



association pour la prévention de la torture  
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association for the prevention of torture

## Country File **BRAZIL**

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<b>Region</b>	Americas
<b>Legal System</b>	Civil Law
<b>UNCAT Ratification, Accession (a), or Succession (d)</b>	28 September 1989
<b>Relevant Laws</b>  ▪ Stand-Alone Torture Law (Y/N)	- Constituição da República Federativa do Brasil de 1988 (Constitution of the Federative Republic of Brazil) (Constitution)  - Lei Nº 9.455, de 7 de Abril de 1997 (Law No. 9.455)  - Decreto-Lei No 2.848, de 7 de Dezembro de 1940, Código Penal (Penal Code)  No.
<b>Relevant Articles</b>	
<b>Definition of Torture (General), (Article 1)</b>	
<b>Prohibition on Torture (Article 1)</b>	Article 5 (III) of the Constitution
<b>Crime of Torture (Article 4)</b>  ▪ Definition ▪ Statute of Limitations  ▪ Penalties ▪ Other	Article 1 of Law No. 9.455  Article 109 of the criminal code is an article of general application. Pursuant to this article, the statute of limitations is tiered depending on the maximum penalty for the offense. Thus, the general statute of limitations for torture is 12 years for crime of torture with a limitation of 8 years for § 2 and 20 years for §3 (see text of Article 1 below).  Article 1 of Law No. 9.455
<b>Universal Jurisdiction &amp; Cooperation, (Articles 5, 9)</b>	

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<b>Investigations, (Articles 12, 13)</b>	
<b>Remedies and Reparations, (Article 14)</b>	
<b>Exclusion of Evidence (Article 15)</b>	Article 5 (LVI) of the Constitution states that “evidence obtained through illicit means are unacceptable in the process.” This section does not mention torture specifically.
<b>Legal and Procedural Safeguards (Articles 2, 11, 16)</b>	- Article 5 (LXIII) of the Constitution (notification, access to a lawyer)  In addition, access to a lawyer is governed by Articles 261, 263, 289-A § 4 and 306 § 1 of the Criminal Procedure Code No. 3.689/41 and Articles 15 and 16 § 3 of the Penal Execution Law No. 7.210/84. Access to a doctor is governed by Article 14 Penal Execution Law No. 7.210/84. Notification of family or others concerning the detention is covered in Article 302 of the Criminal Procedure Code No. 3.689/41. (These articles are not excerpted below).
<b>Non-Refoulement (Article 3)</b>	
<b>Other</b>	<ul style="list-style-type: none"> <li>▪ <b>No Amnesties</b></li> </ul> <p>- Article 5 (XLIII) of the Constitution states that “The practice of torture . . . shall be considered by law as non-bailable and not subject to the grace or amnesty, and their principals, agents and those who omit themselves while being able to avoid such crimes shall be held liable”.</p>
<b>Comments</b>	
<b>Languages Available</b>	Portuguese (official language) and English.
<b>Links &amp; Sources</b>	<p>- Constituição da República Federativa do Brasil de 1988, <i>available at</i>: <a href="http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm">http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm</a></p> <p>Constitution of the Federative Republic of Brazil (updated through 2010) (English translation) (Digital library of the Chamber of Deputies) <i>available at</i>: <a href="http://bd.camara.gov.br/bd/handle/bdcamara/1344">http://bd.camara.gov.br/bd/handle/bdcamara/1344</a></p> <p>- Lei Nº 9.455, de 7 de Abril de 1997 (Presidency of the Republic website) <i>available at</i>: <a href="http://www.planalto.gov.br/ccivil_03/Leis/L9455.htm">http://www.planalto.gov.br/ccivil_03/Leis/L9455.htm</a></p> <p>- Law No. 9.455 of April 1997 (unofficial English translation by APT on file with APT).</p> <p>- Decreto-Lei No 2.848, De 7 de Dezembro de 1940, Código Penal <i>available at</i>: <a href="http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm">http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm</a></p>

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## Relevant Articles – BRAZIL

### ➤ Constituição da República Federativa do Brasil de 1988

#### TÍTULO II- Dos Direitos e Garantias Fundamentais CAPÍTULO I- DOS DIREITOS E DEVERES INDIVIDUAIS E COLETIVOS

**Art. 5º** Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes:

[...]

III - ninguém será submetido a tortura nem a tratamento desumano ou degradante;

[...]

XLIII - a lei considerará crimes inafiançáveis e insuscetíveis de graça ou anistia a prática da tortura, o tráfico ilícito de entorpecentes e drogas afins, o terrorismo e os definidos como crimes hediondos, por eles respondendo os mandantes, os executores e os que, podendo evitá-los, se omitirem;

[...]

XLIX - é assegurado aos presos o respeito à integridade física e moral;

[...]

LVI - são inadmissíveis, no processo, as provas obtidas por meios ilícitos;

[...]

LXIII - o preso será informado de seus direitos, entre os quais o de permanecer calado, sendo-lhe assegurada a assistência da família e de advogado;

[...]

§ 2º - Os direitos e garantias expressos nesta Constituição não excluem outros decorrentes do regime e dos princípios por ela adotados, ou dos tratados internacionais em que a República Federativa do Brasil seja parte.

§ 3º Os tratados e convenções internacionais sobre direitos humanos que forem aprovados, em cada Casa do Congresso Nacional, em dois turnos, por três quintos dos votos dos respectivos membros, serão equivalentes às emendas constitucionais.

[\(Incluído pela Emenda Constitucional nº 45, de 2004\)](#) [\(Atos aprovados na forma deste parágrafo\)](#)

➤ Constitution of the Federative Republic of Brazil (updated through 2010)  
(English translation from the digital library of the Chamber of Deputies).

TITLE II - FUNDAMENTAL RIGHTS AND GUARANTEES  
CHAPTER I- INDIVIDUAL AND COLLECTIVE RIGHTS AND DUTIES

**Article 5-** All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security, and to property, on the following terms:

[...]

III. no one shall be submitted to torture or to inhuman or degrading treatment;

[...]

XLIII. The practice of torture, the illicit traffic of narcotics and related drugs, as well as terrorism and crimes defined as heinous crimes, shall be considered by law as non-bailable and not subject to the grace or amnesty, and their principals, agents and those who omit themselves while being able to avoid such crimes shall be held liable;

[...]

XLIX. prisoners are ensured of respect to their physical and moral integrity;

[...]

LVI. evidence obtained through illicit means are unacceptable in the process;

[...]

LXIII. the arrested person shall be informed of his rights, amongs which is the right to remain silent, and he shall be ensured of assistance by his family and a lawyer;

[...]

Paragraph 2. The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party.

Paragraph 3. International human rights treaties and conventions which are approved in each House of the National Congress, in two rounds of voting, by three fifths of the votes of the respective members shall be equivalent to constitutional amendments.

➤ Lei N° 9.455, de 7 de Abril de 1997

**Art. 1° Constitui crime de tortura:**

I - constranger alguém com emprego de violência ou grave ameaça, causando-lhe sofrimento físico ou mental:

a) com o fim de obter informação, declaração ou confissão da vítima ou de terceira pessoa;

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b) para provocar ação ou omissão de natureza criminosa;

c) em razão de discriminação racial ou religiosa;

II - submeter alguém, sob sua guarda, poder ou autoridade, com emprego de violência ou grave ameaça, a intenso sofrimento físico ou mental, como forma de aplicar castigo pessoal ou medida de caráter preventivo.

Pena - reclusão, de dois a oito anos.

§ 1º Na mesma pena incorre quem submete pessoa presa ou sujeita a medida de segurança a sofrimento físico ou mental, por intermédio da prática de ato não previsto em lei ou não resultante de medida legal.

§ 2º Aquele que se omite em face dessas condutas, quando tinha o dever de evitá-las ou apurá-las, incorre na pena de detenção de um a quatro anos.

§ 3º Se resulta lesão corporal de natureza grave ou gravíssima, a pena é de reclusão de quatro a dez anos; se resulta morte, a reclusão é de oito a dezesseis anos.

§ 4º Aumenta-se a pena de um sexto até um terço:

I - se o crime é cometido por agente público;

~~II - se o crime é cometido contra criança, gestante, deficiente e adolescente;~~

II - se o crime é cometido contra criança, gestante, portador de deficiência, adolescente ou maior de 60 (sessenta) anos; ([Redação dada pela Lei nº 10.741, de 2003](#)).

➤ Law N°9.455, April 7th, 1997, Brazil  
(Unofficial Translation by APT)

Defines the crimes of torture and provides other regulations.

The President of the Republic makes public that the National Congress has approved and I sanction the following Law:

Art. 1. It is a crime of torture:

I- Intimidate someone with violence or serious threat, causing physical or mental suffering:

a) in order to obtain information, statement or confession from the victim or a third person;

b) to induce action or inaction of a criminal nature;

c) on grounds of racial or religious discrimination;

II- Submit someone, under one's custody, power or authority, with the use of violence or serious threat, to intense physical or mental suffering, as a way to enforce personal punishment or a preventive measure.

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Penalty - imprisonment of two to eight years.

§ 1 The same penalty applies to whom submits a person arrested or subjected to a security measure to physical or mental suffering, through the performance of an act not provided for by law or not resulting from legal action.

§ 2 The one who omits oneself regarding such conduct, when had the duty to prevent or investigate it, incurs a penalty of imprisonment from one to four years.

§ 3 If serious or very serious injury results, the penalty is imprisonment from four to ten years; if death results, the penalty is imprisonment from eight to sixteen years.

§ 4° The Penalty increases from one sixth to a third:

I-If the crime is committed by a public agent

II- If the crime is committed against a child, a pregnant woman, a person with disability or a person aged 60 (sixty) or more; (Amended by Law No. 10.741, 2003)

III- if the crime is committed through abduction

§ 5 The conviction will result in loss of title, office or public employment and prohibition to exercise its mandate for twice the term of the sentence.

§ 6 The crime of torture cannot be object of bail, grace or amnesty.

§ 7 The convicted for an offense under this Act, unless the hypothesis of § 2, will begin serving sentence in a closed regime.

Art.2. The provisions of this law applies even when the crime has not been committed in national territory, if the victim is Brazilian victim or if the agent is found in territory under Brazilian jurisdiction.

Art. 3. This law comes into force on the date of its publication.

Article 4. Art. 233 of Law No. 8069 of July 13, 1990 is revoked - Status of Children and Adolescents.

Brasilia, April 7th, 1997, 176th of the Independence and 109th of the Republic.

FERNANDO HENRIQUE CARDOSO

Nelson A. Jobim

This does not replace the text published in D.O.U. of 8.4.1997

➤ Decreto-Lei No. 2.848, de 7 de Dezembro de 1940, Código Penal.

**Prescrição antes de transitar em julgado a sentença**

Art. 109. A prescrição, antes de transitar em julgado a sentença final, salvo o disposto no § 1o do art. 110 deste Código, regula-se pelo máximo da pena privativa de liberdade cominada ao crime, verificando-se: (Redação dada pela Lei nº 12.234, de 2010).

I - em vinte anos, se o máximo da pena é superior a doze;

II - em dezesseis anos, se o máximo da pena é superior a oito anos e não excede a doze;

III - em doze anos, se o máximo da pena é superior a quatro anos e não excede a oito;

IV - em oito anos, se o máximo da pena é superior a dois anos e não excede a quatro;

V - em quatro anos, se o máximo da pena é igual a um ano ou, sendo superior, não excede a dois;

VI - em 3 (três) anos, se o máximo da pena é inferior a 1 (um) ano. (Redação dada pela Lei nº 12.234, de 2010).

**Prescrição das penas restritivas de direito**

Parágrafo único - Aplicam-se às penas restritivas de direito os mesmos prazos previstos para as privativas de liberdade. (Redação dada pela Lei nº 7.209, de 11.7.1984)