

International Human Rights Law Group

Workshop on the Use of United Nations Human Rights Mechanisms to Combat Racial Discrimination in Brazil

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The International Human Rights Law Group is a nonprofit organization of human rights and legal professionals engaged in advocacy, litigation and training around the world. Our mission is to empower local advocates to expand the scope of human rights protections for men and women and to promote broad participation in building human rights standards and procedures at the national, regional and international levels.

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Background Information

The 1988 Brazilian Constitution established that the “practice of racism constitutes a crime without the right to bail and without prescription, subject to the punishment of imprisonment, according to the terms of the law.” Law 7716/89 of 05.01.89 and its different amendments defined the crimes resulting from discriminatory acts or prejudice on the basis of race, color, religion, ethnic or national origin. These new provisions have become the central legal tools used by Afro-Brazilian groups to promote racial equality in Brazil.

Though these are very important steps in establishing procedures for respecting human rights, very few racial discrimination cases have actually come to court. Additionally, there are still few Afro-Brazilian groups that devote significant resources to address legal issues related to racial discrimination. For most of the Afro-Brazilian NGOs, legal assistance is just one of many services offered.

Despite advances in the law against racism, nearly all racist crimes go unpunished. In July 1998, researchers from the *Folha de Sao Paulo* newspaper identified only three convictions handed down since the anti-discrimination law was passed in 1989. The appeals court, moreover, has never considered a case under that law. The *Folha* report quoted a knowledgeable federal official as saying that the three levels of the justice system responsible for implementing the law (police, prosecutors, and judges) are incapable of recognizing racism against blacks. Police and prosecutors often do not consider cases of discrimination brought to them by blacks to be serious matters. There are also very few investigations on the significance of racial discrimination in the criminal justice system as a whole. Additionally, little attention has been paid to possible civil remedies for racial discrimination.

There is a growing interest within the black movement in the use of international law and international mechanisms to advance racial equality in Brazil since the Brazilian Constitution provides for the direct incorporation of international human rights treaties into the domestic legal order. Compared to many other nations, Brazil has an excellent record of ratifying international human rights instruments, having signed many of the prominent conventions and treaties of the United Nations and the Organization of American States. Particularly, Brazil ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1968, the American Convention on Human Rights in 1992, and both the International Covenant on Civil and Political Rights and the International Covenant on Social, Economics and Cultural Rights in 1992. Among them, these instruments underscore a whole set of rights, including the prohibition of racial discrimination against individuals.

Although Brazil has made significant progress in addressing some of the domestic human rights issues, and is now seen, rhetorically at least, as a champion of human rights at the global level, Brazil must still make a fuller commitment to enforcing the human rights treaties that it has signed. For civil society in general and Afro-Brazilian groups in particular, there is still a need to associate and focus on racial discrimination as a human rights violation and incorporate the tools provided by those international human rights instruments in their daily work against racial discrimination in Brazil. Several organizations and authorities are conducting different training programs on international mechanisms, but none of them is focusing on racial discrimination or on the substantive provisions of international norms.

The main goal of the Law Group's work in Brazil is to explore different strategies for combating racial discrimination in Brazil and to create a higher level of understanding about the potential of the international human rights legal system and its ability to guarantee racial equality. By assisting Afro-Brazilian groups to combat racial discrimination and to develop a practical understanding of the utility of international human rights law and practice, the Law Group hopes to facilitate the use of international human rights by domestic groups in their advocacy work at every level. The crux of this assistance will be provided through a one-year training program

consisting of three one-week workshops. The workshops will focus respectively on the use of United Nations mechanisms, highlighting in particular the work of the Committee on the Elimination of Racial Discrimination (CERD); the use of the Inter-American human rights system, including the Inter-American Commission on Human Rights and the Court of Human Rights; and the use of strategic lawyering skills and advocacy strategies. This report covers the first of these workshops – the Use of UN Mechanisms -- for combating racial discrimination in Brazil.

Overview of the Workshop

The first part of this workshop consisted of an introduction to UN human rights law, standards, mechanisms and instruments. This section sought to build awareness of Brazil's existing international obligations in upholding human rights. While the workshop addressed the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the workshop highlighted the usefulness of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) as a viable tool to combat racism and racial discrimination in Brazil. Participants received materials discussing these key human rights provisions in advance of the workshop. A complete list of materials is attached.

The second part of the workshop concentrated on the preparation of a shadow report to be submitted to the Committee on the Elimination of Racial Discrimination, the UN body that is charged with monitoring compliance with the Convention by State Parties. The workshop provided a step-by-step description of how to structure and organize the content of a shadow report; information on submitting the shadow report to the CERD Committee; and strategies for using the report domestically to promote rights protections and advocacy efforts. The workshop focused particularly on how to choose an issue or theme to help focus the shadow report; how to describe the situation using international human rights language; how to identify the key articles of the Race Convention that would be implicated by the action; the identification of existing laws and the Government's implementation record with respect to those laws; the obstacles to achieving racial equality under existing law and practice; and the identification of the steps to achieve equality. Participants created eighteen-month plans for collaborating on a shadow report, an example of which is included as an annex to this report.

The third part of the workshop addressed the importance of participation in the upcoming UN World Conference Against Racism. To participate effectively in the World Conference process, the black movement must be engaged in all levels of the preparatory process to ensure the Conference reflects their specific needs. At the national level, Afro-Brazilian organizations will need to define their agenda and then draft documents to submit to the World Conference, as well as to influence the positions of key Brazilian government officials. At the regional level, they will need to strengthen their local and regional coalitions as well as participate in the events leading up to the World Conference. The workshop addressed all aspects of the Conference, including ways that organizations of the black movement can be effective even without attending the Conference. Participants discussed opportunities for using the timing of the World Conference as an advocacy tool to integrate the promotion of human rights and international standards into the policies of the Brazilian government, and through this effort to develop and strengthen international human rights norms and institutions.

Participants

Careful selection of participants according to predetermined criteria was a crucial factor in the success of this workshop. In reviewing applications, the Law Group applied a variety of considerations, including: affiliation with Afro-Brazilian NGOs or lawyers offering pro-bono services to victims of racial discrimination; experience in litigation of racial discrimination cases; and regional and gender balance. The Law Group selected eighteen representatives of Afro-Brazilian human rights and civil society organizations from throughout the country and included representatives from prominent organizations of the black movement as well as representatives from less well-known organizations. All major areas of Brazil were represented, with a significant number of women human rights activists attending. The majority of participants belong to a nationwide network against racism. A list of participants and participant profiles is attached.

Questionnaire

Another key factor in the success of this workshop was the use of a questionnaire, which was sent to participants well in advance of the workshop. The Law Group used the detailed information solicited through the questionnaire to ensure that the workshop would be as useful, relevant and interesting as possible for the participants. The questionnaire included questions related to each participant's conception of racism in the Brazilian context; the nature and the most common forms of racial discrimination in each participant's community; how the participant's organization treats cases of racial discrimination; the principal challenges impeding the fight against racial discrimination; and the participant's vision of how international mechanisms could be used in combating racial discrimination in Brazil. The questionnaire also assessed each of the participant's existing level of knowledge related to UN treaties and conventions that address international human rights. All eighteen participants completed the questionnaire, and the Law Group adapted the agenda and the materials of the workshop to reflect the responses received. Involving participants in the process from the beginning assisted the Law Group in understanding the actual context facing organizations of the black movement in Brazil and tailoring our work accordingly, as well as in encouraging active involvement from participants in all stages of the process. The questionnaire is attached.

Methodology and Key Themes

The Law Group designed this workshop to meet the practical needs of the participants. As an exercise in identifying and analyzing issues around which consensus can be built, participants were asked to outline the main issues of racial discrimination facing Afro-Brazilians and to subsequently identify the three issues that all participants could agree are the most egregious impediments to the enjoyment of full human rights in Brazil. Among the issues put forth were access to housing, health care, education, and employment, as well as police violence and access to justice. After much debate and guidance from the Law Group, the participants chose access to education, access to the labor market and police violence as the three themes around which they would strategize for collective action. Much of the work at the workshop occurred in small groups divided according to these themes. Each group wrote a brief analysis of the violation, including the party or parties responsible for the violation and a strategy for addressing the violation.

Limited access to education and racial discrimination within Brazil's education system has a significant impact on the lives of Afro-Brazilians. Blacks have less access to education, and those who do attend school are often forced by economic circumstances to abandon their education in order to work to help support their family. Within the education system, stereotypes of Afro-Brazilians as servants or manual workers, and Afro-Brazilian culture as merely folkloric, permeate education texts at all levels, and negatively affect the self-esteem and development of black children. Discrimination against Afro-Brazilians increases at each level of education and very few blacks have the opportunity to pursue a college education. Low levels of education limit employment opportunities and in so doing perpetuate the cycle of poverty. Several of the participants' organizations, particularly the Centro de Cultura Luiz Freire and the Núcleo de Estudos Negros, address this issue in their work and pressure the Brazilian government to create public policies that will attempt to end this type of widespread discrimination.

Closely related to discrimination in the education system is limited access to the labor market. It is in this sector that racial discrimination may be considered most overt. Current practice allows employers to require "good appearance" (which often means having light skin) as a job qualification. There is also a widely held belief that there are jobs which are only suitable for whites (such as government positions and senior and intermediate level positions) and those which are suitable for blacks (low skilled and low wage jobs of the service sector). Unemployment affects blacks disproportionately and there is very little occupational or social

mobility. Afro-Brazilian women often face double discrimination, with gender bias and racial prejudice reinforcing the subjugation of Afro-Brazilian women in the workforce, and ensuring that they earn significantly less than both their black and white counterparts. Many of the participants' organizations, most notably the Instituto de Culturas Negras, are pressuring the government to implement policies of affirmative action to ensure greater access to the labor market and greater occupational mobility for blacks.

The grave problem of police violence was the third focus area selected by the participants. Arbitrary arrest, torture and extra-judicial killings continue at alarming rates in both urban and rural areas. Incidences of police violence often directly target blacks, especially young black men, and are more likely to occur in impoverished areas where blacks live. There has been very little official response to police violence and the resulting impunity lends itself to the continued perpetuation of violence. Cases of police violence are rarely challenged in court and even when they are, the system is so riddled with corruption and lengthy delays that it is unlikely that the perpetrators will be brought to justice. Although there have been some improvements, the most noteworthy being that police offenders are now tried in civilian rather than military courts, very little has actually changed. Some of the participants' organizations, especially the Centro de Articulação das Populações, have called for greater transparency in judicial proceedings and for a new, racially sensitive standard to be developed for use in mandatory trainings of police officers.

A discussion of these issues at the workshop served as a backdrop for the presentations by the Law Group and were systematically carried through during the entire workshop. The culminating exercise was the initial outlining of an eighteen-month strategy for Afro-Brazilian groups to engage the UN on human rights issues that are critical in Brazil. This exercise built upon the previous work and tied all of the concepts presented together into a document that serves as the basis for developing a concrete action plan. Each of the aforementioned groups designed an eighteen-month plan around their respective chosen theme. An example of these plans is attached.

This methodology was very successful as it allowed participants to understand and apply international standards of human rights to real life issues in Brazil. In addition, the fact that the participants were very familiar with the issues enriched the experience and reinforced the real utility of these mechanisms for combating racial discrimination in the country.

Outcome

Even in the short amount of time following the workshop, a number of related activities undertaken by participants and facilitators can be traced to the tools presented and the invaluable connections made with other organizations during the course of the workshop. At least one workshop participant represented his organization at the General Assembly of the Organization of American States, which took place in early June in San Jose, Costa Rica. Another participant represented her organization at the Third Meeting of the Preparatory Committee (PrepCom) for the UN World Conference Against Racism, which took place in May in Geneva, Switzerland, and Gaston Chillier, Coordinator of the Law Group's Latin America Program, was invited by Congressperson Luis Alberto to attend the National Meeting of Black Politicians in Salvador, Brazil in July. Additionally, conversations with Mr. Alberto and with other Brazilian officials during the Third PrepCom led to the Law Group's invitation to an Afro-Brazilian woman to speak about her personal experiences of racism during a Special Forum on *"Comparative Experiences of Racism and Racial Discrimination: 'Voices of Victims,'"* which the Law Group will hold during the UN World Conference Against Racism. While the Law Group has not yet implemented a more formal and systematic method for maintaining an ongoing dialogue with participants, a mechanism for follow-up and evaluation is in development and will be applied at the end of this project cycle.

Key to the success of any efforts will be the ability of organizations of the black movement to go beyond the limited agendas of individual organizations and work collaboratively toward a common goal centered around a particular issue. An additional value of this workshop, therefore, was the opportunity to exchange ideas and visions, drawing on the great geographical, thematic and experience diversity of the workshop participants. In this way, the Law Group provided a forum for which collective action could be considered and will continue to be a resource for future action.

Participant response

The Law Group received praise for the workshop from a number of participants. Just as the Law Group solicited significant participant input prior to the workshop, we also solicited input following the workshop. The evaluation sought to measure the effectiveness and utility of the workshop, while soliciting guidance for the design of future workshops. Participants gave high marks to the Law Group's teaching style and methodology; the opportunity the workshop provided for obtaining new and relevant knowledge (e.g. several participants mentioned that they did not learn about this in law school or in other training courses); the quality and diversity of the participants selected; the Law Group's success in bringing the participants together, despite difficult internal politics among organizations within the black movement; the opportunity to move beyond talking to actually developing strategies together; and the opportunity the workshop provided for focusing on political as well as juridical techniques for addressing racial inequality in Brazil.

Related events

A crucial factor in the mobilization of the black movement to combat racial discrimination in Brazil is the ability of the movement to work together more effectively to engage regional, national and international mechanisms in advocacy. To build upon existing networks and foster greater connections with Brazilians at all levels of the black movement, the Law Group held a special reception for the community preceding the start of the workshop and invited several prominent speakers to discuss the human rights landscape within the Afro-Brazilian community, with particular attention to racial discrimination as it affects the community. The panelists for this event included Nelson Pelegrino, president of the Human Rights Commission of the National Congress; Luiz Alberto, member of the National Congress and the first and only Afro-Brazilian activist of the black movement to be elected to Congress; Marcia Virgens, the first and only public prosecutor charged with combating racial discrimination in Brazil; and Gilberto Leal, a well-known activist, former state politician and current state (Bahia) Coordinator of the Association of Black Organizations (CONEN). More than eighty guests representing political, social, legal, labor and religious groups in the region attended the event, which was covered by the media. An interview with Gay McDougall, Executive Director of the Law Group and Member of the UN Committee for the Elimination of Racial Discrimination, was published in the newspaper *A Tarde*, bringing the issues of racial discrimination against Afro-Brazilians to an audience much larger than the black movement alone. A translation of the article is attached. Law Group staff also met with several leaders and activists of the black movement throughout the week of the workshop to discuss current developments within the black movement, strategies for using the UN World Conference as an advocacy tool, and possibilities for future collaboration. A complete listing of meetings is attached.

Conclusion

The Law Group is very pleased with the outcome of this workshop on the use of UN mechanisms for combating racial discrimination in Brazil. The high level of participant involvement during the workshop and frequent communication prior to and after the workshop fostered a more advanced level of partnership among the organizations that make up the black movement. We are confident that the concepts presented in this workshop will be practically used by the participants and shared with their respective organizations and networks, and that new modes of collaboration that were developed at the workshop will strengthen the efficacy of the work already being done. The momentum that has been created through this workshop is very encouraging. It is within this framework of active engagement that the Law Group is now actively undertaking preparations for the second workshop in the training program. Both the participants and the Law Group look forward to the next training with enthusiasm and high expectations.