



***Permanent Mission of Brazil to the United Nations Office
and other International Organizations in Geneva***

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The Permanent Mission of Brazil to the United Nations and other International Organizations in Geneva presents its compliments to Office of the United Nations High Commissioner for Human Rights – Special Procedures Division – and, with reference to letter JOL BRA 6/2021, dated 15 June 2021, has the honor to transmit herewith the response from the Brazilian Ministry of Justice and Public Security to the request of information presented by the relevant Special Procedure mandate holders in the abovementioned communication.

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, 18 June, 2021

To the
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations CH-1211 Geneva 10, Switzerland
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Information from the Coordination on Counter-Terrorism of the Federal Police:

ON SENATE DRAFT BILL NO. 272/2016

Under the authorship of Senator Lasier Martins, it dates from 2016 and proposes to amend Law No. 1,326/2016, in order to define with more precision conducts considered as acts of terrorism.

It seeks to insert in § 1 of Art. 2 of Law No. 13.260, of March 16, 2016, the conducts of:

a) setting fire to, depredating, looting, destroying or exploding means of transport or any public or private property with the aim of forcing public authorities to carry out, refrain from carrying out or tolerate the practice, or to intimidate certain persons, group of persons or the population in general; and b) to interfere with, sabotage or damage computer systems or databases with a political or ideological motivation, with the aim of disorienting, disabling, hindering or obstructing their operation.

To the Art. 3, it adds paragraphs to punish those who provide shelter to a person who he or she knows has committed a crime of terrorism, exempting from punishment the ascendant or descendant in the first degree, spouse, stable companion or stable partner or brother of the terrorist.

In addition, it inserts art. 3-A, providing punishment for who rewards or praises a person, group, organization or association for the execution of terrorist crimes.

Finally, it adds the art. 7-A to establish that the person convicted of the crime of terrorism will serve their sentence in maximum security facility.

The draft bill had amendments presented as well as votes for rejection.

On 31/10/2018 a Public Hearing was requested by the Commission of Constitution and Justice and Citizenship of the Federal Senate – CCJ –, to discuss the Project. Since 04/30/2019 this draft bill has been under the auspices of CCJ, labeled "matter with the rapporteur", distributed to the Senator Alessandro Vieira, to issue his report.

Such circumstances demonstrate precisely a broad and varied discussion of the issue, and the allegations made in the joint allegation letter OL BRA/6 2021 are of a premature nature.

ON CONGRESS DRAFT BILL 1595/2019

Under the authorship of Deputy Major Vitor Hugo, it dates from 2019 and provides for counterterrorist actions, without excluding or impeding the actions and procedures of the State aimed at the criminal prosecution of those who practice the typified crimes of terrorism provided by the law.

The last legislative movement recorded of the mentioned legislative project was on March 18, 2021, when it was determined the creation of a Special Commission destined to issue an opinion on the bill. This commission will be composed of 34 members and an equal number of substitutes. Since then, the bill has not had any new development.

CONSIDERATIONS

The progress of the above-mentioned draft bills demonstrates a prolonged and ample discussion of issues related to contemporary terrorism and its confrontation.

Responding to the constitutional command and the numerous international requirements and commitments made by Brazil, these bills regulate matters related to terrorism, addressing investigative and procedural aspects.

Moreover, the texts follow the international trend on the recognition of the "message of terror" as an essential element of the crime of terrorism, attesting to the preponderantly communicational nature of terrorism.

It is also important to mention that the international doctrine related to the theme is clear when referring to the need to create specific systematic legislation to avoid or prevent incidents related to terrorism, since numerous existing criminal provisions do not respond to the phenomenon. The fight against terrorism must be all-encompassing, requiring the adoption of a series of measures, including among them the improvement and adequacy of judicial and informational treatment of the issue, using all the means available under the rule of law.

The contemporary society is going through a transition phase, to face a new step on terrorism, even more dangerous and delicate, which calls for a more modern and efficient preparation and action by States.

It is imperative that, in this context, in the face of the Brazilian legal system, the definition of a terrorist organization and its acts must remain fully subject to the principle of precision. Moreover, the modern legislation related to the matter does not restricts guarantees or fundamental rights unduly; on the contrary, it preserves the rights of the majority of the citizens, fulfilling and making operational the principle of the prohibition of insufficient protection.

It is also important to emphasize that the two legislative projects present rich and prolonged discussion, including object of public hearings. This seems to be exactly the role expected of the Legislative Power. Moreover, such legislative projects are still legislative projects are still far from being approved.

Information from the Special Advisory Office for Federative and Parliamentary Affairs - AFEPAR/MJSP

PL 1595/2019 - which "Provides on counterterrorist actions, amending Laws No. 10.257, of July of July 10, 2001, and nº 9.807, of July 13, 1999, and makes other provisions".

As for the Advisory of Federative and Parliamentary Affairs of Parliamentary Affairs of MJSP, a consultation was opened on the matter, under process SEI No. 08027.000562/2019-85 through which through Memorandum No. 1586/2019/AFEPAR/MJ, dated 08 of July 08, 2019, requesting the manifestation of the technical competent areas to analyze the matter, considering that the position requested would inform the actions of the Presidency of the Republic about the processing of the aforementioned bill at the House of Representatives.

PLS 272/2016 - which "Amends Law No. 13.260, of March 16, 2016, in order to discipline with more precision conducts considered as acts of terrorism".

In November 2018, a Public Hearing was held aimed at the instruction of the matter at the request of Senators Lindbergh Farias (PT/RJ), Ana Amélia (PP/RS) and Gleisi Hoffmann (PT/PR). Among the invitees were Mr. Juner Caldeira Barbosa, Federal Police and Deputy Head of Division Antiterrorism Division - DAT/DIP/PF. On 04/25/2018, the then rapporteur and Senator Magno Malta read the report, with a vote for approval with amendments, but the Presidency postponed the discussion of the matter.

The Advisory Office of Federative and Parliamentary Affairs of Parliamentary of MJSP, opened a consultation on the matter, SEI process No. 08027.001007/2017-17, by means of Memorandum No. 611/2017/AFEPAR, requesting the manifestation of the competent technical areas to analyze the matter, considering that the position requested would subsidize the actions of the Presidency of the Republic about the processing of the proposal in the Federal Senate.

Information from the Special Advisory for Legal Affairs of MJSP

The Special Advisory for Legislative Affairs has not yet been asked to perform an analysis on the merit of the aforementioned proposition, as verified in SEI 08027.001007/2017-17 (LETTER NO. 14938985/2021/AFEPAR/MJ), for which reason there are no technical contributions to be presented by this by this unit at this moment.

On the examination of the compatibility of Bill No. 272, of 2016, and Bill no. 1595, of 2019, with articles 17, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, it is reported that the prior judicial review of legislative proposals, which are in progress, is primarily a role of the deliberation and analysis bodies of the National Congress, including in relation to the compatibility to the commitments signed by the Federative Republic of Brazil internationally.

Moreover, the two draft bills in question are still being analyzed in the Legislative Houses by means of extensive public debate and with the possibility of substantial changes to the text.
