

FUNDAMENTAL RIGHTS STUDY NUCLEUS

Equality Right in Brazil: State Actions to correct Racial Inequalities¹

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In its early history, Brazil was used almost exclusively as a source of natural and agricultural resources. An economy with this characteristic relies heavily on manual working power, and since the natives were hard to enslave and considered poor workers, Portugal turned to Africa for slaves. As a result, Brazil's black population increased drastically. Later efforts to exchange black workers for immigrants did not alter this trend and, as a result, colored people in Brazil today amount to over 90 million, virtually half of the country's inhabitants. It is the world's second largest African-descent population, smaller only than Nigeria's.

As is tradition in countries whose colonial past involved large scales of slave-work, black people in Brazil suffered from unequal treatment throughout history. Slavery was officially abolished as late as 1888, and though the 20th century brought some State measures to counter the effect of past discrimination, mainly the criminalization of racism, it wasn't until the 1988 Constitution that this grave societal problem was vigorously addressed. This last document reflected the fight of black groups and the general concern with the situation of *de facto* social segregation. As a result, it orders the Government to partake whatever policies it must so that a racially equal society, which is not yet a reality, can be reached in the future. The interpretation

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made by most is that the Constitution strongly encourages affirmative action policies so that fundamental rights such as education, work and health care can be thoroughly and equally satisfied by all races.

And so it is that, unfortunately, the Brazilian Government's real efforts to implement anti-discrimination measures and desegregation policies date of the last decade. Therefore, the statistical data we provide henceforth shouldn't be a surprise. As said before, black people constitute almost half of the population of Brazil.

For the last few decades both black and white people have had their average of study years increased. Black people born in 1929 studied 2 years in average, throughout their whole lives, while whites born at the same time studied 4 years. Today, the number has tripled for black people, reaching 6,2 years, whereas it has doubled for whites, reaching 8,1 years. However, the gap between the number of years that the average black person studies and the average white person studies has remained ominously consistent: 2 years, after all this time. Today only 3,7% of all black people who are over 25 years of age have studied more than 15 years in their life. In comparison, 12,7% of all white people are in this situation. When the issue is illiteracy the numbers switch, as expected. While only 6,5% of all white people in Brazil are illiterate, 14,4% of all black people share this condition.

The labor market statistics confirm the expectation raised by the education statistics. Black people who have studied up to for 4 years earn 2,6 reais (Brazilian currency) per hour in their main job. Those who have studied 12 or more years earn 11,10 reais per hour. But white people who have studied up to 4 years earn 3,70 reais, and the ones that studied over 12 years earn 15,90 reais. The difference between the average for black and for white people is astounding: the first ones earn in average 3,9 reais per hour, while second ones earn 7,30 reais.

In metropolitan São Paulo the unemployment rate among colored people – 23,1% – is higher than among white – 16,8%. In the city of Salvador, in the northern state of Bahia, where blacks represent 86% of the economically active population, 26,9% of them are unemployed. On the other hand, only 18,4% of whites are on the same situation. In Porto Alegre this inequality is no different: 23,4% for blacks, 15% for whites. In this state capital, the percentage of unemployed black people rose 12,5% from 1998 to 2004, while white's rose a mere 2%. In the federal capital, a black person has to look for a job an average of 17 months, whereas a white one needs only 15 months at most to find work. In the metropolitan Rio de Janeiro, black men are paid in

average 50% better than black women and white women are paid 105% more than black ones. A white male has an income 323% higher than that of black women. The average per capita income of white people in the Rio de Janeiro state is 550 reais, while that of black people is 244, that is, 40% less.

Aside from being unemployed more often, and receiving worst pay, black people also lead the rank when it comes to those who work in vulnerable conditions. Those are understood as informal jobs, unpaid family workers or houseworkers. In the main Brazilian capitals a consistent gap between the number of black and that of white people in this condition is noticed. In São Paulo, 41,8% of black people are in vulnerable working conditions, whereas only 30% of white people share that faith. In Salvador, the percentage for black people reaches 43,5% and that of whites is 29,8%. In Recife, capital of the northern state of Pernambuco, the numbers do not differ: 43% colored people are in that line of work, compared to only 36,5% of white people. In Porto Alegre, 36,4% of black people and 28,9% of white people depend on vulnerable jobs.

The final numbers sum up the situation: when the whole population is split according to the average family income of people over 10 years of age, the tenth with the poorest people is composed of 26,1% whites and 73,2% blacks. The richest 1% of the Brazilian population, on the other hand, is composed of 12,4% black people and a crushing 85,7% white people.

This data is testimony to the harsh and persistent inequality that has victimized colored people in Brazil for centuries and defies all but the best devised and best implemented public policies. Fortunately, there is very strong public will towards changing these statistics, and, as of late, clear political consensus in the idea that the State must act using all the tools available to it in order to bring about racial equality. Contrary to the situation in several countries, it can be argued that the biggest contemporary problem in Brazil is not racial intolerance *per se*, despite its significant role in historical and present-day racial inequality, but the persisting effects of historical mistreatment of the African descendants.

In 1996, after the launch of the National Human Rights Program, the Fernando Henrique Cardoso administration created the Human Rights Secretariat. It is a federal public entity with nearly ministerial status. Its attribution was to combat the situation described earlier, not only regarding black people, but also other Brazilian minorities, such as natives and homosexuals. The Secretariat had an active role at the Durban

Conference and later a National Council dedicated to fight discrimination was instituted. It is a multi-representative council, composed of government as well as civil society members. In 2002, a national affirmative action program was created, aimed at increasing the number of black students in universities. At the time, differentiated treatment for black people regarding university admission processes was an idea that had just started being put to use in Brazil. But the federal government took the initiative: in 2001, the Ministry of Justice adopted a quota-based admission's policy which reserves 20% of the jobs in that Ministry to colored people, as well as other smaller percentages for other minorities.

In 2003, at the very beginning of the Lula administration, a special secretariat, directly subordinated to the President was created. It was named the "Special Secretariat for the Promotion of Racial Equality Policies". It is reasonable to say that, although it is evidence of a government's compromise with desegregation, it fulfills or should fulfill much of the same role as the Human Rights Secretariat. Unfortunately, many social policies in Brazil – even when successful – are replaced with new ones as soon as a new administration takes its place. The goals and execution remain often the same, but the names always change to associate the new policy with the new administration. The special secretariat's focus is improving the living conditions of black people, but the native population is also object of the secretariat's efforts.

This seems to be the case: this special secretariat also structured a nationwide multi-representative council. It has some 40 members, including spokes-people for several black-race associations, religious groups and government ministries. The goal of this council is to promote an active participation of the civil society, individuals as well as commercial corporations, in the pursuit of racial equality. It is also the council's function to police the implementation of affirmative action programs to ensure their execution is satisfactory and according to plan. Sadly, however, after a few assemblies, the council's last meeting was held on February of 2006.

An intergovernmental forum was also devised, in order to push other federation entities, which, in Brazil, include cities as well as states, to create and implement their own affirmative action policies, as well as providing a way for all of these governmental sectors to coordinate their actions, learn from what has already been done and support each other in reaching the main objective of minority upbringing.

The council and the forum reflect the secretariat's guiding principles, which consist of transversalization, participation and decentralization. It means that the

secretariat aims at introducing a State policy, rather than a government policy, of racial equality promotion. It is no longer a job for a federal entity alone, on the contrary, it involves the work and participation, in one way or another, of all federal agencies and ministries. Also, it intends to incentive states, cities, NGOs and companies to take on the role traditionally reserved to the federal government, of creating and executing affirmative action programs and policies. The secretariat follows the guidelines set by the UN's International Convention on the Elimination of All Forms of Racism of 1965, mainly when it comes to defining racism, and it also abides by the Durban Plan of Action of 2001, especially by adopting the resolutions therein and lining up the challenges of the Brazilian government according to the Plan.

An example of the compatibility of the Lula administration's policies regarding racial equality with the Durban Plan of Action is the ProUni program, which hands out full and partial scholarships for students that come from public schools, keeping a percentage of these scholarships safe for black and native-Brazilian students. Such program complies with the article 123, g, of the Durban Plan, which urges States to: “consider establishing financial assistance programmes designed to enable all students, regardless of race, color, descent or ethnic or national origin, to attend institutions of higher education”.

The Brazilian government's efforts to fight racial inequality are not limited to policies devised and executed by the Administration, but rather include active participation by the Legislative power. The cornerstone of this participation is the Statute for Racial Equality, a project that has been proposed in 2003 but has not, as of yet, been passed. It is believed to be the most advanced piece of legislation in the area of racial rights ever to be designed, mostly because of its vast application (being that it is a federal law) and its concept of the affirmative role that is needed of the State in terms of racial equality policies.

In its preliminary dispositions, it makes clear that both the State and civil society are bound by a duty to promote the social inclusion of racial inequality victims, through equal participation of all in political, economical, entrepreneurial, educational, cultural and sports activities. In order to achieve more efficacy, the federal, state and city Administrations can allocate resources for policies and plans more easily, without having to resort to a request the legislative chambers.

With the same spirit as the 2001's Ministry of Justice affirmative action plan, the Statute authorizes all public entities to adopt hiring policies with preferential treatment

for black people. It is considered a salutary measure to contain the perverse and discrete, yet highly prejudicial, color discrimination in the labor market. Such preferential treatment is recommended to the private sector companies as well.

The search for racial equality carries on in the Judiciary. Two main aspects of a justiciable right to equality can be focused here. Firstly, the fight of the black people for the lands remnant of ancient Quilombos. These were colored communities – independent and autonomous, in a way – formed by rogue slaves in the metropolitan regions of large cities. The property rights of people still living in communities that evolved from old Quilombos – an estimate one thousand in 14 states – are being secured through judicial suits started by these people but also by NGOs and civil society representatives. Their rights are anchored mainly in Constitutional dispositions that privilege the situation of “Quilombolas” and the in the 169 Convention of the ILO, which demands respect for minorities' historical traditions. There are currently 82 lawsuits with the objective of formalizing property rights in these cases, with already 6 favorable sentences. The judiciary contributes to the development of a pluralistic society, preserving the Brazilian colored people's most ancient roots.

The second main aspect is the criminal prosecution of racism. Although efforts have been made in as early as 1951 to fight racist behavior, it remained until 1988 a minor offense. The Constitution then explicitly held it a crime, which caused a 1989 law to determine prosecution conditions and penalties. But, like many of the initiatives aimed at eliminating racism, this too proved inefficient. A report made by the External Affairs Ministry in 2001, preparing for the Durban Conference, acknowledged that there were then only 150 criminal suits on the basis of racism in the whole country. Regional researches show that low number to be accurate. In Salvador, a 10-year old judicial court established specifically for racism-related suits has so far not produced a sentence, despite a record of 219 complaints motivated by racist practices. In Recife, between 1998 and 2005, as low as 3% of cases reported to the police were actually processed and sentenced. In only one case did the verdict actually apply a penalty. Along with historically-known police investigational flaws, the absence of a sincere belief in the importance of racist-practice's criminal suppression can be indicated as reasons for these puny numbers.

Specifically in the field of education, the strong public will towards elimination of racism and racial inequality, mentioned earlier, resulted in several affirmative action programmes for higher education all over the country. These are mostly quota-based

admission's policies that increase the chances of success for colored and native students that have attended public schools throughout their lives. The first state university to put in place a cota admission's policy was Bahia's, in 2002. In 2004, the University of Brasilia was the first federal institution to admit black people through this mechanism. In that same year, the Faculdade Zumbi dos Palmares was the first private institution to do so. It is funded by a black-rights-activism NGO. A state law instituted cotas for the admission of black students in the universities of the state of Rio de Janeiro. That law is suspended to this date, object of an unconstitutionality action that the Brazilian Supreme Cortehasn't yet ruled on.

The state of Bahia has one of the largest proportions of black to white inhabitants in the nation. It is, therefore, politically simpler to adopt such affirmative action programmes. But the same cota-based policy was recently implemented in the Federal University of Rio Grande do Sul, the country's southernmost state. There, the black population is by all means a minority, as a result of a strong European colonization. Nonetheless, the council of that University approved an admission's policy with amazing results. Whereas normally both a black and a white student would have to top other 32 candidates to be admitted into Medschool, now a white student has to top other 36, and a black student who attended public school for several years needs only to best 3 candidates like him. There was very strong tension involving the council and the whole university prior to the submission of the program for voting. Unfortunately, this only contributes to the argument held by some that affirmative action stimulates racial hatred.

It is important to stress that most of these programs were implemented by the councils and administrations of the universities. This supports the idea behind the Special Secretariat for Promotion of Racial Equality Policies' decentralization principle: the initiative to fight segregation and discrimination has to originate and develop in the bosom of civil society, not via the government. Despite all efforts cited here, the statistics that were shown point to the seriousness and urgency of the problem. What needs to be said is that changes are being made, as opposed to what happened through the last century – societal negligence towards the black population. Significant results, however, will probably be seen only by the next generation of Brazilians. That is, if both the government and the civil society merge their will of change and work together to achieve racial equality between black and white people.

