Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
12 June 2023

Original: English

Committee against Torture

Concluding observations on the second periodic report of Brazil*

1. The Committee considered the second periodic report of Brazil[1] at its 1980th and 1983rd meetings,[2] held on 19 and 20 April 2023, and adopted the present concluding observations at its 2006th meeting, held on 9 May 2023.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure and submitting its periodic report thereunder, as this improves the cooperation between the State party and the Committee and focuses the examination of the report and the dialogue with the delegation. It regrets, however, that the report was submitted 18 years late.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation, and the responses provided to the questions and concerns raised during the consideration of the periodic report.

B. Positive aspects

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189), on 31 January 2018;

(b) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 29 September 2017;

(c) The International Convention for the Protection of All Persons from Enforced Disappearance, on 29 November 2010;

(d) The Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 25 September 2009;

(e) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 1 August 2008;

(f) The Convention on the Reduction of Statelessness, on 25 October 2007;

* Adopted by the Committee at its seventy-sixth session (17 April–12 May 2023).

[1] CAT/C/BRA/2.

[2] See CAT/C/SR.1980 and CAT/C/SR.1983.

(g) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 12 January 2007;

(h) The United Nations Convention against Corruption, on 15 June 2005;

(i) The United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on 29 January 2004;

(j) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 27 January 2004;

(k) The (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), on 25 July 2002;

(l) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 28 June 2002;

(m) The Rome Statute of the International Criminal Court, on 20 June 2002.

5. The Committee also welcomes the State party's recent initiatives to revise and introduce legislation in areas of relevance to the Convention, including the adoption of the following:

(a) National Council of Justice Resolution No. 213 of 2015, by which custody hearings were introduced;

(b) Law No. 13,104 of 2015, on femicide;

(c) Law No. 13,010 of 2014, on the prohibition of corporal punishment in all settings;

(d) Law No. 12,288 of 2010, on racial equality;

(e) Law No. 11,942 of 2009, on minimum assistance services for incarcerated mothers and their children.

6. The Committee commends the State party for its initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular the following:

(a) The establishment of the Ministry of Human Rights and Citizenship and of the Ministry' Office of the Special Adviser for the Defence of Democracy, Memory and Truth, in 2023;

(b) The launch of the "Mandela Project", in 2023, aimed at promoting the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(c) The adoption of the national policy for finding disappeared persons and the creation of the national register of disappeared persons, in 2019;

(d) The adoption of guidelines for the judiciary on dealing with cases involving Indigenous Peoples in conflict with the law, in 2019;

(e) The adoption of the Federal Pact for Preventing and Combating Torture, in 2017;

(f) The adoption of the national policy on alternative penalties, in 2016;

(g) The adoption of the national policy on comprehensive care in prisons, in 2014;

(h) The release of the final report of the National Truth Commission, in 2014;

(i) The adoption of the national plan to end sexual violence against children and adolescents, in 2013;

(j) The establishment of the National System to Prevent and Combat Torture, in 2013;

(k) The adoption of the National Pact to Combat Violence against Women, in 2011;

(l) The adoption of the revised Integrated Action Plan to Prevent and Combat Torture, in 2010;

(m) The adoption of the Programme for the Protection of Children and Adolescents Threatened with Death, in 2003.

C. Principal subjects of concern and recommendations

Definition of the offence of torture

7. While noting that the Superior Court of Justice interpreted the definition of the offence of torture enshrined in article 1 of Law No. 9,455 of 1997, on torture, as being in conformity with article 1 of the Convention, the Committee is concerned that this definition does not encompass acts of torture committed for the purpose of intimidating or coercing a person, or for any reason based on discrimination of any kind, and that it still lacks a direct analogue to the language of article 1 of the Convention to cover all acts of torture inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (arts. 1 and 4).[3]

8. **The Committee urges the State party to amend the definition of the offence of torture contained in article 1 of Law No. 9,455 of 1997 to bring it fully into line with article 1 of the Convention. In this regard, the Committee draws the State party's attention to its general comment No. 2 (2007) on the implementation of article 2, in which the Committee notes (para. 9) that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity.**

Statute of limitations

9. The Committee is concerned that the crime of torture is subject to a statute of limitations of 20 years.

10. **The State party should ensure that the offence of torture is not subject to any statute of limitations in order to preclude any risk of impunity in relation to the investigation of acts of torture and the prosecution and punishment of perpetrators.**

Fundamental legal safeguards

11. The Committee is concerned about consistent reports that the procedural safeguards set out in the State party's legislation are not effective in practice. In that respect, it has been reported that: (a) lawyers are sometimes not allowed to meet with their clients during the period of the investigation; (b) the right to notify a relative or a person of one's choice is often delayed; (c) the lack of independence of forensic examiners, as the Medical-Legal Institute forms part of the Civil Police and reports to the public security department of the relevant state;[4] (d) forensic examinations are carried out sporadically, and often in the presence of the officers who are presumptively responsible for the torture and ill-treatment, which hampers the effective detection and documentation of signs of torture or ill-treatment;[5] and (e) online custody hearings, which temporarily replaced custody hearings with the physical presence of the detainee during the coronavirus disease (COVID-19) pandemic, are still taking place in a number of states, often from police stations or prison cells, which significantly reduces the probability of detecting and investigating cases of torture or ill-treatment.[6] Moreover, the Committee regrets that the State party has not provided

[3] A/HRC/31/57/Add.4 and A/HRC/31/57/Add.4/Corr.1, para. 12.
[4] Ibid., paras. 73–77.
[5] Ibid., para. 75, and CAT/OP/BRA/3, paras. 20–22, 55 and 56.
[6] A/HRC/31/57/Add.4 and A/HRC/31/57/Add.4/Corr.1, paras. 97–107, and CAT/OP/BRA/3, paras. 25–32.

information on the number of complaints filed during the period under review and the procedures in place to ensure that the fundamental safeguards recognized under its legislation for persons deprived of their liberty are respected in practice (art. 2).

12. **The State party should:**

(a) **Ensure that all fundamental legal safeguards are guaranteed, both in law and in practice, for all detained persons from the outset of their deprivation of liberty, including the rights:**

(i) **To be informed immediately in a language that they understand of the reasons for arrest, the nature of any charge against them and their rights;**

(ii) **To be assisted by an independent lawyer of their choice, including during the interrogation stages, and, if necessary, to receive free legal aid;**

(iii) **To request and receive a medical examination by an independent physician free of charge, or by a doctor of their choice, and to have the confidentiality of medical examinations respected;**

(iv) **To inform a relative or another person of their choosing about their detention;**

(v) **To be brought before a judge within 24 hours, as prescribed by law;**

(vi) **To be registered at the place of detention;**

(b) **Ensure that forensic medical institutes become structurally and operationally independent of the police and public security authorities, and that physicians' findings are recorded in a register established for that purpose;**

(c) **Immediately resume custody hearings with the physical presence of the detainee, before a magistrate and in a judicial setting, in all states and within each state of the country, as a required and essential safeguard to assess the legality of the detention, to bring the person under judicial control and to prevent, investigate and ensure accountability in all cases of torture or ill-treatment;**

(d) **Provide information to the Committee, in the next periodic report, on the number of complaints received regarding failure to respect fundamental legal safeguards and on the outcome of such complaints, including the disciplinary measures taken against officials who fail to respect fundamental legal safeguards.**

Allegations of widespread torture and ill-treatment

13. While noting the numerous measures taken by the State party during the period under review to prevent torture, the Committee remains concerned about consistent reports regarding the frequent use of torture and ill-treatment, including severe kicking, beating (sometimes with sticks and truncheons), suffocation, the administration of electrical shocks with taser guns, the use of pepper spray, tear gas, noise bombs and rubber bullets, and profuse amounts of verbal abuse and threats, by prison guards, military personnel and police officers, in particular by members of the military police, the rapid intervention groups and the federal Penitentiary Intervention Task Force, when holding a person in custody, and the disproportionate targeting of Afro-Brazilians in the context of anti-drug operations (arts. 2 and 13).[7]

14. **The State party should:**

(a) **Take the measures necessary to ensure that reporting systems are effective, independent, accessible and completely safe for victims;**

(b) **Ensure that public prosecutors properly monitor the measures taken by the officers of the security services in charge of investigations;**

[7] A/HRC/31/57/Add.4 and A/HRC/31/57/Add.4/Corr.1, paras. 50–59.

(c) **Install video surveillance equipment in all interrogation centres and places of custody, except where doing so might give rise to violations of detainees' right to privacy or the confidentiality of their conversations with their counsel or doctor;**

(d) **Create and continually update a national register of cases of torture and compile and publish statistical data on the number of complaints of acts of torture and ill-treatment registered in all bodies.**

Impunity for acts of torture and ill-treatment

15. The Committee expresses its concern about the serious shortcomings evident in the investigation of acts of torture and ill-treatment in the State party, and about the persistently high levels of impunity associated with offences of this kind. It also regrets that it has not received comprehensive information on the number of cases that have resulted in criminal proceedings and the number of prosecutions and convictions, or the penalties and disciplinary measures imposed on the persons convicted for acts of torture and ill-treatment, during the period under review. Furthermore, the Committee is concerned that there is still no specific, independent, effective mechanism for the receipt of complaints of torture or ill-treatment in places of deprivation of liberty and that existing investigation bodies, principally the Public Prosecutor's Office, lack the necessary independence as they belong to the same structure that employs the alleged perpetrators (arts. 2, 12, 13 and 16).

16. **The Committee urges the State party:**

(a) **To ensure that all complaints of torture and ill-treatment are investigated in a prompt and impartial manner by an independent body and that there is no institutional or hierarchical relationship between that body's investigators and the suspected perpetrators of such acts;**

(b) **To ensure that the authorities open an investigation ex officio whenever there are reasonable grounds for believing that an act of torture or ill-treatment has been committed;**

(c) **To ensure that, in cases of torture and/or ill-treatment, suspected perpetrators are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, take reprisals against the alleged victim or obstruct the investigation;**

(d) **To ensure that the suspected perpetrators of acts of torture and ill-treatment and the superior officers responsible for ordering or tolerating the acts are duly tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts;**

(e) **To ensure the effective enforcement of the provisions of Law No. 9,455 of 1997, on torture, in particular in the investigation and prosecution of acts of torture and ill-treatment; and to oversee the establishment and effective operation of all prosecutors' offices so as to ensure their autonomy, the allocation of adequate resources and the training of their personnel;**

(f) **To compile and publish statistics on the number of investigations and prosecutions carried out, convictions handed down and penalties imposed in cases of torture or ill-treatment, at both the federal and the state levels.**

Use of excessive force by law enforcement and military officials

17. The Committee is deeply concerned about persistent use of excessive force, especially the use of lethal force, by law enforcement and military officials in the context of security operations to combat organized crime. It is gravely concerned that, according to the *Brazilian*

Yearbook of Public Security 2022, 84.1 per cent of victims of police violence in 2021 were Afro-Brazilians.[8] In particular, the Committee is concerned about:

(a) The grave human rights violations, including extrajudicial killings and torture, during highly militarized police raids in favelas carried out by law enforcement officials from multiple State security entities, including the military police, the civilian police and the federal highway police;

(b) The use, during these raids, of heavy and indiscriminate firing of machine guns in densely populated areas, resulting in the death and injuries of predominantly Afro-Brazilian civilians, who are residents of favelas, including pregnant women and children;

(c) Reports of other forms of serious violence perpetrated by law enforcement officials during raids in favelas, including sexual violence and beatings perpetrated predominantly against Afro-Brazilians;

(d) The lack of effective and timely independent investigations into grave incidents of the use of excessive and lethal force, and the application of military law in certain cases of the use of excessive and lethal force that took place during civilian policing activities;

(e) Reports that legislative proposals (Bill No. 733 of 2022) would, if adopted, expand the legal protection afforded to law enforcement officials who engage in the use of excessive and lethal force;

(f) A lack of access to justice and remedies among victims and their families (arts. 2, 12, 13 and 16).

18. **The State party should take urgent measures to end the use of excessive force, especially the use of lethal force, by law enforcement and military officials, including by:**

(a) **Continuing the efforts to demilitarize law enforcement activities in the State party;**

(b) **Ensuring that guidelines and manuals used to train all relevant law enforcement and security officials outline protocols for the use of force, according to the principles of proportionality, necessity and legality, as set forth in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and standards relating to racial equality, and that training is effective and frequent;**

(c) **Ensuring the deployment of less-lethal weapons during policing activities, particularly in areas densely populated with civilians, including Afro-Brazilians;**

(d) **Strengthening independent oversight mechanisms with regard to all law enforcement entities in the State party and ensuring that all complaints of the use of excessive force, especially the use of lethal force, by these entities are promptly and impartially investigated, that the suspected perpetrators are prosecuted and, if found guilty, are punished in a manner commensurate with the seriousness of their actions, and that the victims or their families receive full redress;**

(e) **Identifying and amending legal provisions and practices that are hindering accountability among law enforcement officials who engage in the use of excessive or lethal force, including pending legislative proposals that would expand protection afforded to law enforcement officials, and ending the application of military law in cases of the use of excessive or lethal force during civilian policing activities.**

[8] Fórum Brasileiro de Segurança Pública, *Anuário Brasileiro de Segurança Pública 2022* (São Paulo, 2022). Available at https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/ (in Portuguese only).

Indigenous and Quilombola communities

19. The Committee is concerned about:

(a) High levels of violence against Indigenous and Quilombola communities, including killings, often taking place in the context of the defence of their lands or as a result of their work as Indigenous human rights defenders;

(b) Indigenous and Quilombola women being subjected to endemic levels of violence, including threats, intimidation, harassment, sexual violence, ill-treatment and femicide;

(c) The lack of protection from violent attacks against Indigenous and Quilombola communities and pervasive impunity for these crimes;

(d) The forced eviction of Indigenous communities from their land as a result of land-grabbing by ranchers, the development of extractive industries, illegal logging or other industrial projects (arts. 2, 12–14 and 16).[9]

20. **The State party should:**

(a) **Take steps to prevent and address the root causes of violence against Indigenous and Quilombola persons, including women, in full consultation with Indigenous and Quilombola communities and women, and to prevent killings and raids by local ranchers or illegal loggers;**

(b) **Carry out timely and effective investigations into all incidents of violence against Indigenous and Quilombola persons, including human rights defenders and women, ensuring accountability among perpetrators and the provision of remedies to victims;**

(c) **Immediately cease the forced eviction of Indigenous communities from their lands, and guarantee their right to free, prior and informed consent and consultation, as established in the Constitution.**

Conditions of detention

21. As the delegation acknowledged, the Brazilian penitentiary system faces enormous challenges. The Committee takes note of the efforts made by the State party to reduce overcrowding in prisons, as such efforts improve the conditions of detention. However, the Committee remains deeply concerned about reports of overcrowding in the vast majority of the prisons in the State party and about the overall very high rate of incarceration, including in pretrial detention, for drug-related offences, in particular of young Afro-Brazilian men and women. It is seriously concerned about a lack of effective measures to address the root causes of the disproportionate rates of incarceration of Afro-Brazilians, including overpolicing, racial profiling, systemic racial discrimination within law enforcement agencies and other institutions involved in the administration of justice and policies that criminalize drug possession. Moreover, the Committee is concerned about reports of self-rule arrangements made possible by the lack of custodial staff in many prisons, frequent riots resulting in fatalities, violence among inmates and inadequate security measures in some prisons. It is further concerned about acts of corruption by prison officers and other prison staff. Furthermore, the Committee is concerned about reports of: (a) appalling conditions of detention – including for women, minors, persons with disabilities and lesbian, gay, bisexual and transgender persons – in most correctional facilities, which lack hygiene and sanitation services, ventilation and natural light, access to drinking water and sufficient amounts of suitable food; (b) a failure to effectively separate persons on or awaiting trial from convicted persons; (c) insufficient programmes for rehabilitation and social reintegration; and (d) insufficient access to medical care, in particular for persons deprived of their liberty who have chronic diseases or COVID-19 symptoms, drug users, persons with intellectual disabilities and persons with psychosocial disabilities, and a lack of medical personnel, medicines and medical equipment. Lastly, the Committee is concerned about reports of

[9] CERD/C/BRA/CO/18-20, paras. 49 and 50, and CRC/C/BRA/CO/2-4, paras. 79 and 80.

assault and sexual violence in detention facilities, with particularly high incidence against detained women (arts. 2, 11 and 16).

22. **The State party should:**

(a) **Pursue its efforts to eliminate overcrowding in all detention centres, primarily by using alternative measures to custodial sentences both before and after trial, in which regard the Committee draws the State party's attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and undertake work to make the necessary improvements to prison facilities and take urgent measures to remedy any deficiencies related to the general living conditions in prisons, to ensure full compliance with the Nelson Mandela Rules;**

(b) **Carry out a thorough review of relevant laws, policies and practices to effectively address the root causes of the disproportionate rates of incarceration of Afro-Brazilians, including overpolicing, racial profiling, systemic discrimination within law enforcement agencies and other institutions involved in the administration of justice and policies that criminalize drug possession;**

(c) **Ensure that persons in pretrial detention and those serving sentences are strictly separated, and that, in mixed-sex prisons, the women's wing is completely separate from the men's wing;**

(d) **Ensure the security of prisons, including by recruiting and training a sufficient number of prison personnel;**

(e) **Take judicial and disciplinary proceedings against officials and other custodial personnel responsible for corruption in the penitentiary system;**

(f) **Ensure, in cooperation with public health services, the continuity of medical treatment in prison, particularly for infectious diseases, drug dependency and mental health conditions and the medical monitoring of women during pregnancy, including through the provision of suitable medical personnel, materials and medicines;**

(g) **Increase detainees' access to programmes for rehabilitation and social reintegration;**

(h) **Collect and publish data on the maximum rates of capacity and occupancy, and on the numbers of persons serving sentences and those in pretrial detention, for all places of detention in the State party.**

Juvenile justice

23. While noting Law No. 12,594 of 2012, on the National System of Social-Educational Assistance and the related national plan, the Committee remains deeply concerned that alternative measures to detention are not applied effectively, resulting, inter alia, in large numbers of children, particularly Afro-Brazilian children, serving prison sentences. The Committee is concerned about the many cases of children being placed in detention for minor offences that do not justify deprivation of liberty. It also regrets the passing by the Chamber of Deputies of Bill No. 171 of 1993, which contains a proposal to lower the age of criminal responsibility from 18 to 16 years, and about its pending further consideration by the Senate, and about the passage by the Senate of Bill No. 333 of 2015, which contains a proposal to increase the maximum length of prison sentences for children from 3 to 10 years. Furthermore, it is particularly concerned about:

(a) Reports of violence in prisons, which has led to the deaths of children;

(b) The very poor health and sanitary conditions and severe overcrowding in many of the facilities where children are detained, including social-educational centres;

(c) Cases in which children are detained with adults and cases of sexual violence against and abuse of children, particularly girls, in detention;

(d) Excessive and lengthy use of pretrial detention and prolonged solitary confinement of children;

(e) The inadequate number of juvenile courts and specialized juvenile judges (arts. 2, 11 and 16).

24. **The State party should bring its juvenile justice system fully into line with the Convention and other relevant international standards. In particular, the State party should promote alternatives to detention and ensure that detention is used as a last resort and for the shortest possible period of time and is reviewed on a regular basis with a view to its withdrawal, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). Furthermore, the State party should:**

(a) **Promptly and thoroughly investigate all cases of violence against children and child deaths in custody;**

(b) **Take measures to resolve overcrowding in juvenile detention facilities, improve, as a matter of urgency, living conditions in centres of deprivation of liberty for children and adolescents in terms of sanitation, hygiene, safety and education, and ensure that adolescents are separated from adults, that suitable, culturally diverse socio-educational and rehabilitation programmes are offered, that the staff have received appropriate training and that regular inspections are carried out;**

(c) **Expedite legal proceedings and strictly adhere to regulations regarding the maximum period of pretrial detention, and observe the prohibition on imposing solitary confinement and similar measures on minors (rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and rule 45 (2) of the Nelson Mandela Rules);**

(d) **Increase the number of specialized juvenile court facilities and procedures that have adequate human, technical and financial resources, designate specialized judges for children, and ensure that such specialized judges receive appropriate training.**

Disciplinary measures

25. While noting that, according to the Criminal Enforcement Law, temporary solitary confinement as a disciplinary measure should only be used as a last resort and for a strictly limited time, the Committee is concerned about reports documenting the imposition of such measures for as many as 30 days in small cells and in deplorable conditions with severe restrictions on visits and calls to relatives. It also regrets the absence of information on the visits made by enforcement judges during the period under review and on the impact of the remedial measures that have been taken. Moreover, the Committee is troubled by documented cases of collective punishment of inmates who may be held indefinitely under the differentiated detention regime (article 52 of the Criminal Enforcement Law), in punishment cells in reportedly very harsh, inhuman and degrading conditions (arts. 2, 11 and 16).

26. **The State party should:**

(a) **Ensure that solitary confinement is used only in exceptional cases and as a last resort, for as short a time as possible, and that it is subject to independent review and imposed only with the permission of the competent authority, in accordance with rules 43 to 46 of the Nelson Mandela Rules;**

(b) **Ensure due process in the imposition of disciplinary sanctions (rule 41 of the Nelson Mandela Rules), and ensure that disciplinary sanctions and restrictive measures do not include the prohibition of family contact and that the means of family contact are restricted only for a limited period of time and as strictly required for the maintenance of security and order, and never as a disciplinary measure (rule 43 (3) of the Nelson Mandela Rules);**

(c) **Abolish the practice of collective punishment and review article 52 of the Criminal Enforcement Law to end the practice of indefinite detention in punishment cells under the differentiated detention regime;**

(d) **Ensure that general living conditions, including those related to light, ventilation, temperature, sanitation, nutrition and drinking water, apply to all prisoners without exception (rule 42 of the Nelson Mandela Rules).**

Deaths in custody

27. The Committee is concerned about the reported high number of deaths, including violent deaths, in places of detention. It regrets that the State party did not submit complete statistical information for the entire period under review. It also regrets the lack of information on the outcomes of the investigations carried out, on specific measures taken to prevent the recurrence of similar cases and on any cases in which compensation was awarded to the relatives of the deceased. It is also disturbed by the persistently high levels of violence between rival groups of prisoners, which appear to be the work of criminal gangs and extortion rings in prisons that exercise a form of self-rule (arts. 2, 11 and 16).

28. **The State party should:**

(a) **Ensure that all cases of death in custody are promptly and impartially investigated by an independent body, with due regard to the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and that an evaluation is undertaken of any possibility that agents of the State or their superiors are the responsible parties and, if this is found to be the case, that the guilty parties are duly punished and the families of the victims provided with adequate reparation;**

(b) **Ensure the allocation of the human and material resources necessary for the proper medical and health care of prisoners, in accordance with rules 24 to 35 of the Nelson Mandela Rules, and review the effectiveness of programmes for the prevention, detection and treatment of chronic degenerative diseases and infectious or contagious diseases in prisons;**

(c) **Compile and publish detailed statistics on deaths in custody and their causes;**

(d) **Reinforce measures for preventing and reducing inter-prisoner violence, investigate the extortion rings operating in prisons and regain effective control over them.**

Therapeutic communities

29. The Committee is concerned about Law No. 11,343 of 2006, which is aimed at directing drug users to medical attention and treatment provided by so-called "therapeutic communities", which are private faith-based institutions partially financed by the State party. It notes with concern that mental health patients are also detained in therapeutic communities. It is deeply concerned about reports of frequent human rights violations in these communities, including physical and psychological violence, use of excessive force, forced labour, restrictions on freedom of movement, and poor living conditions. The Committee reminds the State party of its responsibility to protect the physical and psychological integrity of persons in these facilities, regardless of the facility's affiliation, or absence thereof, with the State party (arts. 2, 11 and 16).

30. **The State party should:**

(a) **Prioritize family reintegration and community-based health and social services as an alternative to the institutionalization of drug users;**

(b) **Ensure that all allegations of human rights violations, including torture and ill-treatment, in therapeutic communities are investigated promptly, thoroughly and impartially, that alleged perpetrators are prosecuted and, if found guilty, punished in a manner commensurate with the seriousness of their acts, and that all victims are granted adequate redress;**

(c) **Ensure that drug rehabilitation centres are regularly monitored by health and social services inspection authorities and independent monitoring mechanisms, and that they are provided with sufficient qualified and trained medical staff.**

Privatized detention facilities

31. The Committee notes with concern the growing number of privately-run detention facilities. It is concerned that such arrangements may result in serious violations of the rights of detainees, as the lines of accountability for misconduct by non-State agents may be blurred, and that essential services for inmates may suffer under the pressure to maximize corporate profits (arts. 2, 11 and 16).[10]

32. **The State party should ensure that private companies running detention facilities comply with all international standards, in particular the provisions of the Convention. It should ensure that such private companies provide appropriate training to their staff and that such facilities are regularly monitored.**

National preventive mechanism

33. The Committee acknowledges the complexity of the federal structure of the State party and notes that the National System to Prevent and Combat Torture comprises a variety of institutions and bodies, including the National Committee to Prevent and Combat Torture, the National Mechanism to Prevent and Combat Torture, the National Penitentiary Department, the National Council on Criminal and Prison Policy and local committees to prevent and combat torture at the state level. While welcoming the decision by the Supreme Court to invalidate a presidential decree adopted in 2019 that would have dismantled the State party's preventive mechanism on torture, and the suspension pending review of several provisions of Order No. 8 of 2016, which had been used by penitentiary authorities to restrict access by the National Mechanism to Prevent and Combat Torture to a number of places of detention and detainees on security grounds, the Committee is seriously concerned that an independent, effective and well-resourced network of preventive mechanisms across all the jurisdictions of the State party has still not been established, only 4 out of 26 states having set up such a preventive body so far. It also regrets the lack of information on the resources allocated to the National Mechanism to Prevent and Combat Torture and to those visiting bodies already set up at the state level, and the degree of cooperation of such bodies with civil society organizations (arts. 2, 11 and 16).

34. **The State party should:**

(a) **Take all the measures necessary to promptly establish a network of preventive mechanisms in all states, and ensure that each of the bodies in the network has the resources and functional and operational independence necessary to fulfil its preventive mandate in accordance with the Optional Protocol to the Convention, including access to all places of deprivation of liberty on the basis of its own priorities;**

(b) **Intensify its efforts to build the capacities of the National Mechanism to Prevent and Combat Torture in coordinating the national network of preventive mechanisms with a view to ensuring effective and independent monitoring, including regular and unannounced visits and confidential hearings of detainees, of all places of deprivation of liberty across all states;**

(c) **Ensure effective follow-up to and implementation of the recommendations made by the National Mechanism to Prevent and Combat Torture and by state-level monitoring bodies as part of their monitoring activities, in accordance with the guidelines on national preventive mechanisms adopted by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**[11]

[10] A/HRC/31/57/Add.4 and A/HRC/31/57/Add.4/Corr.1, paras. 46–49.
[11] CAT/OP/12/5, paras. 13 and 38.

(d) **Encourage cooperation between the National Mechanism to Prevent and Combat Torture and civil society organizations.**

Training

35. The Committee acknowledges the efforts made by the State party to develop and implement human rights education and training programmes, including those related to the prevention of torture and the use of force, designed for members of the various State security bodies, prison staff, judges, prosecutors, immigration personnel and members of the armed forces. However, it regrets the paucity of information on the evaluation of their impact on the incidence of torture and ill-treatment in the State party. It also regrets the limited information available on training programmes for forensic doctors and medical personnel dealing with detainees to enable them to detect and document the physical and psychological sequelae of torture (art. 10).

36. **The State party should:**

(a) **Continue to develop and implement mandatory initial and in-service training programmes to ensure that all public officials, in particular law enforcement officers, military personnel, judicial officials, prison staff, immigration personnel and others who may be involved in the custody, interrogation or treatment of persons subjected to any form of arrest, detention or imprisonment, are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that breaches will not be tolerated and will be investigated and that those responsible will be prosecuted and, on conviction, appropriately punished;**

(b) **Ensure that all relevant staff, including medical personnel, are specifically trained to identify and document cases of torture and ill-treatment, in accordance with the revised version of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);**

(c) **Develop and apply a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts and the prosecution of those responsible.**

Redress

37. The Committee regrets that the State party has not given complete information on the measures of redress and compensation ordered by the courts and other State bodies and in fact provided to victims of torture, including use of excessive force, and their families during the reporting period, or on the level of cooperation in this area with specialized non-governmental organizations. The Committee draws the attention of the State party to its general comment No. 3 (2012) on the implementation of article 14, in which the Committee explains the content and scope of the obligations of States parties to provide full redress to victims of torture (art. 14).

38. **The State party should ensure, in law and in practice, that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for rehabilitation as fully as possible.**

Confessions obtained as a result of torture

39. While noting the guarantees set forth in article 157 of the Code of Criminal Procedure regarding the inadmissibility of evidence obtained through unlawful acts, the Committee regrets the lack of information about court decisions in which confessions obtained through torture or ill-treatment have been disallowed as evidence. Moreover, it is concerned about reports indicating that torture is routinely used to extract confessions and that confessions obtained through torture are invoked against defendants in court as evidence of their guilt. It is also concerned about consistent reports maintaining that the courts do not investigate complaints of this kind and instead shift the burden of proof to the alleged victims (arts. 2, 15 and 16).

40. **The State party should:**

(a) **Take effective measures to ensure that confessions and statements obtained through torture or ill-treatment are not admitted as evidence in practice, except against persons accused of committing torture as evidence that the statement was made;**

(b) **Ensure that, when it is alleged that a statement has been obtained through torture, the allegation is investigated immediately and the burden of proof falls not on the victim but on the State;**

(c) **Expand specialized training programmes for both judges and prosecutors so as to ensure their ability to effectively identify torture and ill-treatment and to investigate all allegations of such acts;**

(d) **Compile and make public information on criminal proceedings in which judges, either on their own initiative or at the request of parties to the case, have ruled that evidence obtained under torture is inadmissible, and on the measures taken in that regard.**

Gender-based violence

41. While acknowledging the legislative and other measures taken by the State party to prevent and combat gender-based violence against women, and the fact that the Supreme Court issued a ruling on the legal controversies around the constitutionality of Law No. 11,340 of 2016 (the "Maria da Penha Law"), on domestic and family violence against women, finding that the Law was indeed constitutional, the Committee remains concerned about compliance both with the verdicts of the Supreme Court and with the Maria da Penha Law by judges at the local level.[12] It is also concerned about:

(a) The high levels of gender-based violence against women, in particular Afro-Brazilian, Indigenous and Quilombola women, including those who identify as lesbian, bisexual and transgender, particularly in the form of femicide, and weaknesses in the measures taken by the State party, including the national plan to combat femicide;[13]

(b) The low number of prosecutions and convictions and the leniency of the penalties imposed, and the lack of expertise within the judiciary on domestic and family violence cases;

(c) The failure to provide adequate redress for victims and the insufficiency of the resources allocated to victim support programmes;

(d) The lack of up-to-date disaggregated statistical data on gender-based violence in all its forms, and on the resolution of such cases, including prosecutions, sentences and convictions of the perpetrators and awards of compensation for victims (arts. 2 and 16).

42. **The State party should:**

(a) **Ensure that all cases of gender-based violence, especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately, and that the victims receive redress, including adequate compensation;**

(b) **Provide mandatory training to judges, prosecutors and lawyers on the prosecution of gender-based violence, and on the Maria da Penha Law and on its constitutionality as ruled by the Supreme Court, to judges, public prosecutors and law enforcement personnel, and conduct awareness-raising campaigns on all forms of violence against women;**

(c) **Strengthen its judicial system to ensure that women, in particular Afro-Brazilian, Indigenous and Quilombola women, including those who identify as lesbian,**

[12] CEDAW/C/BRA/CO/7 and CEDAW/C/BRA/CO/7/Corr.1, paras. 18 and 19.
[13] CERD/C/BRA/CO/18-20, paras. 16 and 17.

bisexual and transgender, have effective access to justice, and facilitate women's access to justice by increasing both the number of specialized courts dealing with domestic and family violence cases and the number of judges with expertise in these cases;

(d) **Maintain statistics, disaggregated by age and ethnic origin or nationality of the victim, on complaints, investigations, prosecutions, convictions and sentences relating to gender-based violence;**

(e) **Allocate the necessary human, technical and financial resources to ensure the effective implementation of the National Pact to Combat Violence against Women;**

(f) **Ensure that shelters for women victims of violence are established throughout the territory of the State party, and that victims of gender-based violence receive the medical treatment, psychosocial support and legal assistance that they require.**

Trafficking in persons

43. While noting the State party's initiatives to address trafficking in persons, such as the adoption of Law No. 13,344 of 2016, amending the Criminal Code, which provides for the prevention and suppression of national and international trafficking in persons and measures to assist victims, and the third national plan to combat trafficking in persons, in 2018, the Committee is concerned about the lack of information about the extent of the phenomenon of trafficking. It is particularly concerned about:

(a) The high vulnerability of Afro-Brazilian and Indigenous men, women and children to trafficking for the purposes of forced labour, sexual exploitation or domestic servitude;

(b) The fact that the State party has not yet adopted comprehensive anti-trafficking legislation;

(c) The low rates of prosecutions and convictions in trafficking cases;

(d) The lack of information on the early identification and referral of victims of trafficking to the appropriate social and legal services (arts. 2, 12–14 and 16).

44. **The State party should continue and strengthen its efforts to combat trafficking in persons. In that respect, it should:**

(a) **Consider adopting comprehensive legislation against trafficking in persons, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, enforce the existing legislative framework and promptly, thoroughly and effectively investigate, prosecute and punish with appropriate penalties trafficking in persons and related practices, ensuring the allocation of all the means required for that purpose;**

(b) **Establish national mechanisms to coordinate efforts towards preventing and combating internal and international trafficking in persons and protecting victims;**

(c) **Encourage reporting by raising awareness of the risks of trafficking among vulnerable communities, and train judges, law enforcement officials and immigration and border control officers in the early identification of victims of trafficking and their referral to the appropriate social and legal services;**

(d) **Strengthen its efforts towards international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange and the adoption of joint measures with respect to the prosecution and punishment of traffickers.**

Human rights defenders

45. The Committee welcomes the adoption of the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists, in 2018, and the launch of the Information System on Threatened Human Rights Defenders, in 2014. However, it is

concerned about reports of death threats, intimidation, harassment, violent attacks and killings carried out against human rights defenders, in particular Afro-Brazilian, Indigenous and Quilombola human rights defenders, including women, environmental rights defenders, journalists, community leaders, trade unionists, and lesbian, gay, bisexual and transgender activists during the reporting period. It is also concerned that there is an absence of specific legislation to protect human rights defenders, and that the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists has been allocated inadequate budgetary resources and has been unable to provide meaningful protection to human rights defenders facing threats. It is further concerned about the misuse of legislation on drugs and counter-terrorism to criminalize human rights defenders. The Committee regrets the low number of convictions for such acts committed against human rights defenders (arts. 2, 12, 13 and 16).[14]

46. **The State party should:**

(a) **Take all the steps necessary to prevent, investigate and punish accordingly all forms of threats, harassment, violent attacks and killings committed against human rights defenders and provide adequate redress to the victims or their families;**

(b) **Adopt specific legislation to protect human rights defenders, provide additional funding for the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists and consult with affected groups on how the programme can effectively meet their needs;**

(c) **Take effective measures to ensure that legislation on drugs and counter-terrorism are not misused to criminalize the work of human rights defenders.**

Military justice

47. The Committee is concerned about reports indicating that, since 2010, military police officers are subjected to the jurisdiction of military courts for all crimes except intentional homicides and other intentional crimes against life. It is also concerned that, under the current legislation, military officers are subjected to the jurisdiction of military courts for all crimes committed in the context of so-called "operations to ensure law and order", including those committed against civilians and against their lives. The Committee notes that this provision has been challenged as unconstitutional before the Supreme Court in 2013, but that the resolution is still pending. It is further concerned about a recent proposal, which has also been challenged before the Supreme Court, to further extend the jurisdiction of military courts for police abuses and for civilians who offend military officers in times of peace. The Committee is concerned that these proposals, if adopted, could further jeopardize efforts to combat torture and ill-treatment and to ensure accountability for such crimes (arts. 2, 12 and 16).

48. **The State should review its existing legal framework, including Law No. 13,491 of 2017, to ensure that cases involving human rights violations or offences committed against civilians that are attributed to military personnel or members of the security forces, including acts of torture and ill-treatment, are excluded from the jurisdiction of military courts, and that only civil courts are competent to hear such cases. The State party should also take all measures necessary to ensure that civilians are not subject to the jurisdiction of military courts, regardless of the crimes committed.**

Sexual and reproductive health, including abortion

49. The Committee is concerned about:

(a) The high rate of maternal mortality, in particular among Afro-Brazilian, Indigenous and Quilombola women;

(b) The continued criminalization of abortion (except in case of rape, threat to the life of the mother, or an anencephalic fetus), which results in many women and girls resorting to clandestine and unsafe abortions that put their lives and health at risk;

[14] CERD/C/BRA/CO/18-20, paras. 45 and 46, and CRC/C/BRA/CO/2-4, paras. 19 and 20.

(c) The fact that women and girls seeking access to contraceptives and legal abortions are reportedly subjected to harassment, violence and criminalization, as are the doctors and other medical staff providing those services;

(d) Reports of undignified and violent obstetric practices against Afro-Brazilian women during the provision of sexual and reproductive health services (arts. 2 and 16).[15]

50. **The State party should:**

(a) **Continue its efforts aimed at enhancing women's access to sexual and reproductive health with a view to effectively reducing the maternal mortality rate, in particular among Afro-Brazilian, Indigenous and Quilombola women and girls;**

(b) **Review its Criminal Code to decriminalize the voluntary termination of pregnancy, considering the World Health Organization's guidelines on abortion, updated in 2022;**

(c) **Ensure that all women and girls, including those belonging to disadvantaged groups, have access to legal voluntary termination of pregnancy under safe and dignified conditions without harassment or efforts to criminalize them or their medical providers, and guarantee health care for women after they have had an abortion, regardless of whether they have done so legally or illegally;**

(d) **Increase anti-racism and human rights-based training of all health-care professionals involved in the provision of sexual and reproductive health care to Afro-Brazilian, Indigenous and Quilombola women, while also ensuring accountability and remedies for any forms of obstetric violence.**

Follow-up procedure

51. **The Committee requests the State party to provide, by 12 May 2024, information on follow-up to the Committee's recommendations on use of excessive force by law enforcement and military officials, conditions of detention, juvenile justice and the national preventive mechanism (see paras. 18 (b), 22 (c), 24 (b) and 34 (a) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the present concluding observations.**

Other issues

52. **The Committee encourages the State party to consider making the declaration under article 21 of the Convention.**

53. **The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.**

54. **The Committee requests the State party to submit its next periodic report, which will be its third, by 12 May 2027. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its third periodic report under article 19 of the Convention.**

[15] CERD/C/BRA/CO/18-20, paras. 16 and 17, and CRC/C/BRA/CO/2-4, paras. 59 and 60.