

17. Please provide detailed information about the mechanisms and criteria applied in the context of procedures for expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance. In this respect, please indicate whether, before proceeding to an expulsion, return, surrender or extradition, a thorough individual assessment on whether the person concerned is at risk of being subjected to enforced disappearance is undertaken in all cases. With respect to paragraph 100 of the State party's report, please clarify whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority, under which procedure and whether the appeal has a suspensive effect. In addition, please indicate whether the State party accepts diplomatic assurances when there is a risk that the person concerned may be subjected to enforced disappearance (art. 16).

18. Please provide information about measures taken to ensure in practice that all persons deprived of liberty are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided for under article 17 of the Convention, in particular access to a lawyer, the right to communicate with and be visited by family members, counsel or any other person of their choice, and to notify their relatives or any person of their choice of the deprivation of liberty and of the place in which they are being held, including in the context of the COVID-19 pandemic. In that connection, please indicate whether there have been any complaints or allegations regarding failures to observe those safeguards and, if so, please provide information on the proceedings carried out and their outcome, including sanctions imposed (art. 17).

19. With respect to paragraph 118 of the State party's report, please clarify: (a) the relationship between the database held by the National Justice Council, the National Database for the Monitoring of Prisons and the National Register of Arrested Individuals; and (b) whether these databases contain all the information listed in article 17 (3) of the Convention. Please indicate whether these databases contain information on all persons

deprived of liberty, regardless of the nature of the place of deprivation of liberty, such as establishments for juvenile offenders, camps or detention centres for migrants and psychiatric establishments. If that is not the case, please provide information about the records kept in other places of deprivation of liberty. In addition, please provide information about measures, including monitoring measures, taken to ensure that all records of persons deprived of liberty are filled out and updated without delay (art. 17).

20. In relation to the National Mechanism to Prevent and Combat Torture, please: (a) indicate whether the Mechanism can conduct visits to all places where persons could be deprived of their liberty, irrespective of the nature of such places; (b) report on the guarantees that exist to ensure that the Mechanism has immediate and unrestricted access to all places of deprivation of liberty and can conduct unannounced visits; and (c) provide information on measures recently taken that are weakening instead of strengthening the Mechanism and please specify what measures will be taken to ensure that the Mechanism has the resources necessary, including staffing, to carry out its mandate effectively and independently in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Please also report on progress made to establish preventive mechanisms in all states (art. 17).

21. With regard to paragraphs 121 and 123 of the State party's report, provide information on those provisions that 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. Also provide information on the measures taken to guarantee the protection of the people specifically mentioned in article 18 (1) of the Convention against any mistreatment, intimidation or punishment (arts. 17–18).

22. Please provide information on measures currently in place to ensure that persons deprived of liberty are released in such a manner as to permit a reliable verification that they have actually been released, regardless of the nature of the place of deprivation of liberty, and to guarantee the physical integrity of such persons and their ability to exercise fully their rights at the time of release, including in the context of the COVID-19 pandemic (art. 21).

23. With reference to paragraph 117 of the State party's report, please provide additional information about the content of article 655 of the Code of Criminal Procedure and elaborate on how it complies with article 22 of the Convention (art. 22).

24. In relation to paragraphs 125 and 126 of the State party's report, please clarify whether all civil and military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice, both at the federal and state level, receive specific and regular training on the Convention in the terms set forth in article 23 (1) thereof (art. 23).

## **V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)**

25. Please indicate whether domestic law provides for a definition of “victim” that is in line with that contained in article 24 (1) of the Convention. With reference to paragraph 139 of the State party's report, please also indicate: (a) who would be responsible for providing compensation and/or reparation under domestic law in the event of an enforced disappearance; (b) whether access to compensation and/or reparation is contingent on a criminal conviction; (c) whether there is a time limit for victims of enforced disappearance to gain access to compensation and/or reparation; and (d) whether any victims of enforced disappearance receive rehabilitation services from PROVITA or in the framework of the “witness clinics” project. In addition, please specify what measures have been taken to facilitate the work of families and relatives, human rights defenders and civil society organizations on enforced disappearances (art. 24).

26. Please provide detailed information about the “unified database on disappearances” referred to in paragraph 141 of the State party's report and indicate whether there exists a

repository of genetic data. With respect to paragraphs 143 and 144 of the State party's report, please also provide information about progress made to implement the recommendations made by the National Truth Commission in its final report with respect to enforced disappearances. In relation to the Special Commission on Political Deaths and Disappearances, please: (a) report on the efforts undertaken by the Special Commission and the progress it has achieved so far, particularly in terms of searching for disappeared persons and promoting the quest for truth, remembrance and reparation; (b) indicate whether the Special Commission has the resources necessary to carry out its mandate efficiently; (c) provide information about the results of the work carried out by the Perus working group; and (d) also provide information about the impact of Decree No. 9,759/2019 on the work of the Special Commission (art. 24).

27. Please further elaborate on the information in paragraph 138 of the State party's report relating to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives. In particular, please describe the procedure to be followed and its effects in matters such as social welfare, financial matters, family law and property rights. Please indicate whether the declaration of absence can influence the obligation of the State party to continue investigating an enforced disappearance (art. 24).

28. Please indicate whether, in Bill No. 6240/2013, it is envisaged to specifically criminalize the conduct described in article 25 (1) (a) of the Convention. Please also indicate whether any complaints concerning the wrongful removal of children in the terms described in article 25 (1) (a) of the Convention have been made since the entry into force of the Convention for the State party (i.e. 29 December 2010) and, if so, please provide information on measures taken, and their results, to locate those children and prosecute and punish those responsible (art. 25).

29. Please describe the legal procedures in place to review and, if necessary, annul any adoption or placement originating from an enforced disappearance. If such procedures have not been set up yet, please indicate whether there are any initiatives to bring national legislation into line with article 25 (4) of the Convention. With regard to paragraph 147 of the State party's report, please update the Committee about the measures being studied to find disappeared children and to promote and enable international adoption without risk, and the results thereof (art. 25).

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