

TERROR IN BRAZIL:

THE LAWS OF REPRESSION*

REVISED NATIONAL SECURITY LAW OF 1969

The following decree, published in March 1969, significantly increases the categories of acts considered as crimes against national security and stiffens the penalties for such acts. It creates the concept of "adverse psychological warfare", established military courts to judge civilians, defines subversive propaganda, takes away (in practice) the right of defense, and gives the armed forces power to imprison any citizen without due process of law. The following articles constitute the key provisions.

Article 12: (It is prohibited) to form, to join, or to maintain any type of association, committee, or organization of class or group which, under the orientation or with the aid of a foreign government or international organization, carries on activities harmful or dangerous to the national security. Penalty: Imprisonment from two to five years for organizers or maintainers, and from six months to two years for others. (Translator's observation: In determining whether or not an organization is harmful to the national security, the President of the Republic and his Council have absolute discretion.)

Article 14: It is prohibited to divulge, by any mass means of communication, false or tendentious news, or a true fact truncated or slanted so as to create or attempt to create ill-will among the people against the constituted authorities. Penalty: Detention from three months to one year.

Paragraph 1: If such divulgence provokes a disturbance of public order or exposes to danger the good name, the authority, the credit, or the prestige of Brazil, the penalty shall be detention from six months to two years.

Paragraph 2: If the director of or person responsible for the newspaper, magazine, radio or television station is found accountable for the divulgations, he will also be fined an amount for 50 to 100 times the value of the local minimum wage, the fine to be doubled should the terms of the previous paragraph apply.

(Translator's observation: Under this article, anyone who criticizes any action of a governmental authority may be found guilty of "attempting to promote ill-will among the people against the government", and may be imprisoned for "committing a crime against the national security".)

Article 39: The following constitute subversive propaganda:

1. The utilization of whatever means of mass communication, such as newspapers, magazines, periodicals, books, bulletins, pamphlets, radio, television, movies, theater and the like, as vehicles of propaganda of psychologically adverse warfare or of revolutionary warfare.

2. The recruitment of persons in their places of work or study.

3. A rally, public meeting, parade, or march.

4. A prohibited strike.

5. Abuse, calumny, or defamation directed at an organ or entity which exercises public authority, or at a public official because of his functions.

6. A manifestation of solidarity with any one of the acts mentioned in the preceding items.

Penalty: Detention from six months to two years. If any of the actions specified in this article causes a threat to or an attack upon the national security, the penalty shall be detention from one to four years.

Article 44: Civilians as well as military personnel shall be subject to the military courts described in Article 122, Paragraphs 1 and 2, of the Constitution, as amended by Institutional Act Number 6 of February 1, 1969, in relation to the process and judgment of the crimes defined by this decree, as well as those perpetrated against military institutions.

Article 45: The special military court established in this decree shall prevail over any other, even as regards crimes committed by means of the press, radio or television.

Article 46: The Code of Military Justice shall be applied in the proceedings and trials in so far as it does not conflict with the dispositions of the Constitution and this decree.

Article 47: During the police investigations, the accused maybe imprisoned up to 30 days by the officer in charge of the inquiry, who should inform the proper judicial authority of the imprisonment. This period may be extended once, by means of a documented request presented by the officer in charge of the inquiry to the authority who nominated him.

Paragraph 1: The officer in charge of the inquiry may hold the accused incommunicado up to ten days if this measure becomes necessary for the police and military questionings.

Paragraph 2: If he considers it necessary, the officer in charge shall solicit, within the period cited or its extension, the preventive imprisonment of the accused, observing the dispositions of Article 149 of the Code of Military Justice.

Article 48: The provisions concerning preventive imprisonment contained in the Code of Military Justice are applicable at any stage of the proceedings.

Article 49: Individual or collective proceedings may be instigated against the infractors of any of the provisions of this decree.

Article 54: The defense, in the course of the proceedings, may indicate two witnesses for each of the accused, and the two witnesses should present themselves, whether or not they are served with a summons, on the day and hour set for the inquiry.

Paragraph: Defense witnesses who fail to appear at the appointed time without a justifiable motive verified by the Council, will no longer be heard; their absence will be considered desistance.

Article 62: An individual condemned to imprisonment for more than two years will also be subject to suspension of his political rights from two to ten years.

Article 63: Suspended sentences for crimes described in this decree are prohibited.

Article 64: Imprisonment shall be imposed in a military or a civilian jail, at the criteria of the judge, but without penitentiary regime.

Article 65: Probation will be governed by the terms of military penal legislation.

Article 66: No bail will be permitted for the crimes described in this decree.

"SELF CONTROL" OF THE PRESS:

The following is an abridgement of an order sent by the Ministry of Justice to all editors of newspapers and owners of television and radio stations the week before Mr. Nelson Rockefeller's visit to Brazil, June 1969:

No news about, comment upon or interviews with anyone who has had his political rights taken away;

No reporting about student movements which have been dissolved by the government, nor about student political activity;

No criticism of government action taking away political rights of citizens or dismissing them from their employment;

The Brazilian government has produced institutional acts and decrees by the dozens, in an attempt to legitimize its situation. Under such legislation all rights are in reality held by the armed forces, publicly represented by a General-President. The power to legislate and the functioning of the judicial system are subordinated to the criteria of the Executive, who can cancel the terms of office of Congressmen and of Supreme Court judges without having to justify his actions. The accused persons are not even informed of the charges which led to their punishment. The same kind of treatment is meted out to university professors, members of the liberal professions, etc., and even to military officials themselves who are not in agreement with the arbitrary acts which are being committed. The principal laws of repression are: Institutional Act Number 5; the National Security Law; the Press Law; and the Law Pertaining to Schools and Universities (Decree Number 477).

INSTITUTIONAL ACT NUMBER 5

This act, published on December 13, 1968, gives absolute powers to the President of the Republic to decree a Congressional recess, to intervene in state government, to suspend summarily the rights of citizens, including Supreme Court judges, to confiscate personal holdings, and with the Act the right of Habeas Corpus is eliminated. This Act was annexed in its entirety to the Constitution promulgated in 1967. The principal articles follow:

Article 1: The Constitution of January 24, 1967 is maintained, as well as the State Constitutions, with the modifications which this institutional Act contains.

Article 2: The President of the Republic may decree the recess of the National Congress and State Legislative Assemblies and the Municipal Councils by a Complementary Act, whether during a State of Siege or not; these bodies shall reassume their functions only when convened by the President of the Republic.

Paragraph 1: When legislative bodies have been recessed by decree, the corresponding Executive Power is hereby authorized to legislate in all matters pertaining to the Constitutions or the Organic Law of the Municipalities.

Article 3: The President of the Republic, in the national interest, may decree intervention in the States and Municipalities, exempt from the limitations provided in the Constitution.

Paragraph 1: State and Municipal Interveners (Interventores) shall be named by the President of the Republic and shall carry out all the functions and have all the powers which are attributed to the Governors and Mayors, and shall have all the rights, salaries, and benefits determined by law.

Article 4: For the purpose of preserving the Revolution, the President of the Republic, upon the advice of the National Security Council, and exempt from the limitations provided in the Constitution, shall have the power to suspend the political rights of any citizen for a period of ten years and to cancel all elected terms of office, whether federal, state, or municipal.

Article 5: The suspension of political rights based on this Act shall simultaneously signify:

1. Cancellation of the privilege of special legal status due to prerogative of function;
2. Suspension of the right to vote or to be voted for in labor union elections;
3. Prohibition of activities and manifestations concerning subjects of a political nature;
4. Application, when necessary, of the following security measures;
 - a. freedom under surveillance
 - b. prohibition against visiting certain specified places
 - c. fixed domicile

Paragraph 1: The Act which decrees the suspension of political rights may fix restrictions or prohibitions related to any other public or private rights.

Article 6: Constitutional or legal guarantees of lifetime duration, of stability in office, as well as of the exercise of functions for a fixed period of time are hereby suspended.

Paragraph 1: The President of the Republic, by means of decree, may dismiss, remove, retire or displace any holders of the guarantees referred to in this article, as well as employees of the self-governing boards (autarchies), public enterprises or associations of mixed capital, and dismiss, transfer to reserve status, or change the status of military personnel or members of the Military Police, providing, when due, payments or benefits proportional to the time of service.

Paragraph 2: The provisions of this article and its first paragraph apply also to the States, Municipalities, Federal District and the territories.

Article 7: The President of the Republic, in any of the cases covered by the Constitution, may decree a State of Siege and prolong it, fixing the period of its duration.

Article 8: The President of the Republic, following investigation, may decree the confiscation of the possessions of all those who have illicitly become wealthy in the exercise of their public offices or functions, including autarchies, public enterprises, or associations of mixed capital, in addition to the corresponding legal sanctions.

Article 10: The guarantee of habeas corpus is suspended in the cases of political crimes against the national security, economic and social order and the popular economy.

Article 11: There shall be no judicial review of any measure carried out in accord with this Institutional Act and its Complementary Acts, nor of the corresponding results.

Article 12: The present Institutional Act takes effect on this date, revoking any provisions to the contrary.

Brasilia

December 13, 1968.

COMPLEMENTARY ACT NUMBER 38

The following Complementary Act Number 38 was promulgated simultaneously with Institutional Act Number 5:

Article 1: In the terms of Article 2 and its paragraphs of Institutional Act Number 5 of December 13, 1968, the recess of the National Congress is decreed as of this date.

Article 2: The present Complementary Act takes effect on this date, revoking all provisions to the contrary.

Brasilia

December 13, 1968.

DECREE 477: LAW PERTAINING TO SCHOOLS AND UNIVERSITIES (February 26, 1969)

Teachers, Students and employees of educational institutions who participate in strikes, destroy property (inside or outside of schools), participate in street marches and unauthorized rallies, or distribute "subversive material", will be punished under Decree 477 by the following penalties: Professors and employees will be summarily dismissed, and banned from employment in any other educational institution during a three year period. If the student is on scholarship, he shall lose it and become ineligible for any scholarship aid for a period of five years (if a foreigner, the scholarship student will be expelled from the country.)

No publication of anything that might create hostility toward government officials;
No criticism of the economic policy of the government;
No news about political arrests, except when provided by the government;
No news about the political activity of the clergy, no manifestos of church leaders or interviews with them that might create tensions "of a religious nature";
No news about workers' movements, strikes or other acts considered subversive which may occur in Brazil or in foreign countries;
No news of opposition to the Rockefeller visit whether that opposition occurs in Brazil or in other countries.

HOW THE PRESENT BRAZILIAN PRESIDENT WAS "ELECTED"...

1. The present President of Brazil was chosen by consulting 239 officers of the Armed Forces.
2. The Electoral College was made up of 118 Army generals, 60 Admirals and 61 Air Force generals.
3. The only eligible candidates were the "electors" themselves, i.e., two-, three-, or four-star generals.
4. For "hierarchical" motives, a three-star general preferred by the troupes in the Northeast, the most underdeveloped region of Brazil, was excluded from the dispute for succession.
5. The name chosen by the Army High Command, the Admiralty Council of the Navy, and the Military Aeronautical Council as capable of preserving unity and representing the military, was that of General Garrastazu Medici, Commander of the Third Army. A symbolic list of three names, which in addition to General Medici included the Army Chief of Staff and the Chief of Staff of the Armed Forces, was organized.
6. Congress, whose membership had already undergone successive purges, was reopened in order to ratify, in the name of national security, the name selected by the upper echelons of the military.

*From TERROR IN BRAZIL: A DOSSIER published in April 1970 by the American Committee for Information on Brazil. The Dossier also contains verified reports of the "systematic and generalized" use of torture against political prisoners.

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