

CONTRIBUTIONS FROM:

The Federal Public Defenders' Office

INPUTS TO THE:

Special Rapporteur on extrajudicial,
summary or arbitrary executions

MURDER OF LGBTQIAPN+ INDIVIDUALS IN BRAZIL



30 April 2024.

MURDER OF LGBTQIAPN+ INDIVIDUALS IN BRAZIL

1. INTRODUCTION

This report pertains to a call received to contribute to the Report of the Special Rapporteur on extra-judicial, summary or arbitrary executions, Morris Tidball-Binz, regarding the murder of LGBTQIAPN+ individuals. Subsequently, the document will be presented at the 79th Session of the United Nations General Assembly (UNGA).

The report aims to address the risk of murder faced by LGBTQIAPN+ individuals globally, with the objective of identifying key challenges in state responsibility, highlighting best practice, and providing evidence-based recommendations to enhance the protection of the right to life for all individuals.

In this regard, it is proposed that the following topics be addressed:

- Laws, institutions, policies, and practices that may constitute direct violations of international human rights obligations concerning the right to life of LGBTQIAPN+ individuals;
- Laws, institutions, policies, and practices governing the investigation and prevention of potentially unlawful deaths of LGBTQIAPN+ individuals, including those that may result from hate crimes;
- Any changes in laws, policies, and practices that may have contributed to the reduction of unlawful deaths of LGBTQIAPN+ individuals;
- Laws, policies, and practices against discrimination based on sexual orientation and gender identity, which may have mitigated unlawful deaths of LGBTQIAPN+ individuals between 2020-2024;
- Any recommendations on laws, institutions, policies, and practices that may lead to the reduction of unlawful deaths of LGBTQIAPN+ individuals;
- Existing laws, institutions, policies, and practices that fail, or appear to fail, to safeguard the right to life of LGBTQIAPN+ individuals;
- Instances and examples of failures to respect and protect the right to life of LGBTQIAPN+ individuals between 2020-2024.

The Federal Public Defenders' Office prepared this report to contribute to the efforts of the independent expert on the protection of LGBTQIA + individuals against violence and discrimination based on sexual orientation and gender identity.

2. LEGISLATIVE DATA AND PANORAMA

2.1. Laws, institutions, policies, and practices that may constitute direct violations of international human rights obligations concerned the right to life of LGBTQIAPN+ individuals;

2.2. Laws, institutions, policies, and practices governing the investigation and prevention of potentially unlawful deaths of LGBTQIAPN+ individuals, including those that may result from hate crimes;

Despite the current absence of a specific Convention aimed at ending discrimination based on sexual orientation, the international consensus is that the right to equality, as well as the clause prohibiting discrimination of any kind, should be construed as provisions encompassing discrimination related to sexual orientation and [1] gender identity.

In this context, the International Covenant on Economic, Social and Cultural Rights stipulates, in its Article 2, the clause prohibiting discrimination, which states:

"2. The States Party to the present Covenant undertake to ensure that the rights set forth therein shall be exercised without discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, economic situation, birth, or any other situation."

In its interpretation of the provision, the Committee on Economic, Social and Cultural Rights has established in its General Recommendation No. 20 that the term "other situation" contained therein encompasses sexual orientation. On this occasion, the Committee emphasized the obligation of States to ensure that an individual's sexual orientation and gender identity do not serve as [2] impediments to the enjoyment of the rights enshrined in the Covenant.

Consequently, Brazil's status as a signatory to this and numerous other human rights treaties, which guarantee the right to equality and prohibit discrimination, should suffice to ensure the exercise of the rights outlined in these international laws for the LGBTQIAPN+ community. However, what is observed is a widespread violation of human rights against this community, particularly concerning the right to life.

The *Observatory of LGBTI+ Deaths and Violence in Brazil* [3] conducted a study coordinated by Acontece - Arte e Política LGBTI+ and GGB - Grupo Gay da Bahia to ascertain the number of deaths of LGBTQIAPN+ individuals in Brazil. As detailed in the document, the study was conducted using a database shared between the institutions, which collated data from newspaper reports, online platforms, and social media. The Observatory cautions about the likely underreporting of data due to methodological limitations and the absence of official statistics.

The research revealed that in 2022, there were 273 violent deaths of LGBTQIAPN+ individuals in Brazil. Of these, 228 were homicides, 30 were suicides, and 15 were classified as deaths from other causes. Transvestites and transgender women accounted for over half of these deaths (58.24%), followed by gay men, who represented 35.16% of the cases. Lesbian women and transgender men each accounted for 2.83% of the deaths. Finally, non-binary individuals and other segments comprised less than 1% of the total violent deaths.

The data reveals that one LGBTQIAPN+ person was murdered every 32 hours in the country in 2022, also providing information on age, race, location of the crime, and murder weapon. Compared to figures released by other countries, Brazil is regarded as the nation with the highest rate of killings of LGBTQIAPN+ individuals globally.

In its analysis of the data, the Observatory points out that "the State has not only been negligent but is also a direct agent of numerous violations and violence against transgender individuals" [4]. It is noteworthy that the high mortality rates do not necessarily stem from a surge in victims in recent years; rather, they represent a case of structural violence. This escalation in reported deaths is attributed to the fact that data is now collected by non-governmental organizations, with increased public awareness.

Broadly speaking, Brazil lacks laws that explicitly prohibit or restrict rights based on sexual orientation, gender identity, or broader concepts of sex or gender. However, **regarding a social group historically subjected to discrimination and marginalization, and which has been victimized even before the current understanding of sexuality and gender denominations [5], the State's omission in the face of widespread violence perpetuates the violation of the right to life of LGBTQIAPN+ individuals.**

Thus, **despite the high mortality rates of this social group identified by non-governmental organizations, it remains challenging to pinpoint specific laws, policies, and practices governing the investigation and prevention of potentially illegal deaths of LGBTQIAPN+ individuals.**

The 2023 Atlas of Violence [6] underscores that in Brazil, limitations in data production pose the primary technical challenge to the implementation of public policies aimed at this population. It also highlights that the lack of data indicates underreporting and misclassification of the phenomenon in the officially produced databases. For instance, in law enforcement, official data captures about 50% fewer deaths of LGBTQIAPN+ individuals than unofficial sources.

The report concludes that "*investment in data production, diagnostics, planning, and implementation of specific public policies aimed at vulnerable territories is crucial to preserving the lives of the LGBTQIAPN+ population*".

Thus, the absence of official data impedes the development of preventive and punitive public policies regarding violence against LGBTQIAPN+ individuals, especially violations of the right to life. This failure reflects the lack of commitment of from public authorities to guarantee and promote fundamental rights for this group.

It is pertinent to note the significant increase in political polarization and ideological radicalization in Brazil in recent years. This has led to the construction of false and harmful stereotypes about LGBTQIAPN+ individuals by far-right leaders and political parties. In this context, gender and sexuality issues are exploited in political discourse as threats to traditional family values, morality, or public safety, often grounded in moral or religious arguments.

Such discourse, recognized as hate speech, constitute statements that attack and incite hatred against specific social groups based on race, ethnicity, gender, sexual orientation, religious beliefs, or nationality [7]. Far-right political leaders widely employ this type of rhetoric during electoral campaigns and while in office, within the Executive and Legislative branches.

Thus, alongside demonstrating an omission in addressing the prevention and investigation of deaths of LGBTQIAPN+ individuals, homophobic behaviours, speeches, and discourses, as well as incitements to violence by state representatives, have become increasingly prevalent in recent years.

An illustration of this is the speech made by federal representative Nikolas Ferreira (PL-MG) on 8th March 2023, International Women's Day, in the Chamber of Deputies, the Congress lower chamber, where he wore a wig to make transphobic and sexist remarks [8]. Other notorious instances include the LGBTphobic speeches made by former President Jair Bolsonaro throughout his tenure as a federal representative, during his presidential campaign, and throughout his term as president from 2018 to 2022.

This trend underscores is a direct correlation between the escalation in violence against the LGBTQIAPN+ community and the proliferation and institutionalization of homophobic discourse by public authorities [10]. Over 50% of LGBTQIAPN+ individuals interviewed reported experiencing at least one act of aggression during electoral and post-electoral scenarios in Brazil. Much of this violence involved speeches referencing homophobic political leaders as symbols of support or encouragement for such acts.

2.3. Any changes in laws, policies, and practices that may have contributed to the reduction of unlawful deaths of LGBTQIAPN+ individuals

2.4. Laws, policies, and practices against discrimination based on sexual orientation and gender identity, which may have mitigated unlawful deaths of LGBTQIAPN+ individuals between 2020-2024.

2.5. Any recommendations on laws, political institutions, and practices that may lead to the reduction of unlawful deaths of LGBTQIAPN+ individuals

Regarding changes in laws, policies, and practices that may have led to a reduction in unlawful deaths of LGBTQIAPN+ individuals, as well as laws, policies, and practices against discrimination based on sexual orientation and gender identity, it is pertinent to note the lack of official data on violent deaths and a qualified database. This impedes a robust assessment of any reduction in illegal deaths and the identification of potential causes for such reductions. Nonetheless, certain actions observed in recent years aim to uphold the rights of LGBTQIAPN+ individuals and may indirectly contribute to a reduction in deaths within this social group.

In the Executive Branch, since the advent of the new federal government in January 2023, several practices aimed at the inclusion of LGBTQIAPN+ individuals have been initiated. One such initiative is the establishment of the National Secretariat for the Rights of LGBTQIAPN+ Individuals, an agency under the Ministry of Human Rights. This secretariat is tasked with developing public policies to combat prejudice and discrimination and promote the rights of the LGBTQIAPN+ community.

Within the Legislative Branch, there has been an increase in LGBTQIAPN+ members elected to positions in the National Congress and Legislative Assemblies across states. Currently, there are 18 LGBTQIAPN+ members in the Chamber of Deputies and Senate [11], including two transgender federal representatives. This represents a significant albeit gradual and belated advancement in increasing political representation in the country. It is worth noting that Brazil lacks any affirmative action for LGBTQIAPN+ candidacy, meaning elected parliamentarians achieved their positions without public incentives.

Nevertheless, the Brazilian Judicial Branch has played a notable role in supporting the rights of LGBTQIAPN+ individuals, with several significant decisions issued by the Supreme Federal Court (STF) in recent years.

In 2011, through the Claim of Non-Compliance with Fundamental Precept (ADPF) No. 132 and the Direct Action for the Declaration of Unconstitutionality (ADI) No. 4,277, the STF affirmed the constitutionality of same-sex civil unions. This ruling upheld both actions to remove any barriers preventing the recognition of same-sex unions as family entities, granting them the same legal rights and consequences as heterosexual unions.

In 2015, the STF decreed the decriminalization of homosexuality in the military sphere. Previously, Article 235 of the Military Criminal Code criminalized "pederasty or other libidinous act", which included "engaging in or allowing any libidinous act, whether homosexual or not, in a location under military administration". In ADPF No. 291, the STF invalidated the terms "pederasty or other" and "homosexual or not", deeming them incompatible with the right to freedom of sexual orientation enshrined in the Federal Constitution.

The ruling of ADI 4.275 recognized the right of LGBTQIAPN+ individuals to change their first name and sex in the civil registry, irrespective of undergoing sex reassignment surgery or hormonal or pathologizing treatments. Prior to this decision, Article 57 of Law 6.015/1973 allowed name changes only in exceptional cases, necessitating a court order.

Furthermore, in the judgment of the Writ of Injunction No. 4.733, the STF acknowledged the Legislative Branch's failure to criminalize conduct violating the right to freedom of sexual orientation and/or gender identity. It also mandated the criminalization of homophobia and transphobia, in line with Law 7.716/96, which is to apply to homophobic and transphobic conduct until the enactment of superseding legislation.

Finally, in 2020, the STF issued two significant decisions advancing LGBTQIAPN+ rights. ADI 5.543 declared unconstitutional provisions prohibiting homosexual men from donating blood, (as outlined in Article 64, Item 4 of Ordinance No. 158 of 2016 of the Ministry of Health, and Article 25, Item 30, Subitem "d", of ANVISA Resolution). Additionally, ADPF 457 deemed unconstitutional a provision (Article 3, Law 3.468/2015) prohibiting the teaching of gender and sexual orientation in schools.

Furthermore, within the purview of the Superior Electoral Court (TSE), Resolution No. 23,562, issued in March 2018, amended TSE regulations to include the use of social names in voter registrations and updates. This amendment signifies a significant step forward in safeguarding the citizenship rights of the LGBTQIAPN+ community.

2.6. Existing laws, institutions, policies and practices that fail, or appear to fail, to safeguard the right to life of LGBTQIAPN+ individuals

2.7. Instances and examples of failures to respect and protect the right to life of LGBTQIAPN+ individuals between 2020-2024.

The persistently high rates of death among LGBTQIAPN+ individuals position Brazil as the country with the highest number of fatalities within this community. In light of this grave situation, as previously noted, the government demonstrates both a passive and an active role in violating the right to life of these individuals. It is passive in its failure to provide adequate information, data, and effective public policies aimed at reducing these deaths, and active when representatives and authorities of the country's institutions propagate hate speech and intolerance, thus becoming the perpetrators of human rights violations against LGBTQIAPN+ individuals.

One of the few existing specific public policies for safeguarding the right to life of LGBTQIAPN+ individuals is the "Disque 100" (dial 100) service, established in 1997 to report rights violations [12]. Currently operated by the Ministry of Human Rights, this service is designed to receive reports related to human rights violations, with a particular focus on vulnerable populations.

During the tenure of former President Jair Bolsonaro (2018-2022), Disque 100 was transferred to the Ministry of Women, Family, and Human Rights (MMFDH). During this period, as highlighted in the Atlas of Violence [13], changes were made to its methodology to obscure data concerning violence motivated by homophobia and/or transphobia. At the [14] time, educators and healthcare professionals denounced, through ADPF 94, the politicization of Disque 100 for persecution purposes and the adoption of a surveillance policy.

The 2023 Atlas of Violence explains the decision not to utilize Disque 100 data on violence against LGBTQIAPN+ individuals in its research:

"Moreover, there have been significant alterations both in the manner of dissemination and in the values and consistency of the statistics released by Disque 100 since 2022 (reference year 2021). In 2019, there was a 94% decrease in reports of homicide and 65% decrease in reports of attempted homicide compared to the previous year, indicating an increase in the concealment of violence against LGBTQIAPN+ individuals."

Hence, it becomes evident that even among the limited public policies aimed at preventing violence against LGBTQIAPN+ individuals, there exists a lack of trust in the efficacy of prevention mechanisms and associated data, given the risk of politicization of public policy.

However, Brazil's failure to protect the right to life of LGBTQIAPN+ individuals is also acknowledged by international human rights organizations. The United Nations [15] Committee on Economic, Social and Cultural Rights examined Brazil's third periodic report, which provided an opportunity for recommendations. The Committee expressed concern about the ongoing absence of comprehensive anti-discrimination legislation and highlighted the prevalence of socioeconomic, racial, and gender inequalities, as well as social stigma and discrimination against disadvantaged and marginalized groups.

Through Item 24 [16], the Committee recommended that the Brazilian Government enact comprehensive anti-discrimination legislation encompassing prohibited grounds of discrimination, including sexual orientation and gender identity. Additionally, it urged the establishment of effective judicial and administrative mechanisms to combat discrimination, among other pertinent recommendations.

[1] <https://www.corteidh.or.cr/tablas/r37886.pdf>. Page 10.

[2] Idem.

[3] *The Dossier of Deaths and Violence against LGBTI+ in Brazil 2022*: <https://observatoriomorteseviolenciaslgbtibrasil.org/dossie/mortes-lgbt-2022/>

[4] Idem.

[5] Idem.

[6] The Atlas of Violence is a partnership between the Brazilian Public Security Forum and the Institute of Applied Economic Research (IPEA), which, through data from the Mortality Information System (SIM) and the Ministry of Health's Information System for Notifiable Diseases (Sinam), seeks to portray violence in Brazil from the perspective of gender, race, age group and other intersections. Available at <https://forumseguranca.org.br/wp-content/uploads/2023/12/atlas-da-violencia-2023.pdf>

[7] <https://saferlab.org.br/o-que-e-discurso-de-odio/index.html>

[8] Transphobic speech by Congressman Nikolas Ferreira. <https://www.cnnbrasil.com.br/politica/nikolas-ferreira-veste-peruca-na-camara-e-diz-mulheres-estao-perdendo-espaco-para-homens-que-se-sentem-mulheres/>

[9] Jair Bolsonaro's LGBTphobic speeches <https://noticias.uol.com.br/politica/ultimas-noticias/2022/07/14/bolsonaro-faz-discurso-transfobico-joaozinho-seja-joaozinho-a-vida-toda.htm/> <https://www.terra.com.br/nos/bolsonaro-adiciona-mais-uma-fala-homofobica-a-lista-relembre-todas-99d67075400b02b8af744716573a7af295z8zid6.html/> <https://www.correiobraziliense.com.br/politica/2022/01/4976459-bolsonaro-afirma-que-pautas-lgbt-destroem-a-familia-e-comemora-pautas-na-mao-de-mendonca.html>

[10] Violence against LGBT people in the electoral and post-electoral scenarios <https://violencialgbt.com.br/em-pesquisa-sobre-violencia-contra-lgbt-no-contexto-politico-eleitoral-mais-de-50-dizem-ter-sofrido-pelo-menos-uma-agressao/>

[11] <https://www.votelgbt.org/>

[12] Atlas of Violence, 2023. Page 61.

[13] Idem.

[14] <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=481491&ori=1>

[15] <https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/relatorios-internacionais-1/ObservacoesConclusivasPIDESC.pdf>

[16] Idem. Page 5.

LGBTQIAPN+ Working Group
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