

RELIGIOUS INTOLERANCE, ETHNORACIAL LAW AND THE SHIFTING LANDSCAPE OF AFRO-BRAZILIAN RELIGIOUS RIGHTS IN 21ST CENTURY BRAZIL¹

INTOLERANCIA RELIGIOSA, DERECHO ETNICO-RACIAL Y CAMBIO DE PAISAJE DE LOS DERECHOS RELIGIOSOS AFRO EN EL BRASIL DEL SIGLO XXI

INTOLERÂNCIA RELIGIOSA, LEGISLAÇÃO ÉTNICO-RACIAL E A MUDANÇA DA PAISAGEM DOS DIREITOS RELIGIOSOS AFRO-BRASILEIROS NO BRASIL DO SÉCULO XXI

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Abstract

The legal status of Afro-Brazilian religions has changed dramatically in the past few decades. For much of the 20th century, Afro-Brazilian religions lacked legal recognition as religions. Over the past twenty years, they have become targets and beneficiaries of ethnoracial laws and government institutions fostered by Brazil's 1988 "Citizen Constitution." Still, most acts of violence on Afro-Brazilian religions fail to reach courts and even fewer are tried using the legal frameworks provided by ethnoracial law. This article examines the structural obstacles that the legal remediation of discrimination against Afro-Brazilian religions has faced over the past two decades. It argues that although religious activists' efforts have contributed to beneficial changes in the legal landscape surrounding religious intolerance, current legal understandings of religious prejudice and discrimination continue to curtail the application of anti-discriminatory law to most attacks on Afro-Brazilian religions. Looking ahead to the 2020s, these obstacles can be expected to be aggravated further by the growing influence of conservative Evangelical Christian agendas on the executive, legislative and judiciary branches of the Brazilian government.

Key words: anti-discrimination law, legal activism, religious intolerance, Afro-Brazilian religions

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Resumen

El estatus legal de las religiones afrobrasileñas ha cambiado dramáticamente en las últimas décadas. Durante gran parte del siglo XX, las religiones afrobrasileñas carecieron de reconocimiento legal como religiones. Durante los últimos veinte años, se han convertido en objeto y beneficiarias de las leyes étnico-raciales y las instituciones gubernamentales impulsadas por la constitución ciudadana de Brasil de 1988. Aun así, la mayoría de los actos de violencia contra las religiones afrobrasileñas no llegan a los tribunales y aún menos son juzgados utilizando los marcos legales proporcionados por las leyes étnico-raciales. Este artículo examina los obstáculos estructurales que ha enfrentado la resolución legal de la discriminación contra las religiones afrobrasileñas durante las últimas dos décadas. Sostiene que, aunque los esfuerzos de los activistas religiosos han contribuido a cambios beneficiosos en el panorama legal que rodea a la intolerancia religiosa, la comprensión legal actual del prejuicio religioso y la discriminación continúa restringiendo la aplicación de la ley antidiscriminatoria a la mayoría de los ataques contra las religiones afrobrasileñas. De cara a la década de los 2020s, se puede esperar que estos obstáculos se agraven aún más por la creciente influencia de las agendas cristianas evangélicas conservadoras en los poderes ejecutivo, legislativo y judicial del gobierno brasileño.

Palabras clave: ley contra la discriminación, activismo legal, intolerancia religiosa, religiones afrobrasileñas

Resumo

O status legal das religiões afro-brasileiras mudou dramaticamente nas últimas décadas. Durante grande parte do século XX, elas não foram reconhecidas legalmente como religiões. Nos últimos vinte anos, elas se tornaram alvos e beneficiárias das leis étnico-raciais e instituições governamentais promovidas pela Constituição Cidadã de 1988. Ainda assim, a maioria dos atos de violência contra religiões afro-brasileiras não chega aos tribunais e menos ainda são julgados usando os marcos legais fornecidos pelas leis étnico-raciais. Este artigo examina os obstáculos estruturais enfrentados pela remediação legal da discriminação contra as religiões afro-brasileiras nas últimas duas décadas. O artigo argumenta que embora os esforços dos ativistas religiosos tenham contribuído para mudanças benéficas no cenário legal em torno da intolerância religiosa, os atuais entendimentos legais de preconceito e discriminação religioso continuam a restringir a aplicação das leis antidiscriminatórias aos ataques às religiões afro-brasileiras. A perspectiva para a década de 2020, é que esses obstáculos sejam agravados pela crescente influência das agendas cristãs evangélicas conservadoras nos poderes executivo, legislativo e judiciário.

Palavras-chave: lei antidiscriminatória, ativismo legal, intolerância religiosa, religiões afro-brasileiras.

In June 2015, Brazilian media reverberated with the shocking news that an 11-year-old girl had become the victim of a stoning motivated by prejudice against Afro-Brazilian religions in Rio de Janeiro. The stone that hit the girl was thrown by two strangers brandishing Bibles who charged that she and her companions (identifiably dressed in the white garb of practitioners of Afro-Brazilian religions) were of the Devil (Globo, 2015). In August 2017, also in Rio de Janeiro, an elderly Candomblé practitioner was seriously injured by a neighbor who accused her of being a “*velha macumbeira*” (old macumbeira - “macumbeira” is a derogatory term for a practitioner of Afro-Brazilian religions). The neighbor had threatened to kill the religious practitioner and proceeded to throw a large stone at her head (Indio do Brasil, 2017). In

May 2018, an Afro-Brazilian religious temple in the city, the *Centro Espírita Caboclo Pena Branca*, was destroyed by strangers. On the walls of the temple, the attackers wrote “*Não queremos macumba aqui*” (We don’t want macumba here) and “*Fora macumbeiros*” (Go away macumbeiros) (Corrêa, 2018).

These acts of physical violence present but some of the most spectacular examples of the exponentially increasing aggression against Afro-Brazilian religions that has unfolded in Rio de Janeiro and across Brazil over the past decades.² In addition, practitioners of Afro-Brazilian religions are regularly insulted by family members, neighbors, or colleagues. They are depicted as vessels of the Devil by pastors preaching a theology of spiritual warfare in Evangelical

² Afro-Brazilian religions emerged from efforts by enslaved and emancipated Africans and Brazilians of African descent to adapt and maintain their religious beliefs and practices in the Brazilian context. These efforts frequently involved bringing a variety of regionally specific religious traditions as well as Catholic and on occasion indigenous elements under the same roof. The religious practices that formed out of this process gradually coalesced into named “religions” that were identified with particular regions in Brazil. The best known of these continue to be Candomblé in Bahia, Xangô in Pernambuco and Batuque in Rio Grande do Sul. Although the “reach” of these religions has extended beyond those of African descent for most of their history (see Reis, 2001, 2008, Amaral & Silva, 2005, Miranda & Boniolo, 2017), their “African character” has inspired widespread fear and prejudice from their early days.

The violence that practitioners of Afro-Brazilian religions have confronted from followers of some Brazilian Evangelical Christian churches since the late 1980s has, however, been of a different order. It has been more widespread, more violent, more systematic, and more public in character. Underlying it has been a theology of “spiritual warfare” against the Devil that has

identified Afro-Brazilian religions as a primary target. At the forefront of this bellicose theological agenda has been the Neo-Pentecostal church *Igreja Universal de Reino de Deus* (Universal Church of the Church of God, IURD), which has attacked Afro-Brazilian religions on a wide range of fronts (see Silva, 2007). In addition, Afro-Brazilian religions have been variously attacked by followers of several other Pentecostal and Neo-Pentecostal churches. Although many of these churches have also spoken disparagingly of Catholicism and other Protestant churches, the ways in which Afro-Brazilian religions have become their primary targets showcase both the weaker social and political position of these religions (Montero, 2016) and the close entanglement of the theology of spiritual warfare and older prejudices against Afro-Brazilian religions. Indeed, the derogatory ways in which these supposed “soldiers in Christ” characterize Afro-Brazilian religions resonate strongly with the long history of non-Evangelical Christian stereotypes on the religions’ “morally dubious” and “spiritually compromising” African character. In so doing, they not only reproduce but also consolidate the close entanglement of religious and racial prejudice that has underpinned derogatory views on Afro-Brazilian religions throughout their history.

Christian churches and news media.³ They are slandered on blogs, YouTube videos and online discussion forums. And, on a more general level, such key ritual practices in Afro-Brazilian religions as animal sacrifices are the focus of diverse efforts to legislate the criminalization of these religions. Irrespective of their form or severity these offenses must be understood as part of a singular phenomenon of systematic religious intolerance against Afro-Brazilian religions. Not only do they all contribute to an overall climate of terror for practitioners in which a verbal insult may turn physical, but also they are motivated by the same assemblage of long-standing prejudice towards the religions' Afro-Brazilian origins and character, a racially inflected Evangelical Christian theology of spiritual warfare, and inter-religious competition for adherents and societal influence.

Irrespective of the character or target of offense, these attacks on Afro-Brazilian religions have been remarkably difficult to bring to trial. The obstacles have been various. Practitioners have been reticent to file criminal reports for fear of retaliation or a sense of futility when considering the slim prospects of attaining a remedying court order. Many also lack the resources or knowledge required to report attacks in

legally actionable ways. The police, in turn, have been dismissive of or outright hostile to practitioners' complaints, which they tend to view as insignificant (not real crimes) or a waste of time (not real police work) (see Miranda, 2010). As a result, when accepted at all by the police, complaints on attacks tend to be registered as lesser offenses such as insult, slander or defamation, or alternately as crimes of bodily injury or property damage that do not mention their religious contours. In addition, they are generally afforded low investigative priority (Miranda, Mota & Pinto, 2010). Finally, courts have been reticent to adjudicate such attacks as crimes of religious prejudice or discrimination, often finding the evidence presented inconclusive. In consequence, only a very small number of particularly egregious cases, the majority of which involve the dissemination of religiously derogatory content through online media platforms, have been found receivable by the courts for constituting crimes of religious prejudice or discrimination.

These challenges are not particular to the problem of religious violence against Afro-Brazilian religions. Instead, they closely parallel the experiences of Afro-descendant populations across Latin America with anti-discrimination laws. Despite the region-wide adoption of ethnoracial laws that criminalize

³ My use of the phrasing "Evangelical Christian" follows common Brazilian usage. The term refers to both Neo-Pentecostal and Pentecostal forms of Christianity.

race-based discrimination since the late 1980s, the number of convictions has remained low.⁴ Similar to practitioners of Afro-Brazilian religions who have struggled to bring their experiences of religious violence to trial, individuals of African descent throughout Latin America have found it exceedingly difficult to gain legal redress for racial discrimination (Hernández, 2013, 2019, Rahier, 2019).⁵ As Jean Muteba Rahier observes, the obstacles are such that “[a]ll legal cases involving ethnoracial legal instruments that come forth, therefore [...], must be appreciated as cases having benefited from ‘positive’ circumstances that allowed complainants to overcome basic obstacles to successfully initiate a litigation.” These “positive” circumstances have consisted of such facts as the support of organizations or individuals with “the necessary financial and social capital to navigate the justice system” (Rahier, 2019:216), and the particularly egregious character of the offense performed (Hernández, 2019).

The parallels between the challenges confronted by victims of religious and racial prejudice and discrimination who seek to gain legal redress for these offenses in Brazil are

not coincidental. First, religious and racial prejudice and discrimination are criminalized by the same laws. The law that criminalizes prejudice and discrimination against race, also criminalizes such acts against religion (L.9.459/97) (commonly referred to as the *Lei Caó* after its original author Carlos Alberto Caó Oliveira dos Santos). Similarly, paragraph 3 of article 40 of the Brazilian Penal Code, which mandates greater penalties for aggravated insult includes both race and religion on the list of recognized identity attributes. As a result, not only the legal frameworks but also the legal practices and jurisprudence that victims confront are the same. Second, although many practitioners of Afro-Brazilian religions do not identify as Afro-Brazilian or black (Amaral & Silva, 2005) and practitioners who file reports and raise court cases on religious intolerance tend to self-identify as white (Miranda & Boniolo, 2017), the religious prejudice and discrimination they confront are inseparable from derogatory views on the religions’ African origins and character. Irrespective of the racial identity of individual practitioners, then, the religious attacks they suffer are inflected by racial prejudice.

⁴ My use of the phrasing “ethnoracial law” here follows Jean Muteba Rahier’s (2019, 215) definition: Ethnoracial law in the Latin American context encompasses “(1) the articles of constitutions and special laws that recognize and define identity-based collective rights (generally over land or ‘territory,’ cultural practices and perspective), and which form what are usually called ‘multicultural legal instruments’ (the right to be ‘pluriversally’ or ‘decolonially’ different); and 2) the constitutional articles and special laws often referred

to as ‘racial equality law’ or ‘anti-discrimination law’ adopted by constituent assemblies as well as municipal, provincial, or departmental, national, and international or multilateral governing bodies, which criminalize hate crimes and discrimination to guarantee the protection of Afrodescendants’ rights and remedy wrongs they have experience (the right to be the same).”

⁵ See also interviews with Chalá and Rosero in this special issue.

Thus, the obstacles that practitioners of Afro-Brazilian religions confront in bringing the attacks they have suffered to trial cannot be understood apart from the broader obstacles to societal and legal inclusion and recognition that Afro-descendant populations across Latin America confront. Despite the proliferate inclusion of anti-discriminatory laws in the region's legal codes, the practice of law continues to be structured by a white supremacist model of justice (Rahier, 2019). In addition to individual judges who disagree with the premises of anti-discriminatory laws due to their overall rejection of the existence of racism in the region (see Hernández, 2013), legal practice throughout Latin America, and thus also the adjudication of prejudice and discrimination against Afro-Brazilian religions, is variously entangled with what Rahier calls "race regulation customary law:" the "values, beliefs, and practices that colonial and postcolonial states systematically ground their decisions and interventions on to implement, reproduce, and administer a particular socioeconomic and racial order for the long-standing benefit of identified white and white-mestizo elites in multi-racial and multi-ethnic societies." For Rahier,

"[t]he notion of 'race regulation customary law' should be seen as an appropriate synonym of 'structural racism': a set of systemic public (state and other governance level) policies, state (and other governance level) organs' bureaucratic

practices, 'mainstream' cultural representations, and a flurry of norms that work in concert to strengthen and perpetuate inequality among 'racial groups.'"

As he observes, such race regulation customary law poses severe constraints on the application of current Latin American anti-racial discrimination laws (220). At the same time, the challenges are even further compounded by the particular focus of extant discrimination laws on acts performed by individuals (220). As a result, the laws provide no recourse for addressing the structures of values, beliefs and practices that undergird and power the discriminatory conduct itself.

This paper examines how these structural obstacles to the legal remediation of discrimination have ordered the adjudication of attacks on Afro-Brazilian religions over the past two decades. I approach this question from two perspectives. First, I analyze how activists from Afro-Brazilian religions have conceptualized these obstacles and deployed strategies to transform the values, beliefs and practices of race regulation customary law that have impeded the application of anti-discrimination laws to the concrete attacks they have endured. As I show below, these efforts contributed to an overall shift for the better in the legal landscape of religious intolerance in the 2010s. For example, in Rio de Janeiro, the problem of religious intolerance

increasingly entered government agendas. This led to the proliferation of state and municipal institutions dedicated to combatting attacks on religion and supporting the victims of such attacks. Second, I examine how race regulation customary law structures the legal treatment of attacks on Afro-Brazilian religions. Here, I reveal the foundational ways in which the initial typification of a crime by the police impacts a case's subsequent legal trajectory. In addition, I draw attention to the particular problems of evidencing intent and balancing the rights of victims and their aggressors to free religious expression as established by the *Lei Caó*.

The broader goal of this paper is to assess the status of Afro-Brazilian religious rights in Brazil at the start of the 2020s. As I suggest at the end of the paper, the limited advances that my analysis describes remain fragile, especially after President Bolsonaro's rise to power in 2019. His close ties to the *Igreja Universal do Reino de Deus* (Universal Church of the Kingdom of God, hereafter IURD), which is overtly opposed to Afro-Brazilian religions, and his unambiguous disparagement of previous presidents' efforts to address Brazil's racial inequalities have at once emboldened attacks on Afro-Brazilian religions and reoriented institutions and programs formerly dedicated to combating religious intolerance to a more general agenda of protecting religious freedom that tends to privilege the religious freedoms of

Evangelical Christians. The effects of the COVID pandemic will surely also be deleterious. While practitioners of Afro-Brazilian religions have tended to position themselves on the side of state governments' efforts to curb the spread of the disease through social distancing and an avoidance of in-person gatherings (Capponi & Araújo 2020), many of the federal state level efforts to combat religious intolerance that were developed in preceding years have been forced to operate in significantly reduced capacity, if not halt altogether, during the pandemic.

Legal protections for Afro-Brazilian religions

Although the right to freedom of religious belief and conscience has been recognized in Brazil since the Constitution of 1889, the legal status of Afro-Brazilian religions remained precarious until the late 20th century. Instead of being recognized as religions, Afro-Brazilian religions and religious practitioners were viewed by the legal establishment through the lens of laws that criminalized "black magic" and folk healing practices or that tied "acceptable religious practice" to notions of 'public order' and 'good customs' (*bons costumes*) predicated on Catholic norms and mores (see Montero, 2009, see also Johnson, 2001). This lack of religious recognition was also

exemplified by the ways in which the practical governance and management of Afro-Brazilian religious communities was positioned under the jurisdiction of police departments for vice and entertainment until the 1970s (see Santos, 2005). This situation existed in a legal scape quite different from the contemporary multiculturalist configuration; it presented practitioners of Afro-Brazilian religions with little legal means for confronting the wide-spread and ordinary religious prejudice and discrimination they faced daily. Not surprisingly, many preferred to keep their religious commitments secret even from close friends and relatives.

Since the late 1980s, however, the legal status of Afro-Brazilian religions has changed quite dramatically. As Paula Montero (2016) has described, the Constitution of 1988 reimagined Brazil as a religiously plural nation. The Catholic Church lost its privileged status and other religions were recognized and afforded a legal existence equal to it. Moreover, in contrast to prior Constitutions, it did not tie the right to religious practice to the demands of public order or good customs. These changes effectively created a legal frame for recognizing Afro-Brazilian religions as religions on par with Catholicism and Protestant Christianity (Montero, 2016). In practice, however, practitioners of Afro-Brazilian religions have continued to struggle

to gain recognition and respect for their religious communities and practices. That continued marginalization is made manifest, for example, by the fact that most Afro-Brazilian religious temples have not been able to secure exemptions from property taxation that should be granted to all legally recognized religious communities (see Santos, 2008). Additionally, Afro-Brazilian religious leaders have but rarely been accepted among the ranks of religious personnel that are welcomed into hospitals, prisons and military branches to administer to patients, inmates and recruits. Most notably, though, the changes to Afro-Brazilian religions' legal status have not served to quell the explosion of Evangelical Christian attacks on Afro-Brazilian religions since the 1980s, despite the guarantees that the 1988 Constitution provides for the protection of religious communities and sites of worship. To the contrary, as Montero observes (2016), the ways in which the 1988 Constitution reconfigured Brazil's religious landscape and positioned the nation's religious communities in competition with each other for state resources, may in fact have contributed to the proliferation of inter-religious aggression and violence in general, and Evangelical Christian aggression against Afro-Brazilian religions in particular.

As the number and violence of Evangelical Christian attacks on Afro-Brazilian religions began to grow in the 1990s

and 2000s, practitioner activists from Afro-Brazilian religions joined forces with black social movement activists to call for the development of new legal instruments that would ensure the protection of practitioners' religious rights. This political strategy led to legislative advances that were interlinked with the adoption of legal instruments that sought to expand the societal inclusion and equality of Brazil's African descendant populations. The first of these was a 1990 law (L. 8.081/90) that amended 1989 law 7.716 (the original version of the *Lei Caó* authored by Carlos Alberto Caó Oliveira dos Santos). In its original form, the law criminalized prejudice and discrimination based on race or color. The 1990 law included "religion" among the identity attributes which discrimination, if performed via communicative media (*meios de comunicação*), was a crime. In 1997, the *Lei Caó* was amended again by another law, the *Lei Paim* (L. 9.459/97), to encompass all forms of prejudice or discrimination against religion instead of only acts committed through media channels. The *Lei Paim* also added paragraph 3 to Article 140 of the Brazilian Penal Code, which criminalizes and establishes penalties for insults (*injúrias*) to a person's dignity or decorum. The added paragraph expanded the penalty mandated for

insults that involved the use of elements related to race, color (*cor*), religion, or origin to one to three years in prison plus a fine. Such insults came to be viewed by the law as aggravated insults (*injúria qualificada*). The Statute for Racial Equality (Law 12.288) that was signed into Brazilian law in 2010, in turn, expanded the protection of Afro-Brazilian religious rights further by requiring governing bodies to take action against the use of the media to spread religious intolerance or hate.

These legislative advances did not, however, put an end to the tide of Evangelical Christian attacks on Afro-Brazilian religions. To the contrary, the number of attacks on Afro-Brazilian religions, a large majority by Evangelical Christians, grew exponentially in the 2010s. Although it appears that most attacks on Afro-Brazilian religions are not reported to or registered by government instances, the statistics on religious intolerance published by government agencies in the past ten years are shockingly high.⁶ According to a 2016 report on religious intolerance and violence published by the *Ministério das Mulheres, Igualdade Racial, da Juventude, e dos Direitos Humanos* (Ministry of Women, Racial Equality, Youth and Human Rights), the number of complaints on such aggressions that were received by the national helpline *Disque 100* (Dial 100) run by the federal level

⁶ The reasons for underreporting are many, while some practitioners fear retaliation from their aggressors, others lack access to or are skeptical of extant government

efforts to combat religious intolerance. Many also struggle to have their complaints taken seriously by the police.

Secretaria de Direitos Humanos (Secretariat of Human Rights) rose from 15 in 2011 to 252 in 2015 (Fonseca and Adad 2016). 27% of these complaints were filed by practitioners of Afro-Brazilian religions, who according to census data represent only 0.3% of the Brazilian population (IBGE 2010).⁷ Since 2015, the situation has only deteriorated. According to statistics published by the newly named *Ministério da Mulher, da Família, e dos Direitos Humanos* (Ministry of the Woman, the Family, and Human Rights), *Disque 100* received 506 complaints of religious intolerance in 2018 (147 i.e. 29% of these were from practitioners of Afro-Brazilian religions), and 354 in the first six months of 2019 (61 from practitioners of Afro-Brazilian religions), which constituted an increase of 67.7% from the first half of the previous year.

The media coverage of attacks on Afro-Brazilian religions presents an even more disturbing picture. In the past decades, reports on religious intolerance against Afro-Brazilian religions have been a constant in major news media across the country. This coverage has described a proliferation of verbal and physical attacks performed by family members, neighbors, and teachers, as well as complete strangers on such religions' practitioners and temples across the country

(see Ministério Público Federal, 2018). In addition, it has reported how in Rio de Janeiro practitioners of Afro-Brazilian religions have been targeted by systematic attack and abuse from drug gangs whose members have converted to militant forms of Evangelical Christianity. These drug gangs have terrorized practitioners of Afro-Brazilian religions in a variety of ways, including ordering the termination of religious activities and the closing of temples, and forcing practitioners to destroy temple shrines and renounce their religious commitments at gun point (de Deus, 2019).

At the same time, the creation of new legal instruments for prosecuting religious attacks has not translated to a notable increase in convictions. Despite the exponential growth in attacks on Afro-Brazilian religions, the cases that have reached trial have been few, and even fewer have been tried in the framework established by the *Lei Caó*. Instead, judges have either argued that the attacks brought to their courts do not fulfil the definition of religious discrimination or that they constitute lesser offences. This is illustrated, for example, by a case tried in Salvador in 2009 that concerned a Candomblé temple, which had been demolished by a municipal government agency. The case was dismissed by the

⁷ The actual proportion of Brazilians who practice Afro-Brazilian religion can be expected to be higher than that reported in the census, but this not-with-standing

practitioners of Afro-Brazilian religions have clearly been targeted by religious aggression to a greater degree than other religious groups at the start of the 21st century.

presiding judge due to lack of overt evidence of discriminatory intent (Hartikainen, 2019). In the previous year, in turn, a judge in Rio de Janeiro tried a case that involved a violent attack against an Umbanda center in Catete, the *Centro Espírita Cruz de Oxalá*, as an example of religious insult and contempt rather than religious discrimination (the attack was performed by four young men from the Pentecostal Church *Igreja Geração de Cristo* who had forced their way into the Umbanda Center and destroyed its shrines). Instead of the penalty of two to five years in prison that the application of the *Lei Caó* would have demanded, the judge presiding over the case sentenced the attackers, who were first-time offenders, to the payment of *cestas básicas* (food baskets that cover the nutritional needs of one family for a month) (Bortoleto, 2014, 77).

This paucity of convictions has been understood by practitioners of Afro-Brazilian religions and their supporters as a problem of legal application: The *Lei Caó*, in particular, they argue, exists only on the books when it comes to attacks on Afro-Brazilian religions. It is not applied to actual incidents of religious prejudice or discrimination. This analysis is supported by both the extant scholarship and recent media reports on the treatment by the police and the judiciary of cases alleging religious intolerance. Miranda (2010) describes how in the late 2000s Rio de Janeiro police minimized religious intolerance and

considered it a problem of lesser import (135). As a result, practitioners' efforts to register religious assaults or attacks with the police without the support and presence of a lawyer were significantly hampered or failed altogether. Miranda, Mota and Pinto (2010), in turn, show that the majority of cases of religious aggression that were registered by Rio de Janeiro police in this time period were typified as *injúria* (insult), *calúnia* (slander), *difamação* (defamation), *ameaça* (threat, intimidation), *agressão física leve* (mild physical aggression), or *perturbação da ordem ou do sossego* (disturbance of order of peace) instead of religious prejudice or intolerance when reported to the police. This would seem to have been the case also for the 2010s (see Ministério Público Federal, 2018). Although no comprehensive statistics or studies on the classification and legal treatment of cases alleging religious intolerance against Afro-Brazilian religions exist (see Ministério Público Federal, 2018), media reports on individual cases and media interviews with state officials and activists concerned about the issue highlight the challenges practitioners of these religions confront in registering such attacks as incidents of religious prejudice or discrimination.

In keeping with these analyses, practitioners of Afro-Brazilian religions' juridical activism has predominantly focused on the problem of legal application.

Luta jurídica

Activists across Latin America have turned to the juridical field as a site of politics. This juridification has been integrally intertwined with the Latin American embrace of rights discourses, a process that in itself has been closely tied to the creation of new rights-oriented “Citizens’ Constitutions” and a broader judicialization of politics (see Huneeus, Couso & Sieder, 2010, Sieder, Schjolden & Angell, 2005). The focus of much of the scholarship on this juridical activism has been on describing how activists translate their political struggles to legal frames and seek to advance them through courts, or alternatively on how the turn to legal frames has transformed activist understandings of the world and the conflicts they seek to relieve (see Sieder, Schjolden & Angell, 2005, Sieder, 2010, see also Comaroff and Comaroff, 2006, Eckert et al., 2012). However, such activism is not only predicated on translation. Instead, as I show in the following, it also involves the construction of recognizable and actionable objects of adjudication (see Greenberg, 2020), calls for concrete change in police and legal practice, and the development of collaborative relationships with various kinds of legal actors.

As Vagner Gonçalves da Silva (2007) has described, practitioners of Afro-Brazilian

religions have combatted Evangelical Christian attacks on their religions in the legal arena since the 1980s. At first, these actions took the form of protests such as a 1981 solicitation by state representative and Umbanda practitioner Átila Nunes for legal action against growing aggression against Afro-Brazilian religions. By the end of the decade, practitioner activists had also begun to provide legal support to victims of attacks. For example, in 1989 a group of religious activists headed by Jayro Pereira founded the *Núcleo Jurídico Oju Obá* in Rio de Janeiro to assist practitioners of Afro-Brazilian religions that had been attacked (de Deus, 2019). The *núcleo* would receive complaints of attacks from practitioners, transmit them to the police and aid in their further processing. In addition, its representatives would visit temple communities to share information on religious rights and legal instruments available to practitioners who had been assaulted. The *núcleo* also produced a report, the *Dossiê Guerra Santa Fabricada* (The Manufactured Holy War Dossier), that detailed Evangelical Christian churches’ widespread verbal, physical, psychological and symbolic aggression against Afro-Brazilian religions. The report was delivered to the Assistant Attorney General of the Brazilian Republic in August 1989.

The 1997 criminalization of all forms of prejudice and discrimination against religion under the *Lei Caó* was hailed as a

victory by practitioners of Afro-Brazilian religions. But, by the early 2000s it had become clear to practitioner activists that this legal transformation had not resulted in changes on the ground. The law had not “stuck.” It was not applied by the police or the judiciary. Instead, even the most egregious attacks on Afro-Brazilian religions were registered by the police or adjudicated by courts as minor offences, if they were recognized at all as crimes. In the beginning of the 2000s, the situation was particularly challenging in Bahia. According to Silva (2007), the number of complaints of religious attack that were lodged in the state were the highest in the country at that time. However, by the second half of the decade Rio de Janeiro had surpassed Bahia as the state where Afro-Brazilian religions suffered the most from egregious religious violence. In Rio de Janeiro, the increasing challenges presented by such violence were most clearly revealed in 2008 by a series of attacks on Afro-Brazilian religions by drug traffickers that claimed to be acting out of an Evangelical Christian concern with expunging the “Devil” from the neighborhoods they controlled. This new kind of “armed intolerance” in the city’s *favelas* and peripheries in which Afro-Brazilian religious communities were prohibited from organizing ceremonies and forced to close temples and leave the

neighborhoods under threat of violence from the drug traffickers brought a new level of terror to the ever-growing assaults on Afro-Brazilian religions (see de Deus, 2019, 23).

In the beginning of the 2000s, Bahia stood at the forefront of Afro-Brazilian religious legal actions and activism.⁸ There, the *Ministério Público* (Public Prosecutor’s office) and civil rights entities played a crucial role in pushing forward legal processes. However, these efforts were challenged by the slow speed at which cases of religious attack were processed by local criminal courts, which discouraged victims of attacks from filing cases. Moreover, a general lack of knowledge of the ways in which the judiciary worked made it difficult for practitioners to present their cases in legally effective ways. In efforts to mitigate these challenges, civil rights entities such as the *Afrogabinete de Articulação Institucional e Jurídica* (Afro-Cabinet of Institutional and Juridical Articulation, Aganju) and *Associação dos Advogados Afro-descendentes* (Afro-descendant Lawyers’ Association, Anaas) proposed the creation of a special criminal court for cases of racial and religious discrimination. Such a court did not come into being, but the 2000s did bring a large number of cases involving religious discrimination to the Bahian court system.

⁸ The following description is based on Silva’s 2007 analysis.

The most famous of these cases was that of Mãe Gilda. Mãe Gilda was an elderly Candomblé *mãe de santo* (temple leader) who led a temple in the Salvador neighborhood of Itapuã. In 1999, a photograph of her was used by the *Folha Universal*, a nationally distributed weekly published by the Universal Church of the Kingdom of God (IURD), to illustrate a cover story that associated Afro-Brazilian religions with charlatanship. The incident so shocked the elderly woman that she suffered a fatal heart attack soon after the publication. However, before her passing, Mãe Gilda managed to raise a court case against the IURD that accused the church of slander. In 2004, the IURD was found guilty of the charge and sentenced to compensate the family of Mãe Gilda for moral damages and the unauthorized use of her image through a fine of 1 372 000 BRL. While the fine was eventually significantly reduced by higher courts, the case is still considered to be one of the greatest legal victories for efforts to combat Evangelical Christian attacks on Afro-Brazilian religions.

The legal action in Mãe Gilda's case, and that in another similar case that was won in the 2000s against the IURD, did not deploy the framework of the *Lei Caó*.⁹ Instead, the

cases relied on legislation that criminalized slander and the unauthorized use of the image of practitioners to bring the IURD to justice. Many religious activists, however, considered the application of the *Lei Caó* to attacks on Afro-Brazilian religions to be a primary goal. As Rangel and Correa (2012, 6) observe, practitioner activists were not only motivated by an interest in the oftentimes higher penalties that the *Lei Caó* carried, but also, and crucially, by a broader concern with expanding the recognition of Afro-Brazilian religions and the systematic character of the violence against them (see also Miranda 2010). Cases like the destruction of the *Centro Espírita Cruz de Oxalá*, mentioned in the previous section, showed to them that such attacks were not taken seriously as examples of a broader phenomenon of systematic religious discrimination by the police or the judiciary. The *Lei Caó*, with its focus on religious prejudice and discrimination instead of personal insult or slander relied on a different conception of the attacks. For activists the application of the *Lei Caó* by courts both depended on and promised the latter's recognition of the systematic character of the onslaught of

⁹ In 2004, the IURD and its press *Editora Universal* were sentenced by a court in Rio de Janeiro to pay 120,000 BRL for the unauthorized publication of an image of a Candomblé practitioner. The book in which the image was published, *Orixás, Caboclos & Guias – Deuses ou Demônios*, was also the object of a 2005 request by the Public Prosecutor's office in Bahia to remove it from

circulation due to the ways in which it offended Afro-Brazilian religions (Silva, 2007, 21). The request was approved by the 4th federal court in Bahia, but the decision was swiftly repealed by the 1st Federal Appellate Court (*Tribunal Regional Federal da 1a Região*) (Silva & Serejo, 2017).

violence, in all its forms, against Afro-Brazilian religions.

The *Comissão de Combate a Intolerância Religiosa* (Commission for the Combat of Religious Intolerance, hereafter CCIR), an inter-religious activist group that was founded by practitioners of Afro-Brazilian religions in Rio de Janeiro in 2008, has played a particularly important role in religious activist efforts to apply the *Lei Caó* to attacks against Afro-Brazilian religions. Similar to many of the other activist groups founded by practitioners from Afro-Brazilian religions at the end of the 2000s in Brazil, the CCIR has been centrally concerned with expanding public and state recognition of the severity and prevalence of attacks on Afro-Brazilian religions. It has organized annual marches against religious intolerance that have attracted participants in the tens of thousands since 2008. It has called on media professionals to cover incidents of religious attack and practitioners' struggles to register them as such with the police. It has made public demands on the state of Rio de Janeiro to intervene in the violence. And, it has collected and collated data on religious attacks in the city in order to demonstrate the prevalence of attacks on Afro-Brazilian religions. However, alongside these efforts, the CCIR has also worked concertedly to reframe the various forms of aggression that practitioners of Afro-Brazilian confront as a single systematic phenomenon: that of

religious intolerance, a crime that irrespective of its particulars should be prosecuted under the *Lei Caó*. At the core of this reframing has been a concern with both improving the recognition of attacks on Afro-Brazilian religions as crimes of religious prejudice and discrimination in general and ensuring that interpersonal insults and violence are considered part of them.

Some of the particular strategies that the CCIR has employed to accomplish this are worth noting. Miranda and Boniolo (2017) highlight the formative role that weekly meetings organized by the CCIR played in the late 2000s in Rio de Janeiro for constructing “religious intolerance” as a recognizable and legally actionable phenomenon. The commission’s weekly meetings unfolded both as forums for the sharing of news on incidents of attack and for general discussion of the challenges confronted by practitioners of Afro-Brazilian religions, conversations that in themselves served to delineate religious intolerance as a specific phenomenon, and as venues for coaching victims of aggression on how to present their cases to the police so that they fell within the scope of the *Lei Caó* (93-94). According to Miranda and Boniolo, these latter conversations, in particular, served to not only align the victims’ descriptions of individual incidents with the criteria of criminal classification, but, crucially, also to encourage the victims themselves to

understand the aggressions they had suffered as examples of legally actionable religious prejudice and discrimination.

Alongside these efforts, the commission took the act of police registration of complaints as a key focus (Miranda and Boniolo, 2017). First, it sought to intervene in the registration of individual incidents. In the case of an attack that had come to the commission's attention before the registration of a police complaint, it would send a lawyer to accompany the victim to the police station to ensure that the complaint was registered as a crime of religious prejudice. Or, if an attack had already been registered as a minor offence, the commission would send in a delegation composed of a lawyer, an entourage of religious practitioners in ritual attire, and representatives of the media, to demand that the typification of the crime be changed to that of a crime of religious prejudice and discrimination (Miranda and Boniolo, 2017). Second, the CCIR strove to transform the practice of police registration of attacks on Afro-Brazilian religions through structural reform. It took a leading role in calls for the creation of a special police station in Rio de Janeiro that would be dedicated to crimes of racial discrimination and religious intolerance (see Miranda and Goulart, 2009). A law proposal to found such a police station

was filed by state representative Átila Nunes, a politician from the *Movimento Democrático do Brasil* (Democratic Movement of Brasil, MDB) in 2008, and approved in 2011. However, it was not until 2018 that a *Delegacia de Combate a Crimes Raciais e Delitos de Intolerância* (Police station for combating racial crimes and offense of intolerance, DECRADI) was created in Rio de Janeiro. In addition, the commission worked to transform police practice through direct dialogue with the police. Here, the participation of Henrique Pessoa, the chief of the *Coordenadoria de Inteligência da Polícia Civil* (Intelligence Office of the Civil Police), as representative of the Civil Police in the commission's activities proved particularly influential.¹⁰ After learning about the commission's concerns, Pessoa took on the task of investigating how the police responded to practitioners of Afro-Brazilian religions' efforts to register incidents of attack. He learned that police officers tended to view such cases as inconsequential and too minor to be registered. He also learned that the computer system employed by the police in Rio de Janeiro had not been updated to include religion as an object of prejudice or discrimination as criminalized by the *Lei Caó*. Thus, the crime category could not be used in the registration of complaints. As a result of

¹⁰ State-level police forces in Brazil are divided into the Military Police which is responsible for the maintenance of order and the enforcement of laws, and the Civil

Police, which is responsible for the investigation of crimes.

this oversight, the computer system was updated. In addition, Pessoa took personal responsibility for arranging training for police officers and cadets on crimes of religious prejudice and discrimination (Miranda & Boniolo, 2017).

In parallel to this attention on police registration, the CCIR called on the *Ministério Público* and the judiciary to better recognize the rights of practitioners of Afro-Brazilian religions and the criminal character of the attacks they endured. To this end, they invited representatives of these instances to join their weekly meetings. According to Miranda and Goulart (2009), in 2009 these institutions were represented by Judge Sandra Kayat of the *Tribunal de Justiça do Estado do Rio de Janeiro* (Appellate Court of the State of Rio de Janeiro), and Prosecutor Marcos Kac of the *Procuradoria-Geral do Estado do Rio de Janeiro* (State Attorney General of Rio de Janeiro). There appears to have been little focused analysis of the character and impact of these collaborations, however. Thus, it is difficult to assess their potential influence on the adjudication of attacks on Afro-Brazilian religions.

As the activities of the CCIR illustrate, the *luta jurídica* of practitioners of Afro-Brazilian religions of the early 2000s and 2010s was variously in dialogue with and complemented by broader changes in the

legal landscape. This is clearly revealed in the ways in which the frame of religious intolerance entered Rio de Janeiro state and municipal governments' agendas in the 2010s and their prolific creation of new institutions and initiatives focused on this task. In 2011, a working group, the *Grupo de Trabalho de Enfrentamento à Intolerância e Discriminação Religiosa* (Working group for Confronting Intolerance and Religious Discrimination, GTIREL-RJ) was founded under the *Secretaria Estadual de Assistência Social e Direitos Humanos* (State Secretariat for Social Assistance and Human Rights). In 2012, a *Centro de Promoção da Liberdade Religiosa e Direitos Humanos* (Center for the Promotion of Religious Freedom and Human Rights) was founded under the same secretariat with support from the *Secretaria Nacional de Políticas de Promoção da Igualdade Racial* (National Secretariat for Policies to Promote Racial Equality, SEPPPIR).¹¹ In 2018, the working group GTIREL-RJ was converted to the *Conselho Estadual de Defesa da Promoção da Liberdade Religiosa* (State Council of Defense for the Promotion of Religious Freedom), and the *Plano Estadual de Promoção da Liberdade Religiosa e Direitos Humanos* (State Plan for the Promotion of Religious Freedom and Human Rights) was signed into law. In 2018, the special police

¹¹ The center was in existence until 2017, although it lost state funding in 2016. After this it was supported briefly

by funding from the *Fundação Palmares* and the *Universidade Federal Fluminense*.

department DECRADI was inaugurated. And, in 2019, the *Núcleo de Atendimento às Vítimas de Intolerância Religiosa* (Nucleus for Serving Victims of Religious Intolerance), that provided legal, psychological and social support to victims of religious attack was opened in Novo Iguaçu, one of the municipalities in which practitioners of Afro-Brazilian religions have been attacked the most in Rio de Janeiro. Alongside these developments, concerns over the growing incidence of attacks on Afro-Brazilian religions also took center stage in some areas of the legal field. For example, both the federal public prosecutor's office and the state of Rio de Janeiro's public prosecutor's office called on the state of Rio de Janeiro and individual municipalities to develop solutions to the problem of religious intolerance. In 2019, the Rio de Janeiro branch of the organization of Brazilian lawyers (OAB-RJ) launched several initiatives aimed at curbing religious intolerance, including the creation of a hotline dedicated to reports of acts of religious intolerance (Bittar, 2019). In May 2021, the Legislative Assembly of the State of Rio de Janeiro appointed a *Comissão Parlamentar de Inquérito* (Parliamentary Commission of Enquiry) that was tasked with investigating religious intolerance in the state (Souza, 2021).

As these developments reveal, the project of combatting religious intolerance that Afro-Brazilian religious activists have

promoted for the past few decades has to a certain extent been taken up by governmental institutions and legal actors. One of the most notable consequences of this has been the emergence of new services and initiatives in cities like Rio de Janeiro that seek to assist practitioners in coping with, registering and bringing to trial religious attacks. However, on closer examination, these changes have not been accompanied by a more general adoption of the activist framing of religious intolerance as a phenomenon that encompasses such seemingly lesser forms of aggression as religiously motivated interpersonal insults. As media outlets and government representatives have increasingly distressed over the growing number of violent attacks on Afro-Brazilian religions, the less spectacular forms of religious aggression of religiously motivated insult and slander have tended to remain outside their attentions or concern. As I discuss in the following section, the latter kinds of attacks have continued to be viewed by the police and courts as minor offences rather than crimes of religious prejudice or discrimination.

Problems of criminal typification

A 2012 ruling by the *Superior Tribunal da Justiça* (Superior Court of Justice, hereafter STJ) of Brazil stated that the typification of religious discrimination under

the *Lei Caó* was to be reserved for crimes in which the aimed target of offence was an undetermined group of people or all practitioners of a particular religion. By contrast, if the aim was only to attack the honor of an individual through reference to his or her religious beliefs, the crime was to be typified as *injúria qualificada* (aggravated insult).¹² At the basis of this ruling was the assumption that the two crimes could be clearly distinguished from each other. First, the object of a religiously motivated insult could be delimited to its immediate target. And, second, interpersonal conflicts did not amount to crimes of religious prejudice or discrimination.

Obviously, as Machado, Lima and Neris (2016) have argued for the adjudication of racial discrimination in Brazil, which follows a similar logic, such legal distinctions ignore both the performative effects of, and the broader contexts that motivate and give meaning to, racial or in this case religious insults. But, as I show in what follows, the very effort to maintain these distinctions in legal contexts also has performative effects. The typification of a case as an incident of religious insult at the stage of police registration not only sets it on a particular legal trajectory that determines its legal treatment but crucially also minimizes and privatizes the incident in ways that further

strengthen legal assumptions on the difference between religiously motivated interpersonal conflict and aggressions directed at religious groups at large.

Once a case is typified according to a specific legal category at police registration, its legal trajectory and treatment are in effect fixed. Even if in theory Brazilian courts are not bound by the classifications afforded to crimes by the police at the time of their registration, or by the juridical frames applied to the case by prosecutors or plaintiffs, in practice the classificatory frames deployed by police officers to register complaints on attacks against Afro-Brazilian religions have a profound impact on the case's subsequent legal trajectories. Depending on the classification of a given police complaint, not only is the case itself typified in particular ways but also its treatment is directed to different courts and channels of litigation and prosecution (see Miranda, Côrrea & Almeida, 2019, see also Rangel & Correa, 2012). Miranda, Côrrea & Almeida (2019) describe how the initial typification of an incident at the registration of a complaint, the *registro de ocorrência*, is followed by the creation of an investigative report, a *verificação de procedência da informação* (VPI) composed of a description of the incident by the victim, witnesses, and the defendant as well as any other evidence. The subsequent trajectory of

¹² STJ, Rel. Min. Castro Meira, CE, APn 612/DF, julg. em 17.10.2012.

the case is determined by this report. If the VPI is seen to demonstrate the occurrence of a crime it becomes a police investigation, and the case is sent for prosecution to the *Ministério Público*. The *Ministério Público* then assesses the report and decides if the case merits prosecution or not. The *Ministério Público* can also change the classification of the incident if it deems this to be necessary. If the VPI presents the incident as a *termo circunstanciado* (a minor infraction that carries a maximum penalty of two years in prison), the case is sent to a *Juizado Especial Criminal*, a conciliatory court that aims to produce a resolution between victims and the defendant through reconciliation or remediation rather than legal arbitration or adjudication.

The different legal trajectories called forth by the typification of individual cases as either minor or major infractions are particularly significant for cases alleging attacks on Afro-Brazilian religions or their practitioners. The first class includes most crimes of disrespect, insult and slander, including *calúnia* (slander), *desacato* (disrespect), and *injúria simples* (simple

insult), all typifications that are commonly assigned by the police to attacks on Afro-Brazilian religions. The second class, in turn, includes the crimes of *injúria qualificada* (aggravated insult), and the practice of and incitation to prejudice or discrimination against religion, as well as race, color, ethnicity, or national origin (*Lei Caó*), as well as break-ins (*furto*). Notably, these classes of crimes also call forth different procedures of litigation and prosecution. In the first class, the responsibility for litigation falls on the offended party. In the second, the prosecuting party is the *Ministério Público*.¹³ Although it is possible for a case to be reclassified by a *Juizado Especial Criminal* as a major offence and redirected to the criminal courts, this appears to happen only rarely for cases involving insults on religion.¹⁴ As a result, the legal trajectories established by the VPIs tend to be all but fixed.

According to Miranda, Côrrea & Almeida (2019), the channeling of cases alleging attack on Afro-Brazilian religions to the *Juizados Especiais Criminais* weakens the religions' practitioners' efforts to achieve legal remedies for the aggression and

¹³ The responsibility for the prosecution of crimes typified as *injúrias qualificadas* was transferred to the *Ministério Público* in 2009 by Law 12.033.

¹⁴ Requests for such transfers are sent to appellate courts. A survey that I conducted of cases in the online archive of the State of Rio de Janeiro Appeals Court from 2010 to 2020 that alleged attack on Afro-Brazilian religions or their practitioners' religious commitments revealed that such requests for reclassification do happen but they are extremely rare. I was able to identify only one request from a *Juizado Especial Criminal* judge to reclassify a case involving allegations of attack on Afro-Brazilian

religions for this time period. The request was declined (Conflito negativo de jurisdição no 0052376-31.2018.8.19.0000). This is not surprising. Considering both the ways in which the *Juizados Especiais Criminais* are conceptualized as a means to relieve the overwhelming caseloads of criminal courts, and the practical bureaucratic demands that such requests for reclassification and transfer can be expected to involve, judges of the *Juizados Especiais Criminais* could be assumed to be interested in proceeding with them in only the most egregious cases.

intolerance they confront. Although these courts were established as part of an attempt to create a model of restorative justice within the Brazilian criminal justice system, in the case of attacks on Afro-Brazilian religions they have served to minimize and delegitimize practitioners' experiences of religious intolerance. The reasons for this are predominantly structural. Most notably, the proceedings of the conciliatory courts are structured in such a way that neither the victim nor the defendant are offered the opportunity to present their views on the incident until after the attempt at reconciliation fails (Miranda, Côrrea & Almeida, 2019, see also Miranda, 2010). The aim of the courts is to process cases expediently while retaining focus on resolution. To accomplish this the courts process cases following a script that has a maximum of three steps: 1) initial hearing, 2) second hearing, and 3) judicial sentencing. The primary aim of the initial hearing of a case is to convince the victim to desist from continuing with the process either through relinquishing the case, reconciliation with the *autor de fato* (author of the incident), or acceptance of a civil agreement. If the victim does not accept any of these alternatives, a second hearing is scheduled. If the victim still does not accept the alternatives proposed, an offer of a benefit of penal transaction (*benefício transação penal*) is presented to the author of the incident, which consists in

the donation of a sum of money stipulated by the *Ministério Público* to a charitable institution, or in the performance of community service for a set time. If the author of the crime accepts this offer of penal transaction, the case is closed irrespective of the victim's acceptance of the resolution. If the offer of penal transaction is rejected by the defendant, the case is passed on to a judge for sentencing. Overall, the hearings tend to be swift and focused affairs. According to Miranda, Côrrea and Almeida, their maximum duration is set at fifteen minutes, and they offer no opportunities for discussing motives related to the conflict in question or dialogue between the parties. There also appears to be no space for the parties involved to dispute the characterization of the conflict that organizes the conciliatory effort.

The *Juizados Especiais Criminais* do not, however, merely silence the parties involved. According to Miranda (2010), the manner in which the courts are conditioned to approach cases as interpersonal matters to be resolved through reconciliation also serves to decriminalize and privatize the conflicts, instead of understanding them as manifestations of broader sociological trends. Many of the cases involving attacks on Afro-Brazilian religions' practitioners examined by Miranda had in fact suffered such minimization and personalization of the facts of the crime. Instead of being dealt with as assaults on religious freedom, they were

framed as “squabbles between neighbors” or minor quarrels (*picuinha de vizinho* or *abobrinha*) that should be resolved in the context of the family or neighborhood instead of the judiciary (Miranda, 2010, 140). This was only further compounded by the ways in which prosecutors from the *Ministério Público* (MP) tended to minimize the cases that were sent to the conciliatory courts. According to Miranda’s description many of the MP prosecutors involved in the cases viewed the aggressions as reflections of their authors’ “lack of education” (*falta de educação*) about proper, respectful social conduct. In the prosecutors’ view, the conciliatory courts provided a means to both educate these individuals, and to keep such cases from filling up criminal courts. Some of the prosecutors also suggested that the courts served to provide victims with an opportunity to have their concerns heard. They understood many of the victims to have entered into a legal process not with the aim of gaining a legal resolution, but instead an interest in simply drawing attention to the wrongs that they had experienced (141).

What happens to cases that are typified as major infractions (i.e. *injúria qualificada*, *preconceito religioso*, and *furto*) by the police and that as a consequence are directed to criminal courts is less clear. To date, the treatment of cases alleging attack on Afro-Brazilian religions in criminal courts has not been the object of a focused scholarly

analysis. This is no doubt at least partly the product of methodological challenges. Notably, the cases tried in lower criminal courts in Brazil are not organized in archives that allow for searches by key word or by law applied. As a result, studying these cases would necessitate the conduct of close examinations of individual criminal courts’ case archives. Fortunately, though, as analysts of the legal treatment of racial discrimination cases in Brazil have shown (Machado, Lima & Neris, 2016), the records of appeals courts, which are more widely searchable, can provide a useful alternative means to the analysis of criminal court jurisprudence. In addition to revealing the challenges that cases alleging attacks on Afro-Brazilian religions encounter in appeals courts, a consultation of these archives provides insight into how such cases are arbitrated and adjudicated in lower courts. Indeed, although the judgments of appeals courts describe a case’s prior history only partially, they frequently reflect on and discuss the lower court’s justifications for criminal classification and sentences. The following analysis of court records from the appeals court of the state of Rio de Janeiro, although limited in its focus, illustrates some of the structural challenges that efforts to prosecute attacks on Afro-Brazilian religions confront in this legal domain.

A survey of judgments concluding cases involving attacks on Afro-Brazilian religions or their practitioners’ religious

commitments between 2010 and 2020 that I conducted in the online archive of the State of Rio de Janeiro Appeals Court produced only seven cases.¹⁵ This is a surprisingly low number considering the number of reports of religious intolerance received by different state offices over the past decade. Of these seven cases, five concerned verbal insults directed at practitioners of Afro-Brazilian religions by neighbors or family members that were typified as *injúrias qualificadas*. Only one case was typified as a "crime of religious discrimination or prejudice" (the case of Tupirani da Hora Lores discussed in detail in the next section) Otherwise, this criminal classification did not appear at all in the archive for cases involving religion. In addition, I was able to identify one case that had been typified as a break-in (*furto*), but that involved the complete destruction of shrines at an Umbanda temple (considering media reports on the common practice of typifying temple invasions as *furtos*, it is quite likely that a closer examination of cases involving *furtos* would produce other similar examples). All seven of the appeals concerned efforts to dismiss or reduce sentences rendered by lower courts.

On a general level, few of the judgments emitted in these cases contested the

religiously oriented character of the attacks in question (one case was dismissed for lack of evidence of the occurrence of insult, and one, the case involving the break-in ignored its religious character). In this regard, the adjudication of cases involving religious insults appears to differ somewhat from those involving racial insult. A study conducted by Machado, Lima and Neris (2016) on cases alleging racial insult filed by Brazilian appeals courts between 1998 and 2010, found that courts were highly reticent to identify racial insults as racist. Instead, in a significant number of cases judges would argue that insults that were overtly racial in their content were to be interpreted as subjectively oriented and as such typified as *injúrias simples* instead of *injúrias qualificadas* by race. According to these judges, the evidence presented did not show that the insults were directed at a broader racially identified group. By contrast, such debates over the classification of the insults deployed against practitioners of Afro-Brazilian religions were completely absent from the small sample of judgments I examined. The religiously offensive character of the insults performed was not contested by the judges that tried these cases. Apart from the one case that was dismissed for lack of evidence of the occurrence of an insult, all

¹⁵ I searched the database through a combination of keyword searches that included variations on the words religion, insult, prejudice and discrimination. It is possible that I did not identify all cases involving attacks on Afro-Brazilian religions in this time period. Also, it is important to note that not all cases are recorded in the

online archives of appeals courts in Brazil (see Machado, Lima, and Neris, 2016). Nevertheless, the cases examined here provide a suggestive base for examining the structural constraints confronted by cases alleging attack on Afro-Brazilian religions.

cases tried as *injúrias qualificadas* in lower court were retained as such. However, this did not amount to a recognition of a broader scope of offence. Instead it appears that in the context of religiously oriented insults, at least in the appeals court of Rio de Janeiro, the distinction between *injúria simples* and *injúria qualificada* did not map onto a divide between intent to offend an individual and intent to offend a broader group of people as was the case for the cases of racial insult analyzed by Machado, Lima and Neris (2016). Instead, following the Supreme Court of Justice decision cited above, such distinctions between object of offence were used by judges to determine the difference between *injúria qualificada* and crimes of religious prejudice or discrimination. One consequence of this was that all the cases typified as *injúria qualificada* were understood by the judges to be oriented towards individual subjects rather than a religious group at large.

This framing of *injúria qualificada* was also reflected in the judgments' focus on delineating the social relationship between the parties involved and the social context of the insults. The majority of the insults were described by the judgments to have been voiced between neighbors or family members in the midst of heated arguments that were related to longer brewing conflicts: For example, one judgment detailed how the

defendant had insulted a neighbor as a "*macumbeira de merda*" (a shitty practitioner of Afro-Brazilian religions) after having become frustrated with the latter's children playing soccer in front of his gate.¹⁶ Another case described a conflict between neighbors that had escalated into religiously offensive insults after the defendant had become frustrated by noise emanating from the victims' apartment.¹⁷ This focus on the interpersonal was also illustrated by the justifications that the appeals court presented for overturning a lower court decision of *injúria qualificada*. According to the presiding judge, given the social context in which the defendant had insulted the victim, the insults were understandable. The victim had been in the habit of organizing Umbanda ceremonies in a courtyard shared by other family members, including the ill, elderly mother of the defendant. The defendant, who was a devout Evangelical Christian, had objected to the organization of the ceremonies arguing that they disturbed his mother, who did not want strangers in the shared space. The tensions between the defendant and the victim eventually led to a verbal conflict in which the defendant called the victim a *macumbeira*. The appeals court judge dismissed the case. In his view, considering the circumstances and that the parties involved were devout followers of different

¹⁶ Case no 0387020-31.2012.8.19.0001

¹⁷ Case no. 0086427-36.2016.8.19.0001

religions, the conflict was understandable if not inevitable. Moreover, he added, the term *macumbeira* could not be considered a serious insult since it was commonly used by practitioners themselves.¹⁸

As these cases show, the courts' interpretations of the frame of *injúria qualificada* tended to reproduce a common analysis of aggression toward Afro-Brazilian religions as interpersonal and subjectively oriented rather than systemic in character. Albeit in different ways than the *Juizados Especiais Criminais* described by Miranda, Côrrea and Almeida (2019), this interpretation of *injúria qualificada* also minimized and privatized insults performed against Afro-Brazilian religions. In this framing, the insults under analysis appeared as a product of interpersonal conflict with no connection to the broader religious and political contexts that motivated and powered them. In so doing, the judgments also gave the impression that the cases of religious insult that they examined were of a completely different order than the kinds of broad reaching religious prejudice and discrimination that were criminalized by the *Lei Caó*.

Challenges of the Lei Caó

If the 2012 Supreme Court of Justice ruling distinguished crimes of religious

prejudice and discrimination from those of religious insult on the basis of their purportedly distinct objects of address, an analysis of the few cases that have been tried under the *Lei Caó* and that have reached higher courts suggests that the two types of crimes also raise significantly different legal questions. In keeping with the differential framing of the crimes, the emphasis on the victim and his or her relationship to the offending party in cases of religious insult is substituted by attention to the offending party's intentions on the one hand, and the relationship between the harms caused and the rights of the offending party on the other hand. As Tanya Hernández (2013, 2019) has argued for the adjudication of racial discrimination in Latin America more broadly, the focus on intent is a common feature of the legal treatment of that phenomenon. This, as she observes, places a particularly high burden on evidence. Indeed, how and in what situations can intent to discriminate be proved? However, in many cases involving acts of aggression directed at Afro-Brazilian religions the question of intent is reconfigured. In contrast to cases of racial aggression, the offending parties in these cases do not necessarily contest the religiously derogatory character of their actions. Instead, some of them claim to be exercising their rights to free expression or

¹⁸ Case no. 0000709-12.2015.8.19.0032

free religious expression. As a result, courts are called on to opine on the limits of such freedoms and to balance the demands of these freedoms with the harms caused by the offending acts.

The court case on the demolition of a Candomblé temple in Salvador (mentioned above) that concluded in 2009 presents a particularly revealing example of the challenges that claims to religious prejudice and discrimination confront.¹⁹ In this case, the defendants--the municipal office that ordered the demolition, the company that performed it, and the neighborhood association that had filed the initial complaint--all contested the claim of discriminatory intent. The first defendant claimed to not have known that the demolished building housed a religious temple, the second claimed to have simply been following orders, and the third claimed that they had been acting out of a concern over the obstruction of a public thoroughfare. In the judge's view, these claims rendered the framework of religious prejudice or discrimination inapplicable. A conviction under the *Lei Caó* required a demonstration of malicious, discriminatory intent. This analysis, however, left the question of demolition open. Could the demolition of a religious temple be justified by concerns over public space? To this question, the judge responded in the affirmative. The right to

religious freedom, he argued, was not absolute. It was constrained by the interests of the community as a whole. These interests included the ability to circulate through public space. In extending onto a public thoroughfare, the temple had offended this interest. Thus, it had not only been the state's right but also obligation to remove the offending structure.

The challenges posed by the difficulties of proving intent for the adjudication of cases in the framework of the *Lei Caó* are not limited to cases concerning Afro-Brazilian religions. Instead, as the treatment of cases alleging racial prejudice and discrimination also shows, they are inherent to the structure of the legal framework itself. A conviction can only be reached if the defendants explicitly state that actions they undertook and that caused harm to a religious object were motivated by religious prejudice or an intent to discriminate. The challenges that this demand presents for prosecuting religious harms were particularly well demonstrated by a case that was tried in Brasília in 2016. The case concerned the burning of a Spiritist center in Brasília by five men. Prior to the fire, the men had spoken repeatedly against Spiritism arguing that the religion was a form of Devil cult. The five men had participated in various actions that had impeded the Spiritist group's

¹⁹ See Hartikainen (2019) for an analysis of this case.

meetings and threatened its congregants. However, since the men contested the claim that the fire was motivated by religious animus, the court could not find them guilty of the crime of religious prejudice or discrimination. Although the court recognized that religious differences might have contributed to the burning of the center, the evidence was not strong enough to render a sentence of religious prejudice or discrimination. Instead, after a confession by one of the defendants led to two of the men being found guilty of burning the building, the court found the primary motivation for the fire to have been disagreements over ownership of the property on which the center resided. The two men were sentenced to four years in prison in an open regime and fines (Correio Braziliense, 2017).²⁰

The defendants in cases that involve attacks on Afro-Brazilian religions do not, however, always contest the attacks or their religious motivations. Instead, in some cases they contest the accusation of criminal activity by arguing that their actions were protected by the right to freedom of expression or the right to freedom of religion. The case of Tupirani da Hora Lores presents one example of this kind of argumentation. In 2012, the Evangelical Christian pastor, and Afonso Henrique Alves

Lobato, a member of his church and one of the men who had destroyed the *Centro Espírita Cruz de Oxalá* Umbanda center in Rio de Janeiro in 2008 were condemned of the practice of and incitement to religious prejudice and discrimination. The pastor had preached intolerance against all religious groups other than his own on his blog, and Lobato had published a video on YouTube that celebrated the destruction of the Umbanda temple. The two men appealed the sentence to the Appellate Court of the State of Rio de Janeiro but their appeal was rejected. Then, Tupirani da Hora Lores' lawyer, Roberto Flavio Cavalcanti, presented a Habeas Corpus brief to the *Superior Tribunal da Justiça* (STJ), that argued that the pastor's derogatory blog posts were to be considered protected by the constitutionally guaranteed right to freedom of religion. The brief claimed that the "ideological condemnation of other beliefs was inherent to the practice of religion". Thus, Tupirani da Hora Lores' inflammatory blog posts were to be understood as religious expressions. In a decision rendered in 2017, the STJ, rejected Tupirani da Hora Lores' appeal arguing that the right to free religious expression did not extend to attacks on other religions. In 2018, the *Supremo Tribunal Federal* (Federal Supreme Court, STF),

²⁰ The prison system in Brazil is divided into three disciplinary regimes: closed, semi-open, and open. Prisoners may progress from one to the other in the course of filling their sentences. Closed regime sentences begin in the penitentiary and involve full confinement. In the semi-open regime, prisoners may

work outside the prison but must return to it each night. In the open regime, prisoners serve their sentences outside the prison, but must comply with judicial controls such as making periodic court appearances to report on their activities.

reaffirmed this decision in responding to a new appeal from Loeres. It agreed with the STJ's analysis of the limits of religious freedom, but it also emphasized the especially inflammatory character of Tupirani da Hora Loeres' blog posts arguing that they presented a particularly insidious threat to societal peace in Brazil. If the State were to allow such publications, the ruling charged, it would soon face a war between religions (Balan, 2018).

Such appeals to freedom of religious expression have been rejected by higher courts in similar ways in other cases as well. Thus, at the beginning of 2020, the Appellate Court for the Federal District issued a similar ruling in a case that involved the dissemination of religiously insidious video content on Facebook by an Evangelical Christian pastor. The video, which had been filmed in 2016 at the request of the pastor, showed him destroying a ritual offering that he had encountered on the street. In the process, the pastor made highly derogatory comments about Afro-Brazilian religions, including a claim that the offering was designed to kill and destroy people in a particularly cruel fashion. The Appellate Court argued that although the freedom of religious belief and expression was indisputable, it did not, under any circumstance, allow for discrimination or prejudice (MPDFT, 2020).

The number of cases of religious attack on Afro-Brazilian religions and their practitioners that have been tried under the *Lei*

Caó is, however, so limited that it is impossible to determine if such analyses of the scope of religious freedom will prevail in future rulings. Ultimately, this line of analysis pits Evangelical Christians' religious freedoms against the harms caused to Afro-Brazilian religions' practitioners. In the two cases discussed here, the higher courts ruled unanimously in favor of Afro-Brazilian religions. However, a different consideration of the "severity" of the harms caused by restrictions on Evangelical Christian religious expression might result in a contrary sentence. Indeed, if arguments like the one presented in the *Habeas Corpus* brief filed by Tupirani da Hora Loeres' lawyer--which claimed that the condemnation of other religions was a central characteristic of Evangelical Christianity--gain further traction in Brazilian courts, the argument for restricting the right to express such incendiary views may become increasingly dependent on a comparison of harms experienced by Evangelical Christians and by their targets of derision. The recent embrace across the Brazilian political and public spheres of a new discourse on religious freedom that is closely aligned with a discourse of Christian victimhood, and the parallel emergence of conservative discourses on race that vehemently contest the need for ethnorracial legal and policy initiatives in Brazil and claim them to be societally divisive, make these concerns particularly acute.

Shifting ground under Bolsonaro

If for most of the 2010s the efforts of practitioner activists focused on constructing religious prejudice and discrimination as a legally legible phenomenon and gaining recognition for the systematic character of attacks on Afro-Brazilian religions, the rise of Jair Bolsonaro to Brazil's presidency in 2019 has brought about a new set of challenges. In addition to having to simply deal with a steady resistance of state and federal agencies to recognize the severity and systematicity of the Evangelical Christian onslaught on Afro-Brazilian religions, Afro-Brazilian religious activists have now been increasingly confronting state and federal executive and legislative branches of government that are openly hostile to them. This new and aggravated situation calls for a different set of politico-legal strategies. Here, the various government initiatives on religious intolerance that activists have helped to bring into being and that continue to be in existence as well as the many alliances they have forged with public prosecutors' offices and lawyers' associations will be crucial. The following examples provide some indications of how.

The 2000s and 2010s saw a proliferation of law proposals and other legal initiatives by Evangelical Christian legislators that if approved would have variously constrained the ritual practice of Afro-

Brazilian religions. The most widely discussed of these was an effort to legislate against animal sacrifice in Rio Grande do Sul. In 2003, Manoel Maria dos Santos, an Evangelical Christian state assemblyman (*deputado estadual*) from the right-wing Brazilian Labor Party (*Partido Trabalhista Brasileiro*, PTB) in Rio Grande do Sul proposed a state code for the protection of animals. The overt focus of the code was on prohibiting physical violence against animals and the subjection of animals to experiences that cause suffering. However, it was taken by critics to be designed to impede Afro-Brazilian religions from performing animal sacrifice, a key rite in the religions' ritual practice. The code quickly became a battleground over conflicting arguments on the scope of religious freedom in relationship to animal rights. But it also raised questions on the neutrality of the increasingly Evangelical Christian legislative branch in respect to Afro-Brazilian religions (see Hartikainen, 2019).

The beginning of the 21st century also saw the entry of a growing number of Evangelical Christian politicians into the executive branch. A notable example is Marcelo Crivella, a pastor of the *Igreja Universal do Reino de Deus* (IURD), who was elected to the mayorship of Rio de Janeiro in 2016. This was the first time the IURD was able to position one of its pastors into the leadership of a large capital city in the country (de Deus, 2019, 33). Not surprisingly, Crivella's actions were the focus of close

scrutiny and heated debate among the city's Afro-Brazilian religious activists. As de Deus (2019) describes, a decree announced by Crivella in 2017 caused particular concern. The decree (DL No 43.219) established the *Rio Ainda Mais Fácil Eventos* (RIAMFE) system which overt aim was to facilitate the processing and emission of authorizations for events to be held in both public and private spaces. In practice, however, the decree subjected the approval of such authorizations directly to Crivella's cabinet. Moreover, it established the possession of a license as a prerequisite for the organization of any regular events, including religious ceremonies. Both of these requirements threatened to severely restrict the ability of Afro-Brazilian religious communities to perform the regular religious ceremonies that compose the core of their ritual practice (de Deus, 2019).

Ultimately, these two cases were resolved by the judiciary in ways that favored Afro-Brazilian religions. In both of them, the judiciary ruled overwhelmingly for Afro-Brazilian religions' religious freedoms. In respect to the law on animal sacrifice, judges from the Rio Grande do Sul Appellate Court to the Federal Supreme Court supported the inclusion of a safety clause in dos Santos' law proposal that explicitly excluded the ritual practice of religions of African origin from the objects of the law. Such a clause, they argued, was necessary to ensure that the law did not impinge on the religious rights of these

religions' practitioners (see Hartikainen, 2019). Crivella's decree, in turn, was annulled by the Appellate Court of the State of Rio de Janeiro in May 2019. Following a request for suspending the decree that was filed by the Rio de Janeiro branch of the Organization of Lawyers in Brazil (OAB-RJ) in collaboration with practitioners from Afro-Brazilian religions, the appellate court found the decree to be unconstitutional (AMAERJ, 2019).

These two cases highlight the importance of the judiciary and its commitment to supporting particular framings of religious freedoms. That the judiciary has positioned itself so strongly in favor of Afro-Brazilian religions is reflective of its more general politicization in the past decades (see Vianna, Burgos & Salles, 2007). This development parallels a broader trend towards judicialization in Latin America (Sieder, Schjolden & Angell, 2005). Such judicialization can, however, lean in different directions politically. In particular, the increasing embrace of Evangelical Christian value discourses and foci across the political and public spheres may lead to a conservative turn in the judiciary. At the same time, judicialization frequently results in executive attempts to weaken the judiciary's independence (see Sieder, Schjolden & Angell, 2005, 2). President Bolsonaro's efforts to influence the judiciary in recent years, especially during the COVID-19 pandemic and in relationship to corruption investigations

are telling. So far, the judiciary appears to have resisted such executive pressure. But the impending nomination of a Supreme Court Justice by Bolsonaro may have a different effect.²¹

In parallel, the broader landscape of government offices and services surrounding religious intolerance has shifted in significant ways since Bolsonaro's rise to power. Notably, the end of the 2010s saw the increasing embrace of a new kind of Evangelical Christian-informed discourse on religious freedom across a broad range of government institutions that could be expected to extend also to the judiciary in upcoming years. Perhaps, most concerningly, government offices on the federal level that were dedicated to promoting religious diversity and combatting religious intolerance have been substituted by new ones oriented to the promotion of "religious freedom" across the country. In parallel, the appointed leadership of offices dedicated to the protection of religious rights shifted from politicians

focused on questions of racial equality and human rights to politicians who advocate Evangelical Christian agendas of family values.²² At first glance, these new offices' advocacy for religious freedom might appear to parallel the concerns of Afro-Brazilian religious activists. Similar to the arguments for combatting religious intolerance, these offices aim to promote religious freedoms. But, on closer examination the new formulations of religious freedom are tied to an agenda that if not openly hostile to, at least undermines Afro-Brazilian religious struggles against Evangelical Christian aggression. As the religious associations of their directors and the ways in which their mandate is framed reveal, these offices are tied to an Evangelical Christian discourse on religious freedom that has global proportions (see Mahmood, 2012). A particularly clear example of these transnational connections was a speech that President Bolsonaro gave at the General Assembly of the United Nations in September 2019. The speech called on the international

²¹ Justice Mello retired from the Supreme Court in July 2021 giving President Bolsonaro the opportunity to appoint a justice of his choosing to the court.

²² The disappearance of Afro-Brazilian religions from federal agendas is telling. SEPPPIR, the national secretariat for policies to promote racial equality that oversaw and participated in a wide range of initiatives dedicated to supporting the recognition of Afro-Brazilian religions was subsumed by the *Ministério das Mulheres, da Igualdade Racial e dos Direitos Humanos* (Ministry of Women, Racial Inequality and Human Rights) in October 2015. Under Bolsonaro's administration the mandate of the ministry was reoriented to one focused on women, the family and human rights. The name of the ministry changed accordingly to the *Ministério da Mulher, da Família e dos Direitos Humanos* (Ministry of the Woman, the Family and Human Rights). To head the new ministry, President Bolsonaro appointed

Damares Alves, a conservative Evangelical Christian pastor who has advocated for greater religious influence on the state and the adoption of conservative family values and gender roles. In the end of 2019, Alves founded the *Comitê Nacional da Liberdade de Religião ou Crença* (National Committee for the Freedom of Religion and Belief), under the *Ministério da Mulher, da Família e dos Direitos Humanos*. Overtly, the committee seeks to improve the recognition of the right to religious freedom, respect for different beliefs, and the preservation of the secularity of the state (Agência Brasil, 2019). Notably, however, the mandate of the committee makes no explicit mention of Afro-Brazilian religions. Furthermore, Damares Alves' own public alignment with groups that advocate for the greater protection and promotion of the religious freedoms of Evangelical Christians raise questions on the committee's intended agenda.

community to protect religious freedom and combat *crisofobia*, a term that has come to be commonly used by conservative Evangelical Christians in Brazil to refer to the supposed global persecution of Christians (da Andrade, 2020).

At the time of writing this essay (2021), it is still too early to assess how this shift of government agencies to an Evangelical Christian informed agenda of promoting "religious freedom" will affect efforts by practitioners of Afro-Brazilian religions to counter religiously motivated attacks against their temples and faithful followers. The questions it raises however are many: How will the shift affect the positioning of Afro-Brazilian religious concerns in the agendas of municipal, state and federal government offices? Will this shift strengthen the Evangelical Christian arguments on the scope of religious freedoms in ways that will make it more difficult for courts to argue for their limitations in situations of conflict with freedoms of other religions? And how, ultimately, will the judiciary locate such Evangelical Christian value discourses in respect to the broader frameworks of value that it draws on to justify rulings?

However, what is certain is that the challenges posed by this shift to Evangelical Christian framings of religious freedom in government institutions will be further compounded by the ways in which Bolsonaro and his government have aligned themselves

with critics of previous administrations' efforts to expand racial equality and inclusion. The criticism in itself is not new. Affirmative action policies aimed at expanding Afro-Brazilian populations' access to higher education, in particular, have been the object of wide-spread criticism in Brazil since the early 2000s. Opponents to the policies claim them to be a US American import that is at odds with Brazilian practices of race as fluidly constructed. Many also argue that the policies constitute a form of reverse racism in that they unfairly privilege Brazilians of African descent (see Hernández, 2013). These kinds of views on ethnoracial policy and law have gained increasingly greater ground in the federal government since Bolsonaro's rise to the presidency. Particularly telling is Bolsonaro's appointment of Sérgio Camargo, a man who denies the severity of slavery in Brazil, has described the black movement as "*escória maldita*" (damn scum) and a harbor for "*vagabundos*" (bums), and has publicly referred to a Candomblé leader as "*uma filha da puta da macumbeira*" (sic) (a daughter of a whore of a macumbeira), to head the federal government's premier agency for promoting Afro-Brazilian culture, *Fundação Palmares* (Metrópoles, 2020, Soares, 2019). But the growing influence in the federal government of such critical views on efforts to remedy Brazil's racial inequalities is also evidenced by the rapid disappearance of concerns over racial equality and inclusion from government

agendas in general. These new policy trends are certain to also affect the ways in which Afro-Brazilian religions' struggles with religious intolerance are treated by the police and by judges as they can be expected to give further credence to views on racial, and in so doing also, religious prejudice and discrimination as minor, interpersonal conflicts rather than products of broad society-wide prejudices and structures of race regulation customary law.

Conclusion

The COVID-19 pandemic has put to a test both the advances that practitioners of Afro-Brazilian religions have achieved in combatting religious intolerance and the changes wrought by the Evangelical Christian churches-supported arrival of Bolsonaro and the far-right to the federal government. As Brazilian society was forced to a stand-still under the Covid-19 pandemic, the activities of offices, institutions and organizations which mandate is to support and defend Afro-Brazilian religions either halted or were notably slowed. At the same time, attacks on Afro-Brazilian religions have continued unabated (Mendonça, 2020). Moreover, the debates over restrictions on religious congregations that the pandemic spawned afforded Evangelical Christian formulations of the character and scope of religious freedoms

an increasingly prominent, even if also heavily contested, place in public sphere discussions on religion in Brazil (see Hartikainen, 2020).

Afro-Brazilian religions overwhelmingly responded to the pandemic with efforts to present themselves as “good citizens.” They called on their fellow practitioners to limit religious activities to a bare minimum. They advocated for the use of masks and for respecting the health of elders in ways that aligned Afro-Brazilian religions' valorization of elders with public health concerns. And they adapted religious practices to the demands of social distancing in highly creative ways (see Capponi & Araújo, 2020). In the pandemic situation, the collaborative relationships they have managed to form with sympathetic government actors also showed their utility. The exemption of practitioners of Afro-Brazilian religions from the requirement of cremation of victims of COVID-19 in Salvador, Bahia provides one example in point. In March 2020, Leonel Monteiro, the president of the *Associação de Preservação da Cultura Afro Ameríndia* (Association for the Preservation of Afro Amerindian Culture, AFA), petitioned the *Ministério Público do Estado da Bahia* (Public Prosecutor's Office of the State of Bahia) for the exemption. He argued that cremation seriously conflicted with the religious foundations of funerary rites in all Afro-Brazilian religions (Hortélio, 2020). In late April 2020, the *Ministério Público* responded to the petition by recommending

that the religious beliefs of the dead be taken into account in the treatment of the deceased during the pandemic (Bahia Notícias, 2020).

At the same time, the structural problems that impede the application of the *Lei Caó* to attacks on Afro-Brazilian religions that I have described in this article have not disappeared. Such attacks remain a low police investigative priority. The majority of attacks continue to be registered as insults or other minor offenses. And the category of religious prejudice and discrimination remains constrained to attacks that do not specify an individual as their target. Despite the concerted efforts of Afro-Brazilian religious activists and their allies, then, the strictures of race regulation customary law continue to dominate the legal treatment of attacks on Afro-Brazilian religions. These obstacles will surely be further aggravated as the influence of conservative Evangelical Christian agendas on the executive, legislative and judiciary branches of government grows.

Would it be time, perhaps, to think beyond the effort to bring attacks on Afro-Brazilian religions to trial under the *Lei Caó*. Might there be other ways to approach the low

levels of convictions beyond the framework of ethnoracial law? The recent turn to a legal framework of “religious terrorism” by some Afro-Brazilian religious activists may present one fruitful alternative. This strategy is predicated on the adoption of the notion of religious terrorism to refer to attacks performed on Afro-Brazilian religions by Evangelical Christian drug traffickers in Rio de Janeiro’s favelas. On one level, the framing is motivated by an effort to highlight the violent and systematic character of this violence and render it recognizable as a crime not of religious discrimination but terrorism, which carries penalties of decades in prison. On another level, the frame of terrorism seeks to present the violence against Afro-Brazilian religions and the widespread failure of government entities to contain it in an idiom that is legible to and such renders it actionable in the sphere of international law and International Human Rights Courts (see de Deus, 2019).²³

Ultimately, though, the success of this strategy like the ones I have described in this paper are dependent on the broader legal landscape in which they unfold. The contours

²³ In a letter presented to the Legislative Assembly of the State of Rio de Janeiro in October 2017, a group of practitioner activists from the municipality of Nova Iguaçu called on the state government to recognise these attacks as instances of religious terrorism and to intervene in them accordingly (de Deus, 2019, 32). The characterization of these attacks as a form of terrorism, de Deus observes, sought to highlight the gravity of the attacks and draw attention to the state’s lax response to practitioners’ complaints about them, but it also proposed new avenues for legal action in International Courts of Justice. In keeping, later on in the same month

babalorixá Adailton Moreira, the leader of the Candomblé temple Ile Omiojuaro, delivered a report on racism and religious intolerance against religions of African origin in Brazil to the *relatora especial* for the rights of afro-descendant populations and women of the Interamerican Court of Human Rights. The following day, a group representing Afro-Brazilian religions delivered a petition to the Municipal Council of São Paulo to denounce Brasil to the Interamerican Court of Human Rights for its negligence in addressing attacks on the religions. See de Deus (2019) for a discussion of this strategy.

of this landscape, as I have shown, determine the potential for success of particular legal strategies. The growing government interest towards supporting practitioners of Afro-Brazilian religions in their struggles with religious intolerance has contributed in crucial ways to the expansion of services for and access to legal assistance for victims of attacks. However, at the same time, the legal landscape in which these efforts have taken form continues to be structured by the values, beliefs, and practices of race regulation customary law. In Brazil, it is the combination of these two, oftentimes conflicting, facets of the legal landscape that is constitutive of the fields in which cases of religious attack can be rendered recognizable as crimes, shepherded through police registration, and constituted as legal cases that are adjudicated in particular ways by judges. In assessing the status of Afro-Brazilian religious rights in Brazil in the 2020s, then, it is essential to take the structuring effects of not only these different facets, but also the tensions and contradictions between them, into account.

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