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Committee against Torture

Second periodic report submitted by Brazil under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2002*, **, ***

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List of Acronyms

ADI	Direct Action Based on Unconstitutionality
CAT	Committee against Torture
CERD	Committee on the Elimination of Racial Discrimination
CNJ	National Justice Council
CNMP	National Council of the Prosecution Service
CNPCP	National Council for Criminal and Correctional Policies
CNPCT	National Committee for Prevention and Fight against Torture
CNV	National Truth Commission
CPP	Brazilian Code of Criminal Procedure
CPPM	Brazilian Code of Military Criminal Procedure
CRC	Committee on the Rights of the Child
UNSC	United Nations Security Council
Depen	National Prison Department
DPF	Federal Police Department
DRCI	Department of Asset Recovery and International Legal Cooperation
EaD-SENASP	Distance Education Network of the National Public Security Office
ECA	Statute of the Child and Adolescent
Espen	National School of Criminal Services
FBI	Federal Bureau of Investigation
HC	Habeas Corpus
GAFI	Financial Action Task Force on Money Laundering and Terrorism Financing
IDC	Motion for Change of Jurisdiction
IPEA	Institute of Applied Economic Research
LEP	Criminal Enforcement Law
LMP	Maria da Penha Law
MCN	National Curriculum Matrix
MMFDH	Ministry of Human Rights
MJSP	Ministry of Justice
MNPCT	National Mechanism to Prevent and Combat Torture
MP	Public Prosecutors' Office
MPF	Federal Prosecution Service
ONDH	National Ombudsman for Human Rights
ONU	United Nations
PNDH-3	3rd National Human Rights Program
PPCAAM	Program for Protection of Children and Teenagers Threatened with Death
PPDDH	Program for the Protection of Human Rights Defenders

PROVITA	Federal Program for Assistance to Victims and Threatened Witnesses
RDD	Differentiated Disciplinary Regime
RDE	Special Disciplinary Regime
Renaesp	National Network for Advanced Studies in Public Security
REsp	Appeal to the Superior Court of Justice
RSS	Raposa Serra do Sol
SDH/PR	Special Office of Human Rights of the Presidency of the Republic
Senasp	National Public Security Office
Sinase	National System of Social-Educational Assistance
Sinesp	National Information System for Public Security, Prison and Drugs
SISTAC	Custody Hearings System
SNJ	National Secretariat of Justice
SNPCT	National System to Prevent and Combat Torture
STF	Brazilian Supreme Court
STJ	Superior Court of Justice

Introduction

1. This document is the Second Brazilian Report in compliance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The list of questions made to Brazil in the 42nd Session of the Committee against Torture was used as a guide for preparation of this report, as provided for in UN document No. CAT/C/BRA/Q/2, of May 13, 2009.

3. This report refers to the period between 2000 and 2017.

Replies to the list of issues prior to reporting (CAT/C/BRA/Q/2)

Article 1

Reply to paragraph 1 of the list of issues

4. Law 9,455/1997, which defines the crime of torture in Brazil provides for the possibility of torture being committed by private individuals. Such dissonance with regard to the terms of the Convention, which restricts torture to acts "inflicted by a public servant or other person discharging public duties, or at their instigation or with their consent or acquiescence" has also been subject to the recommendations of Special Rapporteur.

5. The 3rd National Human Rights Program (PNDH-3)[1] provided for a programmatic action as to "create a working group to discuss and propose updates and improvements to Law No. 9,455/1997, which defines crimes of torture in order to update the criminal offenses, establish a national system to combat torture, establish a legal framework to define unified rules for forensic examination, as well as to stipulate mandatory preventive actions such as a specific training for police forces and training agents to identify torture."

6. This action resulted in the creation of the SNPCT by Law 12,847/2013, but the classification provided in Law 9,455/1997 was not amended. It should be noted that the Superior Court of Justice (STJ), the highest body that defines the infra-constitutional case law in Brazil, adopted a ruling Law 9,455/1997 as provided for in article 1 of the Convention.

7. The understanding of STJ is that "By defining the crime of torture as a common crime, article 1 of Law No. 9,455/1997 did not violate the definition included in art. 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, considering the reservation made in the language ratified by Brazil itself."[2]

8. In the express application of the definitions provided for in the crime of torture, the STJ repudiates the cruel treatment by State agents and established an understanding that "the practice of torture by police officers is an act of administrative impropriety as it violates the principles of public administration."[3]

[1] The third National Human Rights Program, created by Decree No. 7,037, of December 21, 2009, and updated by Decree No. 7,177, of May 12, 2010, introduces the basis of a State Policy for human rights and is marked by the indivisibility and interdependence of its provisions, and is structured around Guiding Axes, Guidelines, Strategic Objectives, and Programmatic Actions. For more information: http://www.pndh3.sdh.gov.br/portal. Accessed on June 22, 2018.

[2] Appeal to the Superior Court of Justice 1.299.787 – PR, available at: https://ww2.stj.jus.br/processo/revista/inteiroteor/?num_registro=201103113130&dt_publicacao =03/02/2014.

[3] According to Special Appeal in Appeal to the Superior Court of Justice 1200575 – DF. See also Appeal to the Superior Court of Justice 1081743 – MG and Appeal to the Superior Court of Justice 1177910 – SE.

Article 2

Reply to paragraphs 2 and 3 of the list of issues

9. Brazil has a strong regulatory framework that ensures rights and guarantees to persons deprived of their liberty. If the authority competent to inform the rights to the imprisoned person does not do so, it may be indicted for malfeasance, pursuant to the Brazilian Penal Code.

10. The Brazilian Federal Constitution, in its article 5, item LXIII, ensures that all imprisoned or arrested persons shall be informed of his/her rights at the moment of the arrest, and he/she shall be ensured of assistance by his/her family and a lawyer. The communication of the arrest of any person to his/her family is also a constitutional guarantee provided for in the same article.

11. In addition to the constitutional provisions, the Brazilian Legal Code of Criminal Procedure (CPP), an infraconstitutional legislative codex that regulates the criminal investigation proceedings in Brazil, establishes that, if the imprisoned person does not inform the name of his/her attorney, the case shall be forwarded to the Public Defender's Office in order to ensure his/her right to legal defense.

12. Once the person is imprisoned or arrested, Law No. 7,210/1984 – Criminal Enforcement Law (LEP) becomes effective and provides specifically for the rights of the imprisoned person, including, among others, the right to a personal, private interview with the attorney.

13. The Criminal Enforcement Law also establishes that convicted or temporary prisoners shall be allowed to leave prison temporarily due to a medical treatment, by decision of the director of the prison facility. The same law also establishes that prisoners have the right to contract a private doctor to provide guidance and monitor the treatment.

14. In 2003, the National Health Plan for the Prison System was created in order to ensure access to health to all types of imprisoned persons, providing basic healthcare actions and services in prisons. By 2011, the Plan had trained 250 healthcare teams, distributed among 230 facilities. In 2014, the National Policy for Comprehensive Care in Prisons was created in order to organize and ensure access of the whole prison population to the Unified Health System. 23 states and 127 cities adhered to the policy, which is financed with funds transferred by the Federal Government to the States and municipalities.

15. The Federal Government has undertaken capacity-building measures for public security professionals, in order to reinforce the legal obligation to inform the arrested or detained person about his/her rights. The Ministry of Justice and Public Security (MJSP) prepared the "Police Action Handbook for Protection of the Human Rights of Vulnerable Persons",[4] teaching material containing guidelines on procedures for taking detained persons to the police stations, among which it is important to highlight the police officer's duty to inform the detained person about the following rights: to silence, to family assistance, and to assistance of a lawyer.

16. The Judiciary Branch has also been active in publicizing the arrested individuals' rights. In 2010, the CNJ elaborated the "Arrested Persons Handbook"[5] and, in 2012, the "Arrested Woman Handbook".[6] Both are distributed in prison units to help people deprived of their liberty to understand their rights, duties, and guarantees.

17. The Criminal Enforcement Law provides for full and free legal assistance by the Public Defender's Office in and outside the correctional facilities. It establishes that there shall be spaces intended for assistance by the Advocates in all correctional facilities. In addition to the Federal Government, all Brazilian States and the Federal District have Public Defender's Offices. The Public Defender's Office is still evolving in Brazil. According to the MJSP, "in average, each of the State Public Defender's Offices counts on

[4] For more information, see: http://www.justica.gov.br/news/cartilha-orienta-policias-naabordagem-agrupos-em-situacao-de-vulnerabilidade-1.

[5] For more information, see: http://www.cnj.jus.br/images/programas/comecardenovo/publicacoes/cartilha_da_pessoa_presa_1_portugues_3.pdf.

[6] http://www.cnj.jus.br/images/programas/comecardenovo/publicacoes/cartilha_da_mulher_presa_1_portugues_4.pdf.

227 Advocates, a figure significantly higher than the average existing in 2008, when institutions counted on about 190 Advocates. Nevertheless, this number ranges from 38 Public Defender, in the state of Rio Grande do Norte, to 771 professionals in Rio de Janeiro, the most traditional Public Defender's Office in Brazil."[7] Whilst the Public Defender's Offices in the country have evolved positively, free legal assistance provided for in the Constitution is still limited. The number of Public Defenders acting in the country is approximately half the number of judges and public prosecutors.

18. This condition is basically due to the fact that, in contrast to the Prosecution Service and the Judiciary Branch, the Public Defender's Offices do not have budget and administrative autonomy. Thus, they depend on the Executive Branch for their structure and operation. Aiming at reducing the discrepancy between the number of advocates when compared to the number of judges and prosecutors, the Constitutional Amendment No. 80[8] was approved in 2014, which establishes the proportion of advocates at the jurisdictional offices in comparison with the effective demand for the services of the Public Defender's Office and with the corresponding population, as a deadline for the Federal Government, the States, and the Federal District to implement its objectives.

Reply to paragraph 4 of the list of issues

19. There is no legal provision in Brazil that imprisoned persons shall be routinely submitted to forensic examination, here referred to as exam of *corpus delicti*. When addressing pre-trial detention, Law No. 7,960/1989 establishes the possibility of the judge, ex officio or upon request of the Prosecution Service (MP), to determine that the imprisoned person may be subject to the exam. There are bills in the National Congress determining that this practice become a mandatory, linked to a set of initiatives aiming at the amending the CPP.

20. In spite of that, some States of the Federation set forth in their operational routines the exam of *corpus delicti ad cautelam* with the purpose of ensuring physical integrity to the imprisoned persons, as well as of protecting the police officers themselves from further charges.

21. With resolution No. 213/2015[9] of the CNJ, that created the custody hearings, the practice was institutionalized based on the provision that, during the hearing, the judge shall "VII – verify if the exam of *corpus delicti* was carried out, determining that it shall be carried out in cases in which: a) the exam was not carried out; b) the records are insufficient; c) the argument of torture and mistreatment refers to a moment after the exam was carried out; d) the exam was carried out in the presence of a police officer, and the provision of CNJ Recommendation No. 49/2014[10] as to the formulation of requirements to the expert shall be strictly observed."

22. Under Brazilian law, the organization of the police forces and of the public security system is incumbent upon the States and of the Federal District. The Federal Government is not responsible for legislating on this matter. Nevertheless, Law No. 12,030 was enacted in 2009, which "provides for official expert examinations and other provisions" and establishes that "During the official expert examination of criminal nature, technical, scientific, and functional autonomy is ensured, and public sector recruitment examination and specific education are required to the granting of the position of official expert."

23. According to diagnosis of criminal expert examination in the country published by the MJSP in 2013,[11] this activity was performed in 14 states. Brazil has been working strongly in order to strengthen the criminal expert examinations. The diagnosis itself is an

[7] *IV Diagnóstico da Defensoria Pública no Brasil* [Forth Diagnosis of the Public Defender's Office in Brazil]. Available on: https://www.anadep.org.br/wtksite/downloads/iv-diagnostico-da-defensoria-publica-no-brasil.pdf.

[8] Available at: http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc80.htm.

[9] Available at: http://www.cnj.jus.br/busca-atos-adm?documento=3059.

[10] Resolution 49/2014 "provides for the need for compliance, by Brazilian magistrates, with the standards - principles and rules – of the document referred to as the Istanbul Protocol, of the United Nations – UN, and of the Brazilian Protocol of Forensic Expert Examination, in cases of crime of torture, among other provisions". Available at: http://www.cnj.jus.br/atosnormativos?documento=1983.

[11] Available on: http://bibspi.planejamento.gov.br/handle/iditem/300.

initiative in this regard, aimed at "improving the quality of investments" made by the Federal Government in the area, based on a better understanding of its organization and demands. In addition to investments in equipment and trainings of expert examination professionals, for the first time Brazil has established general guidelines for the most common expert examinations performed for verification of violent crimes upon publication by the MJSP, in 2013, of the "Standard Operating Procedure – criminal expert examination."[12]

Reply to paragraph 5 of the list of issues

24. Law 12,847/2013 provides a clear framework for an improved human rights public policy aimed at fighting serious violations in detention facilities.

25. The law created the National System to Prevent and Combat Torture, through which the Brazilian State consolidates the establishment of a network of national and local players favoring integration of actions to prevent and combat torture. The network makes easier the exchange of good practices; adopting measures to implement recommendations made in the scope of the National Mechanism; negotiation of solutions to issues on deprivation of liberty submitted to international organizations; among other actions.

26. The first meeting of the National System to Prevent and Combat Torture, attended by members of bodies and institutions forming the SNPCT, was held on August 27, 2015. During the meeting, an ordinance approving the Joinder Agreement of the State and District Committees and Mechanisms to Prevent and Combat Torture to join the National System to Prevent and Combat Torture was issued, as well as a booklet titled "Monitoring of places of detention: a practical guide" ("Monitoramento de locais de detenção: um guia prático").

27. The National Committee to Prevent and Combat Torture – CNPCT is a collegiate body composed of representatives from the Federal Executive Branch and civil society. Its purpose is to prevent and combat torture and other cruel, inhuman, or degrading treatment or punishment. In addition to work with the MNPCT, the Committee receives reports from the Mechanism, participates in meetings with local officials during visits, and works for the implementation of recommendations. The CNPCT has worked on recommendations intended for custody hearings; the importance of respecting parameters established by the Istanbul Protocol and the Brazilian Protocol of Forensics Expertise in the assessment of crimes of torture; the privatization of assets in the penitentiary system; and the inspection role of the Public Defender's Office and other agencies dedicated to the defense of the rights of teenagers in social and educational facilities.

28. One of the main duties of the MNPCT, established in 2013, is to carry out inspections in those facilities. Therefore, in 2016, the Mechanism approved a resolution setting rules for visits in correctional facilities, social and educational facilities, police stations, psychiatric hospitals. The rules cover the preparation process, including a required survey of information on the state that shall receive a mission from the Mechanism; detailing the mission phases; indicating methodological steps for the visit. They also set standards for the preparation of reports. The MNPCT's resolution presents guidelines and procedures aimed at providing more transparency, consistency, and credibility to the work developed by this body. Its work is further detailed in the answer to question 42 in this report.

29. Initiatives by the Ministry of Women, Family and Human Rights (MMFDH), supported by the Federal Agreement to Prevent and Combat Torture, are directed to assist federated states to establish local committees and mechanisms. Presently, Brazil counts on 21 established committees and three installed mechanisms:

- Committees: Acre, Amapá, Rondônia, Pará, Amazonas, Goiás, Piauí, Maranhão, Ceará, Rio Grande do Norte, Paraíba, Pernambuco, Alagoas, Sergipe, Bahia, Espírito Santo, Minas Gerais, Rio de Janeiro, Paraná, Santa Catarina, and Rio Grande do Sul (created within the scope of civil society);
- Mechanisms: Operative in the states of Rio de Janeiro, Pernambuco and Rondônia. Other mechanismos in the states of Maranhão and Paraíba. In the States of Alagoas,

[12] Available on: https://pt.scribd.com/document/344279044/ProcedimentoOperacionalPadrao-pericia-Criminal.

Espírito Santo, Amapá, and Sergipe have been created by law, but not yet implemented.

30. There is no general rule in Brazil for the management of the prison system allowing unrestricted access of all mentioned parties to detention facilities. On the other hand, there is a well defined routine for inspections by State and civil society representatives.

31. The relevant actors in inspection routines are the mechanisms to prevent and combat torture, the offices of the ombudsman, the members of the Prosecutor's Office and of the Judiciary Branch and the CNPCP.

32. The Criminal Enforcement Law establishes mandatory monthly visit of Members of the Prosecutor's Office to correctional facilities, which must be observed by all units of the Prosecutor's Office, in the States and in the Federal Government as a national inspection model. In order to regulate visits, the National Council for the Prosecutor's Office (CNMP) issued, in 2010, Resolution No. 56. A standard form to be filled during visits was also issued in view of the need of creating and feeding a database with inspections outcomes.

33. The Judiciary Branch also carries out inspections since 2008, based on incarceration task forces through a CNJ initiative. In summary, work in task forces is based on two axes: the guarantee of the due process of law with revision of sentences of final and temporary prisoners, and inspections in the State's prison facilities. The initiative includes judges who travel through States to analyze the procedural status of incarcerated persons, in addition to inspecting prison facilities, aiming at preventing irregularities and ensuring compliance with the Criminal Enforcement Law. All Brazilian States have been visited by task forces, which resulted in the analysis of approximately 400 thousand proceedings. As a result of these analyses, 80 thousand benefits have been granted, such as progression of imprisonment, temporary liberty, and right to an external job.[13] The task forces resulted in the release of over 45,000 inmates. CNJ also amended a resolution in 2007[14] determining that criminal enforcement judges carry out a monthly inspection in prison facilities under their responsibility.

Reply to paragraph 6 of the list of issues

34. The Brazilian Government has been using a series of initiatives of legislative, administrative, and judicial nature, aimed at reviewing imprisonment penalties and alternative measures to incarceration.

35. From the legislative point of view, the main innovation on the topic was the enactment of Law No. 12,403/2011, known as the Law of preliminary injunctions, which establishes that judges may only decree pre-trial detention when other measures, less burdensome to the right to liberty of the indicted or accused, are not adequate. Based on the Law of Preliminary Injunctions, magistrates may choose from ten different options of preliminary injunctions to pre-trial detention, including house arrest and electronic monitoring. Using this new provision, the possibility that persons who had been temporarily incarcerated prior to conviction may face charges while in liberty has increased.

36. In addition to the abovementioned measures provided for in the applicable laws and regulations, the protective measures of the "Maria da Penha Law" (such as home withdrawal and prohibition of contact or proximity to the injured person), the criminal transaction and deferred prosecution, the reconciliation and mediation, and the use of restorative justice techniques are also alternative measures.

37. In addition to work in partnership with the CNJ encouraging the adoption of alternative measures with restorative efforts,[15] the Federal Government encourages using alternative penalties through transferring funds to States to set up systems of electronic monitoring and Centers of Application of Penalties and Alternative Measures, and prepared reference documents to the implementation of public policies on the theme.

[13] Data related to CNJ task forces are available at: http://www.cnj.jus.br/sistemacarcerario-e-execucao-penal/pj-mutirao-carcerario.

[14] Available at: http://www.cnj.jus.br/busca-atos-adm?documento=2614.

[15] See Cooperation Agreement No. 06/2015, agreed between Depen and the CNJ. Available at: http://www.justica.gov.br/seus-direitos/politica-penal/politicas-2/alternativas-penaisanexos/tctalternativas-penais.pdf.

38. In 2011, the MJSP published Ordinance No. 2,594[16] creating the National Strategy of Alternative Penalties. In 2016, the National Policy of Alternative Penalties[17] was established to instruct actions, projects, and strategies directed to the expansion of the implementation of the alternative penalties in the country, and to combat mass imprisonment. One of the goals of this policy was to make possible a decrease of 10% in the number of arrests in Brazil by 2019.

39. Law 10,259/2001 provides for small claims in Federal Courts with competence to prosecute and judge cases related to lower offensive potential violations. This Law is similar to Law 9,099/1995 that creates the Small Claims and Criminal Courts in the scope of the federated states Judiciary Branch and which established applicability of alternative penalties and measures to conducts considered "lower offensive potential crimes and less complex causes, which shall be settled faster, thus seeking, whenever possible, an agreement between the parties. At the criminal level, the purpose of the laws and regulations is promoting the compensation for damage and application of penalty not depriving liberty, such as penalties restricting rights and fine.

40. The results of implementation of this legislative apparatus may be observed in reports prepared on an annual basis by the CNJ. The report titled "Justiça em Números" ["Justice in Numbers"], of 2017,[18] with data of 2016, reports the existence of 10,433 state courts and small claims courts and 976 federal courts and small claims courts. The main outcome after the adoption of small claims courts, as pointed out, is a decrease in the duration of proceedings. In first trial, court decisions take an average of 2 years and 3 months at the state small claims courts and 1 year and 2 months at the federal small claims courts, compared to 3 years and 1 month and to 3 years and 4 months in the corresponding regular courts. For appeal, the average time for a court decision at the state small claims courts is of 8 months, compared to 1 year in the regular courts and, at the federal small claims courts, 1 year and 7 months compared to 2 years and 7 months at the federal regular courts. Regarding the productivity index,[19] the report shows that at the Small Claims Courts, where a lawyer is not required to be present, 16% of the disagreements end up in conciliation. The percentage decreases to 13.6% when the process reaches the first trial and to only 0.4% when it reaches the second. At the end of 2016, there were 1.4 million outstanding criminal enforcement proceedings – enforcement actions beginning that year amounted to 444 thousand proceedings. More than half of them entailed imprisonment. 272 thousand (61.3%). Among the penalties not depriving liberty, 163 thousand (94.9%) were filed at common court (1st instance, except for appeal courts and panels) and 9 thousand (5.1%) at special courts.

41. Such figures show the Brazilian Judiciary Branch's commitment to implement Law 10,259/2001.

Reply to paragraph 7 of the list of issues

42. The LEP establishes that criminal facilities are intended to the convicted person, to the person submitted to security measures, to the person temporarily imprisoned, and to the former inmates; that women and persons older than sixty years shall be imprisoned in facilities specific and suitable for their personal conditions; that the same architectural complex may house facilities of different disposal as long as properly separated; that the National Council of Criminal and Penitentiary Policies – CNPCP shall determine the maximum capacity of criminal facilities, according to their type and peculiarities.

[16] Available at: http://www.justica.gov.br/seus-direitos/politica-penal/politicas-2/alternativaspenaisanexos/2011portaria2594-1.pdf.

[17] Available at: http://www.justica.gov.br/seus-direitos/politica-penal/politicas-2/alternativaspenais1/arquivos/portaria-no-495-de-28-de-abril-de-2016.pdf/view.

[18] Available at: http://www.cnj.jus.br/files/conteudo/arquivo/2017/12/b60a659e5d5cb79337945c1dd137496c.pdf.

[19] The report takes into account productivity indicators between the discovery and first-instance enforcement stages, only for courts and special courts, except for the appeal panels. Productivity at the discovery stage corresponds to the total of proceedings removed at this stage regarding the total of 1st-instance magistrates, and productivity at the enforcement stage correspond to the amount of proceedings removed at this stage regarding the same 1st-instance magistrates. Accordingly, the total indicator shall correspond to the sum of the indicators in both stages.

43. In 2015, Law No. 13,167 was enacted, establishing criteria for the separation of convicted persons in criminal facilities and determining that persons temporarily imprisoned shall be separated by and between according to the following criteria: I – persons convicted of practicing heinous crimes or similar crimes; II – persons convicted of practicing crimes committed through violence or serious threat to the victim; III – persons convicted of committing other crimes or misdemeanors other than those indicated in items I and II. The convicted prisoners shall be separated according to the following criteria: I - persons convicted of practicing heinous crimes or similar crimes; II - persons who are not first-time offenders, convicted of violent crimes or serious threat to the victim; III – first-time offenders convicted of committing violent crimes or serious threat to the victim; IV - other persons convicted of committing other crimes or misdemeanors in a situation other than those provided for in items I, II, and III. The same Law also establishes that the imprisoned person that has his/her physical, moral, or psychological integrity threatened by the cohabitation with the other imprisoned persons shall be separated, in a specific place.

44. Despite the legal provisions, separation by severity of conviction is still challenging due to the growth of the prison population in Brazil[20] over the last few years.

45. In 2015, the Brazilian Supreme Court (STF) passed a decision which might support gradual improvement. In a preliminary injunction granted in the Claim of Breach of Fundamental Precept No. 347,[21] the Court partially granted the request, in order to determine a deadline of 90 days for custody hearings to be carried out throughout the country.

Reply to paragraphs 8-10 of the list of issues

46. The Brazilian State counts on specific laws and regulations focused on children and teenagers, the Statute of the Child and Adolescent (ECA), issued in 1990, which is based on the principle of full protection of these persons considering their particular condition of person under development. According to these laws and regulations, teenagers are not criminally liable for their actions, however, they are held liable for their offenses being subject to social and educational measures. These measures may be in an open environment, such as warning, obligation to compensate for the damage, provision of services to the community, and assisted liberty, or restrictive measures or deprivation of liberty, such as semi-liberty and custody, which may be temporary.

47. Laws and regulations provide for the separation of the juvenile justice and offense liability system from the system involving processing and punishment of crimes committed by adults. It is the so-called social and educational system that is being implemented based on international rules, especially the Beijing Standards (1985) and the United Nations Standards for the Protection of Juveniles deprived of their Liberty (1990). Additionally, the time of stay in temporary custody is up to 45 days. It must be carried out in centers exclusively dedicated to teenagers. The right to be separated by age and type of offense is also ensured. Article 123 of the Statute of the Child and Adolescent provides that both the custody measure and the temporary custody shall be carried out in a facility exclusively dedicated to teenagers, complying with strict separation rules according to criteria of age, physical structure, and severity of the offense. Pedagogical activities must also be carried out in those facilities.

48. Thus, the social and educational system is completely separated from the public security and criminal justice system, and it works according to differentiated and specific laws and regulations and public policies.

49. Law 12,594, of 2012, is the main recent rule intended for improvement of the system. It created the Brazilian System for Social and Educational Assistance (Sinase) and regulated enforcement of social and educational measures intended to offender teenagers.

50. The number of teenagers undergoing social and educational measures restricting and depriving liberty in the country has increased a lot in the country over the last few years,

[20] The incarcerated population in Brazil increased by 81% between 2006 and 2016, according to data from the MJ Report "National Survey of Penitentiary Information" of 2017, which has data of June 2016 as reference. For more information: http://depen.gov.br/DEPEN/noticias-1/noticias/infopen-levantamento-nacional-deinformacoespenitenciarias-2016/relatorio_2016_22111.pdf.

[21] Available at: http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=10300665.

going from 16,868, in 2008,[22] to 25,929, in 2016,[23] the last year which data are available. This increase in population also causes problems for managing separation of teenagers in the units of restriction and deprivation of liberty. On the other hand, the rule for separation of adults and teenagers in different units is complied with. Any failure to comply will be investigated and taken to court as necessary.

51. The ECA provides that federated states and the Federal District may create exclusive childhood and youth courts. The Judiciary Branch shall establish its proportionality according to the number of inhabitants, provide it with infrastructure and define the assistance, including for duty calls. According to a survey carried out by the CNJ in 2012,[24] 100 Brazilian cities had such exclusive courts. The CNJ understands that "specialization of childhood and youth courts is an important indicator of the relevance of the principle of absolute priority inscribed in art. 227 of the Federal Constitution and in art. 4 of the ECA. It provides greater easy and efficiency for the organization of services offered to the people under its jurisdiction and boosts operating coordination and integration with the remaining institutions serving children and adolescents rights, as provided for in art. 88 of the ECA. In this regard, it is seeking for developing a judicial policy to encourage the creation of new specialized courts and, therefore, it created, in 2009, the Brazilian Forum for Childhood and Youth. The collegiate body, currently regulated by Resolution 231/2016, is authorized to "prepare studies and propose measures for coordination, preparation, implementation of public policies, in the scope of the Judiciary Branch, concentrating specially on national initiatives to improve relief in the Childhood and Youth area."[25]

52. Teenagers shall be deprived of their liberty only if detained in the offense act or upon written and well-grounded order of the competent judicial authority, and custody prior to court decision shall be judicially determined for the maximum term of forty-five days. The House of Representatives in is examining a bill to ensure that teenagers arrested for committing offenses be taken to the competent judicial authority within 24 hours. While the ECA currently provides for leading teenagers to a public prosecutor, immediately after being detained, such bill aims at expanding the custody hearing mechanism to the juvenile justice.

53. Ordinance No. 1,082, issued in 2014, resets the guidelines of the Brazilian Policy for Comprehensive Health Care to Teenagers in Conflict with the Law, in the Custody or Temporary Custody System [26] which establishes new criteria the implementation of comprehensive health care to teenagers deprived of liberty, in custody, temporary custody, and semi-liberty units.

54. Understanding the challenges for implementing an effective social and educational system, the Ministry of Women, Family and Human Rights (MMFDH), which coordinates SINASE pursuant to Federal Law No. 12,594/2012, has been working to prioritize open-environment measures that do not entail restriction of teenagers' liberties. The right to family and community life and other daily activities is hereby ensured.

Reply to paragraph 11 of the list of issues

55. Although the prison population strongly increased over the last few years, the number of persons imprisoned in police units diminished. According to data from Depen, the number of imprisoned persons under police custody gradually decreased from 26.7% in 2001 to 5% in 2016.[27]

[22] Social-Educational Assistance to the Teenager in Violation of the Law, 2011 Survey, available at: http://ens.sinase.sdh.gov.br/ens2/images/conteudo/levantamentos/Sinase%20%20Levantamento%202011.pdf.

[23] 2016 Annual SINASE Survey, available at: http://www.sejudh.mt.gov.br/documents/412021/9910142/Levantamento+SINASE+_2016Final.pdf/4fd4bcd0-7966-063b-05f5-38e14cf39a41.

[24] National overview – implementation of socio-educational measures of detention. Available at: http://www.cnj.jus.br/images/pesquisas judiciarias/Publicacoes/panorama_nacional_doj_web.pdf

[25] http://www.cnj.jus.br/busca-atos-adm?documento=3146.

[26] Available on: http://bvsms.saude.gov.br/bvs/saudelegis/gm/2014/prt1082_23_05_2014.html.

[27] Data of the synthetic reports of the National Prison Information Survey (Infopen) available at: http://depen.gov.br/DEPEN/depen/sisdepen/infopen/relatorios-sinteticos/relatorios-sinteticos.

56. The incarceration facilities in most police stations are being closed because of the risk to the physical integrity of the imprisoned persons and the need to reduce the number of police officers involved in the task.

57. The closing of police incarceration facilities throughout Brazil was one of the goals presented by CNJ during the 3rd National Meeting of the Judicial Branch in 2010, when, according to Depen, 56,500 imprisoned persons overcrowded police stations CNJ, MJSP, and state governments are collaborating to this end.

58. In addition to the general measures for the extinction of incarceration facilities, the implementation of Custody Hearings had great impact in the decrease of custody time in police units.

59. According to Resolution 213/2015 of CNJ, every person in custody must be brought before a judicial authority within 24 hours. The custody hearing carried out then has the purpose of verifying the occurrence of torture or mistreatments well as the actual need for upholding the arrest. In this hearing the judge may determine, when applicable, an investigation and to expert examinations to verify the occurrence of violations. They will also evaluate the possibility of release due to the illegality of the or replacement of pre-trial detention with provisional liberty until the final bench trial. The judge may also determine the adoption of preliminary injunctions, such as electronic monitoring and periodic presence in court.

60. All the States and the Federal District have already implemented the custody hearings. The mechanism is assessed by CNJ, by researches financed by MJSP and by the Council itself. There are still challenges, such as obstacles for the incorporation of custody hearings and judicial practices not always consistent with the investigation of violations. The officers of the Court system not always make questions effectively related to the occurrence of violations. Moreover, the presence of security professionals in hearings often make the environment hostile to reports of police violence.

61. Despite these challenges, the custody hearings are an essential mechanism for decreasing the admission of prisoners in the prison system and the time they spend in police units, besides investigating violations committed by police officers upon arrest.

62. According to CNJ,[28] from 2015 to June 2017, 258,485 custody hearings had already been carried out. 44.68% resulted in liberty, and, in 4.9% there was allegation of violence upon arrest.

63. Additionally, in 1994, Complementary Law 79/1994 created the National Penitentiary Fund (Fupen). It allocates resources to maintenance activities, such as renovations, expansion of facilities, and improvement of services in the prison system. Because of ongoing difficulties in the funding process, in 2015 a decision of the Brazilian Supreme Court (STF) obliged the Executive Branch to release the Funpen accumulated balance and prohibited new contingencies. According to Depen, in 2016, about 1.2 billion Reais were destined to state, district, and local penitentiary funds. In 2017, the fund-to-fund transfer was of about 590 million Reais.

Article 3

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64. The Foreigner Statute was enacted in 1980 and replaced by Law 13,445, the "Migration Law", which added a humanitarian content to rule the matter. It is part of the commitments undertaken by Brazil, aiming at the preservation of citizen and migrant individual rights. It is now possible to extradite a migrant in only two circumstances: a) when they commit a crime within the state requesting their extradition; or b) when they are held liable for an investigative process or convicted in their country of origin. Laws and regulations also sets forth that "(…) the person shall not be effectively extradited if the State requesting it does not undertake the commitment to: I – not submit the person to prison or proceeding due to a fact prior to the extradition request; II – compute the time of prison that, in Brazil, was applied due to extradition; III – exchange the corporal

[28] Data available at: http://www.cnj.jus.br/sistema-carcerario-e-execucao-penal/audienciadecustodia/mapa-da-implantacao-da-audiencia-de-custodia-no-brasil.

punishment, life sentence, or death penalty with penalty depriving liberty, observing the maximum limit for serving a thirty-year sentence; IV – do not deliver the extraditee without consent of Brazil, to another State requiring them; V – do not consider any political reason to aggravate the penalty; and VI – do not subject the extraditee to torture or other severe, inhuman, or degrading treatments or penalties".

65. The cases of extradition are decided by the STF, which acts according to the constitutional principles of legal defense and the contradictory, thus ensuring the right to defense for the defendant, who can allege the risk of being subject to torture. There is no record of expulsion or delivery of an extraditee who could suffer torture in another country. Attachment VII contains charts on the extradition and transfer requests for persons convicted from 2016 to 2018, according Ministry of Justice's data.

66. Deportations and expulsions, on their turn, are administrative and, thus, discretionary measures. However, reconsideration of Administration acts can be requested. It is possible to submit the act to the Judiciary Branch, through filing of an Ordinary Action, Habeas Corpus, Writ of Mandamus, or another appeal, according to the case.

67. Given that the internal rule ensures protection to the foreigner likely to be subject to any practice prohibited in this Agreement, there is no record on effective expulsion or delivery of an extradite that could suffer torture in another country.

68. According to information of the Ministry of Justice, in 2017, 31 active extraditions and 26 passive extraditions were effected. Considering that there is no mechanism established, passive extraditions were not reviewed. There was no case where the STF or the MJSP denied extradition based on the fact that the extraditee committed a crime of torture.

Article 4

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69. As provided by Law No. 9,455/1997 and by the Brazilian Penal Code, both attempting to commit and participating (co-perpetration) in torture are subject to punishment. The penalty set forth for the attempt corresponds to that of the consummated crime, with a one- to two-third reduction, and, in case of participation or co-perpetration, the penalty is the same as that of the crime, although it may be reduced by one sixth to one third in case of a less significant participation.

70. The Brazilian Government still suffers from the lack of criminal and judicial statistics that would enable presenting individual information on the proceedings related to the crime of torture. As of this moment, it is not possible to provide further details about the number of proceedings, the results thereof, the profile of the persons accused, or the sanctions imposed.

71. In spite of that, the Judiciary Branch and the Executive Branch have strived to remedy the insufficiency of data. In 2012, Law No. 12,681 created the National Information System for Public Security, Prison and Drugs (Sinesp), with the purpose of storing, handling, and integrating data and information to support the formulation, implementation, enforcement, monitoring, and assessment of the policies related to public security, the prison system, and criminal enforcement, in addition to the fight against illegal drug trafficking. The only data currently available on the topic are those provided by Depen, indicating that, in June 2016, there were 229 persons imprisoned in the country, 174 men and 55 women,[29] for the practice of torture.

72. The Brazilian laws and regulations differentiate between the crimes of torture, bodily injury, ill-treatment, and abuse of authority, not only based on the description of the conducts, but also regarding the penalties set forth.

73. The connection between these criminal practices is not always understood by the public security and justice officials, so the classification of one or another legal type is often subjective.

[29] Available at: http://depen.gov.br/DEPEN/depen/sisdepen/infopen/relatorios-analiticos/br/br.

74. The doctrine differentiates “torture punishment” (when the purpose of the official is to injure the victim) from “torture evidence” (when the official tortures the victim in order to obtain information or any data that may be used to obtain another evidence). Precisely because of this doctrinal distinction, there is a huge amount of judicial decisions, especially in the State Courts, that do not deem the practices as a crime of torture due to insufficient evidence that the agent had such power over the victim.

75. In 2008, the Brazilian Bar Association filed a Claim of Breach of Fundamental Precept with STF arguing that the 1979 Amnesty Law was not provided for by the Brazilian Federal Constitution of 1988. Only two Justices accepted the request, which was rejected by majority of votes by the plenary session of the Supreme Court in 2010.

76. In this sense, the final report of the National Truth Commission (CNV), published in 2014, deemed inconsistent with the Brazilian and international Law to extend amnesty to public officials that caused illegal and arbitrary detentions, torture, executions, enforced disappearances, and concealment of corpses, as they are characterized as crimes against The Federal Prosecution Service (MPF), especially through the actions of the Office of the National Ombudsman, has also been working to try to suspend in court the application of the Amnesty Law, in addition to adopt legal actions aiming at the civil accountability for the violations of human rights occurred during the dictatorship.[30] MPF also made a formal pronouncement pleading the revision of the Amnesty Law in Claim of Breach of Fundamental Precept No. 320,[31] which is still pending in the Supreme Court, in order to ensure that such law is not applied to the crimes of serious violation of human rights committed by public officials or to persons who committed continuing or permanent crimes.

77. The Federal Prosecution Service (MPF), especially through the actions of the Office of the National Ombudsman, has also been working to try to suspend in court the application of the Amnesty Law, in addition to adopt legal actions aiming at the civil accountability for the violations of human rights occurred during the dictatorship.[32] MPF also made a formal pronouncement pleading the revision of the Amnesty Law in Claim of Breach of Fundamental Precept No. 320,[33] which is still pending in the Supreme Court, in order to ensure that such law is not applied to the crimes of serious violation of human rights committed by public officials or to persons who committed continuing or permanent crimes.

78. Despite these efforts, the Amnesty Law of 1979 still prevails in Brazil.

Article 5 to 8

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79. The cases referred to in article 5 of this Convention are governed in Brazil by the Brazilian Penal Code and the CPP. The standard principle is the territoriality of the criminal law, according to which the Brazilian criminal law applies, without prejudice to the international law, to crimes committed within the national territory – which includes Brazilian vessels and aircraft, whether public or serving the Brazilian government wherever they may be located at, that may be, respectively, in the corresponding airspace or high-seas. Brazilian criminal law also applies to crimes committed on board of foreign private aircraft or vessels, the former once they land in Brazilian territory or fly over the corresponding airspace and the latter once they dock in Brazilian ports or reach Brazilian territorial waters.

80. The Brazilian Penal Code also regulates cases of extraterritoriality, in which crimes committed abroad are subject to Brazilian laws: and which include cases where the author is Brazilian and cases involving crimes that, due to a treaty, Brazil was forced to suppress. In situations of extraterritoriality, the enforcement of Brazilian laws depends on the entrance of the author within the national territory, on the compatibility of the liability to prosecution in such case in the country where the crime has been committed, on the crime

[30] http://www.mpf.mp.br/pgr/noticias-pgr/pfdc-e-camara-criminal-lancam-nota-publicasobredocumento-da-cia-que-confirma-crimes-da-ditadura-brasileira.

[31] Available at: http://stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=4574695.

[32] http://www.mpf.mp.br/pgr/noticias-pgr/pfdc-e-camara-criminal-lancam-nota-publicasobredocumento-da-cia-que-confirma-crimes-da-ditadura-brasileira.

[33] Available at: http://stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=4574695.

being listed among those for which the Brazilian law authorizes extradition, on the author not being acquitted abroad or having served time in another country, on the author not being pardoned abroad or on the liability to prosecution of the author not being annulled.

81. Brazilian criminal law shall also be applied to foreign persons if the same abovementioned conditions regarding Brazilians are satisfied and if the extradition of such foreign person was not requested or denied and also if there was no request from the Minister of Justice.

82. Extradition is the rule in cases of requests made so that the country of origin may judge the deportee for torture. There are discussions in the Supreme Court, however, regarding the applicability of statutory limitations in some cases, as Brazil is not a signatory to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity and to the Inter-American Convention on Forced Disappearance of Persons. In this regard, there are cases (Extradition 1,278 and Extradition 1,270) in which the requests for extradition were granted, but due to other crimes involved in the case, which were classified as continuous, rather than due to the crime of torture.

Article 10

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83. The federative structure of Brazil was organized so that the states are responsible for the vast majority of the jurisdictions related to public security and penitentiary administration. The Federal Government has direct responsibility only for the selection and training of professionals acting in the Federal Police, the Federal Highway Patrol, and in the national prison department.

84. Still, since the early 2000s, the Federal Government has been expanding its role, trying to implement policies, programs, and national projects through fostering the participation of the states. Thus, there are federal structures specifically directed to the strengthening and integration of the police forces and penitentiary system of the states, which were previously located in MJ (now the Ministry of Justice and Public Security).

85. In this regard, the Federal Government has been developing actions to improve the work of public security and prison system professionals regarding human rights through Senasp and Depen.

86. SENASP develops a series of capacity-building and training activities, which are based on the National Curriculum Matrix (MCN).[34] Created in 2003 and updated in 2005 and 2014,[35] the MCN was designed to be a theoretical and methodological reference to guide the training – initial and continuing – of security professionals and is also used as a reference document in structuring the curricula of most police academies in the states.

87. The MCN is ruled by a set of principles, that emphasize the relationship between training actions and the transversality of human rights, contributing to guide the actions of public security professionals in a democratic state of law.

88. Compliance with the MCN is one of the criteria used by SENASP in the transfer of federal funds to the states in order to qualify the educational actions. It guides all programs executed directly by the office related the execution of classroom and distance learning courses and the maintenance of a lato sensu postgraduate network in partnership with universities.

89. Since 2005 the SENASP maintains a Distance Education Network, the EaD-SENASP,[36] which seeks to provide free, qualified, integrated, and continuous training, regardless of geographic and time limitations, to professionals of public security throughout

[34] The Government's concern with the development of reference materials that could guide the process for training state security professionals began in 1997, when the studies and activities that led to the preparation of the document "Basic Curricula for the Education of Security Professionals," published by SENASP in 2000, started to be developed.

[35] The current version of the MCN can be accessed at: http://www.seguranca.gov.br/suaseguranca/seguranca-publica/analise-e pesquisa/download/outras_publicacoes/pagina1/2matriz-curricular-nacional_versao-final_2014.pdf.

[36] The address to access the Network is http://portal.ead.senasp.gov.br/home.

the country. It has trained more than 670 thousand security professionals which already accounted for more than 3 million enrollments in 125 courses available, several of them specifically related to human rights – such as Philosophy of the Human Rights applied to police acting (I and II), Police Acting Against Vulnerable Groups, Resolution of Agrarian Conflicts, Public Security Without Homophobia, and Differentiated Use of Strength.[37] Since 2015, the Network counts on a course specifically about Prevention and Combat to Torture, developed in a partnership with the Ministry of Women, Family and Human Rights – MMFDH, according to which 12,588 security professionals passed the course.[38]

90. It is important to highlight the creation of the Distance Education Course on Preventing and Combating Torture in the Distance Learning Platform of the National Secretariat of Public Security. Its purpose is to increase awareness and train public security and prison system professionals on preventing and combating torture and other cruel, inhuman, or degrading treatment or punishment in places of detention (police stations, barracks, prisons, and custody hospitals) and to disseminate a new institutional culture for the promotion and defense of human rights.

91. Since 2005, SENASP has also been managing the National Network for Advanced Studies in Public Security (RENAESP), in partnership with Higher Education Institutions, intending to promote the access of security professionals to specialization courses, several of them related to human rights issues.

92. Finally, the concepts on human rights are the cross-sectional axis of all vocational courses directly implemented by SENASP (focused, for example, on investigation techniques, production of expert evidence, and use of force) and, between 2004 and 2011, it held training events addressing human rights attended by about 11,400 security professionals.[39]

93. Additionally, the Federal Government has also produced a series of reference documents on human rights for public security professionals, such as:

- Human Rights Handbook – ethical, technical, and legal conduct for military police institutions[40] (2008)
- Police Action Handbook for Protection of the Rights of Vulnerable Persons[41] (2010/2013)
- Guidelines for Police Approach to Street Population[42]
- Police Approach from a Human Rights Perspective (2018)[43]

94. DEPEN manages the National School of Criminal Services (ESPEN), an entity that offers significant classroom and distance courses, preparation, and trainings for federal prison officers, as well as courses, preparation, and trainings for public officials who work in state prisons in subjects related to human rights, public policies for the prison sector, operational techniques, prison intelligence, among others. The ESPEN works based on a reference pedagogical document, the National Curriculum Matrix for Education in Prison Services,[44] which is also completely guided by respect to human rights.

95. There are several initiatives on penitentiary training, please carry out some research.

96. With respect to trainings of prosecutors, please note that the Prosecution Service of each federative unit has its school for trainings and continuing education. Recently, the

[37] The list with the courses and the amount of persons passed in the course are available in Attachment I.

[38] Data provided by SENASP. The professionals of the penitentiary system, as well as the administrative civil servants of the security system, also have access to some courses of Ead-SENASP Network, and are accounted for in the total amount of persons who passed the course on combat to torture, as it can be verified in Attachment II.

[39] Idem.

[40] Available at: http://www.dhnet.org.br/dados/guias/a_pdf/guia_dh_policias_ue.pdf.

[41] Available at: http://www.justica.gov.br/central-deconteudo/segurancapublica/cartilhas/a_cartilha_policial_2013.pdf.

[42] The document is available in its entirety in ATTACHMENT III.

[43] Available at: https://cedecarj.files.wordpress.com/2018/08/cartilha_curso_2018.pdf.

[44] CNMP Resolution No. 146 of June 21, 2016, available at: http://www.cnmp.mp.br/portal/images/Resolucoes/Resolu%C3%A7%C3%A3o-1461.pdf.

National Council of the Prosecution Service – CNMP has been engaged in defining national parameters for its public sector recruitment examination, of which curriculum content shall be included in the courses for education and improvement of its members and civil servants. For this, it created the National Training Unit of the Prosecution Service,[45] which objectives are aligned with CNMP's Strategic Plan and which includes the continuous progress of the admission and training processes of the members and civil servants of MP to ensure that there are highly qualified professionals in all its operation areas.

97. CNMP has also been promoting and participating in a series of events addressing torture, and it is worth mentioning the promotion of National Meetings to Improve the Actions of the Prosecution Service for External Control of Police Activity. In these Meetings, which were already held five times between 2011 and 2015, members of the state Prosecution Services meet to discuss and propose ways to improve the work. The 1st Meeting, held in 2011 (please update) had an specific working group to address torture that, among other prevention activities, proposed the "specific training of Members in combating torture through the courses of the Prosecution Service, in addition to address the topic in the public sector recruitment examinations".[46]

98. In addition to the initiatives listed, another structured initiative based on training officers of the Court System to combat torture is the guide to combat torture prepared by the Special Office for Human Rights of the Presidency of the Republic – SDH/PR, currently a member of the MMFDH's structure, prepared for judges, prosecutors, public advocates, and attorneys.[47] Additionally, there was the seminar entitled "Protecting Brazilian Persons against Torture", held in partnership with the Appeals Court in the State of Rondônia and the Prosecution Service of the State of Rondônia. The event was held in 2013, at the headquarters of the Court of Appeals in Rondônia, and 100 persons participated of the activities proposed. The same event also was held in Porto Alegre, Rio Grande do Sul, supported by the Prosecution Service of the State of Rio Grande do Sul, in 2013. About 40 persons, including Law enforcement officers and representatives of the civil society, participated in the activities.

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99. In 2003 the SDH/PR established, through ordinance, the Brazilian Protocol of Forensic Expert Examination in Crime of Torture,[48] which contains guidelines and rules to be complied with by the expert bodies, forensic experts, and other professionals in forensic examination in cases of crime of torture. The Protocol was prepared based on the Istanbul Protocol, including adaptations to the Brazilian reality regarding the procedures for identification and production of expert evidence. The document was also based on the principles and recommendations in the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.

100. Aiming at promoting the compliance with the protocol, between 2006 and 2011, SDH/PR created workshops for training in "Forensic Expert Examination focused on crimes of torture". 11 workshops were held, training about 360 magistrates, MP members, commissioners, public defenders, expert medical examiners, criminal experts, members of the Committees of Fight against Torture, and representatives of human rights entities.

[45] Available at: http://www.seap.am.gov.br/wp-content/uploads/2012/07/matriz_curricular.pdf.

[46] The memory of the working group is available at: http://www.cnmp.mp.br/portal/images/Comissoes/CSP/Grupo_E_-_Tortura.pdf.

[47] The Guide was translated in a partnership between the Special Office of Human Rights and the British Embassy and is available at: http://www.dhnet.org.br/dados/manuais/a_pdf/306_manual_combate_tortura_mp.pdf. Later, the Brazilian Office for Judicial Reform, in a partnership with the International Bar Association, issued an updated version of the text, available at: https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=7d33b16e-d92b-4de5-ba9dd414fd398e25.

[48] The Protocol is available at: http://pfdc.pgr.mpf.mp.br/atuacao-e-conteudosdeapoio/publicacoes/tortura/protocolo-brasileiro-pericia-forense-no-crime-de-tortura-autor-grupodetrabalho-tortura-e-pericia-forense-sedh/view.

101. In 2014, through Recommendation No. 49,[49] the National Justice Council – CNJ standardized the need for compliance of Brazilian magistrates with the Istanbul Protocol and the Brazilian Protocol of Forensic Expert Examination in cases of torture. The Recommendation establishes the requirements that shall be formulated to medical examiners in cases involving torture, and provides guidance to magistrates as to pay attention to the existence of other elements of evidence, other than expert examinations, in police investigations.

102. The National Council of the Prosecution Service also worked in the same sense and, in 2016, issued Recommendation No. 31[50] which provides for the need for compliance by MP members with the Istanbul Protocol and the Brazilian Protocol of Forensic Expert Examination in cases of torture.

Article 11

Reply to paragraph 20 of the list of issues

103. In Brazil, there is no procedure to periodically revise laws and regulations regarding practices of interrogation or the custody and treatment of incarcerated persons.

104. In Brazil, the legal instrument that guides the interrogation of persons accused of crimes by police authorities is the Brazilian Code of Criminal Procedure,[51] which, on its chapter III, sets forth the legal provisions about processes of interrogation. The discussion about the need for a more detailed regulation on this police procedure is recent in Brazil. As that is a moment where the interrogated person is particularly vulnerable, as he/she is under police custody, the Federal Government has been trying to discuss ways of standardizing this procedure so that the history of tortures within police stations, which is widely documented in researches and investigations, is interrupted.

105. The restriction not only on the interrogation, but also on the entire investigation, according to the general rules of the Brazilian Code of Criminal Procedure is proving to be insufficient not only regarding occasional infringements of rights, but also of the effectiveness of the procedures, and the Federal Government has used efforts to produce laws and regulations and more detailed reference materials.

106. In 2014, SENASP produced the hematic Reference Book on Criminal Investigation of Homicides,[52] a reference material on the topic, which was prepared based on extensive analysis of the national and international bibliography on the topic and on a long empirical research with units specialized in investigating homicides in several Brazilian States. In 2016, together with UN Women, Brazil published the document "National Guidelines for investigating, prosecuting, and judging violent deaths of women from a gender perspective (feminicide)",[53] a protocol that defines guidelines and lines of work in order to improve the actions of security and justice professionals in cases of violent gender-related deaths of women. In 2017, Law No. 13,431[54] was enacted, providing for the procedures to be complied with by the public bodies in order to take the depositions of the child or adolescent who is a victim of or a witness to violence.

107. In the most recent years, SENASP has been offering courses on Techniques for Interviews and Interrogations in a partnership with the FBI. Between 2013 and 2017, 457 public security professionals went through this training process.

[49] Available at: http://www.cnj.jus.br///images/atos_normativos/recomendacao/recomendacao_49_01042014_03042014155230.pdf.

[50] Available at: http://www.cnmp.mp.br/portal/images/Recomendacoes/Recomenda%C3%A7%C3%A3o031.pdf.

[51] Available at: http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689.htm.

[52] For more information: http://www.justica.gov.br/central-deconteudo/segurancapublica/livros/ctr_homicidios_final-com-isbn.pdf. Retrieved on August 18, 2018.

[53] Available at: http://www.onumulheres.org.br/wpcontent/uploads/2016/04/diretrizes_feminicidio.pdf.

[54] http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13431.htm.

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108. The Differentiated Disciplinary Regime (RDD) was incorporated into the LEP[55] in 2003, after a legislative amendment to article 52 that started to describe the possibilities and conditions for its application. It is a special form of serving a sentence in the closed prison regime, which consists in the permanent residency of the inmate (temporary or convict) in an individual cell, with limitations on the right to receive visits and to leave the cell.

109. The maximum duration of the RDD is 360 days; however, the penalty may be imposed again in case of a new serious offense of the same nature, in up to one sixth of the penalty imposed during this period, the prisoner is held in an individual cell and is entitled to 2-hour weekly visits by two persons, not counting children, and to leave the cell for 2 hours a day for sunbathing.

110. In addition to the Federal Prison System, which is composed of five maximum security prisons throughout the country, only three Brazilian states – São Paulo, Rio de Janeiro, and Minas Gerais – have exclusive facilities for prisoners under the RDD.

111. The RDE was a regime created and applied in São Paulo, but that does not exist anymore.

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112. In Brazil, offenders are subject to the full protection doctrine and, pursuant to the Statute of the Child and Adolescent (ECA),[56] children involved in infractions are subject to protection measures, and adolescents are subject to social and educational measures that range from warning to detention. The states are responsible for enforcing social and educational measures in the closed prison regime (semi-open regime and detention), but the Federal Government is competent to "establish guidelines on the organization and operation of facilities and assistance programs and the reference rules for enforcement of social and educational measures of detention and semi-open prison," as set forth in Law 12,594/2012,[57] which created Sinase.

113. Even before the Sinase Law was enacted in 2006, the Federal Government had already established architectural parameters for the construction of facilities for enforcement of social and educational measures in a closed regime so that they include leisure and medical facilities, in addition to spaces for educational activities and vocational workshops.57 In 2016, according to the Sinase Annual Survey conducted by MMFDH,[58] there were 477 social and educational assistance facilities, but there are no available data about how many actually follow the established architectural parameters.

114. In 2013, the National Socio-Educational Assistance Plan,[59] a document containing the guidelines and the management model for the area to be adopted throughout the country between 2014 and 2023, was issued. This ten-year plan includes articulated and cross-sectional actions contemplating education, health, social assistance, sports, culture, and capacity-building.

115. It is possible to find more information on Sinase in the 3rd Brazil's Report on the International Covenant on Economic, Social, and Cultural Rights.

Article 12 and 13

Reply to paragraph 23 of the list of issues

116. Pursuant to the answer given to question 14, the culture of generating data on the public security system and criminal justice is a recent practice in Brazil. Although the National Committee for Prevention and Fight against Torture is responsible for "creating

[55] Available at: http://www.planalto.gov.br/ccivil_03/LEIS/L7210.htm.

[56] Available at: http://www.planalto.gov.br/ccivil_03/LEIS/L8069.htm.

[57] Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12594.htm [57] Pursuant to "National Social and Educational System, produced by SDH/PR, available at: http://www.conselhodacrianca.al.gov.br/sala-de-imprensa/publicacoes/sinase.pdf.

[58] Available at: http://www.mdh.gov.br/todas-asnoticias/2018/marco/Levantamento_2016Final.pdf.

[59] Available at: http://www.mpgo.mp.br/portal/arquivos/2017/03/03/17_49_45_295_Plano_ NACIONAL_Socioeducativo.pdf.

and maintaining a registry of claims, criminal complaints, and court decisions",[60] the only data currently available on the subject is from the National Prison Department and indicate the existence of 174 persons arrested for the practice of torture in the country in June 2016, being 174 men and 55 women.[61] Regarding public security, in 2012 Sinesp was created to store, process, and integrate data and information to assist in the formulation, implementation, execution, monitoring, and evaluation of policies related to public security, prison system, and criminal enforcement, in addition to fight against illicit drug trafficking, but the System does not contain specific data on torture yet. Regarding data on legal proceedings, the National Justice Council – CNJ has been making efforts to consolidate data from state courts, but, besides the implementation of electronic proceedings, which are an important tool for obtaining more detailed information in the near future, the efforts are focused on productivity so far.

117. Still regarding the Judiciary Branch, it is important to mention that the same CNJ resolution that implemented custody hearings in Brazil created the Custody Hearings System (SISTAC), which is an electronic system of national range that requires the Court of Appeals to insert information about the custody hearings carried out. Among other functionalities, this system makes it possible to collect information on complaints of torture and ill-treatment committed by public officials at the moment of the arrest of a person caught in the act and/or during police custody. However, such data are not available separately, although CNJ reports that there were allegations of violence upon arrest in 4.9% of the hearings carried out until June 2017.61 In 2017, a research[62] on the implementation of the custody hearings was published at the request of CNJ, and, despite the fact that the research did not use data from the SISTAC, it has obtained quite different data indicating that 22% of the persons accused of crimes within the scope of custody hearings mentioned that they suffered some form of violence at the moment of the arrest – out of those, 73% were attributed by the accused persons to the Military Police. The Brazilian Government has a challenge of making progress in the production of statistical data on the matter, but it is already possible to verify important steps in the institutionalization of systems and procedures over the last few years.

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118. Out of the sanctions institutionalized in the country, the Criminal Enforcement Law (LEP) established the "isolation in the cell itself or in a proper location", which shall never exceed thirty days. Still pursuant to the LEP, the isolation sanction, which shall be "informed to the judge", may be applied by the administrative authority, preventively, for the period of up to 10 days.

119. Any cases of sanctions that differ from the provisions of the LEP are a crime and/or administrative infraction, and they must be investigated and punished.

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120. In Brazil, MP has the power to investigate and its actions in the cases related to police activity, including cases of torture, was set forth in Resolution No. 20 of CNMP, regulating the external control of police activity and established that "the bodies of the Prosecution Service must, also, when needed and convenient, initiate an investigation about the crime committed during police activity".[63]

121. At first, the figure of the arraignment judge does not exist in Brazil[64] and there is no consensus about its creation, even though there are bills pending in this regard, including in

[60] As provided for in item XII, article 6, of Law No. 12,847/2013, available at: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12847.htm.

[61] Available at: http://depen.gov.br/DEPEN/depen/sisdepen/infopen/relatorios-analiticos/br/br [61] Data available at: http://www.cnj.jus.br/sistema-carcerario-e-execucao-penal/audienciadecustodia/mapa-da-implantacao-da-audiencia-de-custodia-no-brasil.

[62] Available at: http://www.cnj.jus.br/files/conteudo/arquivo/2017/10/4269e81937d899aa 6133ff6bb524b237.pdf.

[63] Wording of paragraph 1 of article 4 of the Resolution; the full wording is available at: http://www.cnmp.mp.br/portal/images/Resolucoes/Resolu%C3%A7%C3%A3o-0202.pdf.

[64] In the Appeals Court in the State of São Paulo there is a Police Investigation and Judiciary Police Department working in the criminal offenses which are currently pending in the capital and, in

initiatives related to the amendment to the Brazilian Code of Criminal Procedure, which may start to include the figure of the judge of guarantees.

122. As mentioned in the response to question 14, Brazil suffers from a lack of criminal and legal statistics, so it is not possible to provide information about investigations and patterns of abuses in cases of torture.

Reply to paragraph 26 of the list of issues

123. According to the Brazilian Federal Constitution, ordinary courts are responsible for the prosecution of ordinary crimes, and the Military Courts for the prosecution of the military crimes. With Constitutional Amendment No. 45 of 2004, the Constitution has gone further and started to grant jurisdiction to the jury when the victim is a civilian.

124. Cases involving the commission of a military crime and a common crime simultaneously, such as, for example, bodily injury and torture, are separated according to STJ Precedent No. 90, which sets forth: "The State Military Court is responsible for prosecuting and judging the military police officer for the military crime, as the Ordinary Court is responsible for prosecuting and judging the ordinary crime The State Court-Martial is responsible for prosecuting and judging the military police officer for the military crime, as the Ordinary Court is responsible for prosecuting and judging the ordinary crime simultaneously committed simultaneously".[65]

125. There is a divergence in the interpretation of the jurisdiction to investigate crimes against life committed by military officers due to the fact that, by removing this crime from the list of military crimes, Law No. 9,299/1996 did not clarify the investigative jurisdiction of the conduct, so the wording of the Brazilian Code of Military Criminal Procedure (CPPM) was thereafter "In case of felonies against life, committed against a civilian, the Military Courts shall submit the records of the military police investigation to the ordinary court".[66]

126. Based on this wording, there was room for understanding that the investigation could be carried out by military forces and then referred to the Military Courts, which would be responsible for referring it back to the ordinary court. In practice, there was no standardization of such understanding in different Brazilian states, and therefore there are cases where, for felonies against life committed by military state police officers, the investigation was carried out both by the Military and the Civil Police and cases where the investigation was carried out by only one of them, either Civil or Military. This lack of standardization in the understanding of the investigative jurisdiction was reinforced through the preliminary decision of STF rendered in Direct Action Based on Unconstitutionality (ADI) No. 1494[67] which indicated the "apparent constitutional effectiveness of the rule".

127. The matter remains open-ended, as there is no final decision on this regard rendered by STF. The abovementioned ADI was dismissed without prejudice and other actions addressing the same topic – ADI No. 4164[68] and ADI No. 5804[69] – remain not judged.

128. The corporate disputes between the Military state Police and the Civil Police regarding the topic increased due to the enactment of Law No. 13,491,[70] which granted back to Military Courts the jurisdiction to judge cases of felonies committed against the life of a civilian by the Armed Forces when committed: I – while performing the duties established by the President of the Republic or by the Minister of Defense; II – during an action involving the safety of a military institution or military mission, even if not belligerent; or III – while performing acts related to a military activity, to peace operations, to the enforcement of law and order or to a subsidiary duty. This Law is also being

practice, it is an arraignment court, as it is in charge of records only during the hearing stage, i.e., it is not in charge of the procedural phase, which begins when the Prosecution Service files the complaint.

65 Available at: https://ww2.stj.jus.br/docs_internet/revista/eletronica/stj-revistasumulas2009_6_capSumula90.pdf.

66 Article 82, paragraph 2. Full excerpt from the Code of Military Criminal Procedure (CPPM) available at: http://www.planalto.gov.br/ccivil_03/DecretoLei/Del1002.htm.

67 Available at: http://portal.stf.jus.br/processos/detalhe.asp?incidente=1649684.

68 Available at: http://portal.stf.jus.br/processos/detalhe.asp?incidente=2644215.

69 Available at: http://portal.stf.jus.br/processos/detalhe.asp?incidente=5298182.

70 Available at: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13491.htm.

challenged before STF through ADI No. 5901.[71] The Law was also subject matter of an opposing opinion by the former Special Office for Human Rights in 2016, as the amendment is contrary to the guidelines of the major international covenants.

Reply to paragraph 27 of the list of issues

129. The National Human Rights Program (PNDH-3), created in 2009 through the Presidential Decree,[72] provides for, in the scope of the expansion of external control of public bodies, the establishment of the National Ombudsman for Human Rights, to replace the General Ombudsman's Office, politically independent and with political autonomy, with mandate and nomination by the National Human Rights Council, ensuring human, material, and financial resources for its full operation. The same strategic objective includes encouraging states and municipalities to create local ombudsman offices with the same purpose. It is important to note that, at state level, there are also competent ombudsman offices and internal affairs bureaus to receive, assess, and forward complaints.

130. In addition to the offices of Ombudsmen and Inspectors General, there are several institutions in Brazil that receive and assess complaints of torture and ill-treatment, like the Prosecution Service, the Public Defender Offices, and the Judiciary Branch. The National System to Prevent and Combat Torture, especially the MNPCT and CNPCT, may also receive complaints. Moreover, it is not uncommon for cases regarding this matter to also be reported to and monitored by the Legislative Branch, both at state and federal levels. The primary purpose of making available several channels for receiving complaints is to facilitate access to the justice system, and to protect citizens that are afraid of contacting police forces, when they may be connected to offenders. If, on the one hand, these various channels for receiving complaints foster their investigation and enhance access to the justice system, on the other hand, information systematization is hindered, making it harder to have a general view of this issue.

131. As previously reported, Brazil still lacks systematic data on the security and justice system. Nevertheless, data provided by the National Ombudsman for Human Rights (ONDH) will be provided bellow. This is an unit that reports directly to the Minister of Women, Family and Human Rights and coordinates a free of charge hotline known as "Dial Human Rights" ("Disque Direitos Humanos"), which receives complaints and protests regarding human rights violations.

132. Pursuant to the ONDH's Annual Balance of 2017,[73] between 2013 and 2017, more than 19 thousand complaints of human rights violations against individuals deprived of their liberty were received. According to data from 2016 and 2017, the following violations were the most frequently reported: negligence (6,809), institutional violence (4,816), physical violence (3,672), psychological violence (3,040), and torture (741).[74] The report also indicates that, between 2011 and 2017, 7,120 complaints of human rights violations committed by police officers were received. Between 2016 and 2017, there were 908 complaints of torture.

133. The hotline "Dial National Complaint" ("Disque Denúncia Nacional"), otherwise known as "Dial 100" ("Disque 100"), is currently operated by an outsourced company called CALL, headquartered in Brasilia. The service works 24/7 and counts on approximately two hundred hotline operators.

134. The offices of Ombudsmen are responsible for assessing the complaints in a broader manner, collecting data about them, fostering protection networks regarding thematic groups, and coordinating the hotline service strategically.

135. The service provided by the "Dial Human Rights" follows the following procedures regarding the complaints received:

- The hotline operator listens to the person calling and seeks to obtain as much information as possible, while not causing discomfort to the victim. In more serious

[71] Available at: http://portal.stf.jus.br/processos/detalhe.asp?incidente=5298182.

[72] Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d7037.htm.

[73] Available at: http://www.mdh.gov.br/informacao-ao-cidadao/ouvidoria/balanco-disque-100.

[74] The same complaint may include more than one kind of infringement. Detailed information is available in Attachment IV.

cases, such as calls made by aggressors or teenagers that might be suicidal, the person calling is directed to a specialized service;

- Upon confirmation of a human rights violation, the hotline operator collects the information and records the data in the SONDHA, which is a national integrated system of services related to human rights;
- After the call is ended, the monitoring team verifies and classifies the complaint, forwarding it to those responsible for analyzing it, classifying it according to the level of priority, and contacting all relevant bodies;
- In cases of more serious complaints, such as urgent demands or constant users of the hotline service, the coordinators in charge of handling complaints perform what is called "active search", which is a contact established between the operators and the body responsible for handling the complaint to obtain updated information on the case.

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136. With the aim of eradicating torture and reducing the use of lethal force by police officers, the PNDH-3 reaffirmed the need for independent police ombudsman offices. The matter is addressed in the guideline on democratization and modernization of the public security system as follows: "to propose the mandatory creation of independent police ombudsman offices in the states and the Federal District, with ombudsman's officers protected by their mandates and chosen with the involvement of society". It is also addressed in the guideline on combating institutional violence, with an emphasis on eradicating torture and reducing deaths in prisons and that result from police action by "making the voluntary transfer of federal resources to states and the Federal District conditional on the existence of ombudsman offices in the police and the prison system or of a plan to establish them, fulfilling the additional requirement of having as the ombudsman's coordinator someone who is independent, who has a mandate, and who is chosen with the involvement of civil society".

137. There are currently police ombudsmen offices in 22 states. Several analyses about these ombudsman offices have been funded by the Federal Government,[75] which concluded, in general, that most of them are still closely linked to state governments and do not yet act with political independence. Moreover, most ombudsman offices do not have their own budget and face several institutional limitations to the exercise of their function to control police activity.

138. The Federal Government has sought to encourage the establishment and effective operation of police ombudsman offices in the states, including through a major partnership with the European Union, but these efforts were limited by the Brazilian federal system, which determines that states are autonomous with respect to the organization of the public security bodies. For the same reason, there are no systematized national data that would allow the evaluation of the effectiveness of the Inspectors General.

139. The Presidency of the Republic created the National Forum of Human Rights Ombudsman's Officers (FNO-DH), through Decree 9,400/2018, including ombudsman's officers of federal, state, district, and municipal bodies, as well as of the Prosecution Service and the Public Defender's Office. The Forum aims, among other things, to bring ombudsman's officers together to expedite the handling of complaints received by the "Dial Human Rights – Dial 100". The forum will be managed by the Ministry Women, Family and Human Rights.

[75] Situational Assessment of the Capabilities of Assistance, Treatment, Referral, and Monitoring of Complaints by Police Ombudsman Offices, prepared by technical consulting services contracted by the MJSP in 2016; Public Security or Social Defense Ombudsman Offices: Capability Assessment, prepared by technical consulting services contracted by the then SDH in 2014; Overview of Public Security and Social Defense Ombudsman Offices at State Level, study prepared by the Brazilian Forum of Public Security, at the request of Senasp in 2013, Police Ombudsman Offices and the reduction of deaths resulting from police actions in Brazil, an assessment prepared by the Center for the Study of Violence of the University of São Paulo, at the request of the then SDH in 2008.

140. The forum will address topics such as police, public security and prison system, migrants and refugees, children and adolescents, older persons and persons with disabilities, LGBT population, racial equality and "quilombolas". The objective is to establish a forum with a wide scope, which can propose cross-cutting measures, besides improving the referral and settling of complaints received in all areas relating to human rights.

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141. The bodies in charge of receiving complaints about human rights violations have their own procedures in place to ensure the confidentiality of complaints and to protect the identity of complainants.

142. The Federal Program for Assistance to Victims and Threatened Witnesses (Provita) has been implemented in Brazil since 1999. It was established by Law 9807/1999,[76] later regulated by Decree 3518/2000.[77] Pursuant to this normative, the Federal Program for Assistance to Victims and Threatened Witnesses seeks to provide special protection to victims and witnesses of crimes that are facing intimidation or are exposed to serious threat, as a consequence of their collaboration with an investigation or a criminal proceding, and that are not yet being protected in any other way. In this regard, the PROVITA aims for the full protection of victims, witnesses, and their relatives, through psychosocial assistance, the promotion of their human rights, and safe access to social public policies.

143. In general, Brazil implements these protection measures through partnerships between the Federal Government and State Governments, and between the latter and non-governmental organisations that have reputable expertise regarding the defense of human rights.

144. The partnership between the Federal Government and the states involves the voluntary transfer of resources through the signing of agreements. There are currently 14 valid agreements, of which 13 are related to the financing of state programs and 1 serves the other states that do not have an agreement of their own with the Federal Government. In places where there is no Program for Assistance to Victims and Threatened Witnesses at state level, threatened victims and witnesses are protected by the Federal Program for Assistance to Victims and Threatened Witnesses.

145. The targeted public of the Program are victims, witnesses, cooperating defendants that are not deprived of their liberty, spouse or partner, relatives in ascending and descending lines and dependents who have regular contact with the victim or witness, regardless of facing themselves a situation of threat, and relatives of an arrested cooperating defendant, who come to be threatened due to the collaboration of the prisoner.

146. The requirements for admission to the Program are the following:

(a) To face a risky situation, being in a situation of coercion or serious threat;

(b) To collaborate in a criminal proceeding as a victim or witness and as result of this collaboration face a risky situation;

(c) To obey the Program`s inherent behavioral restrictions due to safety rules;

(d) To not face a situation of deprivation of liberty;

(e) To assent to being admitted to the Program, obeying its security restrictions and other measures adopted by it.

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147. In 2007, the National Policy for the Protection of Human Rights Defenders was instituted through Decree 6.044/2007,[78] with the purpose of establishing principles and guidelines for the protection and assistance of legal or natural persons, groups, institutions, organizations, or social movements that promote, protect, and defend human rights, and, as a result of these activities, may be facing risky or vulnerable situations. The Decree also

[76] Available at: http://www.planalto.gov.br/ccivil_03/LEIS/L9807.htm.
[77] Available at: http://www.planalto.gov.br/ccivil_03/decreto/D3518.htm.
[78] Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6044.htm.

seeks to ensure the continuity of the work of the human rights defender who faces risky or vulnerable situations or whose rights have been infringed as a result of his/her work.

148. MMFDH is responsible for managing the Program for the Protection of Human Rights Defenders (PPDDH) at the national level. The Program has a General Coordination and a technical team, which assists defenders and monitors their situation in states that do not have a local protection program. The National Coordination of the PPDDH decides on requests for inclusion in or exclusion from the Program and on protective measures to be taken. At the state level, the Program operates with a State Coordination linked to the General Coordination of the National Program. In the states, a technical team, selected by the body that executes the program, perform the assistance and monitoring tasks. States programs, which are run with support by the Federal Government, are currently present in six states: Minas Gerais, Pernambuco, Maranhão, Ceará, Pará, and Bahia. In Pará and Bahia, the programs are still in the process of implementation.

149. The situation of defenders in the Program is followed up through a process of systematic and periodic monitoring, in addition to referrals regarding each situation. In September 2018, PPDDH was reformulated, enhancing its scope to encompass social communicators and environmentalists, given their constant acting in defense of human rights. According to the new regulatory framework enacted through Ordinance No. 300/2018, the targeted public of the program now covers human rights defenders, environmentalists, and social communicators who are threatened or whose rights are infringed due to their activities in this area. Furthermore, in 2018, there was an increase of R$ 5.000.000,00 in MMFDH's budget directed to finance the Program.

150. When it comes to jurisdiction over serious human rights violations, in 2004, the Brazilian Constitution was amended and paragraph 5 was included in article 109 with the following wording: "In cases of serious human rights violations, and with a view to ensuring compliance with the obligations deriving from international human rights treaties to which Brazil is a party, the prosecutor-general of the Republic may request, before the Superior Court of Justice, and in the course of any of the stages of the inquiry or judicial action, that jurisdiction on the matter be taken to the Federal Justice". With this amendment, a procedural mechanism was created within the Brazilian legal system, the Motion for a Change of Jurisdiction (IDC), which authorizes Federal Courts to act, upon request of the prosecutor-general of the Republic, even in a case in which the original jurisdiction was of state courts.

151. Since the implementation of this procedural mechanism in Brazilian Law, three motions were accepted. The first one, IDC 02,[79] was proposed by the prosecutor-general of the Republic in June 2009. It addressed the murder of the human rights defender, councilman, and attorney Manoel Bezerra de Mattos Neto, which occurred on January 24, 2009, in the City of Pitimbu, Paraíba. According to the ruling, the murder happened after Manoel Mattos "received several threats, presumably as a result of his persistent and known action against death squads that have reportedly been acting with impunity for more than a decade on the border between the states of Paraíba and Pernambuco, between the cities of Pedras de Fogo and Itambé, with the alleged participation of state authorities". Manoel Mattos reported "two hundred homicides that occurred over the last ten years, with features similar to summary executions, carried out by these squads". The IDC addresses both the motion to move the case of the murder of the human rights defender to the Federal Justice, and the accounts given by Manoel Mattos regarding the actions of these death squads. The PGR argues, in its initial petition, that the reported involvement of state authorities in the case may impair or even preclude a reliable investigation, which is why the motion of the cases to federal courts should be determined. IDC No. 2 was accepted by STJ in 2010.

152. In 2013, IDC 3[80] was filed, which requested that the investigation of the suspected involvement of extermination groups formed by public officials in the murder of homeless people in Goiás be moved to the Federal Justice. Of the 40 cases involved in the proceeding, eight criminal actions and police inquiries regarding crimes of homicide, torture, and enforced disappearances were brought to federal courts. Furthermore, it was determined

[79] Available at: http://www.stj.jus.br/SCON/jurisprudencia/doc.jsp?livre=idc&b=ACOR&p=true&t=JURIDICO&l= 10&i=9.

[80] Available at: http://www.stj.jus.br/SCON/jurisprudencia/doc.jsp?livre=idc&b=ACOR&p=true&t=JURIDICO&l=10&i=4.

that cases that remained with state courts be treated as priorities. This decision was rendered in December 2014.

153. In November 2014, IDC 5[81] was also accepted, regarding the move to the Federal Justice of the case about the murder of Thiago Faria Soares, the State Prosecutor of Pernambuco. The case is suspected to be related to actions of extermination groups in Pernambuco, and so it is necessary to determine if the crime occurred due to the victim`s work.

154. The following proceedings are still pending decision: IDC 9,[82] about killings that took place in the State of São Paulo, which are attributed to extermination groups, with the suspected involvement of public officials, and IDC 10,[83] which seeks to move to federal courts the investigation and judgment of police excesses during an operation carried out in February 2015, which resulted in the deaths of 12 people aged between 15 and 28 years old and in the injuring of 6 people.

Article 14

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155. Victims of torture may receive fair and proper compensation for the damage suffered through decisions rendered by the Judiciary Branch in legal proceedings with this purpose. If the action is deemed valid, the compensation is paid by the State to the victim of torture or, in case of the death of the victim, to his or her family members. Nevertheless, since Brazil is organized as a federation of states, in effect, the realization of this right varies according to each state.

156. With regards to the acts of torture carried out during the military dictatorship, the STJ has consolidated its stand that damages caused by an infringement of fundamental rights are imprescriptible, especially when having occurred during the military regime, when individuals could not stake their claims properly. Therefore, besides recognizing the State's obligation to compensate these persons, the Superior Court understands that proceedings requesting compensation concerning these cases may be initiated at any time.[84]

157. It is also possible to obtain financial compensation for some facts related to the period of dictatorship through administrative means. Pursuant to Law 10,559/2002, [85] compensation is due to those who can prove loss of employment as a result of political persecution, in which case compensation for the loss of income will be ensured through the granting of a monthly, permanent, and continuing pension and the back payment of values owed until 1988. To those who cannot prove this, a lump sum of up to R$ 100,000.00 will be granted. Theses amounts may be updated by court decision.

158. The compensation granted through administrative procedures also involves the recognition of the status of political amnesty of a victim, which is carried out by the Amnesty Commission. Created by Law 10,559/2002, the Commission has already received, since its implementation, more than 77 thousand requests, of which more than 65 thousand were already examined.

[81] Available at: http://www.stj.jus.br/SCON/jurisprudencia/doc.jsp?livre=idc&b=ACOR&p=true&t=JURIDICO&l=10&i=7.

[82] Available at: http://www.stj.jus.br/SCON/decisoes/doc.jsp?livre=idc&b=DTXT&p=true&t=JURIDICO&l=10&i=.

[83] Available at: https://ww2.stj.jus.br/processo/pesquisa/?src=1.1.3&aplicacao=processos.ea&tipoPesquisa=tipoPesquisaGenerica&num_registro=201601776056.

[84] In this regard, see the Appeal to the Superior Court of Justice (Resp) No. 1577411, available at: https://ww2.stj.jus.br/processo/pesquisa/?aplicacao=processos.ea&tipoPesquisa=tipoPesquisaGenerica&termo=REsp%201577411. There are several precedents in STJ, such as Special Appeal under Specific Court Regulations (AgRg) in REsp 1480428, AgRg in REsp 1176213, AgRg in AREsp) 611,952, AgRg in REsp 1,128,042, AgRg in AREsp 302,979, AgRg in Interlocutory Appeal (Ag) 1,428,635, and AgRg in AREsp 294,266. This stand was supported by the STF in the judgement of AI 781787, available at: http://portal.stf.jus.br/processos/detalhe.asp?incidente=3815423.

[85] Available at: http://www.planalto.gov.br/ccivil_03/LEIS/2002/L10559.htm.

159. Since 2012, the Amnesty Commission has been funding the Clinic of Testimony Project,[86] which establishes, in partnership with the civil society, centers of support and psychological care for individuals, families, and groups affected by the violence committed by state agents between 1946 and 1988. The goal is to provide symbolic redress through psychological care to people directly and indirectly affected by State violence, helping them face the legacies left by the dictatorship.

160. At the end of 2011, Law 12,528 was sanctioned,[87] creating the National Truth Commission (CNV), with the objective of investigating serious human rights violations between 1946 and 1988, especially those committed during the military regime implemented in 1964. Formed in May 2012, the CNV concluded its activities on December 10, 2014, with the publication of a report listing the activities performed, describing the facts examined, and presenting its conclusions and recommendations.[88]

161. The report recognizes that human rights violations occurred between 1946 and 1988, most notably during the military dictatorship, and that they were of 4 main types: torture, death, enforced disappearance, and concealment of a dead body. A total of 191 deaths and 210 disappearances were recognized, Moreover, there were 33 missing persons, whose bodies were later found, and 337 public officials and persons employed by the State indicated as perpetrators of human rights violations. The report also makes 29 recommendations to authorities, divided into three groups: 17 institutional measures, 8 initiatives to recast the normative framework, and 4 follow-up measures regarding actions and recommendations. The recommendations include holding perpetrators of human rights violations accountable in the criminal, civil and administrative spheres, and proceeding with reforms in the field of public security, such as police demilitarization and prison reforms.

162. The CNV's report has a specific chapter on its relationship with the Armed Forces. According to the report, 84 letters were sent to the Ministry of Defense and its commands, 53 of which requested information.

Article 15

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163. The prohibition of evidence obtained by illicit means in proceedings is one of the unchangeable clauses in the Brazilian Federal Constitution.[89] The Constitution itself also establishes the illegality of torture. Therefore, a systematic interpretation of the Constitution allows the conclusion that the use of evidence or confessions obtained through torture is constitutionally prohibited in Brazil.

164. This prohibition is also enshrined in the Brazilian Code of Criminal Procedure (CPP)[90] as amended by Law 11,690/2008. With the new Law, article 157 was replaced to read as follows: "Illegal evidence, understood as that obtained in violation of constitutional or legal rules, will be inadmissible and shall be excluded from the proceedings". The same article also deems inadmissible any evidence derived from unlawful acts and provides for the invalidity of evidence declared inadmissible.

Article 16

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165. The Brazilian Penal Code was amended in 2009 and 2016 in order to provide a better legal framework regarding the fight against human trafficking. The most recent amendment, made by Law 13.344/2016,[91] provides for the prevention and suppression of

[86] More information available at: http://www.justica.gov.br/seus-direitos/anistia/clinicas-dotestemunho-1.

[87] Available at: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Lei/L12528.htm.

[88] All information on the CNV, including the full report, is available at: http://cnv.memoriasreveladas.gov.br/.

[89] Brazilian Federal Constitution, article 5, item LVI.

[90] Available at: http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689.htm#view.

[91] Available at: http://www.planalto.gov.br/ccivil_03/_Ato20152018/2016/Lei/L13344.htm#art16.

national and international trafficking in persons and the measures to assist the victims. This amendment has established a penalty of 4 to 8 year imprisonment and fine for the conducts regarding trafficking in persons with the purpose of I) removing their organs, tissues, or body parts; II) submitting them to slavery or practices similar to slavery; III) submitting them to any form of servitude; IV) illegal adoption; or V) sexual exploitation started. This penalty may be increased by one third to a half in the following circumstances: I) the crime is committed by a public official while discharging their duties or on the pretext of discharging them; II) the crime is committed against a child, teenager, an elderly person or a person with disabilities; III) the agent takes advantage of family, domestic, cohabitation or hospitality relationships, relationships of economic dependence, authority or hierarchical superiority inherent in the position, office or duty; and IV) the victim of human trafficking is taken away from the national territory.

166. In addition to changing the classification, the 2016 Law also provided for a set of preventive measures, such as an intersectoral task force involving several government agencies, social and educational campaigns, promotion of civil society participation and of projects to prevent human trafficking. The same Law also provides for cooperation between national and foreign justice and security system bodies, integration of policies to punish related crimes, accountability of their perpetrators and the creation of joint investigation teams.

167. Current national laws and regulations also provide for protection measures and care for the direct or indirect victims of human trafficking, by means of: legal, social, labor, physical and psychological health assistance; temporary shelter; attention to specific needs, especially in relation to sex, sexual orientation, ethnic or social origin, origin, nationality, race, religion, age, migratory status, professional background, cultural diversity, language, social and family ties, or other status; preservation of intimacy and identity; prevention of revictimization in assistance and investigative and judicial procedures; humanized care; and the right to receive information on administrative and judicial proceedings.

168. Brazil has a National Policy against Human Trafficking since 2006, and two National Plans against Human Trafficking were implemented in 2008[92] and 2013.[93] In 2017, the II National Plan, which provides for actions at federal, state and municipal levels and stresses the cross-cutting nature of the fight against human trafficking, went through an evaluation process with participation of the civil society through public consultation. The assessment of the II National Plan against Human Trafficking[94] showed that 58% of the expected goals were achieved and 25% were partially achieved.

169. There are no reliable sources of information regarding court records and convictions related to trafficking in persons. Despite not being comparable, the National Secretariat of Justice (SNJ) has produced reports that include pieces of data collected from 2005 to 2016. The most recent report, drafted in 2017, compiles data concerning the period between 2014 and 2016, and points out that, between 2007 and 2016, according to the information system of the Federal Police Department (DPF), 959 police investigations were initiated and 1,745 persons were indicted, most of the cases regarding slavery-related incidents.

170. More information on the subject of human trafficking may be found in Brazil's Report on the International Covenant on Civil and Political Rights.

171. According to data from the "National Survey of Penitentiary Information – Infopen Women 2016", women deprived of their liberty in Brazil constitute the 4th largest female prison population in the world, summing up to 40 thousand women. The female imprisoned population has been increasing by numbers above the average for the male population. Between 2000 and 2012 it has increased by 256%, while the average growth for men in the same period was 130%.

172. A recent decision by STF has granted a collective habeas corpus allowing house arrest for incarcerated women who have children of up to 12 years of age or that are

[92] Available at: https://www.unodc.org/documents/lpobrazil/Topics_TIP/Publicacoes/2008_PlanoNacionalTP.pdf.

[93] Available at: https://www.unodc.org/documents/lpo-brazil/noticias/2013/04/20130408_Folder_IIPNETP_Final.pdf.

[94] Available at: https://www.justica.gov.br/sua-protecao/trafico-de-pessoas/publicacoes/anexos/relatorio-de-avaliacao-ii-plano-final-agosto2018.pdf/view.

pregnant. This decision represents great progress on the matter as it addresses the vulnerable situation of these women.

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173. According to the most recent National Survey of Penitentiary Information prepared by the Prison Department,[95] in June 2016, Brazil's prison population was of 726,712 persons.

174. As mentioned above, Brazil has acted towards expanding the effective enforcement of alternative penalties and measures. Additionally, since 2008 the National Justice Council (CNJ) has put in place the so-called Incarceration Task Forces,[96] which comprise inspections of members of the justice systemto prison units in several Brazilian states with the purpose of analyzing the inmates' legal situation and ensuring compliance with the LEP. This program has assessed about 400 thousand proceedings, with the granting of over 80 thousand benefits, such as progression of the imprisonment regime, temporary liberty and the right to perform an external job. This program has also led to the release of 45 thousand persons which had already served their original sentence.

175. The Federal Government has adopted several measures to improve prison facilities, such financing the establishment of new vacancies in order to address prison overcrowding and improve the conditions for serving penalties.

176. The Federal Prison System[97] comprises five maximum security prison units in Porto Velho (RO), Mossoró (RN), Campo Grande (MS), Catanduvas (PR) and Brasília (DF), which collectively offer 1,032 vacancies. In June 2016, 437 persons were serving penalties in the Federal Prison System and 119 were temporary inmates. The system is a maximum security one. Inmates have individual cells and are granted two hours of sun bath a day, spent in small groups at a time. Inmates also have the right to receive visitors, as long as previously scheduled.

177. The laws and regulations on the transfer and inclusion of inmates in federal prison units, Law No. 11,671/2008,[98] and Decree No. 6.877/2009,[99] establish that the inmates should have at least one of the following characteristics:

(a) Leadership position or material participation in a criminal organization;

(b) Commission of a crime that offers risks to their physical integrity in the original prison unit;

(c) Subjection to RDD;

(d) Participation in criminal conspiracy or gang involved in reiterated violent crimes or serious threats;

(e) Being a collaborating defendant or party to a plea bargain, as long as those conditions pose a risk to their physical integrity in the original prison unit; or

(f) Involvement in escapes, violence or sever indiscipline incidents in the original prison unit.

178. Since its implementation, the Federal Prison System has no record of rebellion or escape. Its strict security system also prevents the entrance of phone devices or any other prohibited objects. Disciplinary faults by inmates are subject to the enforcement of RDD, served in a specific cell with a solarium, therefore being in full isolation.

179. According to the "Assistance in Federal Prisons – 2017 annual data compendium" report,[100] 23,016 health assistance events were recorded, 74.4% of which were nursing

[95] Available at: http://depen.gov.br/DEPEN/depen/sisdepen/infopen/relatorios-analiticos/br/br.

[96] More information is available at: http://www.cnj.jus.br/sistema-carcerario-eexecucaopenal/pj-mutirao-carcerario.

[97] General information on the system is available at: http://depen.gov.br/DEPEN/dispf/cgcmsp.

[98] Available at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2008/Lei/L11671.htm.

[99] Available at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6877.htm.

[100] Available at: http://depen.gov.br/DEPEN/dispf/cgtp/compendio.pdf.

events.[101] In the same year, 215 inmates were registered in the formal education system and 438 inmates participated in vocational education activities offered as distance learning. Federal prisons also have programs for penalty reduction as a result of reading and, in some cases, cultural activities, such as cinematheque. However, there are still no job offers.

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180. Maria da Penha Law (LMP)[102] represents a milestone in the defense of women's rights and relies on the assumption that domestic violence is a form of violation of human rights. Its provisions set forth strategies for full, multidisciplinary assistance to women victims of domestic violence and change the perspective of action by the State regarding this issue. With major innovations, this Law has expanded the services aimed at combatting violence against women, which now provide for units specialized not only in healthcare, but also in the security and justice system. This law has also provided for a set of urgent protective measures for women in life-threatening situations, such as removal of the aggressor from the domicile and prohibition of physical approximation to the woman and any children thereof.

181. An impact assessment survey on the Law conducted by IPEA[103] in 2015 pointed out that "results unanimously showed that the introduction of LMP caused statistically significant effects to decrease homicides related to gender." The fight against gender-related homicides was also prioritized by the Brazilian Government upon enactment of Law No. 13.104/2015,[104] which included such motivation – feminicide – as an aggravated form of homicide.

182. Details about this issue are the object of Brazilian reports on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

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183. The use of physical punishments against children is prohibited in the Brazil by Law 13,010/2014,[105] which establishes that these practices cannot be used as forms of correction, discipline or education.

184. The situation of children living in the streets addressed by the 2016 National Plan for Promotion, Protection, and Defense of the Right of Children and Adolescents to Family and Community Coexistence.[106] This plan provides for actions ensuring the right of children and adolescents living in the streets to family and community coexistence according to the National Policy for the Street Population. In 2011, a study carried out by the Office of Human Rights of the Presidency of the Republic[107] was published and became the First National Census Research about Children and Adolescents Living in the Streets. Based on this research and on several other studies, the National Council for the Rights of Children and Adolescents (CONANDA) created, in 2015, a working group intended for strengthening the social assistance network and the public policies for the promotion of the rights of children and adolescents living in the streets. As a result of the working group's activities, the National Guidelines for Assistance to Children and Adolescents in Street Situation were published in 2017.[108]

185. The matter of violence against children and adolescents is addressed, among other public policies, in the Social Agenda, issued in 2007 and comprised of four major projects

[101] The graphic representation of the evolution of healthcare assistance in the federal prison system is available in Attachment V.

[102] Available at: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm.

[103] Available at: http://www.ipea.gov.br/portal/images/stories/PDFs/TDs/td_2048.pdf.

[104] Available at: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13104.htm.

[105] Available at: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2014/Lei/L13010.htm.

[106] Available at: https://www.mds.gov.br/webarquivos/publicacao/assistencia_social/Cadernos/Plano_Defesa_Cr iancasAdolescentes%20.pdf.

[107] Available at: http://www.teleios.com.br/wp-content/uploads/2011/03/PesquisaCensitariaNacional-sobre-Criancas-e-Adolescentes-em-Situacao-de-Rua-Mar-2011.pdf.

[108] Available at: http://www.crianca.mppr.mp.br/arquivos/File/publi/conanda/diretrizes_nacionais_atendimento_si tuacao_de_rua_2017.pdf.

aimed at assisting children and adolescents subjected to social violence and vulnerability: "Bem-me-quer" (Wishes-me-well), "Caminho para Casa" (A Way Home); "Na Medida Certa" (Right Amount); and the "Observatório Nacional dos Direitos da Criança e do Adolescente" (National Observatory for the Rights of the Child and Adolescent), which is integrated as a monitoring instrument. The Social Agenda aims at promoting, defending and ensuring rights to Brazilian children and adolescents and has grounds on Decree No. 6,230/2007,[109] which provides for the National Commitment to Reduce Violence against Children and Adolescents.

186. Since 2000, Brazil has had plans and programs aimed at preventing and combating sexual abuse and exploitation of children and adolescents. The current National Plan to Combat Sexual Violence against Children and Adolescents provides for actions to be implemented until 2020. One of the main aspects of the Plan is the strengthening of the assistance network and joint actions between the government and civil society organizations.

187. Since 2003, the Federal Government has put in place the Program for Protecting Children and Adolescents Threatened with Death (PPCAAM), institutionalized by Decree No. 6,231 in 2007[110] with the purpose of "protecting children and adolescents exposed to serious and imminent death threat, whenever conventional means have ended, through prevention or repression of the threat". Since its creation, the Program, performed by MMFDH, has provided assistance to more than 10 thousand persons, of which 74% were male and 26% female; and of which 74% were Afro-Brazilians and an average of 15.7 years old. The Program currently covers 13 Brazilian states and comprises a Federal Technical Center that provides assistance in cases related to states that are not covered by the Program.[111]

188. Enacted in 2009, Law No. 12,127[112] created the National Registry of Missing Children and Adolescents,[113] which is a database containing information on missing children and adolescents. The National Registry includes pictures and allows registration, consultation and dissemination of information on missing persons throughout the country, in addition to entailing participation of Public Security agents, State Government officials and agents for Child Protective Services and from the civil society to fully combat the problem. Anyone can register a missing child or adolescent. Currently 138 missing persons are registered.

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189. Information on modern slavery and forced labor shall be found in the Brazilian Report on the International Covenant on Civil and Political Rights.

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190. The control on the use of force by police officers is still a great challenge to public security agencies. In Brazil, due to the federative structure, there are no official systematically outlined data on the use of force by police officers.

191. Several efforts were used in the last few years aiming at enhancing the regulation and control over use of force by public security agencies.

192. In 2010, Interministerial Ordinance No. 4,226[114] established Guidelines on the Use of Force by Public Security Agents, intending at gradually reducing lethality rates resulting from actions involving public security agents. The wording is based on the Code of Conduct for Law Enforcement Officers and on the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and addresses matters of

[109] Available at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6230.htm.

[110] Available at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6231.htm.

[111] Information retrieved from MDH's website: http://www.mdh.gov.br/todas-as noticias/2018/marco/programa-de-protecao-a-criancas-e-adolescentes-ameacados-demorteprotegeu-mais-de-mil-pessoas-em-2017.

[112] http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Lei/L12127.htm.

[113] Available at: https://www.desaparecidos.gov.br/.

[114] The Ordinance was published in the Federal Official Gazette on January 3, 2011, and the full text is available in Schedule IV.

underlying principles, training of security professionals, rules for use of less offensive tactics and technologies, and procedures for analyzing incidents. Seeking to encourage the adoption of the guidelines by governmental entities the Federal Government, through MJSP, entered into a Technical Cooperation Agreement on the Decrease in Police Lethality with the states and invested on the acquisition of personal protection equipment, less offensive technologies and training of public security professionals.

193. In 2014, Law No. 13,060,[115] regulating the use of less offensive instruments by public security agents, was made effective throughout the national territory. The law states for the need to provide equipment alternative to firearms to security professionals as a form of enabling proportional use of force.

194. As of the enactment of the laws and regulations, the EaD-SENASP Network course on the theme was revised and updated. According to the table included in Attachment I, more than 140 thousand security professionals already took the course through distance education system.

195. In 2015, the National Council of the Prosecution Service amended Resolution No. 129[116] of 2015, which establishes minimum operating rules for the MP in external control of investigation of death caused by police intervention. In addition to providing procedural guidelines on the actions of the Prosecution Service during investigations on the theme, this Resolution also provides for the "responsibility of the Prosecution Service to promote public policies to prevent police lethality".

196. It is necessary to highlight that this theme composes CNMP's agenda, which has a series of systematically outlined objectives aiming at controlling the issue, as outlined in the handbook[117] "MP Combating Death as a Result of Police Intervention", published in 2014 and in the report with that same name,[118] published in 2016.

197. In 2014, in the scope of DPF's Human Rights Division, the Division to Combat Crimes Against the Person was created aiming at combating the actions of the so-called "death squads", criminal organizations which involve members of police and civilian forces in the practice of summary executions. DPF has initiated many operations on combating death squads, such as, for example, Operation Sixth Commandment (2011 and 2016), which resulted in the arrest of many military police officers in the State of Goiás in addition to the execution of search and seizure warrants; Operation Squadre (2012), which resulted in the execution of 45 arrest warrants, 11 bench warrants, and 19 search and seizure warrants; Operation Hecatomb (2013), which resulted in the execution of 21 arrest warrants, nine bench warrants, and 32 search and seizure warrants; Operation Cold Case (2013), which resulted in the execution of nine arrest warrants, 3 bench warrants, and 21 search and seizure warrants; and Operation Red Well (2014), which resulted in the execution of six arrest warrants, 15 bench warrants, and three search and seizure warrants.

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198. The matter shall be addressed in the Brazilian Report on the International Convention on the Elimination of All Forms of Racial Discrimination.

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199. Information on the matter of indigenous peoples and quilombola communities shall be provided within the scope of the Brazilian Reports on the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.

[115] Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l13060.htm.

[116] Available at: http://www.cnmp.mp.br/portal/images/Resolucoes/Resolu%C3%A7%C3%A3o-129.pdf.

[117] Available at: http://www.cnmp.mp.br/portal/images/O_MP_no_Enfrentamento_%C3%A0_Morte_ Decorrente_ de_Interven%C3%A7%C3%A3o_Policial.pdf.

[118] Available at: http://www.cnmp.mp.br/portal/images/Relat%C3%B3rio_SRMDIP_1.pdf.

General Information on the situation of Human Rights, including new measures and Development related to the implementation of the Convention

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200. The main form of reaction to terrorism in Brazil relies on the action of the DPF, preventively, through permanent activities developed by Police Intelligence based on information received from Interpol and Brazilian and foreign attaché offices, such as the Brazilian Intelligence Agency.

201. The Department of Asset Recovery and International Legal Cooperation (DRCI) of the Ministry of Justice is the competent authority implement the sanctions from the United Nations Security Council (UNSC), upon request for blocking properties and assets of individuals and companies indicated in the resolutions of such body. In order to internalize the duty to comply with the orders from the Security Council into the Brazilian legal system, Law No. 13,170/2015, [119] was enacted. However, it was deemed insufficient by the Financial Action Task Force on Money Laundering and Terrorism Financing (GAFI). Accordingly, an interdisciplinary group formed by representatives of the Ministry of Foreign Affairs, the Ministry of Civil Affairs, the Ministry of Justice, the Office of the Attorney General of the Union and of the Council for Financial Activities Control, has prepared a Bill, currently pending approval in the National Congress, which "provides for the execution of the sanctions imposed by resolutions of the United Nations Security Council – UNSC, by its sanction committees, or upon request from a foreign authority, including the unavailability of assets and properties of individuals and legal entities, as well as for the national appointment of persons investigated for or accused of terrorism, their financing and acts related thereto". A new regulatory act aims at solving the problem of lack of adequacy of the Brazilian laws and regulations to the new challenges in preventing the operation and use of assets to commit crimes against humanity. Additionally, it establishes a mechanism more agile than the one currently provided by Law 13,170/2015. For this purpose, it establishes that "the sanction resolutions of the United Nations Security Council and the appointments of its sanction committees shall be immediately executed in Brazil".

202. Law No. 13,260/2016[120] regulated the provisions of item XLIII of article 5 of the Brazilian Federal Constitution, governing terrorism, addressing investigation and cognizance provisions and rephrasing the concept of terrorist organization. The Federal Courts have jurisdiction to investigate the crimes provided for in this laws and regulations, so that the appeals available for persons subjected to anti-terrorist measures shall be filed before them.

203. For persons subjected to anti-terrorist measures, their main form of defense is Habeas Corpus. Any person that had the right to enter the country or to stay here may use this appeal.

204. Finally, there are no reports against Brazil regarding compliance with international standards on the fight against terrorism.

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205. The National Mechanism to Prevent and Combat Torture (MNPCT) has the role of preventing and combating torture through regular visits, established by annual planning, to persons deprived from their liberty throughout the Brazilian territory; circumstantial reports on what was observed during the visits; recommendations filed with the competent authorities and technical notes on matters related to preventing and combating torture. MNPCT is composed of 11 experts with permanent terms of office provided by law, which have autonomy, and independence regarding positions and opinions while discharging their duties.

206. As of March 2015, after the implementation of the Mechanism, minimum guidelines and protocols were created to regulate its actions, and a process of training its experts was carried out. During its early operations, the MNPCT visited 30 facilities in 6 states and the

[119] Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13170.htm.

[120] Available at: http://www.planalto.gov.br/ccIVIL_03/_Ato2015-2018/2016/Lei/L13260.htm.

Federal District, including prisons, socio-educational facilities, and mental institutions. When defining the facilities to be visited, the MNPCT carried out a national situational diagnosis and analyzed the states with higher evidence of tortures and other cruel, inhuman, or degrading treatments or penalties being inflicted.

207. This diagnosis was based on a few criteria, such as the regional diversity of Brazil, complaints by the National Committee to Prevent and Combat Torture (CNPCT), complaints of the civil society and public bodies, complaints reported through "Dial 100" and news broadcasted through media. Additionally, the MNPCT took into account the gender separations that characterize the places of deprivation of liberty, as well as the states where there is lack of disclosure of possible infringements of rights analyzing underreporting as an important criterion for preparing the annual planning.

208. As mentioned, the MNPCT has the duty of visiting any space, whether public or private, in which persons are being restricted from liberty. During an assessment that is still incomplete, MNPCT mapped more than 3,000 places of deprivation of liberty throughout Brazil, such as prisons, penitentiaries, socio-educational facilities, screening centers, children shelters, extended residency institutions, psychiatric hospitals, therapeutic communities, etc. Considering all this, MNPCT sought in its planning to encompass several types of facilities of deprivation of liberty.

209. Before conducting the actual visits, MNPCT planned the activities to be developed in the states, encompassing dialogues with civil society and with the government; the assessment of complaints; the submission of presentation documents to executive, legislative, and judiciary bodies, etc. There is a prior integration work to support and prepare MNPCT's work at the state level.

210. The visits conducted between April 2015 and August 2016 had an average duration of five days. is the first day comprised a dialogue with the local civil society and last day included a conversation with state government bodies. This strategy enables, on one side, to present MNPCT's work and, on the other, to think of strategies for monitoring the actions of the body in the state. On the remaining days, members of MNPCT visited areas of deprivation of liberty according to international protocols on human rights, as well as the guidelines established by the Association for the Prevention of Torture (APT).

211. In all visits to states, members of MNPCT coordinate their actions with the government and with the local civil society aiming at strengthening (if any) or promoting (if none) the creation of state Committees and Mechanisms for preventing and combating torture.

212. The National Mechanism has published three annual reports, available in the website: http://www.mdh.gov.br/informacao-ao-cidadao/participacaosocial/orgaos-colegiados/mnpct/mecanismonacional-de-prevencaoe-combate-a-tortura-mnpct.

213. Just as the state committees, the Federal Government uses efforts to implement mechanisms in federative units. There is a total of 9 mechanisms created by law, of which 2 are fully operational (Rio de Janeiro and Pernambuco):

- Rondônia: State Mechanism for Preventing and Combating Torture in the State of Rondônia (Law No. 3,262/2013)
- Maranhão: State Mechanism for Preventing and Combating Torture (Law No. 10,334/2015)
- Paraíba: State Mechanism for Preventing and Combating Torture (Law No. 9,413/2011)
- Pernambuco: State Mechanism for Combating Torture and Preventing Torture (Law 14,863/2012)
- Alagoas: State Mechanism for Preventing and Combating Torture in Alagoas (Law No. 7,141/2009)
- Sergipe: State Mechanism for Preventing and Combating Torture of the State of Sergipe (Law No. 8,135/2016)
- Rio de Janeiro: State Mechanism for Preventing and Combating Torture of Rio de Janeiro (Law 5,778/2010)

- Espírito Santo: State Mechanism for Preventing and Eradicating Torture in Espírito Santo (Law No. 10,006/2013)
- Amapá: State Mechanism for Preventing and Combating Torture of the State of Amapá (Law 2,226 of September 20, 2017).

Reply to paragraphs 43-45 of the list of issues

214. Regarding human rights policies and programs in Brazil since the initial report in 2001, PNDH-3 currently regulates the actions of the Federal Government related to human rights.

215. With respect to prevention of and fight against torture, the Integrated Action Plan for Prevention of and Fight Against Torture in Brazil (PAIPCT – 2006, revised in 2010) is one of the main reference documents. PAIPCT includes a set of actions aiming at combating and preventing torture, and specialists of different fields contributed to its creation. PAIPCT aims at promoting an agenda of integrated actions among the branches of the Republic and governmental entities to make progress in the preventive actions to fight against torture.

216. Data identified by studies carried out in Brazil and disclosed in PAIPCT indicates that torture is a crime of opportunity. Thus, PAIPCT increase the chance of punishment, and eliminate the culture of the practice of torture. For this purpose, PAIPCT proposes the following actions: to prohibit torture practiced by the higher ranks, to develop a course about "human rights and torture" in centers for education of police officers and penitentiary agents, and to condition the federal funding of police and criminal facilities to the existence of a structure and programs for ensuring respect to the rights of persons deprived of liberty.

217. Regarding the liability of the aggressors, there is a proposal to create internal affairs bureaus specifically for the Police System and for the Prison System and also to train healthcare practitioners acting in the prison system regarding legal registration and referral of the cases of torture. Furthermore, there were proposals of actions for expediting the "corpus delicti" examination when the prisoner enters and when they leave a prison unit; expanding and improving the services of welcome, assistance, and protection of victims, witnesses and family members of victims and witnesses of institutional violence; as well as adopting measures aiming at remediating the damage caused to the victims of abuse of power and excessive use of force by public officials.

218. Additionally, PAICT has presented some recommendations:

- To reduce overcrowding in the places of deprivation of liberty, and to increase the imposition of alternative socio-educational penalties and measures;
- To ensure a proper number of penitentiary agents and promote the use of technologies such as cameras and electronic monitoring in general;
- To create, in the states where there are none, Prison Management Schools and Law Enforcement Academies that develop processes for selection, training and improvement of personnel according to the public administration principles, focusing on providing a quality service and respecting the rights of the citizens;
- To develop, together with partners in the field of public security, regulatory procedures for dealing with prisoners and investigating torture reports;
- To encourage police bodies to adopt measures so that the statements or confessions are taken only in the presence of a lawyer;
- To prevent that persons lawfully caught in the act and arrested are held in police stations for more than the 24 hours required for obtaining a temporary arrest warrant, preventing, also, that any arrest sentences are served in a police station, even if it is a temporary arrest. To release any suspects without a judicial order or who were not caught in the act and arrested;
- To encourage the public officials to inform the arrested persons about their rights, especially the right to consult a qualified professional to accompany them and assist them legally;

- To adopt a separate custody registration for each arrested person, indicating the time of and reasons for the arrest, the identity of the police officers who made the arrest and the time of and reasons for any subsequent transfers;
- To encourage that all interrogations are recorded in video with the proper identification of the present persons;
- To promote debates about the limitations on the referral of crimes against human rights to federal bodies;
- To encourage, along with private security services, the offering of courses and training that disseminate information about protection and promotion of the rights of the citizens and prevention of the abuse of power and excessive use of force.

219. The Federal Pact for Preventing and Combating Torture was published in the Federal Official Gazette through MMFDH Ordinance No. 346, of September 19, 2017. In July 2018, MMFDH organized the Third National Meeting of National Committees and Mechanisms for Preventing and Combating Torture. The Third Meeting resulted in the publication of the Brasilia Letter, which gathers a set of proposals resulting from the analysis of the needs and in order to strengthen SNPCT. The Letter specifically suggests the adoption of a set of actions aiming at encouraging and implementing State Committees and Mechanisms.

220. Additionally, the creation of the Ministry of Human Rights (MDH), in 2017 – nowadays, the Ministry of Women, Family and Human Rights (MMFDH) –, strengthened the institutionalization of this matter under the government, overcoming the consecutive administrative changes regarding the Ministries formerly responsible for it.

221. Regarding the major law frameworks, in addition to PNDH-3, the specific laws to which the subjects addressed in this report are related were presented throughout the answers to each of the questions. More comprehensive questions on the national legal system with respect to human rights can be found in the updated Common Core Document (DBC).

222. The extensive list of case law produced over the last years is undoubtedly important, due to the recurring need to appeal to the Judiciary Branch whenever human rights are violated. In each of the questions regarding this report, we have presented the main relevant case law.