



Permanent Mission of Brazil in Geneva

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URGENT

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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, with reference to Nota Verbal 205, has the honour to transmit hereby the COMPLETE reply, in its Engmn053 Tc0.202T 11.92369vehgmn053 Tc6.5(n94(f63iar62022 s)-3..78 0 T27bw[]hr

Core questions

Question 1: Can you assess the implementation of the Durban Declaration and Program of Action in your country?

The adoption of the Durban Declaration and Action Plan exerted great influence on the manner the Brazilian State deals with the issue of discrimination. Several initiatives have been carried out since then with a view of implementing the recommendations contained on that document both at national and international levels.

In 2002, in the course of the dedication to the date of formal abolition of slavery in Brazil – May 13th – the Presidency of the Republic edited the Decree n°4.228/02 that created the National Program of Affirmative Action. This Decree covered a series of initial measures aiming for the promotion of equality, including the “fulfillment of statistic goals of participation of afro-descendents, women and disabled persons occupying posts of direction” in Governmental staff. The following year, this would be overruled by the creation of the Special Secretariat for the Promotion of Racial Equality Policies (SEPPIR)¹, by the adoption of the National Policy for the Promotion of Racial Equality as well as by the creation of the National Council for the Promotion of Racial Equality (CNPIR)².

The SEPPIR, established in March 21st, 2003, consists of a body assisting directly to the Presidency of the Republic in the formulation, planning and coordination of policies and parameters related to the promotion and the protection of the rights of racial and ethnic groups subjects to discrimination, stressing the black population. That was the first time in Brazilian History that the Federal Government established a body specifically in charge of promoting not only juridical, but also material equality to populations traditionally affected by racism, racial discrimination, xenophobia and related intolerance.

SEPPIR is also in charge of the implementation and coordination of the National Policy for the Promotion of Racial Equality - PNPIR, established by the Decree no 4.886/03, which covers initiatives in long, medium and short term, based in six programs and programmatic actions: (1) implementation of a model of management of the policy for the promotion of racial equality; (2) support to the reminiscent communities from quilombos; (3) affirmative actions; (4) development and social inclusion; (5) international relations; (6) production of knowledge.

The PNPIR is based in three basic principles: cross cutting actions, decentralization and democratic management.

The principle of **cross-cutting** actions is related to the inclusion of a promotion of racial equality perspective in initiatives of several areas of Brazilian

specific demands of discriminated ethnic-racial groups, looking for joint solutions with the competent bodies. Experience shows that in many occasions, it is not required to formulate, plan and execute additional policies especially designed for the needs of these groups, but just including an innovative perspective towards their needs in already existing policies may be perfectly enough.

Alternatively, **decentralization** refers to the extension of the policy of promotion of racial equality to states, municipalities and the Federal District. According to Brazilian Constitution, Brazil consists of a Federative Republic in a way that each Federative Unit is responsible for providing certain public services. Decentralization makes possible a full care to most of the needs of excluded population in those areas of specific competence of the federative units and has been turned into reality by their adhesion to the National Forum of the Promotion of Racial

Brazilian Society and was committed to overcoming it, it is explicitly recognized that most of recent development is a direct result of the influence exerted by that World Conference in 2001. It is imperative to take into consideration that Brazil has lived almost four centuries under a slavery regime, structured over state policies that permitted and encouraged racial discrimination against – but not just – black and indigenous people. The longstanding omission of the State in reverting the damage caused by such a process set the basis for a highly undesirable situation that affects to this day the right to equality of these populations.

Question 2: Can you assess contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance as well as initiatives in this regard with a view to eliminating them in your country?

Among contemporary forms of racism, special attention must be given to the diffusion of discriminatory messages through new media, particularly Internet. The Brazilian State has made all possible efforts to enforce existing legal resources in order to prevent and punish this kind of illicit behavior – as well as developing alternative mechanisms – so to assure the respect for human rights in virtual communications and keep the virtual web a space of citizenship, free of racism.

In 1995, Brazil established the Steering Committee of Internet (CGI.br), created by the Interministerial Edict n° 147 of May 31 and later modified by Presidential Decree n°4.829, of September 3, 2003, in charge of the coordination of all initiatives and services of internet in the country regulating its technical quality, innovation and the spread of access to this kind of services into the population. It is integrated by official members, representatives from private sector, civil society and scholars and aims for a democratic management, bringing society to take part in the decision-making process concerning the net, based in principles like multilaterality, transparency and democracy. Since July 2004, the CGI.br elects democratically its representatives of civil society to take part in debates over the priorities for the internet along with the Government.

Beyond the efforts for the establishment of a policy of democratic information, Brazilian judicial bodies have worked together to ensure the respect for the rights of all as well as the respect for diversity on the web. Accordingly, it is important to take into account some case law related to the matter.

CASE SIEGFRIED ELLWANGER:

An exemplary experience in Brazilian Jurisprudence is the sentence of *Habeas Corpus* – HC – n° 82.424/RS, presented before Federal Supreme Court (STF), concerning the crime of racism and anti-Semitism, in which the editor Mr. Siegfried Ellwanger appealed against a decision from the Superior Court of Justice (STJ). In September 17, 2003 the ministers of STF decided by a majority of seven votes to three to deny the constitutional remedy Mr. Ellwanger had required.

This case law has been cited as one of the most emblematic decisions of the STF since the promulgation of Brazilian Constitution en 1988 and has been very influential to future decisions on judgments concerning racism and race in Brazil. Even though the central focus of the demand lay in the reach of the term “racism”, present in the § XLII of Article 5° of Brazilian Constitution (“The act of racism

constitutes crime not subject to bill or prescription and bound to prison, according to the law”), the decision achieved a far beyond reach. The justification of the votes of ministers overcame the biological concept of race and replaced it by the notion of ethnic-racial identity recognized by anthropology, sociology and other fields of study of social sciences.

CASO ONG ABC SEM RACISMO (NGO ABC WITHOUT RACISM):

Currently, there is a great diversity of governmental bodies working jointly or separately for the repression of racist crimes on internet, most of the time in close partnership with sectors of social movement or organized civil society.

For instance, the Ombudsman of SEPPIR, due to its legal competence receives daily a significant amount of complaints by e-mail, petition or letters concerning various crimes of racism, some of them committed through the internet. One of these cases was denounced by the civil society organization ABC Without Racism and concerned a discussion forum on internet where several racist and discriminatory comments were posted and became news in national mass media in July 2005. A *community* of the website orkut, created by students of the University of Brasilia–UnB, was turned into a forum on the reservation of vacancies in the university for black students, that is to say affirmative actions based on quotas in public Universities.

At Orkut, members of the community not only opposed this policy (what would be legitimate) but offended black people by saying: «blacks have to die indeed... [a white person] studies his whole life and is out just because of a dirty black little boy. These times I want to take up a gun and go around killing all blacks of the country». The discussion began when an UnB’s student started a discussion on the quotas by saying that it was necessary «to take a sunbath e wear wax in the hair so it can be hard», or else «quotas only take stupid people to the University». The student offended black people also by calling them «donkeys», «underdeveloped monkeys», «thieves», «vagrants» etc.

The NGO ABC Without Racism also presented a denounce on the case to the Group of Special Work Against Organized Crime - GAECO, from the Public Ministry of the State of São Paulo, and reinforced it when the same student deleted their website *Afropress*, in a retaliation for the exposure of his name in an electronic news. In august 2005, the Public Ministry started the criminal proceedings before the Court of Justice of the Federal District and asked for a preventive provisional measure and apprehended all devices used by the student so to protect all possible material evidence of their suspected crimes.

The Public Ministry emphasized in his request – that was fully accepted – that the defendant had consciously offended black people what constituted crime. By encouraging justice and security bodies to properly enforce existing laws against racism, the Brazilian State aims for preserving Internet as a democratic environment, instead of a means of diffusion of racism and intolerance.

Question 3: Please identify concrete measures and initiatives for combating and eliminating all manifestations of racism, racial discrimination, xenophobia and related

traditional injury to aggressor. The cases under this legislation are subject to public conditioned action, prescription and decadency, in the terms of the Brazilian Penal Process Code, for they are Injury Felony, and not, Racism Felony.

- Anti-discrimination Law (Law number 7.716/89) – foresees as crimes the discrimination or race, color, ethnicity, religion or national origin prejudice resulting conducts. As a broad legislation, it sanctions the limitation which comes from the discrimination or prejudice in the labor sphere (articles 3rd, 4th and 13th), in the granting of services or goods (Articles 5th, 7th, 8th, 9th, and 10th), in the exercise of free locomotion (Articles 5th, 7th, 8th, 9th, and, specifically, 11th and 12th), in the education (Article 6th) and, at last, in the exercise of the family and social integration (Article 14th). The cases under this Law are subject to Public Unconditioned Action, so that the process does not finish with the withdraw of the claim from the victim. Furthermore, according to constitutional principle, constitute unbailable and timeless crimes the severe treatment when compared to that regarded the majority of common crimes;
- Law of the Afro-Brazilian and Indigenous History Education (Law 11.645/08) – Complements Law 10.639/03 which includes in the Education Network official curricula the obligation of promoting the self-esteem of Afro-Brazilian and Indigenous children and assures an educational environment free of racism and prejudice.

International Cooperation

The Brazilian State has a compromise with the promotion of ethnicity-racial equality not only in its territory but also in the international ground. The Brazilian exterior policy is oriented also by the conviction that it is fundamental to contribute for the strengthening of the international mechanisms for the protection of human rights in the subject, allowing for a greater interaction and cooperation among the peoples and the States, specially in the Americas. Equally, It considers fundamental to

The first Conference was held in the context of the Follow-up of the Santiago Conference, held in 2000, as a preparation for the World Conference. The event gathered over 400 delegates of several countries of the region, representing States, civil society and multilateral organisms, aiming at evaluating the implementation of policies of equality promotion in the continent, with emphasis on the best practices. It is worth mentioning the decisive participation of the High Commission on Human Rights of the United Nations (EACDH), the Economy Commission for Latin America and the Caribbean (CEPAL), the DFID and the Interagency Working Group of Gender and Race of the United Nations. The Final Report of the Conference was elaborated in partnership with SEPIIR and the anti-discrimination Unit of the EACDH and it was presented officially in the United Nations in the occasion of the Meeting of the Board of Human Rights, in March 2007.

The second Conference aspired to allow an interaction environment among scholars and activists for the reflection over the implications and challenges which came from the African Diaspora process, with emphasis on the renovation of the agreement on "Global Coalition for Africa". It contributed to the enhancing of Africa's and Diaspora's interest themes, such as the relations of gender, education, identity, cultural, health, democracy, peace, development, languages, colonialism, religiosity, international cooperation, affirmative action, and policies for the combat of racism, xenophobia and other forms of discrimination. The event had over one thousand representatives from various countries, including the participation both African and Brazilian participants, intellectuals, political activists and public managers.

The Brazilian State has equally dedicated to the installment of the debate on the promotion of racial equality in other relevant multilateral forums, such as the Mercosul, where it was established, by Brazilian proposition, the Working Group on Discrimination, Racism and Xenophobia, which the first meeting occurred in December 2006. This activity was held in the context of the Meeting of High Authorities in Human Rights of the Mercosul e Chancellor's Offices of Mercosul and Associates (RAADH) and it can be considered a consolidated initiative.

Question 4: How would your Government assess the effectiveness of the existing

efficient international protection of the individuals against manifestations of racism and racial discrimination are almost inexistent. Since the contemporary tendencies of such manifestations are prone to be included in the context of total racism or that which is officially validated, it is up to the international community to put a stop at

Discrimination and give proper consideration of the recommendations of the Committee on the Elimination of Racial Discrimination?

Brazil has signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in March 7th 1966, and ratified it in the 27th of March 1968. Internally, the document was approved by Legislative Decree in 1967 (DO de 23rd of June 1967) and, followed by the Decree n° 65.810, 1969.

Furthermore, an important recent development was the presentation of the Brazilian State of the Declaration foreseen in the Article 14 of the ICERD, recognizing the competency of the International Committee to receive and analyze claims of violation of the human rights under mentioned Convention.

In October 16th 2003, Brazil presented the 17th Periodic Report (refferent to 2002), in agreement to Article 9th of the Convention. This Report corresponds to Reports 14th, 15th e 16th (CERD/C/431/Add.8) and now prepares to present the new edition of the Report, updated, already this year.

Question 6: Please identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related intolerance in your country.

The initiatives adopted by the Brazilian State to assure the effective implementation of the Durban Declaration and Action Plan have many different aspects in the social life of the country. The main governmental bodies plan their actions taking in consideration the ethnicity-racial perspective and the importance of the adoption of affirmative policies for the overcome of the inequalities. In principle, the biggest value of this policy constitutes in its transversal character, what implicates in a progressive and consistent cultural change in the formulation of public policy, making them more inclusive.

In this sense, the policies of greater success in the incorporation of this perspective are presented in the following.

Brazil Quilombola Program

Brazil has over 3.500 communities of remaining of quilombos. Such communities constitute a valuable heritage for the memory of the resistance of these black populations to slavery and are encountered through out the various regions of the country. In these places, culture, religiosity and the history of the black people are preserved, despite the numerous and Constant threats resulting from the lack of assistance and protection from the public power. The Brazil Quilombola Program (PBQ) supports these communities offering infrastructure and other basic services for the development of the standard of living of the quilombolas. Such services include title to the land

the quilombolas, as well as to the local development, by means of activities that enlarge the production capacity and the generation of revenue of the communities. The offer of medical assistance was also increased through the Family and Mouth Health Program in more than 300 municipalities, not mentioning an expected offer of basic sewage in eleven states where there are quilombos. The Quilombola Education Program also integrates this set of efforts. It has invested in the formation of teachers, production of didactic material, construction and structuring of schools, among other measures to raise the educational level of these populations. Finally, it is worthy pointing out the capacitation of leaderships so that they can participate, monitor and accompany the actions undertaken in their communities. By doing so, one seeks to enhance the capacity, participation and representation of the quilombolas.

The remaining quilombola communities were formed by afro-descendants who resisted to slavery and got refuge in the hinterlands of the country, which were, in general, isolated regions with difficult access. Most of these communities remained excluded from access to public facilities and regular contact with the rest of society. Therefore, their socioeconomic situation reflects this exclusion. As a consequence, there is a large demand for public policies, particularly for health services, education,

in the country, to structure sewage systems, to promote health in the spaces of traditional african cults and, finally, to implement the Falciform Anemia National Program, priority being given to states with major presence of black population.

This policy combines a large and wide range of activities among which the following ones are included:

- Establishment of mechanisms and strategies towards the inclusion of subjects related to the specificities of the black population health

the black population in Brazil, which nowadays is well below the national average.

Therefore, it is an element of social justice and the recognition of the value of human life of these people that have been traditionally left behind when public policies were formulated.

Education

The educational system can be an element of reproduction of inequalities, prejudices and discriminations historically rooted in social life or an element of liberation and promotion of the value of diversity and of respect for human rights. On recognizing this fact, the Brazilian government has sought to turn the educational institutions into strategic spaces of discussion and deeper examination of the racial issues in which representatives of groups that have traditionally been excluded now participate. The educational policy for the black population is based not only on efforts to raise their educational level, by guaranteeing their access and their stay in schools and universities, but also on efforts to make the racial issue as transversal as possible in the whole educational system.

To reach such objectives, the SEPPIR and the Ministry of Education have worked together and the following achievements were obtained;

- Stimulation of public and private universities in the sense that they destinate vacancies to black and indigeous people.
- Inclusion of the item “color” in the forms of the School Census since 2005 and the making of the campaign “ Assume Your Race, Declare Your Colour”
- Organization of the “Intergovernmental Forum of the Promotion of Racial Equality” and of “ Technical Seminars of Promotion of Racial Equality”, aimed at the implementation of the law 10.693 which obliges the teaching of the Afro-Brazilian history and culture at basic and intermediate educational levels.
- Program “University for All” (ProUNI). It implements affirmative actions in private higher education institutions through scholarships to students of public schools, among them blacks and indians, proportionally to their participation in the population of their respective states (data of IBGE). Between 2005 and 2006, 200.000 scholarships, of which 81.287 were granted to afro-descendants and indigenous people.
- Uniafro Project: It offers support and incentives to the enhancement and institutionalization of the activities of the Centers of Afro-Brazilian Studies (Neabs) or related groups belonging to public institutions of higher education. By doing so, it is intended to encourage the production and difusion of knowlegment on ethnic-

racial issues and thus contribute to the access and stay of the Afro-Brazilian population in the higher education institutions.

- Making of State Forums of Education and Ethnic-Racial Diversity, with the participation of education professionals, representatives of the Neabs, activists of the black movements, entities of the Social Movement, NGOs and representatives of the Quilombolas Communities.
- Project “Gender and Diversity at School”: Coordinated by the Secretariat of Policies for Women, supported by the SEPPIR, Ministry of Education, Ministry of Culture, British Council and the Latin American Center for Sexuality and Human Rights/UERJ (CLAM), this project contributes to the formation of education professionals and it is based on the themes of gender, racial relations and sexual orientation. The “Course Gender and Diversity at School” promoted the capacitation of 1200 teachers of the basic level of public schools in the municipalities, between april and september 2006, and was intended to the formation of education professionals and teachers of basic and intermediate levels.
- Adoption of the publication “Notebooks of the National Curricular Guidelines for the Education of the Ethnic-Racial Relations and to the Teaching of the Afro-Brazilian and African History and Culture”, didatic material supporting the implementation of the law 10639/03.

The above mentioned actions are guided by the objective of promoting an inclusive education from the ethnic-racial point of view, paving the way to the formation of a critical and aware population as to the importance of respecting diversity.

The Brazilian educational system is being encouraged to exert a pro-active role in the construction of a democratic society in which unjust social inequalities based upon ethnic-racial criteria have been totally swept away.

Development, Labor and Income Generation

The Brazilian State have also reaffirmed its commitment to the incorporation of a ethnic-racial perspective in Governmental programs aiming at including populations affected by discrimination into the labor market. The initiatives adopted intend to meet the demand for an effective inclusion of black population into programs designed to promote better employment and income.

In December 2003, it was signed the Technical Cooperation Agreement between SEPPIR and the Ministry of Labor and Employment (MTE), which established the parameters for State action on the matter. The chosen areas were the Tripartite Commission of EqTl Coop5.3(diswere th)-11.9ed t6.5(o)o1(d t6.kePl(p0.001(tion)6.2o)o1(124-0.1(s

The commitment to the Decent Work Agenda has been enhanced between Brazilian Government and the International Labor Organization (ILO). During the 91st International Work Conference, in June 2003, it was signed a Memorandum of Understanding that established the Special Program of Technical Cooperation for the Development of the National Agenda for a Decent Labor (ANTD). This Agenda was prepared taking into account three major priorities: to generate more and better jobs, including equality in treatment and opportunities; to eradicate child labor and slavery, particularly in their worst forms and strengthen tripartite actors through social dialogue.

Tripartite Commission of Equal Opportunities: the Tripartite Commission of equal opportunities and treatment of Gender and Race in Work was created by Presidential Decree under coordination of MTE in August, 2004. This Commission is integrated by representatives from federal Government, from syndicates as well as by confederations of entrepreneurs and from the Interamerican Labour Union for Racial Equality (Instituto Sindical Interamericano pela Igualdade Racial -Inspir). The role of ILO as a permanent technical assistant was recognized in the Internal Statute of the Commission

In addition, it is convenient to stress the following actions:

National Qualification Plan. Aiming at the inclusion and valorization of the gender and race diversity in the working place, by the financing of social and professional qualification actions for the most vulnerable to unemployment populations. Around 60% of the beneficiaries of the qualification courses between 2004 and 2006 are blacks and indigenous. Another vulnerable group benefited by this qualification plan was the category of the housekeepers, who are approximately 8 million professionals, 95% of them women and 57,4% of those black⁴. Workshops with representants from the housekeeper's organizations and social institutions in Salvador, Brasília and Recife were held. So as to assure the labor rights of these professionals, the deduction in the income tax of the contributions made to the INSS of the housekeepers was regulamented, stimulating the formalization and their access to their constitutional rights (vacations and 13th salary).

Brazil Gender and Race Program. Inspired by the principles and directives of the conventions n° 100 e n°111 of OIT, the program established the Areas of Promotion of the Equality of Opportunities and Combat to the Discrimination in the Regional Work Enforcement Offices (DRTs), so as to aid in the identification and combat to discriminatory practices in the working relations. This Areas are constitute by representants from the communities, the general prosecutor's offices, the public defensories, state and municipal boards, syndicates, enterprises, universities, associations, non-governmental organizations of women, blacks, indigenous and disabled. It is part of their attributions: (1) institute educational programs that assure the application of policies of equality of opportunities promotion in the field of employment and profession; (2) propose strategies and actions that aim at the elimination of the discrimination and of the degrading treatment and that protect the dignity of the human person in the field of labor; (3) analyze claims and discriminatory practices in the working field, aiming at resolve them according to legal dispositions and, when it should be appropriate, lead them to the General Prosecutor's Office of Labor.

⁴ Source: Inequalities Picture (IPEA, UNIFEM).