



What is the color of the invisible?

The human rights situation of
the Afro-LGBTI population in
Brazil

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Race and Equality thanks our partner organizations in Brazil, especially the Associação Nacional de Travestis e Transexuais (ANTRA), Grupo Conexão G, Instituto Transformar Shelida Ayana and the Rede Nacional de Negras e Negros LGBT (Rede Afro-LGBT). We also thank the Afro-LGBTI activists who were interviewed during the research process and all Brazilians who continue to denounce human rights violations in a political context that opposes the defense and promotion of LGBTI rights.

I also thank the staff of Race and Equality's LGBTI Program, including our Program Coordinator Zuleika Rivera and particularly our LGBTI Program Officer in Brazil Isaac Porto, for their efforts to ensure that this report contributes to the study of advances and setbacks in the rights of LGBTI Brazilians.

Finally, I thank all the readers of this report. I hope that it aids activists across Brazil to contribute to a national discussion on homophobia and racism, including homophobia within Brazil's Afro-descendent movement and racism within the LGBTI movement.

Carlos Quesada,
Executive Director

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Preface

Victor Madrigal Borloz*

The year 2020 has offered us a magnifying glass to view the social exclusion and the daily harms afflicting Black people and communities of the American continent, resulting from deeply rooted discrimination and violence within our societies. The convergence of the COVID-19 pandemic and the rapid growth of the Black Lives Matter (BLM) social movement has created deep fractures in the facade of normality that was built up over decades. Through these cracks, we can see clearly that Black people in the Americas have been condemned to poverty through exclusion from the education, housing, employment, and healthcare systems; through prejudice that contaminates all levels of the legal system, particularly police action and criminal justice; and through disparities in treatment based on race in all aspects of daily life, all factors that fuel vicious cycles of stigma and prejudice.

The BLM discussion has highlighted the scope of discrimination and violence. Without a doubt, the next phase of the discussion will be a recognition of the debt that today's globalized society owes to the Black people, communities, and populations of our hemisphere. The United States, Brazil, Peru, Venezuela, Colombia, Central America – all are nations or regions with Afro-descendant populations that do not exist in official statistics, have been excluded from spaces of power, and are massively imprisoned.

In this narrative, those whose life experiences occur at the intersection of Blackness and sexual and gender diversity have a distinct place. The many hardships faced by Black lesbian, gay, bisexual, trans

* UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Eleanor Roosevelt Senior Researcher at the Harvard University Law School.

and gender-diverse people seem to have two patterns in common: first, the amplification of intersecting factors of discrimination; and second, a constant exposure to levels of violence that should outrage our consciences. In my experience, they are among the most invisible, the most forgotten, and the most left behind, due to patterns that go far beyond negligence and reveal a deliberate intent.

In this context, this study by the International Institute on Race, Equality and Human Rights makes a valuable contribution to efforts to bring race and ethnicity into the conversation about violence and discrimination based on sexual orientation and gender identity in Brazil. I enthusiastically welcome this study in light of the dozens of conversations I had during my visit to Brazil in January 2020, where I reiterated the importance of this topic and the urgency of this line of work. This effort is essential to make the realities of Black Brazilians, who are disproportionately affected by exclusion and violence, visible on the regional and international stage.

The study also reveals the dilemmas facing LGBTI activism in Brazil (common in many other contexts) and the tensions and restrictions that shape it. It examines dynamics inside of the movements and outside of them, particularly those related to a social and political reality marked by deep contrasts between urban and rural, secular and religious, state and federal. These dynamics are playing out in the context of a pandemic, and as always in the shadow of some of the world's greatest socio-economic inequalities.

This report - shaped by the voices of human rights defenders and activists from Black LGBT communities - is a fundamental contribution to this line of work. It is a conversation whose results have been pending for too long. The freedom and equality of too many lives depend on its progress, and this must compel us to carry it forward with particular urgency.

Washington, D.C.
1 August 2020

Terminology used in this study:

Sexual Orientation: A person's capacity to feel emotional, affective, and sexual attraction for another person, as well as the capacity to establish an intimate or sexual relationship with that person.

Lesbian woman: A woman who feels emotionally, sexually, and romantically attracted to other women.

Gay man: A man who feels emotionally, sexually, and romantically attracted to other men.

Bisexual man or woman: A person who feels emotionally, sexually, and romantically attracted to men and women.

Gender identity: The internal feeling of gender as experienced by each person. This may or may not correspond to the gender assigned to them at birth and may or may not involve modification of the body through medical, surgical, hormonal, or other intervention.

Cis person (cisgender): A person whose gender identity corresponds to the gender assigned to them at birth.

Travesti: A person who was assigned male at birth, but who identifies themselves as being of female gender and express themselves as being of female gender, even though they are not recognized as women according to the social constructs of the society in which they live.¹

¹ This definition is used by the National Association of Travestis and Transsexuals (ANTRA)

Transsexual women: People who were assigned male at birth, but who identify themselves as being of female gender and regard themselves as women.

Trans men: People who were assigned female at birth, but who identify themselves as being of male gender and regard themselves as men.

Transmasculine: People who were assigned female at birth, but who identify as and have male gender expressions. They do not regard themselves as men according to the social constructs of the society in which they live.

Intersex people: People who are born with variations in physical sexual characteristics, including genetic, hormonal or anatomical aspects, that are not typical of the standard body types established as male or female.

Gender expression: How a person publicly expresses their gender. This is visible and may be a source of identification, especially when outward changes effected through ways of dressing, mannerisms, and physical interventions to the body are done in a way that conflict with traditional expectations for gender expression.

About race:

Pretos or pretas: Afro-descendant people with darker skin.

Pardos or pardas: Afro-descendant people with lighter skin. Both categories support different shades within the Afro-descendants.

Quilombolas Communities: Ethnic-racial groups that are descendant of enslaved communities who also have specific territorial relations related to the resistance to the oppression they historically suffer.

Executive Summary

- I. Race and Equality, with the help of local partner organizations, conducted an investigation on the human rights situation of Afro-LGBTI people in Brazil, including data collection and analyses intended to make this population more visible.
- II. The investigation was conducted from an intersectional perspective, adopting race not only as a topic of study, but also as an analytical lens, allowing for the observation of hierarchies that have particular negative effects for Black people with non-normative sexual orientations, gender identities, gender expressions, and sexual characteristics.
- III. The failure of the Brazilian State to produce specific data on the Afro-LGBTI population has become apparent. The absence of data permits the State to avoid making commitments to the rights of this population, aggravates the disadvantages experienced by this community, and intensifies socio-racial hierarchies.
- IV. Afro-LGBTI people in Brazil are fighting for the most basic right: the right to life. It is unquestionable that race is a category that allows for numerous human rights violations and is expressed through an unequal distribution of rights.
- V. There exists a pattern of systemic rights violations which bar Afro-LGBTI people from access to education, healthcare, and the formal job market. Furthermore, intense police violence in the country makes

it clear that the State does not act as a guarantor of rights, but rather as the main perpetrator of violence.

- VI.** There is a pressing need to ‘racialize’ discussions about LGBTI persons in Brazil. Discussions on racism and Black people cannot be seen as the exclusive sphere of the Black movement, just as discussions on sexual orientation and gender identity cannot be viewed as the prerogative of the LGBTI movement alone. Such attitudes render the Afro-LGBTI population invisible, perpetuating a system of privileges for some and disadvantages for others.

Introduction

1 The International Institute on Race, Equality and Human Rights in Brazil

1. The International Institute on Race, Equality and Human Rights (Race and Equality) is an international non-governmental organization for the defense and promotion of human rights. Race and Equality works with partners and local activists in Latin America to protect and promote the human rights of populations marginalized because of their national or ethnic origin, sexual orientation, or gender identity.
2. Race and Equality's objective is to strengthen grassroots organizations so they can become political actors in their countries capable of advocating for structural changes. Race and Equality builds our partners' capacities through interventions including:
 - a) Developing activists' ability to document, condemn, and address human rights abuses and crimes against historically marginalized groups like Afro-descendants, female members of the lesbian, gay, bisexual, *travesti*, transsexual and intersex (LGBTI) community or any people who are subjected to discriminatory practices due to their sexual orientation or gender identity;
 - b) Increasing access to justice for historically marginalized groups by accompanying them in using the mechanisms provided by international, regional, or local human rights entities and/or legal systems;

- c) Demanding legal protections on the international, regional, and local levels for historically marginalized groups;
 - d) Facilitating South-South exchanges through which in-country partners can learn from one another about ways to document and combat discrimination and strategies to seek political, economic, and legal reforms.
3. Race and Equality closely monitors the grave situation in which Afro-LGBTI people in Brazil live, with special concern for trans persons and *travestis*. In response to this serious situation, Race and Equality has increased its presence in the country and has sought to deepen its relationships with Brazilian Afro-LGBTI organizations.
4. On August 15th and 16th of 2019, Race and Equality collaborated with other Brazilian organizations and institutions to organize the Sankofa Forum, a space for exchange and dialogue in the fight for racial and gender justice.² The forum aimed to stimulate a dialogue between the Brazilian Public Defender's Office and activists, academics, human rights defenders, *quilombolas*, women from favelas, and trans people, who recounted the current human rights situation which they face in the wave of violence that Brazil is experiencing, especially among historically discriminated and marginalized groups.
5. Commissioner Margarette May Macaulay, Rapporteur on Women's Rights and on the Rights of Persons of African Descent and against Racial Discrimination of the Inter-American Commission on Human Rights (IACHR), participated in the Sankofa Forum. Commissioner Macaulay made refe-

² Sankofa", an African word, is a two-headed bird, that, among other things, represents looking at the the past in order to give new meaning to the present. The event was organized by the following organizations/institutions: Associação Nacional de Travestis e Transexuais (ANTRA), Centro pela Justiça e o Direito Internacional (CEJIL), Criola, Defensoria Pública do Estado do Rio de Janeiro (DPERJ), Fórum Estadual de Mulheres Negras, Fórum Justiça, Instituto Transformar Shélida Ayana, Núcleo de Direitos Humanos da Pontifícia Universidade Católica do Rio de Janeiro (NDH -PUC-Rio), and by Race and Equality.

rence to the historic debt that the Brazilian State owes to people of African descent in a country in which socio-racial hierarchies impede Afro-Brazilian communities' access to and full enjoyment of rights, emphasizing the duties of States to protect people without regard to their condition.

6. In January of 2020, Race and Equality organized an academic visit by Victor Madrigal, the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (SOGI). Mr. Madrigal met with around 40 local LGBTI organizations, including more than 100 activists in three different cities: Brasilia (Federal District), Salvador (state of Bahia), and Rio de Janeiro.
7. In meetings with civil society organizations in Brasilia, LGBTI activists expressed their concerns to Mr. Madrigal, highlighting in particular the difficulties they encounter due to the invisibility of LGBTI persons under the current government and to the lack of debate on this topic in federal spaces. Lesbian activists also called for specific issues to receive more attention, including organized family violence and corrective rape commonly practiced throughout Brazil and the increase of violence against Black women.
8. In Salvador, along with numerous meetings with Black activists in the LGBTI movement, Race and Equality organized a series of discussions titled *Afro-LGBTI Resistance: Intersectional Perspectives for the Fight for Human Rights*, which provided different activists from Salvador with the opportunity to speak about the realities they face in the city.³
9. The visit ended in Rio de Janeiro, where Race and Equality organized the event *Visibility in Times of Hate: Challenges in Including Trans Persons in the Multilateral Human Rights Agenda*, which was held during Trans Visibility Month on January 29th.

³ Rede de Observatórios da Segurança. *A cor da violência na Bahia - Uma análise dos homicídios e violência sexual na última década*. (2020). Available at: observatorioseguranca.com.br/wp-content/uploads/2020/03/A-cor-da-violência-na-Bahia-Uma-análise-dos-homicídios-e-violência-sexual-na-última-década-FINAL.pdf

10. During his visit, Mr. Madrigal explained his mandate to the activists, urging them to utilize his mandate's processes for condemning rights violations. He also made important declarations regarding the protection of rights of Afro-LGBTI persons in Brazil, affirming that the State should recognize and protect the rights of its citizens without exception.
11. Race and Equality is committed to helping social organizations in Brazil document, condemn, and bring national and international visibility to human rights violations. Race and Equality places great value in facilitating contact between civil society organizations and those occupying the highest positions in the Inter-American and United Nations human rights protection systems.
12. Far from seeking to exhaust the topic and to carry out an encyclopedic study on this population's human rights situation, this dossier intends to provide data to highlight the grave situation in which this community lives. This dossier aims to be an advocacy tool so that civil society can pressure the Brazilian State into fulfilling its duty to protect these groups.

2 Objective

13. The present dossier aims to offer a racialized reading of the LGBTI situation in Brazil, beginning with an intersectional interpretation of some of the human rights violations committed against this population.
14. The use of intersectionality as an analytical lens allows for the understanding of how the overlap between race, gender, sexual orientation, gender identity, class, ability, and other axes of domination shape both interpersonal and institutional relationships. Intersectional analysis accounts for the role of these different axes in structuring the State, its public institutions, and all of society.⁴

⁴ The concept of intersectionality was used in academia for the first time by African American professor Kimberlé Crenshaw. Upon carrying out a legal analysis of

15. Research sources included meetings with civil society organizations, focus groups, records produced by civil society, articles, masters dissertations, doctoral theses, other academic works, events organized by civil society, records and reports from the government, documents from the the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights, and documents from the United Nations system.

16. The meetings with civil society were held in Brasilia, Rio de Janeiro, and Salvador. In Brasília, the meetings were hosted by the Rede Nacional de Negras e Negros LGBT (National Network of Black LGBT Women and Men). The focus groups were held in Rio de Janeiro and Salvador. In Rio de Janeiro, they were hosted by the Instituto Transformar Shélida Ayana (Shélida Ayana Transformation Institute). In Salvador, the meetings and focus groups were held by the Associação Nacional de Travestis e Transexuais (ANTRA, National Association of Travestis and Transsexuals). Moreover, Race and Equality was also present at a national ANTRA gathering held from October 28th - 31st, 2019, in the city of Tapes, located 67 miles (108 km) from Porto Alegre, capital of Rio Grande do Sul.

17. Race and Equality chose to value knowledge produced by those people whose voices are historically and systemically silenced, prioritizing whenever possible the work, statements, and attitudes of trans and other LGBTI persons along with Afro-descendants.

the question of black women in a North-American context, Crenshaw proposes intersectionality as analytical tool to frame the various interactions between race and gender in the context of violence against women, defending that research of these women should be guided by the consideration that they are not affected by gender and race separately, but rather that discrimination occurs in a mixed or combined manner through combination of the two. CRENSHAW, Kimberlé. *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*. Stanford Law Review, Stanford, v. 43, n. 6, p. 1241-1299, jul. 1991. Available at: http://funnel.sfsu.edu/students/luyilin/Lu_Yilin/other/wgs/Crenshaw1991_intersectionality.pdf

18. By the same token, the dossier has chosen not to participate in thinking patterns that hierarchize knowledge and limit these groups' contributions to mere witness accounts, but rather has aimed to promote dialogue between knowledge produced by activists and knowledge produced by researchers, professors, and any other professionals. This effort breaks from the phenomenon known to, and criticized by, Brazilian activists in which "They want to talk about us, without us."
19. The present dossier introduces several aspects of the human rights landscape for LGBTI people in Brazil overlapped with racial questions, using race as a lens allowing readers to perceive how racial tensions in Brazilian society produce hierarchical relationships which have a singular effect on and create disadvantages for Afro-LGBTI persons and especially transsexual individuals.

2.1 Lack of Data Regarding the LGBTI Population

20. First and foremost, it must be stated that the attempt to racialize the LGBTI issue encounters a very serious initial problem; namely, the absence of official data on this population. As will become apparent, the greatest producers of data on the LGBTI population are civil society organizations which fill this critical gap left by State inaction.
21. In 2019, the UN Independent Expert on Sexual Orientation and Gender Identity highlighted that the production of data on demographic, economic, social and cultural characteristics, literacy rates, employment, voting procedures, reported cases of violence, and other areas are essential so that states can fulfill their duty to protect the human rights of the LGBTI population, stressing that these statistics should be used to create public policy and legislative measures.⁵

⁵ Informe del Experto Independiente sobre la protección contra la violencia y la discriminación por motivos de orientación sexual o identidad de género. *Recopilación y gestión de datos como medio para fomentar la sensibilización acerca de la violencia y la discriminación por motivos de orientación sexual o identidad de género*. 14 de maio de 2019. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/138/30/PDF/G1913830.pdf?OpenElement>

- 22.** According to the Expert, the lack of data on LGBT persons renders this community invisible to policy makers and contributes to an atmosphere in which, on one hand, irrational measures are taken and, on the other, problems touching the lives of LGBTI people are denied. These processes legitimize the repression or punishment of diversity and leave violence and discrimination toward these groups unaddressed.⁶
- 23.** Additionally in 2019, the Inter-American Commission's Report on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex People reinforced the importance of data collection on LGBTI persons and of the compilation of statistics on violence so that the challenges that LGBTI people endure are made visible and States can respond effectively to secure their rights.⁷
- 24.** As Chapter 2 will discuss, ANTRA maps the murder of trans people in Brazil annually, emphasizing that the absence of data allows the State to absolve itself from "having to consider public policy actions in order to face the problem caused by the State itself when it fails to commit to these insecure lives."⁸
- 25.** Executive Director of Race and Equality, Carlos Quesada, highlights that the absence of data is itself a crucial data point. The enormous lack of political commitment to LGBTI lives is blatantly demonstrated by this lack of effort, especially commitment to Afro-descendant communities, which are negatively affected by the lack of specific data-informed measures to address their needs.
- 26.** In 2017, Race and Equality requested a thematic hearing before the Inter-American Commission on Human Rights regarding violence against the Afro-LGBTI population in

⁶ Idem, p. 8, par. 20.

⁷ IACHR. *Recognition of the Rights of LGBTI Persons. 2019. p.34, par. 42. Available at: <http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>*

⁸ "Dossiê Assassinatos e violência contra travestis e transexuais no Brasil em 2019". 2019, p. 20.

Brazil.⁹ The Executive Director of Race and Equality used this occasion to criticize the absence of data production on the Afro-Brazilian population and mentioned that in Brazil, discussion about the Afro-descendant population and the LGBTI population remain separate, with no attention given to the specific situation of Black LGBTI persons. He recommended that specific data on Afro-LGBTI Brazilians be prioritized.

27. During the same thematic hearing, Janaina Oliveira emphasized that the Report on Homophobic Violence in Brazil from 2013, published by the Ministry of Human Rights, communicated that Black victims made up 39.4% of reported cases and white victims made up 27.5%, while 32% of victims did not list their race, indicating an undercounting of homophobic and LGBTIphobic violence against Black people.¹⁰
28. In 2016, the Rede Afro LGBT (National Network of LGBT Afro-descendants) compiled a dossier which aimed to map the various forms of violence suffered by the Afro-LGBTI population in public spaces.¹¹ In Salvador, 67 Afro-LGBTI persons were interviewed. It must be noted that the state of Bahia has the largest number of people that self-identify as Black, and that its homicide rate among Black people is 4.5 times greater than among whites.¹²

⁹ IACHR. 161 período de sessões. *Denúncias sobre violência contra pessoas afrodescendentes LGBTI no Brasil*. 22 de março de 2017. Available at: www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=32

¹⁰ Ministério dos Direitos Humanos. *Relatório de Violência Homofóbica no Brasil: ano 2013*. Brasília: 2016, p. 17. Disponível em: www.direito.mppr.mp.br/arquivos/File/RelatorioViolenciaHomofobicaBR2013.pdf

¹¹ Rede Nacional de Negras e Negros LGBT. *Dossiê da violência contra a população negra LGBT*. Brasília, 2016. Available at: <https://raceandequality.org/wp-content/uploads/2015/08/DossRede-Afro-2016.pdf>

¹² Rede de Observatórios da Segurança. *A cor da violência na Bahia - Uma análise dos homicídios e violência sexual na última década*. (2020). Available at: observatorioseguranca.com.br/wp-content/uploads/2020/03/A-cor-da-violencia-na-Bahia-Uma-analise-dos-homicidios-e-violencia-sexual-na-ultima-decada-FINAL.pdf

- 29.** The Rede Afro LGBT's report observed that 60% of people interviewed in Salvador had suffered discriminatory actions in which race, sexual orientation, and gender identity were involved so that:

LGBTphobia cannot be investigated without correlating it with the harmful effects of racism, in the same way that we cannot investigate cases of racism in isolation without correlating it with the crimes and violence caused by LGBTphobia.¹³

- 30.** These facts point to a fundamental need for data that can make the intersectional ways that Afro-LGBTI persons experience human rights violations visible, starting with the dynamics of inequality that subjugate them to multiple forms of discrimination.

- 31.** The present dossier aims to demonstrate these realities through discussions on the murder of LGBTI persons, access to justice, police violence, and the rights to the healthcare, education, and work.

- 32.** Two brief considerations must first be made. The first is that, due to the specificity of their situation, this report will not address the situations of incarcerated LGBTI persons. This grave and complex situation merits its own investigation, which Race and Equality will undertake at a later date.

- 33.** The second consideration is that Brazil's social and political situation is in flux due to the context of COVID-19. Race and Equality expressed on several occasions its concern for the groups rendered most vulnerable by the Brazilian government's negligent COVID-19 response, emphasizing that Black people, women and LGBTI persons, especially transsexual individuals, encounter specific, aggravated impacts in a pandemic.¹⁴ COVID-19 has revealed and intensified structural vulnerabilities to which these groups are subject.

¹³ Idem, p. 46-47.

¹⁴ Raça e Igualdade. *Raça e Igualdade organizou um webinar para ativistas compartilhar os efeitos do COVID-19 na população LGBTI na América Latina com o especialista independente da ONU em Orientação Sexual e Identidade de*

34. With data fluctuating daily and the impacts of the pandemic unfolding in real time during the preparation of this document, Race and Equality chose not to include the impacts of COVID-19 in the present report.

Gênero. Available at: <https://raceandequality.org/es/brazil-p/raca-e-igualdade-organizou-um-webinar-para-ativistas-compartilharem-os-efeitos-do-covid-19-na-populacao-lgbti-na-america-latina-com-o-especialista-independente-da-onu-em-orientacao-sexual-e-identidade/> ; Idem. *Raça e Igualdade e Associação Nacional de Travestis e Transexuais do Brasil (ANTRA) solicitam à Comissão Interamericana de Direitos Humanos (CIDH) um pronunciamento público sobre o aumento de assassinatos de pessoas trans no Brasil em 2020*. Available at: <https://raceandequality.org/es/cidh/raca-e-igualdade-e-associacao-nacional-de-travestis-e-transexuais-do-brasil-antra-solicitam-a-comissao-interamericana-de-direitos-humanos-cidh-um-pronunciamento-publico-sobre-o-aumento-de-assassin/> ; Ibidem. *O Instituto Internacional sobre Raça, Igualdade e Direitos Humanos (Raça e Igualdade) expressa preocupação com a resposta do Estado brasileiro ao avanço do Coronavírus no país*. Available at: <https://raceandequality.org/es/brazil-p/o-instituto-internacional-sobre-raca-igualdade-e-direitos-humanos-raca-e-igualdade-expressa-preocupacao-com-a-resposta-do-estado-brasileiro-ao-avanco-do-coronavirus-no-pais/>

Racism and LGBTIphobia in Brazil



Chapter 1

Racism and LGBTIphobia in Brazil:

aspects within the context
of human rights

We're talking about a system that has been designed by whites to kill, oppress and destroy our bodies.¹⁵

*Alessandra Ramos (Rio de Janeiro)
Black trans woman
Instituto Transformar Shélida Ayana*

35. In addition to suffering from extreme inequality, Brazil is a very hierarchical and authoritarian country, making it an environment in which racism and LGBTIphobia, together with other axes of domination such as *machismo*, sexism, and class domination, are embedded throughout the institutions of the State and its social relations.
36. More than just affecting a person's access to rights, the markers by which people identify themselves, such as race, sexual orientation, class and gender, determine their possibilities with regards to life and death, as well as which lives and deaths will be visible in society.
37. In Brazil, barriers separate men from woman, cis people from trans people, and heterosexuals from lesbians, gays, bisexuals, and everyone else who does not fit into the cis-heteronormative social construct. These barriers become even more accentuated when the individual is Black.

¹⁵ A remark made during a speech at the Fórum Sankofa, an event held in Rio de Janeiro in August of 2019, to which The International Institute on Race, Equality and Human Rights invited Commissioner Margarette May Macaulay, Rapporteur on the Rights of Persons of African Descent and Women's Rights of the Inter-American Commission on Human Rights.

38. According to census data from 2018,¹⁶ there are 115,900,000 Black people in Brazil. In that same year, it was estimated that the total population of Brazil amounted to 208,500,000 people which means that Black people make up more than 55% of the country's population.¹⁷
39. There is no official data to allow for an estimate of Brazil's LGBTI population. Nevertheless, Brazilian media report that some estimate this group as being 10% of the population, which would put it at 20 million people.¹⁸ In its annual report, the organization Grupo Gay da Bahia (Gay Group of Bahia or GGB) estimates that there are approximately 20 million gay men (10% of the population), 12 million lesbian women (6%) and 1 million trans people (0.5%) in Brazil.¹⁹ On the other hand, ANTRA uses an estimate for the trans population of 3.9 million (1.9% of the population), with 2.3 million (1.1%) being *travestis* and transsexual women and 1.7 million (0.8%) trans men and transmasculine people.²⁰
40. The lack of official information in regard to the LGBTI population as a whole is already, in and of itself, an obstacle to understanding and intervening in the reality experienced by these people. Additionally, this population cannot be looked at as a homogenous group, as if everyone that is a part of the LGBTI community were experiencing the

¹⁶ Instituto Brasileiro de Geografia e Estatística. *Pesquisa Nacional por Amostra de Domicílios Contínua*. IBGE: 2019. Available: https://biblioteca.ibge.gov.br/visualizacao/livros/liv101654_informativo.pdf

¹⁷ Agência Brasil IBGE. *IBGE divulga as Estimativas de População dos municípios para 2018*. August 29, 2018. Available: <https://agenciadenoticias.ibge.gov.br/agencia-sala-de-imprensa/2013-agencia-de-noticias/releases/22374-ibge-divulga-as-estimativas-de-populacao-dos-municipios-para-2018>

¹⁸ Brasil de Fato. *10% dos brasileiros são LGBTI, mas estão sub-representados na política*. June 19, 2017. Available: <https://www.brasildefato.com.br/2017/06/19/cerca-de-10-da-populacao-brasileira-pessoas-lgbti-sao-sub-representadas-na-politica>

¹⁹ De Oliveira, José Marcelo Domingos. *Mortes violentas de LGBT+ no Brasil – 2019: Relatório do Grupo Gay da Bahia*. Salvador: Editora Grupo Gay da Bahia, 2020, p. 16. Available: <https://grupogaydabahia.com.br/relatorios-anuais-de-morte-de-lgbti/>

²⁰ Associação Nacional de Travestis e Transexuais do Brasil (ANTRA); Instituto Brasileiro Trans de educação (IBTE). *“Dossiê Assassinatos e violência contra travestis e transexuais no Brasil em 2019”*. 2019, p. 28. Available: <https://antra-brasil.files.wordpress.com/2020/01/dossic3aa-dos-assassinatos-e-da-violc3aa-ncia-contra-pessoas-trans-em-2019.pdf>

same realities. The questions remain: where is the data on Afro-LGBTI people? What are their particular characteristics? What kind of relationship does the State maintain with these people? How does society treat them?

1.1 Racism in Brazil: the myth of racial democracy

41. In a visit to Brazil at the end of 2018, the Inter-American Commission on Human Rights reported that it found a scenario in which the Afro-Brazilian population suffered from persistent inequality and structural discrimination, recognizing that this group has experienced historic systematic discrimination both in society and in the country's institutions:

This is reflected in norms, rules, routines, standards, attitudes and behavioral patterns, both *de jure* and *de facto*, which create a situation of inferiority and exclusion affecting a group of people in a generalized manner that has been perpetuated over a long time, even generations. This is to say that these are not isolated or sporadic incidents, but discrimination that has arisen out of a historic, socio-economic and cultural context.²¹

42. During the 74th session of the United Nations General Assembly, the Report on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance recognized that the legacy of slavery and colonialism in Brazil includes structures maintaining contemporary racial discrimination. These structures have relegated, and continue to relegate, the Afro-Brazilian population to the lowest socio-economic strata. This involves low salaries, lower life expectancy, higher rates of unemployment, food insecurity, and inadequate housing and educational conditions:

(...) the formal abolition of slavery and colonialism did not affect the continuation of the discriminatory racial structures that were established by these practices. In other words, many contemporary manifestations of racial discrimination must be understood as a continuation of

²¹ IACHR. Preliminary Observations of IACHR's In Loco Visit to Brazil. November 12, 2018. Available at: <http://www.oea.org/es/cidh/prensa/comunicados/2018/238OPeng.pdf>

historical forms and structures of injustice and racial inequality that have not been adequately remedied.²²

43. During a visit by the UN Working Group of Experts on People of African Descent to Brazil in 2013, the Working Group recognized that the historic injustices stemming from colonialism and slavery continue to exert a profound effect on the lives of the Black population in Brazil. Due to historic mechanisms of exclusion and stereotyping reinforced by poverty and political, economic, social and cultural marginalization, the Afro-descendent population lives under the burden of interpersonal, institutional and structural racism.²³
44. Brazil was the last country in the Americas to abolish slavery, on May 13, 1888. The date is not seen by the Afro-Brazilian movement as a day to commemorate. Abdias do Nascimento, considered one of the leading exponents of the Afro-Brazilian movement, has condemned the official propaganda of the Brazilian State for characterizing abolition as the result of kindness and humanitarianism from Brazil's rules, a sign of the supposed tolerance of the Portuguese and white Brazilians toward Black people, hiding the fact that this event was actually an extremely violent act for this population.
45. In 2008, on the date of the 110th anniversary of the abolition of slavery in the country, Abdias do Nascimento gave a speech in the Federal Senate, in which he denounced the fact that:

²² UN. *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance*. August 21, 2019. Available: https://www.ohchr.org/Documents/Issues/Racism/SR/A_74_231_Reparations_%20SR%20Racism.pdf. Free Translation.

²³ UN. *UN Working Group on People of African Descent release final report final on visit to Brazil*. December 13, 2013. Available: <https://nacoesunidas.org/grupo-de-trabalho-da-onu-sobre-afrodescendentes-divulga-comunicado-final/>. United Nations. *Report of the Working Group of Experts on People of African Descent on its fourteenth session - Addendum - Mission to Brazil. September 23, 2014*. Available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/168/64/PDF/G1416864.pdf?OpenElement>

This was how we arrived at the 13th of May in 1888, when Black people all over the country (...) were able to happily celebrate their recently-acquired liberty, only to wake up on the 14th with an enormous hangover produced by a horrific uncertainty: what can we do with this liberty? For many, the only answer was to remain on the same plantations, performing the same work, under conditions that had become even worse: now that they were no longer an investment, and enjoyed no protections under the law, Black people were now free to choose which bridge they would prefer to die under. Without land to farm and facing a labor market where they had to compete with European immigrants who were generally supported by their countries of origin and given incentives by a Brazilian government that was concerned with making its population more physically and culturally white, Brazilians of African descent were entering a new era of their *via crucis*. They went from being slaves to slum dwellers, street urchins, and the preferred victims of police violence, discriminated against in the spheres of justice and the workplace, made invisible in the media, and denied their own values, their religion and their culture. They became citizens of a curious “racial democracy” in which they primarily occupied a place of distinction in all of the statistics that map misery and destitution.²⁴

46. The disadvantages imposed on Black people’s lives by slavery (and by the way in which it was abolished) are still felt today, a fact that is confirmed by various social indicators. Nevertheless, despite the chasm between the reality of white people and Black people, it is not unusual to hear it said that there is no racism in the country.
47. During its 2013 visit to Brazil, the UN Working Group of Experts on People of African Descent stated that discussions on race in Brazil still encountered obstacles imposed by the “myth of Brazilian racial democracy,”²⁵ which posits that Black and white people live in harmony in the country, in a

²⁴ Geledés – Instituto da Mulher Negra. *Abdias do Nascimento: 13 de maio uma mentira cívica. Discurso proferido pelo Senador Abdias Nascimento por ocasião dos 110 anos da Abolição no Senado Federal*. May 13, 2013. Available: <https://www.geledes.org.br/abdias-nascimento-13-de-maio-uma-mentira-civica-2/>

²⁵ UN. *Report of the Working Group of Experts on People of African Descent on its mission to Brazil (4–14 December 2013)*. General Assembly. 27th session. September 23, 2014. Available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/168/64/PDF/G1416864.pdf?OpenElement>

“harmonious fusion of a variety of races who have learned to live together and work together in an exemplary community”²⁶ and enjoying equal opportunities, as if racial and ethnic origins were of no relevance in the Brazilian social dynamic:

We should understand “racial democracy” as the perfect metaphor to designate the Brazilian style of racism: not as obvious as racism in the United States and not written into the law like apartheid in South Africa, but effectively institutionalized in the official levels of government and permeating the social, psychological, economic, political and cultural fabric of society in the country.²⁷

48. Black intellectual Lélia Gonzalez also addressed the myth of racial democracy in Brazil, saying that it represents one of the most effective strategies for ideological domination because, following the idea of equality before the law, it affirms the existence of a great racial harmony in the country - always under the shield of the dominant white group.²⁸
49. In other words, this myth is used to hide the fact that it is only whites who exercise power at every political, economic and social level: “whites control the means to disseminate information; the educational system; they formulate the concepts, the arms, and the values of the country.”²⁹ Thus,

Interpreting historical facts in a way that is convenient for their purposes, distorting something here, inventing something there, always engaging in sophistry, the apostles of “racial democracy” manage to construct a solid and attractive ideological foundation that even today fools not only some of those they dominate, but also the dominant

²⁶ In the classic book *The Genocide of the Brazilian Black: a process of disguised racism*, Abdias do Nascimento, commenting on Brazil’s attempts to project an image of racial harmony, uses the example of a Brazilian delegate to the United Nations who, in a discussion about the policies of apartheid in South Africa, offered these words, in an attempt to say that there was no racism in Brazil. do Nascimento, Abdias. *O genocídio do negro brasileiro: processo de um racismo mascarado*. Rio de Janeiro: Editora Paz e Terra S.A., 1978, p. 88.

²⁷ Id., p. 93.

²⁸ GONGALEZ, Lélia. *Por um feminismo Afro-latino-americano*. 1988, p. 16. Available: https://edisciplinas.usp.br/pluginfile.php/271077/mod_resource/content/1/Por%20um%20feminismo%20Afro-latino-americano.pdf

²⁹ DO NASCIMENTO, Abdias. *O genocídio do negro brasileiro: processo de um racismo mascarado*. Rio de Janeiro: Editora Paz e Terra S.A., 1978, p. 46.

class. These people, subject to hearing the slogan repeated over and over again, often sincerely believe that racism doesn't exist in Brazil. And thus, they are able to oppress without remorse or a feeling of guilt.³⁰

- 50.** Lélia Gonzalez also argued that the myth of racial democracy enables a type of disguised racism to exist in Brazil, or in other words, a racism through denial. As opposed to so-called open racism, a characteristic of places that have had or have explicit segregation of non-whites, disguised racism does not explicitly segregate because, in practice, racial hierarchies guarantee the superiority of whites as the dominant group without requiring explicit segregation. That is why

(...) the affirmation that everyone is equal before the law takes on a clearly formalist character in our societies. Latin-American racism is sophisticated enough to maintain Black and Indigenous people in their position as subordinate segments within the more exploited classes, thanks to a more efficient ideological format: the ideology of whiteness.³¹

- 51.** The ideology of whitening “reproduces and perpetuates the belief that the classifications and the values of the Western white culture are the only true and universal ones”³², establishing a white superiority that fragments Black racial identity and creates the desire to become white, with negation of one’s own race. With this, a variety of euphemisms are created to mitigate the stigma of Blackness: mulatto, dark-skinned, swarthy, mixed race, and a variety of other nomenclatures whose objective is to hide the African heritage in Brazilian racial identities.

³⁰ Geledés – Instituto da Mulher Negra. *Abdias do Nascimento: 13 de maio uma mentira cívica. Discurso proferido pelo Senador Abdias Nascimento por ocasião dos 110 anos da Abolição no Senado Federal.* May 13, 2013. Available at: <https://www.geledes.org.br/abdias-nascimento-13-de-maio-uma-mentira-civica-2/>

³¹Gonzalez, Lélia. *Por um feminismo Afro-latino-americano.* 1988, p. 15. Available: https://edisciplinas.usp.br/pluginfile.php/271077/mod_resource/content/1/Por%20um%20feminismo%20Afro-latino-americano.pdf

³² Id.

1.1.1 Racial identity in Brazil

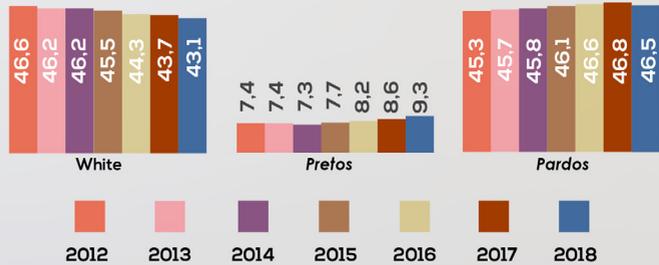
52. It is possible to say that the ideology of whitening has a direct impact on the self-perception of race, which in turn impacts the data that is produced on Brazil's Black population. Article 1 of Brazil's Statute on Racial Equality defines the Black population as "the group of people who declare themselves to be *pretos* and *pardos* when answering the question on skin color or race that is used by the Brazilian Institute of Geography and Statistics (IBGE), or who adopt an analogous definition for themselves".
53. *Pretos* are those people whose skin tone is darker while *pardos* are those with lighter skin. Both of these categories include a variety of tonalities, giving rise to two interesting movements to observe: on one hand are people with darker skin who see themselves as *pardos*, and on the other hand are people with lighter skin who see themselves as *pretos*, because they see the classification *pardo* as an attempt to fragment and obscure the racial identity of Black.
54. In 2012, Brazil had 4.7 million people who declared themselves to be *pretos*. In 2018, this number grew to 19.2 million, representing an increase of 32.2%. The number of self-declared *pardos* also grew from 89.6 million in 2012 to 96.7 million in 2018. At the same time, the number of people who declared themselves to be white decreased, going from 92.2 million in 2012 to 89.7 million in 2018.³³
55. In percentage terms, in 2012, white people made up 46.6% of the population, while *pretos* and *pardos* represented 52.7% (45.3% *pardos* and 7.4% *pretos*). In 2018, these numbers became 43.1% white and 55.8% *pretos* and *pardos* (46.5% *pardos* and 9.3% *pretos*). Analyzing the five Brazilian regions, the percentage of people who declared themselves to be white decreased in every region.³⁴

³³ Instituto Brasileiro de Geografia Estatística. *Pesquisa Nacional por Amostra de Domicílios Contínua*. IBGE: 2019. Available: https://biblioteca.ibge.gov.br/visualizacao/livros/liv101654_informativo.pdf

³⁴ Id.

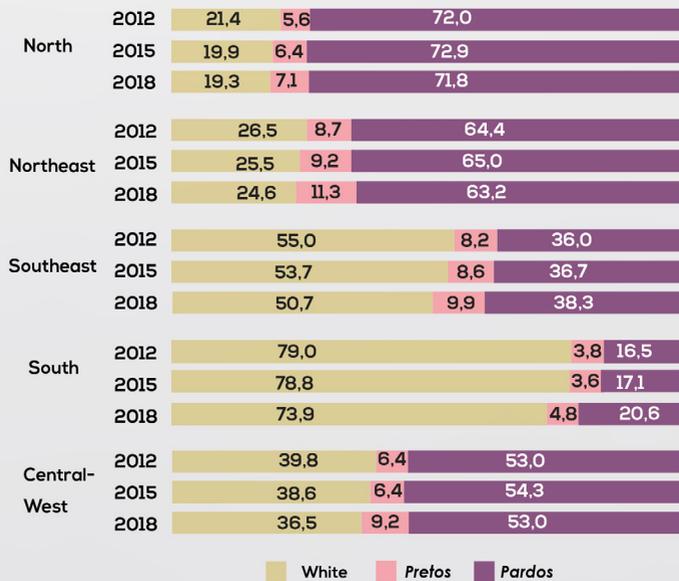
Resident population by skin color or race (%)

Brazil
2012-2018



Major Regions

2012/2018



Source: IBGE, Directorate of Research, Coordination of Work and Income, National Census by Continuous Sampling of Residences 2012-2018.

56. Apparently, this increase was not merely population growth among Black people or population reduction among white people, but a result of the Black movement's fight to give value to their culture and encourage people to embrace their Afro-Brazilian identity, challenging the myth of racial democracy and the ideology of whitening. It is important to ensure that these advances do not suffer future setbacks.

1.2 Structural racism and LGBTIphobia in Brazil

57. Black philosopher Silvio de Almeida argues that racism can be discussed and analyzed from three different perspectives: the individual, the institutional and the structural.³⁵ In the individual aspect, racism is understood as if it were a pathology or an abnormality. From this perspective, racism is seen as a psychological problem, or an irrationality that must be fought in the legal area with prosecution and punishment. By this logic, it is not a racist society or institutions that are addressed, but rather individuals who may express racist behavior individually or as a group. Racism is reduced to merely a behavioral characteristic.³⁶

58. According to de Almeida, from an institutional perspective, racism is not limited to individual behaviors, but is seen as the result of institutions that operate according to a dynamic that produces disadvantages and privileges based on race.³⁷

59. Institutions shape the behavior of individuals and, as a part of society, also reflect the existing conflicts within that society. For this reason, racial conflicts also take place in institutions, which are dominated by groups (white men and cis heterosexuals) that, using institutional mechanisms, impose their political and economic interests.

³⁵ ALMEIDA, Silvio. *Racismo estrutural*. Coleção Feminismos plurais. Coord.: Djamila Ribeiro. São Paulo: Pólen, 2019. Kindle Version.

³⁶ Ibidem.

³⁷ Ibidem.

- 60.** Finally, racism can also be understood as a structural phenomenon. It is not considered to be a disorder, a malfunction of the system, or an abnormality. From this perspective, racism is a fundamental part of the order itself. It is the normal operating mode for political, economic, and legal relations as they have been established; therefore, it expresses itself in political, economic, and legal inequality. In this way, racism is embedded in the structure, so that institutions are racist because society is structured by and through racism, building a historical and political process that causes racially-identified groups to be systematically discriminated against and submitted to hierarchical social, political, legal and economic relations. Racism is the rule, not the exception.³⁸
- 61.** By pointing out the need to discuss racism from the perspective of structural biases, in no way is Sílvia de Almeida trying to negate the individual responsibility of people who manifest racist behavior, but rather point out the fact that, as a part of the social structure, racism does not require the intention of the individual or the institution to manifest itself and maintain hierarchical relations.³⁹
- 62.** This is why Thula Pires, a Black professor at the Pontifical Catholic University of Rio de Janeiro, understands that:

Racism manifests itself through individual conduct that promotes racial discrimination in its various forms of violence or through forceful action on the part of public or private agencies to expropriate the humanity of, discard the lives of, and apply a disproportionate mobilization of violence against racially subordinated social groups.⁴⁰

³⁸ Ibidem.

³⁹ This vision of the lack of the need for intentionality for racism to exist should be applied, for example, when discussing police violence. Much more than expressing the intention of an agent of the law, police violence expresses the way of being of the State.

⁴⁰ PIRES, Thula. *Racializando o debate sobre direitos humanos: limites e possibilidades da criminalização do racismo no Brasil*. SUR–Revista Internacional de Direitos Humanos, v. 15, n. 28. 2018, p. 70. Available at: <https://sur.conectas.org/wp-content/uploads/2019/05/sur-28-portugues-thula-pires.pdf>

- 63.** Reflections on racism as a structural phenomenon allow for comparisons that help us understand LGBTIphobia as a structural phenomenon and, therefore, not see it as a malfunction of the system, but as part of the order of things, as “natural.”
- 64.** According to trans activists Bruna Benevides, secretary of political coordination for ANTRA, and Maria Eduarda Aguiar, an attorney and the president of Grupo Pela Vidda (Group for the valorization, integration and dignity of the AIDS patient), who works for the protection of people living with HIV:

The experiences reported by the LGBTI+ population and that have been brought up by social movements condemn the way that LGBTphobia stems from the lack of broader discussions on the subject. This lack of discussion maintains the privileges of those people who are born into a structure designed for them, in detriment to those who experience a different way of existing, and it imposes various barriers over the course of their lives.⁴¹

- 65.** In establishing the division between those who exist in a structure designed for them and those who do not, Bruna Benevides and Maria Eduarda Aguiar allow us to consider a structural dimension of LGBTIphobia, demonstrating that “there are institutions, elements and organized tools that deny the LGBTI+ population access to their rights and to recognition of full citizenship.”⁴²
- 66.** To say that the structure is designed for certain groups and not for others is to say that the humanity of LGBTI people is less recognized by the State, and that there is

⁴¹ AGUIAR, Maria Eduarda; BENEVIDES, Bruna. *LGBTfobia estrutural: a violência e o assassinato consentido pelo não reconhecimento da cidadania da população LGBTI+*. In: Dossiê sobre assassinatos e violência contra travestis e transexuais no Brasil em 2018. Associação Nacional de Travestis e Transexuais (ANTRA); Instituto Brasileiro Trans de Educação (IBTE), p. 43. Available at: <https://antrabrasil.files.wordpress.com/2019/01/dossie-dos-assassinatos-e-violencia-contra-pessoas-trans-em-2018.pdf>

⁴² Ibidem, p. 53.

a hierarchy established between those that conform to cis-heteronormativity and those who do not.

- 67.** Cis-heteronormativity is therefore understood as a political regime that conditions social, economic, legal, and political relations. This regime is anchored in an ideology that treats differences in sexual orientation and gender identity as natural inequalities, hiding those generated in the political, social, economic, and legal planes.⁴³
- 68.** This ideology naturalizes the vulnerability of LGBTI people, which is no longer understood as and begins to be looked at as an individual's natural attribute. Thus, trans persons, for example, are seen as vulnerable by their very nature, as if vulnerability was inscribed in their DNA, and not because these people have been made vulnerable through structural hierarchical relations.⁴⁴
- 69.** At this point, it is worth looking a little deeper into the significance of using intersectionality as a tool for analysis. In the first report prepared by the mandate of the UN Independent Expert on Sexual Orientation and Gender Identity,⁴⁵ a position that was occupied in 2017 by Vitit Muntarbhorn, there is a recognition of the need for an intersectional approach and for an identification of multiple, interrelated, and aggravated forms of violence and discrimination. The need for these approaches stems from the recognition that violence and discrimination generally do not occur as singular, isolated events, but as a part of a vicious cycle that persists on emotional, psychological, physical, and structural levels.

⁴³ See CURIEL, Ochy. *De las identidades a la imbricación de las opresiones*. In: Encrespando - Anais do I Seminário Internacional: Refletindo a Década Internacional dos Afrodescendentes (ONU, 2015-2024) / FLAUZINA, Ana; PIRES, Thula (org.). - Brasília: Brado Negro, 2016, p. 79. Available at: <http://bradonegro.com/Encrespando.pdf>.

⁴⁴ PORTO, Isaac. *Punição e estigma: a criminalização das pessoas que vivem com HIV*. Master's Dissertation. Rio de Janeiro, Pontifícia Universidade Católica, 2019, p. 98.

⁴⁵ UN. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. April 19, 2017. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/095/53/pdf/G1709553.pdf?OpenElement>

This becomes clearer when the victim is not only attacked or discriminated against because of their sexual orientation and gender identity, but also for reasons of race, ethnicity, age, sex/gender or belonging to a minority group or an indigenous community.

70. In 2015, the Inter-American Commission on Human Rights (IACHR) embraced the idea that there are certain factors that make LGBTI people more vulnerable to violence, or that aggravate the consequences of such violence,⁴⁶ recognizing that there is a direct relationship between race, socio-economic class, and poverty, which causes the Afro-descendant population to be affected in an adverse manner by multiple forms of discrimination.⁴⁷ For example, “a trans Afro-descendant woman who is displaced internally to a rural area and lives in extreme poverty will suffer violence in a different way than a gay white man with a high degree of purchasing power who lives in an urban metropolis.”⁴⁸

71. While many studies use intersectionality as a lens to view the experiences of people who are subjected to more than one axis of domination, this dossier opts to use the concept to demonstrate the extent to which racism and LGBTIphobia, as well as sexism, classism, ableism, and other axes of domination, operate in a structural and interconnected manner. Thus, it looks at and categorizes not only experiences, but institutions and all of the workings of the State and society.

72. This reading reveals “how the institutions of the State are forged to maintain white, masculine, Christian and heterosexual privilege, operating according to the logic of dehumanization, and the mobilization of gender, race, sexuality and class to maintain hierarchies.”⁴⁹

⁴⁶ IACHR. *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*. 2015, p. 169, par. 262. Available at: <http://www.oas.org/en/iachr/reports/pdfs/violenceigbtipersons.pdf>

⁴⁷ Ibidem, p. 220, par. 359.

⁴⁸ Ibidem, p. 169, par. 262.

⁴⁹ PORTO, Isaac. *Punição e estigma: a criminalização das pessoas que vivem com HIV*. Master's Dissertation. Rio de Janeiro, Pontifícia Universidade Católica,

73. Racializing discussions about the human rights of the LGBTIQ population in Brazil makes it possible to see that there are important differences between the experiences of white and Afro-LGBTIQ people that become even more obvious when applied to the different experiences of cis and trans people. As a result of this difference, LGBTIQ people have different causes, worries, and expectations in relation to the State depending upon if they are white or Black, from urban centers or the outskirts, or from capital cities or rural areas.

74. In this regard, the Instituto Transformar Shélida Ayana, a trans organization operating in the city of Rio de Janeiro, believes that:

LGBTIQ+ people in favela-like areas are subject to specific, multiple, and aggravated kinds of human rights violations due to the types of public safety policies established, the dynamics of poverty in these territories, and access to services such as education, health, and leisure: they suffer for being Black, LGBTIQ+ and favela dwellers.

75. Consequently, it is common to hear Afro-LGBTIQ activists living in the outskirts of municipalities complain that, while cis gay middle class white men are concerned about their right to marry and for homosexual couples to adopt children, Black *travestis* and transsexual women are still fighting for a more basic right, the right to live. According to Washington Dias, a Black gay activist from Salvador with the Rede Afro-LGBTIQ there are “different questions. While white gays fight for marriage and equality, the reality for the vast majority of Black gays is that of a fight for survival.”⁵⁰

76. There are reports that confirm that for many trans people, the State is the main violator of human rights, instead of being an agent for guaranteeing these rights. Gilmara Cunha, president of Grupo Conexão G, a group that works

2019, p. 12.

⁵⁰ Newspaper O Globo. *Ativistas afro-LGBTIQ alertam para preconceito duplo e cobram políticas públicas específicas*. January 23, 2020. Available at: <https://oglobo.globo.com/sociedade/ativistas-afro-lgbti-alertam-para-preconceito-duplo-cobram-politicas-publicas-especificas-24205945>

for the protection of the rights of LGBTI people, especially Black LGBTI people living in the group of favelas called the Complexo da Maré in Rio de Janeiro, maintains that there is a wide gap between the needs of the LGBTI community in the favela and those that live outside of it:

In the favela, you can't kiss or even walk holding hands. Anyone who is gay, lesbian, or transsexual within the boundaries of the favela can't enjoy the advances that LGBT people in our country have been experiencing. We don't fight for the ability to adopt a child. We're still fighting for our survival. (...) Outside the favela, they can condemn prejudice and aggression and there is a chance that it will be punished. Here, we can't do that. We're in a lawless territory. The reality is different, the risks aren't the same.⁵¹

77. This racial analysis also allows us to see that Brazilian society separates its population between those who have their humanity and individuality recognized and those who do not and are looked at as an indistinct mass with no individuality.⁵²

78. In other words, there are people who are seen as having rights and people who are not. The lighter a person's skin is, the closer they are to being considered worthy of having their rights protected. The darker they are, the less protection they deserve; their lives are disposable.

79. Thus, it can be seen that the white person is hegemonically the default for considering the protection and the promotion of human rights, even within the LGBTI population. This default mindset produces a normative apparatus that is incapable of accounting for the human rights violations perpetrated against groups whose humanity is not recognized,⁵³ such as Afro-LGBTI people.

⁵¹ BBC. 'Gay da favela não usufrui de avanços. Ainda estamos lutando pela vida', diz ativista transexual. November 17, 2015. Available at: https://www.bbc.com/portuguese/noticias/2015/11/151101_transexual_jp

⁵² FANON, Frantz. *Os condenados da terra*. Translation by Enilce Albergaria Rocha and Lucy Magalhães. Juiz de Fora: UFJF, 2005.

⁵³ PIRES, Thula. *Racializando o debate sobre direitos humanos: limites e possibilidades da criminalização do racismo no Brasil*. SUR-Revista Internacional de Direitos Humanos, v. 15, n. 28. 2018, pp. 65 a 75.

- 80.** Therefore, the violence experienced by white people determines what kinds of protection will be guaranteed by the State, which means that the violence experienced by Black people will be ignored and will not generate the kind of public commotion that will put pressure on the State for change.
- 81.** In a study on Black lesbian women, Fátima Lima, a Black, lesbian professor at the Federal University of Rio de Janeiro, aids in the understanding of the centrality of racism in analyses of LGBTI people:

It is impossible to address the discussion about the lives of Black lesbians without addressing racial questions. The ways in which socio-racial relations were built and how they are lived in different Brazilian contexts constitute what I have called the backbone supporting the way race (...) produces singular, pigmentocratic, intersectionalized processes that mark certain territories, origins, ages, and educational levels, among other things, for exclusion. The marker of race must be taken as the backbone through which racist discursive practices permeate bodies-subjectivities, revealing the genderization and sexualization of race, as well as the racialization of the performance of gender and sexuality.⁵⁴

- 82.** Alessandra Ramos of the Instituto Transformar explains:

Within the LGBT movement, there is an apprehension toward touching on the subject of race, as if it were a deterrent from allowing us to have a platform where conversation and dialogue can take place on a level plane, as if the oppression of racism were a subject that is taboo, as if you could not mention it.⁵⁵

⁵⁴ LIMA, Fátima. *Raça, Interseccionalidade e Violência: corpos e processos de subjetivação em mulheres negras e lésbicas*. In: Cadernos de Gênero e Diversidade. Universidade Federal da Bahia. Universidade Federal da Integração da Lusofonia Afro-Brasileira. Salvador/São Francisco do Conde: UFBA, UNILAB, v. 4, n. 2, 2015, p. 74. Available at: <https://portalseer.ufba.br/index.php/cadgendiv/article/view/26646/16098>

⁵⁵ RAMOS, Alessandra. Ser mulher trans e negra. October 3, 2016. Available at: <https://www.youtube.com/watch?v=L1SEb3C6fwo>

- 83.** In her reflections on whiteness, the director of the Center for Studies on Labor Relations and Inequality, Maria Aparecida Bento, understands this resistance to any debate on racism as the result of a sort of tacit agreement among whites to refuse to admit that they play an essential role in maintaining racial inequalities in Brazil, including those existing within the LGBTI movement.⁵⁶
- 84.** Once white people conclude that they are not the cause of the continuing existence of racial inequality, racism becomes simply an inheritance of slavery, without perceiving the privileges generated for white people in Brazil today and to what extent they – as white people –perpetuate these privileges.
- 85.** For Thula Pires, “the complicit silence in regard to whiteness operates in a way that perpetuates the cycle of historical privileges and advantages enjoyed by white groups in societies evolved from the colonial-slave system,”⁵⁷ putting a disproportionate burden on Black people. Thus, whiteness is “*conservation, preservation of the white group in the place it occupies, that is, in a place of privilege.*”⁵⁸
- 86.** In this regard, it is interesting to promote the concept of cisgenerity, which emerged from the trans movement as an instrument for destabilizing the idea of cis identity as the norm. The trans researcher Viviane Vergueiro understands cisgenerity as an analytical concept that is used similarly to how whiteness has been used for racial questions, as “a

⁵⁶ BENTO, Maria Aparecida Silva. *Branqueamento e branquitude no Brasil*. In: Psicologia social do racismo. Estudos sobre branquitude e branqueamento no Brasil. BENTO, Maria Aparecida Silva; CARONE, Iray (organizadoras). Petrópolis: Vozes, 2016.

⁵⁷ PIRES, Thula. *Criminologia crítica e pacto narcísico: por uma criminologia apreensível em pretuguês*. Revista Brasileira de Ciências Criminais. Vol. 135. Ano 25. São Paulo: Ed. RF, September 2017, p. 543.

⁵⁸ BENTO, Maria Aparecida. *Pactos narcísicos no racismo: branquitude e poder nas organizações empresárias e no poder público* (Doctoral thesis). São Paulo: Universidade de São Paulo (Department of Psychology of Learning, Development and Personality, 2002, p. 146.

positioning or subjective perspective that is taken as natural, as essential, as the norm.”⁵⁹ Thus:

(...) to use the term cisgenerity or cis-man, cis-women instead of other terms that have been used in the past, such as biological woman, real man, normal man, a man born as a man, a woman born as a woman, etc. (...) may help us to look at it in another manner, allowing us to replace the position of hierarchical superiority that has been viewed as natural, a hierarchy putting cis-people on a higher level in relation to trans identities, for example.⁶⁰

87. In the same way, the trans psychologist and university professor Jaqueline de Jesus also views cisgenerity as a positioning and a social identity that allows non-trans people to understand that “they also have a gender identity; and that they enjoy privileges as a result.”⁶¹

88. Mariah Rafaela, a Black transsexual professor and a project coordinator for Grupo Conexão G, explains how cisgenerity is taken as natural:

The truth is that, before being questioned politically (as a socially practiced “identity”), cisgenerity was taken practically as the natural law of human existence. In other words, as a compulsory “natural” state of an anatomical, biological, identity, and sexual concept: it is gender essentialism. In summary, until the 21st century, cisgender and/or heterosexual people were simply “normal” and trans people were those of whom society would not only bend their taxonomies, but equally relegate to the category of Others.⁶²

⁵⁹ RAMÍREZ, Boris *Colonialidad e cis-normatividade*. Interview with Viviane Vergueiro. Iberoamérica Social: revista-red de estudios sociales (III), pp. 15 – 21. Available at: <https://iberoamericasocial.com/wp-content/uploads/2015/01/Ram%C3%ADrez-B.-2014.-Colonialidad-e-cis-normatividade.-Entrevista-con-Viviane-Vergueiro..pdf>

⁶⁰ Ibidem.

⁶¹ JESUS, Jaqueline. *A verdade cisgênero*. Blogueiras Feministas. January 28, 2015, Available at: <https://blogueirasfeministas.com/2015/01/28/a-verdade-cisgenero/>

⁶² SILVA, Mariah Rafaela Cordeiro Gonzaga. *Corpos antropofágicos: supermáquina e interseccionalidades em cartoescrita de fluxos indisciplinados*. Master’s Dissertation. Interdisciplinary Post-graduate Program in Human Sciences at Estado do Amazonas (PPGICH/UEA). Manaus: Universidade do Estado do Amazonas, 2018, p. 211. Available at: www.pos.uea.edu.br/data/area/dissertacao/download/34-3.pdf

89. Cisgenerity can be understood as a political position of silence in the face of inequalities between cis and trans people and of a tacit agreement (even explicit, at times) among cis people to not see themselves as an essential part in the maintenance of these inequalities. Thus, it works as a guardian of normalized privileges and advantages, creating, in the same way as whiteness, a “territory of silence, of denial, of interdiction, of neutrality, of fear, of privilege.”⁶³
90. In addition, Mariah Rafaela believes that cisgenerity is a set of social practices that establish a power structure that is fundamentally built on race. It is not only sexual anatomy that confers a sovereign character to the identity of cisgenerity, but also its interweaving with race. The strength of cisgender normalization derives from its opposition to “monstrous” or “animalistic” trans and Black bodies. In other words, it relies on their dehumanization. Thus, “what is established through cisgenerity is, in effect, a political hegemony of the non-trans body that necessarily depends on the ‘naturalization’ of social intelligibilities.”
91. At this point, it seems interesting to consider the emergence of the Rede Afro-LGBT, in 2005, at a time when, as the activist Washington Dias said at an event held by Race and Equality during Victor Madrigal’s visit to Salvador (Bahía), the Afro-LGBTI population didn’t feel that they belonged anywhere, neither in the Black movement or the LGBTI movement, because there was no convergence for this intersectional coexistence.
92. Washington Dias also emphasized that “our bodies didn’t cease to be Black bodies when we were in an LGBT space and didn’t cease to be LGBT bodies when we were in a Black space,” insisting that addressing both racism and LGBTphobia depends on the awareness and adoption of a position on the part of whites, who need to take responsi-

⁶³ BENTO, Maria Aparecida. *Pactos narcísicos no racismo: branquitude e poder nas organizações empresárias e no poder público*. Doctoral thesis. São Paulo: Universidade de São Paulo (Department of Psychology of Learning, Development and Personality), 2002, p. 167.

bility for providing answers to this scenario. As a result, the Rede Afro-LGBT emerged with the purpose of racializing the LGBTI debate and pushing the Black movement to internalize LGBTI demands, because, in his words, “we’re not talking about the Black person from a cisgender and heterosexual perspective, but a Black person who is diverse”.

- 93.** A report on the human rights situation of Black trans women in Brazil published by Global Rights Partners for Justice in 2013 stated that the Brazilian Afro-LGBTI population remained severely marginalized from Brazilian political activism and did not receive strong support from the LGBTI or Afro-Brazilian movements, lacking financing, public support, and resources for its operations.⁶⁴
- 94.** In the same regard, the *travesti* professor Megg Rayara poses the following questions:

Why doesn't the Black Social Movement accept me? Why doesn't it hear me even when I scream? Why does the Black Social Movement continue to systematically ignore the situation of exclusion and violence that *travestis* and Black transsexual women are subjected to.⁶⁵

- 95.** Bruna Benevides, of ANTRA, poses similar questions:

Does the antiracist fight include confronting cissexism? Which people's lives are deserving of respect or are at the center of this narrative? Forgive me. I'm tired of seeing cisgenerity silencing us and ignoring our fight. It's very difficult to realize that, we are neither safe in the Black movement, nor in the fight against racism and the insecurity of Black lives. Because there is still a systematic reproduction of patriarchal violence, mirrored in the example of the white, male colonizer who exerts control

⁶⁴ Global Rights Partners for Justice. *Report on the Human Rights Situation of Afro-Brazilian Trans Women*. (2013). Available at: http://www.lgbtinet.dk/database/doc_download/294-report-on-the-human-rights-situation-of-afro-brazilian-trans-women

⁶⁵ DE OLIVEIRA, Megg Rayara Gomes. *Por que você não me abraça?* SUR 28 - v.15 n.28, p. 168. Available at: <https://sur.conectas.org/wp-content/uploads/2019/05/sur-28-portugues-megg-rayara-gomes-de-oliveira.pdf>

through manipulation of a variety of forms of violence in order to maintain power.

While we scream “No to Transphobia”, they say we are undermining the antiracist fight and they often silence us.⁶⁶

96. Megg Rayara believes that homosexuality, *travestilidade*,⁶⁷ and transsexuality are seen as a form of betrayal of one’s race, in that “the Black Social Movement is working for the normalization of cis heterosexuality, which, to a certain extent, justifies making *travestis* and women transsexuals in its midst invisible.”⁶⁸
97. Rayara offers the example of the case of the *travesti* Verônica Bolina, who was brutally beaten by a group of policemen:

The violence inflicted by the São Paulo police upon Black *travesti* Verônica Bolina in 2015 reveals the absolute lack of interest on the part of the Black Social Movement for the lives of *travestis* and transsexual women. Accused of trying to kill someone and of resisting arrest, Verônica was brutally beaten by a group of policemen. In addition to having her face completely disfigured, her hair was cut off and her clothes torn to shreds. After being subjected to all this violence, her hands and feet were handcuffed and she was forced to remain on the ground, semi-naked, in the patio inside the police station. The macabre ritual of violence was filmed and photographed, and the images were shared on social media. Despite all of the repercussions of the case, the Black Social Movement made no comment. It remained silent, as if Veronica’s race had been erased by her gender identity.⁶⁹

98. Professor Fátima Lima affirms that, in addressing race as a central element for understanding LGBTIphobia, it is revealed that the LGBTI movement is still “hegemonically

⁶⁶ BENEVIDES, Bruna. *Quais vidas negras importam?* June 17, 2020. Available at: <https://medium.com/@brunagbenevides/quais-vidas-negras-importam-283f09956760>

⁶⁷ The travesti movement has created the word “travestilidade,” roughly *travesti-ness* in order to refer to the travesti identity and its way of living.

⁶⁸ DE OLIVEIRA, Megg Rayara Gomes. *Por que você não me abraço?* SUR 28 - v.15 n.28, p. 168. Available at: <https://sur.conectas.org/wp-content/uploads/2019/05/sur-28-portugues-megg-rayara-gomes-de-oliveira.pdf>

⁶⁹ *Ibidem*, p. 175.

white, with misogynistic, sexist, and consequently racist elements as well, and minimally involved in the urgent racial agenda.”⁷⁰

99. Intersectionality has proven to be a tool that still needs to be internalized in all of its dimensions by the LGBTI movement and the Black movement, with all of its implications. Thinking of whiteness and of cisgenerity, as well as masculinity in these terms, leads to a greater understanding of the silence of the LGBTI movement in regard to some inequalities that affect the most vulnerable LGBTI lives.

1.3 Some important advances in rights for the LGBTI population

100. During the administrations of Presidents Lula da Silva and Dilma Rouseff, from 2002 through 2016, Brazil went through a period of advances and heated disputes in the human rights agenda. Despite the fact that there were various limitations, important initiatives were undertaken to combat the inequalities existing in the country and to promote human rights.

101. In a visit to Brazil in the year 2013, during the administration of Dilma Rouseff, the UN Working Group of Experts on People of African Descent declared its satisfaction at seeing the many programs and initiatives implemented by the State to combat racial discrimination during the period since the first election of President Lula da Silva.

102. These initiatives included the creation of the National Secretariat of Policies for the Promotion of Racial Equality (SEPPIR),⁷¹ the creation of the National Policy for Promotion

⁷⁰ LIMA, Fátima. *Raça, Interseccionalidade e Violência: corpos e processos de subjetivação em mulheres negras e lésbicas*. In: Cadernos de Gênero e Diversidade. Universidade Federal da Bahia. Universidade Federal da Integração da Lusofonia Afro-Brasileira. Salvador/São Francisco do Conde: UFBA, UNILAB, v. 4, n. 2, 2015, p. 69. Available at: <https://portalseer.ufba.br/index.php/cadgendiv/article/view/26646/16098>

⁷¹ EBC. *Ministra diz que Seppir foi criada em 2003 após décadas de negação do racismo no país*. March 21, 2013. Available at: <https://www.ebc.com.br/noticias/brasil/2013/03/>

of Racial Equality, (PNPIR),⁷² the publication of the Law of Quotas for admission to federal universities and federal institutions of secondary technical education,⁷³ and the creation of the National Policy for Whole Health for the Black population,⁷⁴ among other measures that began the process of institutionalization of a racial agenda.

103. In the same manner, important policies were adopted in the area of women's rights, such as the creation of the Maria da Penha Law for victims of domestic violence, the establishment of the Call Center for Women Threatened with Violence (Call 180),⁷⁵ and the elaboration of a National Plan of Policies for Women,⁷⁶ among others. In 2013, the program *Mulher, Viver sem Violência* (Woman, Live Free from Violence) was created, which established the Casa da Mulher Brasileira (House of the Brazilian Woman), refuges created to provide humanized assistance for women who are victims of or threatened with domestic violence.⁷⁷ In 2017, the United Nations International Policy Center for Inclusive Growth (IPC-IG) recognized that the *Bolsa Família* (Family Welfare Assistance) program,⁷⁸ created under the Lula administration to guarantee direct income transfer to

ministra-diz-que-seppir-foi-criada-em-2003-apos-decadas-de-negacao-do

⁷² Decree nº 4.886, of November 20, 2003. Available at: www.planalto.gov.br/ccivil_03/decreto/2003/D4886.htm

⁷³ Law nº 12.711, of August 29, 2012. Available at: www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12711.htm

⁷⁴ Brazil. Ministry of Health. Secretariat of Strategic and Participative Management. Department of Support for Participative Management. National Policy for Whole Health for the black Population: a policy for SUS / Ministry of Health. Secretariat of Strategic and Participative Management. Department of Support for Participative Management. – 2. ed. – Brasília: Editora do Ministério da Saúde, 2013. Available at: https://bvsms.saude.gov.br/bvs/publicacoes/politica_nacional_saude_integral_populacao.pdf

⁷⁵ Federal Government. Ministry of Women, Family and Human Rights. *Ligue 180*. <https://www.gov.br/mdh/pt-br/navegue-por-temas/politicas-para-mulheres/ligue-180>

⁷⁶ Brazil. Presidency of the Republic. Secretariat for Policies for Women. *Plano Nacional de Políticas para as Mulheres*. Brasília: Secretariat of Policies for Women, 2013. Available at: https://oig.cepal.org/sites/default/files/brasil_2013_pnpm.pdf

⁷⁷ Ministry of Women, Family and Human Rights. *Programa 'Mulher, Viver sem Violência'*. Available at: <https://www.gov.br/mdh/pt-br/navegue-por-temas/politicas-para-mulheres/arquivo/assuntos/violencia/programa-mulher-viver-sem-violencia>

⁷⁸ Law nº 10.836, January 9, 2004. Available at: www.planalto.gov.br/ccivil_03/_Ato2004-2006/2004/Lei/L10.836.htm

families that are suffering from poverty or extreme poverty, had a positive effect on the autonomy of women recipients, influencing their decision-making power in the home, their sense of citizenship, and their reproductive choices.⁷⁹

104. Even if, as we will see in subsequent chapters, these measures have not been enough to protect the lives of Black women and have not even managed to diminish violence against the Black population as a whole, these actions should be seen as part of a political context that created institutional mechanisms for the promotion of human rights in the country and as representing an effort to combat racial and gender discrimination.

105. Some measures have also been taken to protect LGBTI lives. It is important to note that the Brazilian legislative branch has never passed any legislation providing protection for the LGBTI population in the country. All of the guarantees that exist today are victories gained through pressure that was applied on the executive and judicial branches by civil society organizations.

106. The first time that an official document of the Brazilian executive branch championed the promotion of human rights and included an item that demonstrated any level of concern toward people with diverse sexual orientation and gender identity was in 1996, at the first *Programa Nacional de Direitos Humanos* (PNDH - National Human Rights Program).⁸⁰ In the text, the word “homosexuals” was used as a large umbrella for identities that were not really homogeneous. The document recognized that human rights are the fundamental rights of all people, including “homosexuals”, and affirmed the need to support programs for the prevention of violence against more vulnerable groups.

⁷⁹ UN. *Bolsa Família favorece autonomia das mulheres, diz estudo de centro da ONU*. January 13, 2017. Available at: <https://nacoesunidas.org/bolsa-familia-favorece-autonomia-das-mulheres-diz-estudo-de-centro-da-onu/>

⁸⁰ Decree n° 1.904, May 13, 1996, available at: <https://www2.camara.leg.br/legin/fed/decret/1996/decreto-1904-13-maio-1996-431671-publicacaooriginal-1-pe.html>

- 107.** In 2004, however, there was an important advance in institutional protection for LGBTI people with the inauguration of the program *Brasil Sem Homofobia* (Brazil Without Homophobia),⁸¹ which was the fruit of coordination between the federal government and organized civil society. The objective of the program was to “promote the citizenship of gays, lesbians, *travestis*, transgender people and bisexuals, by guaranteeing them equal rights, combating homophobic violence and discrimination, and respecting the specificity of each of these groups within the population,”⁸² through articulation between different ministries and civil society.
- 108.** *Brazil Sem Homofobia* called for a series of instruments for the protection of LGBTI people, covering areas such as political coordination, legislation and justice, international cooperation, right to safety, education, health, work, and culture as well as policies for youths and women and against racism.
- 109.** The program also supported the creation of Human Rights Reference Centers to fight discrimination and violence against LGBTI people, thus making them “able to instigate the mobilization of integrated actions on the part of governmental and non-governmental institutions aimed at the production of knowledge that will enable the advancement of public policies for the development of articulated actions in the area of the promotion and defense of human rights”. The reference centers were spread throughout the country, providing services and legal, psychological, and social assistance. In 2007, Rio de Janeiro became the first state to create a state LGBTI program, *Rio Sem Homofobia* (Rio Without Homophobia), which at that time was under the direction of gay activist, Claudio Nascimento, today the executive coordinator of Grupo Arco-íris (The Rainbow Group).

⁸¹ Brasil Sem Homofobia Programa de Combate à Violência e à Discriminação contra GLTB e de Promoção da Cidadania Homossexual. (2014). Available at: https://bvsm.s.saude.gov.br/bvs/publicacoes/brasil_sem_homofobia.pdf

⁸² *Ibidem*, p. 11.

- 110.** Another important advancement was the adoption of the *Política Nacional LGBT* (National LGBT Policy), with the general objective being to “promote the integral health of the LGBT population, eliminating institutional discrimination and prejudice and contributing to the reduction of inequalities and the consolidation of *Sistema Único de Saúde* (Universal Health System) SUS as a universal, integral and equitable system.”⁸³
- 111.** The decision of the Federal Supreme Court (abbreviated “STF” in Portuguese) in Extraordinary Appeal (“RE”) #670422 should also be cited.⁸⁴ This ruling authorized trans persons to change their name on their civil registration directly through an administrative process, regardless of whether or not they chose to undergo a surgical redesignation procedure.
- 112.** On this last point, it must be noted that *travestis* and transsexual people who wish to alter the name and gender on the registration of their birth certificate can do so in any Civil Registry Office of Natural Persons in Brazil, without the need for the presence of an attorney or a public defender.
- 113.** This alteration does not require legal authorization, a medical report, or proof of sex reassignment surgery, pursuant to the RE 670422 decision. Since then, people over the age of 18 have been allowed to petition for the alteration of their own documents. For people under the age of 18, such alterations can only be made through the courts.
- 114.** It is possible to alter names, gender indications (son, “junior”, grandson, etc.) and gender on birth certificates and marriage certificates (with the authorization of the spouse). Nevertheless, trans people still encounter difficulties exercising this right directly at the service counters of Registry Offices, whether due to a lack of information, difficulty with

⁸³ Decree nº 2.836, December 1, 2011, available at: bvsms.saude.gov.br/bvs/saudelegis/gm/2011/prt2836_01_12_2011.html

⁸⁴ Supremo Tribunal Federal. *STF reafirma direito de transgêneros de alterar registro civil sem mudança de sexo*. August 15, 2018. Available at: www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=386930

access to documentation and fee waivers, or failures in the provision of service.

115. One of the main problems with the realization of this right is the lack of information regarding both the necessary formalities and what procedures should be taken in the event of discrimination in registry offices. The farther one is from urban centers, the greater the lack of information is. It is extremely necessary to invest in programs for the training/qualification of trans leaders, so that they can use support networks to provide the needed assistance to other trans people in order to successfully carry out the rectification of their documents as a way of guaranteeing their rights and respect for their identity. In addition, special attention must be paid to locations where, for whatever reason, trans people encounter difficulty accessing a Public Defender's Office.

116. In addition to these, some other examples include:

- a)** Decree nº 513/2010 of the Ministry of Social Security, which establishes that the provisions of Law nº 8.213/91 (General Social Welfare Policy) addressing dependents for social security purposes cover same-sex stable unions;⁸⁵
- b)** The decision in the trials *Arguição de Descumprimento de Preceito Fundamental nº 132 (Statement of Non-Compliance with Fundamental Precept no. 132)* and *da Ação Direta de Inconstitucionalidade nº 4277 (Direct Action of Unconstitutionality No. 4277)* by the Federal Supreme Court in 2011 that recognized the possibility of a same-sex stable union.⁸⁶
- c)** Resolution nº 175/2013 of National Council of Justice, which establishes that Registry Offices are prohibited from refusing licenses for the celebration of civil marriage or

⁸⁵ MPS Nº 513 of December 9, 2010, available at: www.normaslegais.com.br/legislacao/portariamps513_2010.htm

⁸⁶ Recently, Unesco classified the decision of the Federal Supreme Court to equate stable unions between people of the same sex to that of heterosexuals as documented heritage for humanity.

the conversion of a stable union into marriage for people of the same sex;⁸⁷

d) Decree n° 8.727/16, which establishes that entities of direct federal, municipal and foundational public administration, adopt the social name of any transsexual person or *travesti*, being prohibited from using pejorative and discriminatory expressions;⁸⁸

e) The classification of homophobia and transphobia as crimes of racism;⁸⁹

117. Despite being important institutional advances, which have had positive impacts on the lives of many LGBTI people, these measures have not nearly ended the strong violence that is perpetrated against LGBTI people in the country.

118. In fact, one hypothesis discussed by social leaders is that the visibility that LGBTI people, as well as Black people and women, have gained in recent years has awoken a backlash of hate from conservative groups. This hate has always existed, but with the threat of the advancement of the rights and visibility of these groups, it has begun to be organized in order to act on a variety of fronts to threaten the lives of this population.

1.4 The conservative wave in Brazil and the agenda of retrogression

119. Brazil has witnessed a rise in conservatism in recent years, the greatest expression of which was the election of its current president, Jair Bolsonaro, in 2018. Nevertheless, this process precedes President Bolsonaro's ascension as a political leader.

⁸⁷ Resolution n° 175 of May 14, 2013, available at: <https://atos.cnj.jus.br/atos/detalhar/1754>

⁸⁸ Decree n° 8.727, of April 28, 2016, available at: www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decreto/d8727.htm

⁸⁹ Supremo Tribunal Federal. *STF enquadra homofobia e transfobia como crimes de racismo ao reconhecer omissão legislativa*. June 13, 2019. Available at: www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=414010

- 120.** First, it must be recognized that Brazil is a considerably religious country. Recent research demonstrated that the number of Evangelical Christians has grown exponentially, rising to a level near to that of Catholicism: 31% of people in Brazil declare themselves to be Evangelical (around 63 million people) and 50% declare themselves to be Catholic (more than 104 million people).⁹⁰ This means that Christians make up 81% of the Brazilian population, approximately 167 million people.
- 121.** It is also worth noting that the growth in the number of Evangelicals is closely related to the rise in conservatism in Brazilian politics. This association is not just a natural affinity. In fact, there has been a declared and designed plan for political domination on the part of leaders of Evangelical churches in Brazil, who spare no effort to carry out their political agenda. This is not merely a theory. Proof can be found in the book *Plan of Power: God, Christians, and politics*, published in 2008 and written by Bishop Edir Macedo, the founder and leader of the Igreja Universal do Reino de Deus (IURD; Universal Church of the Kingdom of God), who is also the owner of Record TV, one of the largest television broadcasters in Brazil.⁹¹
- 122.** In the publication, Bishop Macedo writes openly of a “grand project for a nation designed by and intended for God.”⁹² He claims that it is God’s desire that the power and dominion in politics be in the hands of His people,⁹³ criticizing those people who, “despite confessing the Christian faith, aren’t able to identify and assimilate God’s objective in this area for His people (the project of political power in the nation)”.⁹⁴

⁹⁰ G1. *50% dos brasileiros são católicos, 31%, evangélicos e 10% não têm religião, diz Datafolha*. January 13, 2020. Available at: <https://g1.globo.com/politica/noticia/2020/01/13/50percent-dos-brasileiros-sao-catolicos-31percent-evangelicos-e-10percent-nao-tem-religiao-diz-datafolha.ghtml>

⁹¹ MACEDO, Bispo. *Plano de poder: Deus, os cristãos e a política* / Edir Macedo and Carlos Oliveira. Rio de Janeiro: Thomas Nelson Brasil, 2008.

⁹² *Ibidem*, p. 8.

⁹³ *Ibidem*, p. 12.

⁹⁴ *Ibidem*, p. 20.

Sadly, this sense of perception has been lacking in many Christians, who today total a population of nearly 40 million people in Brazil, and is growing every day.⁹⁵

This represents enormous potential, but these people, as a whole, are like a sleeping giant. They need to hear their wake-up call;

In other words: "Free yourselves!" This freedom starts with individual maturation, discomfort with certain situations, a consensus on a general ideal and mobilization.⁹⁶

123. The bishop energetically calls his followers to become politically engaged in the construction of a project for a nation devoted to God:

Everything is a question of the engagement, consensus and mobilization of Evangelicals. Never before, at any time in the history of the gospel in Brazil, has it been more opportune than it is now to call them incisively to participate in national politics.⁹⁷

The whole nation needs a national plan of political development. [...] The project of a nation dedicated to God depends on what we are emphasizing in our arguments: that Christians need to wake up to the reality of the project, get involved, engaged and become mobilized to execute this divine dream.

(...) the almost 40 million Christians who, aware now that they are a part of a great political project, must also be aware that they have a mission and that they need to embrace it, because it will certainly not be imposed by God. If God imposed this mission on Christians, together with His grand desire to conclude His plan, this project of a nation would already have been concluded.⁹⁸

124. The ascendancy of Evangelicals in politics is clear, primarily in the Federal Congress. This organization represents an obstacle to the secular State, especially with their attempts to stop the progress of various proposed laws and public policies that are against their religious

⁹⁵ Quantity referring to the year the book was published, in 2008.

⁹⁶ *Ibidem*, p. 20.

⁹⁷ *Ibidem*, p. 104.

⁹⁸ *Ibidem*, pp. 118 e 119.

principals, acting against the separation of religious arguments from the sphere of State decisions.⁹⁹

125. At the same time, the country is involved in a grave political crisis that led to the impeachment of President Dilma Rousseff in 2016. During her administration and especially during the process of impeachment, Rousseff was the target of a variety of actions which, under the banner of the fight against corruption, unleashed extremely sexist actions and offenses.¹⁰⁰
126. Right after her impeachment, a variety of structural measures were taken that had a direct, negative effect on the lives of Black people, women, and LGBTI people, such as a reform that made labor relations more flexible,¹⁰¹ and a Constitutional Amendment that froze public spending on health and education for 20 years,¹⁰² deepening social exclusions.
127. Nevertheless, the greatest proof of the advance of conservatism in Brazil was the election, in 2018, of ultraconservative politician Jair Bolsonaro as President of the Republic. Results for the Social Liberal Party, with which Bolsonaro affiliated to run for President, grew by 1,341% compared to the election of 2014, reaching 11.6 million votes as compared to 808,000. This wave has led to the election of politicians who adhere to the hate speech promoted by the then-candidate.¹⁰³

⁹⁹ PIZA, Evandro; SANTANA, Leonardo. *O movimento LGBT e a luta pelo Estado laico no Brasil*. In: Hasteemos a bandeira colorida: diversidade sexual e de gênero no Brasil. HILÁRIO, Erivan; MARRO, Kátia; NOGUEIRA, Leonardo; PAZ, Thaís Terezinha. (organizers). São Paulo: Expressão Popular, 2018, pp. 263-287.

¹⁰⁰ Brasil de Fato. “*Louca, burra, prostituta*”: pesquisa escancara machismo contra Dilma. January 6, 2020. Available at: <https://www.brasildefato.com.br/2020/01/06/louca-burra-prostituta-pesquisa-escancara-machismo-contra-dilma>

¹⁰¹ Law nº 13.467 July 13, 2017. Available at: www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13467.htm

¹⁰² Constitutional Amendment nº 95, of December 15, 2016. Available at: www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc95.htm

¹⁰³ G1. *PSL é o partido que ganhou maior número de votos na eleição para a Câmara; MDB e PSDB são os que mais perderam. 11 de October de 2018*. Available at: <https://g1.globo.com/politica/eleicoes/2018/eleicao-em-numeros/>

128. The presidential election of 2018 was marked by hate-filled discourse that legitimized attacks on LGBTI people all over the country and was also accompanied by religious fundamentalism consecrated as government policy. In fact, the religious fundamentalism and conservative anti-LGBTI rights agenda are now axes that heavily influence the actions of the Brazilian government.

129. In this context, there have been material and symbolic setbacks in the area of human rights. Jair Bolsonaro insists on denying the existence of racism in Brazil, alleging that this represents self-pity. SEPPIR, which in the Lula administration had the status of a cabinet ministry, has been continually losing influence. Recognition of families in *quilombola* communities diminished by 91.3%.¹⁰⁴ In addition, Bolsonaro's appointee for the presidency of *Fundação Palmares* (The Palmares Foundation)- an entity whose objective is to promote the preservation of cultural, social, and economic values arising from Black influence in the formation of Brazilian society – was an administrator who constantly uttered offenses toward the Black movement,¹⁰⁵ and who, recently, created an “anti-racist seal” that was awarded to people who, in his opinion, were unjustly accused of racism.¹⁰⁶

130. At the same time, women's rights have also been damaged. Discussion of abortion in Brazil is a taboo. There is a fear that easing the carrying of firearms will lead to an increase in cases of violence and murder of women.¹⁰⁷

noticia/2018/10/11/psl-e-o-partido-que-ganhou-maior-numero-de-votos-na-eleicao-para-a-camara-mdb-e-o-que-mais-perdeu.ghtml

¹⁰⁴ Metrôpoles. Com Bolsonaro, reconhecimento de famílias quilombolas caiu 91,3%. September 29, 2019. Available at: <https://www.metrolopes.com/brasil/direitos-humanos-br/com-bolsonaro-reconhecimento-de-familias-quilombolas-caiu-913>

¹⁰⁵ Carta Capital. *Ataques a Marielle, Lázaro Ramos e mais: as polêmicas de Sérgio de Camargo*. November 28, 2019. Available at: <https://www.cartacapital.com.br/politica/ataques-a-marielle-lazaro-ramos-e-mais-as-polemicas-de-sergio-de-camargo/>

¹⁰⁶ G1. *Fundação Palmares lança selo para quem for 'injustamente' acusado de racismo; entidades reagem*. May 29, 2020. Available at: <https://g1.globo.com/jornal-nacional/noticia/2020/05/29/fundacao-palmares-lanca-selo-para-quem-for-injustamente-acusado-de-racismo-entidades-reagem.ghtml>

¹⁰⁷ Senado Notícias. *Direitos das mulheres estão sob ameaça de retrocesso, afirmam debatedoras na CDH*. February 27, 2019. Available at: <https://www12.senado.leg>

In addition, a process to relinquish State responsibility is underway in relation to maintaining of the Casa da Mulher Brasileira.¹⁰⁸ On the other hand, the Ministry of Women, Family, and Human Rights is directed by Evangelical pastor Damares Alves, who has acted with strong prejudicial bias toward gender politics and the rights of LGBTI people. In January of 2019, as one of the first actions of the federal government under his administration, the LGBTI population was not included in the country's Guidelines for Human Rights.¹⁰⁹ This had an impact on the guarantee of resources, inclusion, and development of programs aimed at this population.

131. The Ministry of Foreign Relations instructed its diplomats to emphasize that, in accordance with the current position of the government, gender is synonymous with biological sex, ignoring gender expressions and identities.¹¹⁰ The government representatives present at the 41st session of the UN Human Rights Council called for a veto of the term “gender” in UN resolutions, with support from Russia, Saudi Arabia, and Pakistan, demonstrating a worrying LGBTIphobic alignment between these countries.

132. The Brazilian National Congress never supported or declared the possibility of enacting legislation that would effectively guarantee the rights of the LGBTI population in the country. As will be discussed later, the Federal Supreme

br/noticias/materias/2019/02/27/direitos-das-mulheres-estao-sob-ameaca-de-retrocesso-afirmam-debatedoras-na-cdh

¹⁰⁸ Brasil de Fato. *Violência contra mulher: militante relata “acirramento do patriarcado” com Bolsonaro*. November 25, 2019. <https://www.brasildefato.com.br/2019/11/25/violencia-contra-mulher-militante-relata-acirramento-do-patriarcado-com-bolsonaro>

¹⁰⁹ Metrôpoles. *Primeira MP de Bolsonaro exclui LGBTs de políticas de Direitos Humanos*. January 2, 2019. Available at: <https://www.metropoles.com/brasil/politica-brasil/primeira-mp-de-bolsonaro-exclui-lgbts-de-politicas-de-direitos-humanos>

¹¹⁰ Folha de São Paulo. *Itamaraty orienta diplomatas a frisar que gênero é apenas sexo biológico*. June 26, 2019. Available at: <https://www1.folha.uol.com.br/mundo/2019/06/itamaraty-orienta-diplomatas-a-frisar-que-genero-e-ape-nas-sexo-biologico.shtml>; Uol. *STF intima Itamaraty a fornecer documentos sobre gênero, mulher e LGBT*. October 30, 2019. Available at: <https://noticias.uol.com.br/colunas/jamil-chade/2019/10/30/stf-intima-itamaraty-a-fornecer-documentos-sobre-genero-mulher-e-lgbt.htm>

Court, thanks to a lawsuit heard in 2012, decided in June of 2019 that LGBTIphobia should be equated with the crime of racism until Congress decides to approve some type of law to criminalize LGBTIphobia.

133. Nevertheless, religious groups that feel supported by the current government's policy proposals submitted a proposal for a law that criminalizes LGBTIphobia in Brazil, but that shields religious groups, churches, and religious individuals from criminal prosecution with the justification of religious freedom. Such groups mobilize constantly to oppose policies that promote education and professional training for trans people, as well as questions related to sexual education and combating discrimination based on sexual orientation and gender identity in schools. This represents a serious threat to progress on LGBTI rights that had recently been achieved in Brazil in the face of persistent violence perpetrated against this population.

134. Another point of concern is that, on June 28, 2019, while the LGBTI movement was celebrating the events that led to the establishment of LGBTI Pride Day, the Brazilian government, through Decree 9.883/2019, extinguished the National LGBTI Council and substituted it with the National Council for Combating Discrimination, aimed at individuals and groups affected by discrimination or intolerance.¹¹¹ With this act, the government made lesbians, gays, bisexuals, transsexual women and *travestis*, trans men and intersexual people invisible. In addition to taking LGBTI people out of the Council, the decree called for a composition of just six members, with only three from civil society. It is a strategy that limits the participation of the LGBTI population in the country's institutional politics by closing of channels that allow for debate about Brazilian political life and its impact on the lives of LGBTI people.

135. To make the situation worse, State programs for the protection of the rights of LGBTI people that had been consi-

¹¹¹ Decree nº 9.759, of April 11, 2019, available at: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Decreto/D9759.htm

dered successful – such as *Rio Sem Homofobia*, in Rio de Janeiro¹¹² – have been experiencing a dismantling process, including frequent layoffs and late payment of salaries.

136. Another worrying problem in Brazil is the situation faced by defenders of human rights. On March 14, 2018, Marielle Franco, a councilwoman in the city of Rio de Janeiro, was assassinated.¹¹³ A Black lesbian woman who was raised in the favela of Maré, Franco challenged and frightened a political system that had always been white, masculine, and cis-heteronormative. Marielle was an expression of everything that the conservative wave on the rise in Brazil over the last several years has been trying to destroy.

137. In the year of Franco's death, Rio de Janeiro was experiencing federal military intervention under the justification of controlling urban violence. Marielle was raising the alarm that this intervention would mean a worsening of violence inflicted on people living in the favelas and used the City Chamber as a platform to denounce the deaths of Black youths in the favelas. One day before she died, when speaking out on social media against another homicide of a young Black man at the hands of the Military Police of Rio de Janeiro, Marielle asked: "How many more will need to die for this war to end?". Until today, investigations have not determined who was behind the assassination of Marielle Franco.

138. One year after the death of Marielle, then federal congressman Jean Wyllys was forced to renounce his mandate and, in January of 2019, leave Brazil after suffering from pressure and threats.¹¹⁴ Jean Wyllys was elected in 2010 as the first openly gay representative committed to the LGBTI fight,

¹¹² Brasil de Fato. "Rio Sem Homofobia" sofre com atrasos de salários e infraestrutura precária. March 29, 2019. Available at: <https://www.brasildefatorj.com.br/2019/03/29/rio-sem-homofobia-sofre-com-atrasos-de-salarios-e-infraestrutura-precaria>

¹¹³ G1. Vereadora do PSOL, Marielle Franco é morta a tiros na Região Central do Rio. March 14, 2018. Available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/vereadora-do-psol-marielle-franco-e-morta-a-tiros-no-centro-do-rio.ghtml>

¹¹⁴ G1. Renúncia de Jean Wyllys ao terceiro mandato é oficializada na Câmara. January 29, 2019. Available at: <https://g1.globo.com/politica/noticia/2019/01/29/renuncia-de-jean-wyllys-ao-terceiro-mandato-e-oficializada-na-camara.ghtml>

for which he became the victim of attacks and accusations related to his sexual orientation.

139. As a result of this situation of harassment against a congressman and the lack of interest of the Brazilian State in investigating these facts, as well as to guarantee his safety, in November of 2018, the IACHR issued Precautionary Measures 1262-18.¹¹⁵ These measures were issued in response to the failure to investigate the complaints of threats on Wyllys's life as he was constantly slandered by fake news and slurs that increased his vulnerability, making him a target of hate groups.

140. There is a climate of constant threats hovering over human rights defenders in the country, and those that openly defend the rights of the LGBTI population are exposed to this kind of violence.

141. On November 12, 2019, during a thematic hearing held during the 174th Period of Sessions of the IACHR in Quito, Ecuador, LGBTI activists and Afro-descendants from Brazil, Colombia, Peru, and the Dominican Republic presented, together with Race and Equality, the situation of violence and lack of protection of their rights in each of these States.

142. On the occasion, Bruna Benevides of ANTRA declared:

For a long time, we have been seen as enemies of the State, since the days when we were hunted, imprisoned or murdered during the military dictatorship. And today, we are once again feeling fear as we walk the streets. I, as a defender of human rights, don't feel safe, despite the advances we have made, because our State leaders, ministers, representatives and everyone who is close to the authoritarian structure of government share in the politics of racist hate, sexism and LGBTIphobia that has been inflicting violence on us every day.¹¹⁶

¹¹⁵ IACHR. Precautionary Measure N. 1262-18. Resolution N. 85/2018. *Jean Wyllys de Matos Santos e família em relação ao Brasil*. November 20, 2018. Available at: www.oas.org/es/cidh/decisiones/pdf/2018/85-18MC1262-18-BR-pt.pdf

¹¹⁶ The hearing can be seen at: https://www.youtube.com/watch?time_continue=2&v=syupQBWvlf8&feature=emb_logo

- 143.** It is clear that the Afro-LGBTI population in Brazil is under constant threat, as we will show in greater detail in the chapters that follow.

Murders of LGBTI people



Chapter 2

Murders of LGBTI people

*If today the life expectancy of trans people in Brazil is 35 years, it is because there is a death policy in place against bodies that are not recognized as legitimate, that adopts an anti-trans agenda that is against rights for the LGBTI population.*¹¹⁷

*Bruna Benevides (Fortaleza)*¹¹⁸
Associação Nacional de Travestis e Transexuais (ANTRA)

144. In 2015, the IACHR manifested its concern over the number of homicides of LGBTI people in Brazil, pointing out that Brazilian statistics indicated a considerably higher number of murders than those of any other Member State in the Organization of American States (OAS).¹¹⁹

145. In 2019, the IACHR emphasized that, according to information received, Brazil was the country with the greatest number of homicides of trans people in the world, highlighting its concern that, since 2014, the State had not published its “Report on Homophobic Violence in Brazil,” as it previously had in the years of 2011 and 2013.¹²⁰

¹¹⁷ The hearing can be seen at: https://www.youtube.com/watch?time_continue=2&v=syupQBWvlf8&feature=emb_logo

¹¹⁸ Despite having been born in Ceará, Bruna Benevides is a resident of the city of Maricá (RJ).

¹¹⁹ IACHR. *Violência contra Pessoas Lésbicas, Gays, Bissexuais, Trans e Intersexo nas Américas*. 2015, p. 96, par. 124. Available at: <http://www.oas.org/pt/cidh/docs/pdf/ViolenciaPessoasLGBTI.pdf>

¹²⁰ IACHR. *Avances y Desafíos hacia el reconocimiento de los derechos de las personas LGBTI en las Américas*. 2019, p. 91, par. 176. Available at: <http://www.oas.org/es/cidh/informes/pdfs/LGBTI-ReconocimientoDerechos2019.pdf>

146. This chapter will examine general data related to the disturbing number of murders in Brazil, with special attention given to the specifics that pertain to Black and LGBTI people.

2.1 Information contained in the 2019 Atlas of Violence

147. According to the Atlas of Violence,¹²¹ there were 65,602 homicides in Brazil in 2017, a rate of approximately 31.6 deaths per one hundred thousand inhabitants. This is the country's highest level in history for intentional lethal violence.¹²² This lethal violence predominately involves youths. In 2017, 35,783 youths were murdered in Brazil, which represents a rate of 69.9 homicides per 100 thousand youths in the country. This is a record rate for the last ten years.¹²³

148. There was a growth in the number of murders of women in Brazil in 2017, with around 13 murders per day, totaling 4,936 women dead, the highest number registered since 2007.¹²⁴ From 2007 to 2017, there was an increase of 20.7% in the national homicide rate for women, going from 3.9 to 4.7 women murdered per 100 thousand women. During this period, there was a growth in the rate in 17 of Brazil's states.

149. While the homicide rate for non-Black women per 100 thousand women grew by 4.5% from 2007 to 2017, the homicide rate for Black women grew 29.9%. The Atlas indicates

¹²¹ Annual publication of the Instituto de Pesquisa Econômica Aplicada [Institute of Applied Economic Research] (IPEA) which counts murders that have occurred in Brazil. Instituto de Pesquisa Econômica Aplicada; Fórum Brasileiro de Segurança Pública. *Atlas da violência 2019*. 2019. Available at: <http://www.ipea.gov.br/atlasviolencia/download/19/atlas-da-violencia-2019>

¹²² The Atlas highlights that, at the same time that there was a growth of 4.2% in the overall homicide rate in the country from 2016 to 2017, there was also a continuity in the gradual process of a reduction in homicides in a large number of states in the Federation, which had already been seen in prior years. *Atlas da violência 2019* / Organizadores: Instituto de Pesquisa Econômica Aplicada; Fórum Brasileiro de Segurança Pública. Brasília: Rio de Janeiro: São Paulo: Instituto de Pesquisa Econômica Aplicada; Fórum Brasileiro de Segurança Pública, p. 5 and 14. Available at: <http://www.ipea.gov.br/atlasviolencia/download/12/atlas-2019>

¹²³ Ibidem.

¹²⁴ Ibidem, p. 35.

that, in absolute numbers, the difference is even more stark: among non-Black women, growth is 1.7%, while for Black women it is 60.5%. Considering the most recent data available, the homicide rate for non-Black women was 3.2 per 100 thousand non-Black women, while among Black women, the rate was 5.6 for every 100 thousand Black women.¹²⁵

- 150.** Black women made up 66% of all women murdered in the country in 2017. The much greater growth of lethal violence among Black women shows the enormous difficulty that the Brazilian State has in guaranteeing the universality of its public policies.¹²⁶
- 151.** Additionally, in 2017, 75.5% of murder victims were Black. The homicide rate per 100 thousand Black people was 43.1%, while that of non-Black people (whites, Asians, and indigenous) was 16.0%.¹²⁷ In one decade (from 2007 to 2017), the rate for Black people grew 33.1%, while that of non-Black people grew 3.3%. Analyzing the variation from 2016-2017, the death rate for non-Black people showed relative stability, with a reduction of 0.3%, while the number for Black people grew by 7.2%.¹²⁸
- 152.** Historically, countless organizations have accused the Brazilian State of remaining silent about the racial aspect of murders in Brazil. In this respect, the report *Violência racial: uma leitura sobre os dados de homicídios no Brasil* (Racial violence: a reading of homicide data in Brazil), published in 2009 by the Geledés Instituto da Mulher Negro (Geledés Institute for Black Women) and by Global Rights Partners for Justice, concluded that:

The social actors involved with the subject of public safety, urban violence and/or the defense of human rights in Brazil have a tendency to remain silent about the racial aspect that is contained in the data on homicides in Bra-

¹²⁵ Ibidem, p. 38.

¹²⁶ Ibidem, p. 39.

¹²⁷ Ibidem, p. 49.

¹²⁸ Ibidem.

zil, thus relativizing this process of extermination. The euphemisms that are used to cloud the evidence of the concentration of lethal practices and actions against the Black population dialogue with the expedients known in Brazilian culture for hiding racism and racial discrimination, which are determining factors for understanding the level of social exclusion and murders of Black people in Brazil.¹²⁹

2.1.1 The data on LGBTI people in the Atlas of Violence

153. The Brazilian State's lack of interest in producing data on the murder of LGBTI people is notorious. In and of itself, this disinterest proves the lack of political will to increase awareness or combat these murders, explaining why the necessary mechanisms are not created.

154. In 2019, for the first time, the Atlas of Violence included a section that was dedicated to LGBTIphobic violence. Nevertheless, the information is meager. The Atlas analyzed data on murders of LGBTI people by looking at complaints registered with Disque 100 (Dial 100),¹³⁰ which is linked to the Ministry of Women, Family, and Human Rights.

155. Even though the data base for Disque 100 is made up only of complaints registered by telephone, it is interesting to observe the tendency toward elevated homicide rates for LGBTI people over the last few years in Brazil. From 2011 to 2017, there was a considerable increase in the number of telephone calls to denounce murders of LGBTI people. In 2011, there were only 5 registered, which indicates the

¹²⁹ SILVA, Rodnei J. da, CARNEIRO, Sueli. *Violência racial: uma leitura sobre os dados de homicídios no Brasil* / Rodnei Jericó da Silva e Suelaine Carneiro. – São Paulo: Geledés Instituto da Mulher Negra; Global Rights Partners for Justice, 2009, p. 111.

¹³⁰ This is a telephone number that operates as a channel to receive, analyze and forward complaints of violations of human rights in regard not only to LGBTI people, but also black people, children, the elderly, and others. The Atlas also uses data from the administrative registers of the *Sistema de Informação de Agravos de Notificação* (Sinan), of the Ministry of Health, a system that collects data on interpersonal/self inflicted violence from health services in Brazil. However, Sinan does not have data on murders, just on other kinds of violence against the LGBTI population.

weakness of the data at the time. But in 2017, there were 193.¹³¹ The Atlas considers two of the possibilities that would justify this:

- a) The change may have been caused by an increase in reporting, occurring as a result of the strong actions by the LGBTI movement in Brazil, which managed to increase the visibility of cases. However, if this were the only cause, there should also have been an increase in regard to other complaints about violence against the LGBTI population, such as attempted murder and bodily injury, which was not verified by the existing data.¹³²
- b) Regarding the possibility that, during the period, Disque 100 was more well-known, it can be argued that, if that were the case, there would also have been a significant increase in complaints of violence against the elderly, children and other groups, which also was not verified by the data.¹³³

156. The synthesis of information from the Atlas presents the LGBTI population in a homogenous manner, without specifying whether the acts of violence were committed against lesbians, gays, bisexuals, transsexuals, *travestis* or intersex people. In fact, nowhere in the Atlas of Violence are trans women even mentioned, despite the gravity of the situation in which they find themselves in Brazil.

157. Additionally, even though there is a brief mention of the race of the victims, the type of violence that different races suffer is not specified, and only one classification is used for both homosexual and bisexual people, without considering gender identity.

¹³¹ Instituto de Pesquisa Econômica Aplicada; Fórum Brasileiro de Segurança Pública. *Atlas da violência 2019*. 2019, p. 58. Available at: <http://www.ipea.gov.br/atlasviolencia/download/19/atlas-da-violencia-2019>

¹³² Ibidem.

¹³³ Ibidem.

158. Finally, the Atlas declares that it has not identified the size of the LGBTI population in Brazil, recognizing that this ignorance makes it impossible to make calculations on the relative prevalence of violence against this social group and diagnostics that would be able to support the production of specific public policies to mitigate violence against the LGBTI population.¹³⁴

2.2 Data produced by civil society

159. The greatest producers of data on murders committed against the LGBTI population are some organizations of civil society, which is the case with the ANTRA and the Grupo Gay da Bahia. In addition, the *Dossiê sobre Lesbocídio no Brasil* (Dossier on the Murder of Lesbians in Brazil), which was released in 2017, analyzed murder cases of lesbian women from 2014 to 2017.¹³⁵

160. The organizations that dedicate themselves to mapping violence face countless difficulties and do not have a unified methodology for data collection, especially data broken down by race. The work is done mainly by using two sources: news broadcast by the media and/or information contributed by close collaborators.

161. This methodology leads to very high underreporting, given that a great number of cases do not make it into the news. According to the Grupo Gay da Bahia:

We are the first to recognize the underreporting in this compilation, because the media is far from able to report on all of the cases, whether it's because they ignore the gender identity or sexual orientation of the victims, or due to gaps in police reports that make it possible for the non-specialized eye to identify the underlying characteristics of hate crimes. This is especially true because violence against the LGBT+ population is multifaceted and there are no precise instruments for monitoring it, which is lar-

¹³⁴ Idem, p. 56.

¹³⁵ DIAS, Maria Clara; PERES, Milena Cristina Carneiro; SOARES, Suane Felipe. *Dossiê sobre lesbocídio no Brasil: de 2014 até 2017*. Rio de Janeiro: Livros Ilimitados, 2018.

gely due to the lack of interest from State authorities in promoting the citizenship of these people.

The underreporting of violent deaths of LGBT+ people in Brazil represents an obstacle to understanding the true and cruel dimension of this social tragedy, blocking the construction of public policies to combat it and, more importantly, eradicate the culture of impunity.¹³⁶

162. In the same sense, Instituto Transformar stated that:

In regard to deaths involving travestis, transsexual women and transsexual men, many cases end up not being identified by public authorities and/or the media, who repeatedly report the sex and name of the victim as found on their birth certificate, or fail to identify the gender identity as a determining factor (identifying them only as homosexuals), which demonstrates ignorance/negligence to the right of expression and gender identity.

163. It is important to point out that this underreporting is not homogenous. The more remote the region is where a murder occurs, the less the possibility is that the case will be reported in the media. It is known that, in some favelas, drug traffickers kill people and throw their bodies in rivers, some of which even contain crocodiles, so that there are no reports of these bodies. Such murders are not reported in the news.

164. Civil society organizations depend on the availability of people who are technically skilled in meticulous searches throughout all national media and can stay in touch with collaborators from each state, throughout a geographically large and highly populated country like Brazil.

165. Annually, ANTRA publishes a dossier on murders and violence committed against the *travesti* and transsexual population in Brazil. ANTRA's methodology is to collect news reports regarding violence and reports on incidents that do not reach the news from their collaborators and partners working in Brazil's various cities and states.

¹³⁶ OLIVEIRA, José Marcelo Domingos de. *Mortes violentas de LGBT+ no Brasil – 2019: Relatório do Grupo Gay da Bahia*. Orgs.: José Marcelo Domingos de Oliveira; Luiz Mott. – 1. ed. – Salvador: Editora Grupo Gay da Bahia, 2020, p. 20.

- 166.** In the first six months of 2020, there was an increase of 39% in murder cases of trans people in Brazil compared to the same period of 2019. In 2019, there were 64 occurrences in the first six months. In 2020, there were 89 cases.¹³⁷
- 167.** In 2019, ANTRA reported the murder of 124 trans people, 121 of whom were *travestis* and transsexual women, along with three trans men.¹³⁸ The youngest of the people murdered was only 15 years of age. Three of the cases, two that were stoned to death and one beaten and hung, displayed signs of sexual violence. In 2018, the youngest victim was only 17 years old.¹³⁹
- 168.** Contrary to what occurs among cisgender people, among whom most murder victims are men, in the case of trans people, women are the main target of lethal violence, representing 97.7% of the cases (121).¹⁴⁰ According to ANTRA, 67% of the murders were committed against sex workers and 64% of the cases happened on the street.¹⁴¹
- 169.** While it was not possible to establish a pattern for the relationship between murderers and their victims in 2019, due to a lack of data, ANTRA estimated in 2018 that about 80% of the accused had no direct relationship with the victim or a casual relationship without social, affective or other types of direct involvement. In cases with no direct relationship, most aggressors were clients or potential clients of victims who were sex workers.¹⁴²

¹³⁷ Associação Nacional de Travestis e Transexuais. *Boletim nº 03/2020. Assassinatos contra travestis e transexuais em 2020*. Available at: <https://antrabrasil.files.wordpress.com/2020/06/boletim-3-2020-assassinatos-antra.pdf>

¹³⁸ Associação Nacional de Travestis e Transexuais do Brasil (ANTRA); Instituto Brasileiro Trans de educação (IBTE). *“Dossiê Assassinatos e violência contra travestis e transexuais no Brasil em 2019”*. 2019, p. 22. Available at: <https://antrabrasil.files.wordpress.com/2020/01/dossic3aa-dos-assassinatos-e-da-viol-c3aancia-contra-pessoas-trans-em-2019.pdf>

¹³⁹ *Ibidem*, p. 30.

¹⁴⁰ *Ibidem*, p. 34.

¹⁴¹ *Ibidem*, p. 32.

¹⁴² Associação Nacional de Travestis e Transexuais do Brasil (ANTRA); Instituto Brasileiro Trans de Educação (IBTE). *Dossiê Assassinatos e violência contra travestis e transexuais no Brasil em 2018*, p. 23. Available at: <https://antrabrasil.files.wordpress.com/2020/01/dossic3aa-dos-assassinatos-e-da-viol-c3aancia-contra-pessoas-trans-em-2018.pdf>

170. Additionally, 80% of the cases were committed with elements of cruelty, excessive violence, multiple methods of violence, or particularly brutal violence. There was an increase in cases of stoning and in murders involving knives.¹⁴³

171. In regard to race, ANTRA's publication reveals an alarming statistic: 82% of the victims in the murder cases were identified as Afro-descendant people.¹⁴⁴ This fact reveals how whiteness, associated with cisgenerity, allows for the termination of certain lives when they don't align with the cis, white, heteronormative standard.

172. LGBTI activists make very clear that the murders of lesbian women are widely ignored and made invisible. In this respect, Black lesbian activist Jézus Ipólito, speaking about the deaths of Afro-descendant lesbians, says:

The Black lesbian community is dying. Our deaths are made invisible just as our lives are. Social movements that should support our demands and be our allies in furthering our agenda, simply go on systematically ignoring us! Even within our own lesbian and bisexual movement, we have to fight for space so that some voices are not hegemonic, so that antiracism will be the current practice for ALL, so that our diverse life experiences will be heard by all. Our names aren't even remembered on August 29, Lesbian Visibility Day. If we are not for us, no one will be.¹⁴⁵

173. In the same sense, professor Fátima Lima states that the lives and deaths of lesbian women are stained by the act of being erased:

The violence suffered by Black lesbians that is racialized in contexts in the South is still given little visibility and is not discussed or faced. Scarred and kept silent by pain, their stories are impacted by different forms of violence

files.wordpress.com/2019/01/dossie-dos-assassinatos-e-violencia-contra-pessoas-trans-em-2018.pdf

¹⁴³ Ibidem, p. 39.

¹⁴⁴ Ibidem, p. 34.

¹⁴⁵ Geledés – Instituto da Mulher Negra. Do luto à luta: não esqueceremos Luana Barbosa dos Reis, morta por PMs em Ribeirão Preto. 26 de abril de 2019. Available at: <https://www.geledes.org.br/do-luto-luta-nao-esqueceremos-luana-barbosa-dos-reis-morta-por-pms-em-ribeirao-preto/>

that go from injurious verbal abuse to corrective rape, beatings and murder. In the Brazilian LGBTTT movement, for example, lesbian women are always complaining that they are being erased.¹⁴⁶

- 174.** In 2017, the last year registered by the *Dossiê do Lesbocídio*, 54 cases were compiled. Of these cases, 53% were deaths that occurred before the victim reached 24 years of age. In 54% of the cases in 2016, lesbian women that were murdered and “driven to suicide” (in the dossier’s term) had a more masculine gender expression. In 43% of the cases, victims were Black.¹⁴⁷ The dossier points out a significant growth in murders of lesbian women over the years, with 16 cases in 2014, 26 in 2015, 30 in 2016 and 54 in 2017. This means that, from 2014 to 2017, there was an increase of about 237% in murders of lesbian women in Brazil.¹⁴⁸
- 175.** GGB publishes an annual report that maps “violent deaths” of LGBTI people in Brazil, a category used by the organization to count both murders and suicides. In 2019, the GGB counted 329 violent deaths, with 297 murders and 32 suicides: 174 gay men, 118 *travestis* and transsexuals, 32 lesbian women, and 5 bisexual people, arriving at a statistic affirming that every 26 hours, an LGBTI person is murdered in Brazil.¹⁴⁹
- 176.** The disparity between the number of murders reported in ANTRA’s report and in the GGB’s (while ANTRA’s report lists 124 murders, in the report of the GGB there are 118)

¹⁴⁶ LIMA, Fátima. *Raça, Interseccionalidade e Violência: corpos e processos de subjetivação em mulheres negras e lésbicas*. In: Cadernos de Gênero e Diversidade. Universidade Federal da Bahia. Universidade Federal da Integração da Lusofonia Afro-Brasileira. Salvador/São Francisco do Conde: UFBA, UNILAB, v. 4, n. 2, 2015, p. 68. Available at: <https://portalseer.ufba.br/index.php/cadgendiv/article/view/26646/16098>

¹⁴⁷ DIAS, Maria Clara; PERES, Milena Cristina Carneiro; soares, SUANE FELIPPE. *Dossiê sobre lesbocídio no Brasil: de 2014 até 2017*. Rio de Janeiro: Livros Ilimitados, 2018, p. 19.

¹⁴⁸ Idem, pp. 38, 47, 55 e 63.

¹⁴⁹ OLIVEIRA, José Marcelo Domingos de. *Mortes violentas de LGBT+ no Brasil – 2019: Relatório do Grupo Gay da Bahia*. Orgs.: José Marcelo Domingos de Oliveira; Luiz Mott. – 1. ed. – Salvador: Editora Grupo Gay da Bahia, 2020, pp. 12 and 13.

demonstrates the need to strengthen Brazilian civil society organizations in order to arrive at a unified methodology for this data collection, given the lack of governmental data.

177. In regard to race, the GGB report indicates that of the 329 violent deaths, 122 were Black (37.08%) and 121 white (36.78%). Given that there was no identification of race for 86 victims (26.14%),¹⁵⁰ it is assumed that the number of Black people, certainly, is greater than the number reported. At this point, it is necessary to add some considerations.

178. Professor Fátima Lima, despite recognizing that the GGB report represents a powerful instrument, believes that there are some gaps in the racial analysis that allow for reflection:

The number of victims that are included in the group “not declared”, together with the total of *pretos* and *pardos*, indicates the need for a deeper and more critical look from the perspective of the racial debate, because a large part of the “not declared” may be in the category of Black people (*pretos/as* and *pardos/as*).¹⁵¹

179. Without wanting to fixate on the greater percentage rates in the GGB report, Fátima Lima proposes a reflection on the invisibility of the lesbian group, comparing it to how the percentages for race are made invisible from an intersectional viewpoint:

It is impossible not to relate the experiences that are lived day-to-day by Black people to those lived by lesbians, particularly those that make up the groups who are most persecuted and exposed to vulnerabilities: the poor, those living in favelas, poor communities, and outskirts of large and small cities and the countryside.¹⁵²

¹⁵⁰ Idem, p. 53.

¹⁵¹ LIMA, Fátima. *Raça, Interseccionalidade e Violência: corpos e processos de subjetivação em mulheres negras e lésbicas*. In: *Cadernos de Gênero e Diversidade*. Universidade Federal da Bahia. Universidade Federal da Integração da Lusofonia Afro-Brasileira. Salvador/São Francisco do Conde: UFBA, UNILAB, v. 4, n. 2, 2015, p. 77. Available at: <https://portalseer.ufba.br/index.php/cadgendiv/article/view/26646/16098>

¹⁵² Idem, p. 78.

- 180.** In commenting on its racial data, GGB reports the difficulty of working with this subject-matter and recognizes that they are lacking stricter data methods:

With the lack of information from the media on race, skin color, and ethnicity, we try to identify these details by using images of victims published in the news covering the death, recognizing, nevertheless, the lack of strict classificatory methods for self-definition or access to civil registries.¹⁵³

- 181.** In other words, when it is impossible discover a person's self-declared race people doing research must form an opinion and determine the race of the victim, which certainly opens up the possibility for mistakes. Meanwhile, as described above, organizations primarily use journalistic news sources for the collection of data, causing a major underreporting of cases that do not make the news.

- 182.** Brazilian media is not able to cover homicides in certain parts of the country or is not interested in doing so. The media is also unable or unwilling to bring attention to the deaths of certain kinds of people. In other words, there are deaths of LGBTI people that are relegated to invisibility and forgotten. It is worth asking: what is the skin color of the person whose death was reported in the newspaper? What is the skin color of the one that was not registered? What is the color of the invisible?

- 183.** The probability that the murder of a gay middle-class white man who lived in an elite neighborhood is reported in the newspaper is much greater than that of an LGBTI person who did not live in a large urban center and was from a more distant region. To this effect, at ANTRA's National Meeting in 2019, at which Race and Equality was present, activist Pitty Barbosa of the organization Igualdade Guaíba (Guaíba Equality) commented on how the deaths of *travestis* in the interior regions of the country are invisible in the

¹⁵³ OLIVEIRA, José Marcelo Domingos de. *Mortes violentas de LGBT+ no Brasil – 2019: Relatório do Grupo Gay da Bahia*. Orgs.: José Marcelo Domingos de Oliveira; Luiz Mott. – 1. ed. – Salvador: Editora Grupo Gay da Bahia, 2020, p. 52.

media. Barbosa also emphasized that most of these deaths are Black *travestis*, who came from other states and who engage in sex work alongside highways.

184. It is necessary to recognize that socio-racial hierarchies in Brazil not only determine conditions of life, but also conditions of death. There is a hierarchy between the deaths that are visible and those that are not. The color of one's skin is what separates the two, intersected with factors such as poverty, gender, geographic location, and a variety of other factors of hierarchical 'invisibilization.'

185. Fátima Lima, expanding her reflection on the invisibility of lesbian and Black bisexual people, says:

Depending on the places we occupy and the absence of social and individual rights that are converted into privileges, some lives turn into spaces for the investment in politics of a person's ability to be killed. For us to combat and minimize the statistics and the different violence involved in the experiences described here, we need, before all else, to remove Black lesbians and bisexuals from their invisibility. Our lives matter.¹⁵⁴

186. Lima's reflection, beyond helping us to reflect on lesbian invisibility itself, allows us to expand this thinking to the Black sector of the LGBTI community as a whole, and their experience of constantly being made invisible in relation to the hegemonic white LGBTI movement.

187. When one understands that Afro-LGBTI people are persecuted due to various social markers of exclusion, one can perceive that this population lives in space where their lives are worthless and are more 'killable' than others, spaces where deaths are naturalized and do not spark the kind of collective public indignation that would put pressure on the

¹⁵⁴ LIMA, Fátima. *Raça, interseccionalidade e violência: corpos e processos de subjetivação em mulheres negras e lésbicas*. In: Cadernos de Gênero e Diversidade. Universidade Federal da Bahia. Universidade Federal da Integração da Lusofonia Afro-Brasileira. Salvador/São Francisco do Conde: UFBA, UNILAB, v. 4, n. 2, 2015, p. 78. Available at: <https://portalseer.ufba.br/index.php/cadgendiv/article/view/26646/16098>

State to guarantee the possibility of a dignified existence for these lives.

2.3 Protective legislation

188. Despite the positive advancements described above, the National Congress has never passed legislation for the protection of LGBTI people's rights. All of the rights won by the community on a national level have been approved by the judicial or executive branches following pressure from civil society.¹⁵⁵

189. It is valuable to analyze some of the perceptions and discussions that surround the laws or proposed laws that aim to protect these groups.

2.3.1 Law 11.340/2006 - Maria da Penha Law

190. The Maria da Penha Law¹⁵⁶ defined domestic and familial violence against a woman as any action or omission based on gender that causes death; injury; physical, sexual, or psychological suffering; or moral or material damage.¹⁵⁷

¹⁵⁵ Examples include: a) Resolution nº 175/2013 of the Conselho Nacional de Justiça [National Council of Justice], that establishes that Registry Offices are prohibited from refusing licenses for and the celebration of civil marriage or the conversion of a stable union into marriage for people of the same sex; b) Decree nº 8.727/16, which establishes that entities of direct federal, municipal and foundational public administration, adopt the social name of any transsexual person or travesti, being prohibited from using pejorative and discriminatory expressions; c) Decree nº 513/2010 of the Ministry of Social Security, which establishes that the provisions of Law nº 8.213/91 (General Social Welfare Policy – RGPS) that addresses dependents for social security purposes cover stable unions between people of the same sex; d) The decision in the trial *Arguição de Descumprimento de Preceito Fundamental nº 132 and da Ação Direta de Inconstitucionalidade nº 4277* by the Federal Supreme Court in 2011 that recognized the possibility of a stable union between people of the same sex. Recently, Unesco classified the decision of the Federal Supreme Court to equate stable unions between people of the same sex to that of heterosexuals as documented heritage for humanity.

¹⁵⁶ Law nº 11.340, of August 7, 2006, available at: www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm

¹⁵⁷ Geledés Instituto da Mulher Negra. Brasil só criou Lei Maria da Penha após sofrer constrangimento internacional. July 7, 2010. Available in: <https://www.geledes.org.br/brasil-criou-lei-maria-da-penha-apos-sofrer-constrangimento-internacional/>

- 191.** One of the approaches taken by the Maria da Penha Law to curbing violence and protecting victims, is the guarantee of protective measures, which may be applied after a complaint of aggression is made by the victim at a police station. Possible measures include the suspension of possession or the restriction of the right to carry arms; expulsion from the home or location of cohabitation with the victim; orders to distance themselves and avoid any type of contact with the victim, her family, and witnesses; prohibition from certain places to separate the aggressor from the victim; and the obligation for the aggressor to pay provisional alimony or support to the victim.
- 192.** It is important to emphasize that for many years, Black activists have pointed out that there is a difference in the impact this legislation has had on white women and its impact for Black women. As stated in the previous chapter, between 2007 and 2017, the Atlas of Violence demonstrated that there was a growth of 1.7% in the number of murders of white women and of 60.5% in the number of murders of Black women,¹⁵⁸ which demonstrates a failure to protect this population.
- 193.** Furthermore, despite the fact that the legislation covers violence that is based on gender, there has been no uniformity in judicial decisions about whether the Maria da Penha Law applies to *travestis* and transsexual people, leading to a lack of legal security for them.
- 194.** For this reason, in May of 2019, the Senate Constitution and Justice Commission approved PL (Proposed Law) 191/2017,¹⁵⁹ which included trans women in the Maria da Penha Law in a more explicit manner. The proposed law adds the term “gender identity” to an article of the Maria da Penha Law stating that any woman, regardless of class,

¹⁵⁸ Atlas da violência 2019 / Org. Instituto de Pesquisa Econômica Aplicada; Fórum Brasileiro de Segurança Pública. Brasília: Rio de Janeiro: São Paulo: Instituto de Pesquisa Econômica Aplicada; Fórum Brasileiro de Segurança Pública, p. 38. Available at: <http://www.ipea.gov.br/atlasviolencia/download/12/atlas-2019>

¹⁵⁹ Projeto de Lei do Senado n° 191, of 2017, available at: <https://www25.senado.leg.br/web/atividade/materias/-/materia/129598>

race, ethnicity, sexual orientation, income, culture, level of education, age, or religion cannot be subject to violence. Currently, PL 191/2017 is awaiting deliberation on the floor of the Senate, and, if approved, will then be voted on in the House of Representatives.

195. Maria Eduarda Aguiar, the first trans woman to receive a law license from the OAB-RJ under her chosen name and the president of the Grupo Pela Vidda, is doubtful regarding the approval of this proposal: “There is strong resistance on the part of some conservative sectors of Congress toward approving any type of legislation that contains the word ‘gender’.”¹⁶⁰
196. ANTRA believes that it is essential to have a specific legal classification to qualify crimes of domestic violence against *travestis* and transsexual people in order to guarantee appropriate punishment for aggressors and curb such actions. According to Keila Simpson, president of ANTRA, “the general population feels more pity for an animal that was killed on the highway than for the murder of a trans person. We are the only ones who know and suffer for these victims. Society needs to see these crimes.”¹⁶¹
197. Today, in practice, there is no guarantee that *travesti* or transsexual women who are victims of domestic violence can seek refuge under the Maria da Penha Law. It is necessary to guarantee that there is uniformity in the judicial decisions regarding aggressions against *travestis* and transsexual women in Brazil.
198. The approval of PL 191/2017 is therefore fundamental for progress in the protection of transsexual women and *travestis* in Brazil, to guarantee legal security and unifor-

¹⁶⁰ Huffpost. *Projeto que inclui mulheres trans na Lei Maria da Penha enfrentará desafio na Câmara*. June 3, 2019. Available at: https://www.huffpostbrasil.com/entry/mulheres-trans-lei-maria-da-penha_br_5cf18aa1e4b0e346ce7e3817

¹⁶¹ Metrôpoles. *Aplicação da Lei Maria da Penha às mulheres trans ainda é polêmica*. July 28, 2019. Available at: <https://www.metropoles.com/violencia-contra-a-mulher/aplicacao-da-lei-maria-da-penha-as-mulheres-trans-ainda-e-polemica>

mity in the judicial decisions in cases of domestic violence against this population.

2.3.2 Femicide Law

199. In 2015, Law 13.104,¹⁶² known as the “Femicide Law,” took effect in Brazil. This legislation altered the Brazilian Penal Code and established a qualification for homicide charges to apply sentences of twelve to thirty years if the crime was committed against a woman because of their female sex and if the crime involved domestic/familial violence or was motivated by disrespect or discrimination toward women.

200. As opposed to the original bill, which made mention of female gender, the final bill opted for the term “female sex” in an attempt to exclude the application of the law to transsexual women and *travestis*, meaning that they could not be qualified as victims of femicide.¹⁶³

201. Nevertheless, in 2016, the São Paulo Public Prosecutor’s Office was the first to file charges for the crime of femicide against a transsexual woman, arguing that doing so was consistent with the Maria da Penha Law.¹⁶⁴

202. In the first half of 2019, the São Paulo Civil Police registered a case of femicide with a transsexual victim for the first time since publication of the law.¹⁶⁵

¹⁶² Law nº 13.104, March 9, 2015, available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13104.htm

¹⁶³ This strategy is a part of a conception of looking at sex as a biological phenomenon and gender as a social construction. In its report on violence against LGBTI people in 2015, the IACHR shared the understanding that the assignment of sex is not an inherent biological fact. The perception of genitalia assigns the sex. In this respect, sex is also a social construction. Comissão Interamericana de Derechos Humanos. *Violência contra pessoas lésbicas, gays, bissexuais, trans e intersexo nas Américas (2015)*, p. 30, par. 16.

¹⁶⁴ G1. *MP oferece primeira denúncia por feminicídio de transexual em SP*. October 6, 2010. Available at: www.g1.globo.com/sao-paulo/noticia/2016/10/mp-oferece-primeira-denuncia-por-feminicidio-de-transexual-em-sp.html

¹⁶⁵ O Globo. *SP registra morte de trans como feminicídio pela primeira vez, mas visibilidade do crime ainda é desafio*. May 31, 2019. Available at: <https://oglobo.com>

- 203.** This was the case of the 36-year-old hairdresser Raiane Marques, who was murdered in February of 2019. According to the police report, the Military Police were called by telephone to confirm a death and, when they arrived at the address given, they encountered a suspect who reported that he had met Raiane on the previous night and invited her to his home to have sex.
- 204.** The creation of the legal figure of femicide ratified the concept that the death of women simply because of their condition of being women is a specific form of violence that cannot be addressed by generic qualifiers. It demonstrated an advance in the political mainstreaming of this reality.
- 205.** ANTRA's dossier takes the position that the lack of recognition of murders of transsexual people and *travestis* as femicide reveals an institutional transphobia and a failure to recognize the citizenship of trans people, even after they are dead.¹⁶⁶
- 206.** For ANTRA, the fact that 97.7% of trans people murdered in 2019 were female points to the need for a legal framework for the murder of *travestis* and transsexual women in the Femicide Law.¹⁶⁷

2.4 Transfemicide and the cruelty involved in the murder of transsexual women and travestis

- 207.** In 2015, the IACHR registered the fact that there were many examples of murders of LGBTI people in the Americas that involved exceptional cruelty. They include many cases involving stabbings, beating to death, burning with acid, strangulation, vehicular homicide that involved repeatedly

globo.com/sociedade/sp-registra-morte-de-trans-como-feminicidio-pela-primeira-vez-mas-visibilidade-do-crime-ainda-desafio-23709616

¹⁶⁶ Associação Nacional de Travestis e Transexuais do Brasil (ANTRA); Instituto Brasileiro Trans de educação (IBTE). “*Dossiê Assassinatos e violência contra travestis e transexuais no Brasil em 2019*”. 2019, pp. 34/35. Available at: <https://antrabrazil.files.wordpress.com/2020/01/dossic3aa-dos-assassinatos-e-da-violc3aancia-contra-pessoas-trans-em-2019.pdf>

¹⁶⁷ Idem, p. 20.

running over the victim, mutilations, and incinerations.¹⁶⁸ The IACHR emphasized that, in many cases, the victims were murdered after having suffered torture, inhumane or degrading treatment, or multiple forms of extreme humiliation and/or rape.

208. The UN Special Report on Violence against Women also indicated that homicides motivated by gender associated with sexual orientation and gender identity present a grave level of physical violence, greater in many cases than that seen in other hate crimes.¹⁶⁹

209. There are various examples of extremely cruel murders, especially of trans women. In Brazil, in the city of Fortaleza, on the 15th of February of 2017, 42-year-old *travesti* Dandara dos Santos was brutally beaten on a public street in broad daylight by a group of cis men through kicking, punching, and stoning.¹⁷⁰ She was then transported in a wheelbarrow to another place on the street, where she was killed with two gunshots. The aggressors recorded the entire scene and circulated the video of Dandara's torture and murder on the internet. The images show her covered in blood, as she was kicked by at least four men.¹⁷¹

210. On July 28, 2017, guests at a hotel in the city of São Gonçalo called the police when they noticed smoke and fire coming from one of the rooms.¹⁷² When police arrived, they found Jéssica Dimy unconscious on the floor of the room

¹⁶⁸ IACHR. *Violência contra Pessoas Lésbicas, Gays, Bissexuais, Trans e Intersexo nas Américas*. 2015, p. 86, par. 107. Available at: <http://www.oas.org/pt/cidh/docs/pdf/ViolenciaPessoasLGBTI.pdf>

¹⁶⁹ UN, Human Rights Council. "*Report of the Special Rapporteur on violence against women, its causes and its consequences.*" A/HRC/20/16, May 23, 2012, par. 71.

¹⁷⁰ Huffpost Brasil. "*Caso Dandara ainda espera respostas do poder público dois anos após morte brutal.*" February 16, 2019. Available at: https://www.huffpostbrasil.com/entry/dandara-dois-anos-travesti-assassinato_br_5c67742ee4b01757c36bb716

¹⁷¹ The case of Dandara will be analyzed in the next chapter, on access to justice.

¹⁷² Extra. "*Travesti que teve 50% do corpo queimado morre após quatro meses de internação. December 7, 2017.*" Available at: <https://extra.globo.com/casos-de-policia/travesti-que-teve-50-do-corpo-queimado-morre-apos-quatro-meses-de-internacao-22164887.html>

with burns over a large part of her body. The investigation revealed that Jéssica had been beaten, hung, and set on fire by a client. Jéssica was hospitalized for almost 5 months, until she died on December 7, 2017. The suspect fled the scene of the crime, but turned himself in to the authorities on August 14, 2017, and was arrested.

211. In 2019, another murder of a *travesti* presented extremely cruel characteristics.¹⁷³ Quelly da Silva, 35 years old, was murdered on the January 22 in the city of Campinas. The alleged killer murdered her after having sexual relations with the victim. The most shocking aspect of this case was that the murderer ripped out the victim's heart, put an image of a saint in its place and saved the bodily organ in his home. In addition, he stated: "He (sic) was a demon, I tore out his (sic) heart. That's right".

212. The courts in Campinas sentenced the murderer to confinement in a psychiatric hospital for two years and absolved him criminally because a psychiatrist diagnosed him with schizophrenia. In the judicial decision, the judge declared:

It is a case of summary absolution, with the maintenance of confinement in a psychiatric hospital. Because it involved crimes that require imprisonment, there is no consideration of outpatient treatment, and as the expert has suggested confinement for a minimum of two years, the Court agrees.¹⁷⁴

213. Judging from the opinion of Brazilian sociologist Berenice Bento, it is possible to say that the cruel murders of trans women are a hyperbolic expression of hate of the female in society.¹⁷⁵ Thus, if the female represents that which is

¹⁷³ Huffpost Brasil. "Quelly da Silva: O nome da travesti que foi assassinada e teve o coração arrancado". January 22, 2019. Available at: https://www.huffpostbrasil.com/entry/travesti-coracao-campinas_br_5c47966fe4b025aa26bdf70f

¹⁷⁴ G1. "Diagnostico com esquizofrenia, homem que matou travesti é absolvido e vai para hospital psiquiátrico". October 24, 2019. Available at: <https://g1.globo.com/sp/campinas-regiao/noticia/2019/10/24/diagnosticado-com-esquizofrenia-homem-que-matou-travesti-e-absolvido-e-justica-determina-internacao.ghtml>

¹⁷⁵ BENTO, Berenice. "Brasil: país do transfeminicídio". Centro Latinoamericano em sexualidade e direitos humanos. Available at: http://www.clam.org.br/uploads/arquivo/Transfeminicidio_Berenice_Bento.pdf

devalued socially, it is inconceivable in the social consciousness that those born “as men” (i.e., with a penis) would fight to be recognized as a different gender. For this reason, the author proposes the term *transfemicide* to characterize an intentional and systematic effort to eliminate the trans population, motivated by hate and by disgust.¹⁷⁶ In this sense, there is a political dimension to these murders, which demonstrate a struggle for power of control over the female body and for an ability to punish this body, signaling a hatred of the attributes associated with femininity.¹⁷⁷

214. The cruelty of the murders of trans women reveals the political character of control and punishment, as is clear in the aforementioned case of Brazilian *travesti* Quelly da Silva, in which the offender, after ripping out her heart, justified his act by saying “he (sic) was a demon”, leaving no doubt about his idea of purification of the trans female body. ANTRA’s dossier confirms that 80% of the murders committed against trans people in 2019 presented characteristics of cruelty and excessive violence, such as dismemberment, drowning, an excessive number of gunshots, stoning, and decapitation.¹⁷⁸

215. In the focus groups realized by Instituto Transformar in Rio de Janeiro’s favelas, trans girls detailed how they have been shot at and narrowly escaped death. Some even live with bullet shards lodged in their bodies. All of them were targeted while they were working as sex workers. In Instituto Transformar’s analysis, transphobia puts trans women

¹⁷⁶ In fact, when, in 1990, Jane Caputi and Diana Russell described the general concept of femicide, the authors proposed that this term include a wide variety of verbal and physical abuses that lead to the death of women, including rape, torture, sexual slavery, physical and emotional golpes, genital mutilation, and forced heterosexuality, among others. Caputi, Jane; Russell, Diana. *Femicide: Sexist terrorism against women*. 1992, p. 15.

¹⁷⁷ SEGATO, Rita. *Que és un feminicidio. Notas para un debate emergente*. Department of Anthropology, Universidade de Brasília, 2006, p. ~3. Available at: <https://www.nodo50.org/codoacodo/enero2010/segato.pdf>

¹⁷⁸ Associação Nacional de Travestis e Transexuais do Brasil (ANTRA); Instituto Brasileiro Trans de Educação (IBTE). *Dossiê Assassinatos e violência contra travestis e transexuais no Brasil em 2018*, p. 39. Available in: <https://antrabrasil.files.wordpress.com/2019/01/dossie-dos-assassinatos-e-violencia-contra-pessoas-trans-em-2018.pdf>

who perform sex work in a position of extreme vulnerability where their bodies are at risk of the most perverse and cruel methods of physical, human, moral, and psychological violence.

- 216.** Other *travestis* who participated in focus groups related that they have been the targets of gunshots at different times in their lives. One of them was a victim of gun violence in 2013 and was the only one of the group who went to a police station to make an official report of the incident. However, she did not go to denounce the attempted murder of herself—believing that, having not been hit by gunfire, she was not a victim of violence—, but to register a complaint for her friend who had been hit by bullets.

Access to justice, racism and LGBTIphobia



Chapter 3

Access to justice, racism and LGBTIphobia

*Last week we had a travesti who was assaulted by the police. She didn't press charges and she won't, because she's not going to travel from Maré to Central do Brazil and have to dress the way she would have to dress for a space of 'public security.' First of all, she doesn't have money for transportation. Secondly, she has another problem which is the area where she lives, and we know the police will return. It's a recurring issue in these spaces in our communities, in our homes.*¹⁷⁹

Gilmara Cunha (Rio de Janeiro)
Travesti
Grupo Conexão G de Cidadania LGBT de favelas

217. The IACHR defined access to justice as the right to access judicial organizations and judicial resources for protection, along with the effective enjoyment of this access. The IACHR recognizes access to justice as essential to the eradication of violence against LGBTI people and considers it an indispensable component of State compliance with the international obligation to respond with due diligence to violations of human rights.¹⁸⁰

218. The IACHR also emphasizes that compliance with the obligation of due diligence, requires States to prevent, inves-

¹⁷⁹ Assembleia Legislativa do Estado do Rio de Janeiro. *Ata da 1ª audiência pública da Comissão de Defesa dos Direitos Humanos e Cidadania. ALERJ.* Rio de Janeiro, 2015. Available at: <http://alerjln1.alerj.rj.gov.br/compcom.nsf/e36c0566701326d503256810007413ca/0225ba4b884c403383257e5f004f-53d4?OpenDocument>

¹⁸⁰ IACHR. *Violência contra Pessoas Lésbicas, Gays, Bissexuais, Trans e Intersexo nas Américas.* 2015, p. 265, par. 458 e 459. Available at: <http://www.oas.org/pt/cidh/docs/pdf/ViolenciaPessoasLGBTI.pdf>

tigate, judge, punish, and redress violations of human rights. In cases of LGBTIphobic violence, States should take into account the distinct forms of violence that LGBTI people suffer due to their interrelation with other multiple forms of discrimination, like those of disabled people, “ethnicity, sex, gender, migratory situation, age, position as a human rights activist, race, socioeconomic situation, and situation of deprivation of liberty.”¹⁸¹

219. However, the IACHR identified a series of specific barriers that LGBTI people face when reaching out to the justice system:

lack of adequate attention and treatment when they attempt to report crimes; negligent and biased attitudes of law enforcement personnel; stereotyped assumptions about the motives for crimes, based on the victim’s sexual orientation, gender identity, or gender expression; increased fear of further victimization or retaliation, which acts as a serious deterrent against reporting crimes; lack of specialized legal aid programs; existence of legislation criminalizing same-sex intimacy between consenting adults; existence of legislation or judicial precedent which condones or justifies violence against LGBT persons; discriminatory attitudes of judges and other officials within the justice system; and high risk of victims having their credibility questioned or their allegations disbelieved; among others.¹⁸²

220. At the Sankofa Forum, held in Rio de Janeiro, Mariah Rafaela, a Black, trans activist and professor, who is a member of Grupo Conexão G, said:

There is a system that allows the deaths of trans people and Black people. A concept of justice has to emerge from the experience of people who don’t enjoy the minimum dignity to live. Giving access to justice should mean giving dignity to lives.

221. Specifically regarding the trans population’s access to justice, Lívia Casseres, current coordinator of the Núcleo Contra a Desigualdade Racial (Office Against Racial In-

¹⁸¹ Idem, pp. 232-232, par. 385 e 388.

¹⁸² Ibidem, p. 266, par. 460.

quality) and ex-coordinator of the Núcleo de Defesa dos Direitos Homoafetivos e Diversidade Sexual (Office on LGBTI Rights and Sexual Diversity), both housed in the Public Defender’s Office of the State of Rio de Janeiro, reported an evident feeling “of distrust among this population toward State bodies in general – bodies that are ordinarily responsible for violations of their rights,”¹⁸³ as well as a “frustration found in the limitations of the judicial process (excessive delay, ideas about the biological truth of the birth certificate, etc.).”¹⁸⁴ Casseres understands that customarily, in the many public services that interact with the trans population, there is a need for trans people to have to undergo intimate exposure of their bodies before many different professionals, and frequently relate intimate, personal, and painful experiences multiple times. Furthermore, “the expectation of a long and humiliating judicial process ahead of them many times discourages people from seeking out the Public Defender’s Office”, because not all people are willing to “expose the experience of transsexuality to the cold eyes of the judicial ritual, which frequently would question their mental health, promote a detailed investigation of their previous life, and minimize their experiences of embarrassment and discrimination.”¹⁸⁵

222. In the same sense, Leticia Furtado, current coordinator of the Center for the Defense of Homoffective Rights and Sexual Diversity (NUDIVERSIS) of the Public Defender’s Office of Rio de Janeiro, understands that, commonly, society and institutions of the justice system exclude *travestis*, showing an institutional and structural character of transphobia. Regarding the day-to-day of NUDIVERSIS, the public defender told Race and Equality that:

¹⁸³ CASSERES, Livia. Normas de gênero e práticas subversivas na Defensoria Pública: litigância estratégica em prol das pessoas transexuais e travestis. In: XIII Congresso Nacional de Defensores Públicos. Teses e práticas exitosas. Defensoria Pública: em defesa das pessoas em situação de vulnerabilidade. 2018, p. 366. Available at: https://www.patriciamagno.com.br/wp-content/uploads/2018/03/Pratica_Livia_Casseres.pdf

¹⁸⁴ Ibidem.

¹⁸⁵ Ibidem.

There are several reports of *travestis* victims of acts of violence that seek assistance from public agencies aiming to protect their rights and who then became victims of new acts of transphobia practiced by the public agents themselves, treating them as if they were the culprits of illegal acts. To begin with, the respect for social names and treatment of the gender identity with which they identify, it cannot be said that, in general, public agencies are capable, with structure and trained personnel to assist trans people and produce documents with the respective data in an appropriate way. On the contrary. There is still a long way to go, because this change requires a socio-cultural transformation.

223. Researcher Thula Pires, in discussing access to justice and racism, argues that discussion of this subject must seek to understand the “process by which equality and inequality intertwine in the formal legal sphere,”¹⁸⁶ highlighting the obstacles imposed on certain social segments in their fight for justice and rights.

224. Therefore, it is necessary to comprehend how structural racism and structural LGBTIphobia impact access to justice, as well as the legal and institutional apparatus that the Brazilian State provides for the protection of LGBTI rights. In this chapter, this reflection will be constructed, first, based on discussions about the criminalization of racism and LGBTIphobia. As LGBTIphobia has been legally equated to the crime of racism, it is fundamental to understand some of the dynamics of the criminalization of racism. Subsequently, analyses will be made of murder investigations where the victims were *travestis* or transsexual women.

3.1 Criminalization of racism

225. In Paragraph XLII of Article 5, Brazil’s Federal Constitution establishes racism as a non-bailable felony with no statute of limitations. According to Thula Pires, in discussions during

¹⁸⁶ PIRES, Thula Rafaela de Oliveira; LYRIO, Caroline. *Racismo institucional e acesso à justiça: uma análise da atuação do Tribunal de Justiça do Estado do Rio de Janeiro nos anos de 1989-2011*. CONPEDI/UFSC; Mônica Bonetti Couto; Angela Araújo da Silveira Espindola; Maria dos Remédios Fontes Silva. (Org.). *Acesso à justiça I*. Florianópolis: CONPEDI (2014), p. 513.

the Constitutional Convention of 1988, Black movements fought for the criminalization of racism in the Constitution. The objective was to move away from the understanding that racism is a problem of the private sphere, and by including it in the Constitution, turn it into a problem of the public sphere to be combated by the country's public institutions:

The measure repositioned the cruelty of Brazilian social stratification as a public discussion, recognized the clamor for respect for historically violated bodies, and proposed that invisibility, exclusion, and acts of discriminatory speech represent serious violence (...). More than "simple offenses" (...), if not suppressed, the types of conduct defined as representing the crime of racism allow for the maintenance of hierarchies and for public justifications for our extermination.¹⁸⁷

226. Later, Law 7.716/89,¹⁸⁸ known as the Lei Caó, defined the types of conduct that result from discrimination or prejudice based on race, skin color, ethnicity, religion, or national origin.

227. The crime of racism is addressed by the Lei Caó, with Article 20 defining the crime as "practicing, inducing, or inciting discrimination or prejudice based on race, skin color, ethnicity, religion, or national origin." Articles 3-14 ban acts that aim to prevent, deny or refuse, the access of someone to employment, commercial establishments, private or public educational establishments, hotels, restaurants, bars, sports establishments, hairdressers, front entrances of buildings and elevators, public transportation, or service in any branch of the armed forces. Acts to prevent marriage or familial and social coexistence on racial grounds are also outlawed.

228. Other than the Lei Caó, there is also the concept of racial slander spelled out in Article 140 of the Penal Code. 'Slander' refers to the practice of offending someone's dignity or decorum and carries a penalty of 1 to 6 months' detention

¹⁸⁷ PIRES, Thula. *Racializando o debate sobre direitos humanos. Limites e possibilidades da criminalização do racismo no Brasil*. SUR 15.28: 2018, p. 69.

¹⁸⁸ Law nº 7.716, of January 5, 1989, available at: www.planalto.gov.br/ccivil_03/leis/l7716.htm

or a fine. However, when the slander consists of abuse relating to race, skin color, ethnicity, religion, origin, capacity, or condition as an elderly person, the penalty is 1 to 3 years of detention or a fine.¹⁸⁹

229. In a survey that elaborated on cases involving racism and racial slander against Black people in the city of São Paulo (119 cases) between the years of 2003 and 2011, the Black researcher Gislene Aparecida dos Santos noticed that the majority of cases analyzed had been classified as racial slander, and not as racism. Among the inquiries, 73% were classified as slander and 15% classified as racism. Among the lawsuits, 53% were classified as slander and 7% as racism.¹⁹⁰

230. There are important differences between an act of prejudicial slander and a racist hate crime. While prejudicial slander refers to an offense against a single person, attacking his/her honor and dignity, a racist hate crime is directed at the whole group or an entire race. This crime is specifically geared towards punishing acts against a whole social or community group and is not focused solely on the injured individual. This is why crimes of racism call for

¹⁸⁹ The detention sentence refers to lighter sentences and, unlike the reclusion sentence, does not allow the sentence to be served in a closed prison, in other words, a medium or maximum-security establishment. It must be noted that, unlike the Lei Caó, the crime of racial slander is not a non-bailable offense with no statute of limitations.

¹⁹⁰ The survey also demonstrated that the majority of inquiries regarding slander or racism were dismissed during the investigation phase: "Regarding the inquiries, a large quantity of dismissals was observed due to deadlines expiring for filing the criminal complaint (...). Among the lawsuits, there was a mixture of declassification of the crime of racism and turning it into racial slander, cases dropped because deadlines to file the criminal complaint had expired and, also, rejections of the accusations due to lack of evidence that was considered consistent. In other words, even when it was admitted that the facts were sufficient to satisfy the criminal offense of qualified slander due to prejudice or racism, in future analyses, one verified the inexistence of material proof of the fact or, yet, fell into procedural questions that stopped the lawsuit from proceeding." SANTOS, Gislene Aparecida. *Nem crime, nem castigo: o racismo na percepção do judiciário e das vítimas de atos de discriminação*. Revista do Instituto de estudos brasileiros. N. 16, São Paulo, dez/2015, p. 190, 192 e 102.

more severe punishment and are not subject to the statute of limitations or bail.

231. In other words, not classifying an act as racism, but instead as racial slander (or even simple slander) implies that the conduct was not motivated by a racism against the entire Black community, but rather by aggression against a particular person:

It [the classification] doesn't consider that the offenses tend to use the same qualifiers that, since the time of slavery, are attributed to Black people in Brazil: bestiality (monkey), filth (dirty Black), sexuality and vulgarity (Black slut), lack of capacity and intellect (...) In all cases we see the disqualification of Black people as humans with rights (...). It is necessary to remember that all of the arguments used to justify slavery were based on the dehumanization of the other and in the transformation of differences in naturalized hierarchies. Considering that Black people are taken as a group (...), these derogatory statements are generalized for all Black people.¹⁹¹

232. Given this, the author concludes that such manifestations are not individual offenses to the honor of a certain person, but rather a "form of actualizing the place that the aggressor supposes Black people should occupy in society."¹⁹²

233. Furthermore, the Lei Caó and the majority of the dispositions of the Penal Code with respect to racial slander refer to a type of racism that manifests individually, by means of explicit segregation. To be actionable, these racist acts must have a demonstrable criminal intent of offending, separating, or excluding. However, to construct institutional and political responses, it is necessary to understand the dynamics by which racism truly operates:

Racism manifests itself through individual conduct that promotes racial discrimination in its most varied forms of violence or through forceful action by public and private

¹⁹¹ Ibidem, p. 201.

¹⁹² Ibidem.

bodies in the expropriation of humanity, in discarding lives, and in the disproportionate mobilization of violence towards racially subordinated social groups.¹⁹³

234. In this sense, Thula Pires recalls that the myth of racial democracy, in saying that there is a harmonious coexistence of races in Brazil, masks the conduct that constitutes practices of racism in the country.¹⁹⁴ In the text of the Lei Caó, for example, there is no action to address the dynamics in which institutional racism is manifested.¹⁹⁵

235. According to researcher Felipe Freitas, since racism is a structural and systemic phenomenon which will therefore influence how institutions function, the judicial branch, as part of a society structured by racism, is also organized by the codes of racism.¹⁹⁶ Therefore, there is a generalized tolerance towards racial discrimination in the justice system, which is configured by institutional racism as a space in which these practices are reproduced. The insistent reclassification of cases of racism as racial slander are one expression of this tolerance.

236. The census of the judicial branch published by the National Justice Council in 2014 reveals that only 1.4% of judges declare themselves *pretos* and 14.2% as *pardos*, while 82.8% identify as white. 64.1% of judges are men. Felipe Freitas argues that this data demonstrates a white (masculine)

¹⁹³ PIRES, Thula. *Racializando o debate sobre direitos humanos. Limites e possibilidades da criminalização do racismo no Brasil*. SUR 15.28: 2018, p. 70.

¹⁹⁴ *Ibidem*, p. 71.

¹⁹⁵ The Estatuto da Igualdade Racial, de 2010, in disposing, in its art. 4^o, about the participation of the black population in economic, social, political and cultural life, prescribes, in its paragraph IV, that “the promotion of normative adjustments to perfect the combat against ethnic discrimination and ethnic inequalities in all of their individual, institutional and structural manifestations”. With this, it becomes an important element in the Brazilian legal order to demand commitment in the fight against racism and its institutional and structural dimensions.

¹⁹⁶ Jota. *Racismo impacta na decisão de magistrados*. December 19, 2016. Available at: <https://www.jota.info/justica/racismo-impacta-na-tomada-de-decisao-dos-magistrados-19122016>

line) hegemony in the judiciary that contributes to the neglect of the rights of the Black population.¹⁹⁷

3.2 Criminalization of homotransphobia

237. In June of 2019, the Plenary of the STF concluded that the National Congress had violated the Constitution by not having passed a law to criminalize acts of homophobia and transphobia, ruling that the delay by Congress left the fundamental rights of LGBTI people vulnerable.¹⁹⁸

238. The STF's interpretation was that homophobia and transphobia should be categorized as a criminal offense defined by the Lei Caó until the National Congress passed a specific law about the matter. The STF made three basic points:

- 1 Until the National Congress passes a specific law, homophobic and transphobic conduct will be classified as crimes covered by the Lei Caó.
- 2 The criminalization of the practice of homotransphobia does not affect nor restrict the exercise of freedom of religion, as long as such exercise does not configure hate speech, understood as any expression that incites discrimination, hostility, or violence against people due to their sexual orientation or gender identity;
- 3 The concept of racism, understood in its social dimension, exceeds strictly biological or phenotypical aspects and includes actions to negate the dignity and humanity of vulnerable groups, because it is:

(...) a construction of a historic-cultural nature, motivated by the objective of justifying inequality and designed for ideological control, political domination, social subjugation.

¹⁹⁷ Ibidem. See also: Conselho Nacional de Justice. Censo do Poder Judiciário: vetores iniciais e dados estatísticos. Conselho Nacional de Justice. Brasília: CNJ, 2014.

¹⁹⁸ Supremo Tribunal Federal. *STF enquadra homofobia e transfobia como crimes de racismo ao reconhecer omissão legislativa*. June 13, 2019. Available at: www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=414010

tion, and the maintenance of otherness, denying dignity and of the humanity of those that, belonging to a vulnerable group (LGBTI+) and not belonging to the group that holds the hegemonical position in a given social structure, are considered strange and different, marginalized in the legal order, and exposed, due to hateful relegation to inferiority and stigmatization, to an unjust and harmful situation of exclusion from the general system of protection of their rights.¹⁹⁹

239. Since then, some organizations like the Rede Afro-LGBT, ANTRA and the Associação Brasileira de Gays, Lésbicas, Travestis, Transexuais e Intersexos (ABGLT) prepared publications geared towards informing the population about what to do to seek justice in cases of LGBTIphobia.²⁰⁰

240. Bruna Benevides believes the approval of the criminalization is an important symbolic milestone:

We are fully aware that criminalization does not solve the situation of violence against us, but it is a symbolic milestone. Starting today, we can demand that certain spaces where LGBTIphobia is committed, whether it be schools or commercial establishments, whether in an indirect or institutional way, be legally charged for reparations. We can face the omission of the State in face of the high indices of complaints and generate official data on this violence. For how long have statistics been produced and then discarded? Now, they can direct public policies. The Supreme Court is saying that we are citizens.²⁰¹

¹⁹⁹ Supremo Tribunal Federal. ADO 26/DF. 2019. Available at: <http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/tesesADO26.pdf>

²⁰⁰ Associação Brasileira de Lésbicas, Gays, Bissexuais, Travestis, Transexuais e Intersexos (ABGLT); Associação Nacional de Travestis e Transexuais (ANTRA). *O que fazer em caso de violência LGBTIfóbica. Cartilha de orientações à população LGBTI no combate à LGBTIphobia*. Rio de Janeiro, 2020. Available at: <https://antrabrazil.files.wordpress.com/2020/03/cartilha-LGBTIphobia.pdf>

²⁰¹ In fact, efforts to disqualify the data produced by civil society exist. In January of 2019, the secretary for the Proteção Global of the Ministério da Mulher, da Família e dos Direitos Humanos questioned the origin of data that demonstrated high rates of violence against LGBTI people: “what is said is that LGBTIphobic violence has higher levels than that of the average violence that Brazilians in general suffer. There is no specific governmental data on this. We will analyze all information in a scientific manner, because public policy must be geared toward what in fact is, and we will try to find out, including so that we have regionalized policies”. O Globo. *‘Presidente é homofóbico, mas o Estado vai ter de nos proteger’, diz ativista*

241. However, for Gilmara Cunha of Grupo Conexão G, criminalization does not protect all of the LGBTI population in the same way. According to the activist, white LGBTI people from urban centers are more protected than those that come from the favelas:

You see, homophobia was criminalized and equated to the crime of racism. If we are within this territory and register a complaint, the police aren't going to come here. If the police do come, that puts our lives at risk, because everyone knows each other and will know who registered the complaint.²⁰²

242. In Rio de Janeiro's favelas, it is common for drug dealers to forbid people from registering cases of violence at police stations in order to avoid police incursion into the favela. In May of 2019, ANTRA introduced Race and Equality to a trans man who suffered a corrective rape in the favela where he lived in the state of Rio de Janeiro. The drug trade dominates this particular favela; the victim received threats warning him not to have the police investigate the case. The police at the station also told him that it would be a very complicated case and it would be best not to report it. Still, he decided to report it. Soon after, due to the threats, the trans man decided to move to another region for his and his family's safety.

243. This is one of the reasons why many movements believe that criminalization, in and of itself, will not have the immediate effect of protecting the most vulnerable LGBTI people who need the attention of the State. Still, it is a very important step for the production of public data on LGBTIphobia in Brazil and toward the social understanding that the Brazilian State must not condone LGBTIphobic practices.

LGBTI sobre decisão do STF. 23 de maio de 2019. Available at: <https://oglobo.globo.com/sociedade/presidente-homofobico-mas-estado-vai-ter-de-nos-protoger-diz-ativista-lgbti-sobre-decisao-do-stf-23689370>

²⁰² Race and Equality. *Deixem de nos matar!: Grupo Conexão G da Favela da Maré.* September 18, 2019. Available at: <https://raceandequality.org/wp-content/uploads/2019/09/Grupo-conex%C3%A3o-G-e-sua-atua%C3%A7%C3%A3o-na-Favela-da-Mar%C3%A9-1.pdf>

- 244.** However, it is important to bring the problems that have been found in the efforts to implement the criminalization of racism, discussed above, to the center of the discussions on criminalization of homotransphobia.
- 245.** According to information received by many LGBTI organizations, just as there are great obstacles for racist conduct to be classified as a crime of racism rather than mere slander, officials do not see LGBTIphobic conduct with the appropriate level of severity. Furthermore, many delegates have claimed that LGBTIphobia was equated only to the crime of racism, without a corresponding equivalence between LGBTIphobic slander and racial slander. For this reason, LGBTIphobic crimes are often classified as simple slander, leaving out the element of bias entirely and leaving them even less addressed by the legal system than racist crimes.
- 246.** This is what the trans lawyer Giowana Cambrone reported in ANTRA's dossier on the murders of trans people in Brazil in 2019:

In this first year since the decision, it is noticeable that the understanding of the STF in cases of racial slander has not been applied. This is because there is a dichotomy between racism, that is understood to be an offense to the collective, and racial slander, that is the offense to the individual regarding their condition. According to the most common interpretations, the individual offense (slander) would not be covered by homotransphobia as a form of social racism. In other words, the structure does not extend the understanding of the STF regarding racism to racial slander. Yet, **this understanding is absurd, since, when one uses a racist or homotransphobic expression against someone, what one wants is to demonstrate superiority for historic or cultural reasons.**²⁰³

- 247.** Cambrone states that this resistance reduces the efficacy of the STF's decision and imposes obstacles that

²⁰³ Associação Nacional de Travestis e Transexuais (ANTRA). *Dossiê assassinatos contra travestis brasileiras e violência e transexuais em 2019*. 2020, p. 69. Available at: <https://antrabrasil.files.wordpress.com/2020/01/dossic3aa-dos-as-sassinatos-e-da-violc3aanancia-contrapessoas-trans-em-2019.pdf>

perpetuate inequalities, “whether they come from race or diverse sexuality”:

This happens because of the formalization of a set of institutional, historic, and cultural practices within society that produce privileges for certain groups (white, heterosexual, and cisgender people), at the same time as it excludes minorities (Black people, homosexuals, *travestis*, and transsexuals) from participating in social institutions. In this sense, the inapplicability of the STF ruling is perceived in police inquiries and structures of the judicial branch that refuse to proceed with the complaints. The resistance from those that don't agree with the decision of the STF reduces its effectiveness and imposes impediments to the effectiveness of the maze of jurisdictional structure.²⁰⁴

248. In the joint publication produced by ANTRA and ABGLT about the criminalization of LGBTIphobia, both organizations recall that there is a decision of the Superior Court of Justice that sees racial slander as a type of racism:

This position is completely illogical, so much so that it is usually brought up by people who disagree with the STF's decision in the first place and therefore want to give it the least applicability possible. This is because, not only did the Superior Court of Justice already recognize that racial slander is a type of racism (ARE 686.965/DF), making its absence from Lei 7.716/89 (Lei Caó) irrelevant to the validity of said conclusion, this decision is maintained by the Federal Supreme Court (and, if it is a type of racism, then STF's decision encompasses it directly).²⁰⁵

249. The discussion about criminalization of LGBTIphobia cannot proceed without an assessment of how courts already treat LGBTI people who are parties in criminal proceedings. In a quick check on the website of the Court of Justice of the state of São Paulo, when applying the words “*travesti*” and “*transsexual*” in the jurisprudence search tool, it is possible to find 126 results of decisions that contained the word “*tra-*

²⁰⁴ Ibidem.

²⁰⁵ Associação Brasileira de Lésbicas, Gays, Bissexuais, Travestis, Transexuais e Intersexos (ABGLT); Associação Nacional de Travestis e Transexuais (ANTRA). *O que fazer em caso de violência LGBTIfóbica. Cartilha de orientações à população LGBTI no combate à LGBTIphobia*. Rio de Janeiro, 2020, p. 10. Available at: <https://antrabrasil.files.wordpress.com/2020/03/cartilha-LGBTIphobia.pdf>

vesti” and 20 with the word “transsexual”. Of the 126, 109 referred to the *travestis* as “*os travestis*” (a phrasing that uses the male gender in Portuguese) and/or referred to them exclusively or mainly using their legal names, rather than their affirmed names. These results show a lack of even the most basic respect for trans people’s lives.

- 250.** Although it is still necessary to do more thorough research about the patterns of judicial decisions when it comes to LGBTIphobia, this is an important fact, that makes one think of how distant the Brazilian judiciary is from trans people, maintaining and deepening structural inequalities.

3.3 Profile of the victims of LGBTIphobic violence in Rio de Janeiro and obstacles to reporting crimes in police stations

- 251.** The Instituto de Segurança Pública (ISP – Public Security Institute) in Rio de Janeiro was the first and only State body in Brazil to publish a dossier with official statistics on crimes motivated by LGBTIphobia, revealing that in 2017, 431 victims of violence motivated by LGBTIphobia in the state of Rio de Janeiro reported crimes at police stations.²⁰⁶ On average, there were 39 victims of a crime motivated by LGBTIphobia per month, which means there was more than one victim per day.²⁰⁷

- 252.** One of the main difficulties pointed out by the dossier is the underreporting of violations against the LGBTI population. The organizations identified five factors that can contribute to underreporting:

- (i) fear or embarrassment on the part of the victim if their gender identity and/or sexual orientation is exposed; (ii)

²⁰⁶ Instituto de Segurança Pública. *Dossiê LGBT+: 2018*. Orgs: Victor Chagas Matos e Erick Batista Amaral de Lara. Rio de Janeiro: RioSegurança, 2018, p. 9.

²⁰⁷ The dossier used as a basis the same grouping of felonies that was used in the Maria da Penha Law, that is to say, physical violence, sexual violence, property violence, moral violence and psychological violence. The majority of victims suffered moral violence: verbal offenses, generally indicated as slander, libel and defamation make up a total of 51.4%. Next, physical and psychological violence appear in identical percentages, with 22,7%. Property and sexual violence on the other hand show few cases, both with less than 1.0%. Idem, p. 23.

belief that their report will not actually be registered due to the inexistence of legal mechanisms that protect the LGBT+ population; (iii) the victim's fear of being revictimized by the security operators; (iv) the victim's lack of knowledge enabling him/her to identify specific acts as LGBTphobic and (v) a range of factors that do not only impact the LGBT+ population, but that, given society's customs and beliefs, possibly affect social minorities, like LGBT+ people, in a more prominent manner. The aforementioned points can make the victim not report the crime suffered or not provide elements that identify them as LGBT+.²⁰⁸

- 253.** Moreover, the reports are precarious: it was not possible to identify the sexual orientation of more than 40.0% of victims, nor the gender identity of almost 60.0%. Nevertheless, despite the precariousness of the data, it still shows important tendencies.²⁰⁹
- 254.** Using the nomenclature of the official police reports, the dossier demonstrates that people registered as male at birth made up 59.6% of the victims, versus 40.2% of people registered as female at birth. There were only 19 cases identified as involving trans people.²¹⁰
- 255.** The authors of the dossier claim that the low number of reported *travestis* and transsexual victims can be explained by the social marginalization imposed on this population, giving them little access to formal education and to the formal job market, which in turn increases the marginalization, stigma, and vulnerability of these people.²¹¹
- 256.** An analysis of the data relating to skin color and race allows us to dig deeper into this discussion. Police officers identify parties' race as they prepare their police reports, so the recorded race of the party may or may not be a self-declaration. In cases of homicide, the victims' race must be surmised by the responding officers. The dossier informs that the majority of victims that reported the violence they

²⁰⁸ Ibidem, p. 11.

²⁰⁹ Ibidem, p. 25.

²¹⁰ Ibidem, p. 26.

²¹¹ Ibidem.

suffered were white (54.8%). *Pardos* were in second place, at 30.9% of the victims. *Pretos* victims made up 11.4%.²¹²

257. What accounts for this large predominance of whites in reports of LGBTIphobic violence? The authors of the dossier say that the strong presence of reports among white men can be an indication that the most vulnerable groups in the LGBTI population do not feel covered by or have difficulty in accessing the State's security apparatus. Once again, the social vulnerability of LGBTI and Afro-LGBTI people influences the course of the justice process.

258. Recognizing vulnerability must lead to discussing whether institutional efforts are made so that necessary social resources are available in a democratic way for vulnerable people.²¹³ The extent to which institutions may reproduce and deepen social conditions of vulnerability, and even create revictimization, must be discussed.

259. In Salvador de Bahía, the *travesti* activist Thiffany Odara, in a meeting with Race and Equality, mentioned the case of a *travesti* who was hit in the face at a party and didn't want to go to the police station to report the assault. According to the activist, there are many cases in which *travestis* are harassed, ridiculed, and marginalized and, even so, choose not to go to the police to avoid being violated once again.

260. In a public hearing held at the State Legislature of Rio de Janeiro in 2015, Lara Lincoln, a transsexual woman, shared an emblematic case for understanding the reasons that reporting a felony can be so difficult for trans people.²¹⁴ When she arrived at the police station to register a complaint against an evangelical teacher who had offended

²¹² *Ibidem*, p. 27.

²¹³ Ver AYRES, José Ricardo de Carvalho Mesquita; CALAZANS, Gabriela Junqueira; FILHO, Haraldo César; FRANÇA-JÚNIOR, Ivan. *Risco, vulnerabilidade e práticas de prevenção e promoção da saúde*. In: Tratado de saúde coletiva. 2006, pp. 375-417.

²¹⁴ Assembleia Legislativa do Estado do Rio de Janeiro. *Ata da 1ª audiência pública da Comissão de Defesa dos Direitos Humanos e Cidadania*. ALERJ: Rio de Janeiro, 2015. Available at: <http://alerjln1.alerj.rj.gov.br/compcom.nsf/>

her with a pejorative transphobic attitude, as soon as she handed over her identification at the reception, the receptionists started to look at each other as if amused. Two and a half hours later, the inspector asked her: “Good afternoon, buddy, what is your problem? What did you come here for?”. The moment Lara introduced herself with her affirmed name, the inspector, then, asked: “Wait, what? What is your name? Lara? But that is not what is on your I.D.”

261. Even though she explained she was as a trans woman, the inspector said: “Look, sir, you’ll have to forgive me, but we don’t know absolutely anything about that here, none of this exists to us, we don’t have this knowledge, so you’ll have to forgive me, but I’m going to have to call you by your name that is here on your I.D.” After that, the inspector began to threaten to charge Lara for disrespect to an officer.

262. Later, when Lara sought out the Centro de Referência LGBT (LGBT Reference Center) and was asked if she wished to take the matter to the Police Internal Affairs, Lara answered:

I don’t. You know why? After I left the police station, this inspector kept stalking me for two weeks: he knew where I lived, he had my phone number, he called me. This happened for two weeks, I was persecuted like that. He was always imposing his presence, making it very clear that he knew where I went, my schedule and everything else. (...) with this inspector having all this information on me, I’m sure something would happen to me, like it has already happened to many others.²¹⁵

263. Lara’s story confirms what was recognized by the IACHR, namely, that LGBTI people avoid reporting crimes against them for fear of revictimization. The IACHR had specified the example of trans women whose documents do not coincide

with their gender, which is a major obstacle to this population's access to justice.²¹⁶

3.4 Lack of commitment to the resolution of murder cases against transsexual women and travestis

264. The IACHR defines impunity as “the lack, in a general sense, of investigation, persecution, capture, judgment, and condemnation of people responsible for violating rights that are protected in the Inter-American instruments of human rights,”²¹⁷ observing that “impunity confirms that violence and discrimination are acceptable, which feeds their repetition.”²¹⁸ That way:

(...)when States fail to conduct exhaustive and impartial investigations into cases of violence against LGBTI persons, the resulting impunity for these crimes sends a social message that the violence is condoned and tolerated, which in turn fuels further violence and leads to mistrust of the victims in the justice system.²¹⁹

265. The IACHR also noted that reliable statistics about the conviction rates in cases of violence against LGBTI people in the countries of the region are limited and, in some cases, inexistent.²²⁰

266. In thinking of the lack of resolution in murder cases against transsexual women and *travestis* in Brazil, it seems interesting to observe an important study coordinated by professor Michel Misse, who analyzed cases of murders committed by police officers between the years of 2001

²¹⁶ IACHR. *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the America*. 2015, p. 267, par. 462. Available at: <http://www.oas.org/en/iachr/reports/pdfs/violencegbtipersons.pdf>

²¹⁷ *Ibidem*, p. 274, par. 475.

²¹⁸ *Ibidem*.

²¹⁹ *Ibidem*, par. 476.

²²⁰ *Ibidem*, par. 477.

and 2011 in Rio de Janeiro.²²¹ This study provides interesting elements to study how the “moral construction” of the murdered person and their personal history can affect how the police conduct investigation work, how the Public Prosecutor’s Office makes the consideration of which cases to be archived or charged, or what variables contribute to charges being accepted by judges and turned into lawsuits.²²²

267. Although it is not about crimes committed against the LGBTI population, this study provides important materials for understanding the dynamic of the penal system. It was noted, for example, that elements such as having previous criminal charges or living in areas dominated by the drug trade influenced the creation of an idea of “dangerousness” of the dead person and their assumed relation to criminal activities.²²³

268. A lack of effort in the investigation of the circumstances of deaths was observed, with murders being divided into those that deserve to be investigated and those that do not.²²⁴ The majority of civil and military police officers shared the sentiment that “criminals should die.” According to the study, “in the words of a civilian police officer:

²²¹ MISSE, Michel. *Letalidade policial e indiferença legal: a apuração judiciária dos autos de resistência no Rio de Janeiro (2001-2011)*. Rio de Janeiro: Universidade Federal do Rio de Janeiro, 2011.

²²² It is important to say that the research itself reports that it is very difficult to undertake an analysis about the flow of crimes in Brazil: “Analyses of the flow of crimes, in Brazil, as is known (Misse e Vargas, 2008) are difficult, when not impossible, to achieve. One of the main problems in performing them, besides the low quality of data produced by the Police, and by the Public Prosecutor and the Courts, is the inexistence of a single numerical code that accompanies these proceedings through these different instances. Each one gives its own number to the proceeding, making it difficult to follow, statistically, what happened to each report registered in the police system as a whole”. Another important factor is that the lack of markers in court databases makes it impossible to verify how many murders committed by police officers were in the system at that time – in fact, it is not possible to perform this search for any crime, so it is also impossible to easily search, for example, for how many murder cases are in the system that have travestis as victims”. Misse, Michel. *Letalidade policial e indiferença legal: a apuração judiciária dos autos de resistência no Rio de Janeiro (2001-2011)*. Rio de Janeiro: Universidade Federal do Rio de Janeiro, 2011, p. 26.

²²³ *Ibidem*, p. 12.

²²⁴ *Ibidem*, p. 43.

"criminals should really just all die, but now there's this human rights deal, right?"²²⁵

269. Accepting that there are cases that cannot be investigated reveals a police logic in which:

(...) there would be "killable" people. The police officers share conceptions of what would be a "criminal", "irredeemable", a person constantly associated with deviant conduct. The stereotype of this individual would be the "poor criminal" involved in the illegal drug trade in poor areas, whose death, in addition to being desirable, would not constitute (or should not constitute, in the police officers' opinion) a crime.²²⁶

270. According to the study, one of the reasons these cases are not seen as priorities by police officers, besides the fact that the perpetrators very well may be police or civil officers, is the fact that they involve low income people who live in the favela.²²⁷ One cannot forget the skin color of most of these victims.

271. Going even further, the process often replaces the person's own identity with that of a criminal subject, "with the intention of legitimizing their death, in detriment to the clarification of the events that occurred until the victim's passing."²²⁸ For example: as a rule, the family members of the victim that were called to the police station did not witness the facts and their declarations tend to relate to the victim's character. Therefore, such testimonies are rarely used to search for other witnesses who may have observed the facts. Instead, they are asked:

if they were drug users, if they had been involved in any criminal activity before, with whom they hung out, if they worked or studied, if they lived in an area dominated by the drug trade, if they had a gun, etc. These questions aim to sketch a social and moral profile of the deceased, trying to find out if they were a "good" person, a hard-worker,

²²⁵ Ibidem, p. 40.

²²⁶ Ibidem, p. 116

²²⁷ Ibidem, p. 46.

²²⁸ Ibidem, p. 118.

or if they were a “criminal”, “thug”, “addict”, or involved in some illicit activity.²²⁹

272. This identification, is extended to the entire population of the favela, so that “Until their ‘innocence’ is proven, every *favelada*²³⁰ victim is prejudged to be guilty.”²³¹ The objective of the inquiry, therefore, becomes to investigate the person murdered, not to search for the murderers themselves. It is more important to know who the victims are, always starting from negative stereotypes.²³²

273. Some elements of this study can be noticed in two specific studies regarding penal investigation and criminal process whose victims were *travestis* or transsexual women. The first of these studies was led by Sergio Carrara and Adriana Vianna, who analyzed murder cases occurring in the city of Rio de Janeiro during the decades of 1970 through 1990. The study pointed out the lack of police effort, which was magnified during investigations into killings of *travestis* and even more so when there was evidence of participation in activities like sex work and drug trafficking, situations in which killings are seen as a natural occurrence. This way, it was ascertained that 78% of the execution cases involving *travestis* which occurred in that period were archived.²³³

274. The study shows, however, that there are cases in which not even the victim’s family make great efforts to demand the crime’s resolution, because, as in one of the cases analyzed, the mother of the victim had already assumed and accepted what would be the fate of her “son” (sic), who frequented bohemian neighborhoods in Rio de Janeiro and lived with HIV.²³⁴

²²⁹ Ibidem, p. 118.

²³⁰ A term used to describe someone who lives in a favela (a slum dweller).

²³¹ Ibidem, p. 119.

²³² Ibidem, p. 52.

²³³ CARRARA, Sergio; VIANNA, Adriana. “*Tá lá o corpo estendido no chão...*”: *a violência letal contra travestis no município do Rio de Janeiro*. *PHYSIS: Rev. Saúde Coletiva*, Rio de Janeiro, 16(2), 2006, p. 237.

²³⁴ Ibidem, p. 238.

275. The study also shows that, in many cases, *travestis* that witness crimes are intimidated by police officers, especially when the perpetrators are police officers.²³⁵ Furthermore, there is a well-established process of putting the credibility of *travesti* witnesses in check, starting with the assumption that there is a solidarity among them in which they cover up each other's crimes and lie to police as a form of mutual protection.²³⁶

276. The stereotypes of *travestis*, allow for the varied forms of violence committed against them to be read as an attempt to impose order and defend legitimate rights that are under threat due to concerted, threatening acts by *travestis*.²³⁷ These stereotypes result in police indifference in the investigation of crimes committed against *travestis*, which comes from a naturalization of their murders as a "consequence of a way of life that is constantly in proximity to illegality and is received with few pressures, especially familial ones, for their investigation and justice."²³⁸

277. Researcher Diego Lemos conducted another study on the criminal system's response to cases of *travestis* being murdered. Lemos observed that, in the state of Pernambuco, of 54 LGBTIphobic murders that occurred from the years 2002-2009 and in 2015, only 12 led to criminal proceedings: 7 in which the victims were gay men and 5 in which the victims were *travestis*. Of these 12, only 3 ended in convictions. For cases in which the victims were *travestis*, none ended in conviction.²³⁹ Lemos determines that:

This means, the three convictions in the universe of cases research already indicates a high degree of impunity in and of itself. But, when we divide the cases in homophobic murders and transphobic murders, the degree of impunity

²³⁵ Ibidem, p. 240.

²³⁶ Ibidem, p. 241.

²³⁷ Ibidem, p. 244.

²³⁸ Ibidem, p. 246.

²³⁹ LEMOS, Diego José Sousa. *Contando as mortes da violência trans-homofóbica: uma pesquisa sociojurídica dos processos criminais na cidade do Recife e uma análise criminológico-queer da violência letal*. Master's Dissertation. Recife: Universidade Federal de Pernambuco, 2017, p. 212.

for these last ones assumes a truly terrifying dimension. There were no convictions for cases with travesti victims. Such findings show us an index of impunity in transphobic murders that is vigorously higher – and, obviously, a much lower index in homophobic murders.²⁴⁰

278. The study presents the example of a 31-year-old *parida travesti* stabbed to death on February 10th of 2008. The police authority registered that the victim used drugs and was “a carrier of AIDS” (sic),²⁴¹ even though both facts were absolutely irrelevant to the case’s resolution. One of the accused confessed the murder to the police authority. From there, the case had the following trajectory:

(...) the civil police’s report was recorded on March 31st of 2009 with the indictment of Biu and Jó for aggravated murder with a warrant for preventive arrest (...).²⁴² The case went to court on April 20th of that year and was received by the judge on May 25th, a little more than 1 year after the fact occurred on February 10th of 2008 (until then, nothing that called our attention). However, (...) the proceedings were still not concluded, and the process is still in the system, even though more than 8 years have passed since the case was received.²⁴³

279. In consulting the site of the Court of Justice of the State of Pernambuco shown in the study, it was possible to verify that, at the time of publication of this dossier, the process was still in the first phase, with no decision from the jury trial.²⁴⁴

280. In the criminal processes analyzed, the author notes that, in the cases of *travesti* victims, the police, the Public Prosecutor’s Office, witnesses, family members of the victims, and all actors in the criminal process and the penal investigation

²⁴⁰ Ibidem, p. 215.

²⁴¹ Note that the police authority referred to the victim with a masculine pronoun and used inappropriate language to refer to people with HIV. Still, the information that this concerns a person with positive serology for HIV is completely irrelevant to the penal investigation and has as its only objective the further stigmatization of the victim.

²⁴² The study chose to use fictional names.

²⁴³ Ibidem, p. 104.

²⁴⁴ Case n° 0110211-43.2009.8.17.000. Ibidem, p. 102.

insist on treating victims as male and referring to them as male homosexuals, revealing the transphobia of the penal system (and of the Brazilian State), which erases the identities of the *travestis*.²⁴⁵

281. Furthermore, the *travestis* are depicted as drug users and their involvement in robberies and theft is noted, even when these accusations have no connection to their murders.²⁴⁶ This labeling attributes to the victim the role of someone who is a criminal by their very nature. The author states that “Such an attribution reverberates not only in the criminal investigation (or lack thereof), but also in the impossibility of effective recognition of *travestis* as victims that are deserving of protection.”²⁴⁷

282. With this, Lemos concludes that:

The fact is that for *travestis* the penal system did not reserve the place of victim, identified with good, order, and honesty. The place conceded by the penal system to the *travestis* is that of the perpetrator of a crime, identified with evil, disorder, roguery. They are seen as criminals and not as victims worthy of protection. And, finally, these roles of criminal and victim are separated in the working dynamic of the penal system and how it sees people. One is either one thing or the other, it is impossible to be both. Even in the proceedings in which they are formally placed as the murder victims, they continued to be seen primarily as criminals, hence their deaths could be explained and maybe even justified in the perception one learns from the penal system.²⁴⁸

283. Confirming the information above, Letícia Furtado, public defender and coordinator of NUDIVERSIS, recalls the case of a *travesti* suffering from mental health issues who searched for help from municipal public staff, in order to request healthcare services, and while doing so, had her social name disrespected by the professional responsible. Soon after, she was flagrantly arrested because she had an “outbreak” due to her dismissal from receiving treatment.

²⁴⁵ Ibidem, p. 206

²⁴⁶ Ibidem, p. 209.

²⁴⁷ Ibidem, p. 210.

²⁴⁸ Ibidem, p. 218.

She also remembers a *travesti* who was caught in the act, being accused of third-party theft when, in reality, she was only complaining of non-payment in the agreed form of sex work. Furtado explains:

There is a certain inversion of values when violations of rights practiced against *travestis* and transsexual people are submitted to the justice system. A kind of “presumption of guilt”, for having “chosen” to live against cisheteronormative standards hangs over their heads. They are different from what society believes is right, a concept established according to the interests of a group that owns the power mechanisms.

284. The thought that *travestis* and transgender women are stripped of the role of victim seems to be a sign, once again, of the selective racist and transphobic gaze that takes away their humanity and determines that there are some lives more killable than others. Where humanity is not recognized, there is no possibility of being seen as a victim of the penal system and there is no commitment to the elucidation of crimes.

285. The studies show that the rare cases in which the accusers are convicted are mostly cases that have sparked media coverage and action from social movements. The case of Dandara, discussed in the previous chapter, is one example. Following her murder, on March 10th of 2017, the LGBTI movement of Ceará promoted, the Public Act of Civil Society Against Transphobic Barbarity, which led to a meeting between members of civil society and the governor. The Public Defender’s Office and Dandara’s mother were present, which added pressure for a quick resolution of the case. A little more than a year after her murder, in April of 2018, a jury condemned five people accused of the crime. The defense tried to argue that Dandara was not murdered for being a *travesti*, but for committing theft, on the orders of organized crime figures seeking to keep order. However, none of the accused were able to state what Dandara had stolen or provide evidence of plan to combat theft²⁴⁹ by

²⁴⁹ Folha de São Paulo. *Cinco são condenados à prisão por morte da travesti Dandara*. 6 de abril de 2019. Available at: <https://www1.folha.uol.com.br/cotidi->

figures of organized crime. In 2019, the last suspect in the murder, who was at large, was arrested.²⁵⁰

286. The quick institutional mobilization on Dandara's case shows that, when there is public pressure and political will, it is possible to confer greater attention to the murders of transsexual people and *travestis* in Brazil, rejecting the tacit institutional authorization to murder this population.

287. There remains, however, a strong mechanism that excludes Afro-LGBTI people from access to justice, composed of racial and gender-based discrimination, words and pronouns used, disrespect of names and identities, improper documentation, investigations that are more interested in criminalizing the victim than in investigating the facts, judicial decisions that overlook gender identity in parts of the process, and many other exclusive elements that modulate access to justice for *travestis* and transsexual people in Brazil and not only increase this population's possibility of victimization, but repeatedly rob them of their humanity after they are victimized.

ano/2018/04/cinco-sao-condenados-a-mais-de-14-anos-de-prisao-por-matar-travesti-no-ceara.shtml

²⁵⁰ O povo. *Após dois anos, Polícia Civil cumpre mandado e prende foragido do caso Dandara*. 18 de março de 2019. Available at: <https://www.opovo.com.br/noticias/fortaleza/2019/03/18/apos-dois-anos--policia-civil-cumpre-mandado-e-prende-foragido-do-caso-dandara.html>

Police violence against Afro-LGBTI people



Chapter 4

Police violence against Afro-LGBTI people

The lives of travestis that work in prostitution in various parts of Brazil are marked by intimidating encounters with the police, especially since the 2018 elections. At times, the same police officers that try to obtain sex by force are also the ones that assault, humiliate and plant drugs, as well as threaten to arrest travestis who are just trying to survive after their “good” families have forced them out of their homes and shut the doors in their faces.²⁵¹

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288. Police stations in Brazil are characterized by an authoritarian character, with poor people and Black people being the preferred targets of institutionalized violence. Various studies have demonstrated a racist *modus operandi* at police stations in Brazil, highlighting how race functions as a mechanism of social control that maintains hierarchical relations through authorities’ racist actions. For Evandro Piza, a professor at the University of Brasília, the daily operations of the police depend on the symbology of the Black person as suspicious, and with every police operation, the dehumanized image and fear associated with the Black presence are reinforced.²⁵²

²⁵¹ Revista Cult. *A violência policial e os apagamentos*. May 31, 2019. Available at: <https://revistacult.uol.com.br/home/a-violencia-policial-e-os-apagamentos/>

²⁵² DUARTE, Evandro Piza. Editorial: *direito penal, criminologia e racismo*. Revista Brasileira de Ciências Criminais. vol. 135. ano 25. São Paulo: Ed. RT, Sep. 2017, pp. 17 to 48.

289. The Anuário Brasileiro de Segurança Pública reveals that in 2018, 6,220 people were killed in police operations, an average of 17 per day. The victims were 99.3% men, 77.9% between the ages of 15 and 29, and 75.4% Black.²⁵³

4.1 The Military Police: a legacy of the military dictatorship in Brazil?

290. Article 144 of the Federal Constitution²⁵⁴ determines that public safety is a duty of the State and a right and responsibility of all, with the State duty exercised through various police forces, including:²⁵⁵

- a) The federal police, responsible for (among other things) the investigation of criminal infractions committed in detriment of goods, services, and the interests of the Federal Union or its regional entities and public companies, as well as infractions with international or interstate repercussions;
- b) The federal highway police, charged with the ostensive patrolling of federal highways;
- c) The penal police, in charge of security at penal institutions;
- d) The civil police, who are responsible for investigating criminal infractions, except those contained in the military penal code;
- e) The military police, responsible for ostensive policing and for the “preservation of public order”.

291. While it is important to analyze all the branches of the police in Brazil, for this dossier it is more important to

²⁵³ FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. *Anuário Brasileiro de Segurança Pública*. 13^o Edição. São Paulo: Fórum Brasileiro de Segurança Pública, 2019.

²⁵⁴ Constituição da República Federativa do Brasil de 1988. Available at: www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

²⁵⁵ The Constitution also dictates that municipalities may establish municipal guards, responsible for protecting public property. The municipal guard is not classified as a police force.

highlight the difference between the operations of the civil police and the military police, in order to understand the violent manner in which the Brazilian State acts in relation to the Afro-LGBTI population.

- 292.** Both the military police and the civil police are subordinate to governors of the states or the Federal District, so both of these forces operate under the purview of state governments. One of the main differences in their operations is related to the moment a crime occurs: the military police act in the prevention of crimes (that is, before they occur), while a crime is in progress, or immediately afterward. Meanwhile, the civil police act in the investigation of crimes or after a crime has occurred.
- 293.** Thus, the military police perform the act of preventative policing,²⁵⁶ with actions that include community policing, radio patrolling, and other actions aimed at preventing the occurrence of crimes or administrative infractions. Additionally, they are responsible for repressing infractions which, in their judgement, disturb public order. Meanwhile, the civil police are responsible for the investigation of crimes and misdemeanors, collecting evidence related to the circumstances surrounding a crime, and identifying perpetrators.²⁵⁷
- 294.** Human rights organizations have repeatedly raised strong criticisms of the manner in which the military police perform their duties of preventative policing, especially in regard to their interactions with the Black population. A look at how the model for public safety was designed in Brazil allows for a better understanding of the underlying issues.
- 295.** In the negotiations over the formation of the Constitution of 1988, held during the transition period from the military dictatorship to a democratic regime, the tone of the discussions on public safety were set by the military, who did not

²⁵⁶ Secretaria de Segurança Pública do Estado de São Paulo. *Atribuições das polícias*. Available at: <https://www.ssp.sp.gov.br/fale/institucional/answers.aspx?t=1>

²⁵⁷ Idem.

want to relinquish power. According to the professor and LGBTI activist Renan Quinalha:

Unfortunately, the subject of public safety was left out of the transition agenda. The return to democracy that affected several spheres of Brazilian social life, was not strong enough to submit the military corporations to civil and democratic control. The representatives of the military took a prominent role in the discussions on public safety during the process of drafting the constitution, linking it to national defense. For their part, the representatives from the democracy movement prioritized other agendas, leaving this subject to be controlled by the “military specialists”.

The result of this, for example, is that art. 144, § 6º, of the Federal Constitution disposes that the military police are considered to be “auxiliary reserve forces of the Army.”²⁵⁸

296. Thus, even though the military police are the responsibility of state governments (except in the case of the Federal District, where it is under the responsibility of the Federal Union) for the purposes of organization, they are auxiliary reserve forces of the Army, which may assume operational control in some situations.

297. For Renan Quinalha, this interinstitutional apparatus is aligned with the authoritarian attitude that was characteristic of the military dictatorship, which emphasized “combatting the enemy within”:

They display a conception of public safety and cultural organization that creates a police force of true armed forces to combat those that challenge the established power, even when they are only demanding their rights. The civil-military dictatorship adopted a series of legal and institutional measures that go a long way toward explaining current policing: they federalized commands, institutionalized specific agencies that address violations of human rights, centralized control over security areas in accordance with the viewpoint of “combatting the enemy within”, tied ostensive policing to agencies and operations of repression and to the Army, “sophisticated” torture

²⁵⁸ QUINALHA, Renan. *Violência policial no Brasil: herança da ditadura ou escolha da democracia?* Revista Cult. November 18, 2016. Available at: <https://revistacult.uol.com.br/home/violencia-policial-no-brasil-heranca-da-ditadura-ou-escolha-da-democracia/>

techniques and distanced the military corporations even farther from any possibility of civil and democratic control by external agencies.²⁵⁹

298. Nevertheless, even if the military dictatorship is considered directly responsible for the institutional structure of a large part of the police system in Brazil, Quinalha recognizes that police forces have always been brutal in authoritarian and unequal societies such as the Brazil's.

299. While affirming that police in Brazil have always been violent, it must be recognized that the military regime adopted specific dynamics of violence when constructing the police forces as we know them in Brazil today, including their practices toward Black and LGBTI people.

300. Here, it is interesting to make some brief historical considerations about the military dictatorship in Brazil. We do not intend to focus on the specific dynamics of military police action during the dictatorship, but rather examine what the legacy of the dictatorship is and how it has structured the State and its interactions with LGBTI and Black lives.²⁶⁰

301. According to a report by the Comissão Nacional da Verdade²⁶¹ (National Truth Commission), there was no formalized State policy to exterminate the LGBTI population or to criminalize it under the military dictatorship. However, the ideology that justified the coup, the suspension of democratic rights, and other violence – embodied in the “national security doctrine”, which called upon society to mobilize to fight against the internal threat of communism – was

²⁵⁹ Idem.

²⁶⁰ PIRES, Thula. *Estruturas Intocadas: Racismo e Ditadura no Rio de Janeiro*. RevistaRev Direito e Práxis Rio de Janeiro: Vol. 9, n. 2, 2018, p. 1054-1079. Available at: <https://www.scielo.br/pdf/rdp/v9n2/2179-8966-rdp-09-02-1054.pdf>

²⁶¹ In 2012, the Comissão Nacional da Verdade was established in Brazil, for the purposes of lifting the veil from violations of human rights perpetrated by agents of the State in the repression of anyone and everyone that was considered to be a possible opponent of the regime, and to force the State to take responsibility for these violations. In 2014, the Commission published a report that attempted to publicize violations in regard to the LGBTI+ population as well. The report may be found at: http://cnv.memoriasreveladas.gov.br/images/pdf/relatorio/volume_2_digital.pdf

permeated with conservative values and an LGBTIphobic perspective that viewed sexual diversity and the possibilities of gender identity (although the particular term was not used at the time) as subversive. This association of LGBTI identities with subversion justified repression. With this, a vision of LGBTI people as filthy, dangerous beings that were against the family, moral values, and 'good behavior' was mainstreamed, legitimizing violence against this population.

- 302.** ANTRA reports that *travestis*, homosexuals, and other people seen as 'perverts' were the targets of persecution, arbitrary detentions, purges from positions of public employment, censorship, murders, and other forms of violence because they were seen as undesirable people.²⁶²
- 303.** The racial dimension of the military dictatorship is also crucial. According to Thula Pires, the dictatorship, in assuming the myth of racial democracy as one of its ideological pillars, suffocated the possibilities for the non-white population to directly confront the violence they suffered from, and helped to maintain the privileges of white supremacy.²⁶³ Thus, racism was an inherent part of the military

²⁶² In fact, in 1987, already during the transition from the military regime back to a democratic state, São Paulo, for example, was the stage for a police operation that became known as "Operation Tarantula". The purpose of this operation was to arrest travestis at the principal points of prostitution in the city and was presented as a contribution on the part of the police to bring down the number of cases of AIDS. More than three hundred travestis were detained in the operation. Thus, São Paulo is an example of how the military government adopted techniques of persecution, with special attention given to travestis, in order to clean up the public space through extermination, because it considered this group dangerous, in a variety of ways. In addition, this persecution was also directed at other LGBTI identities, as with the Operação Sapatão, which occurred in São Paulo during the decade of the 80s, arresting lesbians at some bars in the city. Folha de São Paulo. '*Sobrevivi, diz vítima de operação da polícia de caça a travestis há 31 anos*'. January 17, 2018. Available at: <https://www1.folha.uol.com.br/cotidiano/2018/01/1951067-sobrevivi-diz-vitima-de-operacao-da-policia-de-caca-a-travestis-ha-31-anos.shtml> ; GREEN, James N.; CÉSPEDES, Carlos Manuel de; QUINALHA, Renan. *Ditadura e homossexualidades*. Relatório da Comissão Nacional da Verdade, v. 2, p. 300-311, 2014. Available at: http://cnv.memoriasreveladas.gov.br/images/pdf/relatorio/volume_2_digital.pdf

²⁶³ PIRES, Thula. *Estruturas Intocadas: Racismo e Ditadura no Rio de Janeiro*. RevistaRev Direito e PráxisPráx. Rio de Janeiro: Vol. 9, nN. 2, 2018, p.1054-1079. Available at: <https://www.scielo.br/pdf/rdp/v9n2/2179-8966-rdp-09-02-1054.pdf>

dictatorship and its methods for operating. As the police were under the command of Army officials, the violence suffered by Black people is inseparable from the violence imposed by the military regime:

The reality of Black people, as a rule, was one permeated by “roadblocks”, arbitrary arrests, home invasions, expropriation of places to live (removals), and physical and psychological torture, in addition to having to live under the latent threat of extermination groups. A criminal policy rooted in slave-owning colonialism, exported mainly to the favelas, suburbs, Baixada Fluminense and other peripheral regions of the State.²⁶⁴

304. Even today, the manner in which the police in Brazil deal with LGBTI and Black people is extremely violent. According to data from the Anuário Brasileiro de Segurança Pública (Brazilian Public Safety Annual Report), Black people make up 75.4% of the deaths at the hands of the police.²⁶⁵

305. In addition, as we see in this chapter, it is not unusual to hear reports from LGBTI people, especially Afro-LGBTI people, that they have been physically assaulted or humiliated by the police”. Even today, police control the right to be on the street, especially for transsexual women and *travestis*.

4.2 The case of the state of Rio de Janeiro

306. Rio de Janeiro is Brazil’s worst state in terms of deaths caused by the police. According to data from the Instituto de Segurança Pública do Rio de Janeiro, from January to August of 2019, there were 1,144 deaths at the hands of the state’s police.²⁶⁶ That number is 18.3% greater than the same period of the prior year, when there were 967 murders. An analysis performed by the news site

²⁶⁴ Idem, p. 1063.

²⁶⁵ Fórum Brasileiro de Segurança Pública. *Anuário Brasileiro de Segurança Pública (2019)*, p. 58. Available at: www.forumseguranca.org.br/wp-content/uploads/2019/09/Anuario-2019-FINAL-v3.pdf

²⁶⁶ Dados do Instituto de Segurança Pública. Available at: <http://www.ispvisualizacao.rj.gov.br/index.html>

UOL demonstrated that, of the 881 deaths registered in police operations during the first six months of 2019, all of them took place in areas controlled by drug trafficking organizations.²⁶⁷

- 307.** The current governor of the state of Rio de Janeiro, Wilson Witzel, was elected in 2018 with a campaign theme of war against drug trafficking. In an interview given before he assumed office, Witzel stated that police who kill anyone seen carrying automatic rifles should not be questioned “under any circumstances,” a true policy of slaughter that was not met with any significant public indignation.²⁶⁸
- 308.** This policy of slaughter has put the work of an important organization that operates in the Complexo da Maré, a group of extremely dangerous favelas in the city of Rio de Janeiro, at great risk: Grupo Conexão G, one of the only organizations that has managed to penetrate the most dangerous areas of the city.
- 309.** In September 2019, when Grupo Conexão G was holding the first Festival of LGBTI Culture and Citizenship in the Favelas, an event that included artistic presentations and workshops for political and professional development, the activities were interrupted by a 20-hour police operation in the Favela da Maré that resulted in the confirmed deaths of two local residents. The people that were present at the event had to remain locked inside a hall until the shooting stopped.
- 310.** Mariah Rafaela, the research coordinator for Grupo Conexão G, who was present that day, said:

267 Uol. *Polícias mataram 881 pessoas em 6 meses no RJ. Nenhuma em área de milícia.* August 20, 2019. Available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2019/08/20/policias-mataram-881-pessoas-em-6-meses-no-rj-nenhuma-em-area-de-milicia.htm?cmpid=copiaecola>

²⁶⁸ Uol. *‘A polícia vai mirar na cabecinha e... fogo’, afirma Wilson Witzel.* November 1, 2018. Available at: <https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2018/11/01/a-policia-vai-mirar-na-cabecinha-e-fogo-afirma-wilson-witzel.htm?cmpid=copiaecola>

It was horrible. When we looked, the police were crouching down as they entered the favela and we started to hear the sound of shooting, which most certainly left us very worried about the physical integrity of the people who had come to enjoy the event. There was a lot of gunfire. At that moment, we had to stop the activities and close all of the doors, leaving us trapped inside until the shooting stopped for at least enough time so that we could make a break for it. It is really hard to carry out this work in Maré, but we keep trying. We just keep trying.²⁶⁹

311. On the day of the LGBTI Parade in the Favela da Maré that wrapped up a week of activities, Gilmara Cunha complained:

This State kills us every day! Stop killing us! We are here demanding our lives! We live these days practically in a state of war, with the police invading our homes, murdering residents, and we cannot allow this to happen! This city is not a divided city! Maré is a part of this city! We cannot accept this as if it were normal! Enough! Stop! Stop killing our population that is poor and *favelada*! We are here to demand our rights! Being here today is an act of resistance!²⁷⁰

312. Two months later, on the morning of November 19, trans activist Gilmara Cunha, president of Grupo Conexão G, complained on social media that her house was completely covered in bullet holes when she awoke the next day. The reason, once again, was a police operation, which was launched on the pretext of combatting drug trafficking, one of the problems that most affects the lives of the favela population in Rio de Janeiro.

313. Gilmara Cunha affirms that she is proud to be a *travesti*, Black, and resident of the favela, but warns that it is necessary to take measures against the many forms of violence affecting people living in favelas and to acknowledge racism in Brazil in order to construct a policy for inclusive security.

²⁶⁹ Raça e Igualdade. *Deixem de nos matar!:* Grupo Conexão G da Favela da Maré. Available at: <https://raceandequality.org/wp-content/uploads/2019/09/Grupo-conex%C3%A3o-G-e-sua-atua%C3%A7%C3%A3o-na-Favela-da-Mar%C3%A9-1.pdf>

²⁷⁰ Idem.

314. In the report *Violência racial: uma leitura sobre os dados de homicídios no Brasil* (Racial Violence: A reading on homicide data in Brazil), Instituto Geledés and Global Rights argue that:

For Black people, poor people and residents of the favelas and peripheral areas, there is little or no respect for citizenship and rights. The most visible and present face of the State is its security agents, which appear to this portion of the population as aggressors, who commit excesses, and who hold a legitimate right to use violence. In these regions, police forces become large producers of violence, because social control is realized with heavy equipment and weaponry, in addition to legal instruments such as collective warrants for search and seizure. These actions result in expressive numbers of (...) deaths of civilians that resist police action.²⁷¹

315. None of the police operations affecting Grupo Conexão G or Gilmara Cunha were intended to target the organization or the president of the group. Nevertheless, these incidents demonstrate how the police operate in the favela as if all of the residents were suspects or potential criminals, seeing the entire Black population of the favela as an indistinct mass. Where there are no individuals, there are no subjects with rights. This dehumanizing and depersonalizing view of the lives in the favelas compromises the work of an organization that, in many cases, must defend LGBTI people and, above all, *travestis* and transsexual women from the violent actions of the police or drug traffickers.

4.3 Specific violence against Afro-LGBTI people

316. An intersectional analysis of police operations in Brazil allows us to view how the police act in relation to LGBTI people and to understand that police action assures not only racial domination, but also domination in regard to sexual orientation, gender identity, and other social markers.

²⁷¹ SILVA, Rodnei J. da, CARNEIRO, Suelaine. *Violência racial: uma leitura sobre os dados de homicídios no Brasil* / Rodnei Jericó da Silva e Suelaine Carneiro. – São Paulo: Geledés Instituto da Mulher Negra; Global Rights Partners for Justice, 2009, p. 50.

317. The IACHR has already expressed its concern with cases of police abuse against LGBTI people, observing that police demonstrate biased behavior against this group, also highlighting that acts of discrimination and violence on the part of the police lead other people to believe that they can act with impunity against this population.²⁷²

318. In the previously mentioned report from Global Rights on the situation of Black trans women in Brazil, Lohany Vargas of the Rede Afro-LGBT, said:

So, this violence against *travestis*, what I speak of and to what I can attest ... For how many years have I worked on the streets with these girls? Five years, six years. It is the police who ban them. It is the police who ban them [from the streets]. They arrived on horseback one time kicking girl out of Rio Duto. They invade clubs just to kick out *travestis*. And when they grab a Black girl, well, then they are likely to kill her. And sometimes they do.²⁷³

319. One very shocking case of police violence was that of Luana Barbosa. Luana, who was 34 years old at the time, was a Black, lesbian woman who did not fit the standards understood as feminine. On April 8, 2016, while talking with a friend in the outskirts of the city of Ribeirão Preto, in the state of São Paulo, she was aggressively approached by three military police in front of her son, mother, sister, and neighbors. After requesting the presence of a policewoman before being frisked, she was brutally beaten by the police.

320. At the police station, Luana's sister recorded a video in which Luana tells what happened.²⁷⁴ The autopsy report from the Instituto Médico Legal (IML; Legal Medical Institute) confirmed death from a cerebral ischemia as a result of blunt trauma, on April 13, 2016. The military police were accessed

²⁷² IACHR. *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*. 2015, p. 102, par. 131. Available at: <http://www.oas.org/en/iachr/reports/pdfs/violence/gbtipersons.pdf>

²⁷³ Global Rights Partners for Justice. *Report on the Human Rights Situation of Afro-Brazilian Trans Women*. (2013). Available at: http://www.lgbtnet.dk/database/doc_download/294-report-on-the-human-rights-situation-of-afro-brazilian-trans-women

²⁷⁴ Video available at: https://www.youtube.com/watch?v=HcFG_BvwRSk

of triply aggravated homicide for being of nasty motives, cruel, and without possibility of defense for the victim.

321. In an interview, her sister declared:

Luana had already experienced prejudice before, at a party with her girlfriend. She had already raised her blouse once to show she was a woman to avoid a beating. Maybe that encounter would have been different if she had dressed differently and her appearance was different. She said she couldn't take being stopped on the streets around here anymore.

She paid the price for looking like a poor, Black man, and was stopped like other men in the outskirts are. Lesbian, Black, and from the periphery with a police record, she was already considered guilty.²⁷⁵

322. At the time, UN Women Brazil and the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights (OHCHR) emphasized, through a press release, that “the excessive use of force, as well as any type of discrimination – whether for gender, race, ethnicity, sexual orientation, or any other type – are inadmissible in exercising police duties and should be eradicated from the forces of order in Brazil.” The press release affirmed that the death of Luana is an “emblematic case of the prevalence and the gravity of racist, gender-based, and anti-lesbian violence in Brazil.” Furthermore, they sounded a warning against “misogyny directed toward Brazilian women, aggravated by the fact of being Black, indigenous, lesbian, trans, poor, rural, young, and/or elderly,” asking Brazilian society “to remain implacable defenders of the rights of women and take a position, in an insistent and systematic manner, against all forms of violence against all women.”²⁷⁶

²⁷⁵ Ponte. *A história de Luana: mãe, negra, pobre e lésbica, ela morreu após ser espancada por três PMs*. April 25, 2016. Available at: <https://ponte.org/a-historia-de-luana-mae-negra-pobre-e-lesbica-ela-morreu-apos-ser-espancada-por-tres-pms/>

²⁷⁶ UN Women Brazil. *Nota pública do Alto Comissariado de Direitos Humanos das Nações Unidas para América do Sul e da ONU Mulheres Brasil sobre o assassinato de Luana Reis*. May 4, 2016. Available at: <http://www.onumulheres.org.br/noticias/nota-publica-do-alto-comissariado-de-direitos-humanos-das-nacoes-unidas-para-america-do-sul-e-da-onu-mulheres-brasil-sobre-o-assassinato-de-luana-reis/>

323. In an article for Geledés – Instituto da Mulher Negra, Black, lesbian activist Jéssy Ipólito declared:

Luana was a lesbian-mother-Black-peripheral woman. These elements that she carried on her skin were all that was needed for the police to see her as a target to take down. And they took her down! In a brutal and disgraceful way, with force and torture. And one of us, Black and lesbian, who has left us, a victim of racist and lesbophobic police who did not respect Luana when she said she was a WOMAN, to the point where she had to raise her blouse to prove it. Raised her blouse! Showed her breasts! To have to endure this kind of humiliation of showing your body to affirm your identity. Because Luana did not conform to the gender stereotypes imposed on women. Luana was resistant in her body which, because she existed, was vulnerable to a brutal attack like this. Luana is one of us.²⁷⁷

324. In a focus group held by Race and Equality in Salvador (BA), activists from the Black lesbian movement questioned why the brutal death of a lesbian woman, Black and dark-skinned, did not shock Brazilian society and have repercussions, condemning the fact that lesbian invisibility determines the public commotion (or lack of) surrounding lesbian deaths provoked by the State.

325. In Brasília, Race and Equality spoke with a Black *travesti* who worked as a prostitute and recounted a clear case of police violence: when she was at a corner known for prostitution, but one frequented by cis women more than *travestis*, a policeman approached the women and told only the *travestis* to move to another street. The same day, a group of men had physically and verbally assaulted her and other *travestis* in front of police authorities, who did nothing to intervene.

²⁷⁷ Geledés – Instituto da Mulher Negra. *Do luto à luta: não esqueceremos Luana Barbosa dos Reis, morta por PMs em Ribeirão Preto*. April 26, 2016. Available at: <https://www.geledes.org.br/do-luto-luta-nao-esqueceremos-luana-barbosa-dos-reis-morta-por-pms-em-ribeirao-preto/>

- 326.** From this perspective, a study that analyzed complaints of human rights violations received by Disque 100 observed various cases of violations by police officers against *travestis* and transsexuals. Even though it did not specify the race and location of each victim, this study included interesting reports that demonstrate a *modus operandi* of the Brazilian police for dealing with this population. One example is of a transsexual woman who was physically and psychologically assaulted by a military policeman. After she filed a police report, the officers taking her report did not send her to perform a physical exam at that time. The exam was not performed until a month later, when the marks had already disappeared. For this reason, the victim was not able to prove that she had received scratches and bruises from the physical aggression she had suffered. This fact left her fearful that the policeman that assaulted her would perse-cute, intimidate, or assault her again.²⁷⁸
- 327.** Another example involves a municipal guard who extorted money from *travestis*, humiliating them and calling them “devils,” “garbage of humanity,” and “sick,” even telling them that, if it were up to him, they would be burned – in addition to physically assaulting them. The study also revealed cases of *travesti* sex workers who were hit, struck with batons, had flash bombs thrown at them, and were pepper-sprayed by police to prevent them from working, in addition to threatening them with death if they reported the abuse.²⁷⁹
- 328.** The study also reports the case of a *travesti* who was assaulted by the civil police and, upon going to the station to file a police report, was taken up to the 2nd floor of the unit by police officers, where she was told to take off her clothes to check for marks proving the aggression. Next, after making the victim squat down three times, one of the police officers inserted his fingers in the victim’s anus. The procedure was seen by other people that passed through

²⁷⁸ CAPUTO, Ubirajara de None. *Geni e os Direitos Humanos: um retrato da violência contra pessoas trans no Brasil do século XXI (versão corrigida)*. Master’s dissertation. São Paulo: Instituto de Psicologia da Universidade de São Paulo, 2018, p. 74.

²⁷⁹ Idem.

the location. After that, the agents informed her that they could not complete a police report because there were no marks of aggression on her body.²⁸⁰

- 329.** Instituto Transformar, in one of its focus groups, met with Rafael, a 30-year-old Black trans man and resident of the municipality of Nova Iguaçu in the metropolitan region of Rio de Janeiro. Rafael confirmed the racial discrimination that Black men (cis and transgender) suffer because white people associate them with marginality and criminality. Since he began to present himself as the masculine gender, in 2018, Rafael has noticed a great difference between the days when he was seen as a Black masculinized woman and the moment when he began to be seen socially as a Black man:

Today, as a Black trans man, when I get on a bus, people protect their cellphones, protect their bags. [...] This is so difficult, because you are marginalized all the time. Almost every day I meet my wife at the bus stop in the evening. This did not happen before, because I used other types of clothing. Now, when people get off the bus and see me, they put their cellphones away. And if I am walking and there is another person walking in the same direction, they start walking faster.

- 330.** This difference in social perception of gender also has an impact on the way that police treat an individual. In December 2018, when Rafael was walking with a white cis friend alongside Avenida Brazil in Rio de Janeiro, he was approached by a policeman, who said, “kid, stop there.” Then, the policeman started to frisk Rafael looking for something illicit, noticed his breasts and said, “what the hell is this?” When Rafael responded that he was a trans man, the policeman touched Rafael’s genitalia, putting his hands inside his underwear, and stated “Yikes, this thing is a woman.” Rafael emphasized that this procedure – the placing of hands on genitalia – would never have been done to a cis man. He then showed the policeman his identity document with his revised name. Even so, the policeman did not respect his

²⁸⁰ Idem, p. 73.

gender identity, telling him: “Hmm, lesbo, are you trying to give me a moral lesson?”.

331. Instituto Transformar explains:

The case of Rafael is not an isolated one. In our focus groups, both in Caju as well as in Maré, we heard reports of systematic police violence. M-. also told of an abusive approach by the police. Whether it is through coercion, physical or verbal aggression, or attempted murder and humiliations of the most diverse sort, the LGBTIQ+ population appears to have been designated for any and all types of violence. In general, the Black trans population is the most vulnerable to these forms of violations.

332. In Rio de Janeiro, in 2018, a 21-year-old *travesti* filed a police report against a group of military police from the Babilônia Mangueira police unit who had assaulted her and cut her hair as she descended from the favela to buy groceries. According to testimony, the victim was stopped by about ten military police, who accused her of being a drug dealer:

They took an empty cigarette box, put rifle bullets into it and then put it in the pocket of my jacket, saying it was mine. I denied it right then, but they made me walk through the favela with them in handcuffs while they kicked me in the gut and slapped me. One of them took a knife from his belt and started to cut my hair. Afterward, they let me go. I will never forget it. I want to file a complaint about this violence against me. That is why I am here at the police station.²⁸¹

333. In the focus group held by Instituto Transformar in the Favela da Maré with *travesti* as sex workers, various reports demonstrated that, in the day-to-day of sex work, the police are the principal perpetrators of violence, with various cases in which the police extort part of the money the *travestis* earn.

334. Symmy Larrat, president of ABGLT explains that:

²⁸¹ Observatório IG. *Travesti afirma ter sido agredida por policiais ao ser confundida com traficante no Rio*. April 26, 2018. Available at: <https://observatoriog.bol.uol.com.br/noticias/2018/04/travesti-afirma-ter-sido-agredida-por-policiais-ao-ser-confundida-com-trafficante-no-rio>

Over the course of its history, Brazil has a record for violence against indigenous populations, Black people, low-income people, homosexuals, and transsexuals. This practice goes back to the colonial period and has persisted, reaching absurd amounts, during the dictatorship with the militarization of security. This inheritance permeates the regular police stations and is practiced by both civil as well as military police, who regularly treat trans people as hybrid beings or as subversive, denying them the right to exercise their gender identity. Just as there is a concept among the police of “a criminal is not a person,” by the same logic, “a *travesti* is a man with long hair or a man in a skirt,” and for this reason they are equated with criminals. It is not uncommon to hear stories of extortion, humiliation or abuse on the part of the police against *travestis* and transsexuals who are sex professionals.²⁸²

335. It is clear that the police in Brazil have served to exacerbate the inequalities between white and Black people. However, when confronted with reports of police violence against Afro-LGBTI people, an intersectional reading reveals that the police act with behavior that deprives Afro-LGBTI Brazilians of humanity, seeing them simply as bodies that are subject to white, masculine, cis-heterosexual domination.

336. Police violence should not be reduced to the authoritarian and prejudiced character of police officers as individuals. Approaching it in this manner would be embracing a conception of racism and LGBTIphobia as phenomena that is merely behavioral and individual.

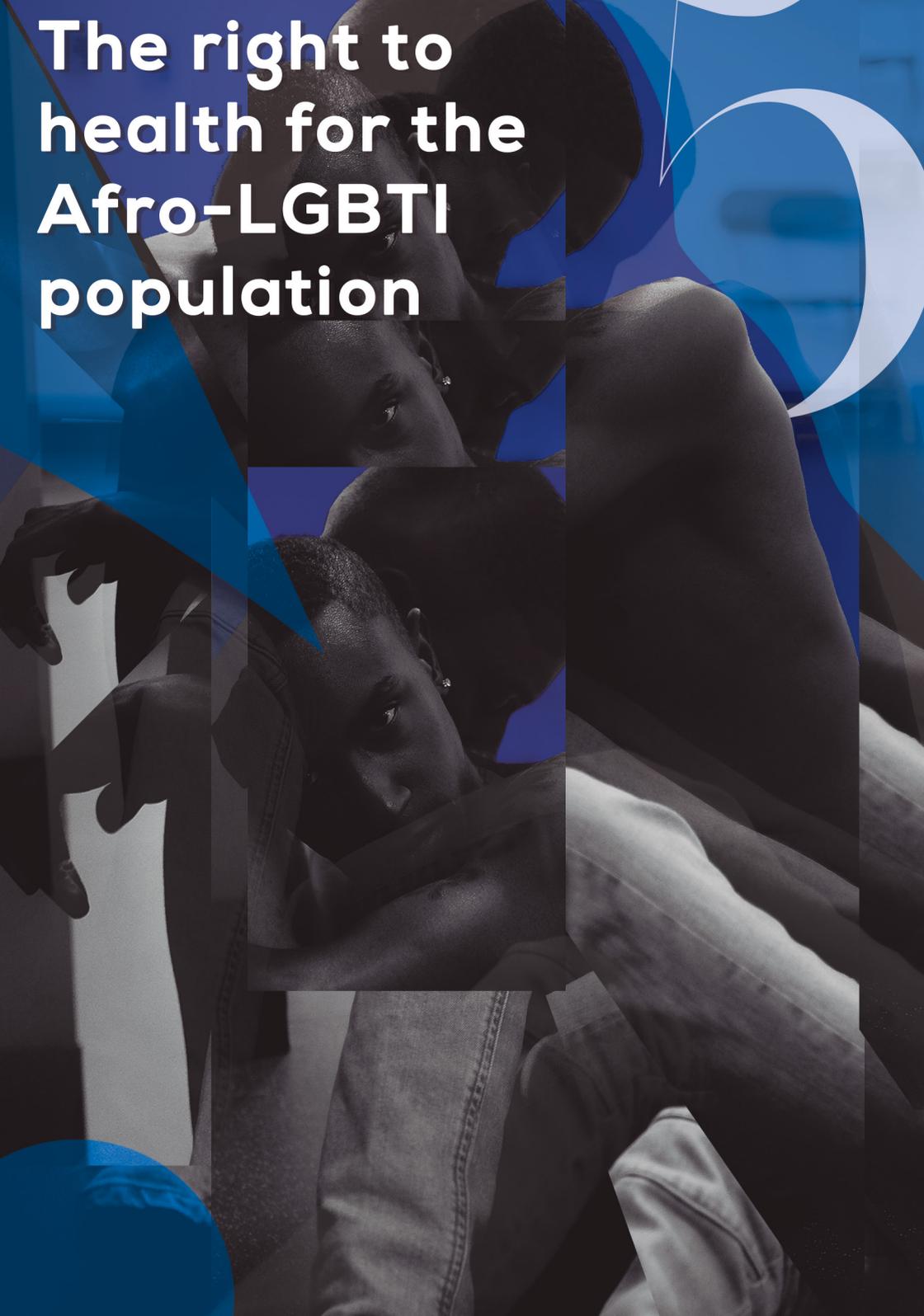
337. With Thula Pires, we can see that this reasoning misconstrues the racial selectivity of the criminal justice system, neglecting racism’s role in structuring political, social, economic, gender, and sexual relations as well as its structural

²⁸² LARRAT, Symmy. *Transfobia: como vencer uma herança do Brasil colonial e uma marca da ditadura?* In: In: Brasil. Ministério da Saúde. Secretaria de Gestão Estratégica e Participativa. Departamento de Apoio à Gestão Participativa. Transsexualidade e travestilidade na saúde / Ministério da Saúde, Secretaria de Gestão Estratégica e Participativa, Departamento de Apoio à Gestão Participativa. – Brasília: Ministério da Saúde, 2015, p. 159. Available at: http://bvsmms.saude.gov.br/bvs/publicacoes/transsexualidade_travestilidade_saude.pdf

existence within institutions.²⁸³ In other words, it misunderstands racism and LGBTIphobia as personal relations, as if the problem of selectivity in police operations was caused by differential treatment by police officers, and not due to the fact that racism and LGBTIphobia constitute a way of being for the State, society, and the police.

²⁸³ PIRES, Thula. *Criminologia crítica e pacto narcísico: por uma criminologia apreensível em pretuguês*. Revista Brasileira de Ciências Criminais. Vol. 135. Ano 25. São Paulo: Ed. RF, September of 2017, p. 547.

The right to health for the Afro-LGBTI population

The image is a complex collage. It features several black and white photographs of people, primarily of African descent, in various poses and expressions. The photos are layered and partially obscured by large, semi-transparent blue and white geometric shapes, including circles, triangles, and overlapping lines. The overall aesthetic is modern and artistic, with a strong emphasis on the intersection of race and sexual orientation. The text is positioned in the upper left corner, set against a dark blue background that blends with the collage's color palette.

The right to health for the Afro-LGBTI population

It must be remembered that travestis and transsexuals are still the populations who have the least access to health services, and this is true especially due to a lack of specific mechanisms to facilitate their access to these services.²⁸⁴

Keila Simpson
Pedreiras (MA)²⁸⁵
Associação Nacional de Travestis e Transsexuais (ANTRA)

338. Recently, in the previously cited report *Recognition of the Rights of LGBTI Persons in the Americas*,²⁸⁶ the IACHR recognized that the right to health, understood to mean the enjoyment of the highest level of physical, mental, and social well-being, is enshrined in various instruments in the Inter-American system, including Article XI of the American Declaration of the Rights and Duties of Man,²⁸⁷ and Article 10 of the Protocol of San Salvador.²⁸⁸ The report also states that,

²⁸⁴ SIMPSON, Keila. *Transexualidade e travestilidade na Saúde*. In: Brasil. Ministério da Saúde. Secretaria de Gestão Estratégica e Participativa. Departamento de Apoio à Gestão Participativa. Transexualidade e travestilidade na saúde / Ministério da Saúde, Secretaria de Gestão Estratégica e Participativa, Departamento de Apoio à Gestão Participativa. – Brasília: Ministério da Saúde, 2015, p. 9. Available at: http://bvsmms.saude.gov.br/bvs/publicacoes/transexualidade_travestilidade_saude.pdf

²⁸⁵ Despite having been born in Pedreiras, Keila Simpson, current president of ANTRA, has lived for decades in the city of Salvador (BA).

²⁸⁶ IACHR. *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*. 2019, p. 83, par. 157. Available at: <https://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>

²⁸⁷ Article XI. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

²⁸⁸ Article 10. Right to Health – 1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social

pursuant to Articles 2 and 3 of the Protocol of San Salvador, the right to health must be guaranteed without discrimination of any kind, including for reasons related to sexual orientation, identity, or gender expression and bodily diversity.²⁸⁹

339. The Inter-American Court of Human Rights expressed the understanding that health is not merely the absence of disease or illness, but a state of complete physical, mental, and social well-being, resulting from a lifestyle that allows people to attain an integral equilibrium, making it the duty of the State to guarantee access for all people to essential health services.²⁹⁰

340. In the same manner, the Yogyakarta Principles point out that States should take all legislative, administrative, and other measures necessary to guarantee the exercise of the right to the highest possible standard of health, without discrimination for reasons related to sexual orientation or gender identity, as well as adopt policies and educational programs that may be necessary to enable health service workers to provide the highest possible level of attention to

well-being; 2. In order to insure the right to health, the States-Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure this right: a) primary health care, that is, essential health care made available to all individuals and families in the community; b) extension of the benefits of health services to all individuals subject to the State's jurisdiction; c) universal immunization against the principal infectious diseases; d) prevention and treatment of endemic, occupational and other diseases; e) education of the population on the prevention and treatment of health problems, and f) satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

²⁸⁹ Article 2. Obligation to enact domestic legislation – If the exercise of the rights set forth in this Protocol is not already guaranteed by legislative or other provisions, the States-Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Protocol, such legislative or other measures as may be necessary for making those rights a reality; Article 3. Obligation of nondiscrimination – The States-Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, skin color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

²⁹⁰ Corte IDH. Caso Poblete Vilchez e outros vs. Chile. Fondo, Reparaciones y Costas. Sentença March 8, 2018. Available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_349_esp.pdf

the health of all people, with complete respect for the sexual orientation and gender identity of each one.

341. In 2011, the World Health Organization (WHO) reported a long history of evidence indicating that trans people face obstacles in relation to the quality health care due to generalized stigma and ignorance in regard to variations of gender in society and in health systems.²⁹¹

342. The lives of LGBTI people living with HIV are marked by processes of stigmatization. The IACHR understands stigma as a process of dehumanization, degradation, disbelief and devaluation of determined groups of people. This process of dehumanization is aggravated in the case of trans people living with the virus.²⁹²

343. In 2019, UN Free & Equal recognized that LGBTI people face a variety of impediments in attempting to exercise their right to the highest possible standard of health, being subject to discriminatory processes in access to health services and information.²⁹³ It also recognized that many trans people do not easily fit into the binary sex categories for health services that are directed toward (cisgender) women and men. For example, trans women may need prostate exams and trans men may need a Pap test. UN Free & Equal has registered cases of people who have died after being denied access to these and other services that save lives.

344. In 2011, Decree n° 2.836/2011 established the National Policy for the Integral Health of LGBT People. The policy

²⁹¹ WHO. “*Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people: Recommendations for a public health approach*”. 2011, pp. 10/11. Available at: https://apps.who.int/iris/bitstream/handle/10665/44619/9789241501750_eng.pdf;jsessionid=8C9E0AB1911C565C58B445AD2F1F9431?sequence=1.

²⁹² Idem.

²⁹³ UN. Born Free and Equal. *Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law*. Second Edition. (2019), pp. 57/59. Available at: https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf

established guidelines and objectives to ensure that the LGBT public is better served by the public health network. Among the diverse dispositions that may be able to guarantee access to health for the LGBTI population, the national policy provides:

- a) The establishment of management mechanisms to increase equality in the SUS, with special attention to the demands and health needs of the LGBT population, including specifics related to race, skin color, ethnicity, territory and other similar characteristics;
- b) The qualification of information on health in terms of the collection, processing and analysis of specific data related to the LGBT population, including ethno-racial and territorial snapshots;
- c) The definition of sectoral and intersectoral strategies that aim at reducing morbidity and the mortality of *travestis*;
- d) The prevention of new cases of gynecological cancers (cervical-uterine and breast), in lesbians and bisexual women, and the expansion of access to qualified treatment;
- e) Pro-active measures toward the elimination of prejudice and discrimination against the LGBT population in health services;
- f) The guarantee of the right of *travestis* and transsexuals to use their social name;
- g) The reduction of problems related to mental health, drug addiction, alcoholism, depression and suicide among lesbians, gays, bisexuals, *travestis* and transsexuals, in a way that emphasizes prevention, promotion and restoration of health.

345. Nevertheless, the Afro-LGBTI population encounters multiple difficulties in their day-to-day interactions with the public health system. Sol Guiné, a Black, lesbian woman, relates that, in 2016, during an appointment with a gynecologist

working in the public sector, after telling the doctor that she was a lesbian and had more than one sexual partner, he responded that he did not know if he could continue the examination, because he did not know how to treat her and was not accustomed to attending people with “homosexuality” (sic).²⁹⁴

346. Instituto Transformar tells the story of the activist that gave the organization its name: Shélida Ayana, a Black *travesti* activist and preschool teacher in the municipality of Queimados who, in recent years, emerged as an important activist fighting for the rights of the trans and Black population. She was also important in the political evolution of the movement that led to the origin of Instituto Transformar.

347. Shélida suffered various forms of discrimination, including constant discrimination in public spaces. Instituto Transformar tells us that many trans people choose to severely limit their consumption of water as a strategy to avoid suffering discrimination in bathrooms. In some cases, this can result in serious renal issues. This happened to Shélida Ayana, who was a victim of renal collapse taking her life in 2018, at the age of 28. In the words of the Instituto Transformar: “this shows how a simple physiological reaction, that is, the act of urinating, can lead to embarrassment and violence for trans people, who end up being as afraid to go the public bathroom that corresponds to their gender identity as much as the one that corresponds to the gender that they were assigned at birth.”²⁹⁵

²⁹⁴ O Estado de São Paulo. *Apesar de políticas, população LGBT enfrenta dificuldades no acesso à saúde*. June 27, 2019. Available at: <https://emails.estadao.com.br/noticias/bem-estar,apesar-de-politicas-populacao-lgbt-enfrenta-dificuldades-no-acesso-a-saude,70002889423>

²⁹⁵ The death of Shélida brings us back to another problem that transsexual and *travesti* people face, which is the disrespect of their identity even after their death. The Instituto Transformar relates that, according to a friend of the victim, “it was a really sad funeral, mainly because of the disrespect to her name and gender, the delegitimization of the person she was, of everything she lived, of the whole process that she went through to externalize the person she was, of Shélida: a Black woman, vulnerable, including the fact that she said a lot of what she said for them, [who were] Black women, trans, suburban, etc.”.

348. A Master's dissertation in public health that addressed the topic "Health care and transphobia: *travestis* and transsexuals perceptions of health services in two regions of Rio de Janeiro: Maré and Cidade de Deus" collected statements from trans people who have suffered prejudice when using the public health network. One example involved a *travesti* from the Favela da Maré who related the case of a friend, also a *travesti*, who, when called to the examination room, heard the health agent say: "call that little Black thing! No, that Black man there."²⁹⁶

349. The same dissertation described the case of a trans man in the favela of Cidade de Deus, in Rio de Janeiro, who also related difficulties with the health system:

You try to explain who you are, how you want to be called, and the person continues to disrespect you. "Geez, please, can you put my social name on the form? Can you please give the doctor the name he should refer to me by?" (...) then you go into the room, and the doctor calls you by the name on your birth certificate, an identity that does not correspond to you.²⁹⁷

350. In the focus group held by Race and Equality in the city of Salvador, Bárbara Alves, an activist in the Black lesbian movement, spoke about recent cases of some Black lesbian women suffering from cervical cancer. The activist explained that poor Black women depend exclusively on the public health system for medical services, and there are many cases of lesbian women who, when they go to a gynecologist, are confronted with questions that only make sense for heterosexual women, embarrassing them and making them uncomfortable and insecure about returning for this kind of appointment. For middle and upper-class women who can pay for private healthcare, the discomfort of a private doctor means only that they have to look for another

²⁹⁶ SOARES, Luciano Silveira. *Cuidado em saúde e transfobia: percepções de travestis e transexuais de duas regiões do Rio de Janeiro: Maré e Cidade de Deus, sobre os serviços de saúde*. Dissertation (Master's in Public Health) - Escola Nacional de Saúde Pública Sergio Arouca, Fundação Oswaldo Cruz, Rio de Janeiro, 2018, p. 62.

²⁹⁷ Idem, p. 55.

doctor with a different approach. For Black women whose only access to health care is the public system, it means not going to a doctor.

- 351.** For the Brazilian Association of Family and Community Medicine, this situation occurs as much due to “professional negligence with the tracking of this population as to fear of institutional violence and the difficulty these women have in finding a service that welcomes them and offers informative care that is appropriate to their reality.”²⁹⁸ It is for this reason that activist Bárbara Alves has observed more cases of Black lesbians with uterine cancer: because they stop going to see a gynecologist after having suffered prejudice in the public health system.
- 352.** Bruna Benevides, of ANTRA, points out the deficient formation of health professionals as a difficulty “[They] do not see our bodies as being possible. There is no specialty for treating trans people. We are humans and the questions can be addressed by any doctor, but many find it difficult to touch our bodies, to examine us.”²⁹⁹ According to Keila Simpson, president of ANTRA, the consequence of this is the search for clandestine treatment that is not safe and puts the lives of this population at risk.³⁰⁰
- 353.** A report in the newspaper *O Estado de São Paulo* questioned the Ministry of Health about how the national policy has been applied, if the department has promoted or supported actions that trained doctors on how to attend the LGBTI public, if there were projects underway to create a pamphlet aimed at lesbian and bisexual women, and what efforts had been undertaken to enable policies to address the needs of each group represented by the letters in the acronym

²⁹⁸ Sociedade Brasileira de Medicina de Família e Comunidade. *Cuidado de mulheres lésbicas e bissexuais*. June 26, 2019. Available at: <https://www.sbmfc.org.br/noticias/cuidado-de-mulheres-lesbicas-e-bissexuais/>

²⁹⁹ O Estado de São Paulo. *Apesar de políticas, população LGBT enfrenta dificuldades no acesso à saúde*. June 27, 2019. Available at: <https://emails.estadao.com.br/noticias/bem-estar,apesar-de-politicas-populacao-lgbt-enfrenta-dificuldades-no-acesso-a-saude,70002889423>

³⁰⁰ Idem.

for the movement. In response, the agency did not answer the questions directly, responding instead in a general way without citing the LGBTI population that it is “seeking to expand and qualify service to the entire population in an equal manner.”³⁰¹

354. For Keila Simpson, the National Policy still leaves much to be desired:

For us, it is a very expensive policy. We helped to write it and defend it as important, but there is still a long way to go before the policy as a whole will be developed to provide what was planned for the LGBT population. Today, we have made a significant step, which is the inclusion of the transsexualization process in SUS, but to be honest, as an integral policy, it still leaves much to be desired.³⁰²

355. In 2018, after the decision of the Federal Supreme Court that allowed for the alteration of the legal name of trans people without the need for a judicial process, ABGLT delivered an official letter to the Federal Public Defender’s Office (DPU in Portuguese) requesting that it open a dialogue with the Ministry of Health to make provisions for the SUS to properly provide adequate health care to the trans population.³⁰³

356. These provisions are necessary in order to adapt the internal system at the SUS for scheduling appointments with specialists, which currently presents obstacles for trans people. If a trans man that has already altered his legal name, meaning that he is registered as a man, requests an appointment with a gynecologist, the system will not allow it because only women are allowed to schedule this type of appointment. In the same way, if a trans woman needs to see a urologist, the system will also not let the health professional make this appointment.

³⁰¹ Ibidem.

³⁰² Idem.

³⁰³ ABGLT. “*Conceito de homem e mulher deve mudar no SUS*”, afirma ABGLT. July 23, 2018. Available at: <https://www.abglt.org/post/conceito-de-homem-e-mulher-deve-mudar-no-sus-afirma-abglt>

357. The Federal Public Defender’s Office delivered an official letter to the Ministry of Health in 2018 requesting that:

All the necessary and sufficient measures are adopted as soon as possible in order to adapt the internal norms and data systems of SUS so that they comply from a legal perspective with the consolidated concept of “sex” as independent of genitalia, in order to allow trans people to have full access to all procedures and medical specialties available in the public health system.³⁰⁴

358. However, to date there has been no response from the Ministry of Health to this letter. For ABGLT:

Medical specialties such as urology, proctology and gynecology continue to be conditioned on genital “sex.” This means that *travestis*, transsexual women and trans men cannot schedule appointments and have the procedures they need performed, even if their names and “sex” are altered, because of the incongruence of the system. Today, SUS understands that certain services, like those of gynecology, can only be offered to “women.”³⁰⁵

359. In practice, this means that trans people depend on the “good will” of the professional that attends them at the health clinic to be able to get appointments with specialists in these areas.

5.1 Access of trans men and transmasculine people to health

360. The field of health is one of the areas in which trans men and transmasculine people have the most difficulty in gaining access to their rights. A study on the invisibility of trans men in discussions on access to healthcare in Rio Grande do Sul determined that:³⁰⁶

- a) The social name is used very infrequently and is not respected by professionals that attend trans men in clinics, creating embarrassing situations for them;

³⁰⁴ Idem.

³⁰⁵ Ibidem.

³⁰⁶ DE ANTONI, Clarissa; SOLKAL, Anna Caroline. *Homens trans: da invisibilidade à rede de atenção em saúde*. In: Revista Saúde e Desenvolvimento Humano. Editora Universidade La Salle: Canoas, v. 8, n. 1, 2020, p. 14.

- b) The lack of discussions about transsexuality in pre-med courses and in daily work situations, together with the lack of literature on the specific needs of trans men in health, results in professionals who are unprepared and services that do not attend to the specific demands of this group;
- c) The moral prejudice or stereotyped viewpoints in the provision of medical services affect the quality of medical care.

361. Many times, these situations keep trans men from going to the public health system, which is evidenced in two interviews performed in the aforementioned study. In one of them, one of the trans men said: “when I had my document altered, it was terrible. I avoided it... preferred to die at home than to go to a doctor, or a health clinic, either public or private.”³⁰⁷ Then he added: “I have to explain (...) that I take hormones, that I have not had certain surgeries performed on my body, that I face such and such questions in my daily life. It is such a great exposure that it makes me avoid going to a doctor as much as possible.”³⁰⁸

362. In another, a trans man related: “to access SUS I would have to go to the health clinic near my house and explain that I am a trans man, and then there would be that whole thing . . . the people sometimes do not know how to handle it, how to talk to a person, you know, they may mess up the gender and that kind of thing.”³⁰⁹

363. A conversation with activist Kaio Lemos, president of the Associação Transmasculina do Ceará (Transmasculine Association of Ceará, in short Atrans – CE), revealed how institutional transphobia is an obstacle for trans men’s access to health care, especially when it comes to scheduling appointments with a gynecologist. In his words, SUS is organized according to a gynecological binarism, which addresses only the needs of cis women.

³⁰⁷ Idem, p. 11.

³⁰⁸ Idem, p. 12.

³⁰⁹ Idem.

364. This phenomenon is expressed both through the impossibility of receiving gynecological care for trans men and transmasculine people who have rectified their civil registry, as well as for the service itself, in which professionals may be unaware of the reality of the trans body and language needed for quality service for these people.

365. Kaio Lemos said that, on one rare occasion, he was attended at SUS by a gynecologist who was prepared to see him, and was able to use the language that some trans men and transmasculine people use to refer to their bodies: the doctor did not speak of “breasts,” but “*intrusos*,” (“intruders”) which is the name used by many trans men. Regarding this appointment and the impact that proper preparation on the health worker’s part can have, he said:

Hearing that, the sensation you get, metaphorically speaking, is of a body full of padlocks that spontaneously break open bringing us security. “*Intrusos*” is not a word used by just anyone; because “*intrusos*” belongs to the transmasculine jargon. So, hearing a professional use this language is to sense an approximation with the other during the appointment, someone that understands us.

366. In 2015, the trans man Guilherme Dias Santos, who was 19 years old at the time, went to the gynecologist and explained that he was a trans man and was going to start hormonal treatment. At the appointment, the doctor imposed a prostate exam on him, even though he was a trans man who was only 19:

She ended up inserting her finger in me in a way that she in no way needed to do. And when I questioned her, the response I got was: “Since you are a man, you have to do this exam”.

Since that episode, I have not stepped into a gynecologist’s office, and do not plan to any time soon, because I felt violated.³¹⁰

³¹⁰ Uol. *Preconceito e violência expulsam trans de rede de saúde: “Me senti violado”*. September 28, 2017. Available at: <https://noticias.uol.com.br/saude/ultimas-noticias/redacao/2017/09/28/discriminacao-e-violencia-afastam-trans-de-medicos-me-senti-violado.htm?cmpid=copiaecola>

- 367.** Activist Leonardo Peçanha, a Black trans man from Rio de Janeiro (RJ), speaks about some problems experienced by trans men and transmasculine people in health and the area of reproductive rights.³¹¹
- 368.** The decree from SUS that establishes the health policy for LGBTI people does not contain a single provision about the possibility of freezing sperm or eggs for assisted reproduction for those people who want to perform sexual redesignation, which will leave them sterile.
- 369.** Seeing this, Leonardo Peçanha calls for changes in the SUS decree:

The fight now is to put other demands in the transsexualization process that weren't there before, such as the question of reproductive rights, understanding that trans people should be given the possibility of freezing their genetic material so they can use it later for reproduction.³¹²

- 370.** It is necessary, therefore, for the Brazilian health system to prepare itself to care for trans people. In the case of trans men and transmasculine people, health has proven to be one of the greatest obstacles to recognition of their humanity and their citizenship.

5.2 The worrying advance of HIV/AIDS

- 371.** One of the issues that has most worried the LGBTI movement in Brazil is the advance of HIV/AIDS and other sexually transmitted infections (STIs), such as syphilis. Whereas Brazil was once a leader in the response to the HIV epidemic, today the country is suffering a great step backwards:

In addition to a dismantling of public policies, financial and social aspects are also among the stumbling blocks to an effective strategy this year. The rule of spending limits,

³¹¹ Gênero e número. *Fora da "família tradicional", população trans não tem saúde reprodutiva garantida pelo SUS*. September 11, 2018. Available at: www.generonumero.media/mesmo-sendo-um-direito-saude-reprodutiva-da-populacao-trans-nao-e-garantida-pelo-sus/

³¹² Idem.

which may impose a reduction of R\$9.46 billion in spending in the area of health, and the influence of conservative groups, which have limited the dialogue over sexual rights, are examples of the arid scenario for 2020.³¹³

- 372.** In 2012, Eduardo Gomez, a researcher at Rutgers University, stated that the success story of the Brazilian AIDS program had begun to falter because of factors such as the drying up of international resources and the weakening of the relationship between the government and civil society: “Historically, the Brazilian AIDS program has a strong connection with NGOs, but now they are without resources and without motivation.”³¹⁴
- 373.** At the same time, Veriano Terto Júnior, from the Brazilian Interdisciplinary AIDS Association, also condemned the dismantling of the Brazilian AIDS response mechanism: “People are dying, the NGOs are closing their doors, the hospitals are terrible, and the federal government is censoring its own campaigns.”³¹⁵ At the time, he was referring to the fact that, due to pressure from religious conservatives, the government at that time revised their campaigns on HIV prevention and opted for campaigns that were less specific and explicit.
- 374.** The situation, unfortunately, has gotten increasingly worse. In 2019, the first year of the Jair Bolsonaro’s government, there were several setbacks. The one that was the most worrisome for civil society came by way of Decree N° 9.795/19,³¹⁶ which downgraded the Department of Surveillance, Prevention, and Control of STI, HIV/Aids, and Viral Hepatitis from acting as its own office to having its work divided between two sub-directories of the recently

³¹³ Jornal da Universidade Federal do Rio Grande do Sul. *Do exemplo ao retrocesso: país sofre desmonte da política para o HIV*. January 2, 2020. Available at: <https://www.ufrgs.br/jornal/do-exemplo-ao-retrocesso-pais-sofre-desmonte-da-politica-para-o-hiv/>

³¹⁴ BBC Brasil. *Programa de Aids no Brasil enfrenta falhas e precisa ser replanejado*. July 25, 2012. Available at: https://www.bbc.com/portuguese/noticias/2012/07/120724_aids_programa_brasil_jc_ac

³¹⁵ Idem.

³¹⁶ Decree n° 9.795, of May 17, 2019. Available at: www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9795.htm

created Department of Chronic Diseases and Sexually Transmitted Infections.

- 375.** Maria Eduarda Aguiar, a trans attorney and president of the Grupo Pela Vidda, which works to support people who live with HIV, states:

The HIV/AIDS policy has been gradually dismantled and today our AIDS department is extinct and in its place is a coordination office. No one is talking about HIV/AIDS anymore in the country thanks to the LGBTphobic and Aids-phobic policies of this government that wants a sanitized health policy, in which talking about HIV is almost prohibited. We live in difficult times. What we really need is to fight for the maintenance of an AIDS policy, without which people that live with HIV/AIDSs will be the biggest losers.³¹⁷

- 376.** The Federal University of Rio Grande do Sul's newspaper prepared a timeline of the main regressions in this field over the course of 2019, with the following information:³¹⁸

³¹⁷ Rio Gay Life. *Maria Eduarda Aguiar: a advogada trans que faz história na luta pelas minorias*. September 16, 2019. Available at: <https://riogaylife.com.br/maria-eduarda-aguiar-a-advogada-trans-que-faz-historia-na-luta-pelas-minorias/>

³¹⁸ Jornal da Universidade Federal do Rio Grande do Sul. *Do exemplo ao retrocesso: país sofre desmonte da política para o HIV*. January 2, 2020. Available at: <https://www.ufrgs.br/jornal/do-exemplo-ao-retrocesso-pais-sofre-desmonte-da-politica-para-o-hiv/>

| January | February |
|---|---|
| <p>Adele Benzaken is relieved from direction of the Departamento de Vigilância, Prevenção e Controle das STI, do HIV e das Hepatites Virais (DIAHV - Department of Surveillance, Prevention and Control of STI, HIV and Viral Hepatitis) of the Ministry of Health, because of a pamphlet for transsexual men which, in a certain section, warned that syringes used in a procedure for increasing the size of the clitoris not be shared. Minister Luiz Henrique Mandetta would have said that the practice cannot be recommended.</p> | <p>Mandetta vetoes pieces included in the campaign for sexual health of same sex couples during Carnival.</p> |
| March | April |
| <p>Federal government moved to buy internal prophylactics (popularly called "vaginal condoms") made of latex, and no longer an anti-allergic material, which can diminish adhesion.</p> | <p>Presidential Decree extinguishes the National Council for Combating LGBT+ Discrimination. During the same month, the president vetoes a proposed law that exempted people that live with HIV and are not working due to disability from having to perform reevaluation exams for disability purposes. The veto was overturned by Congress in June.</p> |
| May | June |
| <p>Decree changes the structure of the Ministry of Health, downgrading the DIAHV. The agency also bans the use of the expression "obstetric violence". For women that live with HIV, the term is important for characterizing violations in regard to reproductive planning, including pressure for sterilization. In the same month, the National Drug Policy is changed by decree. Federal government removes the concept of reduction of damages, which needle exchange is based on. This practice is indicated to avoid HIV transmission.</p> | <p>Government "reestablishes" the Conselho de Combate à Discriminação (Discrimination Counsel), but without any mention of the LGBTQI+ agenda.</p> |

| July | August |
|--|---|
| <p>Federal government informs that social networks of the old DIAHV will no longer be updated, concentrating the information only on the pages of the Ministry of Health.</p> | <p>The budget proposed by the Federal Government for 2020 is sent to the National Congress. Rule of spending limits may cut R\$ 9.46 billion from Health.</p> |
| September | October |
| <p>The Ministry of Health publishes bulletin “Epidemiological Panorama on coinfection TB (Tuberculose) – HIV in Brazil”. Data shows an increase in coinfection from 2016 to 2017, going from 8,234 to 8,515 new cases.</p> | <p>In a public hearing before the Chamber of Deputies, the president of Rede Trans Brazil, (Brazil Trans Network) Tathiane Araújo, claims that the MS had refused to participate in events promoted by the group and condemns the lack of Pre-exposition Prophylaxis (PrEP) policies for the trans population – a strategy for prevention that combines daily medicine with counseling and regular testing.</p> |
| November | December |
| <p>Ministry of Health reveals an estimate that 135 thousand people live with HIV in Brazil without knowing it.</p> | <p>Epidemiological bulletin for HIV/Aids 2019, of MS, shows an increase in the rates of detection of new cases of Aids in two regions: North and Northeast.</p> |

Source: Adapted from the Jornal da Universidade Federal do Rio Grande do Sul.³¹⁹

³¹⁹ Jornal da Universidade Federal do Rio Grande do Sul. *Do exemplo ao retrocesso: país sofre desmonte da política para o HIV*. January 2, 2020. Available at: <https://www.ufrgs.br/jornal/do-exemplo-ao-retrocesso-pais-sofre-desmonte-da-politica-para-o-hiv/>

377. All of these regressions served as a rhetorical and institutional shift that identified HIV infections as the responsibility of the individual. This shift relieves the State of its duty to take action during the advance of the HIV/AIDS epidemic that is occurring in Brazil, with a moralistic discourse that has served to dismantle the Brazilian AIDS policy.

5.3 AIDS and structural racism

378. In recent years, there has been a staggering increase in HIV cases in Brazil. However, exposure to the virus has not occurred in a homogenous manner. Analyzing the data according to the categories of race/skin color and sex from the years of 2008 to 2018,³²⁰ large discrepancies can be observed in the prevalence of infection by HIV, diagnosis of AIDS, and deaths resulting from AIDS.

379. In 2008, of the cases of HIV infection reported in women, 46.5% were white women and 42% were Black women. In 2018, 31.8% of the cases reported involved white women and 61.7% Black women, demonstrating that, among women, the current HIV wave has impacted Black women to a much greater degree.³²¹ Among men, there was a very similar trend: in 2008, white men were 52.3% of reported HIV infections, while Black men accounted for 35.9%. In 2018, white men represented 35.6% of reported cases and Black men 64.4%.³²²

³²⁰ The epidemiological bulletins available up until the present offer complete data only until 2018.

³²¹ Epidemiological bulletin: HIV AIDS 2019. Secretaria de Vigilância em Saúde. Ministério da Saúde. 2019, p. 39. Available at: <http://www.aids.gov.br/pt-br/pub/2019/boletim-epidemiologico-de-hivaid-2019>

³²² Idem.

| | 2008 | | 2018 | |
|-------------|------|-------|-------|-------|
| | N. | % | N. | % |
| Black women | 1762 | 42% | 7307 | 62,8% |
| White women | 1596 | 46,5% | 3877 | 31,8% |
| Black men | 1762 | 35,9% | 17256 | 64,4% |
| White men | 2573 | 52,3% | 11798 | 37,2% |

Source: Adapted from data in epidemiological bulletin 2019.

380. In regard to cases of the development of AIDS, in 2008, 45.2% of cases reported were white women while Black women made up 45.2%. In 2018, 35.1% of the cases reported were white women and 58% were Black women.³²³ For men, in 2008, 47.9% of cases reported were white and 42.3% were Black. In 2018, 38.4% were white and 54.8% were Black.³²⁴

| | 2008 | | 2018 | |
|-------------|------|-------|------|-------|
| | N. | % | N. | % |
| Black women | 5059 | 45,2% | 3222 | 58% |
| White women | 5050 | 45,2% | 1949 | 35,1% |
| Black men | 7445 | 42,3% | 7892 | 54,8% |
| White men | 8446 | 47,9% | 5527 | 38,4% |

Source: Adapted from data in epidemiological bulletin 2019.

381. In regard to deaths, another stark divergence emerges. In 2008, there were 3,846 (52.6% of the total) deaths of

³²³ Idem, p. 57.

³²⁴ Idem.

white men from AIDS and 3,439 (47%) deaths of Black men. In 2018, 2,885 (40.3%) white men died from the disease and 4,219 (59%) Black men died.³²⁵ For women, the same movement was observed. In 2008, there were 1,804 (47.4%) deaths of white women and 1,981 (52.1%) deaths of Black women. In 2018, 1309 (37.7%) white women died from the disease and 2136 (61.5%) Black women died.³²⁶ In summary, for both men and women, while the number of deaths from AIDS decreased for white people, increased considerably for Black people.

| | 2008 | | 2018 | |
|-------------|------|--------|------|--------|
| | N. | % | N. | % |
| Black women | 1981 | 52,1% | 2136 | 61,5% |
| White women | 1804 | 47,4% | 1309 | 37,7% |
| Black men | 3660 | 47,50% | 4334 | 58,80% |
| White men | 3846 | 52,6% | 2885 | 40,3% |

Source: Adapted from data in the epidemiological bulletin from 2019.

382. For Jurema Werneck, Executive Director of Amnesty International Brazil:

The epidemiological data broken down according to race/skin color are sufficiently consistent to indicate the profound impact that racism and racial inequalities have on health, on the burden of diseases and on mortality rates for Black people of different age groups, income levels and places of residence. The data also indicates the shortcomings or inefficiency of the responses offered to try to eliminate the *gap* and contribute to reducing the vulnerabilities and improving the living conditions of the Black population.³²⁷

³²⁵ Idem, p. 64.

³²⁶ Ibidem.

³²⁷ WERNECK, Jurema. *Racismo institucional e saúde da população negra*. Saúde Soc. São Paulo: 2016, v. 25, n. 3, pp. 540-541.

383. Werneck warns that racism is one of the central factors for the production of the inequality in health outcomes, and reminds us of the concept of “social determinants of health,” proposed in 2005 by the WHO Commission on Social Determinants of Health to refer to a complex process that involves structural and intermediate factors that produce health inequalities. Racism and sexism, in this regard, are included as structural factors that produce a social hierarchy associated with health disparities.³²⁸

384. Lúcia Xavier, of the organization of Black women *Criola*, believes that social determinants of health create a lower quality of life for the Black population and therefore higher risk of disease:

The group is more vulnerable to diseases because they are under greater influence from the social determinants of health, such as the conditions in which a person lives and works, other unhealthy conditions, and the lack of proper sanitation that they are submitted to. And the sum of these diverse indicators of vulnerability also increase the risk for the loss of life.³²⁹

385. Fernanda Lopes, as an assistant representative for the United Nations Population Fund (UNFPA) in Brazil, stated that the problem is that the data found in the epidemiological bulletin is not used as a management tool:

When breaking down the data by race/skin color, the inequalities become obvious, but this data is not used to create policies, plans, or programs aimed at changing these living conditions and lack of care. It is not the lack of data or its quality that needs to be looked at. What should not be accepted is that data with information on race/skin color is “ignored.” The indicators need to be sensitive. If they are not broken down, you cannot determine the real necessities of each group, cannot make the

³²⁸ Idem.

³²⁹ UN. *Negros têm maior incidência de problemas de saúde evitáveis no Brasil, alerta ONU. January 31, 2018.* Available at: <https://nacoesunidas.org/negros-tem-maior-incidencia-de-problemas-de-saude-evitaveis-no-brasil-alerta-onu/>

right investments, and the inequalities will remain and/or get worse.³³⁰

386. From this perspective, it can be seen that structural racism in Brazil results in political decisions being made without taking into consideration the discrepancy between Black and white lives, revealed by the epidemiological data.

387. This is not to promote an opposition between white and Black Brazilians who live with HIV, but rather a reading that recognizes that there is a hierarchy between Black and white lives being reinforced by Brazilian institutions, demonstrated by the increase in deaths of Black people from HIV/AIDS while the number of white HIV/AIDS deaths has decreased.³³¹ This situation represents one more piece of evidence of the lack of a political commitment toward the lives of Black Brazilians.

5.4 AIDS and structural LGBTphobia

388. The data from the epidemiological bulletin of 2019³³² related to the sexual exposure to HIV and the development of AIDS among people over the age of 13 also displays asymmetries. In 2008, heterosexual men represented 36% of those exposed to HIV; in 2018, they represented 30.5%. Homosexual men went from 30.5% to 46.4% over the same period, showing that failures in prevention had a greater impact on homosexual men.³³³

³³⁰ UNODC. #VidasNegras: *Políticas para reduzir vulnerabilidades em saúde precisam de dados de melhor qualidade*. Available at: https://www.unodc.org/lpo-brazil/pt/frontpage/2018/01/vidasnegras_politicas-para-reduzir-vulnerabilidades-em-sade-precisam-de-dados-de-melhor-qualidade.html

³³¹ PORTO, Isaac. *Punição e estigma: a criminalização das pessoas que vivem com HIV*. Master's dissertation. Rio de Janeiro, Pontifícia Universidade Católica, 2019, p. 84.

³³² Epidemiological bulletin: HIV AIDS 2019. Secretaria de Vigilância em Saúde. Ministério da Saúde. 2019, p. 40. Available at: <http://www.aids.gov.br/pt-br/pub/2019/boletim-epidemiologico-de-hiv-aids-2019>

³³³ However, once having been diagnosed with HIV, the data shows that homosexuals have a tendency to continue following the proper treatment, keeping in mind that the inversion in relation to HIV was not accompanied by the development of AIDS.

| | | 2008 | | 2018 | |
|-----------|--------------|------|-------|-------|-------|
| | | N. | % | N. | % |
| Masculine | Homosexual | 1472 | 30,5% | 14596 | 46,4% |
| | Bisexual | 464 | 9,6% | 2541 | 8,1% |
| | Heterosexual | 1739 | 36% | 9599 | 30,5% |
| Feminine | Heterosexual | 2835 | 85% | 10516 | 87,4% |

Source: Adapted from data in the epidemiological bulletin of 2019.

389. In regard to women, the bulletin does not offer the data broken down according to the sexuality of women. This failure raises questions as to why disaggregated data is not collected for women, whereas men were able to be classified as homosexual, bisexual, or heterosexual.

390. In addition, nowhere in the bulletin is there any mention of transsexual women, *travestis*, or trans men. This silence reveals how cisgender-ness and heterosexuality are accepted as default and universal in institutions that do not recognize the humanity of those who do not conform.

391. As a rule, *travestis* and transsexual women that have not changed their civil registry are included in the category “men who have sex with men,” but difficulties in accessing data about trans people cannot be used as an excuse. If this were the only obstacle, the epidemiological bulletins could indicate where *travestis* and transsexual women can be found in the data, and what measures are being taken to include them.

392. A meta-analysis performed on a database of 15 countries, estimated that 33.1% of trans women in Brazil live with HIV, behind only Argentina (33.5%) and India (43.7%) with data that is verified up to 2011.³³⁴ This same study pointed to the alarming estimate that trans women are 49 times more likely to contract HIV than other people.

³³⁴ Argentina, Australia, Brazil, El Salvador, Spain, The United States, Holland, India, Indonesia, Italy, Peru, Pakistan, Thailand, Uruguay and Vietnam.

- 393.** More recent data presented by representatives of the Ministry of Health at ANTRA's National Meeting, from a study financed by UNESCO and by the Ministry of Health, estimated that 18.4% of men over the age of 18 who have sex with men live with HIV in Brazil.³³⁵ Among transsexual women and *travestis*, the estimate is 36.7%. This study was promoted by the Fiocruz news agency from 2016 to 2017, with data from 2,800 *travestis* and transsexual women in 12 Brazilian capital cities – Belém, Manaus, Fortaleza, Salvador, Recife, Belo Horizonte, Rio de Janeiro, São Paulo, Brasília, Campo Grande, Curitiba, and Porto Alegre. The cities with the greatest prevalence were Porto Alegre (65.3%), São Paulo (40.18%), and Rio de Janeiro (35.91%).
- 394.** At the same ANTRA meeting, trans activist Kaio Lemos, of the organization *Atrans-CE*, expressed great concern over the lack of visibility of trans men in the data from the Ministry of Health's epidemiological bulletins and in the campaigns for prevention of sexual disease as a whole, produced by both government and civil society. The activist warned that he had become aware of a growing number of trans men and transmasculine people that have turned to sex work, which has increased the need for specific data and prevention campaigns directed at this population.
- 395.** As with structural racism, structural LGBTIphobia makes a great impact on the health of the LGBTI population, rising to shocking levels when it comes to HIV/AIDS. Recognizing that the socio-economic situation of trans people determines the quality of medical services they receive, the IACHR recommends that Member States adopt “integrated measu-

³³⁵ This is the Divas study, which “had as its main purpose the description of socio-demographic and behavioral profiles, knowledge, attitudes and practices in regard to infection by HIV/Aids and other IST (Sexually Transmitted Infections), as well as the estimation of rates of prevalence of HIV, syphilis and hepatitis B and C for each social network access in these municipalities”. Agência Fiocruz de Notícias. *Especialistas discutem resultados da pesquisa ‘Divas’*. March 12, 2018. Available at: <https://agencia.fiocruz.br/especialistas-discutem-resultados-da-pesquisa-divas>

res to effectively combat discrimination and violence faced by LGBTI people who live in poverty and extreme poverty.”³³⁶

5.5 Advance of HIV/AIDS and religious conservatism

396. In 2019, various media outlets have reported that from the years 2007 to 2017, there was a frightening 700% increase in the HIV infection rates among people of 15 to 24 years of age.³³⁷ The negative role that important sectors such as evangelical churches have played in this growth should not be understated. These actors have applied public pressure against the distribution of anti-LGBTIphobic material and information about prevention of sexual disease in the schools, threatening to block this material from reaching adolescents during the Dilma Rouseff presidency.³³⁸

397. For example, Marcos Feliciano, a federal representative and important religious leader in the country, rejected the position of the Federal Psychology Council in favor of one of these materials in a 2011 speech in the Chamber of Representatives:

Psychologists from all of the regional councils are questioning the position of the Federal Council for not having been consulted and also because they do not support the content of this kit called *Projeto Escola sem Homofobia* (Project Schools without Homophobia), because the material is very sexualized and improper, exposing children precociously to sexuality and causing serious problems to their psycho-social development.³³⁹

³³⁶ IACHR. *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*. 2019, p. 227, par. 282. Available at: <https://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>

³³⁷ O Globo. *Campanhas ineficazes e moralismo levam a aumento de casos de HIV entre jovens, dizem especialistas*. February 17, 2019. Available at: <https://oglobo.globo.com/sociedade/saude/campanhas-ineficazes-moralismo-levam-aumento-de-casos-de-hiv-entre-jovens-dizem-especialistas-23458018>

³³⁸ Estadão. *Suspensão de kit anti-homofobia é criticada*. March 19, 2013. Available at: <https://www.estadao.com.br/noticias/geral,suspensao-de-kit-anti-homofobia-e-criticada-imp-,1010420>

³³⁹ Câmara dos Deputados. *Discursos e notas taquigráficas*. August 31, 2011. Available at: <https://www.camara.leg.br/internet/sitaqweb/TextoHTML.asp?etapa=5&nuSessao=227.1.54.O&nuQuarto=18&nuOrador=2&nuInsercao=0&dtHorarioQuarto=13:34&sgFaseSessao=BC&Data=31/08/2011&tx->

398. Jair Bolsonaro, then a federal representative, made even graver comments, like those below, also in 2011:

Minister, there is a national campaign coming about secure sex for LGBT adolescents, using adolescent characters.

Now, Mr. Minister, is a campaign to teach a guy, a boy of 13, to have safe sexual relations with another boy of 13 years normal? This is a disgrace!

(...) And I will tell you more: if being against this is homophobic, with great pleasure and with great honor, I will continue to be homophobic, because this proposal is all for public schools, it is for the kids of poor people, who, while their fathers and mothers are working, are in school learning to be a homosexual, as if having a homosexual in the family is something to be proud of. I will tell you that I would be ashamed if I had a kid who was a homosexual!³⁴⁰

399. These speeches were not isolated cases. In fact, the whole country became polarized over the discussions regarding these pedagogical materials, which became known pejoratively as the “gay kit” and were invoked by Jair Bolsonaro in the elections in 2018 to mobilize his conservative base.

400. The result was an explosion of HIV infections in youths and adolescents, who were deprived of important lessons about prevention of sexual diseases in their schools, demonstrating the broad social impact of LGBTophobic religious conservatism.

Apelido=PASTOR%20MARCO%20FELICIANO,%20PSC-SP&txFaseSessao=Breves%20Comunicações&txTipoSessao=Extraordinária%20-%20CD&dtHoraQuarto=13:34&txEtapa=

³⁴⁰ Câmara dos Deputados. Discursos e notas taquigráficas. April 28, 2011. Available at: <https://www.camara.leg.br/internet/sitaqweb/TextoHTML.asp?etapa=5&nuSessao=086.1.54.O&nuQuarto=25&nuOrador=2&nuInsercao=0&dtHorarioQuarto=09:48&sgFaseSessao=BC&Data=28/04/2011&txApelido=JAIR%20BOLSONARO,%20PP-RJ&txFaseSessao=Breves%20Comunicações&txTipoSessao=Extraordinária%20-%20CD&dtHoraQuarto=09:48&txEtapa=>

5.6 Gender/sex reassignment and risks with the use of industrial silicon

401. The reassignment process has been covered by Brazil's public health network since 2008. There are only five units that are certified by the public network to offer these surgeries, located in São Paulo, Rio de Janeiro, Goiás, Pernambuco, and Rio Grande do Sul. However, the number of certified doctors is still small, and there are no resources available to increase the number of surgeries offered. In general, the average is just one or two surgeries per month at each institution. A report in 2018 calculated that, of the 288 people that were on the waiting list, 80 were on the list in São Paulo, 70 in Pernambuco, 70 in Rio de Janeiro, 50 in Rio Grande do Sul, and 18 in Goiás.³⁴¹

402. If we consider that this procedure costs more than R\$40,000.00 (Brazil's minimum wage is R\$1,045 per month) in the private network, it is understandable transsexual women and *travestis* may choose to perform body modification injections on their own to achieve a desired feminine appearance.

403. Keila Simpson, president of ANTRA, reports that the SUS never understood body modifications for gender expression purposes as a public health issue, making many trans people turn to private medical services, due to the difficulty of finding health professionals in the public network that can attend to it.³⁴²

404. The severe social rejection of trans people in Brazilian society, together with the difficulties of access to the reassignment process, are also strong factors leading *travestis*

³⁴¹ G1. *Quase 300 transgêneros esperam cirurgia na rede pública 10 anos após portaria do SUS*. Available at: <https://g1.globo.com/ciencia-e-saude/noticia/2018/08/19/quase-300-transgeneros-esperam-cirurgia-na-rede-publica-10-anos-apos-portaria-do-sus.ghtml>

³⁴² SIMPSON, Keila. *Transexualidade e travestilidade na Saúde*. In: *Transexualidade e travestilidade na Saúde*. Ministério da Saúde, Secretaria de Gestão Estratégica e Participativa, Departamento de Apoio à Gestão Participativa. Brasília: Ministério da Saúde, 2015, p. 12.

and transsexual people to believe in misleading promises from unscrupulous actors that, in reality, may increase their physical and psychological suffering.

405. It is worth remembering that as extreme poverty leads many trans women to sex work, the only area in which they can find work, it also puts pressure on them to make modifications to their bodies to enhance their sex work prospects. In this regard, the document *Transgender Health and Human Rights*,³⁴³ published in 2013 by the United Nations Development Program, recognized that the dangerous practice of injecting industrial silicone among *travesti* sex workers in Brazil was attributed to this pressure.

406. In the same way, the IACHR's report on violence against LGBTI people confirms that the socio-economic situation of trans people determines the quality of medical services they receive and there are increasingly more reports of trans women who die as a result of improperly-conducted reassignment interventions.³⁴⁴

407. Along the same lines, in 2011, the WHO reported a long history of evidence indicating that trans people encounter obstacles to quality health care due to generalized stigma and to the health system's ignorance about gender variation. Social discrimination has also been one of the primary drivers of physical and mental health problems for this population in a variety of contexts.³⁴⁵ It is also a driver for trans people to seek out alternative means to obtain bodily transformations.

³⁴³ The United Nations Development Programme (UNDP). Discussion Paper: *Transgender Health and Human Rights*, 2013.

³⁴⁴ IACHR. *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*. 2019, p. 227, par. 282. Available at: <https://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>

³⁴⁵ World Health Organization. *Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people. Recommendations for a public health approach*. 2011. pp. 10/11. Available at: https://apps.who.int/iris/bitstream/handle/10665/44619/9789241501750_eng.pdf;jsessionid=8C9E0AB1911C565C58B445AD2F1F9431?sequence=1

408. The doctor Maria Clara Gianna relates that from 2009 to 2014, about 300 transsexual women and *travestis* were directed to the Diadema State Hospital (in Sao Paulo) alone due to complications from the use of industrial silicone as a body modification, complaining of a variety of problems including:

difficulty in walking because of swelling caused by migration of industrial silicone to the lower members, pain from poor circulation also due to migration of the product to other regions of the body, ulcers, infections, nodules, and significant alterations both in coloration and in elasticity of the skin. It is important to emphasize that, in more serious cases, the industrial silicone can enter the circulatory system and cause an embolism, particularly pulmonary, with the risk of death.³⁴⁶

409. The most recent data from ANTRA on deaths caused by industrial silicone in Brazil say that, in 2016, there were 7 cases; in 2017, 6 cases; and in 2018, 5 cases.³⁴⁷

³⁴⁶ GIANNA, Maria Clara. *Ambulatório de saúde integral para travestis e transexuais: cinco anos de desafios e realizações*. In: *Transexualidade e travestilidade na Saúde*. Ministério da Saúde, Secretaria de Gestão Estratégica e Participativa, Departamento de Apoio à Gestão Participativa. Brasília: Ministério da Saúde, 2015, p. 148.

³⁴⁷ ANTRA; IBTE. *Dossiê: assassinatos e violência contra travestis e transexuais no Brasil em 2018*. 2018, p. 37. Available at: <https://antrabrasil.files.wordpress.com/2019/12/dossie-dos-assassinatos-e-violencia-contra-pessoas-trans-em-2018.pdf>

5.7 Medical violence against intersex people

Intersexuality raises questions about a person's body. First, there is a feeling of deception because you have lived a lie for so many years, thinking you were one thing when, in reality, you were not. There are people who are not reborn during their lives. I think that trans people and intersex people are reborn several times, because you discover that your body is changeable, constructed, able to be manipulated.³⁴⁸

Carolina Iara de Oliveira (São Paulo - SP)
Black, intersex, and travesti
Associação Brasileira de Intersexo

410. UN Free & Equal,³⁴⁹ a campaign launched in 2013 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to promote equal rights and fair treatment for LGBTI people, defines intersex people as those who are born with sexual characteristics (including genitals, gonads, and chromosomal patterns) that do not fit into the binary body types known as 'man' or 'woman.' The OHCHR stated that because these people are seen as different, they are often stigmatized and subject to a variety of human rights violations, such as denial of their rights to health and physical integrity, the right to live free from torture and mistreatment, and the right to equality and non-discrimination. According to the UN, it is estimated that from 0.05% to 1.7% of the population are born with intersex characteristics.³⁵⁰

411. UN Free & Equal also recognized that intersex people are frequently subject to discrimination and abuse when it becomes known that they are intersex or when it is perceived that they have characteristics that do not conform with gender norms.³⁵¹

³⁴⁸ BuzzFeed. *Como é ser uma pessoa intersexual?* June 19, 2019. Available at: <https://www.youtube.com/watch?v=qJK5hy7R7kg&t=127s>. Obs.: At the time of the interview, Carolina still did not recognize herself as a travesti.

³⁴⁹ UN Free and Equal. Available at: <https://nacoesunidas.org/campanha/livreseiguais/>

³⁵⁰ UN Free and Equal. Fact Sheet. Intersex. Available at: <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>

³⁵¹ Idem.

412. In a report in 2015, the IACHR registered that human rights violations suffered by intersex people are different from those generally suffered by lesbians, gays, bisexuals, and trans people, notably:

irreversible surgeries for sex assignment and 'normalization' of genitals; involuntary sterilization; exaggerated submission to medical exams, photographs and exposure of genitals; lack of access to medical information and clinical histories; delays in birth registration; denial of health services or health insurance, among others.³⁵²

413. The IACHR also registered that these violations occur because intersex people's bodies do not fit into the socially accepted binary. It emphasizes that these procedures have no medical benefits in the majority of cases, because the condition of being intersex does not constitute a danger to the life or health of these people.³⁵³ Additionally, it emphasized that the forced, involuntary sterilization of intersex people represents a grave violation of human rights, since it may have "serious consequences for their physical and psychological integrity, their right to reproductive freedom, and the right to self-determination."³⁵⁴

414. In 2013, the UN Special Rapporteur on torture and other cruel, inhumane, or degrading punishment or treatment recognized that: "invasive, irreversible medical treatments, if they have no therapeutic objective, may constitute torture and mistreatment when they are applied or administered without the free and informed consent of the patient." This is especially true for marginalized groups, "regardless of any allegations of good intentions or medical necessity that may be offered."³⁵⁵

³⁵² IACHR. *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*. 2019, p. 129-130, par. 182. Available at: <https://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>

³⁵³ Idem, p. 132, par. 185.

³⁵⁴ Idem, p. 135, par. 192.

³⁵⁵ Relatório do Relator Especial sobre a tortura e outros tratamentos ou penas cruéis, desumanos ou degradantes, A/HRC/22/53, February 1, 2013, para. 32 p. 8. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/105/80/PDF/G1310580.pdf?OpenElement>

415. In Brazil, Resolution 1.664 of 2003 of the Federal Medical Council deals with intersexuality, referring to the “technical norms necessary for the treatment of patients with anomalies in sexual differentiation.”³⁵⁶ The resolution defines ‘anomalies in sexual differentiation’ as “clinical situations known in the medical field as ambiguous genitals, genital ambiguity, intersex, true hermaphroditism, pseudo-hermaphroditism (masculine or feminine), gonadal dysgenesis, sex reversal, among others.” In Article 2, the resolution guarantees the “proper definition of gender and treatment in a timely manner.” According to intersex activists, an emphasis on treatments to ‘define gender’ may lead to practices that they denounce as ‘genital mutilation.’

416. Carolina Lara de Oliveira, a *travesti*, intersex and Black member of the Associação Brasileira de Intersexos (ABRAI) in Sao Paulo, told her journey as an intersex person in an interview:

I discovered my intersexuality when I was already a 24-year-old adult. In a conversation with family members and my mother, I found out that surgeries that I had done in childhood, at the ages of 6 and 12, related to urinary problems, were actually related to penile construction. I can remember catheters, and a variety of bandages that my grandmother and mother would change. A great deal of care with hygiene, and real pain. It was explained to me the following way: you have to do all of these things because, if you don't, you won't be able to go to the bathroom.³⁵⁷

417. Carolina Lara also stated that there are cases like the one of a mother who gave birth via Caesarian section. While the mother was sedated, at the moment the doctor saw that the newborn was intersex, the doctor said to the father: “look, you got lucky. Two sexes. Which one do you want?” The father answered: “I already have a boy, so, I want a girl.”

³⁵⁶ Resolução Conselho Federal de Medicina nº 1.664/2003. Available at: http://www.portalmedico.org.br/resolucoes/cfm/2003/1664_2003.htm

³⁵⁷ BuzzFeed. *Como é ser uma pessoa intersexual?* June 19, 2019. Available at: <https://www.youtube.com/watch?v=qJK5hy7R7kg&t=127s>. Obs.: At the time of the interview, Carolina still did not recognize herself as a *travesti*.

This surgery was done without the mother even knowing about it. For the activist:

Questions related to the body need to be separated from notions of what is pure and what is impure, what is right and what is wrong. The body is not this. An intersexual person cannot be born and be submitted to operations without being aware of them and without the family knowing what is happening. Contrary to trans people, for whom there is a rabble in society saying “oh, my, they get operations; oh, my, these people use hormones, we should outlaw it,” there is no shame among these groups to load up children with hormones to try to make them women or men or to perform genital mutilations. How much longer are we going to take babies and cut off their penises? How much longer are we going to open up vaginas in babies without their families knowing? People need to live. All lives have to matter. They have to exercise their humanity.³⁵⁸

418. Amiel Vieira, transmasculine and intersex, who was elected president of the Associação Brasileira de Intersexos (Brazilian Association of Intersex people) in 2019, says that:

Intersex people have their problems ‘resolved’ in the operating room, in secret under a structure of silence that is established with a theoretical argument. There is a pact to keep these bodies hidden from society. This was done to me and happens all of the time with intersex people; it is a protocol adopted all over the world, but one which creates problems.

Medicine still looks at intersexuality strictly from a biological point of view. Talking with some students, I see that medicine classes work with old data, with the idea of obtaining the correct social standard.

This is interesting: bodies have to walk and behave a certain way. And intersex and trans bodies are not considered compliant with the standard of “perfection” that society accepts.

Intersex people with ambiguous genitalia are mutilated, many times when it isn’t necessary. I don’t see anyone discovering what happened to them and saying that they are happy about it.³⁵⁹

³⁵⁸ Idem.

³⁵⁹ Nexo. *O que é intersexualidade. E como é se descobrir intersexual.* February 3, 2018. Available at: <https://www.nexojornal.com.br/entrevista/2018/02/03/O-que-%C3%A9-intersexualidade.-E-como-%C3%A9-se-descobrir-intersexual>

419. It is necessary, therefore, to recognize that intersex people must have their dignity and integrity respected, and immediately put a stop to surgical procedures in any and all cases where there is no risk to the health of the child. In other words, it is necessary to end the genital mutilation of intersex people.

LGBTIphobia in the educational system



Chapter 6

LGBTIphobia in the educational system

*As a Black, transsexual woman from the periphery, the only possibility for the institutionalization of life, for social integration and effective exercise of citizenship is qualification by education.*³⁶⁰

*Dani Balbi (Rio de Janeiro - RJ)
União Nacional LGBT (UNA LGBT)*

- 420.** At the end of 2016, Arthur Henrique dos Santos, a Black, 17-year-old, gay teenager about to graduate from high school, revealed his homosexuality to his mother, who responded: “I am not going to support a faggot son.”³⁶¹
- 421.** Arthur said he had always heard homophobic terms in school and never felt accepted. Above all, he heard a sentence that many Black gay men hear throughout their lives: “not only is he Black, he is also a faggot.” It was at school that Arthur learned that he was a Black gay man in a racist and LGBTIphobic society.
- 422.** At the same time, 18-year-old Letícia Gomes Pereira related that the toxic environment at school had caused her depression and anxiety, pushing her away from the classroom many times, to the point that she almost repeated a grade. Letícia said:

³⁶⁰ Vermelho. *Dani Balbi, mulher trans e professora, se declara salva pela educação*. August 16, 2019. Available at: <https://vermelho.org.br/2019/08/16/dani-balbi-mulher-trans-e-professora-se-declara-salva-pela-educacao/>

³⁶¹ Centro de Referências em Educação Integral. *Alvos de discriminação e exclusão, alunos LGBTs contam o que esperam da escola*. June 28, 2017. Available at: <https://educacaointegral.org.br/reportagens/o-que-alunos-lgbts-querem-da-escola/>

I actually made a calendar of how long it would be until high school was over, because I couldn't stand to see those people anymore. I was always hearing that, besides being poor and Black, I had 'chosen' to be a lesbian, because I was looking for one more oppression to call my own.³⁶²

- 423.** In June of 2017, Diego Archanjo, a Black gay adolescent, was 17 years old, when he shared on his social media:

Today I was called to my school's coordinator's office and told not to wear lipstick anymore, because it cannot be worn inside the school, and that someone had gone there to complain, so my coordinator said it was also to avoid some kind of prejudice.³⁶³

- 424.** Diego received support from thousands of people and the hashtag #BatomPodeHomofobiaNAO ("Lipstick is allowed, homophobia is not") was among Twitter's trending topics.

- 425.** In March of 2018, a transsexual student reported that she had been a victim of violence inside the Federal University of Pernambuco, after leaving an LGBTI event and being approached by a man:

A cis man questioned if I was a woman or not, looking at me and my friends. I said I was a woman. He made fun of me and, immediately, I looked at the man and said "tell me if I'm not a woman! Look at me and say that I'm not a woman".

I'm still psychologically shaken. First, they threw a rock. It didn't hit me. I blinked and they were punching me in the face. I couldn't see anything. I couldn't identify the attackers. It had been a long time since I had cried, and today I cried. I cried with embarrassment for coming home and looking at my mom with a face that wasn't mine. Black, trans, feminist woman from the suburbs. Humiliated, assaulted and harassed.³⁶⁴

³⁶² Idem.

³⁶³ Catraca Livre. *Escola é acusada de homofobia por repreender aluno que usou batom*. June 1, 2017. Available at: <https://catracalivre.com.br/cidadania/escola-e-acusada-de-homofobia-por-repreender-aluno-que-usou-batom/>

³⁶⁴ Geledés – Instituto da Mulher Negra. *Estudante transexual de pré-vestibular da UFPE é vítima de agressão e denúncia transfobia*. March 25, 2018. Available at: <https://www.geledes.org.br/estudante-transexual-de-pre-vestibular-da-ufpe-e-vitima-de-agressao-e-denuncia-transfobia/>

- 426.** In Belém do Pará, in November of 2019, a Black, gay, 16-year-old teenager was in his classroom when an employee walked in and started making insinuations, saying she was happy because, after next year, a certain student would not be in school anymore.³⁶⁵ After being asked by the student if she was talking about him, she called him “monkey,” “gorilla,” and “little faggot.” Right after that, she struck him on the head, grabbed his shirt collar to pull him back, and went as far as pulling his hair.
- 427.** There are countless stories like these that make it clear that the school environment is also a particularly difficult space for LGBTI people. The UN Independent Expert on SOGI recognized that LGBTI students and children of LGBTI people have suffered many types of abuse in the educational system, like provocations, bullying, isolation, cyberbullying, and even physical aggression and death threats. It was also recognized that, in many cases, the educational institution’s response is lacking, whether by intention or by negligence.³⁶⁶
- 428.** In 2019, UN Free & Equal also warned that young LGBTI people frequently suffer bullying, violence, and harassment in school from students and teachers, recognizing that discrimination in education can have a lifelong impact, for example, reducing their access to paying jobs.³⁶⁷

³⁶⁵ Diário da Amazônia. *Polícia civil investiga caso de racismo e homofobia em escola*. November 27, 2019. Available at: <https://www.diariodaamazonia.com.br/policia-civil-investiga-caso-de-racismo-e-homofobia-em-escola/>

³⁶⁶ Informe del Experto Independiente sobre la protección contra la violencia y la discriminación por motivos de orientación sexual o identidad de género. *Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo. Recopilación y gestión de datos como medio para fomentar la sensibilización acerca de la violencia y la discriminación por motivos de orientación sexual o identidad de género*. A/HRC/41/45. May 14, 2019, p. 4, par. 5 and 6. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/138/30/PDF/G1913830.pdf?OpenElement>

³⁶⁷ UN. *Born Free and Equal. Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law*. Second Edition. (2019), pp. 61-62. Available at: https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf

429. A National Survey on the Educational Environment in Brazil,³⁶⁸ published in 2016, found disturbing data regarding the environment at schools in Brazil:

- 27% of LGBTI students had been physically assaulted because of their sexual orientation and 25% because of their gender identity/expression;
- 60% of students that participated in the survey felt insecure at school because of their sexual orientation and 43% felt insecure because of their gender identity/expression;
- 73% were verbally assaulted because of their sexual orientation and 68% were verbally assaulted at school because of their gender identity/expression;
- 48% heard LGBTIphobic comments frequently;
- 55% heard negative comments specifically about trans people;
- 56% of LGBT students were sexually harassed at school;
- 36% of the respondents believed that the school staff's response to stop the aggressions was "ineffective";
- The students were two times as likely to have missed school if they had suffered higher levels of aggression related to their sexual orientation (58.9% compared to 23.7% among those who had suffered less aggression) or gender expression (51.9% compared to 25.5%);
- The LGBT students that experienced higher levels of verbal aggression because of their sexual orientation or gender expression were 1.5 times more likely to report

³⁶⁸ The survey was performed among 1,016 students aged 13 to 21, who frequented middle school or high school in Brazil during the 2015 school year. The students came from all states of the country and from the Federal District, with the exception of Tocantins.

higher levels of depression (73.7% compared to 43.6% of the ones who suffered less aggression in the case of sexual orientation; 67.0% compared to 45.3% in the case of gender identity/expression);

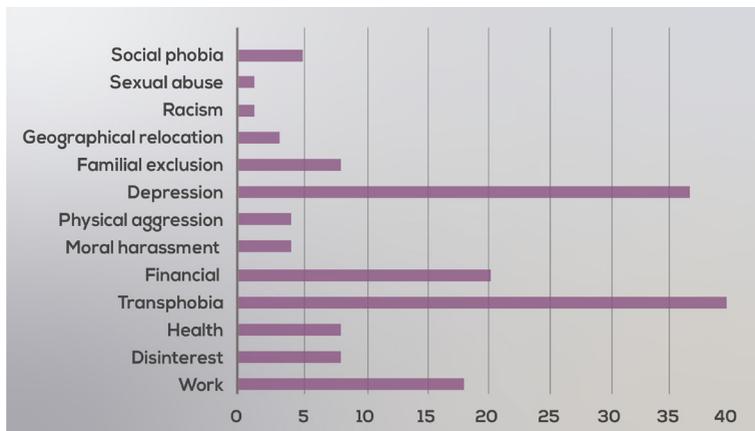
- For 64% of the students there was no clause about this in the school's regulations;
- Only 8.3% of the students claimed that the school's regulations had some clause about sexual orientation or gender identity/expression.

430. Despite this whole picture, the Brazilian government has not taken any measures to guarantee the safety of LGBTI people in the educational environment. On the contrary, Brazilian conservatism, supported by the current government, has tried to impede any discussion about sexual orientation, gender identity, and racism in educational institutions.

431. In the case of trans people, the situation is particularly dire. A more recent survey done by the Brazilian Institute for Trans People in Education (IBTE) in 2019, that exclusively targeted trans people observed that 50% of those interviewed had abandoned their studies at some moment in their lives.³⁶⁹

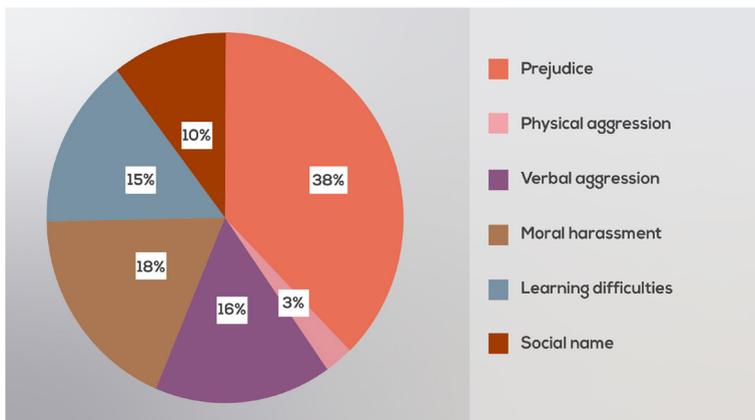
432. When asked about their reasons for leaving school, the answers were, for the most part, in this order: transphobia, depression, financial situation, work and familial exclusion:

³⁶⁹ Instituto Brasileiro Trans de Educação. *As fronteiras da educação: a realidade dos estudantes trans no Brasil*. 2019. Available at: <https://storage.googleapis.com/wzukusers/user-31335485/documents/5c50350f95db81ka6cN8/lbte2019.pdf>



Source: Instituto Brasileiro Trans de Educação³⁷⁰

433. Questioned about what had been the biggest difficulties in their routines, the IBTE obtained the following answers:



Source: Instituto Brasileiro Trans de Educação³⁷¹

434. Today, there is particular concern in Brazil in relation to education. Civil society organizations have collected many cases and data that reveal how much LGBTphobia and

³⁷⁰ Idem, p. 38.

³⁷¹ Idem.

racism affect the lives of Afro-LGBTI people and show a need for educational institutions to inform themselves in regard to these topics.

- 435.** In the focus group held by Race and Equality in Salvador, Black bisexual activist Maria Joana Uzêda, from the National Network of Feminists Against Prohibition, reflected on how educational environments have been harmful to Afro-LGBTI people:

The criminalization of our bodies is intensified, as well, in these spaces that are supposed to emancipate and give some guarantee of life. For us, Black people, school represents something very different from what it is for a white person, who has always had that on their horizon. The role of the school is changing a lot in Brazil today, because one of the main mottos of this government is the fight against 'gender ideology,' which is a fight against us inside schools.

- 436.** In fact, movements that try to eliminate the discussion of racism and LGBTIphobia in educational institutions in the country have been growing, with legislative projects and reformulations of the teaching model that point in this direction.

6.1 Escola Sem Partido

- 437.** One of the biggest signs of the advancement of religious fundamentalism in Brazil is its role the field of education. In an attempt to stop subjects like LGBTIphobia, racism, and sexism from being discussed in schools, many conservative sectors of society, supported by the current government, have promoted growing campaigns for what has become known as *Escola Sem Partido* (Non-partisan Schools).

- 438.** The movement *Escola Sem Partido* was created in 2004 by lawyer Miguel Nagib. Generally speaking, the movement demands a supposed "neutrality" for teachers, limiting them from giving their opinions in the classroom and restricting encouragement of political participation.

- 439.** In May of 2014, Flávio Bolsonaro, the son of Jair Bolsonaro, then a state representative for Rio de Janeiro, asked Nagib to write a bill entitled *Escola Sem Partido*. Right after that, his brother Carlos Bolsonaro, a councilman for the city of Rio de Janeiro, presented a bill of the same type in the state capital.
- 440.** From there, these bills spread across the country. From 2014 to August of 2019, 121 bills of this type had already been presented in state and municipal legislative chambers in Brazil.³⁷² In general, the bills say that “the Public Authority will not intervene in the process of sexual maturation of students nor will it allow any form of dogmatism or proselytism in approaching issues of gender” and will prioritize “parents’ rights in the religious and moral education of their children.”³⁷³
- 441.** Fernando Penna, creator of the website *Educators Against Escola Sem Partido*, explains that, despite the project’s defenders saying that just reading the bills suffices to understand what they are about, it is necessary to know about the movement’s actions to understand the bills:

From their perspective, for example, a teacher is not an educator. One of their main bibliographical references is the book “Professor não é educador” [Teachers are not educators], by an individual called Armindo Moreira. The book’s central thesis is the dissociation between the acts of educating and instructing. Educating should be the responsibility of the family and the church; the teachers, inside the classroom, would be limited to instruction, to transmitting knowledge. Which is a very worrying fact.³⁷⁴

³⁷² O Globo. *Anúncio de suspensão garantiu patrocinador secreto ao movimento Escola Sem Partido*. November 8, 2019. Available at: <https://oglobo.globo.com/sociedade/educacao/anuncio-de-suspensao-garantiu-patrocinador-secreto-ao-movimento-escola-sem-partido-24068869>

³⁷³ Trechos do Projeto de Lei 246/2019, que tramita na Câmara dos Deputados. Available at: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1707037&filename=PL+246/2019

³⁷⁴ Carta Maior. *O que está por trás do ‘Escola Sem Partido’?* July 20, 2016. Available at: <https://www.cartamaior.com.br/?/Editoria/Politica/O-que-esta-por-tras-do-Escola-Sem-Partido-/4/36486>

- 442.** It is with this argument that advocates of Escola Sem Partido want to prohibit discussions on subjects like the fight against LGBTphobia, racism, and violence against women. One of the pillars of Jair Bolsonaro's presidential candidacy in 2018 was the discussion of supposed indoctrination occurring in Brazilian schools, under the allegation that there was an orchestrated plan being carried out in schools to destroy the traditional family, as well as the sexualization of children and the encouragement of homosexuality.
- 443.** On August 1, 2019, the creator of the Escola Sem Partido movement announced that he would terminate the group's activities due to a lack of funding. Right after that, a supporter, who has remained anonymous, started to fund the activities. With this, the movement rented a commercial office and hired four employees,³⁷⁵ giving new life to the project.
- 444.** Furthermore, on November 9th of 2019, Damares Alves, the Minister of Women, the Family and Human Rights, stated that a channel would be created for students' parents to complain about teachers who, during classes, attacked morality, religion, or family ethics:

The channel is being formatted between the Ministries of Education and Human Rights. It will be announced soon. What we want is only that the law be obeyed. Brazil is a signatory of The American Convention on Human Rights. It says there that the school cannot teach anything that attacks morality, religion, and family ethics.³⁷⁶

- 445.** In practice, beyond the institutional dispute, the Escola Sem Partido movement fights in the cultural realm to change the practices of teachers and students. During Race and Equality's visit to Brasília, the organization of lesbian women Coturno de Vênus (Venus's Combat Boots) highlighted the

³⁷⁵ O Globo. *Após anunciar fim, Escola Sem Partido recebe doação, e projetos de lei avançam*. November 8, 2019. Available at: <https://oglobo.globo.com/sociedade/educacao/apos-anunciar-fim-escola-sem-partido-recebe-doacao-projetos-de-lei-avancam-24038212>

³⁷⁶ Exame. *Damares cria canal para denunciar professores "contra a família"*. November 20, 2019. Available at: <https://exame.abril.com.br/brasil/damares-cria-canal-para-denunciar-professores-que-va-contra-a-familia/>

case of a Black lesbian high school teacher who, in 2018, while introducing the subject of human rights to teenage students, became aware of about 20 suicide attempts among the students – the majority of whom were LGBTI and Black. After that, she proposed a human rights curriculum that would discuss themes such as lesbian visibility and racism. When she made her proposal, some of her colleagues began persecuting her and tried to stop her from accessing certain spaces, information, and even from contacting students, claiming it was she who was inciting them to commit suicide.

446. One of the legal devices used by Escola Sem Partido to justify their projects is their interpretation of Article 12. of The American Convention on Human Rights, which states that “parents, and tutors, when it is the case, have the right to have their children or pupils receive the moral and religious education that is in accordance with their own convictions.”³⁷⁷

447. The Escola Sem Partido preaches that religious convictions regarding the family take precedence when it comes to subjects such as sexual education, so that teachers should abstain from mentioning subjects that can come into conflict with these values. The natural response would be to point out that in designating LGBTI lives as subjects that go against moral convictions, one assumes a non-existent unanimity of beliefs among school children’s families.

448. In that respect, Judge Paulo Gustavo Guedes Fontes states that the educational system owes respect and tolerance, but not absolute reverence, to the religious and moral conceptions of parents, because religion should serve the full development of the person:

Education, in the terms of article 205 of the Constitution, is a social project whose aim is the “full development of the person, their preparation for the exercise of citizenship and their qualification for work”. Despite the respect owed to the family and the need for dialogue, intrinsic to the pedagogical practice, education is a right of the individual and a means of blossoming of the personality, of the apti-

³⁷⁷ IACHR. American Convention on Human Rights. November 22, 1969. Available at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

tudes and potentialities of each person, going beyond an acritical ratification of familiar conceptions.³⁷⁸

449. Article 12.3 of the American Convention on Human Rights admits that the right to freedom of conscience and religion is not absolute, allowing restrictions that are “necessary to protect the safety, order, health or public morals or the rights and liberties of others.”³⁷⁹ The same caveat can be seen in other international instruments, like the Convention on the Rights of the Child (Article 14.3)³⁸⁰ and the International Covenant on Civil and Political Rights (Article 18.4),³⁸¹ both ratified by Brazil.

450. On this topic, the United Nations Human Rights Committee, created by the International Covenant on Civil and Political Rights, issued an important commentary:

Article 18 protects theistic, non-theistic, and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.³⁸²

451. Furthermore, the Committee stated that an education that is in accordance to the instructions of a religion or a particular belief is not required under Article 18.4, highlighting that the concept of morality is derived from different religious, philosophical, and social traditions.³⁸³

³⁷⁸ FONTES, Paulo. *Escola sem Partido faz leitura errada da Convenção Americana de Direitos Humanos*. May 1, 2019. Available at: <https://www.conjur.com.br/2019-mai-01/paulo-fontes-escola-partido-e-moral-familiar>

³⁷⁹ IACHR. American Convention on Human Rights. November 22, 1969. Available at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

³⁸⁰ UNICEF. Convention on the Rights of the Child. November 20, 1989. Available at: <https://www.unicef.org/child-rights-convention/convention-text>

³⁸¹ Decree no 592, from July 6, 1992. Available at: http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0592.htm

³⁸² Office of the High Commissioner for Human Rights. Comentário Geral nº 22: The right to freedom of thought, conscience and religion (Art. 18). July 30, 1993. Available only in English at: <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2022.pdf>

³⁸³ Idem.

- 452.** The Yogyakarta Principles confirm that all people have the right to an education without discrimination due to their sexual orientation or gender identity and urges States to take all legislative, administrative, and other measures necessary to secure equal access to education and equal treatment for students, employees, and teachers in the educational system, without discrimination due to sexual orientation or gender identity. It also urges States to guarantee that education is directed to the development of each student's personality, their talents, and their mental and physical capacities to their full potential.³⁸⁴
- 453.** The Yogyakarta Principles + 10, with respect to the additional obligations of the State relative to the right to education, provide that States should guarantee the inclusion of comprehensive, affirmative, and precise material on sexual issues, biological, physical and psychological diversity, and the human rights of people of different sexual orientations, gender identities, gender expressions, and sexual characteristics. These materials should be used in professional training and take into consideration the capacity of the child.³⁸⁵
- 454.** In 2019, the IACHR reinforced that it urges the Member States of the OAS to adopt and comply with effective measures to prevent violence and discrimination against LGBTI people in educational institutions, public as well as private. It also recommended that Member States implement an inclusive sexual education in school programs, including a perspective of bodily, sexual, and gender diversity that serves as an instrument to eliminate discrimination against LGBTI people.³⁸⁶

³⁸⁴ Yogyakarta Principles. *Princípios sobre a aplicação da legislação internacional de direitos humanos em relação à orientação sexual e identidade de gênero*. Available at: http://www.clam.org.br/uploads/conteudo/principios_de_yogyakarta.pdf

³⁸⁵ The Yogyakarta principles plus 10. *Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta principles*. Available only in English at: https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

³⁸⁶ IACHR. American Convention on Human Rights. November 22, 1969. Available at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

455. In 2020, Ahmed Shaheed, UN Special Rapporteur for freedom of religion or beliefs, expressed profound concern in relation to groups of religious interest involved in campaigns that characterize human rights defenders combatting gender discrimination as immoral agents. These campaigns often claim that activists want to implant a ‘gender ideology’ that is harmful to children, families, tradition, and religion.³⁸⁷ The Rapporteur recognizes that by invoking religious principles as well as pseudoscience, these campaigns defend the maintenance of traditional values rooted in interpretations of religious teachings about the social roles of men and women, according to alleged natural differences in capacities. They also frequently exhort governments to adopt discriminatory policies.

456. In Brazil, the Maria da Penha Law, in addressing integrated measures for the prevention of domestic violence, states that there should be an articulated set of actions by the Union, the States, the Federal District, and municipalities for “the promotion of educational programs that disseminate ethical values of respect to the dignity of the human person with a perspective of gender and race or ethnicity.” The Law also calls for “the emphasis, in school curriculums for all levels of teaching, on content relative to human rights, equality of gender and race or ethnicity and to the problem of domestic and familial violence against women.”

6.2 Militarization of schools

457. On September 5th of 2019, the Brazilian federal government launched the National Program of Civic-Military Schools,³⁸⁸ creating a central program for fostering public military schools, in which administrative management and student discipline is managed by the military, in Brazil. This program develops schools with an institutional military culture that adopts the military principles of discipline and hierarchy.

³⁸⁷ UN. *Report of the Special Rapporteur on freedom of religion or belief*. February 27, 2020, p. 8. Available at: <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>

³⁸⁸ The decree that institutes the program is available at: http://escolacivicomilitar.mec.gov.br/images/pdf/legislacao/decreto_n10004_de_5_de_setembro_de_2019_dou_pecim.pdf

- 458.** Soon after, on November 21st, the Ministry of Education announced that 54 military-civic teaching institutions would be spread out across 23 states and the Federal District.³⁸⁹ The Ministry of Education informed that it intends to launch 216 schools in this model throughout the country by 2023. According to information from the Ministry of Education, there were already 203 schools of a military-civic model in Brazil, prior to the launch.³⁹⁰
- 459.** President Jair Bolsonaro stated that some schools in the Federal District had previously refused the military model and even stated his opinion that this model should be imposed: “I am sorry, this is not something to be accepted, it has got to be imposed”. This statement flies in the face of the policy’s text, which states that schools must accept their enrollment in the program.³⁹¹
- 460.** In Rio de Janeiro, Governor Wilson Witzel declared on social media that the state possesses its own model of military schools which is already being implemented and that new units will always be created without adapting existing schools.³⁹² In fact, at the beginning of the year, two military model units were inaugurated in two provincial towns.³⁹³ For 2020, the governor promised 30 more:

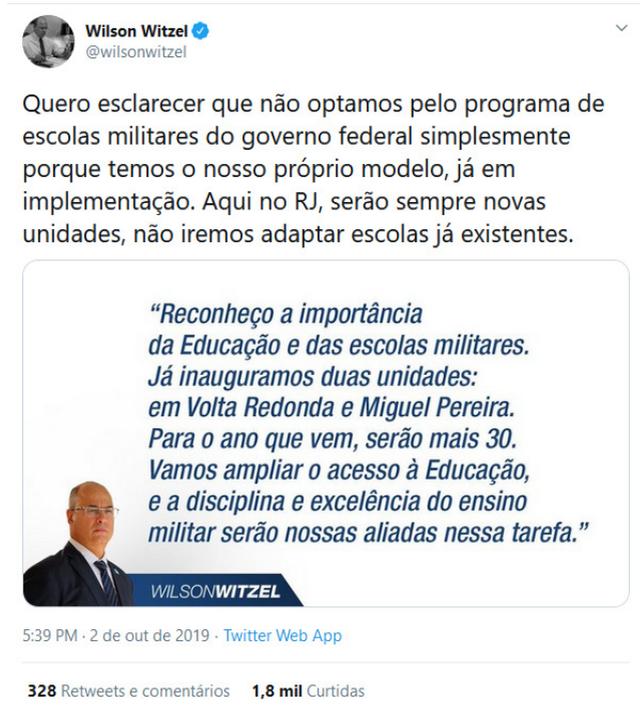
³⁸⁹ Only the states of Piauí, Sergipe and Espírito Santo will not have schools of this program implemented in 2020.

³⁹⁰ Ministério da Educação. *Quinze estados e o Distrito Federal aderem ao modelo de escolas cívico-militares*. October 1, 2019. Available at: <http://escolacivicomilitar.mec.gov.br/noticias-lista/62-quinze-estados-e-o-distrito-federal-aderem-ao-modelo-de-escolas-civico-militares>

³⁹¹ Estadão. *Colegiado de procuradores e promotores diz que Programa Nacional de Escolas Cívico Militares de Bolsonaro fere princípio da gestão democrática do ensino*. September 14, 2019. Available at: <https://politica.estadao.com.br/blogs/fausto-macedo/colegiado-de-procuradores-e-promotores-diz-que-programa-nacional-de-escolas-civico-militares-de-bolsonaro-fere-principio-da-gestao-democratica-do-ensino/>

³⁹² WITZEL, Wilson. Twitter, October 2, 2019, 13h39. Available at: https://twitter.com/wilsonwitzel/status/1179496201999339521?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1179496201999339521&ref_url=https%3A%2F%2Fcomeananas.com%2Fescolas-militares-witzel-cieps%2F

³⁹³ These are the cities of Volta Redonda e Miguel.



Source: Twitter³⁹⁴

Translation of the tweet: I want to make it clear that we did not opt for the federal government’s military school program simply because we have our own model, already being implemented. Here in RJ, there will always be new units, we will not adapt existing schools.

Translation of quoted text: “I recognize the importance of Education and military schools. We have already inaugurated two units: in Volta Redonda and Miguel Pereira. Next year, there will be 30 more. We are going to amplify access to Education, and the discipline and excellence of military teaching will be our allies in this task.”

461. Military discipline involves the use of conservative dress or even military uniforms, short hair for boys, and ponytails or buns for girls. These requirements block the empowerment of Black people through the embrace of their natural hairstyles and the empowerment of LGBTI people who

³⁹⁴ Supra, nota 18.

expressed themselves through hairstyles not in line with cis-heteronormativity.

462. According to Luiza Maria Pereira, Counselor for the Promotion and Defense of Human Rights in the Federal District, the military school project could generate more prejudice and exclusion: “The public that is most going to be affected by this policy is, definitely, the LGBT public, the trans identities, that will be banished, made invisible in these schools, which consequently will foster prejudices and violence within education.”³⁹⁵

463. Any educational model that is not committed to an anti-racist and anti-LGBTIphobic agenda will be associated with an ideology of whitewashing and cis-heteronormatization, educating children and teenagers to internalize discrimination based on race, class, gender, and sexuality.

³⁹⁵ Câmara dos Deputados. *Militarização nas escolas pode levar a mais exclusão de alunos LGBTI+, avaliam debatedores*. August 29, 2019. Available at: <https://www.camara.leg.br/noticias/577985-militarizacao-nas-escolas-pode-levar-a-mais-exclusao-de-alunos-lgbti-avaliam-debatedores/>

Right to work for the LGBTI population



Chapter 7

Right to work for the LGBTI population

LGBTphobia causes a process of marginalization and instability in the labor market. On one side, there is a population of gays relegated to jobs related to beauty, cultural areas and call-center services. On the other, a population of lesbians and bisexual women who are mostly unemployed; and then, you have a population of travestis and transsexuals who depend on prostitution to make a living.

*Janaina Oliveira (Belém - Pará)³⁹⁶
Black, lesbian woman
Rede Afro LGBT*

464. The right to education is intrinsically linked to the right to work in that the lack of access to education becomes the first obstacle for access to work. For Dani Balbi, a Black transsexual woman who is a member of the National LGBT Union and the first trans professor at the School of Social Communications at the Federal University of Rio de Janeiro, education is the first obstacle to entry into the labor market for transsexual people and *travestis*, many of whom are practically expelled from schools in elementary education. From Balbi's perspective, the second obstacle is the absence of any policies for inclusion in the labor market:

They end up not building conditions into their selection processes so that trans people and *travestis* will apply. And many times, in addition to not building these conditions into selection processes for filling places, they end up building other barriers, not using them explicitly, but tacitly discriminating against transsexual people and *tra-*

³⁹⁶ Although from Pará, Janaina Oliveira resides in Brasília (DF).

vestis. All of this ends up creating this reality, which is that trans people and *travestis* are shut out of the formal job market in Brazil.³⁹⁷

465. The publication *LGBTIfobia & racismo no mundo do trabalho* (LGBTIphobia & racism in the workplace), prepared for a seminar in Brasilia by the same name that was promoted by the Commission for Work, Administration and Public Service of the Federal Chamber of Representatives in 2017, emphasizes how work has become an individual's main activity in society. This is the case not only because it guarantees income, but because of the great amount of time and dedication a person must devote to it. However, given that the world of work does not offer equal opportunities to everyone, the seminar posed the questions: "What must one do to gain access to a position? What qualifications are necessary for professional insertion? What is the reason that a person who has the proper qualifications may be barred from this space?"³⁹⁸

466. In a recent report, the UN Independent Expert on SOGI stated that discrimination and abuse based on sexual orientation, gender identity and gender expression can occur in all stages of the work cycle, be it in hiring, promotions, training, remuneration, and separation from work. Discrimination can also shape access to benefits throughout this cycle. The Expert recognizes that many people may feel forced to hide their sexual orientation and gender identity, which can lead to high levels of anxiety and loss of productivity.³⁹⁹

³⁹⁷ Agência Brasil. *Escola é primeiro gargalo à inserção de pessoas trans no mercado*. November 6, 2019. Available at: <https://agenciabrasil.ebc.com.br/geral/noticia/2019-11/escola-e-primeiro-gargalo-insercao-de-pessoas-trans-no-mercado>

³⁹⁸ Câmara dos Deputados. Comissão de Trabalho, de Administração e Serviço Público. *LGBTIfobia & racismo no mundo do trabalho*. Brasília: Câmara dos Deputados, 2017, p. 6. Available at: <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/ctasp/documentos/publicacoes/especial-lgbtifobia-racismo-no-mundo-do-trabalho/view>

³⁹⁹ Protection against violence and discrimination based on sexual orientation and gender identity. *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*. A/74/181. July 17, 2019. Available at: <https://undocs.org/en/A/74/181>

467. The pamphlet *The Promotion of LGBT Human Rights in the Workplace*, prepared by the UN in a partnership with the International Labor Organization (ILO), the United Nations Development Program (UNDP), and the United Nations Joint Program for HIV/Aids (UNAIDS), emphasizes that homogeneity is no longer easily imposed in the workplace, and that the “simplistic vision that workers are ‘human resources’ or ‘manpower’ cannot be sustained and used to dehumanize and remove any personal characteristic from this environment that employers want sanitized and uniform.”⁴⁰⁰ The pamphlet affirms that:

People bring a plurality of characteristics to the work environment that challenge norms, styles, standardizations, processes, and politics that were formerly imposed and obeyed without so much questioning. Practices of discrimination, previously accepted as natural, now create problems and are rejected.⁴⁰¹

468. In 2019, UN Free & Equal registered that trans people reported high rates of exclusion from formal jobs and discrimination and harassment in the workplace. A particular issue was that trans people were discouraged from using the appropriate bathrooms, a problem which is exacerbated for trans people whose documentation does not correspond with their identity.⁴⁰² In addition, it recognized that discrimination and exclusion from the formal economy leaves many trans people without an option other than the informal economy, increasing the risk of exploitation and abuse.

469. Afro-LGBTI people in Brazil, due to all of the structural disadvantages to which they are subjected, face serious problems in gaining access to and retaining jobs and in

⁴⁰⁰ OIT/UNAIDS/PNUD. *Promoção dos Direitos Humanos de pessoas LGBT no Mundo do Trabalho*. 2a. ed. Brasília, OIT/UNAIDS/PNUD, Projeto “Construindo a igualdade de oportunidades no mundo do trabalho: combatendo a homo-lesbo-transfobia”, 2015, p. 15. Available at: https://unaid.org.br/wp-content/uploads/2016/01/2015_ManualPromocaoDireitosLGBTTrabalho_PT_V2.pdf

⁴⁰¹ Idem.

⁴⁰² UN. *Born Free and Equal. Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law*. Second Edition. (2019), p. 65. Available at: https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf

securing equal opportunities for promotion. For the UN, the guarantee of work:

Means not only access to a job and stability once employed, but the right to an inclusive environment where every person can develop to their full potential, without barriers or obstacles to a career, with respectful treatment, and equity and freedom to express themselves without embarrassment or violence.⁴⁰³

470. The promise of the workplace to offer meritocracy loses its meaning in the face of prejudices or discrimination, given that “difference from the dominant standard, which is heteronormative and resistant to diversity in characteristics and life situations, speaks louder than competencies, which should occupy the central place in the choice of people for a job.”⁴⁰⁴

471. The workplace is usually perceived as a competitive environment, with decision processes based on a “neutral meritocracy.” However, analysis can reveal how whiteness and cis-heteronormativity manifest themselves as guardians of privileges in the workplace. With Maria Aparecida Bento, from the Center for Studies on Relations and Inequalities in the Workplace, it is possible to perceive that this “neutral meritocracy,” like the idea of a “racial democracy,” assumes that “when there are equal opportunities for everyone, those that are unable to succeed are the incompetent, or the unprepared,”⁴⁰⁵ implying that “the problem resides in them and not society and its institutions.”⁴⁰⁶ According to the author:

The daily work at a job at a company is one of the contexts in which this ideology can show its most efficient face, guaranteeing strong racial segmentation. There are no formal rules in this area. No Brazilian company declares in writing: “*we do not accept Black people in management positions*”. Nevertheless, managers, bosses, foremen,

⁴⁰³ Idem, p. 17.

⁴⁰⁴ Idem, p.19.

⁴⁰⁵ BENTO, Maria Aparecida. *Pactos narcísicos no racismo: branquitude e poder nas organizações empresariais empresárias e no poder público* (Tese de doutorado). São Paulo: Universidade de São Paulo (Departamento de Psicologia da Aprendizagem/Aprendizagem, do Desenvolvimento e da Personalidade, 2002, p. 13.

⁴⁰⁶ Idem.

and people in charge of hiring follow informal rules in their day-to-day work without thinking and not always with intention to discriminate; but many times, these informal rules end up reinforcing the situation of inequality in Brazil. The fact is, consciously or not, the result of these actions is the same: to reproduce racial inequality.⁴⁰⁷

472. It is important to highlight that when discussing inequality in accessing jobs, keeping a job, or gaining promotion, it does not matter if there is an intention to discriminate or not. What matter are the effects of certain choices and their repercussions on certain social groups. Institutional discriminatory processes that occur every day in workplaces, intentional or not, aggravate the inequality between white and Black people, between LGBTI people and cis-heterosexual people, between men and women, and between any other unequal groups.

473. Professor Cleber Santos Vieira, of the Federal University of São Paulo, when talking about the discrimination that the Black population faces in the work environment, describes three frequent types:

- a) Occupational discrimination, which is the questioning of the capacity of a Black person to perform more complex tasks, even when trained for them;
- b) Salary discrimination, when there is a lack of equivalency in remuneration between white people and Black people, suggesting that the work done by Black people is less valuable;
- c) Image discrimination, where characteristics such as dark skin and Black hair are the target of prejudice, leaving Black people behind when there are opportunities at work.⁴⁰⁸

⁴⁰⁷ Idem, pp. 12 e 13.

⁴⁰⁸ Agência Brasil. *Negros enfrentam mais dificuldades que brancos no mercado de trabalho, diz MPT*. November 8, 2011. Available at: <https://agenciabrasil.ebc.com.br/geral/noticia/2017-11/negros-enfrentam-mais-dificuldades-que-negros-no-mercado-de-trabalho-diz-mpthttps://agenciabrasil.ebc.com.br/geral/noticia/2017-11/negros-enfrentam-mais-dificuldades-que-negros-no-mercado-de-trabalho-diz-mp>

474. None of these types of discrimination need to be conscious or intentional to be disadvantageous to the Black population. The LGBTI population may be affected by the same types of discrimination. In a society like that of Brazil, which constructs negative stereotypes about Black people, women, LGBTI people and/or people with deficiencies and so many other lives that are affected by structural disadvantages, it is essential to ask how the image of someone who is a competent hard worker is created.⁴⁰⁹ It is then vital to ask how this image influences the right to work for Afro-LGBTI people.

7.1 Data on work and the Black population

475. According to data from IBGE, the Black population makes up the largest part of the work force in Brazil.⁴¹⁰ In 2018, there were 57.7 million Black people in the work force, while white people totaled 46.1 million, meaning that there were 25.2% more Black people in the work force than white people.⁴¹¹

476. Despite this, Black people make up about two-thirds of both the unemployed (64.2%) and the underemployed (66.1%) population. When the level of education is consi-

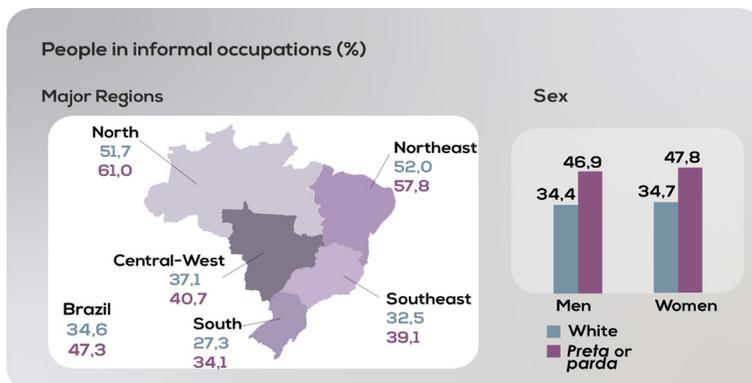
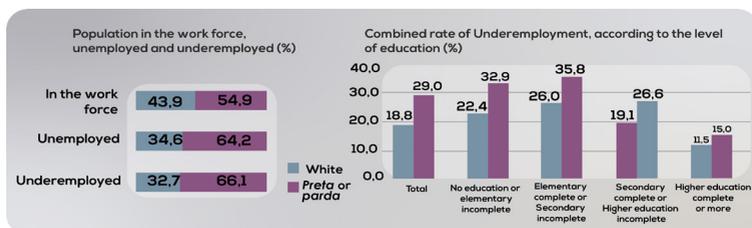
⁴⁰⁹ BENTO, Maria Aparecida. *Pactos narcísicos no racismo: branquitude e poder nas organizações empresárias e no poder público* (Doctoral thesis). São Paulo: Universidade de São Paulo (Departamento de Psicologia da AprendizagemAprendizagem, do Desenvolvimento e da Personalidade, 2002, p. 68.

⁴¹⁰ The workplace is made up of the population that is economically active (PEA), which comprehends “the potential manpower that the productive sector can draw on; the effective offer of work in an economy. The calculation of the PEA considers the following categories: Population employed – those people who, at a determined reference point, work or have a job but are not working (for example, people on vacation); Population unemployed - those people who are not working, at a determined reference point, but are interested in working, and who have made some active effort to seek work in the last 30 days (asking people, looking in newspapers, etc.)”. In other words, the unemployed population is the population that is jobless but looking for a job. IBGE also works with the concept of an underemployed population, which is the “total of the population that is underemployed because they do not get the number of hours they would like, they are underused and have greater potential”. Instituto Brasileiro de Geografia e Estatística. *Desigualdades sociais por cor ou raça no Brasil. Estudos e pesquisas: informação demográfica e socioeconômica*, n. 41, 2019, p. 2, our emphasis. Available at: https://biblioteca.ibge.gov.br/visualizacao/livros/liv101681_informativo.pdf

⁴¹¹ Idem.

dered, the disadvantage remains: the rates of underemployment and unemployment are greater among Black people, no matter the level of education considered.⁴¹²

477. In 2018, 39.0% of the population was working informally. Among Black people, this proportion reached 45.6%, showing that, both Black men and women are more likely to be working in disadvantageous informal situations.⁴¹³ It is important to note that the level of technical training does not make a difference: the disadvantages between white and Black people with the same level of education are evident.



Source: Instituto Brasileiro de Geografia e Estatística [Brazilian Institute of Geography and Statistics]⁴¹⁴

478. The average monthly income for employed white people was R\$2,796.00, 73.9% greater than that for Black people

⁴¹² Ibidem.

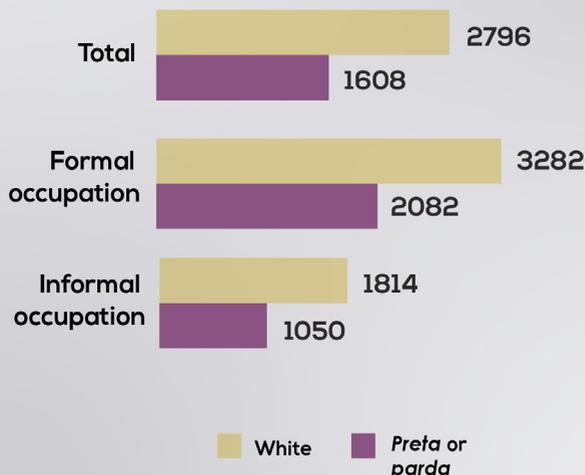
⁴¹³ Idem.

⁴¹⁴ Ibidem.

(R\$1,608.00). Both in formal occupation as well as in informal, Black people receive less than whites.⁴¹⁵

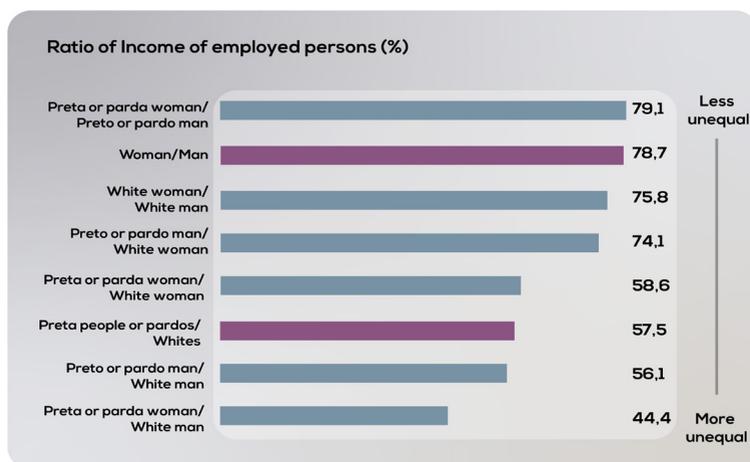
479. In the IBGE study, there are both racial and gender-based economic advantages: Black women who receive less than half of what white men receive (44.4%). Right after white men, come white women, who have greater incomes than Black women and Black men (ratios of 58.6% and 74.1%, respectively). Black men also have greater incomes than Black women (ratio of 79.1%).⁴¹⁶

Average real regular income from principal work of employed persons (R\$/month)



⁴¹⁵ Idem, p. 3.

⁴¹⁶ Ibidem.



Source: Instituto Brasileiro de Geografia e Estatística⁴¹⁷

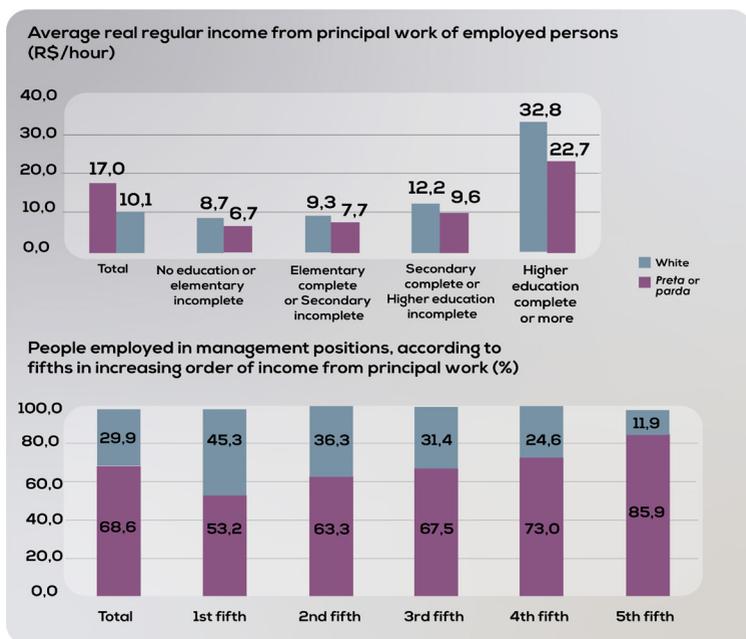
480. The income of white people reached R\$17.00 per hour, while among Black people, the amount was R\$10.10 per hour.⁴¹⁸ Income differences are found throughout all educational levels, including at the highest ones.

481. Additionally, despite the fact that the employed Black population is absolutely larger than the employed white population, management positions show a significant majority of white people – 68.6% against 29.9% in 2018. The higher the income, the fewer Black people are found. In the higher income classes, only 11.9% of employed people in management positions were Black people, while in the lower income management positions, there were 45.3% *preta* or *parda* people and 53.2% whites.⁴¹⁹

⁴¹⁷ Ibidem.

⁴¹⁸ Idem, p. 4.

⁴¹⁹ Ibidem.



Source: Instituto Brasileiro de Geografia e Estatística⁴²⁰

482. For Maria Aparecida Bento, the difficulty faced by Black men and especially Black women in getting into management positions is a result of the fact that a Black person in a management position subverts the normal logic of subordination, making white people feel uncomfortable, consciously or not, when Black people occupy these spaces.⁴²¹

7.2 Lack of data on the LGBTI population and the labor market

483. On December 13, 2019, Race and Equality attended the public hearing “Education, Work and Employment for the LGBTI Population in Rio de Janeiro”, held at the State Legislature of the State of Rio de Janeiro. Ernane Alexandre

⁴²⁰ Idem.

⁴²¹ BENTO, Maria Aparecida. *Pactos narcísicos no racismo: branquitude e poder nas organizações empresárias e no poder público* (Doctoral thesis). São Paulo: Universidade de São Paulo (Departamento de Psicologia da Aprendizagem, do Desenvolvimento e da Personalidade, 2002, p. 19.

Pereira, then the coordinator of the *Rio Sem Homofobia* program, stated that, from the years of 2010 through 2019, the work environment was the third-highest source of complaints regarding LGBTI rights violations (670 total), after only the family environment (901) and the public streets (1,048).

484. However, there is a scarcity of official data in respect to the LGBTI population in the Brazilian labor market, which causes these people to be invisible to those that formulate public policies. The data that does exist is collected by civil society, or by companies that perform research on their customers or employees. Little of this data is disaggregated by race. Given only the data we have seen, the Black population is at a disadvantage in the labor market. As we will see in the following, the LGBTI population is too. Thus, the Afro-LGBTI population is in an even more difficult situation.

485. A recent study, prepared by the group #VoteLGBT, that consulted about ten thousand LGBTI people from every state in Brazil determined that 20.7% of the people interviewed had no income and 21.6% were unemployed, while the unemployment index for the rest of the population was 12.2%.⁴²² One of the researchers stated that “the rate of unemployment among LGBTs tends to be higher than that of the population in general, because insertion into the formal work market is made difficult by a variety of factors, including prejudice.”⁴²³

486. A company that works with systems of recruitment and hiring recently performed a research study involving 1,500 LGBTI people in Brazil, among whom 126 were transsexuals or *travestis*.⁴²⁴ The study determined that:

⁴²² #VoteLGBT. *Durante pandemia LGBTs sofrem com desemprego maior, problemas de saúde mental e tensões no convívio familiar, revela pesquisa inédita*. Available at: https://docs.google.com/document/d/1FkdQib_mrApYY_PpGhE8HzOMPx-vBGJkoyO3aqFRZUBE/edit

⁴²³ Idem.

⁴²⁴ Glassdoor. *Profissionais LGBT+ acreditam que se assumir no trabalho pode ferir sua carreira*. June 24, 2019. Available at: <https://www.glassdoor.com.br/blog/lgbt-assumir-no-trabalho-pode-ferir-sua-carreira/#loveMondaysRedirect>

- 66% of LGBTI professionals believed that assumptions about their sexual orientation or gender identity could hurt their career;
- 62% would not apply for a job in a company that did not support the LGBTI cause at work;
- 35% declared that they had already suffered some type of discrimination at work because of their sexual orientation or gender identity (this percentage went to 40% in the case of trans people).

487. Another study performed with 230 LGBTI people in 14 states in Brazil, revealed that:⁴²⁵

- 40% of the people interviewed had suffered discrimination because of their sexual orientation or gender identity in the work environment;
- 53% had not declared their sexual orientation or gender identity at work, or had only declared to a few people;
- 38% of the companies had restrictions on the hiring of LGBTI people.

488. The Dossier of Murders and violence against Brazilian *travestis* and transsexuals in 2019⁴²⁶ reports that in recent years, ANTRA saw promise in the fight for the right to work and income, especially regarding the inclusion of trans people in work and entrepreneurship. However, the Brazilian political context has complicated these expectations:

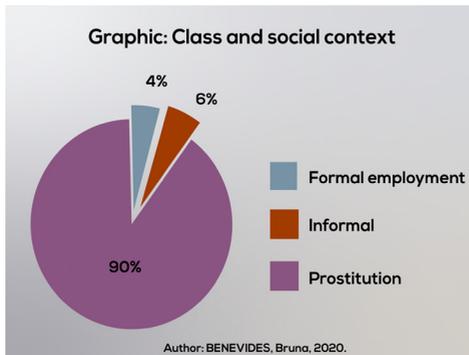
⁴²⁵ Santo Caos. *Demitindo preconceitos: por que as empresas precisam sair do armário*. Available at: <http://www.santocaos.com.br/biblioteca/demitindo-preconceitos-apresentacao-final.pdf>

⁴²⁶ Associação Nacional de Travestis e Transexuais do Brasil (ANTRA); Instituto Brasileiro Trans de educação (IBTE). *"Dossiê Assassinatos e violência contra travestis e transexuais brasileiras em 2019"*. 2019. Available at: <https://antrabrasil.files.wordpress.com/2020/01/dossic3aa-dos-assassinatos-e-da-violc3aancia-contra-pessoas-trans-em-2019.pdf>

We became aware of several partnerships and initiatives that not only were established, but also successfully directed trans people to job opportunities, which led us to believe that, in at least 5 years, we would see an increase in the number of trans people in formal jobs or other activities outside of sex work, as well as the possibility of an increase in life expectancy for our population. However, a variety of factors complicated this expectation. Examples include the freezing of spending in areas that directly affect the life expectancy of people, measures that limit access to health and education for 20 years, the labor and retirement reforms that increase unemployment indices, an increase in poverty and in people involved in informal activities, the increase in violence against the LGBTI population, and the retrogression in rights that we have seen over the last year. In this context, we have been paying close attention to *travestis* and transsexual women once again forced to turn to sex work, many times dangerous, in order to guarantee their subsistence.⁴²⁷

489. In this scenario, ANTRA estimates that:

- only 4% of the feminine trans population have formal employment;
- only 6% are in the informal labor market and underemployed;
- 90% of the population of *travestis* and transsexual women use prostitution as a source of income.



Source: ANTRA; IBTE⁴²⁸

⁴²⁷ Idem, p. 31.

⁴²⁸ Idem.

490. The large number of *travestis* and transsexual women involved in prostitution directly exposes these people to transphobic violence in the streets. In fact, in 2019, 67% of murders were of prostitutes and 64% occurred on the streets.⁴²⁹

7.3 The centrality of LGBTIphobia and racism and experienced firsthand

491. In 2017, Black lesbian activist Ana Claudino spoke about her experience in the labor market:

In addition to facing racism in the labor market, we have to deal with lesbophobia and, the farther we are away from “heteronormative femininity,” the farther we are from a job and more on the margins of society as well (...) Unemployment among Black lesbians is one more weapon for the patriarchal/hetero/white society to kill us, drive us crazy and cause us to cease to exist (...) The majority of my Black lesbian friends are unemployed, depressed, without money and without a way to get out of the house. I include myself in this group. We end up thinking that it’s our own fault, but actually, the fault is racism and lesbophobia — which are structural parts of the patriarchal and capitalist society we live in.⁴³⁰

492. The activist described the difficulty faced at the moment of a job interview:

Various times my resume was accepted for a job and I was called for an interview, but when I got there and the interviewers discovered that I was a Black lesbian, suddenly my resume no longer fit the “job profile”. And we know that this word contains innumerable prejudices, and it is not only that you do not fit the desired profile, right? This desired profile is hetero, white and as skinny as possible.⁴³¹

493. At a meeting with Race and Equality, Luana Rayalla, a Black 25-year old trans woman with a disability, who is a

⁴²⁹ Ibidem

⁴³⁰ CLAUDINO, Ana. *Racismo, Lesbofobia e Mercado de trabalho*. May 18, 2017. Available at: <https://medium.com/@anaclaudino/racismo-lesbofobia-e-mercado-de-trabalho-1f228a91398a>

⁴³¹ Idem.

resident of São Gonçalo, narrated that, in her case, discrimination started very early with her own family. She stated that some family members maintained that her mother was “to blame” for her disability and did not accept the gender with which she identified. She also encountered great difficulties in access to education, a situation that is shared by other people with disabilities. With this, we see that people with disabilities also encounter difficulties in access to the labor market, a fact that is aggravated if these people are trans.

494. Ariane Senna, a 29-year-old Black trans woman living in Salvador (BA), was evicted from home at the age of 13 and, for this reason, very early on she started working as a sex worker. Years later, looking for a job in the formal market, she realized that dressing like a man would increase her chances in job interviews: “It was very painful, I looked at myself in the mirror and didn’t see me. So my experiences with formal jobs did not last more than a year.”⁴³² Today, Ariane is a psychologist and is pursuing a master’s degree in research about the loneliness of Black, trans and peripheral women.

495. Alessandra Ramos, president of the Instituto Transformar, experienced great difficulties finding a place in the formal work market, despite being fluent in five languages, in addition to Portuguese:

When I started to try to look for work, enter in the labor market, I went to more than 60 places and, at the majority, the great majority of them, I wasn’t successful because of the question of being trans, for not having an identity that was the same as the majority of people. (...) I went to more than 60 places to ask for a job. I was able to pass in all of the steps until they found out I was trans. I had to open my own company.⁴³³

⁴³² Correio Braziliense. *A trajetória de superação de uma transexual brasileira*. Available at: especiais.correiobraziliense.com.br/a-trajetoria-de-superacao-de-uma-transexual-brasileira

⁴³³ GSHOW. *Transexual que fala cinco línguas lembra busca por emprego: ‘Mais de 60 lugares’*. January 29, 2015. Available at: <http://gshow.globo.com/programas/encontro-com-fatima-bernardes/O-Programa/noticia/2015/01/transexual-que-fala-cinco-linguas-lembra-busca-por-emprego-mais-de-60-lugares.html>

496. Today, Alessandra Ramos is a parliamentary assistant in the State Legislature of the State of the Rio de Janeiro (ALERJ), as well as a translator and interpreter of Libras.

497. Bruna Benevides, secretary of political coordination for ANTRA, also has a difficult story to tell regarding her right to work. In 1990, Bruna joined the Navy through a competitive test. Her first years were particularly difficult:

At that moment, I decided to let go of who I had been to try to create a different story. I dedicated myself completely to work, I dressed up as a man to work, but a man between lots of quotation marks, because it is impossible for me to really look like a man at times. During this process, I really gave up being who I really am, and I did it to survive.⁴³⁴

498. In 2014, Bruna decided to reveal to her superiors that she was a trans woman and, with the permission of the commander of her sector, let her hair grow. When the case became known at higher levels, Bruna was involuntarily discharged, under a diagnosis of “transsexualism” (sic). Then, for two years she tried to overturn this situation administratively. Unsuccessful, she decided to take it to court. Finally, in November of 2018 Bruna Benevides won the right to be reinstated in the Armed Forces.

499. Stories, such as the one cited above, cause us to reflect on how the structure of Brazilian society operates in a way that marginalizes Afro-LGBTI people and denies them the right to work and to all that this means. Andrey Lemos, president of the União Nacional LGBT (UNA LGBT), emphasizes how much work is central to social relations:

When we talk about work, we are referring to a variety of things, because we can't forget that, in most societies, social, cultural and economic relations are built on a foundation of a person's relation to the world of work.⁴³⁵

⁴³⁴ Huffpost. *Bruna Benevides: A resistência da primeira mulher trans na ativa da Marinha brasileira*. June 8, 2018. Available at: https://www.huffpostbrasil.com/2018/06/07/bruna-benevides-a-resistencia-da-primeira-mulher-trans-na-ativa-da-marinha-brasileira_a_23453761/

⁴³⁵ Câmara dos Deputados. Comissão de Trabalho, de Administração e Serviço Público. *LGBTfobia & racismo no mundo do trabalho*. Brasília: Câmara dos

- 500.** In the same sense, researcher Vinício Brígido points out how work looms large as an essential space in a human being's interaction with the world:

For some authors in the area of Sociology of work, this place occupies a central space. Work is seen as a primordial factor in mediation between the human being and the world, and it enables the construction of humanity in a social sphere. As a factor in mediation between the human being and nature, between the human being and himself, work then becomes fundamental in a process of subjectification of individuals. In other words, it is work that acts as a primordial element in the formation of the identity of who we are.⁴³⁶

- 501.** For all of these reasons, it is fundamental to guarantee all of the necessary conditions to provide this population with equal access and freedom of choice for entry into the workplace through measures that establish conditions for them to work with dignity and security.

Deputados, 2017, p. 24. Available at: <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/ctasp/documentos/publicacoes/especial-lgbtphobia-racismo-no-mundo-do-trabalho/view>

⁴³⁶ Idem, p. 22.

Conclusion and Recommendations



Conclusion and Recommendations

- 502.** This dossier seeks to contribute to the racialization of LGBTI discussions in Brazil, confirming just how much the State's lack of data on Afro-LGBTI persons relegates this population to an invisibility that worsens their human rights situation.
- 503.** This lack of data should itself be treated as data demonstrating political disengagement from certain populations and favored political engagement with others, creating a pattern of human rights violations which begins by refusing to see certain populations while recognizing the existence of others' problems.
- 504.** The lack of information on the lives and deaths of Afro-LGBTI persons crystallizes hierarchies, administers ranks of visibility and invisibility, allows for dehumanization, and determines who is a subject of law and who is an object of State actions in the violation of human rights.
- 505.** Rendering these violations invisible conceals a State that is extremely violent towards the most vulnerable groups while hiding how racism and LGBTIphobia are both woven into the social fabric and shape social relationships, forming a systemic framework of devaluation of Afro-LGBTI lives.
- 506.** It is important to applaud and recognize the work done by civil society organizations to collect data on the LGBTI population. In the face of a State that does not fulfill its responsibility to collect information and construct effective public

policy for combatting racism and LGBTIphobia, this work is essential to tracking the various violations of human rights.

- 507.** The data produced by civil society on the murder of LGBTI people in the country is alarming, especially in the case of transsexual and *travesti* persons. Likewise, the sharp rise in the murder of lesbian women in the last few years cannot be ignored.
- 508.** The lack of official records transfers the duty of data collection to civil society, which has limited resources and does not have standardized methods to determine the race of the victims. The fact that the main data source used by civil society on homicides is news media considerably compromises the scope of this work resulting in a concerning degree of underreporting.
- 509.** In a nation of continental dimensions like Brazil where skin color impacts one's place of residence, the deaths of white people, in particular those living in large urban centers, are much more visible than the deaths of Black people. When a death is unreported, it is unacknowledged and unseen. If it remains unseen, then it does not exist in the public eye. If it does not exist, then there is no problem that society feels a need to resolve. Unreported and uncounted deaths, and unresolved problems as well, have a color.
- 510.** Political disinterest in Afro-LGBTI people also shapes their access to justice. This is most evident for trans people, who the State perceives only as criminals and never as victims. Very little effort is spent in solving cases involving trans victims, and their names and gender identities are generally not respected in the different institutions that compose the levers of the Brazilian legal system.
- 511.** The brutality of State violence is very clearly seen in Brazilian policing. Beyond the significant number of deaths in the Black population, the various stories of LGBTI persons, who suffer violence at the hands of State agents charged with protecting them, illustrate just how much the police, especially the military police, play a crucial role in the inhu-

mane and dehumanizing way with which the State deals with these lives through its armed branch. The manner in which police interact with trans people pursuing sex work is unacceptable. Police also inflict shocking violence against trans Black men, especially after transitioning, reflecting the racist brutality with which Black men are treated in Brazil.

- 512.** In healthcare, it is noticeable how much HIV/AIDS has increased in the “men who have sex with men” category which includes homosexual and bisexual men and among trans people who face barriers to treatment when they cannot change their civil registration. Meanwhile, HIV continues to be being treated as an individual problem in order to erase State human rights obligations. It is also worrying how the healthcare system is not prepared to receive LGBTI persons, causing particular problems for lesbian; bisexual; and transsexual women; *travestis*; transmasculine people; and transsexual men. The issue of genital mutilation of intersex persons is also largely invisible.
- 513.** Conservative religious movements have organized around educational guidelines in order to prevent important discussions on race, gender, and sexuality in schools. This has created an inhospitable environment for LGBTI persons in the educational system that affects primarily Black students and trans students, who have the highest dropout rates.
- 514.** With regards to employment, there is also a concerning lack of official data on LGBTI persons and Afro-LGBTI persons in the labor market, where they encounter multiple discriminatory practices in employment access, continuity, adequate remuneration, and advancement. There is a correlation between education and work which notably affects Afro-LGBTI persons and, above all, *travestis* and transsexual women.
- 515.** The LGBTI community is not a homogenous mass with identical experiences. Different experiences lead to different demands, political principles, and relationships to the State between Black and white LGBTI persons. For the Afro-LGBTI community, the State no longer plays the role

of the protector of rights, but rather acts as the primary perpetrator of violence

516. The myth of racial democracy continues to shape Brazilian society, making racial hierarchies invisible and guaranteeing white superiority, which can also be seen within the LGBTI movement and is expressed in a political disengagement towards the urgencies of the Black LGBTI population. It is possible to say that the myth of racial democracy, the ideology of whitening and whiteness guide the LGBTI community in Brazil, based on systematic processes which make invisible the urgencies of Black people and the consecration of white people's demands as if they were homogeneous needs of the whole community. Thus, hierarchies are crystallized and perpetuate privileges, defining which legal protection will be sought by the State.

517. In addition, it may be possible to say that, just as the myth of racial democracy exists, the myth of a democracy of diversity also prevails in the country, which enshrines the idea that gays, lesbians, bisexuals, *travestis*, transsexual, intersex people and any groups that do not fit within a cis-heteronormativity already live in full conditions of equality with cis-heterosexual people. This idea can be seen when conservative groups claim that the LGBTI movement, when looking for rights, is, in fact, aiming for privileges. This idea is, although in another way, also present within the LGBTI movement, from the invisibility that white cis gay men constantly impose on transsexual, *travestis*, lesbian, intersex and bisexual agendas, which becomes even more serious when these groups are at the lower poles of racial hierarchies.

518. It is evident that Afro-LGBTI persons are the most affected in terms of murder in Brazil and that they are the preferred target of police violence. They encounter the most difficulties with access to justice, healthcare, education, and work. It is vital that Brazilian organizations and activists be strengthened so that they may give visibility to the human rights situation of the LGBTI population and to efforts to resist human rights violations.

519. There is a dynamic of ‘killability,’ in which race allows for some people’s right to life to be violated with impunity. Combined with gender, sexuality, class, ability, and other axes of domination, this racial hierarchy of live creates and perpetuates a system which allows Afro-LGBTI people in Brazil to be killed without concern, removing the possibility of a dignified existence.

520. Brazilian LGBTI movement has many challenges before it. The current President, on various occasions, has minimized issues such as racism, *machismo*, and LGBTIphobia. The current administration has issued statements and taken concrete actions against this population.

521. The invisible in Brazil has a color, and that color is Black. Racializing human rights discussions in Brazil means taking the Black population out of the invisibility and breaking with patterns of domination that guarantee privileges and confers different degrees of humanity. In this process, there is no doubt that the strongest fight for justice will come from people at the lowest end of the social hierarchies, who face multiple forms of discrimination of interpersonal, institutional, and structural dimensions.

522. Several recommendations are presented in the following section.

8.1 Recommendations to the State

8.1.1 Recommendations to the Executive Branch

8.1.1.1 Recommendations to the President of the Republic and to State and Municipal Governors

523. The establishment of a list of objectives for the fight against LGBTIphobic violence through cross-sector action which implements unified directives for combatting LGBTIphobia and racism;

524. Involvement in the production of public data on the rights of LGBTI persons in Brazil with an intersectional focus. Fur-

thermore, provision of all necessary support to civil society organizations that undertake data collection regarding the murders of LGBTI persons with the guarantee that they will not meet unnecessary bureaucratic obstacles in order to ensure smooth operations and that their work will be respected by governing officials;

525. That the President of the Republic seek the ratification of the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance and the Inter-American Convention Against All Forms of Discrimination and Intolerance.

8.1.1.2 Recommendations to the Ministry of Human Rights and to Municipal and State Secretaries of Human Rights

526. Production of periodic reports concerning LGBTIphobic violence as well as the LGBTI population's access to human rights with an intersectional focus and in unison with other ministries and secretaries.
527. The publication of directives in the fight against LGBTI-phobic violence on all levels of public administration with assistance protocols and investigations into violence against the LGBTI community.

8.1.1.3 Recommendations to State Secretaries of Public Safety

528. Implementation of specific training programs on sexual orientation and gender identity for police forces as well as the creation of rigorous structures of supervision to monitor how police interact with this group, especially *travesti* and transsexual persons;
529. Thorough and proper investigation and characterization of homicide cases with specific investigation protocols for cases of violence and murder of the LGBTI population;

8.1.1.4 Recommendations to the Ministry of Education and to State and Municipal Secretaries of Education

- 530.** Reversal of school militarization processes and of the Escola Sem Partido (*Non-partisan schools*) program in order to guarantee the autonomy of educational institutions and that the educational climate not be impregnated with norms that seek to homogenize the learning, teaching, and administrative bodies;
- 531.** That school curricula contain lessons on respecting sexual and gender diversity and sex education, including important information on preventing sexually transmitted infections and early pregnancies;

8.1.1.5 Recommendations to the Ministry of Health and to State and Municipal Secretaries of Health

- 532.** Drafting of directives so that medical and nursing schools address topics such as sexual orientation and gender identity in their curricula, research groups, outreach programs, and at academic events so that healthcare professionals know from the very beginning of their education the specificities of LGBTI persons, and in particular transsexual persons;
- 533.** Use of awareness campaigns and the training of professionals in the healthcare system to ensure the equal treatment of LGBTI person;

8.1.2 Recommendations to the Judicial Branch

- 534.** Completion by the Conselho Nacional de Justiça (National Council of Justice) of the research on LGBTphobia and the Judicial Branch in order to generate public data that can be used to combat institutional LGBTIphobic practices and to verify LGBTI representation in the Judicial Branch. This data should contain information on race/skin color.
- 535.** Promotion by the Judicial Branch of training programs for all levels of its internal teams in order to do away with

institutional postures that keep Afro-LGBTI persons from access to justice.

8.1.3 Recommendations to the Legislative Branch

- 536.** Passing of specific legislation by the Congresso Nacional (National Congress) that criminalizes LGBTIphobia, demonstrating the Brazilian State's commitment to the fight against LGBTIphobic discrimination in the country;
- 537.** Creation by the National Congress, legislative assemblies, and municipal chambers of legislation for the protection of LGBTI rights in the same way that the Statute of Racial Equality exists already. These statutes must take into account the experiences and urgent matters of Afro-LGBTI persons with specific measures for the promotion of equality for the population.

8.1.4 Recommendations to the Public Defenders Offices

- 538.** That Public Defenders Offices create protocols that seek to support this population, including support for social services and psychology professionals whenever necessary;
- 539.** That state public defenders create specialized centers for combatting racism and LGBTIphobia if they have not yet created such centers and that said centers take joint action.

8.1.5 Recommendations to the Public Ministry

- 540.** That the Public Ministry implement training programs for its technical team on all levels in partnership with civil society in order to combat institutional LGBTIphobic practices;
- 541.** That the Public Ministry actively be involved in handling crimes committed against the LGBTI population and particularly against the *travesti* and transsexual populations in order to arrive to a legal truth concerning the facts;

8.1.6 Recommendations to the Public Ministry of Labor

- 542.** That the Public Ministry of Labor introduce specific campaigns against discrimination towards the LGBTI population in order to guarantee fair selection criteria, promotions, salaries, and labor conditions, creating coordinated institutional strategies for promoting the rights of LGBTI persons in the workplace;
- 543.** That the Public Ministry of Health collect statistical data that make it possible to identify the main difficulties faced by the LGBTI population in the job market and so that the regions with the most obstacles can be identified. This data should contain race and skin color information.

8.2 Recommendations to Civil Society

- 544.** That various organizations for the promotion LGBTI equality incorporate intersectionality as a lens and an analytical tool, treating the racial agenda as a debate befitting the LGBTI movement. Likewise, the Black movement also needs to bring more focus to gender identity and sexual orientation oppression.
- 545.** That civil society organizations that produce data on the LGBTI population adopt a unified methodology for writing reports, seeking to perfect ways of rendering the deaths of Afro- LGBTI persons in Brazil more visible.

8.3 Recommendations to the Inter-American Commission on Human Rights

- 546.** That the IACHR publish the report of its official 2018 visit to Brazil with specific recommendations for protecting the rights of Afro-LGBTI persons in Brazil.
- 547.** That the Rapporteurs of the rights of LGBTI persons and of the rights of Afro-descendants visit Brazil, promoting meetings with civil society that have intersectionality as a central theme.

8.4 Recommendations to the United Nations

- 548.** That the United Nations Independent Expert on SOGI carry out an official visit to Brazil and publish a report with specific recommendations for the protection of the rights of Afro-LGBTI persons in Brazil.
- 549.** That the UN Free & Equal campaign promote training programs for the dissemination of the Universal System's instruments of denunciation for leaders of the LGBTI movement in all of Brazil, especially Black leadership committed to the racial agenda, incorporating intersectionality as a methodological tool of action.
- 550.** That the United Nations request that the Brazilian State send the reports to the treaty bodies, to the Committee on the Elimination of Racial Discrimination in particular, because for more than 15 years the State has adopted the posture of not sending the reports. Moreover, that the United Nations also recommend that the reports have intersectionality, sexual orientation, and gender identity as a central theme.

MISSION

The Institute on Race, Equality, and Human Rights contributes to the promotion and defense of human rights through training, technical assistance, advocacy, and strategic litigation at the regional and international levels.

VISION

Our vision is a society of equality built on the Universal Declaration of Human Rights, in which human rights are respected without any kind of discrimination.

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