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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 would like to present the enclosed the information regarding a questionnaire sent by the Special Rapporteur on Freedom of Religion and Belief.

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, June 15, 2020

OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS - OHCHR

Questionnaire of the Special Rapporteur on Freedom of Religion in the context of the elaboration of the report on the "Elimination of intolerance and discrimination on the basis of religion or belief and the achievement of sustainable development goal 16 (ODS 16)", to be presented to the 75th General Assembly of the United Nations in compliance with the Human Rights Council resolution 40/10

RESPONSE OF BRAZIL

Response formulated by the Coordination of Freedom of Religion or Belief, Freedom of Conscience, Freedom of Expression and Academic Freedom, subordinated to the General Coordination of Human Rights Education of the Department of Promotion and Education of Human Rights of the National Secretariat of Global Protection of the Ministry of Women, Family and Human Rights.

According to Articles 26 and 28 of Decree No. 10,174 of December 13, 2019:

Art. 26. The National Secretariat for Global Protection is responsible:

(...)

XI - to coordinate actions relating to public policies on birth registration, human rights education, respect for religious freedom, expression, belief, conscience and academic freedom and state secularism, cooperation for the eradication of slave labour, and the issue of business and human rights;

(...)

Art. 28: The Department of Promotion and Education in Human Rights is responsible for the following:

I - to coordinate and supervise the elaboration and implementation of plans, programs and projects related to human rights education policies, civil birth registration and basic documentation, respect for religious freedom, expression, belief, conscience and academic freedom and state laicity, and the defense of at-risk populations and residents of the semi-arid region, in articulation with federal public administration bodies, the Public Prosecutor's Office, the Judiciary, Executive and Legislative Powers of the federal entities, civil society organizations and international organizations;" . (emphasis added)

The Coordination of Freedom of Religion or Belief, of Conscience, of Expression and Academic Freedom also provides technical support to the coordination of the National Committee on Freedom of Religion or Belief, created through Ordinance No. 3. 075, of December 16, 2019 - a consultative body of the Ministry of Women, Family and Human Rights, which aims to assist the cooperation with other bodies and entities for the promotion of the right to religious freedom, the promotion of respect for different beliefs and convictions, and the preservation of the Brazilian constitutional standard of laicity, as well as to contribute to the formulation of action guidelines and in the implementation of plans, programs and projects related to the respect for different beliefs and convictions, freedom of worship and the laicity of the State.

Question 1 - Standards and examples of discrimination against religious communities or minority beliefs in the area of: civil and political rights, including, among others, participation and representation in public life, access to justice and effective resources, freedom and security, freedom of expression, assembly and association; economic, social and cultural rights, including, but not limited to, rights to adequate food and housing, education, employment and health care.

In providing the information, also include examples of discriminatory practices in the provision of public and private services on the basis of religion or belief, and highlight the relevant legal provisions protecting and punishing such practices.

RESPONSE

In spite of the fact that there is no consensual definition for the term “minorities” in the national territory, Article 5 of the Brazilian Federal Constitution, which describes the fundamental rights of citizens, specifies that freedom of conscience and belief may not be violated. Thus, the law guarantees that religious belief and religious worship is free for all Brazilians.

Although the Federal Constitution guarantees freedom of religion or belief in a clear and unequivocal manner, the phenomenon of violence and religious intolerance is still a challenge to coexistence in a plural and harmonious society, and a barrier to the full realization of freedom of religion or belief in Brazil.

With regard to the registration of complaints of human rights violations, the Ministry of Women, Family and Human Rights (MMFDH) has an important channel of communication between the State and society, a dedicated hotline called “Dial Human Rights - Dial 100”. It has a specific channel for presenting complaints related to religious discrimination. The complaints received are forwarded to the human rights protection, defense and accountability agencies, respecting the competence and specific attributions of each agency and prioritizing the agency that will intervene immediately in order to break the cycle of violence and to protect the victim. Between 2011 and the first semester of 2019 more than 3 (three) thousand complaints were registered relating to religious discrimination. Although there is not specific legal type for these violations the MMFDH is working on indicator to monitor these violations.

The MMFDH published, in 2016, the 2011-2015 Report on Intolerance and Religious Violence (RIVIR). The document sought to gather data of national scope, from 2011 to 2015. Data was collected and analyzed from all states (federal units), focusing on the 10 states with the highest presence of complaints received by the Human Rights Ombudsman (Dial 100 - religious discrimination channel) of the MMFDH - the five states with the highest absolute number of cases (Rio de Janeiro, São Paulo, Minas Gerais Rio Grande do Sul and Bahia) and the five states with the highest proportional numbers of cases in relation to the size of the population (Amazonas, Pernambuco, Paraíba, Distrito Federal e Espírito Santo).

This initiative is part of a broader context of federal government efforts to better identify the presence of acts of violence and religious intolerance in Brazilian society, which has allowed, in the face of this information, the establishment of more appropriate guidelines and strategies to promote respect for freedom of religion or belief.

Among the legal provisions (legal framework) to protect freedom of belief and punish practices of religious discrimination, the following stand out:

- "Right to Freedom of Conscience, Religion or Belief": this consists of the freedom to hold beliefs in religious or non-religious ideas spontaneously and autonomously, without being obliged to deny such beliefs or to hold different beliefs. This right also implies the right to change religion or belief, or not to hold any religion or belief. This freedom is protected by Article 18 of the Universal Declaration of Human Rights, Article 12, item I, of the American Convention on Human Rights of 1969, and Article 5, items VI and VIII, of the 1988 Federal Constitution;
- "Protection against religious discrimination": it is a crime to practice, induce or incite discrimination or prejudice against religions - Article 20, of Law No. 9459/1997 (punishable by one to three years in prison and a fine);
- "Right to religious or secular proselytism and right to promote a religion or a belief": the right to promote a religion, including secular proselytism, whether in private or public contexts - Article 12, item I of the American Convention on Human Rights, 1969;
- "Right to Freedom of Conscience, Religion or Belief": the freedom to hold beliefs in religious or non-religious ideas spontaneously and autonomously, without being obliged to deny such beliefs or to declare different beliefs. This right also implies the right to change religion or belief, or not to hold any religion. This freedom is protected by Article 18 of the Universal Declaration on Human Rights of 1948, Article 12, item I, of the American Convention on Human Rights of 1969, Article 5, items VI and VIII, of the 1988 Federal Constitution;
- "Right to religious assistance in collective internment institutions": the right to receive religious assistance or chaplaincy when in a situation in which mobility is limited. This right is guaranteed in article 5, item VII of the 1988 Federal Constitution;
- "Protection against public mockery for religious belief or religious activity": a person who holds a religious belief or function in a religious group is guaranteed the protection of his or her dignity against attempts against his or her reputation motivated by religious reasons (even if the religious belief and the religious institution are not protected from criticism). The crime of mockery of a person for religious reasons is typified in article 208 of the Brazilian Penal Code. It is punishable with one month to one year's imprisonment or a fine. If violence is used, the penalty can be increased by one-third;
- "Protection against public vilification of an act or object of religious worship": the public reputation and dignity of persons participating in a certain religious worship is protected against vilification. The crime of vilification is typified in the Brazilian Penal Code, also in its article 208;
- "Expression and Thought or Opinion": Article 19 of the Universal Declaration of Human Rights (UDHR). All human beings have the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Question 2 - Laws and policies restricting the right to express freedom of religion or belief of minority religious communities, including laws on blasphemy, national security and combating terrorism; laws and policies concerning the registration of religious organizations and associations; and those relating to religious property, religious education institutions and places of worship and burial.

RESPONSE

In Brazil, the right to freedom of worship and religious association is guaranteed. It consists of the right to exercise religious worship according to one's beliefs and traditions, to associate with others for the collective practice and collective dissemination of religious belief, and to organize oneself into religious bodies governed by private law. It also implies the right of religious worship participants not to suffer harassment and restrictions in their practices and associations. This freedom is protected by article 18 of the UDHR of 1948, by article 12, items 1, 2, and 3 of the American Convention on Human Rights of 1969, and by articles 5, item VI, 16, item I, and 19, item I, of the Federal Constitution of 1988.

The right to tax immunity/exemptions is also guaranteed, i.e. temples of any religious entity are exempt from any type of tax and free from interference. This right is guaranteed in article 150 of the Federal Constitution of 1988.

Legal framework in the field of education:

- "Right to religious and moral education according to the orientation of parents and guardians": consists in the right of parents to give their children a religious and moral education according to their own convictions, which must be respected by the State and any public or private educational institutions, and the right to religious education on an optional basis in public elementary schools may complement but not invalidate this fundamental right. The right of parents and guardians is guaranteed in article 12, item 4, of the American Convention on Human Rights of 1969, and the right to religious education in public schools in article 210, paragraph 1, of the 1988 Federal Constitution;
- "Curricula": Article 206 of the 1988 Federal Constitution states that teaching shall be given on the basis of the following principles: equal conditions for access to and permanence in schools; the freedom to learn, teach, research and disseminate thought, art and knowledge; the pluralism of ideas and pedagogical conceptions, and the coexistence of public and private educational institutions;
- "Religious freedom in schools": Law 13796/2019 provides for alternatives to the application of tests or the attendance to classes for students in the public and private network on days when work and other activities not allowed.

Question 3 - Circumstances in which religious communities are prevented from managing their own affairs.

RESPONSE

Brazil is a secular country, that is, it does not have an official religion, but it allows for the plurality of religions and beliefs, and admits what is called "collaboration of public interest". This collaborative model of laicity is guaranteed by article 19, item I, of the Federal Constitution of 1988. It sets out that the State is prohibited from establishing, subsidizing, getting involved, depending on, or allying with religious groups or churches, except in the case of collaboration in the public interest. Thus, the principle of laicity cannot be invoked to prevent collaboration between religions and the State in the case of proven public interest. Article 5, item VI, of the Constitution also protects temples and sacred places from acts of vandalism and all liturgical practices are protected against disturbances, interruptions or impediments.

Question 4 - Gender-based discrimination: the multiple and intersectoral forms of discrimination faced by women and girls from religious minorities or belief-based communities.

RESPONSE

No technical data/information available in the Coordination.

Question 5 - Examples of laws (constitutional and other legal provisions) and policies at national and local levels, or public statements by political and religious leaders that impose a uniform understanding of national identity around a dominant religion.

RESPONSE

No technical data/information available in the Coordination.

Question 6 - Examples of family and personal laws, particularly those relating to marriage, divorce, inheritance and alimony, which impose the traditions of a prevailing religion on religious minorities or beliefs.

RESPONSE

There are norms and regulations that include in their instruments the right to the full exercise of freedom of religion or belief, for example:

- "Registration of religious marriage for civil purposes": provides legal equivalence for religious marriages that meet the legal requirements for civil marriages, provided that they are registered in the proper register/notary (taking effect from the date of its celebration). Legal framework: Article 226 of the Federal Constitution of 1988, Chapter VII, of Law No. 6015 of December 31,

1973 - which provides for public registration - and articles 1515 and 1516 of the Civil Code (Law No. 10,406 of January 10, 2002);

- "Protection of the freedom of religion or belief of the elderly": consists of the inviolability of physical, psychological and moral integrity, covering the preservation of the beliefs of the elderly, and deals with the obligations of nursing homes to provide religious assistance to those who wish, according to their beliefs - Articles 10 and 50, of Law No. 10.741/2013 (Statute of the Elderly);
- "Protection of freedom of religion or belief of the child and of the adolescent": Article 15 of Law No. 8.069 of 13 July 1990 (Statute of the Child and Adolescent) guarantees the right to freedom, respect and dignity as human beings in development, entitled to civil, fundamental and social rights guaranteed in the Constitution and in other legislation. Article 16 item III includes the aspects of religious belief and worship as a right to freedom; Article 17 states that the right to respect consists in the inviolability of the physical, psychic and moral integrity of the child and the adolescent, including the preservation of the image, identity, autonomy, values, ideas and beliefs, personal spaces and objects; and Article 124 item XIV it establishes that it is the right of the adolescent deprived of liberty, among others, to receive religious assistance, according to his or her belief, and provided he or she so desires;
- "Guarantee of freedom of religion or belief to refugees": Brazil is a signatory to the Convention on the Status of Refugees (promulgated by Decree No. 50215 of 28 January 1961). Article 3, which relates to the principle of non-discrimination, provides that State-Parties shall apply the provisions of the Convention to refugees without discrimination of race, religion or country of origin. Article 4, which focuses on religion, provides that State-Parties shall grant to refugees on their territory treatment at least as favourable as that granted to nationals with respect to the freedom to practice their religion and the freedom to provide religious education to their children;
- "Guarantee of alternative military service by reason of religious belief or philosophical conviction": Law No. 8,239 (October 4, 1991) allows those who allege conscientious objection on the grounds of religious belief or philosophical or political conviction not to perform compulsory military service. Law No. 12,608 (April 10, 2012) provides for alternative service, for example, training for operations in areas affected by disaster, or in situations of emergency and in a state of calamity.

Part II - The effects of discrimination

Question 7 - Displacement and forced migration of religious communities or beliefs due to discrimination, exclusion or violations of land rights.

RESPONSE

No technical subsidies available in the Coordination.

Question 8 - Cases of community violence against religious minorities and incitement to such violence, and the effectiveness and appropriateness of state responses.

RESPONSE

An example of state response was the ruling on the Extraordinary Appeal filed by the Rio Grande do Sul Public Prosecutor's Office against a decision of the State Court of Justice that had denied a request for a declaration of unconstitutionality of State Law 12.131/2004.

The rule introduced a provision in the law that prohibits various treatments considered cruel to animals (State Code of Protection of Animals/Law No. 11.915/2003) in order to suspend this prohibition in the case of ritual sacrifice in liturgies of African religions.

In the Federal Supreme Court, among other arguments, the Public Prosecutor's Office sustained that the state law was interfering in the competence of the Federal Government - besides restricting the exception to religions of African matrix. By unanimous vote, the Federal Supreme Court understood that the law of Rio Grande do Sul that allows the sacrifice of animals in religious rites is constitutional.

On that occasion, the then National Secretary for Global Protection, Sérgio Queiroz, welcomed a Delegation of the Afro-umbandist Movement of Action of Rio Grande do Sul, acknowledging the importance of the decision.

Question 9 - Disaggregated data that show the impact of cases of conflict and community violence on communities and religious minorities.

RESPONSE

No technical subsidies available given the absence of records of these violations in the Coordination.

Question 10 - Examples of communities or religious beliefs at risk of becoming stateless.

RESPONSE

No technical subsidies available given the absence of records of these violations in the Coordination.

Part III - Good Practice

Question 11 - Examples of legislative, regulatory and institutional structures and measures that protect communities of religious or minority beliefs from discrimination and violence.

RESPONSE

Issue addressed in the comments to items 5.2, 5.3, 5.4 and 5.7.

The MMFDH, in addition to this Coordination, also count with a General Coordination for the Promotion of Policies for Traditional People and Communities of African Descent, "Terreiros" (place of worship of Traditional African Religions), Indigenous people and Gypsies, as well as the National Council of Traditional Peoples and Communities, within the National Secretariat for Policies to Promote Racial Equality.

Question 12 - Examples of legislative, institutional and regulatory measures of the State to address past injustices, including violence and discrimination against religious or belief minorities, and to provide reparations and compensation (or examples of the inability of the State to address such injustices).

RESPONSE

Specialized police stations were established to investigate and mitigate crimes of religious discrimination (such as those established in the Federal District and in the states of Rio de Janeiro, São Paulo, Mato Grosso do Sul, Paraíba and Paraná).

On January 21, the World Day of Religion is celebrated - a date created in December 1949 in a National Spiritual Assembly of the Bahá'is with the objective of promoting respect, tolerance and dialogue among the various religions existing in the world. On the same date, Brazil celebrates the National Day for Combating Religious Intolerance (instituted by Law no. 11,635/2007), in honor of Mother Gilda, of the "terreiro" Ilê Abassá de Ogum (BA), victim of religious intolerance. The celebration of this date is an invitation for a peaceful and fraternal coexistence, and an encouragement to comply with the law and with non-discriminatory policies.

Question 13 - Specific policies and initiatives that promote the effective participation of religious or belief minorities in public life, including through responsive, inclusive and representative decision-making processes at all levels.

RESPONSE

The creation of the National Committee on Freedom of Religion or Belief, within the MMFDH with the purpose contributing to the recognition of the right to religious freedom, the promotion of respect for

different beliefs and convictions, and the preservation of the Brazilian constitutional standard of laicity, as well as to subsidize it in the formulation and proposition of action guidelines and in the implementation of plans, programs and projects related to respect for different beliefs and convictions, freedom of worship and the laicity of the State.

The Federal Government encourages the creation of collegiate instances of religious freedom in states, municipalities and the Federal District in order to protect fundamental freedoms, in accordance with national legislation and international agreements. State committees were established in Minas Gerais, Amazonas, Tocantins, Rio Grande do Sul and the Federal District, and municipal committees in Pelotas and Rio Grande, in the state of Rio Grande do Sul, state council in Rio de Janeiro and municipal council in Uruguaiana/Rio Grande do Sul, and state Inter-Religious Forum in São Paulo and municipal Inter-Religious Forums in Guarujá and Limeira.

Question 14 - Adequacy and effectiveness of training of law enforcement agents in surveillance, combating, reporting, and responding to discrimination and hate crimes related to religion or belief.

RESPONSE

The partnership of the National Secretariat for Global Protection (SNPG) with the Federal University of Uberlândia (UFU) to elaborate and publish a manual of good practices with general and specific recommendations for different areas of public service to promote a better understanding of freedom of religion and belief; to hold of events to disseminate these recommendations; and to promote and support the dialogue between State and religious leaders, in order to ensure freedom of religion or belief, the laicity of the State, as well as to promote the principle of fraternity.

Question 15 - Resources provided by States to victims of crimes motivated by religious hatred.

RESPONSE

There are no records in the Coordination regarding resources provided by the State to victims of crimes motivated by religious hatred.

Question 16 - Specific measures to promote inter-religious dialogue and religious pluralism in school programs.

RESPONSE

A Protocol has been signed between the MMFDH and the Ministry of Education (MEC) in order to develop and carry out actions for the protection of children and adolescents, for the promotion of their human

dignity, especially in the scope of their physical, sexual, psychological and moral integrity, and for the strengthening of the family in its legal prerogatives.

Among the commitments is the freedom to learn, teach, research and disseminate thought and ideas, art and knowledge, taking into account the pluralism of ideas and of pedagogical approaches. The aim is to safeguard freedom of expression, academic freedom and promote tolerance of opinions; as well as the right not to be discriminated, in a school environment, on the grounds of background, knowledge, identity, beliefs and convictions; the right to follow the religion that is in accordance with their own convictions; and the right to have ensured, in a school and teaching environment, respect for the religious cultural diversity of Brazil - as well as the right of the student to keep his or her beliefs and convictions, as long as they do not incite violence, in order to avoid any kind of constraint, threat or violation.

Question 17 - Examples of civil society organizations and other non-state actors that protect the right to freedom of religion or belief in religious minorities, particularly when state action is inadequate.

RESPONSE

No technical subsidies available to present, given the absence of records.

Question 18 - Examples of state efforts to protect against the violation by religious communities of the human rights of women and girls.

RESPONSE

No technical subsidies available to present, given the absence of records of these violations.

Question 19 - Concrete measures and initiatives that promote understanding and cooperation between different religious or belief communities in public life, including in conflict and post-conflict contexts, as well as in transitional justice processes and the role of religious officers and leaders in this regard (e.g. training and awareness programs; local interdenominational institutions and dispute settlement mechanisms).

RESPONSE

In the context of the measures related to the coronavirus pandemic (COVID-19), acknowledging the important role of religious organizations, the MMFDH (through the National Secretariat of Global Protection) and the Ministry of Citizenship (through the National Secretariat of Social Assistance) established a Protocol of Assistance to the Street Population in the context of the Pandemic COVID-19.

The protocol present guidelines and practical measures related to the assistance of the population in street situation by religious organizations and civil society.