

INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION



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COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION
Second session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Note by the Secretary-General

Addendum

BRAZIL

Original: English/Portuguese
16 February 1970

The Secretary-General has received the following communication from the Permanent Representative of Brazil to the United Nations:

"I have the honour to inform you that since racial discrimination does not exist in Brazil, the Brazilian Government has no necessity to take sporadic measures of a legislative, juridical or administrative nature in order to assure equality of races.

For reference purposes, however, I am pleased to transmit herewith a copy of legal opinion No. 1/1970 presented by the Legal Counsel of the Ministry of Justice, citing provisions of the law of the land relevant to racial questions.

I will be much obliged if the information can be transmitted to the Committee on the Elimination of Racial Discrimination at your earliest convenience."

MINISTRY OF JUSTICE AND OF THE INTERIOR

OPINION NO. 1/1970

The position taken by the Minister of External Relations, namely, that "since racial discrimination does not exist in Brazil, there is no need to take sporadic measures of a legislative, judicial or administrative nature in order to assure equality of races in Brazil", seems to me correct.

Having regard to the proposal to bring to the notice of the Committee existing national legislation on the subject, I am citing the titles and provisions of that legislation below.

1. In Brazil racial equality is a constitutional principle. The chapter entitled "Individual Rights and Guarantees" of the Constitution of the Federative Republic of Brazil of 24 January 1967, as amended by Amendment No. 1 of 17 October 1969, provides as follows:

"Art. 153. The Constitution guarantees Brazilians and foreigners residing in the country inviolability of the rights concerning life, liberty, security and property, in the following terms:

"1. All are equal before the law, without distinction as to sex, race, occupation, religious creed, or political convictions. Racial prejudice shall be punished by law.

...

"3. The expression of thought or of political or philosophic conviction and the providing of information shall be free and shall not be subject to censorship, except as regards public performances and entertainments, and every person shall be responsible, under the law, for any abuses of which he may be guilty. The right of reply shall be guaranteed. The publication of books, newspapers and periodicals shall not be dependent upon licence from an authority. However, propaganda inciting to war, to subversion of law and order, or to religious, racial or class prejudice, and publications or displays offensive to public morals, shall not be tolerated."

Moreover, the Constitution in Title III, "The Economic and Social Order", provides as follows:

"Art. 165. The Constitution guarantees workers the following rights, in addition to others which, in accordance with the law, aim at improving their social condition:

...

"III. No discrimination in wages or in criteria for employment based on sex, colour or civil status;"

/...

The right of racial equality, as an individual right, may be claimed through the judiciary, when it has been violated, by virtue of the principle of jus naturas, which is embodied in the following passage of the Constitution (art. 153 (4)):

"The law shall not preclude any injury to individual rights from consideration by the judiciary."

2. In civil matters, racial equality is guaranteed by the relevant Code (Act No. 3071 of 1 January 1916), article 2 of which provides as follows:

"Everyone is the subject of rights and obligations of a civil nature."

3. Commercial legislation bases itself on the precepts set forth by the Constitution and the Civil Code in the matter of capacity.

4. With regard to international relations, Brazil signed and ratified (Legislative Decree No. 2 of 1951) the Convention on the Prevention and Punishment of the Crime of Genocide, signed in December 1948 during the third session of the United Nations General Assembly. It signed, ratified (Legislative Decree No. 23 of 1967) and promulgated (Decree No. 65,810 of 8 December 1969) the International Convention on the Elimination of All Forms of Racial Discrimination.

5. In the field of criminal law, both ordinary and special, Brazilian legislation is even more vigorous in protecting racial equality before the law.

Under Act No. 1390 of 3 July 1951, acts resulting from prejudice based on race or colour are criminal offences. The text of this Act reads as follows:

"Art. 1. Refusal by any commercial or educational establishment of any kind to lodge, serve, attend or receive a client, buyer or student owing to prejudice based on race or colour constitutes a penal offence punishable in accordance with the provisions of this Act.

"Sole paragraph. The director, manager or person in charge of the establishment shall be considered as the offender.

"Art. 2. Refusal of hospitality in a hotel, boarding house or similar establishment owing to prejudice based on race or colour. Penalty: imprisonment for three months to one year and fine from 5 to 20 new cruzeiros.

"Art. 3. Refusal owing to prejudice based on race or colour to sell merchandise in stores of any kind or to wait on customers in restaurants, bars, tea shops and similar places open to the public in which food, beverages, refreshments and sweets are served. Penalty: imprisonment for fifteen days to three months or fine of 50 centavos to 5 new cruzeiros.

/...

"Art. 4. Refusal of admission to public entertainment or sports establishments and to barbers' shops or hairdressing establishments owing to prejudice based on race or colour. Penalty: imprisonment for fifteen days to three months or fine of 50 centavos to 5 new cruzeiros.

"Art. 5. Refusal to register a student in an educational institution giving any course or grade owing to prejudice based on race or colour. Penalty: imprisonment for three months to one year, or fine of 50 centavos to 5 new cruzeiros.

"Sole paragraph. If an official educational institution is involved, the penalty shall be the dismissal of the offender after due investigation.

"Art. 6. Denial of access to any post in the public service or in any branch of the armed forces owing to prejudice based on race or colour. Penalty: dismissal after due investigation of the official in charge of the department responsible for receiving applications of candidates.

"Art. 7. Denial of employment or work to anyone in an autonomous body, mixed undertaking, public service or private enterprise owing to prejudice based on race or colour. Penalty: imprisonment for three months to one year and fine of 50 centavos to 5 new cruzeiros in the case of a private enterprise; dismissal of the person responsible for the refusal in the case of an autonomous body, a mixed undertaking or a public service.

"Art. 8. In case of repetition of the offence in private establishments, the judge may order the additional penalty of suspension for a period not exceeding three months.

"Art. 9. This Act shall enter into force fifteen days after its publication and all provisions to the contrary are repealed."

Act No. 2889 of 1 October 1956 defines and punishes the crime of genocide. It reads as follows:

"Art. 1. If a person, with the intent to destroy, wholly or partly, a national, ethnical or religious group, as such:

- (a) Kills members of the group;
- (b) Causes serious bodily or mental harm to members of the group;
- (c) Deliberately submits the group to conditions of life calculated to bring about its total or partial physical destruction;
- (d) Imposes measures intended to prevent births within the group; or
- (e) Forcibly transfers children from one group to another group;

he shall be liable:

In the case specified under (a) to the penalties prescribed in article 121, paragraph 2 of the Penal Code;

/...

In the case specified under (b) to the penalties prescribed in article 129, paragraph 2;

In the case specified under (c) to the penalties prescribed in article 270;

In the case specified under (d) to the penalties prescribed in article 125;

In the case specified under (e) to the penalties prescribed in article 148.

"Art. 2. If more than three persons associate with each other for the purpose of committing the crimes mentioned in the preceding article, they shall be guilty of an offence. The penalty shall be one-half the penalty laid down for the crimes defined in article 1.

"Art. 3. It shall be an offence directly and publicly to incite any person to commit any of the crimes mentioned in article 1. The penalty shall be one-half the penalties prescribed therein.

Para. 1. The penalty for incitement shall be the same as that for the offence itself if the offence is completed.

Para. 2. If the incitement is committed by way of the Press, the penalty shall be increased by one-third.

"Art. 4. In the case specified in articles 1, 2 and 3, the penalty shall be increased by one-third if the crime is committed by a person holding public office or by a public official.

"Art. 5. The attempt to commit any of the crimes defined in this Act shall be punished by two-thirds the penalty for the corresponding crime.

"Art. 6. The crimes defined in this Act shall not be deemed political offences for the purposes of extradition.

"Art. 7. All provisions to the contrary are hereby repealed."

More recently, the new Military Criminal Code (Decree Law No. 1001 of 21 October 1969) includes genocide among military crimes in peace-time and contains the following provisions (art. 208) for its punishment:

"Art. 208. Killing members of a national, ethnic or religious group or of a group belonging to a certain race, with intent to destroy the whole or part of the group. Penalty: rigorous imprisonment for fifteen to thirty years.

"Sole paragraph. Persons who, with the same intent, commit the following acts shall be punished by rigorous imprisonment for four to fifteen years:

- I. cause serious injury to members of the group;
- II. subject the group to physical or mental conditions of life calculated to bring about the destruction of all or some of its members;
- III. compel the group to disperse;
- IV. impose measures intended to prevent births within the group;
- V. forcibly transfer children of the group to another group."

Lastly, the new Criminal Code (Decree Law No. 1004, of 21 October 1969), which enters into force on 1 August of this year, also prohibits genocide in the following terms (art. 131):

"Art. 131. Killing members of a national, ethnic or religious group or a group belonging to a certain race, with intent to destroy the whole or part of the group. Penalty: rigorous imprisonment for fifteen to thirty years.

Para. 1. Persons who, with the same intent, commit the following acts shall be punished by rigorous imprisonment for four to fifteen years:

- I. cause serious injury to members of the group;
- II. subject the group to physical or mental conditions of life calculated to bring about the destruction of all or some of its members;
- III. compel the group to disperse;
- IV. impose measures intended to prevent births within the group;
- V. forcibly transfer children of the group to another group.

Para. 2. The penalty shall be increased by one-third if the crime is committed by a responsible ruler or on his instructions."

6. The above is a summary of Brazilian legislation dealing specifically with racial discrimination. No detailed presentation is given, because the historical and cultural background of the Brazilian people is such that this type of prejudice is entirely alien to it. Moreover, the existing legislation continues to be of a preventive character; the State has not had to resort to the penalties specifically applicable under the law.

Accordingly, the Government of Brazil can guarantee, within its sphere of competence, full implementation of the Convention on the Elimination of All Forms of Racial Discrimination, to which it has acceded.
