



***Permanent Mission of Brazil to the United Nations Office
and other International Organizations in Geneva***
Ch. Louis-Dunant, 15 – 1202 – Geneva / Switzerland
Phone: (+41) (0)22 332 50 00 / Fax: (+41) (0)22 910 07 51
E-mail: delbrasgen@itamaraty.gov.br

NV n. 116 /2020

The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and would like to present the enclosed information regarding a questionnaire on commerce and the fight against torture.

The Permanent Mission of Brazil in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, May 15, 2020

OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS

REPLY OF BRAZIL TO THE QUESTIONNAIRE ON TRADE AND TORTURE BASED ON RESOLUTION GA 73/204

Questionnaire

1. What are the regional and/or national instruments or policies guiding your country for the regulation of trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment? Please provide examples. Which government department/agency is responsible for monitoring the implementation of such regulations/policies, if any?

- Brazil is has ratified all the core international and regional human rights instruments, including those particularly related to torture and the death penalty, such as the American Convention on Human Rights and its Additional Protocol to Abolish the Death Penalty; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol. There are, however, no specific national regulations concerning the international trade of goods used for the purpose of capital punishment or torture treatment.

2. Have there been any investigations, prosecutions and/ or convictions for breaches of national regulations on the trade in goods indicated in paragraph 8 of the introduction to this questionnaire? If so, please provide details.

- N/A

3. Do you agree with the proposed categorization of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment indicated in paragraph 8 of the introduction to this questionnaire (see above)? If not, which categories would you propose?

- Although the proposed categorization seems reasonable based on a preliminary analysis, administrative control would be difficult to be put in practice, given the number of products that could be diverted in their use.

4. Please indicate whether you believe there should be an exhaustive list of goods under each category. If yes, should there be a mechanism for regular updating of the lists under each category?

- The creation of an exhaustive list would only make trade control possible at times when there is an appropriate fiscal classification of the good. The effective control based on an exhaustive list therefore relies, to a great extent, on the correct classification of the good by the competent authority. Any collective exercise on the fiscal classification of such goods should involve the expertise of the World Customs Organization (WCO) on this matter.

5. Should the proposed common international standards prohibit trade in goods which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment? If not, please provide further explanations.

- Such trade should be prohibited (please refer to item 9).

6. Should the proposed common international standards provide for strict control of trade in goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and goods that could be used for the purpose of capital punishment? If not, please provide justification.

- Practicing the strict control of such trade would be a great challenge (please refer to items 3, 4, 8 and 9).

7. What types of activities linked to "import, export and transfer" should the proposed common international standards regulate? Please consider activities such as transit, promotion, technical assistance and training, brokering, sharing technology manufacturing, production and commercial marketing, among others. Please also provide an explanation for why these activities should be regulated or not.

- With regard to transit, practicing the strict control of such trade would be a great challenge (please refer to items 3, 4, 8 and 9).

8. Please indicate which risk assessment mechanisms and criteria should be considered for the import, export and transfer of a) goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and b) goods that could be used for the purpose of capital punishment. Please consider, inter alia, the criteria for preventing diversion to third countries.

- The control of trade in goods that can potentially be diverted in their use would hardly be feasible. The definition of an exhaustive list of goods potentially used for capital punishment would make the control possible, although the risk of diverting its use would not be eliminated (please refer to items 3, 4 and 9).

9. Please indicate what you consider to be the most suitable type of international instrument to establish common international standards for regulating goods used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. Please provide further explanation.

- The debate regarding the possible trade implications of this issue is still in its early stages internationally. Therefore, the negotiation of an international legally binding instrument in this area seems premature, considering that it could result in unnecessary barriers to trade in products which have legitimate purposes and uses (please refer to items 3, 4, 8 and 9). The major challenge for the establishment of "common international standards" would be the definition of its scope. These international standards could therefore be reflected in the elaboration of trade guidelines, recommendations or advisories which take into account the relevant national and international commitments already in place in the area of human rights, such as the American Convention on Human Rights and its Additional Protocol to Abolish the Death Penalty; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol.