



FEDERAL Senate

Senate Law no. 460, of 2017

Provides for the prohibition of Brazilian companies, or companies based in the national territory, from importing oil and its derivatives from countries that violate the basic principle of popular sovereignty over natural resources and from entering into agreements and contracts with such countries, or companies based in those countries, for the purpose of producing or refining oil.

Author: Senator Randolfe Rodrigues (REDE/AP)

Dispatch: To the Constitutional Commission, Justice and Citizenship, and to Foreign Relations and National Defense, for a final decision.



FEDERAL Senate

Senator Randolfe Rodrigues's office

Senate Law no. 460, of 2017

Provides for the prohibition of Brazilian companies, or companies based in the national territory, from importing oil and its derivatives from countries that violate the basic principle of popular sovereignty over natural resources and from entering into agreements and contracts with such countries, or companies based in those countries, for the purpose of producing or refining oil.

The National Congress decrees:

Art. 1. The conclusion of agreements or contracts for imports, exploitation or refining of petroleum originating from non-free countries shall be prohibited.

Art. 2. Countries that violate the principle of Popular Sovereignty over Natural Resources will be considered non-free.

Single paragraph. For the purposes of this law, the definition of the principle of Popular Sovereignty over Natural Resources is established in Article 1 of the International Covenant on Civil and Political Rights and in Article 1 of the International Covenant on Economic, Social and Cultural Rights, both ratified by Brazil, approved by the National Congress through Legislative Decree No. 226 of December 12, 1991 and incorporated into the Brazilian legal system by Decrees No. 591 and No. 592, both dated July 6, 1992.

Art. 3. Declaring which countries violate the principle of Popular Sovereignty over Natural Resources shall be the responsibility of an internal body created exclusively for that purpose.



Art. 4. It shall be incumbent upon the Executive Branch in applying this Law to

I – constitute a collegiate body, with representation balanced between the productive sector, public sector and civil society, and including at least the regulatory bodies, the Federal Public Ministry, the Public Defender’s Office Union, and civil society organizations with recognized expertise in the defense of human rights; and

II – define criteria for declaring countries as non-free on the basis of violations of the principle of Popular Sovereignty over Natural Resources, considering a combination of governance metrics developed by independent institutions recognized nationally and internationally as observers of human rights.

Art. 5. In case of non-compliance with the provisions of this Law, after a statement of the competent body referred to in art. 4, the violating company shall have the contract terminated and the proceeds of the transaction seized, and must also pay a fine of three times the value of the contract.

Single paragraph. In the event of a repeat offense, the violating company shall have the amount of its fine doubled and shall be suspended from the right to participate in bidding, and prevented from contracting, with the Administration, for two years.

Art. 6. This law enters into force on the date of its publication.

Justification

“The force of law must overcome the law of force.”
Rui Barbosa

More than half of the world’s traded oil comes from countries where the people have no control over its natural resources, that is, where the basic principle of Popular Sovereignty over Natural Resources is violated.

Violent and corrupt tyrants and militias exploit these resources for their own benefit. In this criminal process, they become rich and even more powerful while the population often remains poor and suffers from atrocious human rights violations, including murders, torture and rape. This is “blood oil,” as described in the celebrated book of Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules That Run the World* (Oxford University Press, 2016).

Democratic countries that buy or participate in the production of this oil are accomplices in this criminal and violent process. Brazil, like many other countries, helps to perpetuate this iniquity by meeting part of its oil needs (currently 120 million barrels per year) by importing from countries like Saudi Arabia (almost 25% of Brazilian imports) and Equatorial Guinea (5% of imports). Brazil also participates, through Petrobrás, in oil production in Angola and Gabon. (Statistical Yearbook of the Petroleum, Natural Gas and Biofuels 2017 of the ANP.)

In these countries, the population has no control over its natural resources and suffers serious violations of other basic human rights. None is considered even partially free by Freedom House, which measures freedom in the world. All are accused by human rights organizations of curtailing freedom of expression and association, arresting political opponents, journalists and activists, discriminating against minorities and women, and practicing torture. To make matters worse, blood oil revenues are also used to fund terrorism and

civil wars. Most countries on the United States' list of funders of terrorism are oil-producing countries, and 52% of the civil wars in the world in 2014 occurred in these countries.

Citizens of democratic countries are morally implicated in the enormous suffering caused to people living in these "blood oil" producing and exporting countries, by consuming a large part of that oil when they fill the tanks of their cars and buy everyday goods made of oil or its derivatives, such as plastics, synthetic materials, toothpaste and cosmetics.

It is necessary to adopt, through legislation, the principles of "Clean Trade."

The basic principle is that of Popular Sovereignty over Natural Resources, as defined in Article 1 of both UN International Covenants on Human Rights, of which Brazil is a signatory: "All peoples may... freely dispose of their natural wealth and resources," a corollary of the right to self-determination of peoples proclaimed as a fundamental principle of the post-World War II international order and recognized in various treaties of international law and in many national constitutions and laws, even those of authoritarian countries. In Equatorial Guinea's own oil legislation, for example, it says:

“The Basic Law of the Republic of Equatorial Guinea consecrates and designates all the resources found in our national territory as property of the people of Equatorial Guinea ... for whose mandate and delegation the government will administer them.” (Law 8/2006)

The Brazilian Constitution also recognizes this principle in its Article 20, which provides that natural and mineral resources, including those of the subsoil, are assets of the Union and hence the patrimony of all Brazilians.

The principle of Popular Sovereignty over Natural Resources is entirely opposed to the old idea that “might makes right,” which has often been overcome in world history, as in the abolition of slavery, the end of colonialism, and the end of apartheid. Paradoxically, however, it survives in the context of international trade, where democratic regimes continue to maintain trade relations with bloodthirsty dictatorships. As Rui Barbosa famously said, “The force of law must overcome the law of force.”

The principle of popular sovereignty is the most effective tool in the fight against corruption and against “blood oil.” Brazil must honor this principle not only here, but insist that it prevail in all countries.

Oil belongs to the people - it is their property. When a regime sells its natural resources without any control by the people, is literally robbing the

people of its legitimate property. Brazil is therefore buying and helping to extract large quantities of stolen oil daily. When the revenue from this stolen oil is used to oppress the people by violating their most basic human rights, this criminal trade becomes even more vile.

Brazil can and must adopt legislation to end this, showing the world that it will no longer be an accomplice to these crimes. And this legislation is very simple: it must ban participation in the production and import of oil in countries that do not respect the principle of popular sovereignty and violate other basic human rights.

And the reform is not idealistic. Brazil is the 16th country in the world in proven oil reserves (12.6 billion barrels) and the ninth in production (2.6 million barrels per day, 2.8% of the world total). In the last 15 years, from a position of heavy dependence on imported oil, the country became a net exporter. But it still imports a small portion of its needs from countries stained by blood oil, as well as engaging in oil exploration projects in those countries.

Brazil should not and does not need to participate in this dirty trade with corrupt, authoritarian and cruel leaders. For those who think the project is unrealistic, it can be recalled that today's situation evokes that of the United Kingdom two hundred years ago. The British elite were up to their necks in exploitation and the slave trade. Rich and powerful merchants owned many slave ships, members of Parliament - and even the Anglican Church - owned

slaves on the plantations of the West Indies (Caribbean). No one imagined, then, that the abolition of slavery and trafficking was possible. But it happened.

Brazil carries the legacy of being last Western country to abolish slavery. But we were pioneers in the Kimberley Process that resulted in banning the trade in “Blood Diamonds.” Why should we not take the lead in the next urgent moral revolution, that of Clean Trade, ending the purchase of stolen and blood-soaked oil from people oppressed by bloodthirsty dictators?

In view of these reasons, the support of Their Excellencies, the Ladies and Gentlemen of the Senate, is requested for the approval of this project.

Sessions Room,

Senator RANDOLFE RODRIGUES

Cited legislation

-Decree n ° 591, of July 6, 1992-DEC-591-1992-07-06-591/92

<http://www.lexml.gov.br/urn/urn:lex:br:federal:decreto:1992;591>

-Decree n ° 592, of July 6, 1992-DEC-592-1992-07-06-592/92

<http://www.lexml.gov.br/urn/urn:lex:br:federal:decreto:1992;592>

-urn: Lex: br: Federal: Law: 2006; 8

<Http://www.lexml.gov.br/urN/urn: lex: br: Federal: Law: 2006; 8>