

Spring 2017

The Brazilian Paradox: LGBT Legislation Improvements versus High Violence Rates against LGBT People

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**The Brazilian Paradox: LGBT Legislation Improvements versus High Violence
Rates against LGBT People**

by

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An honors thesis submitted in partial
fulfillment of the requirements for the degree of
Bachelor of Arts with honors designation in International Affairs

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UNIVERSITY OF COLORADO AT BOULDER
DEFENSE DATE APRIL 5, 2017

“Understand one thing.
Heterosexual and homosexual have one thing in common.
It is the bond between two people that is important.”
- Unknown

To my family, Luiza, João and Therezinha,
for supporting me through this journey,
especially when the *saudade* was too hard to bear.

To my soul-sister, Raphaela, for holding my hand
through the most difficult times despite being in a
different hemisphere.

Your love and support made this possible.

and

To my mentors, Prof Snyder, Prof Bayard de Volo, and Prof Chester,

Thank you for believing in me and guiding me through
the opportunity of a life time.

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A Note on the Translation

As a Brazilian and a native speaker of Portuguese, all the translations and paraphrasing from Portuguese to English of articles used in the thesis are my own.

Abstract

In the past couple of decades, much of the world shifted into embracing LGBT rights as human rights. Brazil followed this trend and passed federal laws ensuring rights for the LGBT community. However, the Brazilian society has not fully accepted the LGBT people, as evidenced by Brazil having one of the highest violence rates against LGBT members in the world. This thesis uses the established United Nations international legal framework that defines LGBT rights as human rights worldwide under international law to show how this framework influenced the advancements Brazil made in the 2000s to introduce LGBT-friendly laws within the country. It uses homicide rates to show that violence persists and that adoption of laws did not translate into more societal acceptance. Furthermore, it examines the difficulties in implementing LGBT international laws at the national and local levels within Brazil and how this exacerbates violence against LGBT members mainly because the current initiatives happen in isolation. These challenges require the adoption of a set of comprehensive policies that must be implemented and work in conjunction with one another, tackling different roots of prejudice, in order to effectively fight violence and discrimination against the LGBT people in the country. These policies are ought to be first implemented on local level where current successful initiatives are already in place and sympathy for LGBT people already exists, and after the trial period, they should be expanded to other states. The set of policy proposals are based on similar work done for women's rights protection in Brazil and Europe, and on recommendations made by the United Nations in regards to anti-LGBT violence and discrimination.

Keywords: LGBT Rights, Brazil, gay, lesbian, transgender, prejudice, discrimination, equality, human rights, politics.

The Brazilian Paradox: LGBT Legislation Improvements versus High Violence

Rates against LGBT People

Introduction: Understanding LGBT Rights as Human Rights, Societal Acceptance and, Recommendations to Better Protect the LGBT Community

Over the last decade, Brazil has been following the international trend of improving Lesbian, Gay, Bisexual and Transsexual (LGBT) rights.¹ Such rights protect LGBT people from discrimination based on their sexual orientation and gender identity, ensuring that they “can live openly without discrimination, and enjoy equal rights, personal autonomy, and freedom of expression” (ACLU). So why is violence and discrimination against LGBT people still high in Brazil?

The reasons why LGBT people continue to face discrimination and violence is because the public policies and social programs intended to promote equality for this community are not

¹ This research will focus on LGBT rights and not LGBTQ/LGBTI rights because the Brazilian legislation has not yet added Queer people to its law.

effective. This is because the initiatives in place are not properly enforced, funded and propagated by the government, and most importantly, they are isolated. This thesis will argue that through implementing a set of comprehensive policies that must be implemented together for them to be effective the violence and discrimination targeted at the LGBT community can be lowered in the country. These policies are (1) criminalizing homophobia and transphobia, (2) providing education programs for police personnel and the general population with the purpose to sensitize the population about the LGBT community, (3) creating specialized police stations for LGBT people, and (4) increasing the number of referral centers for LGBT people throughout the country. Currently, Brazil does not have a working set of comprehensive policies. Some initiatives have been tried, for example creation of referral centers and the establishment of a crisis hot line, but these efforts are not well coordinated. Ultimately, leaving the LGBT people open to discrimination and violence and without a viable support system.

My main contribution is that differently from prior studies and from what currently happens in Brazil, the policies I propose are interconnected, mutually enforcing, have different goals, and therefore, must be implemented in conjunction to efficiently address the issue of violence and discrimination targeted at LGBT people. For example, criminalizing homophobia and transphobia will address the legal issue of high level of impunity seen in Brazil in regards to LGBT crimes. Moreover, education programs will target society, police force and general population, increasing awareness and promoting tolerance by teaching people about the LGBT community. In order for violence and discrimination against the LGBT community to be effectively addressed, society and legislation need to be aligned; so one can work in accordance with another to enforce norms. Anti-LGBT violence and discrimination do not come only from one sector of society. For example, they happen in the form of victimization from the police

force and social workers as well as stigmatization from the population. This is the main reason why these policies must be implemented together, so they can effectively work. Otherwise, Brazil will continue its ongoing unsuccessful efforts, and anti-LGBT violence and discrimination will persist. However, the implementation of these comprehensive policy proposals can improve LGBT equality and citizenship.

It is worth noting that if not all of these policies can be adopted and implemented at the same time, criminalizing homophobia and transphobia should still be a priority. This is necessary to start combating violence and discrimination, and creating laws that criminalize violent acts committed on the basis of sexual orientation and sexual orientation is an essential step. This gives the criminal justice system a legal mechanism to hold perpetrators of this kind of crimes responsible and also sends a message that targeting the LGBT community is punishable under the law.

Following some current successful efforts seen in the country, I suggest these policies to be implemented at the state level first. Starting at the state level instead of federal would work around the present conservative Congress that opposes LGBT-friendly initiatives. In addition, states are better equipped to address violence targeted at the LGBT community within their borders since they are closer to the problem and can more easily identify what needs to be done and where, following successful models already in place in states such as Sao Paulo. These comprehensive policies need to be adopted and implemented soon, since the current legislation and public policies do not guarantee protection for the LGBT people. Brazil is an example of a country where norm dissemination and capacity building have not followed improvements in legislation and social programs in regards to LGBT rights promotion since it is constantly on international headlines as one of the most dangerous countries for LGBT people

In the Brazil case, despite the advancements in creating LGBT friendly laws and public policies, ongoing research about LGBT rights shows that anti-LGBT violence is still high, which demonstrates that legal improvements alone do not guarantee protection for this population. It is necessary more than just legislation to assure LGBT equality and citizenship. The population and government need to stand side-by-side with rights for the LGBT community. This thesis aims to understand the dynamic surrounding the “LGBT rights as human rights” movement, and more specifically, it intends to suggest mutually enforcing and interconnected policy proposals to address anti-LGBT violence and discrimination in Brazil. In response to the current high level of violence and discrimination targeted at the LGBT people in the country, it is necessary to ask the following questions: To what extent do international laws influence domestic laws? What are the ways in which these issues can be better addressed? What kinds of mechanisms need to be put in place to ensure enforcement of existing laws? How comprehensive does the approach need to be to be affective? What roles do the government and NGOs play into guaranteeing rights for LGBT people? Are government and police force monitoring the effectiveness of ongoing efforts to promote LGBT equality? Why are current initiatives and laws for LGBT equality not working?

Adapting the policy approach used by Celeste Montoya in *From Global to Grassroots* to combat violence against women to the context of anti-LGBT violence in Brazil, in order for social and public policies to be effective three steps are necessary (the three “Ps” policy approach): *protection*, *prosecution* and *prevention*. *Protection* is often the first step, which includes removing victims from dangerous situations and providing general support. Help can be both immediate, such as food and clothing, or in the form of provisions, for example legal counseling and advocacy while victims interact with the justice system. This first step is usually

done by crisis lines, shelters and referral centers since they are the first point of contact for victims. *Prosecution* focuses mainly on holding perpetrators of violence accountable. This includes making sure the criminal justice system prosecutes perpetrators to the full extent of the law. In addition, advocates favor increasing sentences as a way to more effectively combat violence, for example classifying crimes based on sexual orientation and gender identity discrimination as hate crimes since these crimes often have a harsher sentence. *Prevention* includes increasing public awareness through education programs with the intention to change societal norms and perception of LGBT people, ultimately promoting tolerance. Prevention is equally important in combating violence because adoption of laws by the population is necessary to enforce everyone's safety; without public support, public policies or legislations will not be implemented, and therefore, will not be effective. In sum, these actions combined represent a comprehensive approach needed to deal with anti-LGBT violence (Montoya 2003). The goal is to address governmental and societal behavior with the purpose to combat violence and promote acceptance. In addition, better training of police personnel, social workers, health care providers, and professors about the LGBT topic can possibly lower anti-LGBT violence and discrimination and increase tolerance, since would sensitize varies sectors of society about the issue.

My research found that although Brazil tried to create legislations and public policies that fit the policy approach mentioned above, the efforts were substantially limited in regards to funding, outreach, and effectiveness because the few initiatives in place are isolated. For example, despite having a hot line to respond to varies discrimination cases, there are very few LGBT referral centers throughout the country, which leads many of the reported cases to not be followed up with, including lack of victim support and criminally repercussions for perpetrators. Prior articles about public policies that address anti-LGBT violence and discrimination in Brazil,

such as Mello et al. (2012 and 2014) and Carrara (2012), focus on analysis and evaluation of (1) mechanisms that are already in place and (2) governmental initiatives towards promoting LGBT equality. NGOs' reports, such as the 2016 Human Rights Campaign Research Overview, also follow this approach. In some cases, isolated police recommendations are suggested for specific issues, such as increase level of prosecutions through criminalizing homophobia or creation of educational programs about LGBT to sensitize the population and promote tolerance. Rather than empirically studying the existing policies, the main goal of this thesis is to propose ways to address anti-LGBT violence and discrimination. My approach is to suggest a comprehensive set of policy proposals that include UN recommendations, the "three Ps" policy approach to combat targeted violence, and also expand successful Brazilian initiatives used to address violence against women to the LGBT cause, such as the specialized police stations.

To better understand the international trend of LGBT rights as human rights worldwide and how this trend affected Brazil's decision to embrace the LGBT community through legislative means, it is useful to examine the adoption of international human rights laws by national states, since these laws guarantee equality for all people. Mary Kites and Kinsey Bryant-Lees argue that this international trend has caused a shift in social climate over the past two decades, especially in the 2000s, that has led to a steady increase in legal rights, social acceptance, and visibility of LGBT people (164). Under the influence of the *Partido dos Trabalhadores* (Worker's Party) in the presidency, Brazil adopted this trend and took steps towards embracing the LGBT community.

Following a sequence of court rulings in favor of LGBT equality, in May 2013, Brazil legalized same-sex marriage, which was a significant achievement towards LGBT equality. Much of the advancements in regards to LGBT-friendly laws in Brazil were pushed by both the

executive and judiciary branches through executive orders and court rulings that expanded constitutional rights to homosexuals. Parallel to reinforcing the commitment of international treaties in respect to human rights protections through these two measures, the federal government also launched a series of programs to promote LGBT citizenship and combat homophobia. Sadly, these laws and programs put in place by the government fell short and the LGBT community continues to be under supported and suffers great violence and discrimination. For example, there is not a federal law against discrimination based on sexual orientation and gender identity, which leaves LGBT people vulnerable to bias without ways to prosecute perpetrators. Furthermore, there are very few referral centers around the country, and the existing ones are mainly located in the Southeast, leaving the majority of the population unattended. Ultimately, adopting laws and promoting acceptance did not translate into more protection for LGBT people and violence against the LGBT people remains high.

Despite Brazil expanding its federal laws to protect LGBT community members, it has not created effective mechanisms to enforce these laws. In addition, it has not classified crimes based on sexual orientation and gender identity as hate crimes, which have a more severe criminal punishment. By holding a higher number of perpetrators of violence accountable, the goal is to lower the incidence of crimes that target protected communities (GGB Murder Reports). Thus, the lack of proper law implementation has earned Brazil one of the highest rates of violence against the LGBT community in the world. In 2016, the NGO Group Gay da Bahia (GGB) reported 343 LGBT killings in the country (GGB 2016 Murder Report). According to the NGO, this number makes Brazil the world's leader for anti-LGBT killings that year.² Anti-LGBT

² I use annual reports from the NGO GGB to quantify violence, and according to their reports, Brazil is the most dangerous country for LGBT people. I attempted to double check the veracity

violence becomes even more worrisome in regards to trans people; Brazil is considered the most dangerous country for trans people, since the country has the highest rates of trans-deaths in the world – about 16.4 percent higher than any other country (Vice.news). This contradiction between legal improvements and societal acceptance, as evidenced by the high number of LGBT deaths, demonstrates a discrepancy between what the law demands and what LGBT people frequently encounter.

Brazil is already known for being a violent country overall, but what differentiates everyday violence from the crimes directed at the LGBT community is the added bias to the crime. The bigotry against LGBT people leads to violence being committed with an extreme level of brutality, such as recurrent use of torture prior to killing. Throughout the country, there are different levels of anti-LGBT violence: the highest levels of relative violence are recorded in less developed areas in Central-West, followed by the Northwest and Northeast, and the lowest levels of relative violence are recorded in more developed regions, such as the South and Southeast. The goal of my research is to propose ways to address this violence throughout the country. By proposing policies that incorporate legislation, education programs and support systems, the different causes of violence can be better addressed.

This thesis will state the international legal framework used to define LGBT rights as human rights and then analyze both the development of the LGBT movement in Brazil and the worldwide movement towards LGBT acceptance that influenced Brazil's government to adopt LGBT rights starting in the 2000s. In addition, this project will examine (1) the demographic

of this claim by looking for data on LGBT murders reported by other NGOs. Unfortunately, there is not a worldwide or country-by-country record of anti-LGBT violence – with exception of violence directed at transgender people recorded by Transrepect.org-- and every other NGO report that also made this claim, referred back to the GGB report.

profile of the violence rates against LGBT in Brazil to establish the anti-LGBT violence pattern and (2) what the country is doing to ensure its LGBT people are protected. Lastly, it will suggest ways to improve the lives of the LGBT community overall. The aim here is not to provide a cause for the violence or analyze the factors driving it in depth. But rather, given that the violence exists, the primary aim is to propose policy recommendations to address it. My suggestions will draw from and build upon the assessment done by the 2012 United Nations booklet “Born Free and Equal” relevant to the protection from homophobic and transphobic violence, prevention of inhuman and degrading treatment of LGBT people, and prohibition of discrimination on the basis of sexual orientation and gender identity. It will also use Prof Montoya’s policy approach to address violence against women as well as look at public policies used to address gender violence in Brazil and adapt the successful ones to the LGBT cause.

Methodology

In this thesis, I pursue an inductive approach, working with a variety of sources and academic trends³ detailed below, in order to develop an understanding of the relationship between laws, social acceptance, and violence against the LGBT community. As I studied the Brazilian paradox, I applied academic trends from LGBT scholarship such as LGBT rights as human rights, growing violence against the LGBT community as a backlash from significant adoption of laws protecting LGBT people and transgender people as the LGBT group most affected by anti-LGBT violence. I also note the growing importance of transnational advocacy networks for the promotion of LGBT rights issues. Furthermore, I analyze the role international agreements play in shaping the policy-making process within Brazil and the potential for policy

³ I refer to these “theories” as academic trends rather than academic theories because of the ongoing development of this field of study.

reform. However, the persistent gap between policy adoption and policy implementation in regards to LGBT rights creates the need to study how effectively international organizations can influence legal reforms, and most importantly, promote acceptance. I build upon research done by Professor Celeste Montoya in regards to violence against women in Europe to compare and contrast to the Brazilian case of violence against LGBT people. Her book *From Global to Grassroots* comprises an in depth study of women's rights in Europe and its development towards a more gender equal society by looking at the relationship between law adoption and law implementation and how effective this process has been in influencing public policies towards creating a safer environment for women.

In regards to data, since the field of LGBT rights is fairly recent, there has not been a significant amount of research done in respect to the effectiveness of applying the framework of LGBT rights as human rights nor is there governmental quantitative research on how well LGBT laws are being implemented in Brazil or internationally. Therefore, I used LGBT murders as a proxy for acceptance and efficacy of laws intending to protect the LGBT community. My research centers on the Brazilian case because it is an important example of transnational LGBT advocacy interacting with global, regional, and local processes with the purpose to create equality for LGBT people. Moreover, the apparent paradox in respect to the LGBT members arouses my personal curiosity to understand how its society is responding to legal improvements for this community.

My primary sources include state and federal laws and bill initiations, the Brazilian constitution, and public and political debates about the LGBT cause. Unfortunately, Brazil has not classified crimes based on discrimination against sexual orientation and gender identity as hate crimes, which leads to not having a governmental report about violence targeted at LGBT

people. For this reason, I draw primarily from secondary sources, such as reports written by the UN and shadow reports published by Brazilian and international NGOs as well as articles written about the subject by various scholars. I also use media articles and reports as sources because, currently, they are the main vehicles addressing the chronic anti-LGBT violence in Brazil and also bringing awareness to the problem, since the government has been slow in taking measures to prevent these crimes or even acknowledge the issue. I will also include my own perspectives on the Brazilian society, as I lived there for the majority of my life. In addition, having a homosexual twin brother allowed me to experience societal prejudice first hand. I will take those experiences into account when writing about Brazilian societal behavior and acceptance towards the LGBT community.

Notes

** For the purpose of this paper, I will follow the nominations established by Adrienne Rosenberg: “Lesbian,” “gay” and “bisexual” as a descriptor of variant sexual orientation, and “transgender” or “*travesti*” as a descriptor of variant gender identity (Adapted from Rosenberg 2009).

Chapter One - Literature Review

Current LGBT rights can be studied through the successes and failures, the limits and possibilities, and the formal recognition of these rights by nation states as well as the level of enforcement and degree of commitments by various government institutions.

LGBT Rights as Human Rights

LGBT rights, a growing new field of study, has impacted the lives of LGBT people around the world. The main thought in the literature recognizes LGBT rights as human rights. This literature is important because it brought to the international community's attention that LGBT people are victims of discrimination and violence on a regular basis. By raising the issue through increased literature and advocacy, scholars and activists influenced public policies and lives of LGBT members. The goals were to ensure equal rights to LGBT people because they are human beings, and therefore, deserve to be a part of societies and enjoy equality. This trend became even more noticeable in the early 2000s when the international community, including Latin America, experienced a remarkable shift in the acceptance of LGBT people, which led to an increase of formal recognition of LGBT rights by national states. Through advancements in international law, LGBT rights were included under the umbrella of human rights, which granted LGBT people rights such as marriage, adoption, inheritance, and access to participate in the military. The literature also identifies some shortcomings of the campaign to promote LGBT rights as human rights. For example, the non-binding nature of many international laws mechanisms, which by definition means that they offer guidance for expected behavior, by proposing the change and setting the example, but ultimately, it is up to each country to adopt and implement international laws within its borders as well as establish mechanisms to enforce the rights promoted by these laws. Witeck (2014), Donnelly (1999), Encarnación (2011), Friedman (2009), Rios (2006) and Kite and Bryant-Less (2016) all study LGBT rights as an

extension of human rights. World organizations such as the United Nations; the International Lesbian, Gay, Bisexual, Trans and Intersex Association for Latin America and the Caribbean (ILGALAC); the Organization of American States (OAS); the Latin American Public Opinion Project (LAPOP); the Pew Research Center; and Sexuality Policy Watch also conduct studies and release reports on improvements of LGBT rights worldwide. Authors' views and the reports previously released by these international organizations reflect the steady increase in legal rights for LGBT people over the past decade.

The worldwide shift to classifying LGBT rights under human rights started in the 1990s, but significant progress only began to be made around the 2000s. During this time, sociologists started to study the effectiveness of the existing LGBT rights and national states began to decriminalize homosexuality and criminalize homophobia. At the same time, governmental institutions started working towards enforcing these rights. Friedman (2009), Encarnación (2011), Phillipis (2005), Vianna et al (2008), Carrara and Vianna (2007), Carrara (2012), and Rosenberg (2009) studied the improvements of LGBT rights with a focus on the improvements of the Brazilian legislation as well as the contribution Brazil has made internationally to promote equality for LGBT people.

Despite the overall improvements in gay rights worldwide, scholars have discussed the increase in reported violence against the LGBT community. In their study titled, "Historical and Contemporary Attitudes Toward Homosexuality," Kite and Bryant-Lees point out:

The Shifting social climate has led to a steady increase in legal rights, social acceptance, and visibility for lesbian, gay, bisexual, and transgender (LGBT) people. However, there are still marked individual differences in levels of sexual prejudice as well as varying levels of comfort and exposure to the LGBT community. Moreover, the rapid shift in

attitudes may lead students to conclude incorrectly that sexual prejudice is a thing of the past (Kite and Bryant-Lees 164).

The consensus in the field is that although there have been improvements in LGBT rights, violence against the LGBT community is still high.

Scholars have noted the increase in violence against LGBT people; however, they argue about the nature of this violence. Some authors explain the increase of violence against LGBT people as a backlash response to the improvement of rights devoted to the homosexual and transsexual community (Kollman and Waites 2009). By violently attacking LGBT people, populations demonstrate their disagreement with LGBT inclusion in the society. In addition to this idea, many reports by NGOs, such as 2017 Amnesty International Report about the Americas, Human Rights Watch World Reports, 2016 Human Rights Campaign Global Spotlight, US Department of State country report about Brazil, Canada Immigration Report on Brazil, note the gap between law adoption and law implementation as a contributing factor of homophobic and transphobic violence.

Gaps between International Laws and Federal and Local-level Laws Implementation

Under international and domestic law, states have the obligation to protect all individuals. Moreover, this obligation already exists. That is, in order to assure protection for LGBT members, countries do not need to create a new set of laws. According to the UN “Born Free and Equal” report from 2012:

The protection of people on the basis of sexual orientation and gender identity does not require the creation of new rights or special rights for LGBT people. Rather, it requires enforcement of the universally applicable guarantee of non-discrimination in the enjoyment of all rights (“Born Free and Equal” 10).

The reports continues to say that discrimination on the basis of sexual orientation and gender identity is not limited to international rights law. Many countries consider such discriminations as a violation of their constitutional norms as well as international law. Simply put, LGBT people cannot be discriminated against on the basis of sexual orientation or gender identity because the existing laws already encompass all forms of discrimination.

Reports by NGOs also highlight an important paradox with regard to LGBT rights: support for LGBT rights exist alongside denial of these rights. The constant efforts by the UN, and many other NGOs, to raise awareness for the discrimination suffered by the LGBT community, demonstrate the gravity of the situation and the need for action. In response to the call for action, according to the Pew Research Center, about two dozen countries decriminalized homosexuality by 2015, mostly in Europe and the Americas. In contrast to the push towards protecting the LGBT community, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) notes that as of 2016, a total of 73 countries have criminal laws against homosexuality. In many of them, same sex relationships are punishable by death. This contrast between support and denial of homo and transsexual rights demonstrates the dual behavior towards LGBT rights internationally. This contrast is also seen within countries.

The UN report “Born Equal and Free” speaks to the issue that countries are not able to domestically enforce international and federal laws effectively despite the strong international trend to accept LGBT rights as human rights in the last decade:

Deeply embedded homophobic attitudes, often combined with a lack of adequate legal protection against discrimination on grounds of sexual orientation and gender identity, expose many LGBT people to all ages and in all regions of the world to egregious violations of their human rights. They are discriminated against [...] On the streets of

towns and cities around the world, they are singled out for physical attack - beaten, sexually assaulted, tortured and killed (“Born Equal and Free” 7).

Scholars recognize that although there are international, federal and local laws protecting people from discrimination based on sexual orientation and gender identity, these laws are not enforced properly. Therefore, LGBT people end up targeted.

Despite noting that no additional law should be necessary to protect LGBT people since their human rights reside on the fact that they are humans, scholars have noted that implementing international rights norms into domestic cultural and state practices can be difficult (Kollman and Waites 2009). International laws are not adequately transferred to national and local levels in a way that is effective. International legal instruments take the form of international treaties. These treaties can be binding treaties⁴ or non-binding instruments, such as declarations and resolutions. In addition, international human rights laws are soft-laws. In the international context, Bryan Druzin refers to soft-laws as quasi-legal instruments, which do not have any legally binding force, or whose binding force is somewhat weaker than the binding force of traditional law (1). In the international human rights sphere, Montoya goes on to say that “soft laws are not legally binding but which nevertheless may have practical effects,” (Montoya 43) but she also concludes that “soft law can elicit only soft compliance” (Montoya 43) due to its normative nature.

One of the points suggested by the UN report “Born Free and Equal” is that for LGBT rights to be effective, countries need to enforce international laws under domestic criminal law.

⁴ Binding Treaties: a legally binding contract/treaty is a contract agreement that is valid under international, and federal, and state laws. “Legally binding” means that the parties must obey the terms written in the contract and perform their contract duties as stated. Failure to do so may result in legal consequences. In the international sphere, these consequences may be naming and shaming and economic sanctions. Adapted from *LegalMatch* website. <http://www.legalmatch.com/law-library/article/legally-binding-contracts.html>.

The UN report quotes the UNHRC, which stated, “the State party should ensure that individuals who incite violence against homosexuals are investigated, prosecuted and properly sanctioned” (“Born Free and Equal” 20). It continues, “the State party [...] should also... amend the Penal Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offenses and intensify awareness-raising activities aimed at the police force and wider public.” (“Born Free and Equal” 20). Jacobs and Porter defines hate crimes, or bias crimes, as “criminal conduct motivated by prejudice” (Jacobs and Porter 11). A 2009 Human Rights Campaign (HRC) report states that “federal hate crime legislation is crucial to understanding and preventing hate crimes” (HRC Report Hate Crimes and Violence Against Lesbian, Gay, Bisexual and Transgender People 4) because it enables the government to aid state and local jurisdictions when investigating and prosecuting crimes motivated by bias as well as raise awareness for the issue of targeted crimes. By bringing the problem of anti-LGBT violence to light, hate crimes laws can also facilitate training for first-responders so they can better assist this community.

A 2017 Amnesty International report about the Americas states “legislative and institutional progress in some countries – such as the legal recognition of same-sex marriage – did not necessarily translate into better protection against violence and discrimination for LGBTI people” (Amnesty International Report 2016/2017). It also notes that Across the Americas there are high levels of hate crime, advocacy of hatred and discrimination, as well as murders and persecution of LGBTI activists. In the specific case of Brazil, NGOs note that the lack of proper implementation of international human rights laws to include LGBT people create a culture of impunity, which motivates perpetrators of anti-LGBT violence to act (GGB Murder Report 2012-2016). This culture, added to the biased police behavior, worsens violence against

homosexuals, and especially, transgender people. A 2016 HRC report concludes “police officers are frequently perpetrators of criminal violence against transgender people” (Thapa and Zelayandia 2). Research conducted by the *Universidade Federal de Minas Gerais*, (Federal University of Minas Gerais, UFMG) found that within the police force, homophobia is part of their institutional dynamic, which results in flawed investigations of homophobic crimes (Nuh Website). Ultimately, the absence of laws and public policies that address this kind of prejudice and violence enables this attitude towards the LGBT community and reinforces impunity for perpetrators.

How countries see and accept LGBT rights varies. Kollman and Waites examine the development of LGBT politics and advocacy over the past decades and how transnational human rights activism has influenced international and domestic politics. They conclude that in spite of the growing discussion about LGBT rights as human rights, this scholarship needs further development in order to assess if international laws can affect the development of LGBT rights in national states; and therefore, how laws may be implemented to effectively protect the LGBT community (14). More importantly, countries need to elicit support from their populations to accept LGBT rights as human rights; and therefore, have their support when comes to enforcing these rights.

Gaps/Research Difficulties

Despite the important improvements observed around the world, this is a new field of study. Kollman and Waites acknowledge that the concept of LGBT rights as human rights is legitimate and valuable in the global discourse. They also note the need for more sensitive research in order to understand what factors play into allowing international human rights norms to influence national dialogue and political agendas (14). There are two major limitations to the

study of the improvements in LGBT rights: (1) scholars are studying this trend as the global politics of LGBT human rights develops, and (2) due to the recent and rapidly changing characteristic of this scholarship, there is not much data available to assess how effective LGBT rights are and if they are being enforced by nation states. For example, not all countries keep track of violence rates against LGBT people nor have specific law enforcement mechanisms, such as classifying crimes committed based on gender identity or sexual orientation as hate crimes. This makes it impossible for scholars to determine if the level of acceptance of LGBT people is following the overall advancement in legislation. Most data comes from international non-governmental parties, such as the United Nations and local NGOs, such as Grupo Gay da Bahia (GGB) in Brazil. In countries where there has been societal push back, governments have not developed a system of support that the LGBT people can rely on, and therefore it is very difficult for them to report violence or to ask for help. Other factors playing into the difficulties of tracking “real” advancements in securing LGBT rights come from the lack of proper law enforcement, difference in levels of development of countries, failure to classify homophobia and transphobia as a hate crime, etc. One of the major limitations of the literature is that it does not focus on issues such as mechanisms to enforce laws, prevention of violence and systems to track crimes against LGBT people.

Conclusion

Scholars have made big contributions to guaranteeing LGBT people equality by reframing LGBT rights as human rights. LGBT rights advanced worldwide during the last decade mainly due to the joint work of scholars, activists, international organizations and NGOs. As a consequence, countries worldwide followed the trend and adopted national laws in order to ensure rights for LGBT people. This steady shift in acceptance of the LGBT community allows

LGBT people to be part of societies, enjoy rights otherwise restricted to heterosexuals, and freely express themselves. The world is moving towards a more equal society with the decriminalization of homosexuality, passage of anti-gay discrimination laws, and legalization of same-sex marriage. Lesbians, gays, bisexual and transgender people have seen daily changes that affect their lives positively and protect them from discrimination. Scholarship in this field has strengthened significantly from the mid-1990s through the 2000s. Despite the short duration, these studies have already influenced significant changes in laws, government policies, and improved the living experience of millions of LGBT people around the world.

Montoya notes that research is also an important means to combat anti-LGBT violence and promote equality. 30 years ago, LGBT rights was not talked about nor studied: “very little was known about its occurrence, its impact and ways to effectively deal with it” (Montoya 8). The growing network of transnational LGBT advocates brought this topic to the international political agenda, and a consequence, to the national level as well, creating the need to research this subject. Since then, progress has been made to study this issue and formulate better policies and mechanisms to enforce laws and secure these rights. However, there is still need for more systematic research, and more importantly, data collection in order to improve efforts to address this violence. One area within this field that still needs more study is law implementation and public policies mechanisms geared towards preventing anti-LGBT violence and guarantying protection for this community, which is the focus of this paper. As a result, this thesis focuses on addressing this violence in Brazil through a set of comprehensive policy proposals.

Chapter Two - International Trend of Considering LGBT Rights as Human Rights

1990s Worldwide Change in LGBT Framework

Movements that advocated for the normalization of same-sex behavior have existed since at least the late nineteenth century, but the LGBT movement did not frame itself as a human rights movement until early 1990s. This shift to a human rights rhetoric occurred mainly due to the strengthening of transnational LGBT organizations (Kollman and Waites 2009). Considering LGBT rights as human rights resides on two main principles that guide international human rights law: equality and non-discrimination. As stated in the Universal Declaration of Human Rights (UDHR) article 1, “all human beings are born free and equal in dignity and rights,” and national states have the obligation under international law to protect individuals from discrimination, inhuman and/or degrading treatment.

Article 2 of the UDHR states that “all human beings are entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind.” LGBT people do not claim any additional rights. They want to be able to enjoy the same rights heterosexuals are able to enjoy. According to the declaration, human rights encompass basic rights, including (1) right to life, liberty and security of person, (2) right to recognition everywhere as a person before the law, and (3) right to be equal before, and entitled without any discrimination to equal protection by, the law. In many countries, rights such as basic civil, political, social and economic rights are denied, either by law or by practice, on the basis of sexual orientation and gender identity. As human beings, LGBT people deserve to enjoy the same rights as any other person; however, ultimately, LGBT people are denied equality in basic rights. The UN report, “Born Free and Equal,” concludes that:

Protecting LGBT people from violence and discrimination does not require the creation of a new set of LGBT-specific rights, nor does it require the establishment of new international human rights standards. [...] From a legal perspective the issue is straightforward. The obligations that States have to protect LGBT persons from violations of their human rights are already well established and are binding on all United Nations Member States. (“Born Free and Equal” 61)

Based on this approach, the United Nations, as the main advocate for LGBT equality, has expressed concerns in regards to violence and discrimination against the LGBT community. Since the early 1990s, the organization has released many reports stating the legal obligation states have towards LGBT people. It has also established offices responsible for monitoring States’ compliance with international human rights treaties. Its goal is to confront prejudice and to protect the LGBT community worldwide from violence and discrimination. The last action taken towards keeping national states’ practices in check was the approval of a “watchdog” for LGBT rights in June 2016. The UN Human Rights Council voted to appoint an independent monitor to help protect gay and transgender people from violence and discrimination worldwide, with the purpose of identifying the root causes for homophobia and transphobia. The approval of this UN resolution was the most explicit expression of LGBT rights as human rights and a milestone for LGBT equality because the decision came from a UN body that so highly upholds human rights and it reinforced the UNHRC long-term support for the LGBT cause.

In 1994, the UN Human Rights Council set an important precedent in the UN human rights system in regards to protecting people from discrimination based on sexual orientation. The *Toonen v. Australia* (1994) case was the first time an international court ruled in favor of LGBT rights. The court’s decision led Australia to revoke the remaining of its sodomy laws in

Tasmania based on the argument that sexual orientation was included in the anti-discrimination provisions as a protected status under the International Covenant on Civil and Political Rights (ICCPR) (Human Rights Watch 2007). This ruling was also a milestone for the LGBT human rights battle since it was the first time international human rights declarations were linked to each other.

Parallel to the strengthening of international law mechanisms and transnational LGBT networks in the early 1990s, scholars started to study the inclusion of LGBT rights under the umbrella of international human rights. Significant progress has been made in the socio-legal studies and sociology, giving special attention to sexuality and gender diversity in law. This scholarship has developed theories that help explain why LGBT transnational movements emerged and how they are able to influence international politics. Scholars have also joined the UN in affirming that LGBT rights are human rights. Jack Donnelly argues, “human rights are the rights that one has simply as a human being” (Donnelly 2). The premise is that by being a human being, all people are entitled to equality. Therefore LGBT people have the right to not be discriminated against based on their sexual orientation and gender identity.

The joint work of transnational LGBT activism through NGOs and the increasing attention scholars are giving to this subject enabled advancements on international LGBT human rights, laws and policies. These advancements include legal reforms with the intent to protect the LGBT community, for example the legalization of same-sex union policies, passing of anti-discrimination laws, and the criminalization of homophobia. In 2015, the Pew Research Center reported that 23 countries, mostly in Europe and the Americas, had legalized same-sex unions, which was one step further in ensuring LGBT people the same rights as every other human being.

Even with these declarations, recognizing LGBT human rights is still a challenge. The LGBT community is even more prone to discrimination and violence due to the nature of their lifestyle in a sense that LGBT people defy the standard established by society and expected by the status quo. One clear example is that same sex relationships challenge the idea that only women and men are allowed to be attracted to each other in a sexual way. Moreover, in many cultures, same sex relationships are viewed as a violation of religious premises, a crime under the country's law and a dishonor to the family, which makes "ending violence and discrimination against individuals on the basis of their sexual orientation and gender identity a great human rights challenge" (Born Free and Equal 7). This affirmation is especially true for countries with extremist religiosity, such as Iran and Saudi Arabia (Advocate.com), it also holds true for secular states as well such as Brazil, that despite having religion and politics as two separate entities, it still influenced by religion norms.

This framing of LGBT rights as human rights is relatively new and there is still a ways to go before guaranteeing equality for gay and transgender people. The work the UN has done in providing legal framework to promote LGBT acceptance and protection has been crucial, since countries that are embracing the LGBT community as full citizens are following recommendations made by these international documents that offer guidance on this topic. The next section will describe the most prominent legal mechanisms used in respect to LGBT rights. Although these mechanisms are widely known internationally, all countries do not evenly respect them. Still, they represent the foundation for the considering LGBT rights as human rights under international law and provide guidance for nation states in respect to the issue of violence and

discrimination against LGBT people.

United Nations LGBT Legal International Framework⁵

As stated in the 2012 UN “Born Free and Equal,” the protection of LGBT people on the basis of sexual orientation and gender identity does not require the creation of new rights; thus, international human rights laws already in place serve as a foundation for the obligation countries have to protect their LGBT community. International legal mechanisms used to guide countries take the form of declarations, treaties, agreements, conventions and protocols. Below is a list of the main human rights documents set forth by the UN to address discrimination based on sexual orientation and gender identity:

1. **The Universal Declaration of Human Rights** is the primary international human rights document and it states the foundation for the argument: “all human beings are born free and equal in dignity and rights.”
2. **The International Covenant on Civil and Political Rights (ICCPR)** has been used by the UN Human Rights Committee to try cases of LGBT discrimination; in 1994, the UNHRC ruled that sexual orientation was a protected class under the ICCPR. Overall, this document argues for the right to life and the right to equality before the law free from torture, degrading or inhuman treatment or punishment, discrimination, etc., and since the 1994 court ruling, these rights were expanded to homosexuals.
3. **The Declaration of Montreal** was presented at the International Conference on LGBT Rights in July 2006, the largest ever international conference on this issue. The purpose of the declaration was to create a UN convention focused on elimination of all forms of

⁵ See list of commonly violated LGBT rights in Appendix A

discrimination based on sexual orientation and gender identity, laying out broadly the main demands of the international LGBT community (Kollman and Waites 2009).

4. **The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity**, published in 2007, was a milestone in the LGBT rights battle because it is a “universal guide to human rights which affirm binding international legal standards with which all States must comply” (yogyakartaprinciples.org).

5. **The UN “watchdog” resolution** from June 2016. This document creates an “independent expert” to identify the root causes of violence and discriminations against LGBT people based on their sexual orientation and gender identity. It has the purpose to coordinate efforts with countries to ensure that they are complying with recommendations stated in the treaties and resolutions they are a part of, and therefore, LGBT people are being protected as guaranteed by international human rights laws.

Although the UN affirms that LGBT rights fall under international human rights, it is important to note that direct application of the principles and rights stated in international legal mechanisms have fallen short in reality. A shortfall of relying on international legal instruments is that they may or may not be binding on signatory states. These instruments set the precedent and mandate, in the form of recommendations and guidance, but they are not hard law.⁶ Ultimately, it is up to each country to decide how it is going to embrace these laws and how it is going to enforce the laws within its territory (Kollman and Waites 2009). The history of this issue in Brazil exhibits

⁶ In her book *From Global to Grassroots*, Montoya defines hard law as a legally binding, more coercive strategy to enforce laws. “They are precise and delegate authority for interpreting and implementing the law” (Montoya, 2013; 42) As an instrument of change, coercive approaches are more suited for achieving change.

how laws stated in international treaties do not transfer to countries in their full capacity and can affect implementation at the federal and local levels within a country. In this next section, I will explain this issue in depth.

Chapter 3 – The Brazilian Paradox: LGBT Legal Improvements versus High Violence

Rates against LGBT People

History of the LGBT Movement in Brazil⁷

The LGBT movement in Brazil fights for more than civil rights: it is still necessary to fight for more basic human rights, such as the right to life, respect, dignity, and ultimately, equality. Though weak and influential at first, since the early 1990s, the LGBT movement has become one of the most active movements in the world. Brazil had a late development of LGBT rights for several reasons.

First, the movement was held back by the slow transition to a strong democracy in which rights of all people were represented. Brazil was one of the latest colonies to become independent in Latin America, only separating from Portugal in 1882. However, gaining independence did not change the socio-political structure of Brazilian society. At first, white landowners and the Catholic Church were at the top of the power structure. This societal structure to secure power continued throughout most of the country's existence, with only religious denomination changing overtime. When Brazil finally transitioned to a more structured democracy after the end of the military regime in 1985, the majority of the population did not know what being a democracy meant. This ignorance created a weak democracy because people did not know they were in control and that their wishes mattered (Carrara 2012). For this reason, it was only with the promulgation of a new constitution in 1988 that rights for minorities were secured. However, LGBT rights were not included. It was not until the 2000s that the country made meaningful improvements to secure same-sex rights.

⁷ In the following section, I draw from and build upon my prior coursework research done for HIST 4158 class, University of Colorado Boulder, Spring 2016 -- Research Paper "History of the LGBT Movement in Brazil."

In addition, the strong influence of religion, which encouraged the belief that being homosexual was a disease, seriously undermined the movement. Despite being legally defined as a secular state, Brazil remains under the heavy influence of religion. This means that politically Brazil is a secular country, but culturally it is not. The Catholic church has dominated Brazil for most of its history and considered “homosexuality to be a moral abomination” (Green 450). Lately, there has been a shift from Catholicism to non-Catholic Christians (Protestants, Evangelicals, Mormons, and Jehovah’s Witnesses), who have even stronger feelings against homosexuality (Encarnación 114-115). Religion also plays an important role in Brazilian politics. Many politicians are also religious leaders, especially from non-Catholic Christian faiths, and strongly oppose the LGBT community. This has jeopardized safety of the LGBT community since they do not allow pro-LGBT laws to be approved and try to annul laws that have already been approved.

With the end of the military dictatorship in 1985 and the change in the constitution in 1988, women and minority racial groups in Brazil started to have their rights secured, which gave them freedom to fully organize themselves and speak up for their rights. The LGBT community took advantage of this progressive attitude and grew strong in the following decade. Since then, pro-gay activism has picked up in Brazil and influenced the way gay rights issues are viewed internally and internationally, bringing attention to the struggles faced by the community. This steady increase in improvements for LGBT rights, paired with strong advocacy from national civil organizations and backed up by international influences, marks the second and most recent phase of the LGBT movement in Brazil.

The first recorded action of a LGBT organization dates from when Brazil was still under the military dictatorship in the 1970s. Back then, the movement was predominantly composed of

male homosexuals. João Antônio Mascarenhas was a lawyer from Rio Grande do Sul and the founder of a newspaper called *Lampião da Esquina*, a vehicle through which male homosexuals could talk about the prejudice experienced during the dictatorship and fight for their LGBT civil rights. The newspaper had a short life, existing only from 1978 to 1981, but it represented the first milestone for the Brazilian LGBT movement. It also created the foundation for the birth of a much stronger and active LGBT movement later on. In 1980, Group Gay da Bahia (GGB), the oldest LGBT NGO in Brazil, was created in Bahia, Salvador, and since then, many others have emerged. The *Associação Brasileira de Gays, Lésbicas, Bissexuais, Travestis e Transexuais* (ABGLT), the LGBT organization that oversees all others, reports that there are around 200 LGBT NGOs throughout Brazil. GGB is “the country’s longest-surviving gay rights organization” (Green 3), the oldest LGBT organization in Latin America (Vermelho.org), and one of the most influential NGOs in the world in regards to gay rights (Encarnación 2011). It started working in defense of human rights for homosexuals in 1980. Since then, it has defended LGBT rights against homophobia, spread information about homosexuality, and promoted awareness about gay issues. GGB is known internationally for the work it does in the fight for gay rights issues, and it is an example of how successful LGBT activism has been in Brazil.

In addition to fighting for legal rights in the political system, the LGBT movement in Brazil also uses public gatherings to bring attention to their cause. The country hosts some of the biggest gay-pride parades in the world. According to the Guinness World Records, the São Paulo Gay Pride Parade is the world's largest LGBT Pride celebration, hosting 4 million people in 2009. These parades are “effective vehicles for affirming gay identity and main-streaming gay culture” (Encarnación 109). The festive and non-violent character of these manifestations attract

the population's sympathy, opening up another vehicle with which the LGBT community can express their culture and raise awareness of their movement.

The combination of domestic advocacy and the support of strong transnational networks has allowed Brazilian LGBT NGOs to influence policy-making. This influence, aimed at improving LGBT equality, led to the creation of programs that provide support for the LGBT community and help them fight social stigma and discrimination. While there have been influences in policy-making within Brazil, those influences have variances on which LGBT groups are helped. This is because government actions have focused only on certain groups from the LGBT community, and because of competing LGBT interests. In spite of the progress achieved in the legal sector for LGBT rights overall, it is important to note that most of the literature about LGBT rights about Brazil and the laws and programs developed by the government still focus on the gay male and on the *travesti* transgendered male to female. Lesbians and *travesti* transgendered female to male have received little attention (Rosemberg 2009).

The uneven attention given to different LGBT groups can be traced back to the roots of the movement. This uneven advancement in regards to LGBT rights among LGBT groups is related to the structure in which these LGBT organizations advocate for themselves. Irineu notes that during meetings and conferences, LGBT members fight to put their own agenda above others, for example, homosexuals want to their prioritize their needs, which differ from the needs of trans people, and so on (Irineu 2014). Also, the number of members of each group play a role in deciding which groups make more progress; homosexuals groups are usually larger than lesbians and bisexuals, for example, thus they have more representativeness. The opposite happens to smaller groups: with less representation, they have less say and earn less support for their cause.

This separation among LGBT groups has negative consequences overall, since different groups cannot agree on goals. This divide between the community hinders the overarching goal, which is securing equal rights for LGBT members (Irineu 2014).

LGBT Rights Progress in Brazil

In the past decade, Brazil made significant progress towards LGBT equality. Domestically, much of the progress was led by both the executive and judicial branches, while the legislative branch, especially the National Congress, remained passive and sometimes even hostile towards LGBT rights (Carrara 2012; Sales 2014). The main factor responsible for the significant advancement in LGBT rights was the strong advocacy of Brazilian civil rights LGBT organizations for the country to adopt the international trend of recognizing LGBT rights as human rights. Starting in the early 2000s, this joint effort of national NGOs, such as *Grupo Gay da Bahia* and *Associação Brasileira de Gays, Lésbicas, Bissexuais Travestis e Transsexuais* (ABGLT) in partnership with the Brazilian government raised Brazil to a leading position in the international, regional, and domestic spheres as an advocate for LGBT rights.

In regards to national laws, homosexuality is legal in Brazil and has been since 1831.⁸ Starting in the early 2000s, Brazil passed a series of laws granting LGBT people equal rights. In 2004, same-sex unions were legalized. In April 2010, the Superior Court of Justice (the highest court that handles non-constitutional matters) legalized the right for same-sex couples to jointly

⁸ Green provides the context for this fact in his book *Beyond Carnival*, “in 1830, eight years after independence from Portugal, Dom Pedro I signed into law the Imperial Penal Code. Among other provisions, the new law eliminated all references to sodomy. The legislation was influenced by the ideas of Jeremy Bentham, the French Penal Code of 1791, the Neapolitan Code of 1819, and the Napoleonic Code of 1810, which decriminalized sexual relations between consenting adults. However, article 280 of the Brazilian code punished public acts of indecency with ten to forty days’ imprisonment and a fine corresponding to one half of the time served. This provision gave the police the discretion to determine what constituted a public act of indecency” (Green, 1999; 408).

adopt children. In May 2011, the Supreme Federal Court (constitutional court) recognized same-sex couples stable unions as family units, which granted same-sex families rights such as broader health insurance coverage, hospital visits, pension plans, and inheritance rights (Human Rights Watch, World Report 2012 – Brazil). In October of the same year, during an appeal process, the Superior Court of Justice upheld the right for same-sex marriage and used this ruling to determine that all same-sex unions should be converted to marriages if couples requested it. In 2013, marriage equality was achieved, which was the biggest the achievement towards LGBT equality. The National Council of Justice, a body chaired by the chief justice of the Supreme Federal Court, passed Resolution 175 stating that notaries all over the country were obligated to register same-sex marriages. The 2013 ruling built upon the Supreme Federal Court decision from back in 2011 and secured same-sex marriage once and for all, since after the second ruling, homosexuals and trans people no longer needed to request the court to transform their stable unions into marriages. In 2013, the National Court of Justice established the right of same-sex marriage from the get-go.

Under the Presidency of Luiz Inácio Lula da Silva (2003-2010), who was an open supporter to LGBT equality, Brazil strived to become more accepting. In addition to expanding federal rights to LGBT people, the federal government also implemented a series of programs to support the LGBT community as well as developed policies sensitive to LGBT issues. In 2004, Brazil made important progress in policy to address LGBT rights, launching a federal program called “Brazil without Homophobia Program: Program for Combating Violence and Discrimination against Gays, Lesbians, Transgender and Bisexuals (GLBT)” through the Human Rights Secretariat of the Presidency. After that, Brazil hosted two national conferences of LGBT rights in 2008 and 2011. The first National Plan for the Promotion of LGBT Rights was released

in 2009, the National Council on LGBT Rights was created in 2011, and the National System to Combat Violence against LGBT and Promotion of Rights was released in 2013 (Irineu 2014).

These programs reflect the federal initiative to support the LGBT cause.

Brazil has also been a leader in the global fight for LGBT equality. In 2004, the Brazilian delegation to the UNCHR proposed an unprecedented resolution, the “Brazilian Resolution,” (2016 ILGA State-Sponsored Homophobia) which prohibited discrimination based on sexual orientation and gender identity and was the first gay rights resolution at the UN. In 2006, Brazil also actively participated in the creation of the Yogyakarta Principles, by having Professor Sonia Onufer Corrêa, Research Associate of the Brazilian Interdisciplinary AIDS Association, as one of the co-chairs of the document. This document was the first document UN binding document in regards to LGBT rights and represented a milestone for the cause. In 2014, the country co-sponsored a resolution against anti-LGBT violence and discrimination presented at the UN Human Rights Council. Ambassador Keith Harper, U.S. representative on the UNHRC, stated that the approval of this resolution meant, “the international community was visibly and publicly upholding the rights of LGBT individuals” (Washington Blade). In June 2016, Brazil co-sponsored another resolution in the UNHRC that created the first-ever document to combat violence and discrimination based on sexual orientation and gender identity around the world.

It is important to note that timing was crucial for the development of laws protecting the LGBT people. President Lula (2003-2010) was a supporter and advocate of LGBT equality. During his presidency, LGBT legislations thrived in the country and steps in the legislative, executive and judiciary branches were taken to secure equality for the LGBT community. However, during President Rousseff presidency (2011-2016), there were some setbacks. She struggled to keep her approval rates high among the population and political allies. As a way to

keep political allies and public support, she compromised her political agenda and did not prioritize the LGBT rights during her mandate. In 2011, pressured by the Congressional Evangelical coalition, President Rousseff vetoed a bill that would have allowed the distribution of LGBT-specific education materials in the country's public schools. Again, in 2013, pressured by the Evangelical members of the Brazilian Congress, president Rousseff opposed a bill that would have classified bias-motivated attacks based on sexual orientation as hate crime laws and made them a prosecutable category (HRC 2016; Washington Blade 2016). Since her impeachment in 2016, her vice president Michel Temer has been in power. President Temer is from a right-wing party notorious for not defending rights for minorities, LGBT rights included. LGBT rights activists including Jean Willys, the only openly gay elected politician in Congress, are expecting setbacks moving forward.

Despite the lack of federal laws protecting homosexuals and trans people from discrimination, many local jurisdictions have instituted protections for their LGBT population prohibiting discrimination based on sexual orientation and providing equal access to government services. Examples of these initiatives can be seen in the states of Bahia (1997), the Brasilia Federal District (2000), Rio de Janeiro (2000), and Sao Paulo (2001). As noted by the 2016 HRC report, despite advancements in legal provisions for LGBT equality, the lack of federal anti-discrimination protections and hate crime laws for discrimination based on sexual orientation and gender identity represents an important gap in regards to protecting LGBT members. In the Brazilian case, homophobia and transphobia have worked as a deterrent for effective promotion of LGBT citizenship and combat of anti-LGBT violence. The country has one of the best legal protections in the world in regards to LGBT equality, yet research on living experience shows that this community face discrimination and violence on a regular basis (2016 ILGA State

Sponsored Homophobia). Ultimately, this gap contributes to the chronic issue of anti-LGBT violence in the country. (2016 HRC Report).

Brazil, an Already Violent Country

It is important to note that Brazil has high levels of violence in general. Based on data from 2012, a 2013 World Health Organization (WHO) report stated that Brazil had the highest number of killings in the world (2013 Global Study on Homicide). Back then, nearly 11 percent of all homicides worldwide happened in the country (Pri.org). Although concerning, high levels of violence are a trend in the Americas. The report asserts that this region has had “homicide rates five to eight times higher than those in Europe and Asia since the mid-1950s” (2013 Global Study on Homicide 13). The report also notes that homicide levels in Brazil, while still high, are now stabilizing, with rates declining in more developed cities, such as Sao Paulo and Rio de Janeiro, but increasing in poorer areas in the Northeast and North of the country (2013 Global Study on Homicide).

Violence is a part of the Brazilian society; in either of its forms, external causes, such as homicides, or domestic violence, such as partner abuse, it is predominant and causes insecurity. Another contributing factor to high levels of violence is high inequality rates. When there is a drop in inequality, violence is expected to drop as well, and vice-versa (Reichenheim et a 2011). The recession Brazil has been experiencing since 2014 has worsened inequality, thus aggravating crime rates overall (2013 Global Study on Homicide). This background continues to stimulate violence, creating a feeling of insecurity among the population that is worsened by impunity in the forms of inefficient and corrupt policy and inadequate responses from the public-security forces and justice system.

Following this trend of predominantly high violence rates in Brazil, high violence rates

against the LGBT community can be expected as a reflection of the societal behavior seen in the country. The lack of police response and a flawed justice system only aggravate the sense of impunity disseminated among perpetrators. This contributes to the continuous targeting of LGBT people without much action taken by governmental officials to protect this community. Because of high homicide rates, it makes sense that anti-LGBT violence would also be high. The difference between ordinary crimes and anti-LGBT violence is the added bias towards homosexuals and trans people, which is reflected in the brutality in which the crimes are carried out. A report from Homofobiata (“Homophobia kills”), a branch of GGB that tracks the LGBT deaths, states that the murders are often violent. “Besides firearms, many victims were killed by melee weapons – knife, sickle, ax – beating and hanging. There are even cases of torture and carbonization,” (Pri.org) characterizing hate crimes against LGBT people.

Targeted Killings: Homophobic and Transphobic Violence

Brazil remains one of the most dangerous countries in the world for LGBT people (2016 GGB Murder Report) and the deadliest in the world for transgender people (Amnesty International Report 2016/2017). In Brazil, LGBT individuals face higher rates of violence and discrimination, and more obstacles in getting access to justice (Amnesty International Report 2016/2017) compared to other countries that have also enabled LGBT-friendly laws. Because crimes based on homophobia (hatred of homosexuals) and transphobia (hatred of transsexuals) are rooted in discrimination based on sexual orientation and gender identity, they are considered hate crimes in other nations. According to the FBI website,⁹ hate crime is defined as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a

⁹ Because Brazil does not classify crimes targeted at the LGBT community as hate crimes, I am using the parameters used by the FBI to guide the discussion on homophobia and transphobia.

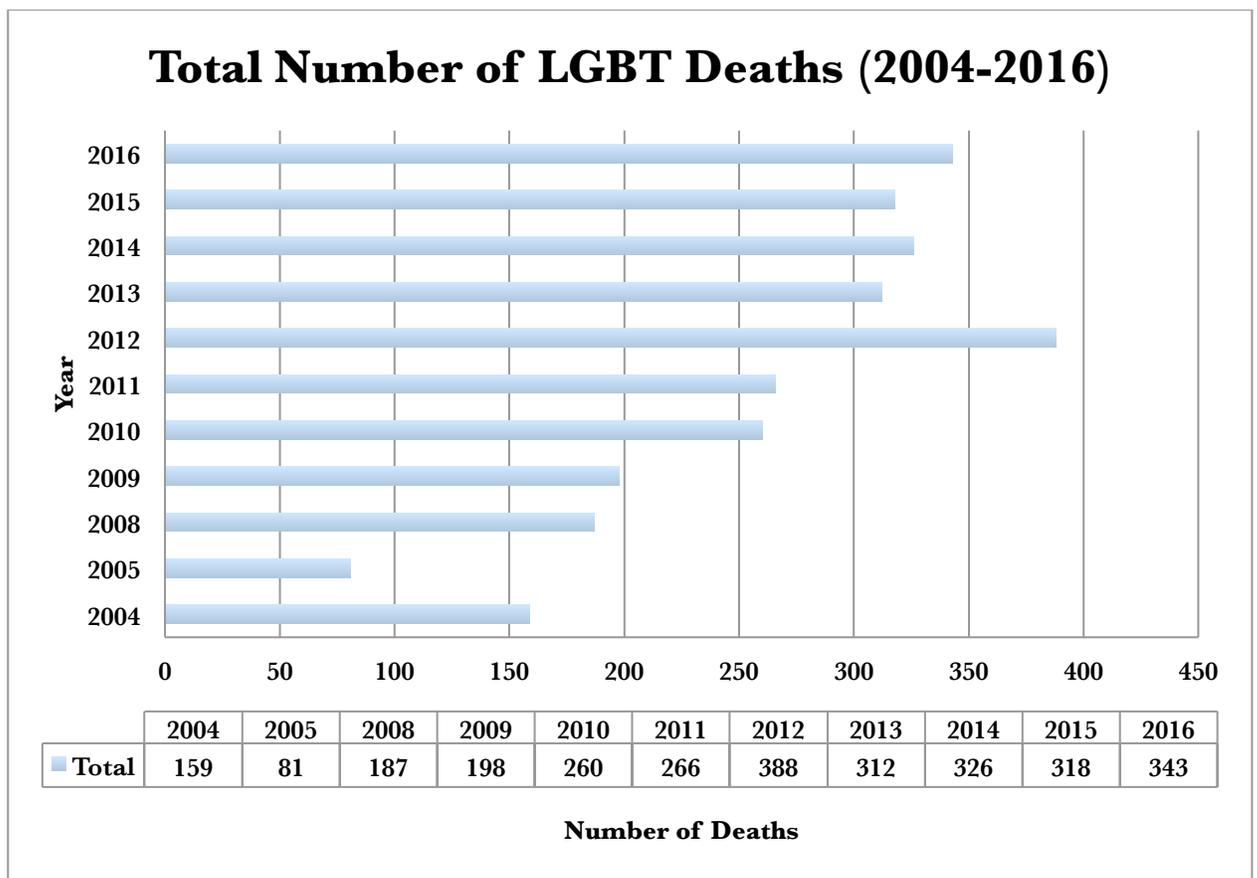
race, religion, disability, sexual orientation, ethnicity, gender, or gender identity” (FBI Website). In sum, it is a traditional offense like murder, arson, or vandalism with an added element of bias, which usually leads to brutality and extreme violence, such as torture, sexual assault, stoning, suffocation, and multiple stabbing of the victim. However, homophobia and transphobia are not considered hate crimes in Brazil.

In order to illustrate the difficulties to adequately address bias-motivated crimes, I am going to make a parallel between racism and anti-LGBT violence laws in Brazil. While racism is punishable by law in Brazil, and it is to some extent considered a hate crime, the application of “hate crime laws” is different between the United States and Brazil. In the U.S., if a crime falls under the hate crime category, for example a crime motivated by ethnicity, it will have a harsher penalty. In Brazil, the criminal prosecution would follow the same process; except for racism to be considered a crime in Brazil the act must be explicit. Since racism in the country is more structural and institutional, it is harder to prove that crimes were committed based solely on racial prejudice, therefore these crimes are often framed as “qualified injured,” which is not technically a crime under Brazilian law. Despite having explicit laws that address racism, “the ability to classify these crimes as ‘injury’ limits victim’s access to redress in the courts” (Rioonwatch.org). In regards to LGBT rights, Brazil still lacks a federal law that clearly includes discrimination based on sexual orientation and gender identity that would allow for these crimes to be criminally prosecuted. Legislation criminalizing bias-motivated violence as hate crimes is an important step towards eliminating targeted violence. As shown by the racism issue, the Brazilian justice system still needs to improve the ways in which deals with these kinds of violence, but classifying violence against LGBT people as hate crimes is a first step to combat anti-LGBT violence and hold perpetrators accountable (2016 HRC Report).

The government’s refusal in classifying these kinds of crimes as hate crimes hinders the capability to account for which crimes are indeed anti-LGBT violence. Due to the lack of official national reports about anti-LGBT violence in Brazil, the demographic profile of anti-LGBT crimes below is based mainly on annual LGBT murder reports released by Brazilian NGO *Grupo Gay da Bahia* from the 2004 to 2016. Their reports are based on news articles and reports, printed and online, and on individual cases reported directly to their organization.

Table A shows the total number of LGBT deaths broken down by year from 2004 to 2016.

Table A

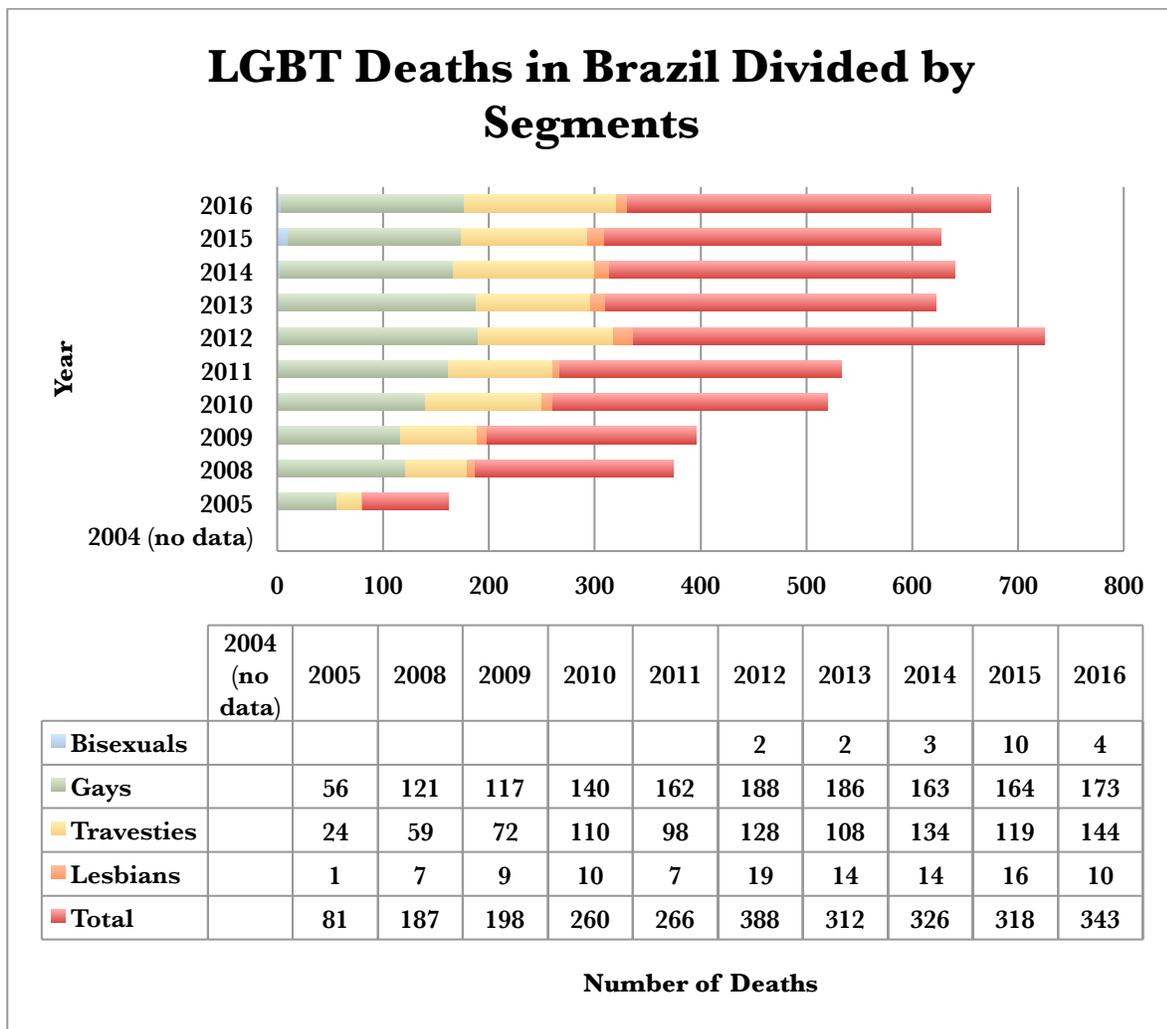


According to the numbers reported by GGB, the overall trend is that LGBT deaths are growing: “between 2000 and 2010, 130 homicides were registered. During former president Fernando Henrique Cardoso’s administration, the median number of LGBT deaths was 127 per

year; during former Lula’s presidency there were 163; and under deposed president Dilma Rousseff and the current president Michel Temer’s government, 325” (GGB 2016 LGBT Murder Report). Because Brazil does not officially report LGBT deaths by themselves, there is not a way to determine if the growing number of deaths reported by GGB are due to real increase in violence against LGBT people or if the community is more aware of their rights, and therefore, are reporting already existing violence. In other words, there is not a way to check if violence is actually increasing or if more crimes are being reported.

Table B shows the number of deaths divided by LGBT groups from 2004 to 2016.

Table B



In regards to deaths divided by LGBT groups, gays have the highest death rates in absolute numbers; however, transgender people have the highest rates of violence in relative numbers (GGB Murder Reports). A trend observed throughout the years and noted in many other NGO reports is that, proportionally, travesties and transsexuals are the most victimized group. They “face greater marginalization, social stigma and danger than their cisgender peers in the LGBT community” (2016 HRC Report). In 2016, in comparison to the United States, a Brazilian trans had a nine times higher chance to be killed — there were 144 trans killed in Brazil and 21 in the U.S. The Transgender Europe’s Trans Murder Monitoring (TMM) reported that more than half of the worldwide homicides of trans individuals happened in Brazil. In absolute numbers, the TMM reports Brazil as the leader in reported killings of trans and gender diverse people, with 845 murders between January 1st, 2008 and April 30th, 2016. In relative numbers (number of reported murders per million of inhabitants), Brazil is in fourth place, with a 4.22 rate (TMM website).

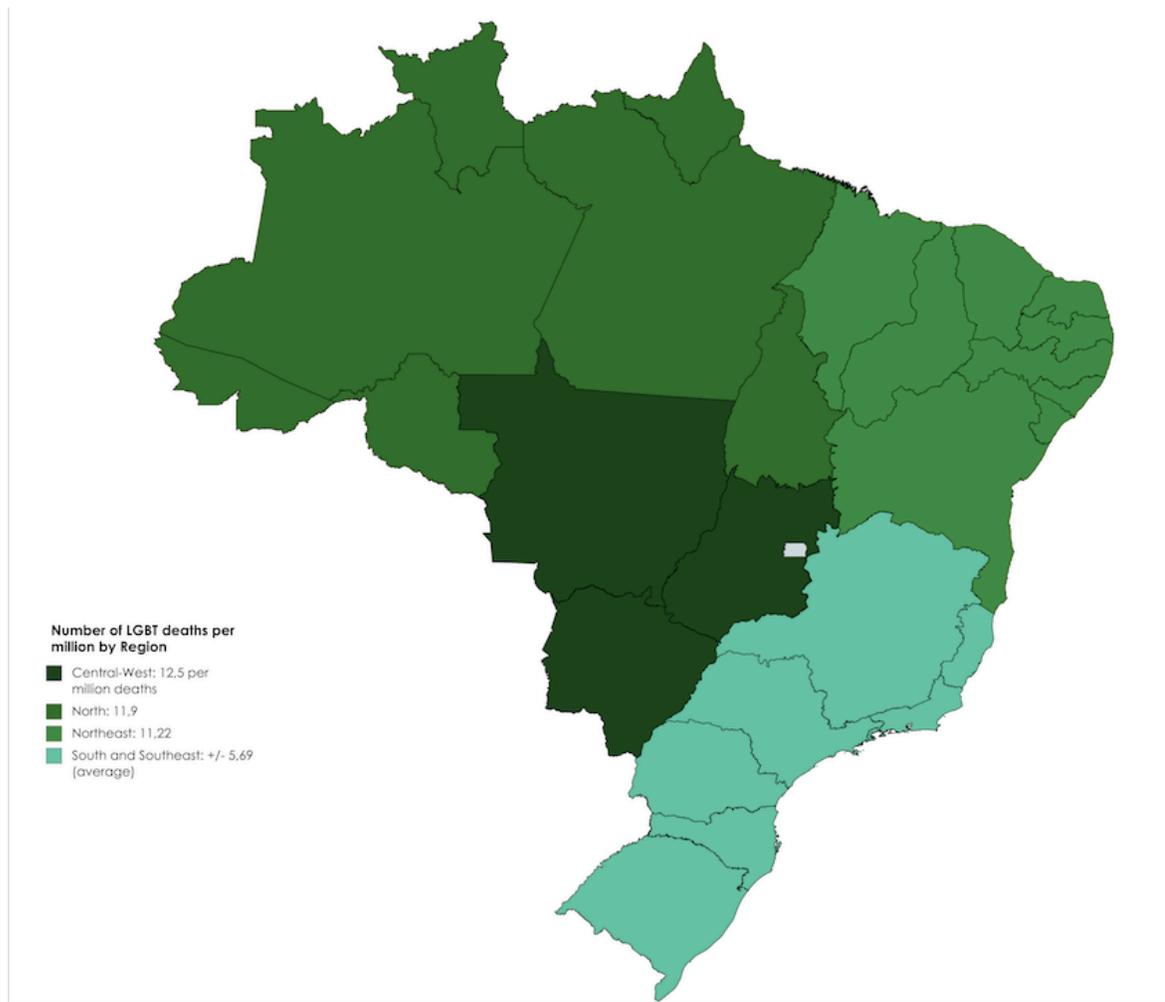
Transgender people often work in high-risk occupations such as sex work and the entertainment and service industries. These occupations make them even more vulnerable to violence due to the high visibility and personal exposure within these positions. Transgender people often work in these industries due to the difficulty of entering other labor markets or even higher education programs. This is likely because of the discrepancy between the photograph on the individual’s labor card and their personal appearance, which can prevent individuals from obtaining permission to work (2012 HRW Country Reports on Human Rights Practices – Brazil).

It is also worth noting that bisexuals’ deaths only started to be accounted for in 2012 – before that there is no record of how this group was affected by anti-LGBT violence. Also, starting in 2012, heterosexual people who were killed because they were mistaken for

homosexuals or transgender people were included in the report as victims of homophobia and transphobia.¹⁰

Table C represents deaths of LGBT people per million inhabitants divided per region. The relative numbers show that the Central-West region is the most dangerous for the LGBT community, followed by the North, Northeast, and lastly, the South and Southeast.

Table C¹¹



¹⁰ In order to keep the chart easier to read, I chose to not include heterosexuals' deaths when making Table B. However, they are included in Table A's yearly total number of LGBT deaths.

¹¹ The blank region in the map represents the capital of Brazil, Brasília. Despite being in the middle of Goiânia, Brasília is autonomous from the state where it's located at and there is not data about the capital.

Additional observations:

In 2014, the numbers observed show a correlation between higher Human Development Index (HDI) with lower level violence, since the South and Southeast regions are the most developed in the country and registered a lower occurrence of violence, but there was not enough evidence to support this claim.

It is important to note that the deaths reported do not represent the reality of anti-LGBT violence because GGB statistics are likely underrepresented because of “closeted gay individuals or lack of transparency in murder cases” (FourTwoNine). The Anthropologist and founder of GGB, Luis Mott, notes that the lack of official statistics is itself proof of “incompetence and institutionalized homophobia” (GGB Murder Report 2016). Ultimately, homophobia remains an issue, and the vast majority of hate crimes go unreported.

In addition to anti-LGBT violence being underreported, there is the challenge of understanding if the current violence represents a higher societal intolerance towards the LGBT community or if it is a consequence of LGBT members being more aware of their rights and reporting crimes that otherwise would have gone unknown. Paulo Roberto Iotti Vecchiattu, an expert in Brazilian Constitutional law, says, “while we are more aware of violence against this community, the advancement of laws benefiting the gay community has ignited a reaction from conservative sectors” (Pluss55). This raises the question of whether violence against the LGBT community is actually increasing, or it has just become more visible.

This claim is corroborated by the significant shift in public opinion in regards to LGBT people. Americas Barometer measured popular support for same-sex marriage in Latin America and data shows that in 2010, 39.8 percent of the population favored same-sex marriage. In 2012, this number increased to 49.8 percent, which represents a 10 percent support growth (Corrales

2015). In 2014, this number remained stable, at 45.5 percent public support for same-sex marriage.¹² Additionally, other organizations have also looked into public support for the LGBT community overall. In 2013, the Pew Research Center conducted a worldwide survey about whether homosexuality should be accepted or rejected by society. The survey found that 60 percent of the Brazilian population accepted homosexuality whereas 36 percent did not (2013 Pew Research Center Global Attitudes & Trends). Similarly, a 2016 ILGA-RIWI Global Attitude Survey reported that 69 percent of Brazilians rejected the idea that being LGBTI should not be considered a crime (ILGA 2016 Global Survey). This increase in public opinion acceptance towards same-sex marriage and homosexuality suggests that the majority of the Brazilian society is following the advancements in legislation and becoming more tolerant towards LGBT people. Some experts attribute the endemic anti-LGBT violence to the increasing hate speech propagated by Evangelicals and the machismo culture intrinsic to the country's society (New York Times).

Brazilian Societal Factors Contributing to High Violence Rates against the LGBT People

There are two factors within the Brazilian society that contribute to the high rates of violence against LGBT people: the patriarchy system and religious fundamentalism in the form of hate-speech spread by Evangelical Christian groups.

The notion of “culturalized forms of violence” (Montoya 2013) can spike forms of violence such as homophobia and transphobia because they are rooted in societal beliefs. In the case of Brazil, the patriarchy system is deeply embedded in its society. This “machismo” rhetoric frames the male figure as the superior figure of power with masculine behavior, such as superior

¹² The question asked was “How strongly do you approve or disapprove of same-sex couple having the right to marry?” and answers were scaled on a 0-100, with higher values meaning more degrees of support (2015 Latin American Public Opinion Project, <http://www.vanderbilt.edu/lapop/insights/ITB021en.pdf>).

strength, a tendency for violence and lack of sensitivity. In general, homosexuals and transgendered male to female defy this preconceived notion that men should be masculine and are, subsequently, viewed with prejudice. In a 2016 HRC report, Dr. Toni Reis of the Brazilian National LGBT Association affirms “high incidence of hate-motivated attacks [is] in large due to the culture of “machismo” which is intolerant of gender nonconformity and frequently responds to it with acts of violence” (2016 HRC Report). By deviating from what is considered normal, LGBT people are perceived as shameful by society and their families, making them the target of violence, discrimination, and in many cases, causing their death.

The second factor is related to the growing force of Christian Evangelical fundamentalists within Brazilian politics and society, and “the rise of evangelical fundamentalism in Brazil in the last decade and their hate speech against homosexuals is seen by many as the main contributor to this increasing homophobia” (Pri.org). Evangelicals are about 25 percent of Brazil’s population, yet despite only being about one fourth of the population, religious leaders reach millions of people through their television and radio stations (New York Times). They use these means to spread their discriminatory views and contribute to the chronic anti-LGBT violence seen in the country. Evangelicals are becoming increasingly powerful and have become a large force within Congress, being part of the most powerful caucus in Brazil’s politics.

Currently, Evangelicals represent the majority of the *Camara dos Deputados* (Congress’s lower house) and contribute to the most conservative Congress elected since 1964. The evangelical politicians are part of a coalition called “bullet, beef and Bible”¹³ that tend to support

¹³ “*Bancada BBB*” or “Bullet, Beef and Bible” caucus is formed by conservative hardliners from Brazil’s security forces, agricultural sector and evangelical churches (The Guardian, <https://www.theguardian.com/world/2015/apr/17/brazil-rightwing-caucus-lower-age-criminal-responsibility>).

conservative socio-political movements, such as anti-LGBT movements (Americas Quarterly). This coalition is able to influence law making in three ways: (1) veto new proposals that could grant LGBT equality more rights; (2) attempt to revoke laws already in place, such as when Eduardo Cunha, Lower House President, proposed a legislation to annul the 2013 judicial ruling in favor of civil unions; and lastly (3) apply pressure through their powerful coalition on both the legislative and executive branches, in most cases, the president, to support their values and stop projects that are already in motion, for example when the Evangelical coalition pressured President Rousseff into not supporting the bill that would have added crimes based on sexual orientation and gender identity as hate crimes to the Country's Penal Code. The 2016 HRC report concludes that "conservative evangelical members of the National Congress have blocked legislation to protect and advance LGBT rights since 2001" (2016 HRC Report). In addition to their religious influence on the country's politics, Evangelical leaders utilize their church congregations to spread hate speech within the religious Brazilian society, creating a trans-homophobic mindset within the people under their influence.

Chapter 4 – Recommendations on How to Address Violence Against LGBT People in Brazil

United Nations Recommendations on this Issue

Ensuring that human rights are being upheld is one of the UN's core values. The organization, in partnership with many transnational and local NGOs, has worked tirelessly to guarantee equality for all human beings. During meetings, UN representatives strive to analyze human rights violations and develop action plans that address them. In an effort to address the violence suffered by the LGBT community internationally, the UN developed a series of recommendations to attend to this matter. In 2012, the booklet "Born Free and Equal" was created to provide guidance for countries on how to prevent anti-LGBT violence and discrimination and better protect its LGBT population. The recommendations are divided into five principles and are stated below:

1. **"Protect individuals from homophobic and transphobic violence** by including sexual orientation and gender identity as a protected class under hate crime laws. In addition to criminalizing hate-motivated violence, States should also establish effective tools to record and report these acts of violence. Ultimately, States should ensure that these kinds of crimes are being investigated, prosecuted and properly sanctioned."
2. **"Prevent torture and cruel, inhuman and degrading treatment of LGBT persons** by ensuring that LGBT people in detention are being treated fairly. States should also commit to investigating acts of mistreatment by police officers as well as providing specific training to personnel to guarantee the safety of incarcerated LGBT members."

3. “**Decriminalize homosexuality** and ensure that individuals are not being arrested or detained on the basis of their sexual orientation and gender identity.”¹⁴
4. “**Prohibit discrimination based on sexual orientation and gender identity** by enacting comprehensive laws protecting individuals from being discriminated against on the basis of their sexual orientation and gender identity, especially in regards to access to basic services, such as health care, employment, and education. Also, in order to prevent discrimination and fight the stigmatization of LGBT people, States should provide educational training to the population.”
5. “**Respect freedom of expression, association and peaceful assembly for LGBT people.** The LGBT community should be able to exercise their rights to freedom of expression, association and assembly without the fear of being targeted by the civil population and/or police officers.”

This UN booklet states countries’ obligations to protect LGBT people, organized by these five principles that are the core areas in most urgent need of governmental action. As previously mentioned, UN documents are soft-law mechanisms, which entail that states can choose to adopt and implement these principles at their discretion.

As a next step towards assuring the protection of LGBT rights, the UN adopted a “watchdog” resolution on June 30, 2016, with the purpose of preventing violence and discrimination based on sexual orientation and gender identity and to mandate the appointment of an independent expert on the subject. The purpose of this resolution is to

¹⁴ Homosexuality has been legal in Brazil since the late 19th century, so this recommendation does not apply to Brazil.

“Asse[ss] implementation of existing international human rights law, identifying best practices and gaps, raising awareness of violence and discrimination based on sexual orientation and gender identity, engaging in dialogue and consultation with states and other stakeholders, and facilitating provisions of advisory services, technical assistance, capacity-building, and cooperation to help address violence and discrimination on these grounds” (UN Makes History on Sexual Orientation, Gender Identity - Human Rights Watch).

The hope is that this independent expert will be able to monitor anti-LGBT violence and discrimination, identify the roots of these acts, and better coordinate with States action plans to address these issues.

Following the international trend, Brazil was one of the countries that made efforts to address some of these principles and protect the LGBT community from violence and discrimination. However, as discussed in the previous chapter, adopting policies and expanding laws did not solve the chronic anti-LGBT problem in the country and there is still need for improvement in regards to the following recommendations (1) protect individuals from homophobia and transphobic violence, (2) prevent torture and cruel, inhuman and degrading treatment of LGBT persons, and (4) prohibit discrimination based on sexual orientation and gender identity. Criminalizing homophobia and transphobia is often the first step to combat anti-LGBT violence since it provides the means for perpetrators to be prosecuted to the full extent of the law. It also facilitates the creation of statistics related to this kind of violence once police enforcement begins to record violence targeted at this community under a specific category. But in order to effectively address anti-LGBT violence, public policies need to be comprehensive and incorporate all five UN recommendations. The next section will lay out the advancements in the legislation and public policies towards promoting LGBT equality in Brazil.

Brazilian Advancements Addressing anti-LGBT Violence

Same-sex relationships have been legal since 1831 in Brazil. However, despite deeming homosexuality legal a long time ago, Brazil struggles with violence and discrimination targeted at LGBT people. In order to prevent anti-LGBT violence and fight discrimination and social stigma, the federal government launched a series of programs to raise awareness to the issue and offer support to the LGBT community. Governmental initiatives to promote LGBT rights started with the *Programa Brasil sem Homofobia* (Brazil Without Homophobia Program, BSH), and were consolidated with *Plano LGBT* (LGBT Plan), a follow up step of *I Conferência Nacional LGBT* (I National LGBT Conference).

Programa Brasil sem Homofobia (Brazil Without Homophobia Program, BSH) was proposed in 2004 through the *Secretaria Especial de Direitos Humanos* (Special Secretary for Human Rights, SEDH) under the Human Rights Program, Rights for All branch with the purpose to promote LGBT citizenship and fight violence and homophobic discrimination, taking into account the specificity of each LGBT group. This program was seen as an ideal model for similar efforts due to its comprehensive policy proposals. A major contributor to the high level of this program's policies was the participation of grassroots organizations and LGBT advocates during the development of the program. This bottom-up approach facilitated the inclusion of policies that were relevant to the LGBT cause.

The *Plano LGBT* (National Plan for the Promotion of LGBT Citizenship and Human Rights) was created in 2009 and based on the I National LGBT Conference's propositions. Its purpose was to guide the creation of social justice public policies and fight LGBT inequality, focusing on the intersectionality and implementation of these policies (Irineu 2014). The Plan's main objectives included "fighting stigma and discrimination on the grounds of sexual

orientation and gender identity and implementing public policies that contemplate actions to combat homophobia and promote citizenship and human rights” (Carrara 187). In contrast to the Brazil Without Homophobia Program, LGBT advocates did not participate in the formulation of this project, which made this program a top-down initiative with little insight from grassroots organizations.

In addition to federal programs, the government, through the Secretaria de Direitos Humanos da Presidência da República (Human Rights Presidency Secretary, SDH/PR), included LGBT status in the *Ouvidoria Nacional de Direitos Humanos* (National Human Rights Ombudsman's Office) *Disque 100* hotline. This hotline is a 24/7 service that offers information about human rights and support systems for populations at risk. This measure amplified the support offered to the LGBT population and helped start the gathering of data on anti-LGBT violence. However, these reports of violence were only acted on in states where there was a network to protect LGBT people, which were, and still are, Rio de Janeiro and Sao Paulo. In states where there was not a support system, these reports were only a form to obtain data (Irineu 2004). The current status of these programs is hard to assess due to the lack of official reports in regards to their effectiveness and accomplishments towards promoting LGBT citizenship. Mello et al. notes that as of 2012 many states discontinued the programs and closed down the referral centers due to lack of funding and sustainability of the projects (Mello et al. 2012).

The main advancement towards LGBT equality was the extension of rights previously reserved for heterosexuals to the LGBT community. The Constitution promulgated in 1988 after the end of the military regime was a constitution pro-human rights. It laid out the principles to respect human rights and enforce commitments signed in international treaties, which allowed judges and courts to “elaborate on its fundamental principles to guarantee certain rights in

practice and to contribute to the creation of new laws” (Carrara 187). Slowly, starting in the early 2000s, rights before restricted to heterosexuals, such as adoption, joint health insurance, inheritance, and marriage, were expanded to homosexuals and transgender people.

Policy Proposals for Brazil

Although legislation allowing same-sex marriage was approved and other laws were expanded to include homosexuals and trans people in addition to the implementation of some social programs, such as the Brazil Without Homophobia program, the LGBT community continues to face discrimination and violent attacks in large numbers. (Amnesty International Report 2014/2015).

In order to address this violence and ensure the protection of the LGBT community in the country, Brazil needs to adopt and implement interconnected and mutually enforcing policies that will include legislation, education and support systems specialized in the LGBT because these initiatives target different sectors of society and address distinct causes of anti-LGBT violence and discrimination, such as stigmatization from society and victimization from the police force. These policies are (1) criminalizing homophobia and transphobia, (2) providing education programs for police personnel and the general population with the purpose to sensitize the population about the LGBT community, (3) creating specialized police stations for LGBT people, and (4) increasing the number of referral centers for LGBT people throughout the country. The aim is to create a more equal and accepting society for the LGBT community in Brazil as a whole.

This thesis goes beyond studying the current public policies and legislations. It looks at what the Brazilian government has done thus far, identifies the gaps and proposes ways to fix the current issues, which is mainly the lack of coordination between the ongoing initiatives to

promote LGBT citizenship and equality. Prior studies done by authors such as Mello et al. (2012, 2014), Carrara (2012), and Rosenberg (2009) have analyzed current Brazilian public policies and legislations in respect to LGBT rights to determine their effectiveness. Similarly, NGO's reports from Amnesty International, Human Rights Watch, and Human Rights Campaign followed the same trend of examining policies and legislations in place. The consensus between authors and organizations is that although there are public policies and legislations that aim to promote LGBT citizenship and combat LGBT violence, the Brazilian ongoing government efforts to address this issue of anti-LGBT violence and discrimination have not fulfilled their goals because they are not coordinated. Based on their conclusion that current attempts to promote LGBT equality are not successful, and the need to improve protection of rights for the LGBT community, I aim to propose a comprehensive set of policies that must be implemented together that takes into consideration recommendations made by the UN in regards to the LGBT cause, the "three Ps" policy approach (*protection, prosecution and prevention*) used to fight violence against women and adapted to this context, and finally, utilize successful measures taken to address violence against women in Brazil to the LGBT community.

To assure the protection of LGBT members, it is crucial to criminalized homophobia and transphobia, criminally punishing acts motivated by sexual orientation and gender orientation. This is the first UN recommendation to effectively address anti-LGBT violence and also an action necessary for holding perpetrators of violence accountable. As stated in the "three Ps" policy approach, criminally prosecution to the full extent of the law is a primary goal to combat violence. As a next step towards ensuring that homophobia and transphobia are being fully prosecuted to the maximum extent of the law, these crimes should also be elevated to hate crimes. Rather than creating a new category of crimes, using the hate crimes classification would

enhance the punishment for crimes motivated by prejudice usually linked to racial, religious, ethnic and sexual orientation and gender identity discrimination (Carrara 2012). The Brazilian penal code states that for a crime to be criminally prosecuted, it has to fall under federal jurisdiction. Because anti-LGBT violence is not currently a part of the penal code, and therefore, not part of the of the federal jurisdiction, they are subject to administrative penalties instead of criminal charges (2015 US Department of State report). Classifying crimes based on discrimination against sexual orientation and gender identity as hate crimes would enable perpetrators of these of crimes to be criminally prosecuted with an enhanced criminal penalty. Another positive consequence of adding sexual orientation and gender orientation as a hate crime is that will allow more effective gathering of data in regards to anti-LGBT violence, facilitating the creation of action plans to deal with areas where violence seems to be predominant.

Parallel to amending the federal legislation to include rights to LGBT people, as a second measure to effectively address anti-LGBT violence and discrimination, the government should offer specialized training to public and social workers as well as police officers. This proposal would fall under UN recommendation to (2) prevent torture, inhuman and degrading treatment of LGBT people by ensuring that LGBT people in detention are being treated fairly. Furthermore, it would address the *prevention* goal of the “three Ps,” since it would create education programs with the purpose to change societal norms and perception of the LGBT community. By being educated on the subject, the population will become more sensitive to the LGBT issue and will be less likely to stigmatize LGBT people. The machismo culture is a big part of the Brazilian society and also a driving factor of violence. Providing educational programs and trainings about the LGBT community and lifestyle could help people become more tolerant and accepting of differences, which would possibly lower anti-LGBT violence rates. Additionally, the police force

in Brazil is perceived as being biased against LGBT people. Diversity training programs could help law enforcement identify bias-motivated crimes, and ultimately, help them better address these kinds of crimes, offering the necessary support to the victims. Working on changing the mindset of the population is as important as assuring that perpetrators are punished.

Another concomitant initiative necessary to provide LGBT people with a better support from the justice system is the creation of specialized police stations. As part of the “three P’s” *protection* goals, these police stations would play a key role into assuring protection for LGBT victims. Similarly to public policies that enabled the creation of women’s police stations to specifically address violence against women, the LGBT community could benefit from this same kind of initiative. The concept of women’s police stations is to develop a targeted work towards helping women who had suffered either physical or psychological abuse. Police personnel employed in these stations receive special training with the purpose of becoming sensitive to the struggles faced by women and how to better address these struggles, especially violence against women. These stations go beyond just recording violence toward women; they also assist with court procedures, help navigate social services, and most importantly, they increase enforcement against perpetrators since their work is geared towards specifically solving cases of violence against women (Perova and Reynolds 2017). Bringing this public policy to the LGBT cause and creating police stations devoted to help and support LGBT people in Brazil would be crucial to help address the high levels of violence suffered by this community.

As the experience with women’s police stations reveal, specialized police stations can help lower incidence of violence in urban areas. In addition to high violence rates against LGBT people, Brazil has also one of the highest female homicide rates in Latin America (Perova and Reynolds 2016). A study done by Perova and Reynolds in regards to women’s police stations in

Brazil found that women's police stations "appear to be highly effective among young women living in metropolitan areas" (188). Their research found that women's police stations are linked to reduction of female homicides in urban areas, which are more developed and under less influence of traditional social norms (Perova and Reynolds 2017). The high violence rates against LGBT members in Brazil are a public policy concern. Thus, it is crucial to extend this policy to the LGBT community so that their specific issues can be addressed.

In coordination with creating specialized police stations and the previous policies, as far as improving support systems for LGBT, it is essential that the government increase the number of referral centers for LGBT people. While analyzing the public policies in place, Carrara states that these centers "have the objective of preventing and combating homophobic violence and discrimination, providing legal aid and psycho-social support to victims" (187). These centers are fundamental because they offer a safe space for LGBT people and are often the first point of contact for help. They also serve as educational organizations for the community. Since referral centers can serve the purpose of support for the LGBT by providing a variety of services as well as a place to educate the population about the LGBT community, more referral centers could benefit LGBT people as society overall.

Implementing these comprehensive and mutually enforcing policies would significantly broaden governmental mechanisms already in place that focus on LGBT protection and anti-LGBT violence, but in order to solve the current issue of isolation, they must be implemented in conjunction, so that all of the roots of anti-LGBT violence and discrimination can effectively be addressed. The goal is by fighting law impunity, victimization from police personnel and stigmatization from society as well as improving resources offered through the crisis hot line and referral centers, promotion of LGBT citizenship and equality could be improved in the Brazil.

Again, it is worth noting that if not all of the policies can be adopted and implemented together, criminalizing homophobia and transphobia is a crucial step towards stopping violence and discrimination against the LGBT community because it sends a message that discrimination based on sexual orientation and gender identity will not be tolerated. Moreover, it will be punished as a crime. Criminalizing homophobia and transphobia is also important to help the government gather data about this kind of violence and develop more accurate initiatives to address the issue.

However, two obstacles might be pointed out that could prevent these policies from being enacted: congressional resistance and lack of state capacity to implement policies. This first impediment stems from the strength of Evangelicals in the Congress. This religious coalition is vocal about its disregard for the LGBT community and uses its influence in society and politics to stop LGBT friendly policies and laws from taking place. Unfortunately, many of these policies need the legislative branch approval to be implemented in the national level, so as long as religious leaders continue to dominate politics in Brazil, the safety of the LGBT community will continue to be in danger. An option to work around the grid-lock in Congress in regards to implementing federal LGBT-friendly public policies is implementing them in the state and local levels. Congress oversees national initiatives, but because Brazil is a federative republic, it gives states a certain level of autonomy to create their own legislation as long as they comply with the constitution. Bahia, Sao Paulo and Rio de Janeiro are an example of states that successfully filled the federal gap for laws against discrimination based on sexual orientation and gender identity by creating their own of state laws with this purpose. These states could expand their current initiatives to implement the comprehensive set of policies suggested here, for example, Sao Paulo already has referral centers and laws criminalizing homophobia, and since the crisis hot

line is a national service, it only needs to create the specialized police stations. To start this initiative, it would be recommended to do trials in women's police stations since the violence suffered by both women and LGBT people have some commonalities. After a first run through, the state's government could learn from the shortcomings and fix them as it moves to creating independent LGBT specialized police stations. Sao Paulo could serve as successful model of state implementation for other states that want to promote LGBT citizenship and equality.

The second foreseeable obstacle, the lack of state capacity to implement these policies, can also hinder the possibility of implementing these policies. Montoya defines capacity building as a "crucial means of building local advocacy coalitions and ensuring that policy gets put into practice, particularly when states adopt new policies without the commitment or even the ability to implement reforms" (Montoya 22). Brazil has a very active LGBT movement that, in partnership with world organizations, was able to push advancements in legislations. However, advocacy alone does not translate into law or public policies implementations. Montoya notes that one of the most important factors in driving government responsiveness to public demands is the presence of vocal and influential advocates within policymaking institutions because these advocates translate social mobilization into policy change. Currently, Brazil only has one openly gay politician, Jean Willys. Despite his efforts to promote the LGBT agenda, Evangelicals that do not support the LGBT cause strongly oppose his initiatives.

A possible route around these obstacles would be working with NGOs to promote tolerance and fight discrimination and violence, but this kind of work requires funding to train personnel, establish referral centers and establish a support network. Unfortunately, Brazil's economy is in recession and the government already struggles to cover basic services, such as the public health and education system. While NGOs could develop an impactful supporting system

for the LGBT community with the help of the federal government, as long as the country's finances are in danger, this partnership is unlikely to happen.

Conclusion

In the past 30 years, the framing of LGBT rights as human rights has become more prominent in the international community. Recurrent reports from national and international organizations have noted that the LGBT community faces worldwide discrimination and violence despite significant improvements in legal provisions for this community. The UN, as the main advocate for human rights protection, has strived to address this issue by creating legal international precedent against discrimination based on sexual orientation and gender identity through UNHRC rulings. Furthermore, the organization has created new international documents that intend to firmly state countries' obligations to comply with international human rights law and guarantee the protection of homosexuals and transgender people.

Brazil and many other countries have followed this trend and adopted LGBT-friendly laws and created public policies to address anti-LGBT violence and promote acceptance. But changing life-long discrimination and violence practices targeted at LGBT people has been a challenge since adoption of laws without effective ways to implement legislations has fallen short to protect the LGBT community. Brazil is an example of where legal improvements and public policies did not translate into safer conditions for LGBT people. The country's history of machismo culture and influence of religion in politics are some of the obstacles towards achieving LGBT equality. There have been legislative improvements, but violence remains high. This thesis looked at prior studies done in regards to effectiveness of current public policies and legislation in Brazil to understand the shortcomings of these mechanisms and propose better,

mutually enforcing, more comprehensive recommendations to address the chronic anti-LGBT violence observed in the country.

The interrelated proposals are as follows: (1) criminalize homophobia to hold perpetrators of anti-LGBT violence accountable, (2) provide specialized training to police force, and social and public workers to bring awareness to anti-LGBT violence and discrimination to society as a whole, (3) create of specialized police stations to better assist victims of violence, and lastly, (4) create of referral centers to support the LGBT community and promote education on the subject. By implementing these proposals, Brazil can change societal norms and perceptions to effectively promote LGBT equality. By educating its population in regards to the LGBT community, it can fight the issue of high violence rates and discrimination against the LGBT community, prevent this violence and better address the reported cases. Moreover, it will allow gathering of data relative to this problem so it can develop targeted public policies to solve this issue once and for all.

The trend of anti-LGBT hate crimes is ongoing in Brazil, and despite some governmental efforts to address the issue, these actions are not enough to protect this community because they work in isolation. This paradox between legal improvements and high violence rates reveals the need for social and institutional changes in order to effectively address violence towards the LGBT community in Brazil. The LGBT debate and the fight against homophobia and transphobia cannot be moral and religious matters; it has to be a political issue. It is legitimated by the Constitution, since the Constitution lays out the precedents for upholding human rights. Thus the law provides the basis for generating public policies, legal instruments, and court rulings (Carrara 2014). Advancements in the Brazilian legislation broadened rights to LGBT people, yet little was done to effectively implement these laws, which demonstrates the

importance of more research on the effectiveness of these policies as well as the development of policies to better be able to protect this community.

The biggest challenge in analyzing the paradox between legislation improvements for LGBT people and the reported high violence rates against this community was finding accurate data. Brazil does not have official reports, which led me to rely on shadow reports, especially from the Brazilian NGO GGB. The difficulty in obtaining data on anti-LGBT violence also raises the question of accuracy in regards to the reported violence rates. As noted by Perova and Reynolds (2017), the lack of governmental data can make it difficult to correctly measure violence. It is hard to determine if the constant high violence rates are due to more people reporting crimes, despite that overall numbers might be falling, or if the intolerance and violence are actually on the rise.

This thesis observed a pattern with respect to Brazil and human rights advocacy, and unfortunately, human right violations as well. The country is often at the forefront of human rights battles. In regards to women's rights, Brazil's federal law *Maria da Pena* is seen as one of the most innovative and advanced national legislative measures aimed at the eradication of domestic violence due to its comprehensiveness" (Perova and Reynolds 189). In regards to LGBT rights, Brazil has been a leader internationally by either proposing and/or co-sponsoring the most important LGBT rights international declarations, such as the Yogyakarta Principles and the "UN Watch Dog" declaration approved in 2016. Domestically, it followed the international trend to recognize LGBT rights as human rights and strove to embrace the LGBT community through improvements in legislation and creation of programs geared towards homosexual and transgender people. Yet, effective implementations of these laws and programs fell short within the country as evidenced by the high crime rates against the two communities.

According to the UN, no one should be discriminated against on the basis of sexual orientation and gender identity. This premise resides on the fact that all human beings are equal in dignity and rights based solely on the fact that they are humans. Thus, violence against LGBT people is a violation of human rights. Under the ideals of equality and justice, the LGBT fight is a globalized fight. The fight to promote LGBT rights as human rights is growing. As seen in Brazil, the work done by international and national organizations, advocates and scholars have kept the issue of violence and discrimination against this community on the political agenda as well as allowed for better policies to be formulated. Significant progress has been made in legislation. The next step is finding the best way to implement these laws. This research aimed to address one of the biggest challenge within this topic, which is adequately translate international human rights laws to domestic level and guarantee protection, freedom and equality for this community. Through the joint work of many involved human rights advocates, I hope that they will soon find a solution to keep this community safe.

Appendix A

Based on the Universal Declaration of Human Rights, the University of Minnesota through the “Human Rights Library” created a list of human rights that are most commonly violated for LGBT people. This list also offers explanations for how these rights are violated.

“The *right to non-discrimination* and to *be free from violence and harassment* is usually denied by omitting sexual orientation in anti-discrimination laws, constitutional provisions or their enforcement.

The *right to life* is violated in states where the death penalty is applicable for sodomy.

The *right to be free from torture or cruel, inhuman or degrading treatment* is infringed upon by police practices, in investigations or in the case of lesbians, gays and bisexuals in detention.

Arbitrary arrest occurs in a number of countries with individuals suspected of having a homo/bisexual identity.

The *freedom of movement* is denied to bi-national couples by not recognizing their same sex relation.

The *right to a fair trial* is often affected by the prejudices of judges and other law enforcement officials.

The *right to privacy* is denied by the existence of 'sodomy laws' applicable to lesbians, gays and bisexuals, even if the relation is in private between consenting adults.

The rights to *free expression and free association* may either be denied explicitly by law, or lesbians, gays and bisexuals may not enjoy them because of the homophobic climate in which they live.

The *practice of religion* is usually restricted in the case of lesbians, gays and bisexuals, especially in the case of churches advocating against them.

The *right to work* is the most affected among the economic rights, many lesbians, gays and bisexuals being fired because of their sexual orientation or discriminated in employment policies and practices.

The rights to *social security, assistance and benefits*, and from here - the standard of living - are affected, for example when they have to disclose the identity of their spouse.

The *right to physical and mental health* is at conflict with discriminatory policies and practices, some physicians' homophobia, the lack of adequate training for health care personnel regarding sexual orientation issues or the general assumption that patients are heterosexuals.

The *right to form a family* is denied by governments by not-recognizing same sex families and by denying the rights otherwise granted by the state to heterosexual families who have not sought legal recognition, but still enjoy several rights. Children can also be denied protection against separation from parents based of a parent's sexual orientation. Lesbians, gay and bisexual couples and individuals are not allowed to adopt a child, even in the case of the child of their same sex partner” (University of Minnesota, Human Rights Library).

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