



Brazil

Country report for use in Canadian refugee claims based on persecution on the basis of sexual orientation or gender identity

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By: Sexual Orientation and Gender Identity Working Group

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EXECUTIVE DIRECTOR
Renu Mandhane, J.D., LL.M.
39 Queen's Park
Room 106
Toronto, Ontario M5S 2C3
Tel: 416.946.8730
Fax: 416.978.8894
renu.mandhane@utoronto.ca



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I. Introduction

Brazil is one of five Latin American countries that recognize same-sex unions and one of three—along with Argentina and Uruguay—that have legalized same-sex marriage. Although Brazil has some legislation that protects same-sex couples, violence and discrimination continue to be problems faced by LGBT persons. Within the LGBT community itself, transgender persons are the most marginalized and experience a disproportionate rate of violence and murder. Despite this, Canada has designated Brazil a “safe country” (or Designated Country of Origin) for LGBT individuals and has continued to deny refugee protection to LGBT claimants. While Brazil has made legislative progress in protecting LGBT rights (e.g. same sex marriage was recently legalized, same sex adoption and other civil rights were recognized a few years prior) and does have a vibrant LGBT community, the facts on the ground suggest the country has a long way to go before safety and protection is genuinely achieved.



II. Legislation

1. *Constitution*, Available online in English at:

http://www.stf.jus.br/repositorio/cms/portaStfInternacional/portaStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf (last updated 2010)

- The anti-discrimination clause, Title I, Article 3 (IV), covers all forms of discrimination. While sexual orientation is not an enumerated ground, it is not an exhaustive list.
- Chapter VII, Article 226, paragraph 3 lists ‘man and woman’ as the parties to a marriage; however, no clause specifically says same sex couples cannot marry. It is important to note that the link provided is a copy of the Constitution from 2010, the most recent version translated into English: same-sex unions have only been legal since 2011 and same-sex marriage has only been legal since 2013.¹ While same-sex marriage has been legalized through the court system, this change has faced strong opposition from evangelical lawmakers and further attempts to codify the change explicitly into law have stalled in Congress.²
- In 2007, sexual reassignment surgery was held to be covered under the constitutional provision covering medical treatment as a basic human right.³ Sexual reassignment surgery is covered under the national medical care plan and is provided free of charge.⁴ Sexual reassignment surgery was officially permitted in 1997.⁵

Title I article 3/*Fundamental Principles*

The fundamental objectives of the Federative Republic of Brazil are:

I – to build a free, just and solidary society;

II – to guarantee national development;

III – to eradicate poverty and substandard living conditions and to reduce social and regional inequalities;

IV – to promote the well-being of all, without prejudice as to origin, race, sex, colour, age and any other forms of discrimination.

¹ <http://edition.cnn.com/2013/05/15/world/americas/brazil-same-sex-marriage/index.html?eref=edition> ;

² <http://www.pinknews.co.uk/2014/10/01/brazil-lgbt-group-launches-website-listing-political-candidates-who-support-gay-rights/>

³ http://www.nbcnews.com/id/20323334/ns/health-health_care/t/brazil-provide-free-sex-change-operations/#.VRL7_GPN67E

⁴ http://www.gaylawnet.com/news/2007/tr07.htm#free_braziann

⁵ http://www.gaylawnet.com/news/1997/tr97.htm#sex_change



Chapter VII, Article 226/ Family, Children, Adolescence and The Family

The family, which is the foundation of society, shall enjoy special protection from the State.

Paragraph 1. Marriage is civil and the marriage ceremony is free of charge.

Paragraph 2. Religious marriage has civil effects, in accordance with the law.

Paragraph 3. For purposes of protection by the State, the stable union between a man and a woman is recognized as a family entity, and the law shall facilitate the conversion of such entity into marriage.

Paragraph 4. The community formed by either parent and their descendants is also considered as a family entity.

Paragraph 5. The rights and the duties of marital society shall be exercised equally by the man and the woman.

Paragraph 6. Civil marriage may be dissolved by divorce, after prior legal separation for more than one year in the cases set forth by law, or after two years of proven de facto separation.

Paragraph 7. Based on the principles of human dignity and responsible parenthood, family planning is a free choice of the couple, it being within the competence of the State to provide educational and scientific resources for the exercise of this right, any coercion by official or private agencies being forbidden.

Paragraph 8. The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family.

2. *Brazilian Penal Code*, Available online in Portuguese at:
http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm (no English version available)
 - **All references to sodomy in the penal code were removed in 1830, making homosexual relations legal.**
 - **The age of consent for both same-sex and opposite-sex sexual acts is 14; Article 217-A of the Penal Code creates a criminal offence for the rape of a vulnerable person, including children under 14.**
3. *Civil code*, Available online in Portuguese at:
http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm (no English version available)



- The code does not set out any restrictions as to gender, marital status or sexual orientation in adoption. The Supremo Tribunal Federal ruled in favour of same sex couple adoption 2010.⁶

III. Canadian Jurisprudence

Immigration and Refugee Board of Canada Decisions

1. RPD File No. TB1-01827 (2012), [\[2012\] D.S.P.R. no 491](#)

Holding: Refugee claim denied.

- **Claimant does not have a well-founded fear of persecution in Brazil.**

Claimant alleged that while he was living in Brazil, homophobic people assaulted him after he came out in 2005. That year he moved to the US, where he stayed illegally until 2008 when he entered Canada. In February 2011 he began a claim for asylum. The claim failed: “I do not find it credible that the claimant has been assaulted or threatened by anyone in Brazil, or that anyone in Brazil is currently looking for the claimant to harm him” (para 5).

2. RPD File No. VB1-03629 (2012), [2012] D.S.P.R. no 213

Holding: Refugee claim denied.

- **Claimant does not have a well-founded fear of persecution in Brazil.**
- **Claimant is not a person in need of protection: his removal to Brazil would not subject him personally to a risk of his life or to a risk of cruel and unusual treatment or punishment and there are no substantial grounds to believe that his removal to Brazil would subject him personally to a danger of torture.**

Claimant alleged he could not safely return to Brazil because of his sexual orientation. “As a gay man, the claimant became aware that openly gay men are mocked, harassed, and beaten” (para 3). He experienced “disrespect and humiliation” at his work place, in school and in his daily life. For example, he was pulled out of a car by a police officer who insisted he and his partner be searched after they were seen kissing in a car (para. 6).

⁶ http://www.athosgls.com.br/noticias_visualiza.php?contcod=29208
<http://ihrp.law.utoronto.ca/>



In 2011, the claimant was returning home at 2:30 in the morning when he was “accosted and threatened at knifepoint by two hooded men who said they would chase him if he did not change his ‘faggot’ behaviour” (para. 8). When the claimant tried to file a report of this assault, he was told to return a few hours later. Interpreting this as “a sign of indifference” (para 9) he travelled to Canada, where a month after arrival, filed a claim.

Despite finding that the claimant had a “genuine fear of returning to Brazil for the reasons alleged” (para 17), and recognizing that that “violence against sexual minorities remains a problem [in Brazil]” (para 32), the panel Judge reasoned that local progress in LGBT rights outweighed these concerns: “gay activist groups have worked diligently against homophobia and violence, leading to recent landmark court victories for gay rights” which in turn has led to progress in anti-homophobia legislation, such as “employment legislation in several cities” and an “anti-homophobia crime bill” [which was not passed] (para 34).

Federal Court of Canada Decisions

1. *De Melo v. Canada (Minister of Citizenship and Immigration)*, [2014] A.C.F. no 1141

Holding: Appeal dismissed.

- **CIC’s decision [that the claimant was not a person in need of protection] was reasonable. It is therefore unnecessary to address the submission on the precise relationship of section 7 of the Charter to section 97 of the Immigration and Refugee Protection Act.**

Applicant was a citizen of Brazil who was applying for judicial review of decision of a senior immigration official at CIC “who conducted a pre-removal risk assessment [PRRA] and found that he was not a person in need of protection” (para 1). The applicant argued that “CIC misapprehended the evidence before it in determining that Mr. De Melo was precluded from section 97 protection due to his failure to access state protection in Brazil” (para. 2). In the alternative, he argued that s.7 of the Charter “mandates CIC assess more than the risk of his life or the risk of cruel and unusual treatment or punishment ... it requires an analysis balancing his interests upon removal against that of Canadians” (ibid).

The court rejected his claim based on a 3-part analysis:

- a) None of the letters CIC received from the applicant’s friends and family that describe incidents of violence and homophobic attitudes, were first-hand accounts of the incidents or targeted attacks, “and no supplementary evidence such as a police report was provided.” The letters did not establish that the applicant suffered homophobic attacks; the “writers’ fear that the applicant would be victimized amount to supposition” (para 9).
- b) “While the applicant cited an experience involving a violent robbery and attempted kidnapping in Brazil as evidence of his risk, there was little to



demonstrate the criminals were motivated by homophobia and no objective or reliable evidence verifying the event was submitted” (ibid).

- c) “While there is much progress to be made, Brazil is widely recognized for its openness to the LGBT community. High-level politicians have come out against homophobia and the country recognizes civil unions of same-sex couples. The applicant did not demonstrate reasonable attempts to obtain protection during his time in Brazil, and could not provide clear and convincing evidence that state protection would not be forthcoming” (ibid).

The court noted that Brazil’s “government has not been perfect in curbing homophobic violence and discrimination in the population” (para 27). However, despite the “violent crimes” which have been “committed against sexual minorities, and discriminatory attitudes continue among some members of the public,” the court pointed to evidence (such as the gay pride parade in San Palo, recognition of same-sex marriage, and the former President denouncing homophobia) that indicates “it is also a country widely recognized for its openness to the LGBT community” (ibid).

2. *Aggi de Oliveria v. Canada (Minister of Public Safety and Emergency Preparedness)* [2013] A.C.F. no 548

Holding: Appeal dismissed.

- **The Board member was not biased.**
- **The reference to the applicant's partner as his boyfriend and the reference to "dude" by the member were not demeaning.**
- **It would have been relatively easy for the member to camouflage any bias on his part.**
- **The Board did not err in its conclusion on state protection. Brazil was a democracy.**
- **Those who finally caused him to leave Brazil were not state actors.**
- **The applicant did not exhaust all the possible protections available to him in Brazil.**

The applicant, a gay man from Brazil, applied for judicial review of the dismissal of his refugee claim, arguing that the Board erred in its analysis of state protection and that there was a reasonable apprehension of bias due to a Board member’s remarks which he took to be homophobic.

The applicant feared persecution due to his sexual orientation in Brazil. After being threatened at knifepoint, the applicant tried to file a complaint with local police. The staff at the police station told him to come back later, but he fled instead. The Refugee Board found the applicant credible but determined that his claim was not objectively well-founded because there was adequate state protection in Brazil.



The Federal Court found that there was no reasonable basis for apprehending bias. The allegations against the board member – that he was disrespectful, too casual, and confrontational – were not founded. His language “may have been taken to indicate that he was not gay himself” (para 9). The reference to the applicant’s spouse as his boyfriend was not demeaning. While the applicant argued that some of the comments were made in a sarcastic tone, the Federal Court only had a transcript of the hearing. The board member’s use of the term “dude” was colloquial as part of the conversational tone of the hearing. While not the best word, it was not offensive. Ultimately, had the board member been biased, he could have camouflaged it. The board member, however, accepted the subjective fear of the applicant.

3. *Reis v. Canada (Minister of Citizenship and Immigration)* [2012] F.C.J. No. 187

Holding: Appeal dismissed.

- **It was not the responsibility of the Court to re-weigh the relevant factors.**
- **The factors in this case were duly considered and weighed and the officer came to a conclusion supported by the evidence as a whole.**
- **There was no evidence indicating the officer violated the applicant's Charter rights.**
- **The fact that the officer did not conduct an interview with the applicant did not give rise to a reviewable error.**
- **The officer identified and addressed all the applicant's concerns in the decision in a way that was commensurate with what he chose to place before her. The reasons adequately explained why the officer could not grant the exemption.**

The Applicant, a thirty-year-old gay man from Brazil arrived in Canada on a visitor’s visa to study at York University in 1998. He remained in Canada without authorization after the visa expired in 2003. In May 2010, CIC denied the Applicant’s request for an exemption under subsection 25(1) that he faced unusual and undeserved or disproportionate hardship if he were to apply for permanent residence from outside of Canada. In her reasons, the Officer said “the elements of the applicant's request were not sufficient to establish that he faced unusual and undeserved or disproportionate hardship if he were required to apply for permanent residence from outside of Canada” (para 4).

The applicant raised the following issues in his application to FCJ:

- (a) Whether the Officer breached his right to procedural fairness by:
- (i) providing inadequate reasons;
 - (ii) denying him a fair hearing by not granting an interview;
 - (iii) fettering her discretion;
 - (iv) refusing to exercise her jurisdiction under 25(1) of the Act;



- (b) Whether the Officer breached his equality rights (s.15) and security of the person (s.7) of the Charter;
- (c) Whether the Officer applied the incorrect test for an H&C exemption;
- (d) Whether the decision was unreasonable.

The Federal Court held that the officer had discretion to weigh factors and that it was not up to the Court to re-weigh the factors the officer considered. The applicant did not provide any evidence of a Charter violation. The officer was under no obligation to call the applicant for an interview. The officer applied the correct test. Ultimately, there was no reviewable error in the way the officer conducted the applicant's hearing.

IV. Domestic Jurisprudence

The investigation and punishment of majority of human rights violations fall within state jurisdiction, although the Constitution “mandate[s] federal intervention to safeguard the rights of the human person” (para 6). Specific federal bodies are mandated with safeguarding Human Rights, including the Defence of the Rights of the Human Person (*Conselho de Defesa dos Direitos da Pessoa Humana CDDPH*) and the National Council to Combat Discrimination (Conselho Nacional de Combate à Discriminação – CNCD), and the National Committee for Human Rights Education (Comitê Nacional de Educação em Direitos Humanos).⁷

Constitutional law jurisprudence⁸

1. *Unknown case name*, National Council of Brazil, March 14, 2013⁹

Holding: Civil officials may not deny marriage licenses to same sex couples.

- **This effectively allows same sex marriage in Brazil, replacing the previous situation where “stable couples” were given the same rights as married couples.**

2. *Unknown case name*, Supreme Federal Court, 2011

⁷ “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Second Periodic Report. Brazil” (November 15, 2004)

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBRA%2f2004%2f2&Lang=en

⁸ **We have been unable to find any Brazilian cases other than those mentioned in secondary sources which did not provide case names.**

⁹ <http://www.pinknews.co.uk/2013/05/14/brazil-judges-rule-in-favour-of-nationwide-same-sex-marriage/>

<http://ihrp.law.utoronto.ca/>



Holding: same-sex couples are legally entitled to civil unions.

- **Civil unions provided same-sex couples with the right to benefits such as health insurance, and division of assets in separations.**¹⁰
- **A number of state judges converted these unions into full marriages before nationwide legalization in 2013.**¹¹

3. *Unknown case name*, Superior Court of Justice of Brazil, 2010¹²

Holding: Homosexuals have the right to adopt children.

4. *Unknown case name*, Fourth Regional Federal Court, 2007¹³

Holding: sexual reassignment surgery is covered under a constitutional clause guaranteeing medical care as a basic right.

- **As sexual reassignment surgery is a basic right it will be free under the national Medicare system.**

V. International Law

UN Treaties

Treaty	Date of Signature	Date of Ratification
<i>ICCPR (1976)</i>	NA	1992
<i>ICCPR – First OP (1976)</i>	NA	2009
<i>ICCPR – Second OP (1991)</i>	NA	2009
<i>ICESCR (1976)</i>	NA	1992
<i>ICESR – First OP (2013)</i>	N/A	Not Ratified
<i>CAT (1987)</i>	1985	1989
<i>CAT – First OP (2006)</i>	2003	2007

¹⁰ *ibid*

¹¹ Romeo, S. “Brazilian Court Council Removes a Barrier to Same-Sex Marriage” New York Times. May 14, 2013. http://www.nytimes.com/2013/05/15/world/americas/brazilian-court-council-removes-a-barrier-to-same-sex-marriage.html?_r=1

¹² http://www.athosgls.com.br/noticias_visualiza.php?contcod=29208

¹³ http://www.nbcnews.com/id/20323334/ns/health-health_care/t/brazil-provide-free-sex-change-operations/#.VRMP0mPN67F



Human Rights Committee (treaty-monitoring body for the ICCPR)

1. “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Second Periodic Report. Brazil” (November 15, 2004)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBRA%2f2004%2f2&Lang=en

- **“Great deal of prejudice and discrimination” against members of the LGBT community in Brazil. Core issue: “cultural heritage of intolerance and homophobia that must be countered with humanist values and...a determined stance by the authorities and the government” (para 130).**
- **Prejudice against homosexuals is widespread in the media, particularly Brazilian comedy programs (para 130).**
- **Federal government has made some attempts to address LGBT discrimination.**
- **“Despite the absence of any laws recognizing their civil rights” LGBT individuals have found a “significantly greater response to their demands for respect and dignity in the judicial branch” (para 133).**

Federal attempts to address LGBT discrimination include:

- *Brazil Without Homophobia*, a program launched in 2004 to combat violence and discrimination against the LGBT community. One of its main goals is educating and “modify[ing] the behaviour and attitudes of public officials” (para 131).
- Ministry of Culture Administrative Rule no. 219, of 23 July 2004, and the resultant Working Group to Promote Citizenship for GLTB to “prepare a plan for fomenting, stimulating, and supporting artistic and cultural productions that promote culture and non-discrimination based on sexual orientation” (para 132);
- Directive by the Superintendence for Private Insurance (*Superintendência de Seguros Privados - Susep*) “ensuring gay couples the right to mandatory car insurance (DPVAT) compensation payments” (ibid); and
- Ministry of Health Administrative Rule no. 880, of 20 May 2004, which created the Gay, Lesbian, Transgender, and Bisexual Population Health Advisory Committee (*Comitê Consultivo de Saúde da População de Gays, Lésbicas Transgêneros e Bissexuais*) to develop health policies and a national health plan for the LGBT population (ibid).

Federal and state judicial decisions that have upheld civil rights of LGBT (para 133):

- The right to support in cases of the death of a partner in a stable same-sex relationship has been fully recognized and a “specific normative directive from the National Social Security Institute (*Instituto Nacional de Seguridade Social – INSS*), no. 50/2001 was put into effect administratively ensuring standard procedures for the granting of benefits to homosexuals.”



- “A recent decision from the Rio Grande do Sul State Judicial Internal Affairs Office requires public notaries to register homosexual unions. Several states of the federation and a number of Brazilian cities have approved laws banning anti-discrimination and protecting the rights of homosexuals. Based on these and other achievements, it can be said that a strong social movement on behalf of the civil rights of homosexuals is emerging, which is reflected in the organization of the annual “gay pride parades.”
- “Recently, in São Paulo, a demonstration for homosexual rights rallied over one million people to the streets, a show of public support that signals how far Brazilian homosexuals have come as a result of their struggle”.

Freedom of expression:

- 1988 Constitution guarantees the right to freedom of opinion, expression and information. Censorship is prohibited pursuant to article 5, s.IX (para 260). “The definition set out in the Constitution with regard to the need to respect the “ethical and social values of the human person and the family,” however, is insufficient to ensure effective guidance on this question. In the absence of specific regulations, many **radio and TV broadcasters have produced programs that violate civil and political rights and incite violence and prejudice - most notably against homosexuals**, individuals engaged in the sex industry, inmates, and criminal suspects - by invading privacy, disrespecting the constitutional principle of the presumption of innocence, and so forth” (para 260). The report note that this has “increasingly been the focus of ...seminars [and]...judicial actions” (ibid) and has led the National Congress to consider a Law mandating an “Ethical Code for Television Programming” (ibid).

Rights of the Family

- At the time of the report, the National Congress had been considering a draft bill to recognize civil rights of homosexual unions for almost a decade (para 283)
2. “List of issues to be taken up in connection with the consideration of the second periodic report of Brazil” Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. July 25, 2005.
- **In response to the 2004 Country Report, the HRC requested additional information about the Homophobia program and an explanation of “action taken at the level of the States in response to reported cases of discrimination based on sexual orientation and acts of violence against affected groups” (para 9).**



Committee on Economic, Social and Cultural Rights

1. “Implementation of the International Covenant on Economic, Social and Cultural Rights: Second period reports submitted by States parties under articles 16 and 17 of the Covenant. Brazil” (August 6, 2007)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBRA%2f2&Lang=en

- **Positive efforts in furthering LGBT rights in Brazil: Brazil Free of Homophobia Program, Human Reference Centres, National Congress efforts at generating dialogue on LGBT rights, judicial decisions, and international initiatives.**

Brazil Free of Homophobia Program – Program for Combating Violence and Discrimination against GLBTTs and Promotion of *Homosexuals’ Citizen Rights*: “calls for various actions aimed at protecting and promoting the right to security, education, health, work, culture, youth and women’s policies, and policies against racism and homophobia. In 2004, the Federal Government spent R\$200,000 on the implementation of this Program; this allocation was increased to R\$2.9 million in 2005 and to R\$7.019.087 in 2006, with the significant help of congressional amendments for that purpose” (para 105).

Human Rights Reference Centres – One of the initiatives aimed at combating violence, discrimination and murder to LGBT persons; run in partnership with federal, state and municipal governments and civil society (17 at time of report). “A network linking these centers and legal assistance offices has also been established in 2006 to seek judicial and extrajudicial solutions to conflicts involving members of this group. A pioneer structure for the permanent management of the “No Homophobia Brazilian Program” is currently in the final stage of implementation, through an agreement with the Federal Savings Bank (Caixa Econômica Federal), in order to start operating already in 2006 (para 106).

National Congress – played a “fundamental, leading role in the discussion of homosexual rights,” with a “view to systematizing the proposals for legislation changes, a *Parliamentary Front for Free Sexual Expression* was established in 2004. This Front is now considering a bill establishing penalty for discrimination based on sexual orientation” (para 107).

Judicial decisions: “Considerable number of Court decisions ensuring protection of LGBT rights” including “recent decision that cancelled the signal of an open television concessionaire for not having abided by the order to take off the air a program suggestive of homophobia and assigned broadcasting time at the same hour to air responses for 60 days” (para 108).



International initiatives: Brazilian State submitted draft resolution to UN Commission on Human Rights that described “discrimination based on sexual orientation as a human rights violation” (para 109). The report notes that while “Parliamentary circumstances prevented this initiative from succeeding ... it has not been discarded from Brazilian foreign policy,” as illustrated by “the fact that nondiscrimination against homosexuals was included on the agenda of the IV and V Meetings of High Officials in Human Rights of Mercosul (RAADH), held ...in 2006, following a Brazilian proposal” (ibid).

2. “Counter Report by Brazilian Civil Society on the Brazilian State’s Compliance with the International Covenant on Economic, Social and Cultural Rights” (June 2007)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNGO%2fBRA%2f42%2f8192&Lang=en

- **Efforts by LGBT movement in Brazil to “draw attention to the discrimination, violence and homophobia” have been hampered by the lack of specific LGBT data/information. Without national effort to collect and centralize this information, the Brazilian State has been unable to fulfil Committee Recommendation no. 33 “as they failed to present comparative and disaggregated data for this group” (para 15).**
- **Research conducted in 2005 by the Grupo Gay da Bahia (GGB) on the number of murders of homosexuals in Brazil “shows that the number of murders of homosexuals in Brazil increased by 26% in the period of a year: in 2004 there were 158 murders, 33 more than in 2003” (para 16). The report included a number of comparisons across regions and year-by-year comparisons. It also noted that one murder takes places every two days in Brazil (para 16).**
- **An opinion poll carried out by IBOPE in 2006 reported that 56% of interviewees would change their behaviour towards a work colleague if he/she were gay; 20% would avoid him/her; 36% would not employ a homosexual for a position in his/her company even if he/she were the most highly qualified candidate and 45% would change doctors if they knew he/she was gay (para 17).**
- **Vulnerable members of society, including LGBT individuals, experience inequality more acutely. “Machismo (chauvinism) and sexism scar social relations and are rooted in cultural practices. They leave a mark upon family relations, relations of production, religion and various aspects of private and public life (para 11).**

Committee Against Torture

1. “Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Initial reports of States parties due in 1990. Addendum. Brazil” (May 26, 2000)



Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f9%2fAdd.16&Lang=en

- **Most homosexual prisoners live in confined prison cells and are discriminated against on a regular basis (para 138-139).**

Universal Periodic Review by the Human Rights Council

1. Universal Periodic Review – Second Cycle. “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Brazil” Working Group on the Universal Periodic Review. Geneva, May 21- June 4, 2012.

Online: [http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/116/18/PDF/G1211618.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G12/116/18/PDF/G1211618.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/116/18/PDF/G1211618.pdf?OpenElement)

- **“The promotion of the rights of the LGBT population is based on the implementation of the National Plan to Promote LGBT Rights, with the involvement of various public agencies. The dialogue with social movements was strengthened through the organization of two National LGBT Conferences (2008 and 2011) and the creation of the National LGBT Council in 2010, which is responsible for monitoring public policies’ implementation” (para 36).**
- **“Other important achievements were: normalization of the use of the social name by transvestite and transsexual federal public servants; extension of benefits in health care plans for same-sex partners as dependants; and the recognition of the constitutionality of same-sex civil unions by the Federal Supreme Court” (para 37).**

Regional Treaties and Monitoring Bodies

Brazil signed and ratified the following:

- American Convention on the Rights of Man
- American Convention on Human Rights
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"
- Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance

Inter-American Commission on Human Rights

The IACHR does not appear to monitor signatories’ progress on specific treaties. Rather, it appears to compile country reports on human rights in general. The most recent country report for Brazil was in 1997. These reports do not mention LGBT rights.



Periodic Review by the Inter-American Commission on Human Rights

1. “Human Rights Situation of Trans Persons of African Descent in Brazil” 149 Period of Sessions, October 29, 2013.

Online: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=32>

- **Audio report. Not available in English.**

2. “Discrimination against the Transsexual, Transgender, and Transvestite Population in Brazil” 140 Period of Sessions, October 25, 2010.

Online: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=32>

- **Audio report. Not available in English.**

VI. Government Reports

Canada

1. Immigration and Refugee Board of Canada. “2014 National Documentation Package for Brazil.” (Last updated: January 30 2015)

Online: <http://www.irb-cisr.gc.ca/Eng/ResRec/NdpCnd/Pages/ndpcnd.aspx?pid=7118>

The Immigration and Refugee Board of Canada produces National Documentation Packages (NDP) for every country where there is a claim for refugee protection. The packages contain a variety of documents on issues relevant to determining refugee claims. The NDPs are updated each month, according to a schedule published by the IRB. The most recent NDP for Brazil includes the following documents/reports that are related to LGBT rights:

- LGBTQ Nation. “Brazil, Where 44% of World's Anti-LGBT Violence Occurs, Kills Discrimination Bill” (December 18, 2013). Document # 6.1
Online: <http://www.lgbtqnation.com/2013/12/brazil-where-44-of-worlds-anti-lgbt-violence-occurs-kills-discrimination-bill/>
- Deutsche Welle. “Brazilians Believe Victims Deserved Sexual Assault, Study Finds” (March 4, 2014). Document #5.2
Online: <http://www.dw.de/brazilians-believe-victims-deserved-sexual-assault-study-finds/a-17536234>

2. Immigration and Refugee Board of Canada, “Brazil: The situation of homosexuals; availability of support groups and state protection” (3 September 2008)

Online: <http://www.refworld.org/docid/492ac7c72d.html>



- **Legislation is pending on several proposals that affect the LGBT community, including civil partnerships and criminalization of homophobia.**
- **The “Brazil without Homophobia Program” created 47 Human Rights Reference Centres aimed at preventing and fighting homophobia.**
- **Brazil has actively promoted LGBT rights at the international stage.**
- **Brazil’s capital hosts one of the world’s largest pride parades.**
- **Discriminatory attitudes have been reported among persons of authority, including a judge (who stated homosexuals should not play soccer).**
- **Despite legal protections for LGBT persons, there are high levels of homophobic violence.**

United States of America

1. United States Department of State. “Brazil. Country Reports on Human Rights Practices for 2013.” (February 27, 2014)

Online:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220424>

- **Human rights problems include violence and social discrimination against LGBT persons.**
- **There have been some positive developments: “In September [2012] the state of Paraiba announced that its three main prisons would feature exclusive wings for LGBT prisoners. The Secretariat for Prison Administration adopted the measure to diminish sexual and physical violence against gay and transgender inmates.”**

VII. Reports from International Agencies and Non-Governmental Organizations
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Freedom House

1. “Freedoms in the World: Brazil 2014”

online: <https://freedomhouse.org/report/freedom-world/2014/brazil#.VNpSA9NdVOR>

- **LGBT interests are legally recognized and protected in Brazil, however LGBT individuals still face discrimination on a social level.**
- **In May 2011, Brazil’s Supreme Court ruled same-sex couple shall have the right to form civil unions, and have the same rights (alimony, health, retirement, adoption) as heterosexual couples.**



Global Rights: Partners for Justice

1. "Report on the Human Rights Situation of Afro-Brazilian Trans Women" No date.
Online: http://www.globalrights.org/sites/default/files/docs/Report_on_Situation_of_Afro-Brazilian_Trans_Women.pdf
 - Despite ratifying human rights treaties and conventions including the UNDHR, ICCPR, CERD, CEDAW and CADH (p.3), there remain significant problems facing the LGBT community; in particular, the report looks at discrimination facing Afro-Brazilian trans women.
 - Most pressing and frequent violations facing Afro-decedent trans women include: racial discrimination (verbal harassment, defamation, hate speech); transphobic and racial violence (sexual harassment, intimidation, violent attacks, extrajudicial killings); police violence and impunity (arbitrary detentions, threats, extortion, torture, inhuman or degrading treatment by police and military); inadequate access to education (discrimination in the class, lack of educational programs); inadequate access to employment (due to discriminatory practices); inadequate access to healthcare (discriminatory practices, health disparities, mental health issues); and lack of legislative protection which guarantee state protection and prohibit violent crimes and discrimination based on sexual or gender identity (p. 4-5).

Human Rights Watch

1. "World Report 2015 Brazil" No date.
Online: <http://www.hrw.org/world-report/2015/country-chapters/brazil>
 - There were more than 1,500 complaints of violence and discrimination against LGBT persons made to the national Human Rights Ombudsman's Office in 2013.
 - In the first six months of 2014, the Ombudsman's Office reported over 500 such complaints. The office also reported a spike in complaints after a presidential candidate called for LGBT people to get psychological treatment during a televised debate.
2. "UN: Landmark Resolution on Anti-Gay Bias," September 26, 2014.
Online: <http://www.hrw.org/news/2014/09/26/un-landmark-resolution-anti-gay-bias>
 - Brazil was one of the 46 co-sponsors who introduced the UN resolution to combat violence and discrimination based on sexual orientation and gender identity.



- **The resolution seeks to update studies on violence against LGBT persons with the purpose of identifying and sharing practices to overcome discriminatory violence.**

United Nations

1. "HIV prevention hampered by homophobia," UNAIDS, January 13, 2009.
Online: <http://www.unaids.org/en/resources/presscentre/featurestories/2009/january/20090113msmlatam>
 - **According to Grupo Gay da Bahia (GGB), a person is killed in Brazil in violence connected with his or her sexuality every two or three days. The majority of victims are men who identify as LGBT.**
 - **Latin America is still a long way from eliminating homophobia.**
 - **Brazil has the highest number of anti-discriminatory laws based on sexual identity and gender of any developing region. However, the reality on the street does not reflect this, suggesting there is still a large gap between legal theory and actual social practice.**
 - **The high social stigma of homosexual relations plays a large role in the spread of HIV and AIDS in Brazil as homosexual men are not comfortable identifying as gay despite the anti-discriminatory laws.**

Transgender Europe

1. "Trans Murder Monitoring Project." No date
Online: <http://www.transrespect-transphobia.org/en>
 - **Brazil has been consistently the country with the most number of murders of trans persons. In 2014, 113 out of the 226 reported cases globally were from Brazil.¹⁴**
 - **Between January 2008 and December 2011, 325 out of 816 reported murders of trans persons were in Brazil.¹⁵**

VIII. Newspaper and Media Reports

1. "Brazil Legislator Pastor Isidório liga Blames Pride Parade For Catastrophic São Paulo Drought," Thiago de Araújo, *Huffington Post: HuffPost Gay Voices*, November 14, 2014
Online: http://www.huffingtonpost.com/2014/11/12/brazil-drought-gay-pride-parade-n_6145882.html

¹⁴ <http://www.transrespect-transphobia.org/uploads/downloads/2014/TDOR2014/TMM-TDOR14-map-TDOR.pdf>)

¹⁵ (<http://www.transrespect-transphobia.org/uploads/images/maps/TvT-TMM-Map2008-11-en2.png>)



- **Isidório stated the drought was God’s punishment for the sins of homosexuals in Sao Paulo.**
 - **Isidorio was the second most voted-for legislator in 2014’s elections and intends to be president of the Bahia Legislative Assembly in 2015.**
2. “Brazil: LGBT group launches website listing political candidates who support gay rights,” Aaron Day, *PinkNews*, October 1, 2014
Online: <http://www.pinknews.co.uk/2014/10/01/brazil-lgbt-group-launches-website-listing-political-candidates-who-support-gay-rights/>
- **Before the October 5th national vote, the #VoteLGBT campaign published information online to help “spread and build LGBT interests in Brazil.”**
 - **The website lists the profiles of all party candidates for legislative positions who openly pledge support for LGBT rights.**
 - **The VoteLGBT site also suggests candidates who suggest LGBT individuals need psychological support should be kept away from office.**
3. “216 gay murders in Brazil this year,” Darren Wee, *GayStarNews*, October 1, 2014
Online: <http://www.gaystarnews.com/article/216-gay-murders-brazil-year011014>
- **As of October 2014, at least 216 LGBT individuals had been murdered in Brazil that year. This indicates a high level of homophobia despite anti-discrimination laws.**
4. “Gay teen found murdered with neck broken in Brazil,” David Hudson, *GayStarNews*, September 11, 2014
Online: <http://www.gaystarnews.com/article/gay-teen-found-murdered-neck-broken-brazil110914>
- **Although Brazil has a range of legal protections for its LGBTI community, including same-sex marriage and pending anti-discrimination legislation, violence towards LGBTI people persists.**
 - **Grupo Gay da Bahia, Brazil’s oldest and best-known group for gay rights, estimates that a gay person is killed every 36 hours in the Brazil, yet around 70% of these murders go unsolved.**
5. “Religion and gay rights take center stage in Brazil elections,” Mauricio Savarese, *RT*, September 4, 2014
Online: <http://rt.com/op-edge/185060-brazil-elections-religion-gay-rights/>
- **Religion and LGBT rights became the two biggest topics of the 2014 Presidential election.**



- **This is a difficult balance as Brazil is 70% Catholic, including 22% who are Evangelical Catholic, a great many of whom are anti-LGBT rights.**
 - **To try to gain LGBT support, former president Rousseff has said she would support an LGBT bill that she had previously dismissed.**
6. "Canada: A safer haven for LGBT refugees," Matthew Sherwood, *The Globe and Mail*, July 22, 2014
Online: www.theglobeandmail.com/news/national/worldpride/article19285991/
- **The article highlights stories of LGBT individuals seeking refuge in Canada.**
 - **One of the stories was about Daniel Concalves, who came to Canada on a study visa to escape harassment he faced in Brazil for being gay. He has been sexually assaulted at knife point. He was also sexually assaulted by two police officers. He believes he was targeted because he is noticeably gay.**
7. "LGBT Global Persecution Leads to Asylum Seekers in Southern AZ," Maria Inés Taracena, *Arizona Public Media*, May 22, 2014
Online: <https://radio.azpm.org/p/azspot/2014/5/22/35851-headline/>
- **"Despite Brazil calling itself an 'open country' for homosexuality, a carnival country, where everything is permitted, where sex is permitted, where liberalism is permitted...Brazil is one of the most homophobic countries in the world...It is a country with the highest number of homosexual killings in the world, a country where the violence against homosexuals is huge."**
 - **Although Brazil is not among the more than 80 countries with anti-LGBT laws, statistics reveal persecution.**
 - **According to the Gay Group of Bahia, Brazil's oldest LGBT advocate group, 44% of all global cases of 'lethal homophobia' in 2012 occurred in Brazil.**
8. "Brazilian Court Council Removes a Barrier to Same-Sex Marriage," Simon Romeo, *New York Times*, May 14, 2013
Online: http://www.nytimes.com/2013/05/15/world/americas/brazilian-court-council-removes-a-barrier-to-same-sex-marriage.html?_r=1
- **Despite the ruling that bans notaries' refusal to perform same-sex marriages, "there is still room for judicial appeals of the Brazilian decision ...and resistance may emerge in Congress, where gay-marriage legislation has faced opposition from an influential bloc of evangelical Christian lawmakers. . . . [who] have recently grown more vocal in Congress."**



9. “Brazil: Judges rule in favour of nationwide same-sex marriage,” *PinkNews*, March 14, 2013

Online: <http://www.pinknews.co.uk/2013/05/14/brazil-judges-rule-in-favour-of-nationwide-same-sex-marriage/>

- **Brazilian National Council of Justice ruled that the civil authorities have no right to reject same-sex couples from applying for marriage license.**
- **Supreme Court Chief Justice Joaquim Barbosa said there was no reason to wait for Brazil’s Congress to pass a new law on same-sex marriage.**
- **This ruling is equivalent to authorization for same sex marriage in Brazil.**
- **This ruling replaces an earlier ruling allowing “stable couples,” in the equivalent of civil unions, the same rights as married couples.**

10. “Fifteen gay activists receive death threats in Brazil”, Dan Littauer, *GayStarNews*, October 24, 2012

Online: <http://www.gaystarnews.com/article/fifteen-gay-activists-received-death-threats-brazil241012>

- **Márcio Marins, president of the national Brazilian LGBT association, was one of the 15 gay activists that received death threats.**
- **Reis revealed that one of the threats he received by phone said: 'You are going to die, you, your husband and your son. Your mother is a dyke'.**
- **In view of the situation, the Human Rights Secretariat of Brazil sent a special mission to Curitiba. The mission interviewed everyone who reported having been threatened.**
- **Steps will also be taken to form a Reference Centre with a multidisciplinary team to attend to LGBT people suffering threats or discrimination because of their sexual orientation or gender identity.**
- **According to the report 'Homophobic Violence in Brazil in 2011,' published by the Human Rights Secretariat of Brazil, the state of Paraná is in the 5th place in terms of violence against LGBT people.**
- **The research is based on official figures of the number of complaints of homophobic violence made to Brazil’s emergency services number. In the state of Paraná 424 complaints were received in 2011 alone. In the same year the national total was 6,809 violations.**

IX. Scholarship

1. Ilana Mountian, “A Critical Analysis of Public Policies on Education and LGBT Rights in Brazil,” *Institute of Development Studies*, Evidence Report No. 61 Sexuality, Poverty, and Law, March 2014.



Online: <http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/3614/ER61%20A%20Critical%20Analysis%20of%20Public%20Policies%20on%20Education%20and%20LGBT%20Rights%20in%20Brazil.pdf?sequence=1>

- **LGBT rights group GGB identified 338 murders of LGBT persons in 2012, up 27% from 2011.**
- **LGBT discrimination mostly felt at the level of families and communities, as well as in educational environments. Data from Castro, Abramovay and Silva (2004) showed that 25% of students interviewed (16,500) did not want a homosexual as a classmate. Souza et al. (2012) found that 44.9% of transsexual youth did not complete elementary school and 79.2% left home before the age of 18 due to their gender identity and sexual orientation.**
- **While Brazilian LGBT policies may seem superb on paper, they generally have little effect on people's lives and face fierce opposition from conservative groups. Further these policies lack long term implementation plans as well as conceptual clarity and clear guidelines.**

2. Henrique Rabello de Carvalho. "LGBT Refugees: The Brazilian Case," *Forced Migration Review*, Refugee Studies Centre, Oxford Department of International development, April 2013.

online: <http://www.fmreview.org/soqi/decarvalho>

- **Public policies in defence and in favour of LGBT people are neither sufficient nor effective in reducing homophobic violence in Brazil.**
- **Violence against gays and lesbians – including murder – continues to rise.**
- **Brazil has no hate crime law and no public institution or specific project monitoring the occurrence of homophobic crimes and violence.**
- **A bill criminalizing homophobia has been pending in the National Congress for more than ten years.**
- **Recognition of sexual minorities as a social group in terms of claiming and providing asylum means that Brazil's Refugee Law and the 1951 Refugee Convention continue to be the most powerful tools in the defence of LGBTI refugee rights in Brazil.**
- **Brazil has the world's largest pride parade but also the highest reported rate of homophobic and transphobic murders.**