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International Convention for the Protection of All Persons from Enforced Disappearance

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Consideration of reports of States parties to the Convention

Replies of Brazil to the list of issues in relation to its report submitted under article 29 (1) of the Convention*

[Date received: 14 September 2020]

* The present document is being issued without formal editing.

I. Reply to paragraph 1 of the list of issues (CED/C/BRA/Q/1)

1. The Brazilian State does not yet have a final position on the subject, which requires extensive consultations with the competent authorities.

II. Reply to paragraph 2 of the list of issues

2. Due to the organization of the Brazilian judicial system, in which courts are independent from each other and divided into different federal levels, it was not possible to obtain examples of case law in which provisions of the Conventions could have been invoked.

III. Reply to paragraph 3 of the list of issues

3. When questioned about the subject, the National Council of Human Rights (CNDH) stated that, according to their understanding, recent progress was made on administrative operation, by requesting the registration of the Council as a legal entity, announcing a public call for jobs in its Executive Office and trying to raise the Council´s own funds with the Federal Legislative Power.

4. Furthermore, CNDH has reported action on the Federal Supreme Court – as *amicus curiae* – and within the Inter-American System of Humans Rights (IASHR/OEA). It has also pointed out its participation on the elaboration of a Covid-19 Fighting and Monitoring Plan for Indigenous Communities.

5. Though forced disappearances are not specifically among CNDH duties, the Council informed it has a specific commission named "Permanent Commission for Monitoring and Implementation of International Human Rights Obligations", created by CNDH Resolution No. 6, of June 22nd, 2017. Commission´s assignments directly related to the Convention include the following:

> "I – encourage approval or ratification, or accession, of human rights international mechanisms, as well as follow the performance of the obligations arising from the international treaties Brazil is part of.
>
> II – collaborate on the preparation of the reports Brazil should present to the United Nations entities and committees and the Inter-American System of Human Rights, and the regional entities, in accordance with the obligations undertaken along with treaties and, whenever necessary, express opinion on the subject, respecting its independence".

6. Activities related to the Convention were implemented by the Council in this period.

IV. Reply to paragraph 4 of the list of issues

7. The disappearance perpetrated by agents of the State or with its acquiescence are extremely rare events, dealt with the force of law. Currently, there are no available statistics on this regard.

V. Reply to paragraph 5 of the list of issues

8. The pandemic did not cause the restriction of any constitutional liberties bearing no relation to the health emergency per se. Therefore, access to justice and other rights of the family of people who may have disappeared were not restricted. The National Human Rights Ombudsman (HRO) of the Ministry of Women, Family and Human Rights (MWFMR) provided multiple means of claiming the State's protection for citizens. Citizen's access to mechanisms for reporting violation of rights during the COVID-19 pandemic was made easier. Thus, it contributed to complying with the precepts of article 12

of the Convention, comprehending the respect for individual liberties and, even, fighting against enforced disappearances. Thus far, the following means were made available:

- Mobile phone app: *Direitos Humanos Brasil* (Human Rights Brazil – Android and iOS), whereby the citizen can report violations. The aim was to open up a fast and modern channel of communication, facilitating the completion of the report from home or anywhere, bearing in mind the social distancing measures;
- A website for receiving reports of human rights violations was published (https://ouvidoria.mdh.gov.br/), where the citizen may, accessing from their own computer at home, work, etc., report violations they have suffered or they were made aware of;
- During the COVID-19 pandemic and in order to make citizen's access easier, the Human Rights Ombudsman provided chat service assistance, report registration by the social networks Telegram and Twitter;
- The Call Centers, *Disque Direitos Humanos* (Call Human Rights – Call 100/180 hotlines), did not suspend its regular functioning, even during the pandemic. Instead it has increased the amount of reports received through the various available channels;
- Focusing specifically on disappeared persons (enforced or not) the National Human Rights Ombudsman has been developing a computer system to speed up dissemination of information on missing persons and their recognition, in order to contribute to investigation, search and finding them, under the National Policy for Finding Missing Persons, Law n. 1.812, of March 16th,2019. The system includes a website and an app (Android and iOS) available to the public in order to file a person's disappearance, as well as to law enforcement officers, which will oversee the search. This project will also count on the Ministry of Justice and Public Security partnership in order to develop a common database and to make information interoperability possible. The pilot project is scheduled to be released in November 2020.

VI. Reply to paragraph 6 of the list of issues

9. Bill No. 6240/2014 originated from Senate Bill No. 245/2011, initiated by Senator Vital do Rêgo. At the initiating chamber, the Federal Senate, the legislative proposal was filed on May 11th, 2011. In the opening order the Senate's President stated the subject would be distributed to the Commission of Constitution, Justice and Citizenship, for a definite decision. Upon arrival on the mentioned commission, the legislative proposal was assigned to Senator Pedro Taques in order to issue a recommendation, which was for the Bill's approval under its substitute project. The recommendation was appreciated in the Senate House and approved on August 27th, 2013 and forwarded to the House of Representatives where it received its current numbering: Bill No. 6240/2013.

10. Bill No. 6240/2012 is currently at the House of Representatives' Commission of Constitution, Justice and Citizenship waiting for rapporteur assignment. The Commission of Constitution, Justice and Citizenship has the role of deciding conclusively the subjects referring to the its constitutionality or legality, and on the merits for subjects related to constitutional, civil, criminal, penitentiary and procedural law, as well as review the constitutional, legal and regimental aspects of the propositions and the legislative technique.

11. At this moment it is not possible to tell when exactly it will be adopted and enforced, since the bill still must follow the legislative process pursuant to article 59 of the Constitution. We emphasize that the ordinary legislative process is a constitutional responsibility of the Legislative Power and that the Commission of Constitution, Justice and Citizenship, as well as the other House of Representatives' Permanent Commissions, was not installed due to the Governing Board Act No. 118 of March 11th, 2020, which suspended crowd events as a preventive measure against infection and dissemination of the coronavirus disease. Thus, bill projects are only being appreciated as urgent matters in plenary sessions.

12. As for paragraph 36, article 1 of Amnesty Law follows, verbatim:

> "Amnesty is awarded to all who, in the period between September 2nd, 1961, and August 15, 1975, committed political crimes or crimes related to political ones, electoral crimes, to those who had their political rights suspended and to civil servants from Direct and Indirect Administration entities, foundations bound to the public power, to Legislative and Judicial Power servants, to the Military staff and to union leaders and representatives, punished based on Institutional and Complimentary Acts".[1]

13. With respect to paragraph 53, we inform that Brazil is a signatory of the Rome Statute of the International Criminal Court, which is in full validity in the Brazilian judicial system. In the statute, the enforced disappearance crime "when committed as part of a widespread or systematic attack directed against any civilian population" is considered crime against humanity and, therefore, it is also in Brazil.

14. The Statute's article 77, concerning penalties, is transcribed below:

> "1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:
>
> (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
>
> (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
>
> 2. In addition to imprisonment, the Court may order:
>
> (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
>
> (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties."

VII. Reply to paragraph 7 of the list of issues

15. Firstly, it must be noted that Brazilian criminal legislation has no provision for the crime of "forced disappearance", though there is a proposed Bill aiming to include such a typology in the "Crimes against Personal Freedom" section of the Criminal Code. However, facts like these may initiate investigations of supposed seizure and false imprisonment (article 148) or human trafficking (article 149-A), depending on the circumstances.

16. It is publicly known that indigenous communities are in a vulnerable situation. Crimes against indigenous people include murder, torture, threats and others. The pressure of illegal mining groups and land grabbers can lead to serious challenges, eventually involving all state-protected groups and resulting in Federal Police investigation.

17. Currently there is no evidence of para-state groups, let alone any groups acting under the acquiescence of the Brazilian State, aiming at the extermination of indigenous people. Their vulnerability is a result of the clash of interests arising mainly from mistakes of public policies of territorial occupation undertaken in the past. Although there are land conflicts related to the indigenous cause and their lands' integrity, there is no record of organized groups that could fit the typical model of militia or "death squad" focused on native people genocide.

18. From the analysis of the procedures currently within the National Indigenous Person Foundation (FUNAI), attached to the Ministry of Justice and Public Security, no request was referred from the proper agencies (i.e. state and federal police forces), asking for the collaboration in the procedures of investigation related to the forced disappearance of any indigenous person.

[1] Institutional and Complementary Acts were regulatory norms imposed by the Military Regime.

19. Positive measures of prevention of possible violations to the physical integrity of indigenous persons, include FUNAI´s response to demands originating within the context of the Human Rights Supporters Protection Program.

20. Other prevention efforts include actions developed by the Ministry of Women, of Family and of Human Rights aiming at the protection of people who report and are threatened during conflict which also encompass land conflicts. Moreover, many indigenous persons are included in the human rights supporters protection programs.

21. On the other hand, when protection measures are not enough and someone disappears, the response measures shift from the prevention realm to investigation and judicial proceedings.

22. Whenever a public security agent is suspected of involvement in someone's disappearance, police agencies' correction offices are able to investigate and punish the involved people. This also applies to cases of "disappearances allegedly committed by mercenaries and by members of paramilitary groups and/or death squads".

VIII. Reply to paragraph 8 of the list of issues

23. "Enforced disappearance" is not considered a criminal offence as such in the Brazilian legal order. However, there are records of criminal lawsuits related to situations that could fit the cases of enforced disappearance pursuant to the Convention for the Protection of All Persons from Enforced Disappearance. The complaints which lead to these criminal lawsuits use the language of article 148 of the Criminal Code – crime of "aggravated kidnapping". This offence is considered to have a permanent nature, that is, causing "a harmful or dangerous situation prolonged in time".

24. As for the statute of limitations of permanent crimes, article 111 of the Brazilian Criminal Code states that the limitation period, before a final judicial decision is taken, begins on the day when the permanence ceases. Consequently, the initial term of the limitation period is the cessation of the kidnapping, the continuity of which depends on the agent's will. In the case of aggravated kidnapping, the consummation of the offence extends in time according to the will of the kidnapper. Therefore, the initial term for limitations starts when the crime ceases.

25. The Brazilian Supreme Court (STF) has ruled on the subject:

> "The First Panel of the Federal Supreme Court granted an extradition request made by the Argentinian Government against a person accused of the crimes of kidnapping, torture and elimination of people during the military dictatorship in their country, between 1976 and 1983, when they were an Argentinian naval officer, on the grounds that the crime of kidnapping is permanent, that is, it cannot be time-barred, as long as the person or body is not found. Bearing in mind that the victims of the kidnapping at hand are still missing, the crime was considered by the majority of the judging Panel as still ongoing. However, this collegiate body rejected the plea of the petitioner State for aggravation of the crime charges against the extradited person as a crime against humanity – which excludes application of statutory limitations to these crimes in Brazil – as the Brazilian State, besides not having subscribed to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, nor having acceded to it, considers that only an internal law may rule on statute of limitations of crimes in its territory."

26. Lastly, the STF has acknowledged the constitutionality of Law No. 6.683 of August 28th, 1979 ("Amnesty Law"). Therefore, once the Enforced Disappearance Crime Law comes into force, the non-applicability of statutes of limitations to this crime, such as intended by Bill No. 6.240/2013, shall be limited to cases not covered by the Amnesty Law.

IX. Reply to paragraph 9 of the list of issues

27. Decree No. 8.766 of May 2016 enacted the Inter-American Convention on Forced Disappearance of Persons, signed by the Federative Republic of Brazil on June 10th, 1994. Article IX of the Convention rules out the Military Justice jurisdiction on crimes of enforced disappearance against civilians.

28. Although there is no specific crime of enforced disappearance in the Brazilian legal framework, Law No. 13.491/2017 states that the ordinary justice – especially jury court – is responsible for intentional crimes against civilian life committed by military agents. Moreover, in 1996 Law No. 9.299 revoked the Military Justice's jurisdiction to process and judge intentional crimes against civilian life committed by military staff.

29. The Military Justice neutrality is ensured institutionally by its organized system. Article 125, §3 of the Federal Constitution determines that State Military Justice is comprised of judges (civilian citizens selected to this position in a public selection process), who must judge state military police agents' actions, except when jurisdiction falls on Jury Court.

30. Moreover, abuse of authority possibly committed by a military agent is considered a common crime to be judged not by the Military Justice, but by the ordinary one. This is stated in Precedent No. 172 of the Brazilian Superior Court of Justice, consolidated in 1996, and in Law No. 13.869/2019.

X. Reply to paragraph 10 of the list of issues

31. Regarding the type of protection granted to beneficiaries of the Federal Assistance Program for Victims and Threatened Witnesses (PROVITA), Law No. 9.807/99 provides for the following measures in article 7:

> "Art. 7. The program includes, among others, the following measures, which can be implemented separately or cumulatively for the benefit of the protected person, according to the gravity and circumstances of each case:
>
> I – security at home, including communications monitoring;
>
> II – escort and personal security while moving around outside home, including to work or to give testimony;
>
> III – changing domicile or temporary accommodations in a safe venue;
>
> IV – identity, image and personal data preservation;
>
> V – monthly financial aid to provide for the expenditure on individual or family livelihood, in cases when the protected person is unable to develop regular work or when income is non-existent.
>
> VI – temporary suspension of work duties, without compromising their respective salaries and benefits, in case of civil servants or military staff;
>
> VII – social, medical and psychological support and assistance;
>
> VIII – secrecy in relation to acts performed due to the granted protection;
>
> IX – support from the agency which will carry out the program to fulfil their civil and administrative obligations when personal attendance is demanded;
>
> Sole paragraph. The monthly financial aid's maximum value will be defined by the deliberative council at the beginning of each financial year".

32. Section III (VOLUNTARY PROTECTION NETWORK), article 9 of Decree 3.518/00 establishes the following on reintegration measures:

> "Art. 9. The Voluntary Protection Network is the whole of civil associations, entities and other non-governmental organizations which volunteer to accommodate,

without earning profits or benefits, the people included in the Program, providing housing and social inclusion opportunities away from their residence".

33. The Procedures Handbook also brings along operational procedures and some items related to reintegration, as follows:

"II – The interdisciplinary technical team shall assist the user in accessing public policies on the new protected site;

III – The interdisciplinary technical team shall introduce the user to the humanitarian network which will assist the reintegration process at the new location;

IV – The technical support must be continuous, in order to assess its adjustment **to the new social contex**t, always guiding and motivating the user to achieve autonomy".

34. Although there is not a list of reintegration measures in the program framework, the Program assesses and monitors the social reintegration of the protected persons, pursuant to the Protection Pedagogy. Some of the main monitored aspects are:

- Right to life and physical integrity;
- Promotion of family companionship and social organization;
- Legal counsel and assistance;
- Strengthening of the subjective conditions;
- Promotion of access to and enjoyment of rights;
- Work and income.

35. By monitoring these axes, the technical teams take the necessary steps to coordinate with public institutions and partners on education, social security, health and housing, legal aid, among others, so that beneficiaries may have access to public policies.

36. The technical teams work jointly and closely to the protected persons in order to raise awareness and search local opportunities, either by providing professional training or applying skills acquired before the inclusion in the Protection Program.

37. While taking protective and social reintegration measures, the technical teams constantly monitor the level of risk to which the beneficiary may be exposed. Additional measures may be implemented according to the risk. When no threat is identified, the assessment of social reintegration measures begins. All measures are designed together with the people included in the Program, enabling better implementation based on their specific needs.

38. The Protection Program is carried out by means of the transfer of funds to states and Civil Society Organizations, whereas the MWFHR is responsible for monitoring its physical and financial implementation. The program is in full operation as the Ministry negotiates new contracts early ahead the termination of the valid ones, ensuring the program's continuity. The Brazilian Federal Government also performs budget programming, by informing the estimated amount of investments on the Protection Programs for the Annual Budget Law. This process allows the Protection Program to be duly funded and prevents it from being halted.

39. The Federal Assistance Program for Victims and Threatened Witnesses, despite not encompassing any case related to enforced disappearance, is accessible to any person that meets the requirements set out by article 1 of Law No. 9.807/99.

XI. Reply to paragraph 11 of the list of issues

40. Any indication of a crime must be investigated by the competent authorities (the Public Prosecutor's Office and the police), even in the absence of a formal complaint in cases of public criminal action such as the ones mentioned previously, given the fact that enforced disappearance is not considered a criminal offence as such in the Brazilian legal

order. Possible administrative procedures take place before corrections units and therefore are independent from criminal procedures (one does not prevent the other from taking place).

41. Resources and necessary “powers” referred to in the final part of the question derive from the full respect of fundamental constitutional rights and the operational independence guarantees accorded to different State bodies in all levels of the Federation, pursuant to the relevant legislative and budgetary procedures.

42. Furthermore, any difficulties may always be remedied by the unrestrained access to the Judiciary Branch, which can act whenever necessary. Anyone caught in the act of committing a crime may be even arrested not only by the police, but also by any other citizen.

XII. Reply to paragraph 12 of the list of issues

43. A person accused of any professional misconduct, specially of committing a crime, most importantly a serious crime like the one of enforced disappearance (even if it has a different definition in the Brazilian legal system), will not be able to participate in the investigation of such crime and will be suspended during the course of the procedures. The safeguards in place for the independent conduction of the investigation and prosecution are based on the functional independency of the Judiciary Branch and the Public Prosecutor’s Office.

XIII. Reply to paragraph 13 of the list of issues

44. Article 6, Annex I, of Decree No. 10.174 of December 13th, 2019, assigns to the National Human Rights Ombudsman the authority to receive, examine and follow up on the reports and complaints about human rights’ violations.

45. There have been no reports registered featuring the three constitutive elements of the crime of enforce disappearance, as prescribed on article 2 of the Convention.

XIV. Reply to paragraph 14 of the list of issues

46. With regard to the case of Mr. Amarildo Dias de Souza, the Rio de Janeiro Court of Justice confirmed, in 2019, the conviction of eight police agents and the acquittal of four police agents. The 13th police officer who was indicted passed away. The proceedings are taking their natural course, in accordance with the Brazilian criminal law. As for other cases of enforced disappearance, the presumable scarcity of such cases and the lack of consolidated information at national level hinder the State from providing a definite answer on whether there was any forced disappearance ever since.

47. As for the last part of the question, Brazil recalls the Committee that, under Article 35 of the treaty, its only has competence over matters occurred after the Convention entered into force for Brazil, in 2016.

XV. Reply to paragraph 15 of the list of issues

48. Law No. 13.445/2017, which is the legal basis for extradition requests received by Brazil in the absence of a treaty in force between the concerned parties, secures a series of warranties to those facing extradition, without which Brazil may deny handing them over, even when the Federal Supreme Court authorizes the extradition with regards to its legality. That is, before carrying out the extradition, Brazil will verify if handing over the person may represent a threat to his or her physical integrity.

XVI. Reply to paragraph 16 of the list of issues

49. In Brazil, mutual legal assistance (MLA) may be provided in accordance with bilateral and multilateral treaties ratified by the country. In the absence of a treaty, Brazil may provide it based on the principle of reciprocity. Requests for international legal assistance can be based on a multilateral convention or a bilateral agreement on criminal matters, if they were duly signed and ratified by the States concerned and have been properly incorporated into their domestic legal orders. In these cases, the processing of requests will take place directly through the Central Authorities of the countries concerned, therefore they do not need to be transmitted through diplomatic channels.

50. The fact that there are no agreements or conventions in force does not mean that Brazil is not able to provide MLA. In those situations, the legal basis for requests of MLA commonly used is the principle of reciprocity. Paragraph 1 of Article 26 of the Brazilian Code of Civil Procedure establishes that in the absence of a treaty, international legal cooperation may take place based on reciprocity, to be indicated through diplomatic channels.

51. In fact, in all the cases that are not prohibited by law, Brazil can, on the basis of bilateral and multilateral agreements, as well as reciprocity, provide a wide variety of measures of international cooperation. The general rule established in Article 27, VI, of the Code states that Brazil can request and execute any judicial or extrajudicial measure that is not prohibited by Brazilian law.

52. Furthermore, according to Paragraph 4 of Article 26 of the Code, the Ministry of Justice and Public Security acts as the Central Authority in the absence of a specific designation as is the case in most multilateral treaties, including Vienna, Palermo and Mérida Conventions.

53. When the Ministry of Justice and Public Security receives MLA requests, it promptly transmits the information to the judiciary, the Public Prosecutor's Office or the judicial police, according to the requesting authority and the measure to be granted, for instance a request that demands a judicial order in Brazil. After its analysis, a request shall be sent to the national authorities responsible for carrying out its execution.

54. As pointed out, MLA is neither prohibited nor subject to unreasonable or undue restrictions. Paragraph 3 of Article 26 of the Code establishes that in international legal cooperation, acts that are contrary to or that lead to results that are incompatible with the fundamental rules of the Brazilian State will not be allowed. Likewise, Article 39 of the Code determinates that a request will be refused if it clearly offends against public order. According to Article 26 of the Code of Civil Procedure, states that request MLA shall observe the following:

> "I - the guarantees of the due process of law in the requesting State;
>
> II – equality of treatment of nationals and non-nationals, resident or not in Brazil or not, with regard to access to justice and the handling of the lawsuits, assuring legal aid to the indigent;
>
> III – the public nature of proceedings, except in cases of confidentiality as provided for in Brazilian statutory law or in that of the requesting State;
>
> IV – the existence of a central authority to receive and send cooperation requests",

55. Article 27 of the Code of Civil Procedure, in its turn, establishes the scope of international cooperation. According to it, international cooperation shall comprise the following measures:

> "I – judicial and extrajudicial summons, subpoenas and notifications;
>
> II – the gathering of evidence and information;
>
> III – the recognition and enforcement of judgements;
>
> IV – the granting of urgent legal remedies;

V – international legal aid;

VI – any other judicial or extrajudicial remedy that is not forbidden by Brazilian statutory law".

56. In fact, all of the provisional measures of the Criminal Procedure Code are available for international cooperation.

57. Finally, in the Brazilian Ministry of Justice and Public Security database, no request based on the above-mentioned Convention was identified. Nevertheless, as previously stated, it would be possible to provide a broad assistance in this regard.

XVII. Reply to paragraph 17 of the list of issues

58. As indicated previously, the Brazilian legislation provides for safeguards to prevent the extradition of a person to a State where his or her human rights might be violated. In addition to the safeguards provided for on article 96 of Law No. 13.445/17, the Federal Supreme Court assess, during the extradition procedure, if the requesting State is able to ensure the basic rights (human rights, right of defense, right to a prior hearing, among others) of the person facing extradition. It also assesses the possibility of a formal request for refugee status by the person facing extradition to the National Committee for Refugees (CONARE), should this person believe that his or her extradition to the requesting State represents a threat to his or her integrity.

59. When it comes to the individual assessment on whether the person concerned is at risk of being subjected to enforced disappearance, article 62 of Law No. 13.445, of May 24th, 2017, determines that Brazil shall not move forward with the compulsory removal of a person whose life or personal integrity may be at risk as result of this measure, including the expulsion of foreigners.

60. Moreover, article 55 of this Law provides for scenarios which ward off the possibility of expelling a person from the national territory and allow for the closing of procedures, after confirmation of said scenario during the administrative procedure of expulsion.

61. The possibility to appeal a decision authorizing an expulsion is regulated by article 206 of Decree No. 9.199, of November 20th, 2017, which establishes that such a request must be presented to the Ministry of Justice and Public Security and must be grounded on the incidence of a cause to ward off expulsion that was not observed or did not exist during the administrative procedure.

62. As for the suspension of the effects of a measure impeding re-entry in the national territory, the second paragraph of the same article states that it is not automatic upon filing a request. Therefore, it must be analyzed by the Ministry of Justice and Public Security, which will decide on the matter.

XVIII. Reply to paragraph 18 of the list of issues

63. The National Human Rights Ombudsman (HRO) has taken concrete steps towards filing, screening and referring reports of human rights' violations to the proper authorities, specifically those related to persons deprived of liberty. This way, it represents a relevant mechanism (article 17 of the Convention) on the fight against human rights violations.

64. Suffice to say that between January 1st and July 31st, 2020, the HRO received 5,353 complaints regarding 20,652 violations of rights of persons deprived of liberty, in detention centers. These complaints encompass violations of various kinds, including violations related to the COVID-19 pandemic.

65. The complaints are received mainly my mail and are then filed, screened and referred to the proper authorities, depending on the addressed subject. Therefore, institutions such as the Public Prosecutor's Office, the Public Defender's Office, the

Offices of Inspectors General of Secretariats of Justice and the prison system, among others. The letters are answered individually, having a protocol number for follow up of the case.

XIX. Reply to paragraph 19 of the list of issues

66. The National Database for the Monitoring of Prisons (BNMP 2.0), created to enhance the BNMP 1.0, is an answer to the need to provide data regarding the prison population to public servants, magistrates and everyone else under Brazilian jurisdiction. It seeks to register arrest warrants issued by the judicial authorities and other relevant documents for the creation of the National Register of Arrested Individuals, that is, the consolidation all the relevant information of a person deprived of liberty.

67. According to information received from the National Justice Council, all the information listed in article 17(3) of the Convention is provided by the BNMP 2.0, according to the current legislation. Besides that, it contains information on all persons deprived of liberty, including those being held in establishments for juvenile offenders or psychiatric establishments. It should be pointed out that there are no detention centers for migrants in Brazil.

XX. Reply to paragraph 20(a) of the list of issues

68. Yes, the Mechanism can conduct visits in all places where there are persons deprived of liberty, according to Federal Law No. 12.847, of August 2nd, 2013.

XXI. Reply to paragraph 20(b) of the list of issues

69. The guarantees ensuring the access to places of deprivation of liberty are provided for in the abovementioned law. Article 10 of this law determines the following:

> "Article 10. The National Mechanism to Prevent and Combat Torture and its member are assured:
>
> I – autonomy regarding the positions and opinions adopted while carrying out their duties;
>
> II – access, regardless of authorization, to all information and registry related to the number, the identity, detention conditions and the treatment of persons deprived of liberty;
>
> III – access to the number of detention facilities and their respective occupancy level and localization;
>
> IV – access to all places of deprivation of liberty listed in item II of article 3,[2] public or private, and to all of their installations and facilities;
>
> V – the possibility of interviewing persons deprived of liberty or any other person who may provide relevant information, privately and without witnesses, in a place that ensures the required safety and confidentiality;
>
> VI – the choice of the places to be visited and the people to be interviewed, with the possibility of making audiovisual recording, given that the concerned parties' privacy is respected; and
>
> VII – the possibility of requiring an official collection of evidence by an expert, in accordance with international rules and guidelines and with article 159 of Decree-Law No. 3.689, of October 3rd, 1941 – Code of Criminal Procedure".

[2] Detention facilities, including establishments for juvenile offenders or psychiatric establishments.

XXII. Reply to paragraph 20(c) of the list of issues

70. The Mechanism has been strengthened by the publication of a new public notice, still in effect, to replace the experts whose terms have expired. In the first call, approximately 300 contestants attended it. The acting experts are exercising their activities regularly and presenting their reports. There is an ongoing plan using the methodology of scheduling meetings with federal states and providing them with useful protocols for establishing their mechanisms.

XXIII. Reply to paragraph 21 of the list of issues

71. The Brazilian legislation has many provisions that guarantee the rights of persons deprived of liberty. Besides the Code of Criminal Procedure, Brazil has regulations that establish safeguards such as the need to immediate reporting arrests to the judiciary and performing custody hearings, the possibility of requesting *habeas corpus*, among others.

72. It is important to emphasize that the pandemic did not cause any restriction to constitutional liberties not related to the health emergency per se. Taking that into consideration, the access to justice and other rights for the families of possibly missing people were not restricted.

XXIV. Reply to paragraph 22 of the list of issues

73. The release permit is the legal instrument used to release persons deprived of liberty and it is issued according to the rules set out in the Code of Criminal Procedure and other regulations, which determine compliance deadlines and administrative and criminal liability for agents who fail to comply.

XXV. Reply to paragraph 23 of the list of issues

74. The article 655 of the Code of Criminal Procedure sets out:

"The prison keeper or director, the scribe, the court clerk or the judicial or police authority that hinders or procrastinates the *habeas corpus* dispatch, the information on the cause for imprisonment, the transit and presentation of the person deprived of liberty, or his or her release will be fined between two hundred thousand and one million *réis*[3], not excluding others incurred penalties. The fines will be set out by the court judge responsible for the *habeas corpus*, except when it is concerning judicial authority, when the fine will be set out by the Federal Supreme Court or the Appeal Court".

75. Therefore, the mentioned article complies to article 22 of the Convention as it provides liability for the agent who disobeys a *habeas corpus* warrant.

XXVI. Reply to paragraph 24 of the list of issues

76. The National School of Prison Services is part of the National Penitentiary Department of the Ministry of Justice and Public Security and plays the role of developing and enhancing the quality of service of public servants acting in the prison system. Its operation conforms to the article 23 of the mentioned Convention in transversal way. For instance, its Political-Pedagogic Principles make references to the National Curricular Guidelines, such as the "encouragement of values of respect, equality, collaboration and rejection to all kinds of violence and discrimination", which are all based on fundamental human rights principles.

77. It is also important to clarify that the National Penitentiary Department is not the sole responsible for training civil servants in a national level, due to the federal pact.

[3] One million réis is equivalent to about US$ 22,000.00 currently.

Therefore, other federal levels have managing and administrative autonomy to promote similar programs.

XXVII. Reply to paragraph 25 of the list of issues

78. According to the article 24 of the Convention, the definition of victim is a "disappeared person and every individual who may have suffered damage as a direct result of the forced disappearance". This definition may not be applied within the Brazilian legal framework because there is no express criminalization of forced disappearance, as aforementioned. However, any person may be prosecuted for the crime of qualified abduction if he or she commits an act equivalent to forced disappearance, due to the lack of such typology in the Brazilian legal framework.

79. Thus, the aforementioned items are answered as follows:

(a) forced disappearance is not a specific crime in Brazil, therefore, this inquiry will consider qualified abduction. In such a case, according to the Brazilian Civil Code, those who, by an unlawful act, may have caused harm to someone, shall be obliged to compensate the damages;

(b) Under the terms of article 935 from the Civil Code, the civil responsibility is separate from the criminal one, though the existence of the fact cannot be disputed when it was already recognized by a criminal court;

(c) The civil compensation for the crime of qualified abduction must be requested within the time limit of three years from confirmation of the crime, according to the Civil Code;

(d) There are no cases of forced disappearances on the federal program, therefore rehabilitation services were not provided.

XXVIII. Reply to paragraph 26 of the list of issues

80. The National Missing Persons Search and Identification System (SINALID) aims to search persons victimized by circumstances that lead to the permanent or temporary loss of family contact (missing persons), as well as the identification of persons found in a condition that indicates apparent disappearance, human trafficking, among others.

81. The methodology of this system received an honorable mention at the seventh edition of Innovare Award (2011), the PLID/SINALID operates by cross-referencing data collected in a varied pool of sources, both public and private, in order to strengthen searching actions all over the national territory.

82. The software development project of SINALID – unprecedent and unique in Brazil – was launched on September 20th, 2017, and its first version was published to users on April 17th, 2018, that is, seven months after the development has started.

83. SINALID does not have a genetic database at the present time. As for the other inquiries presented, the Brazilian State recalls the time frame imposed by the article 35 of the Convention.

XXIX. Reply to paragraph 27 of the list of issues

84. Regarding the civil legal framework associated to disappeared persons, it is worth mentioning that, according to the article 6 of Civil Code, the existence of a natural person ends with the event of his or her death. Death, however, is presumed, in the case of the missing persons, when the law authorizes opening procedures for final succession. That way, there are two kinds of presumed death in the Brazilian legal framework: presumed death without declaration of absence and presumed death with declaration of absence. The presumed death without declaration of absence may be declared in the following cases: a) if the death is an extremely probable event for whose life was danger; b) when someone, who

disappears during a military campaign or who becomes prisoner, is not found in two years following the war's conclusion. The declaration of presumed death, in these cases, may only be claimed after searches and inquiries are finished, and the court ruling shall set the probable date of passing. These cases shall be properly processed in a special procedure of justification, under the terms of the Law of Public Registration.

85. As for the presumed death with declaration of absence, it is for situations when a person disappears from its residence with no news of his/her whereabouts, without leaving a representative or a proxy entrusted with the administration of assets. The judge, then, by claims of any concerned party or of the Public Prosecutor's Office, will declare the absence and nominate a trustee. This kind of declaration is marked by these characteristics: (a) the missing person's life was not in danger; (b) the existence of a declaration of absence and a nomination of trustee; (c) the provisional succession; (d) the final succession.

86. When it comes to the absentee's assets, since there is no one to guard them, any direct concerned party or even the Public Prosecutor's Office may ask the judge to declare the absence and nominate a trustee, who shall manage the absentee businesses until its eventual return, arranging the collection of its assets. Consequently, the judge will set powers and duties of the trustee and the ruling of the absence declaration must be registered. However, if the missing person does not own assets, no trustee shall be nominated.

87. In the matter of provisional succession, a year after the first public notice publication or after three years, if the person has left a representative or trustee, the concerned parties may demand the provisional succession. The concerned parties are (a) marriage partner; (b) presumed heirs; (c) those who have rights over the assets in case of death of absentee; (d) creditors of overdue and unpaid obligations. In the provisional succession, the absentee's real estate properties may only sold to avoid financial ruin and, before the distribution of the estate, the judge, when deemed convenient, will order the conversion of the movable assets in risk of loss or damage into immovable assets or into State backed bonds. The ascendants, descendants and marriage partners may, once their heirship is proven, and without being subject to warranties, take in possession the absentee's assets and, consequently, the provisional successors will take on active and passively representation of the absentee. The provisional successors may benefit from the estate's earnings and other successors shall capitalize on half of these earnings, where it is applicable.

88. Concerning the final succession, ten years after *res judicata* of the provisional succession procedures, the provisional will be converted in final succession. Final succession may be, alternatively, requested proving the absentee would be eighty years old and, cumulatively, has been five years of its latest news. The final succession depends on requesting judicial ruling, the moment in which the concerned parties may request the lifting of deposits. If the absentee returns in a ten-years period following the opening of the final succession procedures, the descendants or ascendants will only take possession of the existing assets at the state they currently are, the subrogated assets, or the price the heirs and other concerned parties may have received by the selling of those assets after that time. If, during the ten-year period mentioned in the Civil Code, the absentee does not return, and none of the concerned parties open procedures for final succession, the collected assets will pass on to the Municipality or to the Federal District, if located on the respective jurisdictions, or incorporated to the Union, when located in federal territory.

89. It is needed to emphasize that the declaration of absence does not impact on the State party's obligation to continue police investigation.

90. As for Family Law, a valid marriage can only be dissolved by the death of one the partners or by divorce. Based on presumed death set on the Civil Code in relation to the absentee, the minor children should be put in guardianship with the parents' passing, or if a court ruling judge them absentees.

XXX. Reply to paragraph 28 of the list of issues

91. Regarding article 25 (1)(a) of the International Convention for the Protection of All Persons from Enforced Disappearance, it is not possible to locate in the Bill's text specific

mention to what the referred article brings. However, the §6, item III of Bill 6.240/2013 states that the penalty is raised from 1/3 (one third) to ½ (half) if the victim is a child or a teenager.

XXXI. Reply to paragraph 29 of the list of issues

92. When it comes to adoption, international or domestic, the availability of children or teenagers for international adoption, their housing, the processing of the destitution of family power, the qualification of applicants and the concession of adoptions are exclusive responsibilities to the state's judicial systems.

93. However, as for the efforts of the Brazilian State to play the role of "promoting and enabling risk-free international adoption" of any children and teenagers (of disappeared persons or not), with residence in Brazil, the following stands out.

94. Brazil is signatory to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, of 1993, which was ratified in 1999. Coming from a commitment set by referred Convention the Brazilian States has a Central Authority office in charge of complying with the obligations laid down by its norms.

95. In these terms, several measures are in place to make sure that the adoptions are completed in accordance to the best interest of the children and to avoiding their kidnap, sale or trafficking. Among those measures there is the supervision of foreign non-profit organizations qualified by the Brazilian state to intermediate international adoptions in Brazil and to provide post-adoptive follow-up reports of all completed international adoptions.