

Impact of thematic reports presented by the Special Rapporteur on Torture vis-à-vis Brazil

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I. Report on Extra-custodial use of force

Summary: The Special Rapporteur presented his report to the 72nd session of the General Assembly (A/72/178), where he examined whether and in which circumstances the extra-custodial use of force by State agents amounts to torture or other cruel, inhuman or degrading treatment or punishment and how the prohibition of torture and ill-treatment applies to the development, acquisition, trade and use of weapons in law enforcement.

1. How relevant was the report to the national context?

It could be relevant. The report addresses an issue of major importance to the national context of Brazil.

There is robust evidence that increases in weapons are accompanied by increases in criminality, violence, homicides, suicides and accidental deaths.¹

Nonetheless, different normative measures were adopted in recent years to facilitate access to weapons in Brazil, despite popular concerns and popular rejection.²

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¹ Conti, Thomas V. “[Dossiê Armas, Crimes e Violência: o que nos dizem 61 pesquisas recentes](#)”. 5 October 2017 (a comprehensive literature review of 61 recent academic publications about weapons, crime and violence, including meta-analyses published in international, peer-review journals; the analysis encompasses studies with international scope and also with a national scope). See, also, Inter-American Commission on Human Rights. [Situation of Human Rights in Brazil](#). OEA/Ser.L/V/II. Doc. 9 February 12, 2021, paragraphs 347-352 (addressing arms control and human rights implications regarding Brazil); Figueiredo, Isabel; Marques, Ivan. “[Panorama sobre as armas de fogo no Brasil: um retrato possível a partir dos sistemas federais](#)”. In: FBSP – Fórum Brasileiro de Segurança Pública. *Anuário Brasileiro de Segurança Pública 2021*. São Paulo: FBSP, 2021, p. 146 (illustrating how increases in weapons and the deterioration of control mechanisms are, *inter alia*, linked to accidental deaths – “such as the death of 14-year old Isabele Guimarães, in Cuiabá, caused by a friend of the same age who was a shooter” amidst “recurrent irregularities in sport shooting activities that naturally tend to increase with the expansion of practitioners or the increase of private arsenals”).

² Kahn, Túlio. “[As Polícias e as Armas](#).” In: FBSP – Fórum Brasileiro de Segurança Pública. *Anuário Brasileiro de Segurança Pública 2021*. São Paulo: FBSP, 2021, p. 305 (“... the CNT/MDA Survey of February 2021 pointed out that 68.2% of Brazilians are against the decree that made the population's access to the purchase of firearms more flexible. In March 2019, IBOPE reported that 61% of the population is

A report based on governmental data indicate that there have been a “significant increase in the number of weapons [...] in the hands of private individuals and the speed at which this has been happening, as well as [a] flagrant deterioration of the control mechanisms for illegal weapons”.³

Facilitating the access to weapons is understood as conducive to criminal organizations having easier access to weapons and more strength – a favorable scenario for increases in the use of force by State agents.

2. What impact, if any, did the recommendations included in the report have (providing examples): a) on national case law and judicial practice; b) on national legislation and other parliamentary activities; c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures); d) on relevant mechanisms of investigation and accountability; e) on national activities such as research, public communication and awareness raising?

I have taken due diligence and found no mentions to the Report among national case and judicial practice; national legislation and other parliamentary activities; national regulations, policies, practices and procedures; relevant mechanisms of investigation and accountability; or national activities such as research, public communication and awareness raising.

II. Report on Migration-related torture and other cruel, inhuman or degrading treatment

Summary: The Special Rapporteur presented his report to the 37th session of the Human Rights Council (A/HRC/37/50), where he recalled the broad range of international legal obligations arising from the prohibition of torture and ill-treatment; examined the legal implications of these obligations for some of the most prevalent laws, policies and practices employed by States in response to irregular migration; and made recommendations with a view to supporting States in addressing irregular migration in full compliance with these obligations, avoiding protection gaps and preventing impunity for violations.

1. How relevant was the report to the national context?

The report could be relevant, for it also addresses a topic that is important to the national context of Brazil.

against making gun ownership more flexible and the DataFolha of July 2019 found that 61% of the population rejects the legalization of ownership and 73% of the possession of guns. (IBOPE, 2019; DataFolha, 2019; CNT/MDA, 2021).”).

³ Figueiredo, Isabel; Marques, Ivan. “Panorama sobre as armas de fogo no Brasil: um retrato possível a partir dos sistemas federais”. In: FBSP – Fórum Brasileiro de Segurança Pública. Anuário Brasileiro de Segurança Pública 2021. São Paulo: FBSP, 2021, p. 144. See, also, Inter-American Commission on Human Rights. *Situation of Human Rights in Brazil*. OEA/Ser.L/V/II. Doc. 9 February 12, 2021, paragraphs 347-352.

In its 2021 report about human rights in Brazil, the Inter-American Commission on Human Rights (IACHR) noted significant migrations to Brazil in recent years (especially of Bolivians, Haitians, Syrians and Venezuelans).

According to IACHR, good practices have been adopted by the State to promote the rights of migrants, including the actions undertaken under “Operation Welcome”. Nonetheless, the IACHR worried about the situation of migrants living on the street in Brazil while awaiting to be covered by these practices.⁴

Of course, these extremely vulnerable circumstances put these people under a greater risk of violations to their physical and moral integrity, as well as to other human rights.

Moreover, the IACHR observed that immigrants were facing difficulties in accessing essential documents and educational and health services, as well as employment, “as is the case of Haitian immigrants, who are exposed by the shortcomings of the process for granting humanitarian visas to illegal actions by intermediaries and human trafficking”.⁵

The IACHR also observed news of acts of discrimination and xenophobia against immigrants in Brazil, including “attacks on Venezuelans perpetrated by local citizens who destroyed the camp they were living in and set fire to their belongings” in Pacaraima, on August, 2018; “the presence of “armed patrols” seeking to intimidate Venezuelans, including member of the Warao indigenous people”, also on August, 2018; and “constant cases of violence and attacks against Venezuelans in Roraima, including at least two murders” in 2019; among other occurrences.⁶

The Commission was also told of “complaints about exploitation and discrimination in the workplace, in which immigrants and refugees reported working longer hours, or receiving lower wages, than the other, Brazilian workers, apart from being subjected to degrading working conditions and exhausting hours”; and of “migrant workers rescued from forced labor” and “conditions akin to slavery”, “some in a human trafficking context”.⁷

2. What impact, if any, did the recommendations included in the report have (providing examples): a) on national case law and judicial practice; b) on national legislation and other parliamentary activities; c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures); d) on relevant mechanisms of investigation and accountability; e) on national activities such as research, public communication and awareness raising?

I have taken due diligence and found no mentions to the Report among national case and judicial practice; national legislation and other parliamentary activities; national regulations, policies, practices and procedures; relevant mechanisms of investigation and accountability; or national activities such as research, public communication and awareness raising.

⁴ Inter-American Commission on Human Rights. [Situation of Human Rights in Brazil](#). OEA/Ser.L/V/II. Doc. 9 February 12, 2021, paragraphs 248-249.

⁵ *Ibid.*, paragraph 251.

⁶ *Ibid.*, paragraph 252.

⁷ *Ibid.*, paragraph 255.

III. Report reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Summary: On the seventieth anniversary of the Universal Declaration of Human Rights, the Special Rapporteur presented his report to the 73rd session of the General Assembly (A/73/207), where he examined the achievements made on the road to realizing the absolute prohibition of torture and ill-treatment since 1948; reflected on the primary challenges facing its universal implementation today and offered recommendations on how to overcome these challenges.

1. How relevant was the report to the national context?

The Report could be relevant, since the national context in Brazil is one of widespread practices of torture and ill-treatment, especially against afro-descendants and the poor.⁸ These practices are especially – though not only – found in prisons and comparable institutions, such as the juvenile “socio-educational” system and the so-called “therapeutic” communities.⁹

Prisons are largely overcrowded. The prison population skyrocketed as a result of “a crime policy bent on resolving security issues by prioritizing incarceration”. Incarcerations related to alleged drug trafficking, in particular, have contributed enormously to the increases in prison population, with sensitive impact on impoverished and marginalized communities.¹⁰

A significant portion of inmates are in pretrial detention, which is frequently adopted amidst a pervasive “pressure from the media and public opinion to combat insecurity using deprivation of liberty” and “inadequate legal defence”.¹¹

Custody hearings are a measure only “recently espoused by the Brazilian State”. Despite being “an important step forward”, they have not yet been implemented in all municipalities, and many obstacles to their proper realization have been reported, such as “lack of time and lack of privacy between the accused and his or her defence counsel; failure of the judicial authority to clearly explain the procedure at the start of hearings; insufficient coordination among judicial institutions; and the failure to provide translation and interpretation in cases involving migrants and members of traditional communities.” It has also been reported that there is a failure to investigate and address allegations of ill-treatment and torture are made during custody hearings.¹²

In overcrowded prisons with shortage of staff and no access to educational or work-related programs, persons deprived of liberty, “including even adolescents”, are kept in

⁸ *Ibid.*, paragraph 152, 162.

⁹ According to the cited IACHR 2021 Report on the situation of human rights in Brazil, “the State has been unable to guarantee the protection that institutionalized persons need” in the prison system, the socio-educational system, and the therapeutic communities”, “be those institutions public or private”, as “[c]ases of torture and maltreatment [...] have been documented in all of them”. “[T]he absence of State supervision in those facilities, the consequent self-governance and the deplorable detention conditions in deprivation of liberty institutions lead to clashes and tensions that create high levels of violence and harm both lives and personal integrity.” “[T]he deaths that have occurred form part of a systematic context of repeated acts of violence, which has prompted the granting of precautionary and provisional measures” by IACHR or by the Inter-American Court of Human Rights. *Ibid.*, paragraph 156.

¹⁰ *Ibid.*, paragraphs 160-162, 173.

¹¹ *Ibid.*, paragraphs 165.

¹² *Ibid.*, paragraphs 166-168.

“permanent confinement” or “prolonged confinement to cells”; “detainees spend practically all their time in their cells”, “in deplorable conditions”.¹³

“[H]ealth care services provided in Brazilian prisons” were classified by IACHR as precarious. In many units, women deprived of liberty “do not receive gynaecological care or even have access to necessary female hygiene products”, “[n]or do transgender women receive hormone treatment”. The IACHR was also informed “about a lack of proper food for pregnant women”.¹⁴

There has been reports of arbitrary body searches in prisons for adults and juvenile detention centres; “visitors, especially women, are in many cases reportedly forced to strip and expose their genitals, to bend over, and do ‘squats’”; there has been a “large number of complaints about invasive and humiliating searches of visitors, including older women, boys and girls”.¹⁵

The IACHR also took note of “the multiple and solid testimonies of torture and inhuman and degrading treatment meted out by prison guards” and stressed that, “according to several testimonies, most people, including adolescents do not report the practice of torture and ill-treatment in Brazilian prisons for fear of reprisals”. “[I]n the cases in which complaints of this kind are in fact registered, the Commission received information that the oversight authorities, like the Public Prosecutors’ Office (Ministério Público), were taking a lenient approach to these abuses and did not undertake the corresponding investigations.”¹⁶

Regarding the juvenile or “socio-educational” system, similar problems were reported, such as a preference “for public policy solutions based on deprivation of liberty, to the detriment of alternatives”; units lacking “appropriate multidisciplinary equipment for providing access to health and education services”; “overcrowding, deplorable health conditions, inadequate nutrition, ill-treatment, and torture.”¹⁷ Additionally, “there have been serious reports of acts of violence inside the units”, with routine deaths of adolescents as a consequence. Similarly, there have been “a large number of reports of violence perpetrated by State agents”. There are also “reports that adolescents who manage to use Ombudsperson mechanisms to report acts of violence are suffering physical and psychological reprisals, thereby making it even more unlikely that aggressors will be punished.”¹⁸

Brazil is a Federation of 27 States. Among them, only six have laws establishing a state-level mechanism to prevent torture, and only two effectively implement a mechanism of the sort. In addition to them, a National Mechanism was established at the federal government level. In recent times, however, “measures were adopted that hamper the work of these kinds of mechanisms, especially in the case of the National Mechanism”, where “some of the staff have been dismissed and there are virtually no resources to enable them to do their work”.¹⁹

¹³ *Ibid.*, paragraphs 174-175.

¹⁴ *Ibid.*, paragraphs 179-180.

¹⁵ *Ibid.*, paragraph 182.

¹⁶ *Ibid.*, paragraphs 187, 190, 214.

¹⁷ *Ibid.*, paragraphs 202, 204.

¹⁸ *Ibid.*, paragraphs 210, 211, 213.

¹⁹ *Ibid.*, paragraphs 191, 193 (where the IACHR manifests “its particular concern regarding Presidential Decree No. 9.831 of June 10, 2019, ordering the dismissal of members of the National Mechanism to Prevent and Combat Torture, thereby putting an end to execution of its mandate to protect persons deprived of liberty. That decision means that the aforementioned Mechanism will not function until new personnel is appointed, who, according to one of the provisions and contrary to current practice, will not be paid for their work.”).

2. What impact, if any, did the recommendations included in the report have (providing examples): a) on national case law and judicial practice; b) on national legislation and other parliamentary activities; c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures); d) on relevant mechanisms of investigation and accountability; e) on national activities such as research, public communication and awareness raising?

I have taken due diligence and found no mentions to the Report among national case and judicial practice; national legislation and other parliamentary activities; national regulations, policies, practices and procedures; relevant mechanisms of investigation and accountability; or national activities such as research, public communication and awareness raising.

IV. Report on Corruption-related torture and ill-treatment

Summary: The Special Rapporteur presented his report to the 40th session of the Human Rights Council (A/HRC/40/59), where he examined the relationship between corruption and torture or ill-treatment, outlined the predominant patterns of interaction between the two phenomena as well as their systemic root causes, and offered recommendations with a view to strengthening the protection against torture and ill-treatment in contexts affected by corruption.

1. How relevant was the report to the national context?

The national context of Brazil is marked by different instances of linkages between corruption and violence, the latter of which can also amount to torture and ill-treatment. The IACHR recently received reports about the emergence and expansion of criminal organizations or gangs engaged in illegal activities, especially drug trafficking, cargo theft, kidnappings, money laundering and others. They came to exercise control of territories – generally vulnerable, poor communities –, and this entails or triggers clashes with government security forces and rival gangs. Their expansion reportedly impacted “various aspects of public security, such as the way detention centres are run, corruption of government officials, control over socially vulnerable areas and communities, and violent deaths”.²⁰

There are also reports of the emergence and expansion of paramilitary groups known as militias – criminal gangs that comprise policemen or former police, whose origin lies in an alleged fight against drug traffickers. These militias exercise control over territories of poor communities and are generally engaged in illegal activities and acts of violence. Their control “takes advantage of the absence, or insufficient presence, of the State (and even of the market) in the provision of services for poor communities (such as transportation and butane gas for cooking).” The militias deliver such services in a “despotic” manner, “at exorbitant prices, with compulsory payment enforced by using violence or heavy threats.” One survey indicated that communities in Rio de Janeiro fear

²⁰ *Ibid.*, paragraphs 283, 284.

the “militias” more than drug-trafficking organizations. The militias’ control of territories “translates into greater access to State power, which further strengthens them.” In the areas dominated by them, “competitiveness in elections is curtailed by the use of force and violence to back candidates to elective office who are committed, or at least not hostile, to the militias”.²¹

According to the IACHR, criminal gangs and paramilitary militias, their crimes and acts of violence are to be, or should be tackled by actions and public policies “mindful of the various structural causes” involved, including “the link between organized crime and inequalities”. In this sense, an adequate response must include, *inter alia*, “guaranteeing access to high quality health care and education, social services, employment, culture, sport, and entertainment/leisure.”²²

In addition to corruption linked with the activities of criminal gangs and paramilitary militias, inside detention centres, at vulnerable communities and elsewhere, another important aspect of the national context is related to how corruption is tied with the impunity of persons responsible for human rights violations.

Side by side with the “high levels of incarceration and large number of murders committed in the population as a whole”, there is a “huge number of deaths at the hands of State agents”. With respect to murders committed by the police and security forces, there are “high levels of impunity compared to that enjoyed by other perpetrators of crimes in Brazil.” According to IACHR, this impunity “is perpetuated by corrupt institutional practices and structures that prevent justice being done in these cases and undermine the rule of law and democracy.”²³

2. What impact, if any, did the recommendations included in the report have (providing examples): a) on national case law and judicial practice; b) on national legislation and other parliamentary activities; c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures); d) on relevant mechanisms of investigation and accountability; e) on national activities such as research, public communication and awareness raising?

I have taken due diligence and found no mentions to the Report among national case and judicial practice; national legislation and other parliamentary activities; national regulations, policies, practices and procedures; relevant mechanisms of investigation and accountability; or national activities such as research, public communication and awareness raising.

²¹ *Ibid.*, paragraphs 285, 286.

²² *Ibid.*, paragraphs 288-289.

²³ *Ibid.*, paragraphs 353, 370 (“According to the information received during the Commission’s on-site visit, the chief obstacle to overcoming the impunity surrounding State violence is to be found at the investigative stage, due to an inefficient and outdated criminal process, lack of appropriate infrastructure, personnel and equipment for the civilian police, in addition to the corruption allegedly found in that institution...”), 387 (mentioning that there has been reports of corruption in the judicial bodies responsible for the trial of cases of torture and extrajudicial killings such as “Nova Brasilia” and the “Corumbiara Massacre”).

V. Relevance of the prohibition of torture and ill-treatment to the context of domestic violence

Summary: The Special rapporteur presented his report to the 74th session of the General Assembly (A/74/148), where he examined the relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence and, in the light of his conclusions, offered recommendations to States with a view to strengthening their capacity to prevent torture and ill-treatment in that context.

1. How relevant was the report to the national context?

Domestic violence is considered endemic in Brazil. In its Report on the Merits of the Case of Márcia Barbosa de Souza and family Vs. Brazil, the IACHR systematized the national context regarding domestic violence and violence against women.²⁴ It did so in an insightful way that merits the attention of the UN Special Rapporteurship:

[In its 1997 Report about the situation of human rights in Brazil, the IACHR] identified the existence of discrimination against women that are victims of violence as a result of the ineffectiveness of the judicial system.²⁵

On April 4, 2001, the Inter-American Commission published its Report on the Merits of the Maria da Penha Maia Fernandes Case [...]. In [it], the IACHR stated: “the lack of trial and conviction of the person responsible [for the acts of violence against women] constitutes an act of tolerance, on the part of the State, vis-à-vis the violence that Maria da Penha suffered”; “this tolerance of State bodies is not exclusive to this case, but a systematic agenda. It is a tolerance of the whole system, which only perpetuates the psychological, social and historical roots and factors that sustain and fuel violence against women”.²⁶

Subsequently, the State approved the so-called Maria da Penha Law (Law n° 11.340, of August 7, 2006), whose objective was to “[create] mechanisms to curb domestic and family violence against women”. Article 5 of this law defines domestic and family violence against women as “any action or omission based on gender that causes her death, injury, physical, sexual or psychological suffering and moral or property damage” within the scope of the “domestic unit”, of the “family” or “any intimate relationship of affection, in which the aggressor lived or has lived with the offended, regardless of the cohabitation”.

In 2012, the United Nations Committee for the Elimination of Discrimination against Women expressed its concern with the issue of violence against women and, in particular, with the lack of full compliance with the Maria da Penha Law; “the lack, within the judiciary, of specialized personnel [to deal with] cases of domestic and family violence; and the lack of accurate and coherent data on violence against women”.²⁷

In 2015, the Brazilian Senate carried out a survey, among which the following conclusions stand out: approximately one in five Brazilian women has already suffered some type of domestic or family violence; less educated women are the most affected; women are more likely to experience domestic violence for the first time when they are between 20 and 29 years old; 21% of battered

²⁴ IACHR. Report No. 10/19. Case 12.263. Merits. Márcia Barbosa de Souza and family. Brazil. 12 February 2019, paragraphs 13-16.

²⁵ Inter-American Commission on Human Rights. Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 ver. 1. 29 September 1997, pp. 142-145.

²⁶ CIDH. Relatório N° 54/01. Caso 12.051. Mérito. Maria da Penha Maia Fernandes. Brasil. 16 de abril de 2001, parágrafo 55.

²⁷ United Nations. Concluding observations of the Committee on the Elimination of Discrimination against Women - Brazil. UN Doc. CEDAW/C/BRA/CO/7. 23 March 2012.

women did not seek help of any kind, neither legal nor social (such as support from friends or family), due to reasons such as the concern with raising children, the fear of revenge from the aggressor and the belief that there would be impunity in relation to the aggressor (this last reason was mentioned in 10% of the answers); 73% had, as their aggressors, a person of the opposite sex without blood ties and chosen by them to live intimately (husband, partner, boyfriend, current or ex). The survey also assessed the quality of care for victims of violence in police stations: 48% rated it as excellent or good, 14% as regular and 38% as bad or very bad.²⁸ In addition to the Maria da Penha Law, Brazil also adopted Law No. 13.104, of March 9, 2015, which modified the Penal Code to include another category of aggravated homicide: the one that is practiced “against women for reasons related to the female condition”. This law – commonly called the “Femicide Law” – made the murder of women for gender reasons a “heinous crime”. In that same year, the study “Mapa da Violência: Homicídio de Mulheres no Brasil” (“Map of Violence: Murder of Women in Brazil”) conducted by the Latin American Faculty of Social Sciences (FLACSO) indicated that Brazil had the fifth highest rate of murders of women by gender in the world.²⁹ According to investigations into the evolution of violence in the country, murders of women increased by 4.6% between 2006 and 2016.³⁰ Similarly, according to a survey carried out by a news website based on official data on homicides in the states, 4,473 women were murdered in 2017 (with at least 946 cases of murder for gender violence).³¹ On several occasions, the IACHR has expressed its concern about the prevalence of murders and attempted murders of women in Brazil.³²

Additionally, in its 2021 report about human rights in Brazil, the IACHR presented in-depth, additional information and remarks about the national context vis-à-vis gender-based violence, including domestic violence.³³

2. What impact, if any, did the recommendations included in the report have (providing examples): a) on national case law and judicial practice; b) on national legislation and other parliamentary activities; c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures); d) on relevant mechanisms of investigation and accountability; e) on national activities such as research, public communication and awareness raising?

²⁸ Brasil, Senado Federal. *Violência doméstica e familiar contra a mulher*. Agosto de 2015. Disponível em: <https://www12.senado.leg.br/noticias/arquivos/2015/08/10/violencia-domestica-e-familiar-contra-a-mulher> (última visita em 19 de setembro de 2018).

²⁹ FLACSO, Mapa da Violência 2015: Homicídio de Mulheres no Brasil, 9 de novembro de 2015. Disponível em: <http://flacso.org.br/?p=13485> (última visita em 19 de setembro de 2018).

³⁰ IPEA, Brasil ultrapassa pela primeira vez a marca de 30 homicídios por 100 mil habitantes. 5 de junho de 2018. Disponível em:

http://www.ipea.gov.br/portal/index.php?option=com_content&view=article&id=33411&catid=8&Itemid=6 (última visita em 19 de setembro de 2018).

³¹ G1. *Cresce o número de mulheres vítimas de homicídio no Brasil; dados de feminicídio são subnotificados*. 07 de março de 2018. Disponível em:

<https://g1.globo.com/monitor-da-violencia/noticia/cresce-n-de-mulheres-vitimas-de-homicidio-no-brasil-dados-de-feminicidio-saosubnotificados.ghtml> (última visita em 19 de setembro de 2018).

³² CIDH, Observações Preliminares da Visita in loco da CIDH ao Brasil, 10 de novembro de 2018; Inter-American Commission on Human Rights, Press Release N° 24/19, IACHR Expresses Deep Concern over Alarming Prevalence of Gender-based Killings of Women in Brazil, 4 February 2019.

³³ Inter-American Commission on Human Rights. *Situation of Human Rights in Brazil*. OEA/Ser.L/V/II. Doc. 9 February 12, 2021, paragraphs 87-101.

I have taken due diligence and found no mentions to the Report among national case and judicial practice; national legislation and other parliamentary activities; national regulations, policies, practices and procedures; relevant mechanisms of investigation and accountability; or national activities such as research, public communication and awareness raising.

VI. Psychological Torture

Summary: The Special Rapporteur presented his report to the 43rd session of the Human Rights Council (A/HRC/43/49), where he examined conceptual, definitional and interpretative questions arising in relation to the notion of “psychological torture” under human rights law and offered recommendations in that regard.

1. How relevant was the report to the national context?

National instances appear to focus more on the aspects surrounding the traditional conception of torture as related to the infliction of physical pain or suffering. The report can help fostering a broader approach to torture in the benefit of human rights monitoring and implementation. The problem of prison overcrowding (see pages 4-5 *supra*), for instance, is present in the national context and could be read in attention to the concept of psychological torture entertained by the report of the Special Rapporteur on Torture. The concept can help framing new analyses of the human rights or persons deprived of liberty. The intentional subjugation of these persons to overcrowding conditions can generate severe mental pain or suffering. How could it be read in light of the concept of psychological torture? What would be the legal implications? These are legitimate questions. The aim at mental pain or suffering deriving from the report of the Special Rapporteur could have indirect effects as well – *v.g.*, in terms of casting light to mental health as a whole, or in terms of highlighting psychological aspects surrounding torture and violence in general.

2. What impact, if any, did the recommendations included in the report have (providing examples): a) on national case law and judicial practice; b) on national legislation and other parliamentary activities; c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures); d) on relevant mechanisms of investigation and accountability; e) on national activities such as research, public communication and awareness raising?

I have taken due diligence and found no mentions to the Report among national case and judicial practice; national legislation and other parliamentary activities; national regulations, policies, practices and procedures; relevant mechanisms of investigation and accountability; or national activities such as research, public communication and awareness raising.

VII. Biopsychosocial factors conducive to torture and ill-treatment

Summary: The Special Rapporteur presented his report to the 75th session of the GA (A/75/179), where he explored the root causes of the current worldwide complacency with regard to torture and ill-treatment, based on well-documented neuro-biological and psychosocial patterns of self-deception and denial, and recommended the urgent and proactive incorporation of his science-based conclusions into ongoing, policy-based global governance reform processes, including the 2030 Agenda for Sustainable Development.

1. How relevant was the report to the national context?

During the dictatorship period that began in 1964 in Brazil “about 50,000 people would have been arrested only in the first months of the dictatorship; around 20,000 prisoners were subjected to torture; there are 354 political executions or forced disappearances; 130 people were expelled from the country; 4,862 people had their mandates and political rights suspended, and hundreds of peasants were murdered.” At the same time, the country did not pursue criminal proceedings to examine the human rights violations that occurred during that period.³⁴ Despite the successful installation of a constitutional democracy, the country still suffers from widespread practices of torture and ill-treatment. What could explain the permanence of these practices after more than three decades of democratic times?

³⁴ Corte IDH. *Caso Gomes Lund e outros (Guerrilha do Araguaia) Vs. Brasil*. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 24 de novembro de 2010. Série C No. 219, paragraphs 85 *et seqs.*; Corte IDH. *Caso Herzog e outros Vs. Brasil*. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 15 de março de 2018, paragraph 107. As stated in official documents, the serious human rights violations committed during the military dictatorship were part of a policy of repression planned and carried out by the State, through the the Armed Forces, the Military and Civil Police, and the Judiciary, with the purpose of eliminating any resistance to the coup d'état and the established regime. As in other regimes in force at the same time in the region, the dictatorship in Brazil articulated a “gigantic repressive apparatus” based on the “Doctrine of National Security”. CIDH. Relatório No. 71/2015. Caso 12.879. Mérito. Vladimir Herzog e outros vs. Brasil. OEA/Ser.L/V/II.156, 28 de outubro de 2015, paragraph 57. See, also, CIDH. *Relatório sobre Segurança Cidadã e Direitos Humanos*. OEA/Ser.L/V/II. Doc. 57. 31 de dezembro de 2009, paragraphs 33-34.

A recent study suggests that the incidence of violence in different nations is directly linked to the adoption of transitional justice processes to deal with the authoritarian past. Countries that have installed effective truth commissions tend to be far less violent; countries that have adopted amnesty laws tend to be more violent. This is explained, *inter alia*, by the tendency of specialists in violence who repressed political dissidents under governments to play, in democracies, crucial roles in the operation of criminal markets and in the production of criminal violence. This participation occurs in various ways, v.g.: the departure of these State agents to become armed agents of criminal organizations in conflict with other organizations and with the State; the actions of these members within the State in favour of criminal organizations; the abusive and disproportionate use of state power in fighting crime (marked by extrajudicial executions, torture, extortion and other crimes). In countries where transitional justice processes have been adopted to expose, trial and punish members of the state forces for serious human rights violations committed during the authoritarian era, there is a redefinition of the criteria of state coercion that prevents members of the armed forces and the police to become the main actors in the production of criminal violence. In short, public measures and policies aimed at breaking impunity for past violations of human rights strengthen new democracies and make them less vulnerable to epidemic violence. Cf. Trejo, Guillermo; Albarracín, Juan; Tiscornia, Lucía. Breaking state impunity in post-authoritarian regimes: why transitional justice processes deter criminal violence in new democracies. *Journal of Peace Research*, v. 55(6), p.787-809, 2018.

The work of social scientist Teresa Caldeira points to possible biopsychosocial factors that are part of the national context.

In a study conducted during the first years of the new Brazilian constitutional democracy, Caldeira noted that “among the various aspects associated with the experience violence, one stands out for its political importance and its absurd character: the general population’s support for a campaign against human rights”, starting in the 1980s.³⁵

The language of “rights” was central in the political debate in Brazil since the mid-1970s, and in the democratization process. During this period, the struggle for human rights was able to receive support from different societal segments. First, with a discourse against the torture and illegal detention of political prisoners, against censorship and in favour of basic rights and freedoms, such as the right to vote and the freedom of expression. Second, with the struggle of minorities, popular classes and social movements throughout the 1970s and 1980s. The multiplication of their specific demands for day care centres or basic public services and a growing process of political mobilization ended up legitimating an agenda for the rights to health, housing, transport, control over the body and sexuality, ethnic difference and so on.³⁶

During the 1980s, human rights were expanding and important victories were achieved, including the possibility of the population to elect state governors in 1982 and the formal end of the dictatorship a few years later. In this context, there were also attempts to humanize the conditions imposed on common prisoners to defend their basic human rights, as it was known that they were “crowded into the worst conditions in overcrowded prisons” and “constant victims of torture and all sorts of ill-treatment”. These attempts were mainly articulated by segments of the Catholic Church, human rights movements and commissions and part of the democratic political class. They were met by the opposition of members of the police, right-wing politicians and segments of the press (*e.g.* popular broadcast programs dedicated to crime-related news).³⁷

The successful defence of political prisoners against torture and ill-treatment was a struggle on behalf of the civil and political rights of activists coming from the middle and upper classes, whose “crime” was to disagree with the powerful, and on behalf of the political rights of the whole national community that were suspended during the military regime. The common prisoners, however, were mostly people from the lower classes who were accused of committing some sort of regular crime and, for that reason, had their citizenship restricted. This is why they were defended under the label of “human rights”, *i.e.*, according to their basic humanity.³⁸

Yet, according to the general perception this elementary humanitarianism was denied to common prisoners. Caldeira’s analysis suggest that this denial has roots in prevalent acts and perceptions of class and racial discrimination.

That the population has turned against this humanitarian idea is related, in my view, to another characteristic of common prisoners: the fact that they are poor and victims of a whole series of prejudices and discriminations in Brazilian society, which are associated with stereotypes about criminals. It is also crucial to understand that the stereotype of the criminal was extended by the population to all cases considered by human rights defenders. They have spoken out against countless types of arbitrariness, a large part of which is committed against people with no proven guilt — other than perhaps the fact that they do not have what is

³⁵ Caldeira, Teresa Pires do Rio. Direitos Humanos ou “Privilégios de Bandidos”? Desventuras da Democratização Brasileira. *Novos Estudos CEBRAP*, n.º 30, pp. 162-174, julho de 1991, p. 162.

³⁶ *Ibid.*, p. 162-163.

³⁷ *Ibid.*, p. 164-165.

³⁸ *Ibid.*, p. 165-166.

called a "good look" —, but the reception of their speech seems to have eclipsed that fact. According to the reactions against the defense of human rights, all persons to whom these rights refer to are criminals, and all rights to be guaranteed are for prisoners. Although prisoners were an important focus of the human rights campaign, they were not the only focus and, it goes without saying, at no point did this campaign defend criminal activities.³⁹

It is difficult to conceive of a collective claim movement whose members share a distinctly negative identity—that of common prisoners, and therefore, criminals. It would be difficult to get social legitimacy to support their claims [...]. Several minorities, such as gays, for example, affirmed an identity once seen as negative as a means of denouncing the discrimination they suffered so as to demand rights. But in the case of common prisoners, this process of reversal and positivization was impossible [...].⁴⁰

[Those against the human rights of common prisoners] had no scruples in abusing the images, stating that [human rights defenders] wanted to offer luxury, a good life, a five-star hotel, everything for bandits who made fun of honest good men and the latter's struggle to survive with dignity. Once the association "human right=privileges for bandits" was made, it was easy to destroy the legitimacy of the rights that were being claimed, and of their defenders, treated as "protectors of bandits". Not even the humanitarianism contained in the defense of human rights for people who were being tortured and living under the worst conditions was able to reverse the campaign. The problem is that, in addition to the fact that the population does not look down on the use of force against "bandits", the stereotypes available in Brazilian society about criminals consider them at the limit not only of society, but also of humanity. [...] The image of criminals was more than emphasized. They have been painted in the strong colours of prejudice, social discrimination and deviance as being at the edges of both society and humanity. In speeches against human rights suspects are always criminals, and criminals are always murderers or rapists (both less than human), destroying the honour and property of honest workers and good men.⁴¹

The policy of human rights and the humanization of prisons intended to extend certain minimum rights to everyone. But the majority of society seems to have wanted to point out that some were outside of it, and for that it did not hesitate to place them almost outside of humanity. [...] Although the rights that were defended were not only for criminals, but for anyone facing arbitrary, it was the image of the criminal that was marked and that was associated exclusively with human rights. In defending criminals, it appears that human rights defenders have touched a limit to the acceptable. The idea is that, by exceeding this limit, the entire social order would be threatened. [...]

When talking about crime and violence, the discourse against human rights is a discourse about social disorder and about the maintenance of privileges. Disorder can be interpreted in many ways, but something easily associated with it is social change. And the fact is that the discourse against human rights was conveyed in a context of change, when the first elected governor in two decades took office, when social movements were legitimized as interlocutors of the State, when they tried to reform the police accustomed to the discretion of the military regime, and when the State itself attributed the role of generator of new rights for the "others". [...]

It is not difficult to see, behind the discourse against human rights and the insecurity generated by crime, the outlining of a diagnosis that everything is changing for the worse, that people no longer behave as expected, that the poor want rights (privileges, it's good to remember) and, supreme abuse, proof of total disorder, they even want to give rights to criminals.⁴²

³⁹ *Ibid.*, p. 166.

⁴⁰ *Ibid.*, p. 167.

⁴¹ *Ibid.*, p. 169.

⁴² *Ibid.*, p. 169.

Once a synonym for civil, political and socio-economic rights defended by large segments of the population, the category of “human rights” regrettably became, throughout the 1980s, a synonym for “rights” or “privileges” of violent criminals. The idea of “rights” in general was not questioned, but only that of “human rights”. Medical care, education, day care centres, etc. were cherished rights. The notion of human rights, however, was dissociated from them.⁴³

Opposition to human rights, associated with a diagnosis of social disorder, ends up giving rise to suggestions on how to recover this threatened order. [...] On the one hand, it turns its back on the [constitutional] State, seen as incompetent and a defender of criminals, and it privileges the privatization of the means of preventing violence. On the other hand, the use of physical force against prisoners and criminals is increasingly defended. [...] It is argued that this brutality is only equivalent to the brutality of those who have passed the limits of humanity. That is why, in addition to being against what is called "good treatment" of criminals, a considerable portion of the population demands the death penalty, turns a blind eye to police abuses and disrespect for human rights, [...] requires "toughness" against the bandits or their elimination outright, in a speech that is also highly diffused. It is also in this context that the "punishers" who work in popular neighbourhoods are supported. [...] Social discrimination expressed in the discourse of violence, support for the use of force and the emphasis on privatization, in my view, are much broader issues than those of crime and security, but there they find an excellent means of expression.⁴⁴

2. What impact, if any, did the recommendations included in the report have (providing examples): a) on national case law and judicial practice; b) on national legislation and other parliamentary activities; c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures); d) on relevant mechanisms of investigation and accountability; e) on national activities such as research, public communication and awareness raising?

I have taken due diligence and found no mentions to the Report among national case and judicial practice; national legislation and other parliamentary activities; national regulations, policies, practices and procedures; relevant mechanisms of investigation and accountability; or national activities such as research, public communication and awareness raising.

VIII. Effectiveness of the cooperation of States with the mandate holder on official communications and requests for country visits

Summary: The Special Rapporteur presented his report to the 46th session of the HRC (A/HRC/46/26), where he evaluated the effectiveness of the cooperation shown by States in their responses and follow-up to official communications and country visit requests transmitted by the Special Rapporteur, and recommended appropriate measures with a view to strengthening the interaction of States with the mandate of the Special Rapporteur and improving the compliance of States with their obligations arising from the absolute and non-derogable prohibition of torture and ill-treatment.

⁴³ *Ibid.*, p. 163-164.

⁴⁴ *Ibid.*, p. 171-172.

1. How relevant was the report to the national context?

Brazil has a history of interactions with the Special Rapporteurship. In terms of national context, one important aspect is the perpetuance of torture and ill-treatment despite reports, observations and recommendations deriving from the Special Procedures.⁴⁵

2. What impact, if any, did the recommendations included in the report have (providing examples): a) on national case law and judicial practice; b) on national legislation and other parliamentary activities; c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures); d) on relevant mechanisms of investigation and accountability; e) on national activities such as research, public communication and awareness raising?

I have taken due diligence and found no mentions to the Report among national case and judicial practice; national legislation and other parliamentary activities; national regulations, policies, practices and procedures; relevant mechanisms of investigation and accountability; or national activities such as research, public communication and awareness raising.

IX. General question

1. In your view, what are specific areas, where the State may require further thematic support or advice from the mandate of the Special Rapporteur?

Brazil is marked by historical discrimination against persons of African descent, including quilombola communities; women; indigenous peoples; peasants and humble rural workers; landless and homeless people; inhabitants of favelas (shantytowns) and persons living on the outskirts of cities. The many human rights violations suffered by those individuals and communities guard a close connection to longstanding social exclusion, lack of access to land and property rights and the *de facto* denial of their economic, social, cultural, and environmental rights. Class and ethno-racial discrimination impose, on those living in poverty and extreme poverty, precarious or extremely precarious housing, precarious and even slavery-like conditions of labour and a greater exposure to violence.⁴⁶

This is reflected in prisons and comparable institutions, such as the juvenile “socio-educational” system and the so-called “therapeutic” communities. These were interpreted by the IACHR as “institutional breeding grounds for the marginalization of persons of African descent and persons living in extreme poverty”. Adult and children deprived of

⁴⁵ V.g., United Nations. Civil and Political Rights, including the questions of torture and detention – Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 1998/38. Doc. E/CN.4/1999/61, 12 January 1999; United Nations. Civil and Political Rights, including the questions of torture and detention – Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 2000/43 Adendum – Visit to Brazil. Doc. E/CN.4/2001/66/Add.2, 30 march 2001; United Nations. [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil](#). UN Doc. A/HRC/31/57/Add.4, 29 January 2016.

⁴⁶ Cf. Inter-American Commission on Human Rights. [Situation of Human Rights in Brazil](#). OEA/Ser.L/V/II. Doc. 9 February 12, 2021, paragraphs 2, 20-149.

liberty are “often held in overcrowded and structurally deficient prisons, maltreated, and frequently subjected to torture.”⁴⁷

The past work of the United Nations Special Rapporteurship on Torture in relation to Brazil was once described as having a focus on torture as a “crime of opportunity”, a crime that is committed when the opportunity arises; in this sense, if the State creates a regular system of visits to prisons, for example, this could function as a way of impeding the conjunction of situations that make the violation possible.⁴⁸ Of course, such a system of visits can play an important role, and so can other similar lines of action. There is, on the other hand, a critical approach to the view that torture can be a crime of opportunity, according to which effective prevention of torture also depends, or mostly depends on tackling “deeper social aspects [that are] producers and reproducers of class, race and gender inequalities”.⁴⁹

In light of all the above, and recalling that there were recent measures that “hamper[ed] the work” of the prevention mechanisms (especially the national mechanism)⁵⁰, the Special Rapporteur could examine the possibility of providing the State with further thematic support or advice regarding both (1) the system for preventing and combating torture and (2) the measures and policies aimed at social inclusion. It is sensible for the agenda against torture to walk together with the agenda for social, economic, cultural and environmental rights.

⁴⁷ *Ibid.*, paragraph 2. See, also, *ibid.*, paragraphs 3, 150-234.

⁴⁸ Duarte, Thais Lemos; Marques de Jesus, Maria Gorete. Prevenção à tortura: uma mera questão de oportunidade aos mecanismos latino-americanos? *Revista Direitos Humanos e Democracia*, 8(15), p. 134-152, 2020, p. 137.

⁴⁹ Duarte, Thais Lemos; Marques de Jesus, Maria Gorete. Prevenção à tortura: uma mera questão de oportunidade aos mecanismos latino-americanos? *Revista Direitos Humanos e Democracia*, 8(15), p. 134-152, 2020, p. 151.

⁵⁰ *Ibid.*, paragraphs 191, 193.