



Home Office

Country Policy and Information Note

Brazil: Actors of protection

Version: 1.0

November 2020

Preface

Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

Contents

Assessment	5
1. Introduction	5
1.1 Scope of this note.....	5
2. Consideration of issues	5
2.1 Credibility.....	5
2.2 Exclusion	5
2.3 Protection	5
Country information	9
3. Security apparatus.....	9
3.1 Police forces.....	9
3.2 Intelligence agencies.....	11
3.3 Armed forces	12
4. Legal rights	13
4.1 Penal / criminal code	13
4.2 Arrest and detention	13
5. Capability of the police.....	15
5.1 Effectiveness	15
5.2 Corruption.....	17
5.3 Human rights abuses	17
5.4 Militias	19
5.5 Oversight bodies and mechanisms	20
6. Rule of law and the judiciary	23
6.1 Structure.....	23
6.2 Independence and effectiveness of the judiciary	24
6.3 Trial procedures	25
Terms of Reference	26
Bibliography	28
Sources cited.....	28
Sources consulted but not cited.....	29
Version control	31

Assessment

Updated: 3 November 2020

1. Introduction

1.1 Scope of this note

- 1.1.1 Whether in general, those with a well-founded fear of persecution or serious harm from non-state actors can obtain effective protection.
- 1.1.2 Where a claim is refused, it must be considered for certification under section 94(3) of the Nationality, Immigration and Asylum Act 2002 as Brazil is listed as a designated state.
- 1.1.3 For guidance on certification see [Certification of protection and human rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

[Back to Contents](#)

2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

[Back to Contents](#)

2.2 Exclusion

- 2.2.1 Decision makers must consider whether there are serious reasons for considering whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.
- 2.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection.
- 2.2.3 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

[Back to Contents](#)

2.3 Protection

- 2.3.1 Where the person has a well-founded fear of persecution from non-state actors, including 'rogue' state actors, decision makers must assess whether the state can provide effective protection.

- 2.3.2 Brazil has a framework of laws to penalise various forms of criminal activity and a functioning criminal justice system as established by the Constitution and composed of the police, military and the judiciary which operates throughout the country (see [Security apparatus](#), [Penal / criminal code](#) and [Rule of law and the judiciary](#)).
- 2.3.3 The police have primary responsibility for maintaining law and order, and investigating crimes, although the armed forces also assume some domestic security responsibilities. There are 3 national police forces - the Federal Police, Federal Highway Police, and Federal Railway Police (collectively the 'Federal Police') – which are responsible for crimes against federal institutions as well as international drug trafficking, terrorism, cyber-crime, organized crime, public corruption, white-collar crime, money laundering, immigration, border control, airport security, and maritime policing. At a state level there are 2 forces: the civil police, which perform an investigative role, and the military police, which maintain law and order. The total police force is reported to have over 500,000 members: 400,000 in the military police, around 120,000 in the civil police and 15,000 in the federal police. The US Department of State (USSD) reported that the civilian authorities did not always maintain effective control over the security forces, however to note, the USSD report did not expand further on what this meant (see [Security apparatus](#))
- 2.3.4 Crimes levels are high across Brazil, including violent crime with the country having some of the highest homicide rates in the world. However, crime rates vary across the country, and between and within cities, with levels of violence particularly high in the 'favelas' - the poor slum areas of high density informal housing that border many cities. These areas are often outside of police control, but are instead controlled and contested by organised criminal groups and vigilante militias reportedly formed of off-duty police, former police and other public officials. The states with the greatest violence and security problems include Sergipe, Rio Grande do Norte, Alagoas, Pará, Amapá, Pernambuco, Bahia, Goiás, Ceará and Rio de Janeiro. One source states that militias operate in 18 of the 26 states exercising influence over several million people who live in these areas. Violations by the militias and police in some of these areas may not be reported for fear of violent reprisals. The police response to high levels of crime is often violent: over 6,000 people were reportedly killed by the police in 2018 (see the Country Policy and Information Note on [Brazil: Background information and internal relocation](#) as well as [Capability of the police](#) and [Militias](#)).
- 2.3.5 Police capability to handle and respond to crime varies from place to place and within cities. The USSD's Overseas Advisory Security Council (OASC) observed in its report for US citizens travelling to Brazil that the police are generally well-equipped and responsive in Brasilia but this varied across states. The OASC crimes and safety assessments for Rio Janeiro, Porto Alegre noted the police response varied, and in Sao Paolo may not be timely because of the volume of crime. The police are reported to complain of a lack of resources and basic equipment, experience staff shortages and low morale. They also, and have a poor record of solving homicides and other crimes, and corruption is reported to be a problem. Nonetheless, many persons are arrested and detained, with the prison population reported to be

over 700,000 although over 40% of prisoners nationwide are in pretrial detention. Several sources report that the police have been responsible for a serious human rights violations such as unlawful killings, use of indiscriminate force, torture and ill-treatment. Public confidence in the police is low because of a perception of heavy handedness, ineffectiveness and corruption (see the Country Policy and Information Note on [Brazil: Background information and internal relocation](#) as well as [Capability of the police](#) and [Militias](#)).

- 2.3.6 Complaints against the non-military police are dealt with through the regional offices of the Ombudsman-General of the Federal Government. The Special Task Force on Police Control, investigate alleged abuses committed by military police officers. Military courts preside over military crimes, including actions by the military police. The Brazilian Office of the Comptroller General, a governmental agency is responsible for preventing and fighting corruption. Oversight of human rights violations is provided by the Ombudsman-General of Citizenship, a special office of the presidency. While there have been prosecutions and convictions of police who committed abuses, members of the security forces are rarely held to account, and impunity and lack of accountability remain a problem (see [Capability of the police: Corruption, Effectiveness, Human rights abuses, Oversight bodies and mechanisms](#) as well as the Country Policy and Information Note on [Brazil: Background note including internal relocation](#)).
- 2.3.7 Killings by police officers are among the highest in the world with 17 people dying a day in 2018, a 19.6% increase on 2017. Rio de Janeiro has the highest number of police killings, with 1,402 people killed in the first nine months of 2019 and 606 in the first four months of 2020. In 2019 President Jair Bolsonaro pardoned members of the police and military convicted of unintentional crimes during lethal operations, and prior to his election stated that security forces accused of killing criminals should not be held accountable. Lengthy pretrial detentions are common and the right to free legal counsel is not always respected. Prison conditions generally are poor (see [Arrest and detention](#), [Effectiveness](#) and [Human rights abuses](#)).
- 2.3.8 Brazil has established a functioning judiciary based on civil law which operates at state and federal levels, comprised of lower courts and specialised courts and ultimately the Supreme Court. The specialised courts answer to a superior tribunal. The courts operate largely independently of government influence but the judiciary is overburdened, inefficient and often subject to intimidation, especially in rural areas. Due process and defendants' rights are mostly upheld. However, many persons who are arrested and prosecuted are unable to afford lawyers and there are millions of backlogged cases in the courts system. Mechanisms exist to handle judicial complaints, the oversight of judicial transparency and limit abuses, however corruption continues to be a problem (see [Independence and effectiveness of the judiciary](#) and [Trial procedures](#))
- 2.3.9 The state has taken reasonable steps to establish and operate an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and to which persons in general

have access. This includes enacting criminal law and judicial procedural codes, and operating functioning law enforcement agencies and judiciary.

- 2.3.10 Therefore, despite weaknesses in the effectiveness of accessing the criminal justice system, in general, the state is willing and able to provide effective protection. Persons, however, who fear the militias and other organised criminal groups, and live in places controlled or influenced by these groups may not be able to access protection and the state may be unwilling and/or unable to provide protection in these areas.
- 2.3.11 Decision makers must consider each case on its facts, taking into account the intent, capability and reach of the persecutor, the person's background and profile, and whether they have previously sought protection and the outcome of this, or a person's reasons for not seeking protection – noting that a person's reluctance to seek protection does not necessarily mean that effective protection is not available. The onus is on the person to demonstrate why the state would not be willing and able to provide effective protection.
- 2.3.12 For further guidance on assessing the availability of state protection, see the instruction on [Assessing Credibility and Refugee Status](#).

[Back to Contents](#)

Country information

Section 3 updated: 3 November 2020

3. Security apparatus

3.1 Police forces

3.1.1 The police are established under article 144 of [Brazil's Constitution of 1988 with Amendments through 2014](#).

3.1.2 The Brazil Business website noted:

'In Brazil, the police are state-run agencies that perform different functions, and therefore, they are subdivided into categories.

'Polícia Federal, also known as PF, the Federal Police.

'Polícia Rodoviária Federal, also known as PRF, the Federal Highway Police.

'Polícia Ferroviária Federal, also known as PFF, the Rail way Federal Police.

'Polícias Civis, also known as PC, the Civil Police.

'Polícias Militares e Corpos de Bombeiros Militares also known respectively as PM and CBM, are the Military Police and the Military Fireman Corporations.

'...Brazil is a Federal Republic that is subdivided into states that are divided in municipalities. Therefore, the police activity does not only vary according to their branches, but also varies according to the area of jurisdiction in the government spheres. Brazil as a whole is named as a union and its administration is the responsibility of the federal government. Each state of the union is administrated by a state government while the municipalities are designated to the municipal government.'¹

3.1.3 See more detail on the [Law Enforcement Agencies of the Union](#).

3.1.4 An International Security Sector Advisory Team (ISSAT) country profile noted:

'The police are divided into Federal (around 15,000 members), Military (over 400,000 active members), and Civil (some 123,403 members) forces. The Military and Civil police are subordinated to the state government, while the Federal Police serve under the Ministry of Justice. Some states have elite units within the Military Police, including Rio de Janeiro, Alagoas, and Santa Catarina, where Special Forces units are known as the Special Police Operations Battalion (Batalhão de Operações Policiais Especiais–BOPE).

'There is also a national force—the National Public Security Force (Força Nacional de Segurança Pública-SENASP)—made up of Military Police from various states which includes an elite force, the Quick Deployment Special Battalion (Batalhão Especial de Pronto Emprego-BEPE).'²

¹ Brazil Business, '[Branches-of-the-Police-in-Brazil](#)', 15 October 2013

² ISSAT, '[Brazil Country-Profile](#)', last updated 2 February 2015

3.1.5 The USSD Overseas Advisory Council on Security (OASC) in its 2020 Crime and Safety report for Brasilia observed:

‘The Military Police of the State of Rio de Janeiro have their own formations, rules, and uniforms, and are responsible for maintaining public order across the state. Polícia Militar is the country’s military police and is not associated with the Brazilian Armed Forces; they are the Brazilian equivalent of U.S. uniformed state police officers. Deployed solely to respond to or act as a deterrent against the commission of crime, these units do not conduct criminal investigations.

‘The Civil Police (Polícia Civil) acts as the state bureau of investigation. Each state has its own Civil Police Department to undertake detective work, forensics, prosecutions, and internal investigation, while the Military Police performs preventive police duties.

‘The Federal Police (Polícia Federal or DPF) are responsible for crimes against federal institutions, to include international drug trafficking, terrorism, cyber-crime, organized crime, public corruption, white-collar crime, money laundering, immigration, border control, airport security, and maritime policing. DPF is subordinate to the federal Justice Ministry.’³

3.1.6 Interpol noted that ‘The Brazilian NCB [National Central Bureau] is part of the ‘International Cooperation General Coordination’ unit of the Brazilian Federal Police. Police in 26 states use the NCB as a gateway to international police cooperation, accessing INTERPOL databases and taking part in regional operations, particularly in the field of fugitive investigations.’⁴

3.1.7 The US State Department 2019 Human Rights Practices Report (USSD Human Rights report 2019) noted:

‘The three national police forces—the Federal Police, Federal Highway Police, and Federal Railway Police—have domestic security responsibilities and report to the Ministry of Justice and Public Security. There are two distinct units within the state police forces: The civil police, which perform an investigative role, and the military police, charged with maintaining law and order in the states and the Federal District. Despite the name, military police forces do not report to the Ministry of Defense.’⁵

3.1.8 The Congressional Research Service commented on drugs and trafficking policing, it stated:

‘The Brazilian government has responded to the challenges posed by organized crime by bolstering security along the 9,767-mile border it shares with 10 nations, including the region’s cocaine producers—Bolivia, Colombia, and Peru. Under its Strategic Border Plan, introduced in 2011, the Brazilian government has deployed interagency resources, including unmanned aerial vehicles, to monitor illicit activity in high-risk locations along its borders and in the remote Amazon region. It also has carried out joint operations with neighboring countries. More recently, the Brazilian government has begun acquiring low-altitude mobile radars and other

³ USSD OASC, ‘[Brazil 2020 Crime & Safety Report: Brasilia](#)’, 13 May 2020

⁴ Interpol, ‘[Interpol Brazil](#)’, undated

⁵ USSD, ‘[2019 Human Rights Practices Report-Brazil](#)’ (executive summary), 11 March 2020

equipment to support its Integrated Border Monitoring System. That system was initially scheduled to be operational along the entire Brazilian border in 2022, but the Brazilian government now estimates that the system may not be completely in place until 2035 due to budget constraints.

‘The United States supports counternarcotics capacity-building efforts in Brazil under a 2008 U.S.-Brazil Memorandum of Understanding on Narcotics Control and Law Enforcement. In 2019, the United States trained nearly 1,000 Brazilian police officers on combatting money laundering and community policing, among other topics’⁶

3.1.9 The US Embassy and Consulates in Brazil provided a [List of Federal Police Offices](#)⁷.

3.1.10 The USSD International Narcotics Control Strategy Report stated:

‘In April 2019, the federal government approved the new National Drug Policy (PNAD) which established a new institutional structure for combatting drugs. The lead agency for policy on reducing drug demand is the National Secretariat for Drug Care and Prevention (SENAPRED), under the Ministry of Citizenship. The Brazilian Observatory of Drug Information (OBID), overseen by SENAPRED, is charged with updating, releasing, and integrating information on illicit and licit drug use in the country. The lead agency for policy on drug supply reduction is the National Secretariat for Drug Policy (SENAD), which is under the Ministry of Justice and Public Security. The Federal Police (PF) is Brazil’s lead agency for combatting drug trafficking.

Although the PF’s 2019 budget increased by 5 percent over 2018 levels, PF operations continued to be affected by across-the-board fiscal austerity and deep cuts to some operational budgets. The PF is capable by global standards but recognizes that its force of 11,000 agents is insufficient to effectively combat drug trafficking in addition to other duties, which include customs border protection, maritime police, and migration control services. SENAD’s National Anti-Drug Fund budget increased by 9 percent from 2018 levels.’⁸

3.1.11 See also the [UN International Human Rights Instruments, ‘Common core document forming part of the reports of States parties: Brazil’, August 2020](#)

[Back to Contents](#)

3.2 Intelligence agencies

3.2.1 A HuffPost article from August 2020 noted:

‘Bolsonaro has now made the Ministry of Justice — one of the country’s most influential departments — a focal point...In June, the ministry assembled a dossier on nearly 600 government officials and multiple university presidents it labeled members of “the anti-fascist movement” because they had criticized the government, the Brazilian news outlet UOL revealed last month.

⁶ CRS, ‘[Brazil: Background and US relations](#)’, updated 6 July 2020

⁷ US Embassy and Consulates in Brazil, ‘[List of Federal Police Offices](#)’, undated

⁸ USSD, ‘[International Narcotics Control Strategy Report: Brazil](#)’, March 2020

‘Days later, Bolsonaro signed a decree expanding the scope of Brazil’s intelligence agency, which sits inside the Justice ministry, and handing it power to “tackle threats to the safety and stability of the state and society.”

‘Brazil’s intelligence agency now reports to the Bolsonaro family ally who heads the Federal Police. Alongside the dossier, the decree sparked fears that Bolsonaro is attempting to set up a politicized intelligence agency of the sort that targeted opponents of the dictatorship decades ago.’⁹

- 3.2.2 Brazil Business, a Brazilian media channel and a point of contact for anyone researching business in Brazil online, stated: ‘ABIN [Brazilian Intelligence Agency], is the central organization of the Brazilian Intelligence System (SISBIN). It is empowered to advise the head of state in the discharge of their functions, especially in preventive, assuring him advance knowledge of facts and circumstances relating to society’s welfare and the development and security of the country.’¹⁰

[Back to Contents](#)

3.3 Armed forces

- 3.3.1 The Brazil Business website provided an historical and organisational overview of the [Brazilian Armed Forces](#)¹¹.

- 3.3.2 An International Security Sector Advisory Team (ISSAT) country profile noted:

‘Brazil has 339,365 active members in the armed forces, the largest in Latin America. The military’s primary role is enforcing border control, particularly in the Amazon states. The army has also traditionally participated in United Nations peacekeeping missions to countries like Haiti and the Democratic Republic of Congo.

‘...While there is no current plan to increase the size of state security forces, private security forces have grown 74 percent over the past decade. According to Federal Police statistics, there are currently 700,000 private security personnel in Brazil.’¹²

- 3.3.3 The US State Department 2019 Human Rights Practices Report (USSD Human Rights report 2019) noted: ‘...The armed forces also have some domestic security responsibilities and report to the Ministry of Defense.’¹³

- 3.3.4 The CIA World Factbook listed the military and security forces as: ‘Brazilian Armed Forces: Brazilian Army (Exercito Brasileiro, EB), Brazilian Navy (Marinha do Brasil, MB, includes Naval Aviation and Marine Corps (Corpo de Fuzileiros Navais)), Brazilian Air Force (Forca Aerea Brasileira, FAB); Public Security Forces.’¹⁴

- 3.3.5 With regard military and security personal strengths the CIA World Factbook stated: ‘size assessments for the Brazilian Armed Forces vary;

⁹ HuffPost, ‘[Jair Bolsonaro Is Pushing Brazil’s Democracy To Its Breaking Point](#)’, 11 August 2020

¹⁰ Brazil Business, ‘[The Brazilian Intelligence Agency](#)’, 23 August 2013

¹¹ Brazil Business, ‘[Brazilian Armed Forces](#)’, 14 July 2014

¹² ISSAT, ‘[Brazil Country-Profile](#)’, last updated 2 February 2015

¹³ USSD, ‘[2019 Human Rights Practices Report-Brazil](#)’ (executive summary), 11 March 2020

¹⁴ CIA, ‘[World factbook: Brazil](#)’ (Military and Security), June 2020

approximately 360,000 active personnel (215,000 Army; 75,000 Navy; 70,000 Air Force).'¹⁵

[Back to Contents](#)

Section 4 updated: 3 November 2020

4. Legal rights

4.1 Penal / criminal code

4.1.1 Brazil's [penal code](#) was enacted in 1941 (and is only available in Portuguese).

4.1.2 An article in the Law Society Gazette from 2013 noted that 'the Brazilian legal system is governed by civil law. Consequently, it mainly relies upon codified legislation rather than precedents. Among the various codes in force, there have been many debates over the penal code. This came into force in 1941 and it was partly revised in 1984.'¹⁶

[Back to Contents](#)

4.2 Arrest and detention

4.2.1 Pretrial Rights International noted on Brazil:

'Its Federal Constitution and statute notably provide some of the most progressive protections in the world for those arrested for a crime or in pre-trial detention; however, these protections are largely ignored and lengthy detentions frequently occur in the country. The country also faces an overcrowded prison population and a lack of resources to meet the demand of the constitutional right to free counsel.

'Over the past two decades, Brazil's prison population has grown to be the fourth largest in the world, upwards of 40 percent of which have yet to be before a judge.

'...Despite protections written into the constitution and statute, the protections afforded to prisoners are largely ignored. The reason for this is twofold; first, the judicial system is lacking the needed resources to abide by the timelines set out by statute; and second, there is public pressure to keep individuals detained, even before being tried and convicted, due to the high crime rate experienced throughout much of the country.'¹⁷

4.2.2 The USSD Human Rights report 2019 noted:

'The constitution prohibits arbitrary arrest and detention and limits arrests to those caught in the act of committing a crime or called for by order of a judicial authority; however, police at times did not respect this prohibition. The law provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court. The government generally observed this provision.

'Officials must advise persons of their rights at the time of arrest or before taking them into custody for interrogation. The law prohibits use of force

¹⁵ CIA, '[World factbook: Brazil](#)' (Military and Security), June 2020

¹⁶ The Law Society Gazette, '[Brazil's 'malformed' penal code](#)', 6 May 2013

¹⁷ Pretrial Rights International, '[Brazil Profile](#)', undated

during an arrest unless the suspect attempts to escape or resists arrest. According to human rights observers, some detainees complained of physical abuse while being taken into police custody.

'Authorities generally respected the constitutional right to a prompt judicial determination of the legality of detention. The law permits provisional detention for up to five days under specified conditions during an investigation, but a judge may extend this period. A judge may also order temporary detention for an additional five days for processing. Preventive detention for an initial period of 15 days is permitted if police suspect a detainee may flee the area. Defendants arrested in the act of committing a crime must be charged within 30 days of arrest. Other defendants must be charged within 45 days, although this period may be extended. In cases involving heinous crimes, torture, drug trafficking, and terrorism, pretrial detention could last 30 days with the option to extend for an additional 30 days. Often the period for charging defendants had to be extended because of court backlogs. The law does not provide for a maximum period of pretrial detention, which is decided on a case-by-case basis. Bail was available for most crimes, and defendants facing charges for all but the most serious crimes have the right to a bail hearing. Prison authorities generally allowed detainees prompt access to a lawyer. Indigent detainees have the right to a lawyer provided by the state. Detainees had prompt access to family members. If detainees are convicted, time in detention before trial is subtracted from their sentences...

'On July 17, the National Council of Justice stated that 41 percent of prisoners nationwide were in pretrial detention. A study conducted by the Ministry of Justice's National Penitentiary Department in 2018 found that more than half of pretrial detainees in 17 states had been held in pretrial detention for more than 90 days. The study found that 100 percent of pretrial detainees in Sergipe State, 91 percent in Alagoas State, 84 percent in Parana State, and 74 percent in Amazonas State had been held for more than 90 days. In January, for the first time, the state of Piaui fell below the national average for its percentage of pretrial detainees. In 2009 the state had the second highest percentage of pretrial detainees (71 percent), but in 2019 the National Council of Justice reported that the rate had fallen to almost 40 percent. According to Judge Sebastiao Ribeiro Martins, president of the Piaui state supreme court, the reduction was a result of the efforts of magistrates and civil servants, structural improvements of the state judiciary, and efforts by the state's General Justice Office to expedite the prosecution of criminal cases.'¹⁸

[Back to Contents](#)

Section 5 updated: 3 November 2020

¹⁸ USSD, '[2019 Human Rights Practices Report-Brazil](#)', 11 March 2020 (section 1d)

5. Capability of the police

5.1 Effectiveness

5.1.1 The USSD Human Rights report 2019 noted: 'Civilian authorities at times did not maintain effective control over security forces.'¹⁹

5.1.2 The Bertelsmann Stiftung Transformation Index (BSTI) 2020 Brazil report however noted that: 'Civilian authorities generally maintain effective control of the federal security forces...'²⁰

5.1.3 The BSTI 2020 Brazil report also noted that:

'... Police forces, which patrol the streets and investigate crimes, are decentralized and under control of the state governments. In February 2018, President Temer ordered the army to take overall responsibility for public security in the city of Rio de Janeiro, arguing that this was the only response to extreme violence. The mandate for the armed forces ended in December 2018 and did not lead to the desired results. Between February and December 2018, shootings in Rio de Janeiro rose 56% compared with the same period in 2017. Although the overall number of homicides decreased 5%, the number of people killed in military operations rose by 40%.'²¹

5.1.4 BSTI also stated:

'As a consequence of violent crime, corruption, mistrust of the police and highly centralized federal legal codes, many Brazilians do not feel that they are in a position to ensure their personal safety. In 2017, 63,880 people died violently in Brazil. The murder rate went from 29.9 per 100,000 people in 2016 to 30.8 in 2017, a 3.7% increase. There was a 20% increase in the number of deaths resulting from police action.

'For Brazilian society, the lack of public security has been a central problem for years. At the same time, the impression prevailed that politics was not really interested in this topic. This benefited Jair Bolsonaro, who made public safety a central theme of his campaign for the 2018 presidential election. Bolsonaro proposed liberalizing Brazil's strict gun laws and waiving punishments for police officers who use violence.'²²

5.1.5 The Human Rights Watch report, events of 2018 stated: 'Violence reached a new record in Brazil, with some 64,000 killings in 2017. Police solve just a small fraction of homicides.'²³

5.1.6 The USSD OASC 2020 Crime and Safety report for Brasilia observed 'Local police in Brasília are generally well equipped and responsive to requests for assistance from U.S. and other foreign visitors. However, disparities do exist across Brazil's 27 states in terms of response capability and law enforcement resources for public security.'²⁴

5.1.7 The OASC 2020 Crime and Safety report for Rio de Janeiro noted:

¹⁹ USSD, '[2019 Human Rights Practices Report-Brazil](#)' (section) 11 March 2020

²⁰ BSTI, '[2020 Brazil Country Report](#)' (p6), 29 April 2020

²¹ BSTI, '[2020 Brazil Country Report](#)' (p6), 29 April 2020

²² BSTI, '[2020 Brazil Country Report](#)' (p12), 29 April 2020

²³ HRW, '[Brazil – Events of 2018](#)', 17 January 2019

²⁴ USSD OASC, '[Brazil 2020 Crime & Safety Report: Brasilia](#)', 13 May 2020

‘Police response varies greatly. Police officials frequently cite a lack of resources, staffing shortages, lack of basic equipment, and low morale as reasons for widely varying response times and unsolved crime. Police labor unions advocate and occasionally organize strikes that result in absences of police personnel in key areas.

‘Police-involved shootings resulted in over 1,800 civilian deaths in the state of Rio de Janeiro over the past year (highest rates since 1991).

‘Law enforcement entities continue to look for creative policing strategies to overcome financial and infrastructure challenges to crime prevention, such as community policing, officers on motorcycles, and extensive implementation of surveillance cameras. Recent implementation of “Operation Presence” to increase the overt law enforcement presence in certain heavily populated areas of the city has yielded some positive results. This increase in overt policing has succeeded due to substantial funding by the local Brazilian private sector and has expanded to more Rio de Janeiro neighborhoods.’²⁵

- 5.1.8 The OASC 2020 Crime and Safety report for Recife observed ‘Due to a lack of resources and equipment, as well as staffing shortages, police response times may be slow. Because of these same issues, police have a higher [sic] rate of unsolved crimes. When reporting a crime, you may have to go to a police station or report less serious crimes via the internet.’²⁶ While the OASC report for Sao Paulo noted:

‘In relation to its population, São Paulo enjoys some of the lowest crime rates in Brazil. However, the sheer volume of crime committed in São Paulo makes it very difficult for authorities to respond to all security calls in a timely fashion. Police officials frequently cite a lack of resources, staffing shortages, lack of basic equipment, traffic conditions, and morale as reasons for widely varying response times and unsolved crime. When police do respond, victims must go to the police station to file a report and complete other investigative formalities. Public confidence in police is low due to perception of heavy handedness, ineffectiveness, and corruption.’²⁷

- 5.1.9 The OASC 2020 Crime and Safety report for Porto Alegre stated:

‘Police response varies in Porto Alegre. Police officials frequently cite lack of resources, unpaid wages, staffing shortages, lack of basic equipment, and low morale as reasons for widely varying response times and unsolved crimes. When police do respond, victims must go to the police station to file a report and complete other investigative formalities. In general, public confidence in police is low due to perception of heavy handedness, ineffectiveness, and corruption. However, confidence has increased somewhat in the past few years.’²⁸

- 5.1.10 See also:

- [USSD, ‘2020 Trafficking in Persons Report: Brazil’, 2020](#)

²⁵ USSD OASC, ‘[Brazil 2020 Crime & Safety Report: Rio de Janeiro](#)’, 13 May 2020

²⁶ USSD OASC, ‘[Brazil 2020 Crime & Safety Report: Recife](#)’, 13 May 2020

²⁷ USSD OASC, ‘[Brazil 2020 Crime & Safety Report: São Paulo](#)’, 13 May 2020

²⁸ USSD OASC, ‘[Brazil 2020 Crime & Safety Report: Porto Alegre](#)’, 13 May 2020

- [UN International Human Rights Instruments, 'Common core document forming part of the reports of States parties: Brazil', August 2020](#)

[Back to Contents](#)

5.2 Corruption

5.2.1 The Freedom House 2020 Freedom in the World Report noted 'Brazil's police force remains mired in corruption...' ²⁹

5.2.2 The USSD Human Rights report 2019 noted:

'There were numerous reports of corruption at various levels of government.

'...Corruption: In June [2019] the Federal Police launched an operation to dismantle a network of federal police agents and federal highway police personnel who leaked information about police operations in the state of Santa Catarina to businesspersons and politicians. As part of the operation, federal police agents arrested the mayor of Florianopolis, Gean Loureiro, for allegedly ordering Paraguayan spy equipment to be smuggled in and placed in the city hall. Loureiro was held for less than 24 hours but was relieved of office for 30 days while the investigation was underway.' ³⁰

5.2.3 See also [Government of Brazil anti-corruption laws and legislations](#) (in Portuguese)

[Back to Contents](#)

5.3 Human rights abuses

5.3.1 The Human Rights Measurement Initiative (HRMI) noted:

'In 2019, the Human Rights Measurement Initiative conducted a 19-country survey measuring civil and political rights performance.

'...These data paint a bleak picture in the context of the Bolsonaro presidency.

'...While Brazil does perform comparatively well in providing access to food, education and work to its citizens, it is one of the worst performers with respect to physical safety from the state.

'These 'physical integrity' rights include the rights to freedom from disappearance, arbitrary arrest, execution and torture.' ³¹

5.3.2 ESCR-Net noted that 'According to Conectas Direitos Humanos... Bolsonaro has already encouraged... empowering the police employ [to use] deadly force with impunity.' ³²

5.3.3 The Human Rights Watch report, events of 2019 stated:

'Violent deaths fell 11 percent in 2018, but high crime levels remain a problem around the country. Police abuses make fighting crime harder by discouraging communities from reporting crimes or cooperating with investigations. Those abuses contribute to a cycle of violence that undermines public security and endangers the lives of civilians and police

²⁹ Freedom House, '[2020 Freedom in the World Report-Brazil](#)' (section F3) , 4 March 2020

³⁰ USSD, '[2019 Human Rights Practices Report: Brazil](#)' (section 4), 11 March 2020

³¹ HRMI, '[The future of human rights in Brazil](#)', undated

³² ESCR-Net, '[Groups defend human rights following Bolsonaro election](#)', 20 November 2018

officers alike. In 2018, 343 police officers were killed, two-thirds of them off duty.

'Killings by police jumped 20 percent in 2018, reaching 6,220, state data compiled by the nonprofit Brazilian Forum on Public Security show. While some police killings are in self-defense, many others are the result of unlawful use of force. In São Paulo, killings by on-duty officers went up by 8 percent from January through September 2019. In Rio de Janeiro, police killed 1,402 people from January through September, the highest number on record for that period.

'President Bolsonaro has encouraged police to kill suspects. Criminals should "die like cockroaches," he said in August. His administration sent a bill to Congress, which he said was intended for police officers, to allow judges to suspend sentences of people convicted of homicide if they acted out of "excusable fear, surprise, or intense emotion." President Bolsonaro also announced he would pardon police officers convicted of crimes if he deemed the conviction to be "unfair"

'In Rio de Janeiro, the governor has encouraged police to kill armed suspects. Three days after 8-year-old Ágatha Félix was killed during a police operation in September, the governor changed a bonus scheme that had been credited with helping reduce police violence. Under the new rules, officers will no longer be rewarded when police killings drop.

'In São Paulo, prosecutors sued the state government to force it to reduce killings by and of police officers, and install cameras and other technology to help investigate police misconduct.'³³

5.3.4 The USSD Human Rights report 2019 noted:

'Civilian authorities at times did not maintain effective control over security forces....

'There were reports that state police committed unlawful killings. In some cases police employed indiscriminate force. The Brazilian Public Security Forum reported police killed 6,160 civilians in 2018, compared with 5,225 in 2017. The extent of the problem was difficult to determine, however, because comprehensive, reliable statistics on unlawful police killings were not available.'³⁴

5.3.5 The Freedom House 2020 Freedom in the World Report noted 'Brazil's police force remains mired in...serious police abuses, including extrajudicial killings, continued in 2019. Police officers are rarely prosecuted for abuses, and those charged are almost never convicted. A 2019 Brazilian Forum of Public Security report found that, on average, 17 people died per day in 2018 due to the actions of police officers, a 19.6 percent increase from the previous year.'³⁵

5.3.6 The Bertelsmann Stiftung Transformation Index (BSTI) 2020 Brazil report however noted that: '... state-level security forces have committed numerous

³³ HRW, '[Brazil – Events of 2019](#)', 14 January 2020

³⁴ USSD, '[2019 Human Rights Practices Report-Brazil](#)', 11 March 2020 (section 1a)

³⁵ Freedom House, '[2020 Freedom in the World Report-Brazil](#)' (section F3) , 4 March 2020

human rights abuses such as unlawful killings, use of excessive force, beatings, abuse, and torture of detainees and inmates. Federal, state and military police often enjoy impunity in cases of torture, as in other cases of abuse.’³⁶

- 5.3.7 The Human Rights Watch (HRW) Brazil home page noted that ‘Chronic human rights problems plague Brazil. Some police officers kill unlawfully, torture detainees, and mistreat children in conflict with the law...Perpetrators of abuses during the military rule of 1964 to 1985 continue to be shielded from justice by an amnesty law passed by the military regime.’³⁷
- 5.3.8 The Congressional Research Service stated ‘ preliminary data suggest that security conditions in Brazil improved in 2019, as the country registered a 19% decline in homicides. The number of individuals killed by police increased, however, including an 18% spike in the state of Rio de Janeiro. In recent years, more than 75% of those killed by police have been Afro-Brazilian.’³⁸
- 5.3.9 See also:
- [Amnesty International, ‘Annual report 2019 - Brazil 2019’, February 2020.](#)
 - [Reuters, ‘Brazil drops police-from human rights report amid global protests against racism and abuse’, 12 June 2020](#)
 - [HRW, ‘Brazil Suffers its Own Scourge of Police Brutality’, 3 June 2020](#)
 - [BBC, ‘Rio violence: Police killings reach record high in 2019’, 23 January 2020](#)
 - [Yahoo News, ‘Bolsonaro pardons Brazil security forces convicted of...’, 24 December 2019](#)
 - [HRW, ‘Brazil: Killings, Abuses in Amazon Police Operation’, 8 August 2020](#)
 - [USSD, ‘2020 Trafficking in Persons Report: Brazil’, 2020](#)
 - [VOA News, ‘Demonstrators in Brazil Protest against Crimes Committed by Police’, 1 June 2020](#)

[Back to Contents](#)

5.4 Militias

- 5.4.1 The Bertelsmann Stiftung Transformation Index (BSTI) Country Report for Brazil noted:

‘In several large cities, the state is unable to completely guarantee private and public security. Organized crime funded by weapons and drugs trafficking is extremely powerful in several metropolitan areas, including Rio de Janeiro, Rio Grande do Norte and Recife. Among the states with the greatest violence and security problems are Sergipe, Rio Grande do Norte, Alagoas, Pará, Amapá, Pernambuco, Bahia, Goiás, Ceará and Rio de Janeiro. While some parts of metropolitan areas are controlled by drug-

³⁶ BSTI, ‘[2020 Brazil Country Report](#)’ (p6), 29 April 2020

³⁷ HRW, ‘[Brazil](#)’, 14 January 2020

³⁸ CRS, ‘[Brazil: Background and US relations](#)’, updated 6 July 2020

trafficking gangs, others are under the influence of militias. These are para-military organizations, largely formed by off-duty police and firemen. Militias control numerous favelas and operate in many neighborhoods. Several million people live in areas controlled by militias. They are known to carry out executions, extract protection money and threaten those who refuse to pay.

'...Most violent crime is related to the illegal drug trade. In many states, police groups referred to as "death squads" terrorize shantytown dwellers and intimidate human rights activists.'³⁹

5.4.2 A 2019 article in Deutsche Welle by the journalist and author Anabel Hernández noted:

'The criminal "militias" in Brazil are mostly made up of police officers who commit violent crimes and go unpunished in those areas which have been given up by the state. They control more than half of the country.

'...According to information from the Brazilian federal police, these militias are made up of public servants from the area of public security: they are members of the police force, the military police, and even the fire brigade, who commit crimes that go unpunished. "The people work for the state and at the same time for organized crime," a senior police officer told me.

'The militias are dedicated to extortion, collecting protection money, controlling the supply of gas, public transport, access to cable television, rented property; they organize illegal gambling, control the drug and weapons trade and even operate illegal mining. According to the federal police, they generate just in Rio de Janeiro a turnover of 100 million dollars (91 million euros) a year.

'...In Brazil, there is a concern that militias from active, well-trained and equipped, violence-prone public servants are formed. Various militias have been distributed across the country. Through the anonymity in which they operate, it is unknown exactly how many groups there are or how many members it has.

'...The officers of the Brazilian federal police showed...a map of Brazil. The country has 26 federal states and according to this map, the militias are represented in 18 states, more than half of the fifth-largest country in the world.'⁴⁰

[Back to Contents](#)

5.5 Oversight bodies and mechanisms

5.5.1 The United Nations Office of Drugs and Crime (UNODC) stated:

'One of UNODC's strategical lines of action in Brazil is to support the federal government in the implementation of preventive measures in the fight against corruption. The main agency in liaison with UNODC in this field is the [Brazilian Office of the Comptroller General](#) (CGU), a Brazilian governmental agency within the Presidency of the Republic responsible for

³⁹ BSTI, '[2020 Country Report-Brazil](#)' (p6&11), 2020

⁴⁰ Deutsche Welle (DW), '[Against the current: Brazil's dangerous militias](#)', 4 September 2019

preventing and fighting corruption, with roles of internal control and promotion of transparency in public affairs.’⁴¹

5.5.2 The Law on Police Use of Force Worldwide website, managed by the Institute for International and Comparative Law in Africa (ICLA) and the Centre for Human Rights of the Faculty of Law of the University of Pretoria noted:

‘In Brazil, the military courts have jurisdiction over cases involving military crimes defined as such by the Military Penal Code. This typically covers the actions of the Military Police. There is also the possibility of policemen committing “ordinary crimes.” In these cases, they can either be tried by the relevant state court or by the federal courts.

‘Police officers may be charged with the commission of torture under Law 9.455/97 of 7 April 1997.

‘...The former attorney general of São Paulo state, Fernando Grella Vieira, expanded the mandate of the Special Task Force on Police Control (GECEP), a unit within the state prosecutor’s office, instructing it to investigate alleged abuses committed by military police officers. One consequence of the new mandate is the creation of a database of cases to help prosecutors identify patterns of police violence. Prosecutors participating in the GECEP are required to, among other actions, to register in the Institution's database and to analyse the occurrences of possible offenses by state agents that have resulted in death, torture or injury.

‘From 1999 to 31 March 2012, the Rio Police Ombudsman’s Office recorded more than 11,300 complaints against police officers concerning criminal conduct. These complaints generated only 43 criminal charges by state prosecutors and four convictions.

‘The “Juan” case led to the introduction of new guidelines on the investigations into “resistance killings” in Rio de Janeiro. The disappearance of Juan de Moraes was one of many incidents of police violence in 2011. Mr de Moraes disappeared on June 20 after an incident in the Danon favela in which three others were shot by military police. No serious investigation into the shoot-out took place. It was only after considerable media attention that civil police investigated the scene of the shooting and sought out eyewitness testimony. They found Mr de Moraes’ DNA at the crime scene and other evidence which indicated that no shoot-out had in fact taken place. Ten days later, they discovered his body in a river.

‘After this incident, the Civil Police Chief Martha Rocha introduced civil police regulations on “resistance” killing investigations. Regulation PCERJ N° 553 of 7 July 2011 requires civil police to immediately isolate and analyse the crime scene; to test guns used by police during the operation that led to the shooting; to collect eyewitness testimonies, and to conduct separate interviews with all police officers involved.’⁴²

5.5.3 The same source also noted:

⁴¹ UNODC, ‘[Corruption: Actions](#)’, undated

⁴² The Law on Police Use of Force Worldwide, ‘[Brazil](#)’ (police oversight), 31 July 2019

'The 1941 Criminal Procedure Code establishes the principle of use of force in self-defence ("auto de resistência") whereby force shall not be used except in the case of "resistance" or else in thwarting the attempted escape of a prisoner. The law further states that "if there is resistance to arrest", law enforcement officials can "use whatever means necessary to defend themselves or to overcome resistance". It is asserted that this law has been used consistently in certain parts of the country to evade accountability for police killings.'⁴³

5.5.4 The 2019 Human Rights Watch (HRW) Report noted that 'In São Paulo, the police ombudsman examined hundreds of police killings in 2017, concluding that police used excessive force in three-quarters of them, sometimes against unarmed people.'⁴⁴

5.5.5 The USSD human rights report for 2019 noted: 'The government prosecuted officials who committed abuses; however, impunity and a lack of accountability for security forces was a problem, and an inefficient judicial process at times delayed justice for perpetrators as well as victims.'⁴⁵

5.5.6 Amnesty International 2019 Annual Report stated

'One year after human rights defender Marielle Franco and her driver Anderson Gomes were killed in the city of Rio de Janeiro, the Rio de Janeiro State Civil Police arrested retired police officer Ronie Lessa and former police officer Elcio de Queiroz for the killings. On 14 March, fourteen experts and rapporteurs from the United Nations and the Inter-American Commission on Human Rights, in a note released in Geneva, acknowledged the work carried out by police investigators and prosecutors to uncover the truth and the progress made in the case. However, they stressed that more needed to be done to establish the motives for the attack and uncover those behind it and they urged the authorities to conclude the investigation as soon as possible by bringing all those suspected of criminal responsibility for the crime, including those superiors who may have ordered, authorized or consented the crime, to justice in fair trials and providing reparation for the families.

'Marielle Franco had been an outspoken supporter of the rights of black youth, women, those living in poverty, lesbian, gay, bisexual, transgender and intersex people, and the victims of police violence in Rio de Janeiro. Allegations that President Bolsonaro's family had links with those responsible for the killing were dismissed by the authorities. Nevertheless, the delay in resolving the case fuelled concerns that senior governmental figures could be implicated in the killing.

'In July, the UN High Commissioner for Human Rights wrote to the Brazilian authorities regarding the case of 16-year-old Davi Fiuza, who was the victim of enforced disappearance in Salvador, Bahia state, in 2014. The Commissioner reiterated previous recommendations in the case and requested information to explain why the results of investigations concluded

⁴³ The Law on Police Use of Force Worldwide, '[Brazil](#)' (police oversight), 31 July 2019

⁴⁴ HRW, '[Brazil – Events of 2018](#)', 17 January 2019

⁴⁵ USSD, '[2019 Human Rights Practices Report-Brazil](#)' (executive summary), 11 March 2020

by the Civil Police Unit in April 2016 were transmitted to the Public Prosecutor's Office only on 7 July 2017 and again on 2 August 2018. The trial was transferred to the military court and there was no information on the process.⁴⁶

- 5.5.7 CPIT was unable to find in the available sources (see Bibliography) any current information with regard the police ombudsman.

[Back to Contents](#)

Section 6 updated: 3 November 2020

6. Rule of law and the judiciary

6.1 Structure

- 6.1.1 A 2020 Wilson Center report noted:

'Brazil's judiciary is a multifaceted system that operates on the state and federal levels, much like the U.S. judicial system. Primarily based on the civil law tradition, it divides cases into several different jurisdictions, including labor, electoral, military, constitutional and non-constitutional. It also includes three instances of appeal, with cases able to advance from first-level courts all the way to either the Supreme Federal Court or the Superior Court of Justice.'⁴⁷

- 6.1.2 An International Security Sector Advisory Team (ISSAT) country profile noted:

'Brazil's judiciary is comprised of lower courts, which are divided into federal and state branches, and specialised courts, which include the military, labour, and electoral courts. Each of these specialised courts answers to a superior tribunal: the Superior Military Court (Superior Tribunal Militar), the Superior Court of Labour (Tribunal Superior do Trabalho), and the Superior Electoral Court (Tribunal Superior Eleitoral). The Military Court has three regional courts, based in the states of Minas Gerais, São Paulo and Rio Grande do Sul.

'For state and federal courts, the superior tribunal is the Superior Court of Justice (Superior Tribunal de Justiça). Higher than any of these bodies is the Supreme Federal Court (Supremo Tribunal Federal)—the country's highest court of law and the equivalent to the Constitutional Court—and the National Justice Council (Conselho Nacional de Justiça) which oversees the judiciary and investigates those accused of corruption.

'Brazil's Office of the Attorney General of the Union (Advocacia-Geral da União–AGU) is responsible for providing legal advice to the state, and for representing the federal government before the courts. Responsible for overseeing criminal prosecutions and protecting the public interest is the Office of the Prosecutor General (Procuradoria Geral da República-PGR), part of the Public Ministry (Ministério Público Federal). There is also a Comptroller General's Office (Controladoria-Geral da União–CGU) which oversees transparency within the federal government. Additionally, there is a special commission meant to curb abuses within the Public Ministry, the

⁴⁶ Amnesty International, '[Brazil](#)', February 2020. Last accessed: 20 August 2020

⁴⁷ Wilson Center, '[The Brazilian Judicial System](#)', August 2020

National Council of Public Ministry (Conselho Nacional do Ministério Público-CNMP).

'There are two Ombudsman offices; the Ombudsman-General of the Federal Government (Ouvidoria Geral do Governo Federal), responsible for processing citizen complaints against government institutions from 152 local Ombudsman offices across the country, and the Ombudsman-General of Citizenship (Ouvidoria-Geral da Cidadania), a special office of the presidency responsible for looking at reports of human rights violations.'

[Back to Contents](#)

6.2 Independence and effectiveness of the judiciary

6.2.1 An International Security Sector Advisory Team (ISSAT) country profile referred to Brazil's 'inefficient judiciary'.⁴⁹

6.2.2 The Freedom House Freedom in the World 2020 Report noted:

'The judiciary, though largely independent, is overburdened, inefficient, and often subject to intimidation and other external influences, especially in rural areas. Despite these shortcomings, the country's progressive constitution has resulted in an active judiciary that often rules in favor of citizens over the state.

'In June 2019, revelations emerged that Justice Minister Moro, when he had served as a judge, colluded with federal prosecutors by offered advice on how to handle a corruption case against former president Luiz Inácio "Lula" da Silva, who was convicted of those charges in 2017. Moro has not denied the existence of the leaked text messages at the center of the revelations, but claims they were misrepresented by the Intercept Brasil, which published them, and do not show misconduct.'

6.2.3 The USSD Human Rights report 2019 noted: 'The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality. Local NGOs, however, cited that corruption within the judiciary, especially at the local and state levels, was a concern.'

6.2.4 According to the World Justice Project's (WJP) Rule of Law Index 2020 which measures adherence to the rule of law by looking at policy outcomes, such as whether people have access to courts or whether crime is effectively controlled, and based on the experiences and perceptions of the general public and in-country legal practitioners and experts worldwide, Brazil ranked 67 out of 128 countries and scored 0.52, where 1 signifies the strongest adherence to the rule of law and 0 signifies the least. Regionally [Latin America and Caribbean], Brazil scored 16 out of 30 countries, sited between Panama (15) and Guyana (17) [with 17 indicating the least adherence to the rule of law]⁵².

[Back to Contents](#)

⁴⁸ ISSAT, '[Brazil Country-Profile](#)', last updated 2 February 2015

⁴⁹ ISSAT, '[Brazil Country-Profile](#)', last updated 2 February 2015

⁵⁰ Freedom House, '[2020 Freedom in the World Report-Brazil](#)' (section F1), 4 March 2020

⁵¹ USSD, '[2019 Human Rights Practices Report-Brazil](#)' (section 1e), 11 March 2020

⁵² WJP, '[Rule of Law Index 2020](#)' (p.16 and 18), 2020

6.3 Trial procedures

6.3.1 The USSD Human Rights report 2019 noted:

‘The constitution provides for the right to a fair and public trial, and an independent judiciary generally enforced this right, although NGOs reported that in some rural regions—especially in cases involving land rights activists—police, prosecutors, and the judiciary were perceived to be more susceptible to external influences, including fear of reprisals. Investigations, prosecutions, and trials in these cases often were delayed.

‘After an arrest a judge reviews the case, determines whether it should proceed, and assigns the case to a state prosecutor, who decides whether to issue an indictment. Juries hear cases involving capital crimes; judges try those accused of lesser crimes. Defendants enjoy a presumption of innocence and have the right to be present at their trial, to be promptly informed of charges, not to be compelled to testify or confess guilt, to confront and question adverse witnesses, to present their own witnesses and evidence, and to appeal verdicts. Defendants generally had adequate time and facilities to prepare a defense but do not have the right to free assistance of an interpreter.

‘Although the law requires trials be held within a set time, there were millions of backlogged cases at state, federal, and appellate courts, and cases often took many years to be concluded. To reduce the backlog, state and federal courts frequently dismissed old cases without a hearing. While the law provides for the right to counsel, the Ministry of Public Security stated many prisoners could not afford an attorney. The court must furnish a public defender or private attorney at public expense in such cases, but staffing deficits persisted in all states.’⁵³

6.3.2 The Freedom House Freedom in the World 2020 Report noted:

‘The judiciary generally upholds the right to a fair trial. However, federal, state, and appellate courts are severely backlogged. The state struggles to provide legal counsel for defendants and prisoners who are unable to afford an attorney. Access to justice also varies greatly due to Brazil’s high level of income inequality. Under a 2017 law, members of the armed forces and military police accused of certain serious crimes against civilians can be tried in military, rather than civilian, courts.

‘In March 2019, the Supreme Court opened a secretive investigation, without the participation of the Attorney General’s Office, into what was characterized as false news about and threats to the court, and at least 60 cases developed from the investigation. Prosecutors filed lawsuits against the investigation, arguing that it fell outside the Supreme Court’s jurisdiction. The court attempted to suppress media reports about the investigation and cases that came from it, but relented after sharp criticism from press freedom groups.’⁵⁴

⁵³ USSD, ‘[2019 Human Rights Practices Report-Brazil](#)’, 11 March 2020 (section 1e)

⁵⁴ Freedom House, ‘[2020 Freedom in the World Report-Brazil](#)’, 4 March 2020 (section F2)

6.3.3 Fair Trials, who describe themselves as ‘a human rights organisation that works to improve respect for the fundamental human right to a fair trial’ and are an ‘...independent non-profit organisation with no party-political affiliations. [...] funded by a combination of charitable grants and donations’⁵⁵, stated in a legal opinion piece article from June 2020 noted:

‘This new law expanded the limits of some negotiation instruments, for example the deal fixed on the article 28-A[8] of Brazil’s Code of Criminal Procedure, brought by this new law.

‘...the existence of this tiny possibility of bargaining a penalty helps increase overcharging, which has been strongly common in Brazil, and is completely incompatible with Brazil’s Constitution and its principles.

‘...using plea bargain, prosecutors possess too much discretion in choosing the charges that a criminal defendant may face, and that turns the procedure strongly unfair.

‘...[the] plea bargain is not compatible with Brazil’s Justice System.’⁵⁶

[Back to Contents](#)

Terms of Reference

A ‘Terms of Reference’ (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office’s Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

⁵⁵ Fair Trials, [‘Who are Fair Trials?’](#), 17 June 2020

⁵⁶ Fair Trials, [‘Why is it dangerous to import plea bargaining to Brazil?’](#), 17 June 2020

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Security apparatus
 - Overview
 - Police force
 - Intelligence agencies
 - Armed forces
- Legal rights
 - Penal/criminal code
 - Arrest and detention
- Capability of the security forces
 - Effectiveness
 - Corruption
 - Avenues of redress
- Rule of law and the judiciary
 - Organisation
 - Independence
 - Fair trial
- Human rights abuses

[Back to Contents](#)

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[Back to Contents](#)

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[Back to Contents](#)

Version control

Clearance

Below is information on when this note was cleared:

- version **1.0**
- valid from **11 November 2020**

Changes from last version of this note

First version of CPIN

[Back to Contents](#)