

General Allegation

132nd session (29 January – 2 February 2024)

Brazil

The Working Group received information from sources concerning alleged violations and obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, 'the Declaration') in Brazil.

1. This general allegation focuses on enforced disappearances commenced during the military dictatorship, between 1964 and 1985; as well as on those that began after the establishment of democracy in Brazil. We would also like to refer to the two general allegations sent in [2019](#) and [2022](#) respectively to your Excellency's Government, for which we are yet to receive replies. We would also like to further call your Excellency's Government attention to the Committee on Enforced Disappearances Concluding observations on the report submitted by Brazil under article 29(1) of the International Convention for the Protection of All Persons from Enforced Disappearances, in particular paragraphs 13, 15 and 23 (([CED/C/BRA/CO/1](#)) and Report on follow-up to the concluding observations ([CED/C/24/2](#)).

Enforced disappearances began during the military dictatorship

2. It is alleged that the Brazilian State is yet to take full and effective measures to address the serious human rights violations committed during the dictatorship, despite several measures adopted over the years.
3. According to the information received, the first 'death squads' formed by civil and military police were established in the 1950s, having significantly expanded their repressive activities, including the perpetration of enforced disappearance during the military dictatorship. It is further alleged that, during the dictatorship, summary executions followed by concealment of the corpses became a systematic practice of the State to combat politically organized opposition.
4. One emblematic example of such practice was the case of the police officer Cláudio Guerra, who was convicted in June 2023 of the concealment of 12 bodies of political opponents forcibly disappeared during the military dictatorship. In the verdict, the Brazilian judiciary - 2^a Vara Federal de Campos de Goytacazes, Seção Judiciária do Rio de Janeiro¹ - recognized the imprescriptible nature of crimes against humanity and the non-applicability the 6683/1979 Amnesty Law. However, such ruling is rather exceptional as, according to the information received, the overwhelming majority of the judiciary continues to apply the 1979 Amnesty Law and thus impunity continues to prevail for gross human rights violations, including enforced disappearances, committed during the military dictatorship. It is further alleged that legal proceedings that seek the recognition of the unconstitutionality of 1979 Amnesty Law (Actions for non-compliance with fundamental precepts/*Ações de Descumprimento de Preceito Fundamental*, numbers 153 and 320) are still pending before the Federal Supreme Court for discussion and resolution.

¹ <https://static.poder360.com.br/2023/06/sentenca-claudio-guerra-ditadura.pdf>

5. According to the information received, Law No. 9140/95 was one of the first attempts by the State to deal with the violations committed during the dictatorship, having established the Special Commission on Political Deaths and Disappearances (hereafter, 'SCPDD' or 'the Commission'). However, it is alleged that the law was at odds with international legal standards, as it established the figure of 'political disappearance', applicable only to those whose disappearance was connected to their political activities and whose relatives were able to establish their militant status. As a result, the legislation concerned excluded all other victims of enforced disappearance for reasons other than political. This has led to inaction of State bodies aimed at the implementation of the rights to memory, truth, justice and reparation, in particular in relation to certain social groups, namely rural and urban workers, indigenous people, the LGBTI population, the residents of *favela* and the Afro-Brazilians. Although these groups were widely affected by the dictatorial violence, including through the practice of enforced disappearance, as the corresponding cases were not classified as 'political disappearances', they remained excluded from the transitional justice process and their claims for truth, justice, memory and guarantees of non-repetition remain unanswered.
6. It is further reported that the prevailing official narrative of events fails to fully recognize the role played, and the violations suffered by, historically disadvantaged groups, such as Afro-Brazilians and indigenous peoples, in the struggle against the dictatorial regime. According to the sources, the SCPDD book (report) on right to truth and memory does not specifically offer an analysis through the lenses of such groups.² While a subsequent publication was specifically devoted to the Afro-Brazilians,³ the struggle of indigenous peoples remains unacknowledged. Further to this, the current school curricula remain silent on the contributions of such groups to the fight against dictatorship in Brazil.
7. It is alleged that, during Jair Bolsonaro's Government (2019-2022), the SCPDD⁴ was subject to a series of changes, including the replacement of a large part of its former members with people linked to the Armed Forces or without any track-record in defending human rights. Further to this, at the beginning of 2020, a change in the Commission's regulations made the search for disappeared people conditional on the expression of interest by the family, contradicting the international obligation of States to act *ex officio* in these cases. Finally, in the last month of the Bolsonaro Government, SCPDD was terminated without having fully completed its mandate to address the crimes committed during the dictatorship, including enforced disappearance.
8. According to the sources one of the last measures adopted to deal with the human rights violations committed during the dictatorship was the establishment of the National Truth Commission (NTC) in 2011. However, it is alleged that the NTC made little

² See: *Direito à verdade e à memória: Comissão Especial sobre Mortos e Desaparecidos Políticos / Comissão Especial sobre Mortos e Desaparecidos Políticos* - Brasília: Secretaria Especial dos Direitos Humanos, 2007, ISBN 978-85-60877-00-3, available here:

http://www.dhnet.org.br/dados/livros/a_pdf/livro_memorial_direito_verdade.pdf.

³ Secretaria Especial de Políticas de Promoção da Igualdade Racial, *Direito à Memória e à Verdade: aos descendentes de homens e mulheres que cruzaram o oceano a bordo de navios negreiros e foram mortos na luta contra o regime militar*, 2009, available: <https://siac.fpabramo.org.br/searchAcao/40>.

⁴ Please note that the Working Group addressed your Excellency's Government with the reference to SCPDD in its 2019 General Allegation.

progress due to lack of cooperation from the Armed Forces. It is further alleged that the NTC recommendation to establish a permanent body with the task of following up on its actions and recommendations, including the continuation of activities aimed at locating, identifying and handing over to the families the remains of disappeared persons (limiting the interpretation of the notion to that of persons “disappeared for political reasons), have not been implemented to date.

Enforced disappearances in democracy

9. According to information received, in 1990, 11 young residents of the Acari *favela* in Rio de Janeiro, including minors, were forcibly disappeared by the military police in what become known, at least publicly, as the first case of enforced disappearance reported during democracy. Their fate and whereabouts remain unknown to date and the families’ quest for truth, justice and reparation has gone unanswered. Further to this, two relatives of the disappeared persons, including a leading figure of the so-called “Acari Mothers” group - established to fight against institutional violence - were summarily executed on 15 May 1993, allegedly by police officers involved in the Acari enforced disappearances.⁵
10. According to information received, currently, enforced disappearances continue being perpetrated mostly under the justification of “war on crime” and “war on drug” targeting disproportionately Afro-Brazilians from impoverished communities in the *favelas*. One example is that of Mr. Amarildo de Souza who was forcibly disappeared, in July 2013, after having been taken for investigation by the Rio de Janeiro military police from the *Rocinha* favela, in the context of the so-called “Operation Armada Peace” aimed to combat drug trafficking. His family is yet to learn the truth about his fate and whereabouts and to be awarded any form of reparation, and those who were initially convicted for the crime continue working for the Rio de Janeiro military police.
11. According to the Brazilian Public Security Forum, between 2017 and 2019, an average of 183 persons have gone missing per day in Brazil, of which 62,8% are male and 54,3% black.⁶ It is further reported that, between 2003 and 2021, 1.2 million people were registered as missing in the State of Rio de Janeiro alone, of which 64% were male and 70% black. It is however not possible to disaggregate the missing from those who were forcibly disappeared. This is mainly due to the lack of full implementation and operationalization of Law No. 13.812/2019, which establishes the National Policy for the Search for Missing Persons and the National Registry of Missing Persons, entrusted upon the responsibility for the registration and search of the missing, including those forcibly disappeared.
12. The Working Group has also been informed that many of the obstacles concerning enforced disappearance stem from the fact that Brazil is yet to criminalize enforced disappearance as an autonomous crime. The process of adoption of legislation for domestic criminalization of enforced disappearance started in 2011 and is yet to be concluded. It currently awaits placement in the agenda of the Legislative House.

⁵ CIDH, Relatório N° 100/21, Caso 13.691. Admissibilidade e Mérito Cristiane Leite de Souza e outros. Brasil. 20 de maio de 2021.

⁶ See: *FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. Mapa dos desaparecidos no Brasil. São Paulo: Fórum Brasileiro de Segurança Pública, May 2023, available at: <https://forumseguranca.org.br/wp-content/uploads/2023/05/mapa-dos-desaparecidos-relatorio.pdf>.*

13. The Working Group would like to bring to the attention of the Government of Brazil the following provisions of the Declaration, which are directly related to the present allegations:

Article 2

- 1. No State shall practise, permit or tolerate enforced disappearances.*
- 2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.*

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

- 1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.*

Article 10

(...)

- 3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.*

Article 13

- 1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.*
- 2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.*

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

14. Moreover, the Working Group would like to bring to the attention of your Excellency's Government the thematic study on [reparations and enforced disappearances](#), in particular the obligation to provide redress which includes the guarantees of non-repetition and satisfaction as well as the [standards and public policies for an effective investigation of enforced disappearances](#), in particular the State obligation to investigate enforced disappearances. The Working Group would like to further call your attention to [the study on enforced or involuntary disappearance and economic](#),

[social and cultural rights](#); study on [best practices on enforced disappearances in domestic criminal legislation](#); [general comment on the right to truth in relation to enforced disappearance](#) and [Guiding principles for the search of the disappeared](#).

15. The Working Group would be grateful for the cooperation and any information that Your Excellency's Government can provide on the following questions:
- (a) Please provide additional information or comments regarding the allegations mentioned herein.
 - (b) Please provide information on the efforts made by your Excellency's Government to ensure the rights to memory, truth, justice, reparation and guarantees of non-recurrence for the enforced disappearances began during the dictatorship. In particular on the efforts made:
 - i. to ensure that the 1979 amnesty law is not applied by the judiciary to hinder the access to justice and accountability. Please also provide information on the status of actions 153 and 320 pending before the Federal Supreme Court.
 - ii. to address the deficiencies of law 9140/95, in particular the restrictive definition of victims of enforced disappearance enshrined therein. Please also provide information on the implementation of the rights to memory, truth, justice and reparation to all victims of enforced disappearances during the dictatorship, regardless of their political affiliation. Please provide any information on the reform of the school curricula to ensure that the narrative of the events is inclusive and recognizes the contributions and the struggles of historically disadvantaged groups in the fight against dictatorship.
 - iii. to ensure the reinstatement of the SCPDD and to ensure that it fully complies with its mandate, as well as the measure taken to ensure the right to participation of the victims in the process.
 - iv. to implement the recommendations by National Truth Commission, namely the establishment of a permanent task force with the view of addressing the human rights violations, including enforced disappearances, committed during the dictatorship.
 - c. Please provide information on the measures taken to ensure the rights to truth, justice, memory and reparation for the victims of enforced disappearance in the Acari *favela*. Please provide information on the measures taken to criminally prosecute those responsible for the enforced disappearances and arbitrary executions concerned.
 - d. Please provide any information on measures taken to protect vulnerable and historically disadvantaged groups, such as Afro-Brazilians from going missing or being forcibly disappeared. Please provide information on the measures taken to ensure compliance with the rights to truth, justice, reparation to Mr. Amarildo de Souza's family.
 - e. Please provide information on the efforts made to implement and operationalize Law 13.812/2019. In particular:
 - i. Whether clear parameters were established for the production of data and public information on the phenomenon of enforced disappearance and on the existence

of disaggregated data by sex, age, nationality, place of origin and racial or ethnic origin.

- ii. Please also provide any information available on the State authorities responsible for the implementation of Law 13.812 and the existing cooperation mechanisms amongst the different State institutions;
 - iii. On the accessibility of the mechanisms to the general population and the ways in which cases are presented before the concerned authorities and the remedies provided in case of denial to file a claim.
- f. Please provide any updates on the domestic efforts to criminalize enforced disappearance as an autonomous crime, including any prospect for the Legislative House to include in its agenda the discussion on the draft law on the criminalization of enforced disappearance.
16. The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days. The text of the general allegation will be published along with the Working Group's post-sessional report and on its website, where also any response received by your Government will be uploaded.