



Brazil's Compliance with the Convention Against Torture: The Death Penalty

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

and

The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Brazil fails to uphold its obligations under the International Covenant on Civil and Political Rights.

1. This report addresses Brazil's compliance with its international human rights obligations with respect to the death penalty. This report examines the current state of the death penalty in Brazil.
2. On 25 September 2009, Brazil acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights.¹ When acceding to the Second Optional Protocol, Brazil included a reservation pursuant to Article 2 to provide for the application of the death penalty in time of war.²
3. Brazil carried out its last execution in 1855,³ and there are no individuals currently on death row,⁴ but reinstatement of capital punishment has been a topic of recent political cycles.⁵ Notably, Brazil's former president Jair Bolsonaro made statements indicating the possibility of reinstating the death penalty for civilian crimes.⁶
4. Brazil's Constitution limits the country's use of the death penalty, providing that "there shall be no penalties . . . of death, except in case of declared war."⁷
5. Brazil's Military Criminal Code sets out the crimes eligible for the death penalty at times of war. These crimes include, but are not limited to, betrayal to an enemy nation, aiding or providing information to an enemy nation, desertion, espionage, cowardice, genocide, robbery, and surrender.⁸
6. Political campaigns and statements made by various elected officials during the 2018 presidential election cycle suggested an interest in introducing the use of the death penalty for civilian crimes. These include statements by Jair Bolsonaro, President of Brazil (2019-2022)⁹ and Wilson Witzel, Governor of Rio de Janeiro (2019-2021).¹⁰

¹ UN Treaty Depository, CN Reference No. 664, Second Optional Protocol to the International Covenant on Civil and Political Rights, Accession, Brazil, United Nations, New York. Also available online at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en

² UN Treaty Depository, CN Reference No. 664, Second Optional Protocol to the International Covenant on Civil and Political Rights, Accession, Brazil, United Nations, New York. Also available online at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en

³ *Countries retaining death penalty fail to give details of executions, UN says*, UN News, 14 July 2005. Also available online at: <https://news.un.org/en/story/2005/07/145092>

⁴ World Coalition Against the Death Penalty, Brazil. Also available online at: <https://worldcoalition.org/pays/brazil/>

⁵ *Brazil election: Bolsonaro hands out tough anti-crime message*, BBC News, 7 October 2018. Also available online at: <https://www.bbc.com/news/world-latin-america-45774849>

⁶ *Brazil election: Bolsonaro hands out tough anti-crime message*, BBC News, 7 October 2018. Also available online at: <https://www.bbc.com/news/world-latin-america-45774849>

⁷ Article 5, Section XLVII(a), Constitution of the Federative Republic of Brazil. Also available online at: https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en

⁸ Articles 355 – 405, Military Criminal Code of Brazil. Also available online at: http://www.planalto.gov.br/ccivil_03/decreto-lei/de11001.htm (in Portuguese)

⁹ *Brazil election: Bolsonaro hands out tough anti-crime message*, BBC News, 7 October 2018. Also available online at: <https://www.bbc.com/news/world-latin-america-45774849>

¹⁰ Ernesto Londoño and Manuela Andreoni, *'We'll Dig Graves': Brazil's New Leaders Vow to Kill Criminals*, The New York Times, 1 November 2018. Also available online at: <https://www.nytimes.com/2018/11/01/world/americas/bolsonaro-police-kill-criminals.html>

7. Following Jair Bolsonaro's election in 2018, military police killed hundreds of suspected criminals in low-income neighborhoods in Rio de Janeiro.¹¹ Various public officials have expressed support for military police's use of lethal force in low-income neighborhoods.¹² These recent events suggest that Brazil may be at risk of reinstating capital punishment.

RECOMMENDATIONS

8. This stakeholder report suggests the following recommendations for the Government of Brazil:
- Revise the Brazilian Constitution to abolish the death penalty for all crimes.
 - Revise the Military Criminal Code to remove language permitting the use of capital punishment.
 - Withdraw Article 2 reservations to the Second Optional Protocol to the International Covenant on Civil and Political Rights.
 - Re-commit to Brazil's abolitionist position for ordinary crimes, as recognized in the Constitution, and publicly reject calls for reinstatement of the death penalty for such crimes.

¹¹ Ernesto Londoño and Shasta Darlington, *Brazil's Military Is Put in Charge of Security in Rio de Janeiro*, The New York Times, 16 February 2018. Also available online at: <https://www.nytimes.com/2018/02/16/world/americas/brazil-rio-military-security.html>

¹² Ernesto Londoño and Manuela Andreoni, *'We'll Dig Graves': Brazil's New Leaders Vow to Kill Criminals*, The New York Times, 1 November 2018. Also available online at: <https://www.nytimes.com/2018/11/01/world/americas/bolsonaro-police-kill-criminals.html>