

ANNEX I
INPUTS FROM THE GOVERNMENT OF BRAZIL REGARDING THE
COMMUNICATION, DATED DECEMBER 20th 2023, FROM THE IE-SOGI.

With regard to the call for inputs transmitted by letter from the IE-SOGI, dated December 20th 2024, the Government of Brazil would like to send the following information.

1. The Constitution of the Federative Republic of Brazil sets forth the dignity of the human person as one of core principles of the country, in accordance with its Article 1, III. It also sets forth, as its fundamental objectives (art. 3), the construction of a free, fair and cooperative society (item I), the eradication of poverty and marginalization and the reduction of social and regional inequalities (item III) and the promotion of the good of all, without discrimination of any kind (section IV).

2. All of these provisions require a comprehensive interpretation of the legal system, including other constitutional provisions and other pieces of legislation related to protecting and promoting broad human diversity and guaranteeing an anti-discriminatory legal order, with a view to achieving equality.

3. The application of such provisions to the LGBTQIA+ population means that they, as persons, are fully endowed with dignity, with the right to self-determination, with freedom and equal opportunities for life and recognition. In this connection, the Federal Supreme Court jurisprudence has established the understanding that discrimination against LGBTQIA+ persons is structural and that such discrimination is prohibited by the Constitution. Besides, the Supreme Court, on Writ of Injunction n^o. 4,733, under constitutional suit n^o 26 (“Ação Direta de Inconstitucionalidade por Omissão”), in 2019, ruled that acts of LGBTQIA+phobia equals to the legal concept of racism, as provided for in Law n^o n^o 7,716/1989.

4. Federal Supreme Court, on constitutional suit n^o 4,277 (“Ação Direta de Inconstitucionalidade”), in conjunction with Constitutional Directives Compliance Action n^o 132, in 2011, ruled that same-sex unions shall be legally recognized and established the understanding that discrimination due to sexual orientation is prohibited by the Constitution and that all legal norms regarding the foundation of families in the Brazilian legal system should be interpreted in a non-discriminatory way. Also this Federal Supreme Court precedent resulted in the publication of Resolution n^o 175 of May 14, 2013, by the National Council of Justice, prohibiting national civil registry offices from refusing to officiate a wedding ceremony or convert same-sex civil unions into marriages. Besides, Federal Supreme Court, on Appeal No. 846,102, ruled that the Brazilian legal system does accept discriminatory criteria for LGBTQIA+ foster parents.

5. Difficulties remain for registration of children with dual motherhood in cases where reproduction was conducted via “home insemination”. Currently, to guarantee the registration of their children these families still need to go to courts, which have ruled in the families’ favour.

6. There are still hidden discrimination criteria in family courts throughout the country. In other words, although sexual orientation and/or gender identity can no longer be expressly used as relevant issues for decisions related to requests for adoption and/or custody of children and

adolescents, discriminatory biases can still be perceived in many cases. The National Council of Justice recently issued Resolution n° 532, dated November 20th, 2023, which determined that courts have the duty to combat any form of discrimination against sexual orientation and gender identity, and, in the proceedings of qualification of applicants and in the adoption of children and adolescents, custody and guardianship, are prohibited from ruling contrary to the requests on the grounds that the couple or family is single-parent, same-sex or transgender.

7. Interpretation of Brazil's legal system is comprehensive, respecting the precedents established by the Federal Supreme Court. Fundamental rights and freedoms are applicable to relations among persons and among persons and the State, so that the LGBTQIA+ population in particular is protected by law even where there is no specific protective legislation.

8. The absence of legislation related to several areas, however, indicates the complexity of this issue in Brazilian society. The protective legal order described above coexists with a social practices that are still LGBTQIA+phobic, especially given the growth of an “anti-gender” narrative in social and political spheres with a negative impact on the social environment and the rights of LGBTQIA+ people. In fact, as scholars on the subject indicate, such a narrative is related to a political agenda that is guided by attempts at nullifying and containing transformations related to gender and sexuality.

9. This issue appears particularly in the field of education, as shown by an analysis of the bills presented to the Brazilian Parliament. The topic of sexual and gender diversity has been addressed in different ways, with the purpose of hindering the advancement of the rights of LGBTQIA+ people in various settings.

10. It has been common for subnational legislative bodies (municipal or state), in particular in the field of education, to present bills and get local laws enacted that are contrary to LGBTQIA+ rights. For example, in the state of Rondônia, state law n° 5,123, dated October 19th, 2021, has the following heading: “establishes protective measures for the right of students from Rondônia to learn the Portuguese language in accordance with linguistic standards and legal guidelines for teaching” (<https://sapl.al.ro.leg.br/media/sapl/public/normajuridica/2021/9987/15123.pdf>), whereby prohibiting the use of neutral language. This Rondônia state law was ruled as unconstitutional by the Federal Supreme Court (“Ação Direta de Inconstitucionalidade n° 7,019”).

11. In several cities across the country in the last decade, municipal laws were enacted prohibiting schools to address issues related to gender, diversity of gender identity and sexuality. The prohibition of the use of neutral language is part of the attempts to prevent the creation of school environments inclusive of LGBTQIA+ people.

12. The vast majority of these local laws have been declared unconstitutional by the Federal Supreme Court in a series of constitutional lawsuits filed by the Attorney General's Office (PGR).

13. In addition, some city councils and state legislative assemblies have passed laws (Annex III) with the aim of prohibiting the participation of children in LGBTQIA+ thematic events. For example, Law n° 6,469, dated October 10th 2023, passed by the Legislative Assembly of the State of Amazonas

(<https://sapl.al.am.leg.br/media/sapl/public/normajuridica/2023/12718/6469.pdf>), provides for the prohibition of the participation of children and teenagers in the LGBTQIAPN+ Pride Parade. Currently, a constitutional lawsuit (ADI n° 7,584) questioning the constitutionality of that piece of state legislation is under consideration in the Federal Supreme Court, with no decision yet.

14. In the Brazilian Parliament, there are several proposed bills that potentially infringe the rights of LGBTQIA+ people, such as: i) disregard of transvestites and trans women as women, seeking to establish a link between being a woman and “biological sex”; ii) disregard of trans men as people who menstruate and can bear children; iii) consideration of women's rights exclusively from an heterosexual perspective, disrespecting lesbians and bisexual women`s experiences; iv) adherence to a binary system, not considering non-binary people as rights` holders; v) promotion of a single-format type of family as acceptable, expressly excluding LGBTQIA+ families and other family formations that do not fit the man-woman-children model; vi) in various ways, disrespect for the humanity of LGBTQIA+ people. Therefore, those are all proposal that, from different perspectives, disregard LGBTQIA+ people as rights` holder before the law (see Annex III).

15. In Brazil, there are neoconservative groups, associated with right-wing political parties, conservative sectors and religious movements, that echo LGBTQIA+phobic speeches and practices. Also there are psychologists and health care workers who, in disregard of regulations and codes of conduct of their respective professions, promote the commonly so-called “gay cure”, which extends to all LGBTQIA+ people, violating their human rights.

16. Today, there are several state and municipal initiatives that aim to prohibit the adoption of neutral bathrooms and gender-neutral language in educational institutions. These initiatives has been subject to constitutional lawsuits with the purpose of ruling them as unconstitutional. Still under consideration is constitutional lawsuit n° 5668 (“Ação Direta de Constitucionalidade”), whose purpose is to give legal interpretation of the Brazil’s National Education Plan that is in line with Constitution, whereby ruling on the obligation of public and private schools adopt measures to prevent and punish discrimination based on gender, identity of gender and sexual orientation, in addition to respecting the identity of LGBTQIA+ children and adolescents in schools.

17. In federal Executive Branch, the agenda is to resume the process of advancing rights. Law n° 14,600, June 19th, 2023, which sets forth the organization of the present Administration, provided for the competence of the Ministry of Human Rights and Citizenship (MDHC) to act in the promotion of the human rights of LGBTQIA+ persons (Art. 28, I, d). Under the Ministry, a National Secretariat on the Rights of LGBTQIA+ Persons was established, despite some resistance in Parliament, with some members tried to block that initiative. In April 2023, the National Council on the Rights of Lesbian, Gay, Bisexual, Transvestites, Transsexuals, Queers, Intersex, Asexual and Others was also established. This body is made up of 38 people from the federal government and civil society organizations, both government and CSOs equally represented. The purpose of the National is to contribute to the formulation of government policies and actions, guidelines and measures relating to LGBTQIA+ persons.

18. The National Secretariat on the Rights of LGBTQIA+ Persons has also closely monitored cases involving Brazil in the Inter-American Human Rights System, as well as receiving, processing and monitoring reports of rights violations, in partnership with the National

Human Rights Ombudsman's Office. The National Secretariat also monitors domestic cases in Brazil involving violations of the human rights of LGBTQIA+ people, in various proceedings, through the issuance of technical notes (Annex II) and providing expert opinion for several cases. Technical notes have been issued on the various bills contrary to the rights of LGBTQIA+ persons, at federal, state and municipal levels, with the purpose of providing expert opinion on unconstitutionality of those initiatives.

19. In conclusion, the realization of rights of LGBTQIA+ persons is still a complex issue and subject to domestic disputes. On the one hand, there have been advances in public policies in the last decade, although the effects persist of different policies in the previous Administration. On the other hand, the current social circumstances pose challenges and obstacles to the broader realization of the rights of LGBTQIA+ persons. The Administration in Brazil has been advancing those rights considering the limits and possibilities of governmental action.