

***IMPACT AND IMPORTANCE, FOR BRAZIL, OF EIGHT
THEMATIC REPORTS OF THE UN SPECIAL RAPPORTEUR
ON TORTURE***

***IMPACTO E IMPORTANCIA, PARA BRASIL, DE OCHO
INFORMES TEMÁTICOS DEL RELATOR ESPECIAL DE LA ONU
SOBRE LA TORTURA***

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ABSTRACT

The United Nations Special Rapporteurship on Torture has approved eight thematic reports on the use of force; migration; prohibition of torture; corruption; domestic violence; psychological torture; biopsychosocial factors; and state cooperation. In 2021, the Rapporteur requested input on the impact of the reports and their relevance in the national context. This article is the response to the Rapporteur's request regarding Brazil, based on an interview with a specialist in torture prevention, in addition to theoretical research of specialized literature, legislation, jurisprudence,

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press releases and reports from international organizations. It may be of interest to academics, lawyers and agents committed to human rights issues and studies on Brazil.

Keywords: Brazil; human rights; Special Rapporteurship; torture; United Nations.

RESUMEN

La Relatoría Especial de las Naciones Unidas sobre la Tortura ha aprobado ocho informes temáticos sobre el uso de fuerza; migración; reafirmación de la prohibición de la tortura; corrupción; violencia doméstica; tortura psicológica; factores biopsicosociales; y cooperación de los Estados con la Relatoría. En 2021, el Relator solicitó aportes sobre el impacto de los informes y su relevancia en el contexto nacional. Este artículo es la respuesta a la solicitud del Relator con respecto a Brasil, a partir de una entrevista a una especialista en prevención de la tortura, además de investigación teórica de la literatura especializada, legislación, jurisprudencia, notas de prensa e informes de organizaciones internacionales. Por sus características, puede ser de interés para académicos/as, juristas prácticos/as y agentes públicos comprometidos con temas de derechos humanos y estudios sociales sobre Brasil.

Palabras clave: Naciones Unidas; derechos humanos; tortura; Relator Especial; Brasil.

I. INTRODUCTION

The so-called “global system” or “universal system” of human rights protection refers to a set of norms and mechanisms or institutional apparatuses that emerge within the United Nations (UN). The United Nations Charter, the founding document of the organization, establishes in articles 55 and 56 that nations commit themselves to promote decent living and working conditions, social and economic development; solutions to international economic, social, and health problems; international cooperation in education and culture; as well as the respect and observance of human rights.¹ Article 7 of the United Nations Charter, in turn, establishes the main organs of the organization, among them the Economic

¹ UNITED NATIONS (Eds.), “Charter of the United Nations and Statute of the International Court of Justice”. San Francisco, 1945, articles 55 and 56, Available at: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>. Accessed on 19 dec. 2022.

and Social Council.² This Council created the UN Commission on Human Rights in 1946 to function as a subsidiary body responsible for the universal promotion and protection of human rights. The Commission functioned until 2006 when, following a Resolution adopted by the UN General Assembly (Resolution 60/251), it was replaced by the current Human Rights Council.³

Based on the general duty to promote human rights under the UN Charter, the former Commission on Human Rights developed “special procedures” for monitoring or analyzing the human rights situation in the world of a public or confidential nature,⁴ pursuant to Resolutions 1,235 (XLII) of June 6, 1967, and 1,503 (XLVIII) of May 27, 1970. In 2006, as already mentioned, the Commission was abolished and replaced by the Human Rights Council, which was entrusted with the task of reviewing and maintaining the special procedures. In 2007, former Resolution 1503 was updated by Human Rights Council Resolution 5/1.⁵

Special Procedures include bodies or mechanisms that investigate human rights violations with a thematic or geographic scope. These bodies or mechanisms can be unipersonal, as in the case of Special Rapporteurships and Independent Experts; and collective or collegiate, as in the case of Working Groups. The mandate holders that integrate both types of mechanisms are specialists chosen through public selection processes. The persons selected exercise their mandates in a personal capacity, not representing their State of nationality, under an oath of independence and autonomy in relation to the States.

All special procedures have the technical and administrative support of the

² UNITED NATIONS, cit. (n. 1), article 7.

³ The Human Rights Council has been entrusted with different functions, among them: promoting human rights; making recommendations concerning human rights to the General Assembly; cooperating with governments and civil society organizations regarding human rights; as well as submitting an annual report to the General Assembly. UNITED NATIONS (Eds.), “General Assembly Resolution 60/251”. Human Rights Council. UN Doc. A/RES/60/251. April 3rd, 2006, paragraph 5. See also: RISPOLI, Eduardo; LAEGER, Mariana. “O Conselho de Direitos Humanos das Nações Unidas: novas perspectivas diante de uma intolerância universal consolidada”. In: OLIVEIRA, Bárbara da Costa Pinto; SILVA, Roberto Luiz (Coord.), *Manual de direito processual internacional*. Saraiva, São Paulo, 2012, p. 459.

⁴ CANÇADO TRINDADE, Antonio Augusto, *Tratado de Direito Internacional dos Direitos Humanos – Volume I*. Sergio Antonio Fabris Editor, Porto Alegre, 2003, 2^o edition, revised and updated, p. 253. Referring to these procedures as “special extra-conventional procedures”, and mentioning that the origin of these procedures dates back to the 1960s, and was “in response to the persistence of *apartheid*”; See also: RAMOS, André de Carvalho, *Curso de direitos humanos*. Saraiva, São Paulo, 2020, 7 ed., p. 266 (*ebook numbering*), including the origin of the special procedures in the 1960s, and CONNORS, Jane, “United Nations”, In: MOECKLI, Daniel; SHAH, Sangeeta; SIVAKUMARAN, Sandesh; HARRIS, David (Eds.), *International Human Rights Law*, Oxford University Press, Oxford, 2018, 3rd edition, p. 377, referring to the *Grupo de Trabalho sobre Desaparecimentos Forçados e Involuntários* as the first mechanism established under the special procedures.

⁵ RAMOS, cit. (n. 4), p. 266; RISPOLI and LAEGER, cit. (n. 3), pp. 462 et seq.; CONNORS, cit. (n. 4), p. 377.

Office of the United Nations High Commissioner for Human Rights. Its work involves the collection of data through studies, questionnaires and consultations, as well as country missions and visits (with the consent of States), and includes the preparation and submission of reports and other communications. Final reports may contain recommendations for action to States. These documents are sent to States and also to the Human Rights Council and the UN General Assembly.⁶⁻⁷

The *UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (or, according to its official abbreviation, “Special Rapporteur on Torture”) is one of the most traditional UN thematic rapporteurships. Its mandate was established in 1985 by the former Commission on Human Rights, through its Resolution 1985/33, for a one-year period.⁸ Since then, the mandate has been extended for successive three-year periods and regularly renewed. The most recent renewal was through Resolution 43/20, adopted by the Human Rights Council in March 2020.⁹ The mandate covers all countries, and comprises three main activities: i) transmitting urgent appeals to States regarding persons reported to be at risk of torture, and communications on alleged cases of torture in the past; ii) carrying out fact-finding country visits; iii) submitting annual reports to the Human Rights Council and the UN General Assembly on the activities of the mandate and its working methods.¹⁰

On 3 June 2021, the Rapporteur on Torture launched a round of written consultations, inviting all current or aspiring UN Member States, civil society actors and stakeholders to submit information on the impact of eight thematic reports previously adopted by the Rapporteur, as well as information on the national context relating to the themes of those reports, namely: (i) the use of

⁶ CANÇADO TRINDADE, cit. (n. 4), p. 253.

⁷ Pointing out that the Special Procedures “constitute today a real human rights monitoring system, whose main function is to investigate (sometimes in situ) situations and formulate recommendations”. On this subject, see also: RAMOS, cit. (n. 4), pp. 266-267, (*ebook numbering*); RISPOLI and LAEGER, cit. (n. 3), pp. 462-476; and CONNORS, cit. (n. 4), pp. 377-381.

⁸ UNITED NATIONS (Eds.), “Resolution 1985/33 of the Human Rights Commission: Torture and other cruel, inhuman, or degrading treatment or punishment”. UN Doc. E/CN.4/RES/1985/33, 13 March 1985. Available at: <https://ap.ohchr.org/documents/E/CHR/resolutions/E_CN4_RES_1985_33.pdf>. Accessed on 19 dec. 2022.

⁹ UNITED NATIONS (Eds.), “Torture and other cruel, inhuman or degrading treatment or punishment. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Report of the Special Rapporteur, Mr. Nils Melzer”. UN Doc. A/HRC/46/26, 22 January 2020. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/014/99/PDF/G2101499.pdf?OpenElement>>. Accessed on 19 dec. 2022.

¹⁰ UNITED NATIONS (Eds.), “Topic: Special Rapporteur on Torture”. United Nations Human Rights – Office of the High Commissioner, 2022. Available at: <<https://www.ohchr.org/en/special-procedures/sr-torture>>. Accessed on 16 dec. 2022.

extracustodial force, (ii) migration-related torture and other cruel, inhuman or degrading treatment; (iii) reaffirmation and strengthening of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; (iv) torture and ill-treatment related to corruption; (v) relevance of the prohibition of torture and ill-treatment to the context of domestic violence; (vi) psychological torture; (vii) bio-psychosocial factors conducive to torture and ill-treatment; and finally, (viii) effectiveness of states' cooperation with the mandate holder in official communications and requests for country visits.¹¹ As a means of gauging the impact of each of these eight thematic reports, the Special Rapporteur requested that the responding parties take into account domestic case law and legal practice; national legislation; parliamentary activities; national regulations, policies, practices and procedures such as those contained in codes of conduct, training manuals and disciplinary procedures; relevant investigation and accountability mechanisms; as well as national research, public communication and awareness activities.¹²

¹¹ UNITED NATIONS (Eds.), "Call for input to a report: Impact of thematic reports presented by the Special Rapporteur on Torture". United Nations Office of the High Commissioner for Human Rights, 2021. Available at: <<https://www.ohchr.org/en/calls-for-input/2021/call-input-report-impact-thematic-reports-presented-special-rapporteur-torture>>. Accessed on 28 jun. 2021.

¹² UNITED NATIONS, cit. (n. 11). The thematic reports mentioned are the following: UNITED NATIONS (Eds.), "Extra-custodial use of force and the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment: Report of the Special Rapporteur, Mr. Nils Melzer". UN Doc. A/72/178, 20 July 2017. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/223/15/PDF/N1722315.pdf?OpenElement>>. Accessed on 19 dec. 2022; UNITED NATIONS (Eds.), "Report on migration-related torture: Report of the Special Rapporteur, Mr. Nils Melzer". UN Doc. A/HRC/37/50, 24 November 2018, Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/347/27/PDF/G1834727.pdf?OpenElement>>. Accessed on 19 dec. 2022; UNITED NATIONS (Eds.), "Seventieth anniversary of the Universal Declaration of Human Rights: reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment: Report of the Special Rapporteur, Mr. Nils Melzer". UN Doc. A/73/207, 21 July 2018. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/232/16/PDF/N1823216.pdf?OpenElement>>. Accessed on 19 dec. 2022; UNITED NATIONS (Eds.), "Report on the relationship between torture and corruption: Report of the Special Rapporteur, Mr. Nils Melzer". UN Doc. A/HRC/40/59, 17 January 2019. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/007/75/PDF/G1900775.pdf?OpenElement>>. Accessed on 19 dec. 2022; UNITED NATIONS (Eds.), "Domestic violence and the prohibition of torture and ill-treatment: Report of the Special Rapporteur, Mr. Nils Melzer". UN Doc. A/74/148, 12 July 2019. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/214/44/PDF/N1921444.pdf?OpenElement>>. Accessed on 19 dec. 2022; UNITED NATIONS (Eds.), "Report on psychological torture and ill-treatment: Report of the Special Rapporteur, Mr. Nils Melzer". UN Doc. A/HRC/43/49, 20 March 2020. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/070/73/PDF/G2007073.pdf?OpenElement>>. Accessed on 19 dec. 2022; UNITED NATIONS (Eds.), "Report on biopsychosocial dynamics conducive to torture and ill-treatment: Report of the Special Rapporteur, Mr. Nils Melzer". UN Doc. A/75/179, 20 July 2020. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/188/03/PDF/N2018803.pdf?OpenElement>>. Accessed on 19 dec. 2022; and UNITED NATIONS, "Torture and other cruel, inhuman or degrading treatment or punishment...", cit. (n. 9).

The present article is the result of a research conducted in order to provide the Special Rapporteur with information about Brazil. In this sense, the research sought to answer the following research problem, articulated in two fundamental questions: what is the impact of the thematic reports in relation to Brazil? And what is the importance of the themes to the Brazilian national context?

To answer the research problem, the following were conducted: i) a non-structured, focused interview with an expert on torture prevention in Brazil,¹³ ii) a bibliographic and documentary research,¹⁴ using as sources the specialized literature, laws and other normative acts, national jurisprudence, documents from international organizations dedicated to human rights¹⁵ and publicly known information such as that contained in press releases¹⁶, between June and August 2021, with updates in December 2022.

The research is justified by the legal, historical and social importance of the topic. The prohibition of torture and the prevention and combat of torture and

¹³ In the unstructured interview, “[t]he interviewer is free to develop each situation in any direction he considers appropriate” and, “[i]n general, the questions are open-ended and can be answered within an informal conversation”; and that in the “focused” unstructured interview, “[t]here is a script of topics relating to the problem to be studied and the interviewer is free to ask any questions he wants: he probes for reasons and motives, gives clarifications, and, strictly speaking, does not follow a formal structure”. (LAKATOS, Eva Maria; MARCONI, Marina de Andrade, *Fundamentos de metodologia científica*. Atlas, São Paulo, 2003, 5^a ed., p. 197). Although unstructured, the interview followed a script of topics containing the information sought by the UN Special Rapporteur on Torture regarding the possible impact of its thematic reports, as well as their importance to the national context. The expert interviewed, Thais Lemos Duarte, has a PhD in Social Sciences from the State University of Rio de Janeiro (UERJ) and was part of the National Mechanism for the Prevention and Combat of Torture. The interview was conducted by video call on August 12, 2021, lasting approximately three hours. The contributions of the interview are described in topics and subtopics 2, 3.6, 3.7, and 3.8 of this article. Due to her background, the interviewee was heard in this research as a “privileged informant”. GUSTIN, Miracy Barbosa de Sousa; DIAS, Maria Tereza Fonseca, *(Re)pensando a pesquisa jurídica: teoria e prática*. Del Rey, Belo Horizonte, 2006, 2a ed., pp. 101-102) define “privileged informants” as people who have greater access to information and reports, or who are more familiar with the researched theme.

¹⁴ GUSTIN and DIAS, cit. (n. 13), p. 110.

¹⁵ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR (Ed.), “Situation of Human Rights in Brazil”. OEA/Ser.L/V/II. Doc. 9, Feb. 12, 2021. To address the concerns of the UN Special Rapporteur on the national context related to each theme, the research especially benefited from the analysis and synthesis of the report of the Inter-American Commission on Human Rights on the situation of human rights in Brazil published in 2021.

¹⁶ Information of this type is part of everyday research in international human rights law, both in academia and in the institutional arena. An example of the latter is how the Inter-American Commission on Human Rights uses information from press releases in its various reports. See, for example: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR, cit. (n. 15); INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR (Ed.), “Relatório No. 71/2015. Caso 12.879. Mérito. Vladimir Herzog e outros vs. Brasil”. OEA/Ser.L/V/II.156, October 28, 2015.

cruel, inhuman or degrading treatment are a central theme of the contestation of the 1964-1985 civil-military dictatorship and of the inauguration of a new democratic legal order in 1988, as exemplified by the documentation produced by the project “Brasil: Nunca Mais”¹⁷; besides being a central theme of the Brazilian legal system (v.g., article 5, clauses III and XLIII of the Brazilian Constitution, 1988) and international norms ratified by Brazil.¹⁸ The research is also justified because no other studies were found on the same subject (i.e., on the impact and importance of the thematic reports examined).

Due to its characteristics, the article may be of interest to practical jurists (members of the private and public legal practice, the judiciary, the Public Ministry, etc.) and public administrators engaged in human rights issues, as well as researchers and other people interested in international law, international human rights law, constitutional law, fundamental and human rights, and Brazilian sociology.

II. LACK OF DEMONSTRABLE IMPACT OF UN REPORTS

The interview mentioned in the introduction, conducted on August 12, 2021, heard from expert Thais Lemos Duarte regarding information sought by the *UN Special Rapporteur on Torture*.¹⁹ According to the specialist, although all the themes of the UN reports were relevant to the Brazilian social context, the most likely would be no evidence or mention of the reports according to the criteria selected by the Special Rapporteur to measure the impact of her work.

As a complement to the interview, between June and August 2021, evidence or mentions of the mentioned UN reports were sought through keywords related to: *torture; ill-treatment; extra-custodial use of force; development, acquisition, trade and use of arms; irregular migration; corruption; systemic failures of governance; domestic violence; psychological torture; cooperation; Nils Melzer* (name of the then Special Rapporteur responsible for the reports). Searches included *Google*

¹⁷ ARQUIDIOCESE DE SÃO PAULO (Ed.), *Brasil: Nunca Mais*. Vozes, Petrópolis, 2013, 40th edition.

¹⁸ BRAZIL. Decreto n. 40, February 15, 1991. *Promulga a Convenção Contra a Tortura e Outros Tratamentos ou Penas Cruéis, Desumanos ou Degradantes*. Brasília, Diário Oficial da União, February 18, 1991, p. 3012. Available at: <https://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0040.htm>. Accessed on December 19, 2022; BRAZIL. Decreto n. 592 de 6 de julho de 1992. *Promulga o Pacto Internacional sobre Direitos Civis e Políticos*. Brasília, Diário Oficial da União, July 6, 1992, p. 8716, Available at: <http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0592.htm>. Accessed on December 19, 2022; BRAZIL. Decreto n. 678, november 6, 1992. *Promulga a Convenção Americana sobre Direitos Humanos (Pacto de São José da Costa Rica)*, November 22, 1969. Brasília, Diário Oficial da União, November 9, 1992, p. 15562. Available at: <http://www.planalto.gov.br/ccivil_03/decreto/d0678.htm>.

¹⁹ See footnotes 24 and 26 above.

search engine, the *Biblioteca Brasileira Digital de Teses e Dissertações*, the database of laws and normative acts Portal da Legislação, as well as national news agencies that deal with human rights issues more frequently, such as *Nexo Jornal*, *Agência Pública*, *Ponte Jornalismo*, *Le Monde Diplomatique Brasil*, *BBC News Brasil*, *El País Brasil*, *Deutsche Welle Brasil* and *Brasil de Fato*. As the search included the Google search engine, other news agencies with different editorial lines, such as the large corporate journalism agencies (like *Globo*, *Record* or *Folha de São Paulo*), were also included. This research effort ended up confirming what the consulted specialist had signaled: no mentions of the UN thematic reports were found, and not even the conclusion of these reports seems to have been generically reported by the press.

It is possible that this absence of demonstrable impact is due to a language barrier, since the reports are usually published in the official and working languages of the UN (English, Chinese, Arabic, Spanish, French, Russian) - languages that, therefore, do not include Portuguese. Another possible explanation lies in the ample space that still exists for greater dissemination of the human rights culture in Brazilian society and among jurists and public administrators. These and other hypotheses can be explored by other researchers.²⁰

III. IMPORTANCE OF THE THEMES TO THE NATIONAL CONTEXT

Despite the lack of demonstrable impact, the reports were considered by the expert interviewed for the research, as already mentioned, as relevant to the national context. The subsequent research, which involved reference to academic studies, documents from international organizations dedicated to monitoring human rights, press releases, and state sources, confirms this relevance, as per the subtopics below.

3.1. *The report on extra-custodial use of force*

In his report on the extra-custodial use of force, the Special Rapporteur examines whether, and in what circumstances, this type of use of force by State agents amounts to torture or other inhuman or degrading treatment. In the paper, the Rapporteur defines the extra-custodial use of force as one that goes beyond “custodial” contexts, i.e., those in which persons are already detained, imprisoned, or otherwise deprived of liberty. The Rapporteur emphasizes that the reflection on

²⁰ A reasoned answer to the question of why there were no mentions of the reports demands an investigation that transcends the scope of the present research.

extra-custodial use of force becomes particularly relevant when state agents resort to unnecessary, excessive, or otherwise arbitrary force, without necessarily infringing on the right to life, for example, during search and seizure, arrest operations, or crowd control operations. The Rapporteur also examines the relationship between the development, acquisition, trade and use of arms by police forces and the standards prohibiting torture and other cruel, inhuman or degrading treatment or punishment.²¹

The themes addressed in the report are of great importance to the Brazilian context. One point of particular interest is the tendency for police forces to use lethal weapons as a counterpart to the increase in the number of weapons in circulation in society. There is much evidence that the increase in weapons is associated with increases in crime, violence, homicides, suicides and accidental deaths.²² However, different normative measures have been adopted in recent years to facilitate access to weapons in Brazil, despite opposition from the majority of the population.²³ A report based on government data indicates that there has been a “dramatic increase in the number of weapons entering into circulation in private hands and the speed at which this is happening,” as well as a “flagrant deterioration in illegal arms control mechanisms”.²⁴ Facilitating access to weapons is understood to be conducive to criminal organizations having more weapons and more power, which in turn can lead to increased use of force by state agents.

²¹ UNITED NATIONS, “Extra-custodial use of force...”, cit. (n. 12).

²² A comprehensive literature review of 61 recent academic publications on guns, crime and violence, including meta-analyses published in international peer-reviewed journals; the analysis covers studies with international as well as national scope. CONTI, Thomas V. “Dossiê Armas, Crimes e Violência: o que nos dizem 61 pesquisas recentes”. Opinion, October 5, 2017. Available in: <http://thomasvconti.com.br/2017/dossie-armas-violencia-e-crimes-o-que-nos-dizem-61-pesquisas-recents/>. Cf., also, how the INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§347-352, addresses gun control and human rights implications in Brazil); FIGUEIREDO, Isabel; MARQUES, Ivan. “Panorama sobre as armas de fogo no Brasil: um retrato possível a partir dos sistemas federais”. In: *FBSP – Fórum Brasileiro de Segurança Pública. Anuário Brasileiro de Segurança Pública*, FBSP, 2021, p. 146, illustrate how the increase in weapons and the deterioration of control mechanisms are, among other things, linked to accidental deaths – “such as the death of the 14-year-old teenager Isabele Guimarães, in Cuiabá/MT, caused by her friend, a shooter of the same age” amidst “recurring irregularities in the shooting sports activity that naturally tend to increase with the expansion of practitioners or increase in private arsenals”.

²³ KAHN, Túlio, “As Polícias e as Armas”, In: *FBSP – Fórum Brasileiro de Segurança Pública. Anuário Brasileiro de Segurança Pública (São Paulo)*, 2021, p. 305. “... the CNT/MDA Survey of February 2021 pointed out that 68.2% of Brazilians are against the decree that relaxed the population’s access to the purchase of firearms. In March 2019 IBOPE reported that 61% of the population is against making gun ownership more flexible, and the DataFolha of July 2019 surveyed that 61% of the population rejects the legalization of gun ownership and 73% of gun carrying.”.

²⁴ FIGUEIREDO and MARQUES, cit. (n. 22), p. 144. See, also, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§347-352.

3.2. The report on migration and torture or other cruel, inhuman or degrading treatment

In his report on migration, torture and ill-treatment, the Special Rapporteur refers to the obligations relating to the prohibition of torture and ill-treatment, and examines what the legal consequences of these obligations are for the most recurrent legislation, practices, and policies in response to irregular migration. In this regard, he makes recommendations to States to address irregular migration in a manner consistent with their human rights obligations.²⁵

Migration-related issues are relevant to Brazil, especially in the face of intense migration flows to the country in recent years, especially of Bolivians, Haitians, Syrians and Venezuelans, as noted by the Inter-American Commission on Human Rights (IACHR) in its 2021 country report.²⁶

According to the IACHR, good practices have been adopted by the State to promote the rights of migrants, including the actions undertaken in the framework of “Operação Acolhida”. Despite this, the Commission expressed concern about the situation of migrants who were living on the streets, in circumstances of extreme vulnerability that put them at greater risk of violations to their physical and moral integrity, as well as to other human rights.²⁷

The IACHR also noted that, in the case of the migration of Haitians, migrants have been facing difficulties accessing essential documents, educational and health services, and employment. Moreover, weaknesses in the process of granting humanitarian visas still open space for the illegal action of intermediaries and exposure to human trafficking.²⁸

The IACHR also noted reports of acts of discrimination and xenophobia against immigrants in Brazil. In August 2018, in Pacaraima, there were attacks on Venezuelans perpetrated by local citizens who destroyed the camp they were living in and set fire to their belongings, as well as reports of armed patrols seeking to intimidate Venezuelans, including member of the Warao indigenous people; constant cases of violence and attacks against Venezuelans in Roraima, including at least two murders; among other occurrences.²⁹

The Commission was also informed of reports of exploitation and

²⁵ UNITED NATIONS, “Seventieth anniversary of the Universal Declaration...”, cit. (n. 12).

²⁶ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), p. 91. In its 2021 report on human rights in Brazil, the Inter-American Commission on Human Rights (IACHR), p. 87-88, 91) noted significant migrations to Brazil in recent years (especially of Bolivians, Haitians, Syrians and Venezuelans).

²⁷ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§248-249.

²⁸ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §251.

²⁹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §252.

discrimination at work. According to the information received, migrants and refugees worked more hours than nationals, but were paid less than their Brazilian colleagues, in addition to being subjected, in some cases, to degrading working conditions and exhausting hours. Moreover, there were migrants rescued from situations of work analogous to slavery, some of them in a human trafficking context.³⁰

The thematic report of the UN Special Rapporteur on Torture and Ill-Treatment addresses issues such as state practices of detention of irregular migrants and repatriation or expulsion of such migrants, as well as the issue of trafficking in persons,³¹ and all of these are topics of great concern. The information from our research shows that in addition to these issues, there is the issue of social and legal inclusion of migrants. The observations of the IACHR illustrate concretely how people in migration, especially those with irregular migration, are more vulnerable to violations of their personal integrity, among other rights, due to limits or deficiencies in their inclusion.

3.3. The report on reaffirming and strengthening the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment

In his report on reaffirming and strengthening the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment, the Special Rapporteur analyzes the achievements made and the remaining challenges to the universal implementation of the absolute prohibition of torture and ill-treatment. From the report, it is possible to identify different challenges, among them: the adequacy of domestic law; combating misguided institutional cultures and impunity and individual accountability of perpetrators; and addressing discriminatory practices that impose greater risk and vulnerability to persons belonging to discriminated races or ethnicities and socially marginalized persons, children and adolescents, women, persons deprived of liberty and inpatients in health care settings, among others.³²

The theme is relevant to the Brazilian context. The country is still marked by widespread practices of torture and ill-treatment, especially against Afro-descendants and the poor. These practices are not exclusive to prisons and comparable institutions, such as the juvenile correctional system and so-called “therapeutic” communities, but are frequently present in these places.³³ According

³⁰ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §255.

³¹ UNITED NATIONS, cit. (n. 25).

³² UNITED NATIONS, “Report on migration-related torture...”, cit. (n. 12), pp. 10-12, 14, 17-19.

³³ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §156). According to the aforementioned

to the IACHR, prisons in the country are largely overcrowded, mainly as a result of criminal policies that seek to solve social and security problems through incarceration.³⁴ In this context, arrests related to alleged drug trafficking cases have contributed decisively to the increase in the prison population, with particularly severe impacts on members of impoverished and marginalized communities.³⁵

Moreover, a significant portion of the prisoners are in pre-trial detention, a modality repeatedly adopted amid pressure from the media and public opinion to combat insecurity through deprivation of liberty and improper legal defense.³⁶ Custody hearings are an instrument only recently adopted by the Brazilian State. Despite an important advance, they have not yet been implemented in all municipalities. Many obstacles to their proper realization have been reported and documented by the IACHR, such as reduced time; lack of privacy in communication between the accused and his defense; lack of explanation by the judicial authority at the beginning of the hearing, in clear terms, about the procedure of the hearing; lack of coordination between judicial institutions; inadequate coordination between judicial institutions; and lack of translation for migrant defendants or those from traditional populations. In addition, failures to investigate allegations of torture and ill-treatment during custody hearings were reported.³⁷

In overcrowded, understaffed prisons with no access to educational or work-related programs, people deprived of their liberty, including adolescents, are kept in prolonged or permanent confinement. They are kept almost all, or all, of the time in their cells under deplorable conditions.³⁸ Moreover, health services in Brazilian prisons are classified as precarious. In relation to women deprived of liberty, there is often a lack of access to gynecological services or even basic intimate feminine hygiene products, and there are trans women without access to hormone treatment. The Commission also documented the receipt of complaints about the lack of

2021 IACHR report on the situation of human rights in Brazil (2021, §156), “the State has been unable to guarantee the protection that institutionalized persons need” “[i]n the penitentiary system, [in] the socio-educational system and [in] therapeutic communities,” “whether public or private,” because “[i]n all of them there are records of cases of torture and ill-treatment,” “[T]he lack of state control over these precincts, the consequent self-government and the deplorable conditions of detention in the institutions of deprivation of liberty have caused confrontations and tensions that result in high levels of violence and serious effects on life and personal integrity.” “[T]he deaths that have occurred are caused in a systematic context of repeated acts of violence, which have resulted in the granting of several precautionary and provisional measures” by the IACHR or the Inter-American Court of Human Rights.

³⁴ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §160.

³⁵ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§160-162, 173.

³⁶ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§164-165.

³⁷ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§166-168.

³⁸ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§174-175.

adequate food for pregnant women deprived of liberty.³⁹

There were also reports of arbitrary body searches in adult prisons and juvenile detention centers. In the words of the IACHR, “visitors, and especially women, would in many cases be forced to undress and expose their genitals, to bend down and stand up repeatedly in what is known as ‘squatting’”; there were “a large number of complaints about invasive and vexatious search methods applied to visitors, including for older women, boys and girls”.⁴⁰

The IACHR also took note of the repeated and consistent testimonies on acts of torture and ill-treatment committed by prison guards, and the victims’ fear of reprisals if they formally denounced these acts. In cases where complaints were made, the Commission received reports of leniency from oversight bodies such as the Public Prosecutor’s Office, which did not initiate the corresponding investigations.⁴¹

Similar problems were reported in relation to the juvenile disciplinary or socio-educational system, such as the preference for measures of deprivation of liberty; overcrowded units; poor health and nutrition conditions; lack of sufficient staff to provide young people with access to adequate health and education services; and recurrent acts of torture and ill-treatment.⁴² In addition to these problems, there are reports of acts of violence in the units that have even caused the deaths of adolescents. In the case of acts of violence committed by state agents, the information is that the adolescents who denounce them suffer physical and psychological reprisals. These reprisals contribute to the impunity of the aggressors.⁴³

In Brazil, a Federation composed of 27 states, only 6 of them had laws establishing a state-level mechanism to prevent torture, and only two effectively implement such a mechanism. In addition to them, a National Mechanism has been established at the level of the Federal Government. In recent times, however, measures have been adopted that weaken this work, such as dismissals of members

³⁹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§179-180.

⁴⁰ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §182. Invasive searches are a serious human rights problem. For an analysis of the issue from the point of view of those affected, see DUTRA, Yuri Frederico, “Como se eu estivesse morrendo”: A prisão e a revista *íntima* em familiares de reclusos em Florianópolis”, Masters Diss. In Law, Centro de Ciências Jurídicas, Universidade Federal de Santa Catarina, Florianópolis, 2008, 193 f., and ALVES, Henrique Napoleão, “Revista invasiva (ou revista íntima) e o Sistema Interamericano de Direitos Humanos”, *Espaço Jurídico Journal of Law*, 2020, Vol. 21, n° 2, pp. 317-332, for an analysis of the subject from a legal perspective on human rights.

⁴¹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§187, 190, 214.

⁴² INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§202, 204, 214.

⁴³ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§210, 211, 213.

of the Mechanism and the absence of resources to carry out the work.⁴⁴

3.4. The report on torture and ill-treatment in the context of corruption

In the thematic report on torture, ill-treatment and corruption, the Special Rapporteur examines the relationship between corruption and torture or ill-treatment, outlines the prevailing patterns of interaction between these two phenomena as well as their systemic causes, and offers recommendations aimed at strengthening protection against torture and ill-treatment in contexts marked by corruption.⁴⁵

Brazil is also characterized by links between corruption and violence, the latter sometimes translating into acts of torture and ill-treatment. The IACHR has documented reports of the emergence and expansion of criminal organizations or gangs involved in illegal activities such as drug trafficking, cargo theft, kidnapping, and money laundering. The control of territories by these groups usually takes place in poor and socially vulnerable areas and is accompanied by conflicts of these groups among themselves and against government security forces. The expansion of criminal organizations, said the Commission, has had an impact on “various aspects of public security, such as the way detention centers are run, corruption of government officials, control over socially vulnerable areas and communities, and violent deaths”.⁴⁶

The Commission also referred to reports on the emergence and expansion of paramilitary groups known as “militias” – criminal organizations comprising police officers or former police officers, whose origins lie in an alleged fight against drug traffickers. These militias exercise control over territories in poor communities and are usually involved in illegal activities and acts of violence. Their control takes advantage of the absence or insufficiency of the state and monetizes the supply of goods and services to poor communities, such as transportation and cooking gas. These goods and services are monetized in a despotic way; there are extortionate prices and compulsory payments demanded under violence or serious threat. There are reports of communities that fear the militias more than the drug trafficking

⁴⁴ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§191, 193. Wherein the IACHR expresses “its special concern about Presidential Decree No. 9,831 of June 10, 2019, which determined the dismissal of the members of the National Mechanism for the Prevention and Combating of Torture and, consequently, the execution of its mandate in favor of the protection of persons deprived of liberty. Such a decision has meant that the said entity is practically non-functional until the new members are appointed who, according to one of its provisions and contrary to the current practice, will not receive any remuneration for their work.”

⁴⁵ UNITED NATIONS, “Report on the relationship between torture and corruption...”, cit. (n. 12).

⁴⁶ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§283, 284.

organizations. In regions dominated by militias, electoral competition is inhibited by the use of force in order to favor candidates aligned with the militia's interests, or at least not hostile to them. Territorial control translates into greater access to state power, which strengthens the militias even more.⁴⁷

In addition to corruption within detention centers, in vulnerable communities and elsewhere, and corruption linked to criminal activities, another important aspect of the national context relates to the way corruption is associated with impunity for those responsible for human rights violations. The country exhibits, along with very high levels of incarceration and violent deaths in general, equally alarming numbers of deaths caused by state agents. Impunity for these deaths is recurrent and “maintained by corrupt institutional practices and structures that impede the delivery of justice and undermine the rule of law and democracy.”⁴⁸

3.5. *The report on torture, ill-treatment, and domestic violence*

In the thematic report on torture, ill-treatment and domestic violence, the Special Rapporteur addresses how domestic violence is a human rights issue, and how such violence can involve torture or ill-treatment, as well as examining international practice on state responsibility in the context of domestic violence, the positive and negative legal obligations of states, the different manifestations of such violence, and the importance of prioritizing the rights and needs of victims.⁴⁹

The report's theme has great relevance for Brazil. Domestic violence is considered endemic in the country. The background considerations on the subject presented by the IACHR in its Merits Report on the *Case Concerning Márcia Barbosa de Souza And Her Relatives*⁵⁰ are of special interest for understanding the

⁴⁷ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§285, 286. For the Commission, paramilitary militias and other criminal organizations, their crimes and acts of violence must be combated by measures that address the structural causes involved, such as the relationship between crime and social inequalities. In this sense, the Commission, §§ 288-289, argues that an adequate response to the problem must include, among other points, “guaranteed access to quality health and education, social services, employment, culture, sports and leisure.”

⁴⁸ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§353, 370, 387. “According to the information received during the Commission's on-site visit, the chief obstacle to overcoming the impunity surrounding State violence is to be found at the investigative stage, due to an inefficient and outdated criminal process, lack of appropriate infrastructure, personnel and equipment for the civilian police, in addition to the corruption allegedly found in that institution, ...”. The INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §387, also mentions that there have been reports of corruption in the judicial bodies responsible for prosecuting cases of torture and extrajudicial killings, such as “Nova Brasília” and the “Massacre de Corumbiara”.

⁴⁹ UNITED NATIONS, “Domestic violence and the prohibition of torture...”, cit. (n. 12).

⁵⁰ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR (Ed.), “Relatório Nº 10/19. Caso 12.263.

national context of the last decades until the present. In summary,

– In its 1997 report on the human rights situation in Brazil, the Commission had already identified and documented the existence of discrimination against women victims of violence as a result of the inefficiency of the judicial system.⁵¹

– On April 4, 2001, the IACHR published its Report on the Merits of the *Caso Maria da Penha Maia Fernandes*. In it, the Commission stated that the lack of trial and conviction of the person responsible for the acts of violence examined in the case represented an act of tolerance by the State with regard to the violence suffered by Maria da Penha. This tolerance by organs of the State, the Commission pointed out, was not unique to this case, but was a pattern, a systematic agenda, a tolerance of the entire system that “perpetuates the roots and psychological, social, and historical factors that sustain and feed violence against women”.⁵²

– Following the case, the state approved the so-called “Lei Maria da Penha” (Lei nº 11.340-2006), whose goal was to “[create] mechanisms to curb domestic and family violence against women. Article 5 of this law defines domestic and family violence against women as “any action or omission based on gender that causes death, injury, physical, sexual or psychological suffering, and moral or property damage” within the scope of the “domestic unit”, or the “family” or “any intimate relationship of affection in which the aggressor lives or has lived with the victim, regardless of cohabitation”.

– In 2012, the United Nations Committee on the Elimination of Discrimination against Women expressed its concern over the issue of violence against women and the lack of full implementation of the Maria da Penha Law; the lack, within the judiciary, of specialized professionals to handle cases of domestic and family violence; and the lack of accurate and consistent data on violence against women.⁵³

– In 2015, the Brazilian Federal Senate conducted a survey according to which, in summary, i) approximately one of every five Brazilian women has already suffered some type of domestic or family violence; ii) women with a lower level

Mérito. Márcia Barbosa de Souza e familiares. Brasil”, February 12, 2019, §§13-16. The IACHR (INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR (Ed.), “Observações Preliminares da Visita in loco da CIDH ao Brasil”, November 10, 2018; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR (Ed.), “Press Release N° 24/19, IACHR Expresses Deep Concern over Alarming Prevalence of Gender-based Killings of Women in Brazil”, February 4, 2019; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§87-101) has also expressed its concern about violence against women in Brazil on other occasions.

⁵¹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR (Ed.), “Relatório sobre a Situação dos Direitos Humanos no Brasil”. OEA/Ser.L/V/II.97 Doc. 29 ver. 1. September 29, 1997, §§ 142-145.

⁵² INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR (Ed.), “Relatório N° 54/01. Caso 12.051. Mérito. Maria da Penha Maia Fernandes. Brasil”, April 16, 2001, §55.

⁵³ UNITED NATIONS (Eds.), “Concluding observations of the Committee on the Elimination of Discrimination against Women – Brazil”. UN Doc. CEDAW/C/BRA/CO/7, March 23, 2012.

of education are the most affected; iii) women are more likely to suffer domestic violence for the first time when they are between 20 and 29 years old; iv) 21% of the battered women did not seek any kind of help, neither legal nor social (such as support from friends or family members), for different reasons, among which are: concern with raising children, fear of the aggressor's revenge, for believing that this would be the last time, for believing in the aggressor's impunity (this last reason was mentioned in 10% of the answers); v) 73% had as aggressor a person of the opposite sex without consanguineous ties and chosen by them to live intimately with (husband, partner, boyfriend, current or former). The research also evaluated the quality of the attention given to the victims of violence in the police stations: 48% qualified it as excellent or good, 14% as regular, and 38% as bad or terrible.⁵⁴

– Brazil also adopted Law No. 13.104 of March 9, 2015, which amended the Penal Code to include another category of qualified homicide: that committed “against women because of their feminine condition. This law - commonly referred to as the “Femicide Law” - made it a “heinous crime” to murder women for gender reasons (Act n° 13.104-2015).

– In the same year of 2015, the “Map of Violence: Homicide of Women in Brazil” by the Latin American Faculty of Social Sciences (FLACSO) indicated that Brazil has the fifth highest rate of murders of women in the world due to gender.⁵⁵

– According to research regarding the evolution of violence in the country, murders of women increased by 6.4% between 2006 and 2016.⁵⁶ Moreover, according to a survey conducted by a news website based on official data of homicides in the states, 4,473 women were murdered in 2017 (at least 946 cases of murder due to gender violence).⁵⁷

⁵⁴ BRAZIL, “Senado Federal. Violência doméstica e familiar contra a mulher”. Agosto de 2015. Available at: <<https://www12.senado.leg.br/noticias/arquivos/2015/08/10/violencia-domestica-e-familiar-contr-a-mulher>>. Accessed on September 19, 2018.

⁵⁵ FLACSO (Eds.), “Mapa da Violência 2015: Homicídio de Mulheres no Brasil”, November 9th, 2015. Available at: <<http://flacso.org.br/?p=13485>> Accessed on September 19th, 2018.

⁵⁶ IPEA (Ed.), News: “Brasil ultrapassa pela primeira vez a marca de 30 homicídios por 100 mil habitantes”. June 5, 2018. Available at: <<https://www.ipea.gov.br/portal/categorias/45-todas-as-noticias/noticias/2582-brasil-ultrapassa-pela-primeira-vez-a-marca-de-30-homicidios-por-100-mil-habitantes>>. Accessed on 19 sept. 2018.

⁵⁷ G1 GLOBO (Eds.), News: “Cresce o número de mulheres vítimas de homicídio no Brasil; dados de feminicídio são subnotificados”, March 7, 2018. Available at: <https://g1.globo.com/monitor-da-violencia/noticia/cresce-n-de-mulheres-vitimas-de-homicidio-no-brasil-dados-de-feminicidio-saosubnotificados.ghtml>. Accessed on September 19th, 2018.

3.6. The report on psychological torture

In the thematic report on psychological torture, the Special Rapporteur examines conceptual, definitional, and interpretive issues regarding the notion of “psychological torture” under international human rights law, and proposes that the term “psychological torture” should be understood as a category encompassing all methods, techniques, and circumstances designed to intentionally inflict severe mental pain or suffering apart from so-called “physical torture,” i.e., that encompassing methods, techniques, and environments designed to inflict severe physical pain or suffering.⁵⁸

When we consider the Brazilian context in relation to this theme, and as pointed out by the specialist consulted during the research for this article⁵⁹, national institutions tend to focus more on aspects surrounding the traditional conception of torture, most commonly related to the imposition of physical pain or suffering. In this sense, the thematic report can help to promote a broader approach to torture for the benefit of human rights monitoring and implementation. The problem of prison overcrowding addressed earlier, for example, is present in the national context and can be read with attention to the concept of psychological torture considered by the report. The concept can drive new analyses of human rights or persons deprived of liberty. The intentional subjugation of these people to overcrowded conditions can generate severe mental pain or suffering. How could it be read in light of the concept of psychological torture? What would be the legal implications? These are legitimate questions. Moreover, the goal of mental pain or suffering mentioned in the thematic report may also have other, indirect effects, such as shedding light on the issue of mental health as a whole, or the effect of highlighting psychological aspects surrounding torture and violence in general.

3.7. The report on biopsychological factors related to torture

The thematic report on biopsychological factors related to torture and ill-treatment addresses the root causes of the current global complacency towards torture and ill-treatment in light of well-documented neurobiological and psychosocial patterns of self-deception and denial.⁶⁰

The theme allows us to reflect on the psychosocial causes that help to explain or understand the persistence of widespread practices of torture and mistreatment in Brazil, even after the country’s transition from a dictatorship to a constitutional

⁵⁸ UNITED NATIONS, “Report on psychological torture and ill-treatment...”, cit. (n. 12).

⁵⁹ See footnote 24.

⁶⁰ UNITED NATIONS, “Report on biopsychosocial dynamics conducive to torture...”, cit. (n. 12).

democracy. During the dictatorial period that began in Brazil in 1964, countless cases of incarceration, torture, and exile were recorded with approximately 50,000 people detained in the first months of the dictatorial regime, 20,000 detainees subjected to torture, 354 cases of political deaths and disappearances, the murder of hundreds of peasants, 130 exiles, and 4,862 cases of people whose mandates and political rights were revoked. Despite the gravity of the facts, the country has not pursued criminal proceedings to examine and hold accountable the human rights violations that occurred during this period.⁶¹⁻⁶² However, more than three decades later, what could explain the permanence of these practices? The expert heard during the research⁶³ recommended the work of social scientist Teresa CALDEIRA as particularly insightful in the search for answers.

In a study conducted during the first years of the new Brazilian constitutional

⁶¹ INTER-AMERICAN COURT OF HUMAN RIGHTS, Case “Gomes Lund and others Vs. Brazil”, Preliminar hearing, Merits, Compensations and Costs. Preliminares, Mérito, Reparações e Custas. Judgement date: November 24, 2010. Series C No. 219, §85 *et seqs*; INTER-AMERICAN COURT OF HUMAN RIGHTS, Case “Herzog and others Vs. Brazil”, Preliminar hearing, Merits, Compensations and Costs. Judgement date: March 15, 2018, § 107.

⁶² As stated in official documents, the serious human rights violations committed during the military dictatorship were part of a policy of repression planned and executed by the State, through the Armed Forces, the Military and Civil Police, and the Judiciary, with the aim of eliminating any resistance to the coup d’état and the established regime. As in other regimes in force at the same time in the region, the dictatorship in Brazil articulated a “gigantic repressive apparatus” based on the “National Security Doctrine”. See also INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 16), p. 57; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – IACHR (Ed.), “Relatório sobre Segurança Cidadã e Direitos Humanos”. OEA/Ser.L/V/II. Doc. 57, December 31, 2009, p. 33-34.

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

⁶³ See footnote 24.

democracy, CALDEIRA observed that among several aspects connected to the experience of violence, the one that draws most attention in view of its political relevance and its “absurd character” is the population’s support for a campaign of opposition to the defense of human rights, which began in the 1980s.⁶⁴

The language of “rights” has been central to the political debate in Brazil since the mid-1970s, and to the democratization process. During this period, the struggle for human rights received support from different segments of society. First, with a discourse against torture and illegal detention of political prisoners, against censorship, and in favor of basic rights and freedoms, such as the right to vote and freedom of expression. Second, with the struggle of minorities, popular classes and social movements during the 1970s and 1980s. The multiplication of their specific demands for day-care centers or basic public services and a growing process of political mobilization ended up legitimizing an agenda for rights to health, housing, transportation, control over the body and sexuality, ethnic difference, and so on.⁶⁵

During the 1980s, human rights were expanding and important victories were achieved, including the possibility for the population to elect state governors in 1982 and the formal end of the dictatorship a few years later. In this context, there were also attempts to humanize the conditions imposed on ordinary prisoners to defend their basic human rights, as they were known to be “crowded in the worst conditions in overcrowded prisons” and were “constant victims of torture and all kinds of ill-treatment.” These attempts were articulated mainly by segments of the Catholic Church, human rights movements and commissions, and part of the democratic political class. They were met by opposition from members of the police, right-wing politicians, and segments of the press (for example, popular broadcast programs devoted to crime-related news).⁶⁶

The successful defense of political prisoners against torture and ill-treatment was a struggle on behalf of the civil and political rights of activists from the middle and upper classes, whose “crime” was to disagree with the powerful, and on behalf of the political rights of the entire national community that were suspended during the military regime. The common prisoners, however, were mostly people from the lower class who were accused of committing some kind of regular crime and who, for this reason, had their citizenship restricted. This is why they were defended under the label of “human rights,” that is, according to their basic humanity.⁶⁷

However, according to the general perception, this elementary humanitarianism

⁶⁴ CALDEIRA, Teresa Pires do Rio, “Direitos Humanos ou “Privilégios de Bandidos”? Desventuras da Democratização Brasileira”, *Novos Estudos CEBRAP*, 1991, n° 30, pp. 162-174, §162.

⁶⁵ CALDEIRA, cit. (n. 64), §§162-163.

⁶⁶ CALDEIRA, cit. (n. 64), §§164-165.

⁶⁷ CALDEIRA, cit. (n. 64), §§165-166.

was denied to ordinary prisoners. Caldeira's analysis suggests that this denial is rooted in prevailing acts and perceptions of class and racial discrimination. Most prisoners are poor and associated with stereotypical characteristics which are seen as the marks of criminals. These are the structures of a wave of prejudice and discrimination against the prison population. CALDEIRA understands that, for those who claim to be opposed to human rights, the latter are perceived as directly and exclusively associated with criminals, and guaranteed only to them – despite the fact that, in reality, this social stratum is not the only one in focus in the struggle for human rights, which in no way defends crime.⁶⁸

The fact that human rights are directly associated with a social stratum viewed negatively by society makes it extremely difficult to publicly articulate the defense of these rights⁶⁹

CALDEIRA goes on to point out the existence of abusive tactics by opponents of human rights for ordinary prisoners, tactics that consist of spreading images of luxury and the good life, spreading the idea that human rights defenders want to offer privileges to criminals to the detriment of good citizens who live through decent work. The problematic association of the notion of human rights with the idea of privileges for criminals contributes to the delegitimization of the struggle for human rights that are stereotyped as “protectors of criminals.”

CALDEIRA highlights the lack of humanity in those who sympathize with the idea of the use of force against “bandits”, mainly due to the stereotypes propagated and caricatured by them, which are transparently based on prejudice and social and racial discrimination.⁷⁰

In this sense, the struggle for human rights and for the humanization of prisons, which aimed to guarantee minimum rights for all citizens, touched the limit acceptable to society, threatening the entire social order by “guaranteeing privileges for criminals.”

Caldeira's analysis is based on the fact that human rights, among them the prohibition of torture, are associated with a discourse of maintenance of privileges and a social change for the worse⁷¹⁻⁷²: the propagated idea is that there is a social

⁶⁸ CALDEIRA, cit. (n. 64), §166.

⁶⁹ CALDEIRA, cit. (n. 64), §167.

⁷⁰ CALDEIRA, cit. (n. 64), §169.

⁷¹ CALDEIRA, cit. (n. 64), §§171-172.

⁷² In talking about crime and violence, the discourse against human rights is a discourse about social disorder and the maintenance of privilege. Disorder can be interpreted in many ways, but something easily associated with it is social change. And the fact is that the discourse against human rights was conveyed in a conjuncture of change, when the first elected governor in two decades was taking office, when social movements were being legitimized as interlocutors of the State, when attempts were being made to reform the police force accustomed to the arbitrary rule of the military regime, and when the

disorder marked by the claiming of rights for the poor, which opponents consider as privileges, and, above all, the claiming of rights for bandits.⁷³

Once synonymous with civil, political, and socioeconomic rights defended by large segments of the population, the category of “human rights” unfortunately became, over the course of the 1980s, synonymous with the “rights” or “privileges” of violent criminals. The idea of “rights” in general was not questioned, but only that of “human rights”. Health care, education, childcare, etc. were cherished rights. The notion of human rights, however, was dissociated from them.⁷⁴

The consequences of this opposition to human rights, according to CALDEIRA, is the perception of the State as a defender of criminals, and calls for changes in the prison system, mainly favoring the action of private agents. At the same time, there is an increase in the defense of the use of physical force against prisoners, based on the argument that the prisoner “deserves to feel the same pain they caused”. It is in this context that support for the death penalty originates, as well as complacency towards police violence and violations of human rights.⁷⁵⁻⁷⁶

3.8. *The report on state cooperation*

In his thematic report on States’ cooperation with the work of the Rapporteur, the Special Rapporteur referred to the effectiveness of cooperation demonstrated by States in their responses to official communities and visit requests transmitted by the Rapporteur. The document also addresses how to strengthen the interaction between States and the Rapporteur and facilitate compliance with international obligations relating to the prevention and combating of torture and ill-treatment.⁷⁷

State itself was attributing itself the role of generator of new rights for the “others” (...).

⁷³ CALDEIRA, cit. (n. 64), §§171-172.

⁷⁴ CALDEIRA, cit. (n. 64), §§163-164.

⁷⁵ CALDEIRA, cit. (n. 64), §172.

⁷⁶ “The opposition to human rights, associated with a diagnosis of social disorder, ends up giving rise to suggestions on how to recover this threatened order. On one hand, they turn their backs on the State, seen as incompetent and defender of criminals, and they favor the privatization of the means of violence prevention. On the other hand, they increasingly vehemently defend the use of physical force against prisoners and criminals. It is argued that this brutality is only equivalent to the brutality of those who have crossed the boundaries of humanity. That is why, in addition to being against what they call “good treatment” of criminals, a significant portion of the population demands the death penalty, turns a blind eye to police abuses and disrespect for human rights, (...) demands “toughness” against bandits or their pure and simple elimination, in a discourse that is also widely disseminated. It is in this context that the “vigilantes” who operate in popular neighborhoods are supported.”

⁷⁷ UNITED NATIONS (Eds.), “Resolution 42/20 of the Human Rights Council: Torture and other cruel, inhuman, or degrading treatment or punishment: mandate of the Special Rapporteur”, UN Doc. A/HRC/RES/43/2020, 22 July 2020. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/>

In addition to inquiring about the relevance of his report on the cooperation of States with the Special Rapporteur, the UN Rapporteur also requested information that also opens space for reflection on how the interaction between the Rapporteur and Brazil occurs, and how it can occur; in particular, the Rapporteur inquired about which specific areas the Brazilian State might require greater thematic support or advice from the Rapporteur.⁷⁸

Brazil has a history of interactions with the Special Rapporteur, as exemplified by documents adopted by the Rapporteur on the country over the years.⁷⁹ Despite these interactions and past reports, observations and recommendations, the country remains marked by widespread practices of torture and ill-treatment, as seen in the previous sections of this paper.

In terms of specific areas that may require thematic support or advice from the Rapporteur, our research highlights that Brazil is marked by historical discrimination against people of African descent, including Quilombola communities; women; indigenous peoples; peasants and humble rural workers; the landless and homeless; slum dwellers; and people living in the periphery of cities. The many human rights violations suffered by these individuals and communities are closely linked to their long-standing social exclusion, lack of access to land and property rights, and the de facto denial of their economic, social, cultural, and environmental rights. Class, ethnic, and racial discrimination impose on those living in poverty and extreme poverty precarious or extremely precarious housing, precarious working conditions or even slavery, and greater exposure to violence.⁸⁰

All this is reflected in the practice of prisons and comparable institutions, such as the units of the juvenile social-educational system and even the so-called therapeutic communities, to the point that the IACHR has referred to such places as “institutional breeding grounds for the marginalization of persons of African descent and persons living in extreme poverty.” In the country, the Commission noted, persons deprived of their liberty are “often held in overcrowded and

G20/161/95/PDF/G2016195.pdf?OpenElement>. Accessed on 19 dec. 2022.

⁷⁸ UNITED NATIONS, cit. (n. 11).

⁷⁹ UNITED NATIONS (Eds.), “Civil and Political Rights, including the questions of torture and detention – Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 1998/38”. Doc. E/CN.4/1999/61, 12 jan. 1999; UNITED NATIONS (Eds.), “Civil and Political Rights, including the questions of torture and detention – Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 2000/43. Adendum – Visit to Brazil”. Doc. E/CN.4/2001/66/Add.2, March 30, 2001; UNITED NATIONS (Eds.), “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil”. UN Doc. A/HRC/31/57/Add.4, January 29th, 2016.

⁸⁰ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§2, 20-149.

structurally deficient prisons, maltreated, and frequently subjected to torture”.⁸¹

As indicated by the expert interviewed during the research,⁸² The work of the UN Special Rapporteur on Torture in relation to Brazil has already been described as having a focus on torture as a “crime of opportunity” (a crime that is committed when the opportunity arises). Under such a view, it would be sufficient for the state to create, for example, a regular system of visits to prisons in order to prevent the conjunction of situations that make the violation possible.⁸³ However, while a regular system of visits can play an important role, as can other similar lines of action, the Rapporteurship can engage with the critical approach to torture as a crime of opportunity. This approach argues that effective torture prevention also depends, or primarily depends, on addressing those “deeper social aspects that produce and reproduce inequalities, such as those related to class, race, and gender”.⁸⁴ Taking all of the above into account, and remembering that there have been recent measures that have hindered the work of the prevention mechanisms (especially the national mechanism),⁸⁵ the Special Rapporteur may consider supporting or advising the State both on a system to prevent and combat torture and on measures and policies aimed at social inclusion. Given the structural causes of the perpetuation of widespread torture and violence in the country, it is sensible for the anti-torture agenda to go hand in hand with the social agenda (which, moreover, is quite consistent with the very legal north, central to the UN’s work, of the indivisibility of civil, political, economic, social, cultural, and environmental human rights).⁸⁶

IV. CONCLUDING REMARKS

The foregoing lays the groundwork for meeting, in a reasoned manner, the general objective of investigating the possible impact of eight thematic reports of the UN Special Rapporteur on torture in relation to Brazil, as well as their relevance to the Brazilian context. From what has been examined and discussed,

⁸¹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, cit. (n. 15), §§ 2, 3, 150-234.

⁸² See footnote n° 24.

⁸³ See also: DUARTE, Thais Lemos; MARQUES DE JESUS, Maria Gorete, “Prevenção à tortura: uma mera questão de oportunidade aos mecanismos latino-americanos?”, *Revista Direitos Humanos e Democracia*, 2020, Vol. 8, n° 15, p. 137.

⁸⁴ DUARTE and MARQUES DE JESUS, cit. (n. 83), p. 151.

⁸⁵ DUARTE and MARQUES DE JESUS, cit. (n. 83), p. 191,193.

⁸⁶ On the subject of the indivisibility of human rights, see CAÑADO TRINDADE, cit. (n. 4), pp. 288-290, PIOVESAN, Flávia, *Temas de direitos humanos*. Saraiva, São Paulo, 2012, 5 ed., p. 29; and RAMOS, cit. (n. 4), chapter 5, topic 2.3: “Indivisibilidade, interdependência e unidade”.

the following points of synthesis and conclusion are thus presented:

1.- Despite diligent research, no references to thematic reports were found in national jurisprudence; in national legislation and other parliamentary activities; in national regulations, policies, practices, and procedures; in relevant investigation and accountability mechanisms; or in national research, public communication, and awareness-raising activities (these indicators were chosen by the Special Rapporteur to measure potential impacts of his reports).

2.- Although no direct impact of the reports could be demonstrated, the issues they address remain pertinent within the national context.

3.- As for the report on arms and extrajudicial use of force and its relationship to Brazil: there is evidence that the increased circulation of arms increases the number of homicides, crime, violence, among others. In recent years, Brazil has eased civilian access to weapons, thus raising concerns about the potential for increased violence, including acts of torture and ill-treatment.

4.- In relation to the report on migration and its relation to Brazil: There has been an increase in immigration to Brazil in recent years, with many immigrants being socially vulnerable due to discrimination and barriers to employment, social inclusion, and integration. This vulnerability makes them more susceptible to acts of violence, including torture and mistreatment.

5.- Regarding the report on the reaffirmation and strengthening of the prohibition of torture and ill-treatment and its relation to Brazil: torture and ill-treatment are recurrent issues, particularly against the poor and Afro-descendants. Many prisons are overcrowded and prisoners suffer from poor or non-existent access to health care and education. Reports of vexatious body searches and torture are frequent.

6.- Pertaining to the report on corruption, torture, and ill-treatment and its relation to Brazil: There is a relationship between corruption and violence in the country, including extreme forms of violence. State and market failures have led to the emergence of militias and paramilitary groups in certain regions. These groups provide services in an authoritarian and extortionate manner, and they engage in illegal activities such as drug trafficking, bribery, kidnapping, and money laundering.

7.- Regarding the report on torture, mistreatment, and domestic violence and its relation to Brazil: despite legislative efforts like the enactment of the Maria da Penha Law and Law no. 13,104, domestic violence remains endemic in the country. The evidence indicates that prevention and repression measures have been insufficiently adopted.

8.- In relation to the report on psychological torture and its application to Brazil: torture is generally conceived in physical terms at the national level. The UN report serves as a valuable tool to highlight the psychological aspect of torture - an important dimension of various social issues, including poor prison conditions.

9.- In reference to the report on biopsychosocial factors related to torture and

ill-treatment and their relation to Brazil: qualitative research indicates the presence of biopsychosocial factors behind the perpetuation of widespread practices of torture and ill-treatment over time in the country – factors such as marked social inequality, racism, constant propaganda against human rights (portrayed as “privileges” of “bandits” and “thugs”) and the dehumanization of large segments of the poor and Afro-descendant population.

10.- Lastly, regarding the report on cooperation between States and the Special Rapporteur: despite Brazil’s history of interactions with the Special Rapporteur, torture and ill-treatment remain widespread. Torture is often seen as a “crime of opportunity” in the UN framework; however, it is a deeply rooted societal problem in Brazil. Implementing an economic and social development agenda aimed at drastically reducing inequality could be key to preventing torture in the country.

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