

## ***Anexo documental 2: La legislación penal accesoria (fuera de los códigos penales)***

---

En Antigua y Barbuda, The Genocide Act, aprobada en diciembre de 1975, dispone lo siguiente:

3. (1) a person shall commit an offence of genocide, if he commits any act falling within the definition of "genocide" as set out in Article 11 of the Genocide Convention contained in the Schedule to this Act.  
(2) A person guilty of an offence of genocide shall on conviction on indictment-
  - (a) if the offence consists of the killing of any person, be sentenced to imprisonment for life; and
  - (b) in any other case, be liable to imprisonment for fourteen years.
4. Proceedings for an offence of genocide shall not be instituted except by or with the consent of the Director of Public Prosecutions.
5. For the purpose of the Extradition Act, all powers vested in and acts authorized or required to be done by any person thereunder in relation to the surrender of fugitive criminals under the Extradition Acts. 1870 and 1873 of the United Kingdom and any Acts amending or substituted for those Acts, hereinafter called "the United Kingdom Acts", shall and may be done in relation to any offence of genocide, any attempt or conspiracy to commit such offence and any direct or public excitement to commit such an offence and for the purposes of the application of the Extradition Act in so far as it relates to the United Kingdom Acts and such United Kingdom Acts shall be deemed in relation to any proceedings within Antigua and Barbuda to include the offence of genocide and any attempt of conspiracy to commit such an offence and any direct and public excitement to commit such an offence as if such offences were stated as extraditable offences in the United Kingdom Acts.
6. For the purposes of the Extradition Act and the Fugitive Offenders Act no offence which, if committed in Antigua and Barbuda would be punishable as an offence of genocide or as an attempt, conspiracy or excitement to commit such an offence shall be regarded as an offence of a political character, and no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character.

En Antigua y Barbuda así como en Barbados, el artículo 33 del *Public Order Act* establece que:

33. (1) A person is guilty of an offence under this section if –
  - (a) he publishes or distributes written matter which is threatening, abusive or insulting; or
  - (b) he uses in any public place or at any public meeting words which are threatening abusive or insulting, being matter or words, intended or likely to stir up or capable of stirring up hatred against any member, or any section, of the public [...] distinguished by race, place of origin, political opinions, colour or creed.
- (2) A person guilty of an offence under this section is liable on summary conviction thereof to a fine not exceeding eight thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

---

En el caso de Argentina, el artículo 3 de la Ley No. 23.592, aprobada en agosto de 1988, dispone lo siguiente:

Serán reprimidos con prisión de un mes a tres años los que participaren en una organización o realizaren propaganda basados en ideas o teorías de superioridad de una raza o de un grupo de personas de determinada religión, origen étnico o color, que tengan por objeto la justificación o promoción de la discriminación racial o religiosa en cualquier forma.

En igual pena incurrirán quienes por cualquier medio alentaren o iniciaren a la persecución o el odio contra una persona o grupos de personas a causa de su raza, religión, nacionalidad o ideas políticas.

---

En Brasil, existen diversas normas especiales que abordan los discursos de odio, especialmente para los casos relacionados a cuestiones raciales. Destacan entre estas normas: la Ley No. 1.390, aprobada en julio de 1951 (también conocida como “*Lei Afonso Arinos*”) y la Ley No. 7.716 (también conocida como “*Lei Caó*”), aprobada en enero de 1989.

La *Lei Afonso Arinos* fue la primera norma que reguló la discriminación racial en Brasil, y fue, por cerca de 40 años, la única norma brasileña en dicho campo. El texto señala que constituye una “contravenção penal, punida nos têrmos desta Lei, a recusa, por parte de estabelecimento comercial ou de ensino de qualquer natureza, de hospedar, servir, atender ou receber cliente, comprador ou aluno, por preconceito de raça ou de côr”. Las penas establecidas iban desde tres meses a un año de prisión hasta la imposición de multas. De acuerdo con algunos autores, la norma no fue concebida para sancionar prácticas encubiertas de discriminación frecuentes, sino más bien para prevenir la ocurrencia de actos discriminatorios en el futuro<sup>1</sup>. Esta norma dio origen a la prohibición constitucional brasileña de 1988 que será referida posteriormente (artículo 5, numeral XLII).

Entre la Ley No. 1.390 y la Ley No. 7.716, aparece la Ley No. 7.170, aprobada en diciembre de 1989, una norma destinada a crear tipos penales relacionados con la seguridad nacional, cuyo artículo 22 dispone que se encuentra sancionado penalmente:

Art. 22 - Fazer, em público, propaganda:

I - de processos violentos ou ilegais para alteração da ordem política ou social;

II - de discriminação racial, de luta pela violência entre as classes sociais, de perseguição religiosa;

III - de guerra;

IV - de qualquer dos crimes previstos nesta Lei.

Pena: detenção, de 1 a 4 anos.

§ 1º - A pena é aumentada de um terço quando a propaganda for feita em local de trabalho ou por meio de rádio ou televisão.

§ 2º - Sujeita-se à mesma pena quem distribui ou redistribui:

a) fundos destinados a realizar a propaganda de que trata este artigo;

b) ostensiva ou clandestinamente boletins ou panfletos contendo a mesma propaganda.

Pero es recién con la *Lei Caó* (posteriormente modificada por la Ley 9.459, aprobada en mayo de 1997) que en realidad se declara—desarrollando el precepto constitucional del artículo 5, numeral XLII—que serán sancionados penalmente los crímenes que resulten de actos móvil fuera la “incitación” a la discriminación por motivos de raza, color, etnia, religión u origen nacional:

Art. 20. Praticar, induzir ou incitar a discriminação ou preconceito de raça, cor, etnia, religião ou procedência nacional.

Pena: reclusão de um a três anos e multa.

§ 1º Fabricar, comercializar, distribuir ou veicular símbolos, emblemas, ornamentos, distintivos ou propaganda que utilizem a cruz suástica ou gamada, para fins de divulgação do nazismo.

---

<sup>1</sup> “The logic behind making discrimination merely a misdemeanor offense was that the law’s purpose was not to uproot an already entrenched social problema, but to prevent the emergence of one that did not currently exist. [...] This focus on deterring the introduction of racial practices, typically of foreign origin, into society, is a persistent preoccupation in Brazilian anti-discriminatory law”. Benjamin Hensler. Not Worth the Trouble? En: Hastings International and Comparative Law Review Vol. 30 No. 3 (2007), p. 288.

Pena: reclusão de dois a cinco anos e multa.

§ 2º Se qualquer dos crimes previstos no caput é cometido por intermédio dos meios de comunicação social ou publicação de qualquer natureza:

Pena: reclusão de dois a cinco anos e multa.

---

En Chile, el artículo 31 de la Ley No. 19.733 (Ley sobre las libertades de opinión e información y ejercicio del periodismo), dispone que:

El que por cualquier medio de comunicación social, realizare publicaciones o transmisiones destinadas a promover odio u hostilidad respecto de personas o colectividades en razón de su raza, sexo, religión o nacionalidad, será penado con multa de veinticinco a cien unidades tributarias mensuales. En caso de reincidencia, se podrá elevar la multa hasta doscientas unidades tributarias mensuales.

---

En Estados Unidos, el US Code, en el Title 18, Part 1, Chapter 13, Section 249, denominado "Hate Crime Acts", dispone que:

(a) In General.—

(1) Offenses involving actual or perceived race, color, religion, or national origin.— Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if

—  
(i) death results from the offense; or

(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(2) Offenses involving actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability.—

(A) In general.— Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person—

(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if

—  
(I) death results from the offense; or

(II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(B) Circumstances described.— For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm,

dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)—

(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(II) otherwise affects interstate or foreign commerce.

(3) Offenses occurring in the special maritime or territorial jurisdiction of the United States.— Whoever, within the special maritime or territorial jurisdiction of the United States, engages in conduct described in paragraph (1) or in paragraph (2)(A) (without regard to whether that conduct occurred in a circumstance described in paragraph (2)(B)) shall be subject to the same penalties as prescribed in those paragraphs.

(4) Guidelines.— All prosecutions conducted by the United States under this section shall be undertaken pursuant to guidelines issued by the Attorney General, or the designee of the Attorney General, to be included in the United States Attorneys' Manual that shall establish neutral and objective criteria for determining whether a crime was committed because of the actual or perceived status of any person.

(b) Certification Requirement.—

(1) In general.— No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that

(A) the State does not have jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(2) Rule of construction.— Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(c) Definitions.— In this section—

(1) the term “bodily injury” has the meaning given such term in section [1365 \(h\)\(4\)](#) of this title, but does not include solely emotional or psychological harm to the victim;

(2) the term “explosive or incendiary device” has the meaning given such term in section [232](#) of this title;

(3) the term “firearm” has the meaning given such term in section [921 \(a\)](#) of this title;

(4) the term “gender identity” means actual or perceived gender-related characteristics; and

(5) the term “State” includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.

(d) Statute of Limitations.—

(1) Offenses not resulting in death.— Except as provided in paragraph (2), no person shall be prosecuted, tried, or punished for any offense under this section unless the indictment for such offense is found, or the information for such offense is instituted, not later than 7 years after the date on which the offense was committed.

(2) Death resulting offenses.— An indictment or information alleging that an offense under this section resulted in death may be found or instituted at any time without limitation.

Asimismo, el US Code, en el Title 18, Part 1, Chapter 50A, Section 1091, denominado “Genocide”, dispone que:

(a) Basic Offense.— Whoever, whether in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

- (1) kills members of that group;
  - (2) causes serious bodily injury to members of that group;
  - (3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
  - (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
  - (5) imposes measures intended to prevent births within the group; or
  - (6) transfers by force children of the group to another group;
- shall be punished as provided in subsection (b).

(b) Punishment for Basic Offense.— The punishment for an offense under subsection (a) is—

- (1) in the case of an offense under subsection (a)(1), where death results, by death or imprisonment for life and a fine of not more than \$1,000,000, or both; and
- (2) a fine of not more than \$1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c) Incitement Offense.— Whoever directly and publicly incites another to violate subsection (a) shall be fined not more than \$500,000 or imprisoned not more than five years, or both.

(d) Attempt and Conspiracy.— Any person who attempts or conspires to commit an offense under this section shall be punished in the same manner as a person who completes the offense.

(e) Jurisdiction.— There is jurisdiction over the offenses described in subsections (a), (c), and (d) if—

- (1) the offense is committed in whole or in part within the United States; or
- (2) regardless of where the offense is committed, the alleged offender is—
  - (A) a national of the United States (as that term is defined in section 101 of the Immigration and Nationality Act ([8 U.S.C. 1101](#)));
  - (B) an alien lawfully admitted for permanent residence in the United States (as that term is defined in section 101 of the Immigration and Nationality Act ([8 U.S.C. 1101](#)));
  - (C) a stateless person whose habitual residence is in the United States; or
  - (D) present in the United States.

(f) Nonapplicability of Certain Limitations.— Notwithstanding section [3282](#), in the case of an offense under this section, an indictment may be found, or information instituted, at any time without limitation.

---

En Guyana, el artículo 2 del Racial Hostility Act establece que:

- (1) A person shall be guilty of an offence if he wilfully excites or attempts to excite hostility or ill-will against any section of the public or against any person on the grounds of their or his race -
  - (a) by means of words spoken by him in a public place or spoken by him and transmitted for general reception by wireless telegraphy or telegraph; or
  - (b) by causing words spoken by him or by some other person to be reproduced in a public place from a record; or
  - (c) by means of written (including printed) matter or pictorial matter published by him.

De la misma manera, el artículo 153A del Representation of the People Act señala que:

(1) Any person who -  
(a) makes or published or causes to be made or published any statement; or  
(b) takes any action, which results or can result in racial or ethnic violence or hatred among the people shall be liable on conviction on indictment to a fine of one hundred thousand dollars together with imprisonment for two years.

---

En Jamaica, el artículo 33 del Offences against the Person Act dispone que:

Whosoever shall advocate or promote genocide is guilty of an indictable offence and shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.

---

En México, el artículo 9 de la Ley Federal para prevenir y eliminar la discriminación, considera como conducta discriminatoria:

XXVII. Incitar al odio, violencia, rechazo, burla, difamación, injuria, persecución o la exclusión.

---

En Trinidad y Tobago, el artículo 3 del *Sedition Act* dispone que:

(1) A seditious intention is an intention - [...]  
(d) to engender or promote -  
(i) feelings of ill-will or hostility between one or more sections of the community on the one hand and any other section or sections of the community on the other hand; or  
(ii) feelings of ill-will towards, hostility to or contempt for any class of inhabitants of Trinidad and Tobago distinguished by race, colour, religion, profession, calling or employment; or  
(e) to advocate or promote, with intent to destroy in whole or in any part of any identifiable group, the commission of any of the following acts, namely:  
(i) killing members of the group; or  
(ii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

De la misma manera, el artículo 7 del *Equal Opportunity Act*, dispone que:

(1) A person shall not otherwise than in private, do any act which—  
(a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons;  
(b) is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group; and  
(c) which is done with the intention of inciting gender, racial or religious hatred.

---

En Uruguay, la Ley 18.026, aprobada en setiembre de 2006 y que acoge el Estatuto de Roma en la legislación interna, incluye en su artículo 16 el crimen de "Genocidio", bajo el texto que sigue:

Artículo 16.

El que con la intención de destruir total o parcialmente a un grupo nacional, étnico, racial, religioso, político, sindical, o a un grupo con identidad propia fundada en razones de género, orientación sexual, culturales, sociales, edad, discapacidad o salud, perpetrare alguno de los actos mencionados a continuación, será castigado con quince a treinta años de penitenciaría"

Finalmente, llama la atención el artículo 17 de la Ley No. 18.026, que dispone lo siguiente: “El que instigare públicamente a cometer crimen de genocidio, será castigado con dos a cuatro años de penitenciaría”.

---