

Why is the enforcement of laws protecting the LGBT minority in Brazil so problematic?



Figure 1: Photo of the Public Debate

Word Count: 1994

The LGBT (lesbian, gay, bisexual, transexual) minority in Brazil is one of the most oppressed groups in Brazilian society, regularly suffering from violent attacks. Over 380 LGBT people were assassinated in Brazil in 2017 alone, and over 440 were involved in violent deaths during that same year, more than 3 times the number from the year 2000.¹ The transexual population in Brazil is especially vulnerable, as employment is incredibly limited, and around 90% of the transexual population is essentially forced into prostitution.² Clearly for many LGBT people in Brazil, several basic human rights are not respected, including the right to work and the right to live in dignity, both of which are included in the Universal Declaration of Human Rights.³ Some legislation does exist which protects the LGBT population, both on a state and federal level. For example, the state of São Paulo has the law number 10.948,⁴ which punishes people for discrimination based on sexual orientation or gender identity. Recently in June of 2019, the Supreme Federal Tribunal (STF) of Brazil ruled to criminalize homophobia.⁵ Despite the existence of laws which codify the human rights of LGBT people, the enforcement of these laws is still incredibly problematic. Many activists and members of the LGBT community see the lack of enforcement of their human rights as one of the biggest political issues facing Brazil, and emphasize the importance of finding a way to make these laws enforceable. Some highlight the importance of strong institutions, while others place importance on an approach based in civil society and education. With that

¹ Morais, Pâmela, and Danniell Figueiredo. "LGBTfobia No Brasil: Fatos, Números e Polêmicas." *Politize!*, Politize!, 28 June 2019, www.politize.com.br/lgbtfobia-brasil-fatos-numeros-polemicas/. Accessed on January 19th, 2020

² Cunha, Thaís. "Transexuais São Excluídos Do Mercado De Trabalho." *Correio Braziliense*, Correio Braziliense, 28 Dec. 2016, especiais.correiobraziliense.com.br/transexuais-sao-excluidos-do-mercado-de-trabalho. Accessed on December 21st, 2019

³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 29th January 2020]

⁴ Assembleia Legislativa do Estado de São Paulo, *Lei 10.948*, 5th of November 2001, available at: <https://www.al.sp.gov.br/repositorio/legislacao/lei/2001/lei-10948-05.11.2001.html>, Accessed on August 31st, 2019

⁵ Oliveira, Mariana, and Luiz Felipe Bárbieri. "STF Permite Criminalização Da Homofobia e Da Transfobia." *G1*, Globo, 13 June 2019, g1.globo.com/politica/noticia/2019/06/13/stf-permite-criminalizacao-da-homofobia-e-da-transfobia.ghtml. Accessed on December 21st, 2019

in mind, **why is the enforcement of laws protecting the LGBT minority in Brazil so problematic?** For this internal assessment, the political issue that I will be focusing on is the enforcement of the human rights of the LGBT population in Brazil.

Laws protecting the LGBT minority in Brazil already exist, although they are considered weak due to their lack of enforcement, and this in turn, diminishes the legitimacy of these laws for many people. The existence of these laws are a relatively recent development. Historically, the LGBT population would usually be excluded from human rights laws in Brazil. The first law which specifically protected the LGBT population was passed in the year 2001, however that law only applied to the state of São Paulo, and suffered from a lack of enforcement, as seen by the regular violence and discrimination suffered by the LGBT population. According to Renato Simões, one of the main authors of the original law, the São Paulo state government did an exceptionally poor job in promoting this law, which affected enforcement as many people, including police and educators, were unaware of the law's existence. For a law to be effectively enforceable, there must be widespread awareness of the law's existence, a strong independent judicial system, as well as an autonomous and active police force. It is clear that these conditions were not met at the time, and it is questionable whether they can be met now. Only in 2019 was a federal law passed. Notably, this law was passed by the Supreme Federal Tribunal of Brazil instead of the Congress or Senate.⁶ The members of the tribunal criticized the legislative branch for its inaction, further stating that it should be the role of the Brazilian legislature to pass such laws.⁷ This shows the relative strength of the Brazilian Judicial branch of power, as the judicial branch can still function independently when the legislative and executive branches fail.

⁶ Coletta, Ricardo Della. "STF Conclui Julgamento e Enquadra Homofobia Na Lei Dos Crimes De Racismo." *Folha De S.Paulo*, Folha De S.Paulo, 13 June 2019, www1.folha.uol.com.br/cotidiano/2019/06/stf-conclui-julgamento-e-enquadra-homofobia-na-lei-dos-crimes-de-racismo.shtml. Accessed on November 19th, 2019

⁷ Ibid

It is too early to determine whether or not the recently passed law will be effective. On the one hand, historically, most state laws protecting the LGBT population have been highly ineffective, mainly due to a general lack of knowledge of the laws' existence. On the other hand, if the law is federal, this may give it more legitimacy in the eyes of Brazilian citizens. That being said, the explicitly homophobic rhetoric of Brazilian president Jair Bolsonaro emboldens homophobia throughout the country. According to [redacted], there has been a notable rise in homophobic discourse since the 2018 elections, and many LGBT people have been feeling increasingly afraid.

One way that I engaged with my political issue was by attending a public debate held at the Legislative Assembly for the State of São Paulo, where several politicians, including Renato Simões and congresswoman Professora Bebel, as well as many LGBT activists discussed the current and future state of LGBT laws in Brazil. By attending this debate, I gained insight on the main issues facing the LGBT population, as well as the way in which different groups respond to this. Additionally, I observed an example of politicization of human rights, as one of the attendees was running for the city council in a small nearby city, and the way he spoke made it seem as if he was campaigning in order to try and win votes. For my second engagement activity, I interviewed an activist and diversity consultant named [redacted], who is heavily involved with several LGBT organizations. He highlighted the importance of activism in the promotion and monitoring of human rights, as well as the issue of intersectionality within LGBT activism. Intersectionality describes the “intersection between different (...) axes of oppression, such as gender, sexuality, class, and race”,⁸ and this is important because some LGBT people suffer more homophobia and oppression if they are poor or black. LGBT people who are white, educated, and more reserved about their sexuality, are usually more accepted by society, and their economic and social rights are more widely respected. From this interview, I learned about several social movements, most

⁸ [redacted]. “Corpo Livre. Body and Art as Means of Activism in Brazil”. N. p., 2017, page 10 Web.

notably the Revolta da Lampada (Lamps revolt). The Lamps Revolt is named after a homophobic attack which took place in São Paulo in 2010, where several attackers beat several people using fluorescent lamps. The lamp became a notable symbol. [redacted] writes that “The collective’s name was not only inspired by that singular episode, but because the lamp had become a symbol of oppression, a homophobic reminder to LGBT and other deviant bodies should stay inside their closets.”⁹ This movement uses art and performance in protests in order to spread its message.

To protect human rights nationally, strong institutions are needed, as well as active and independent judicial, executive, and legislative branches of government.¹⁰ Weak institutions means that a state's ability to monitor and protect human rights is weakened, making human rights laws seem less legitimate. The importance of the promotion of human rights was highlighted by my engagement activities, with [redacted] saying that education is the ideal way of promoting human rights, which in turn, leads to human rights laws having increased effectiveness. If the state cannot effectively enforce human rights laws, civil society can step in. Civil society already has an important role in promoting human rights, as seen by the activism of the Lamps Revolt group. Civil society and NGOs also do significant work in monitoring human rights. For example, the “Grupo Gay da Bahia” (Gay Group of Bahia) does significant work in monitoring violence againsts the LGBT population in Brazil, and their reports are often cited by many larger organizations.¹¹ While it is clear that NGOs and civil society can strengthen human rights laws, whether or not they should be involved in enforcing laws is more controversial. Enforcing laws often means punishing violations, and when non-state actors do this, it often means vigilante justice, which can be counterproductive in enforcing human rights. This relates to the idea of a state monopoly on violence.

⁹ Ibid, page 12

¹⁰“The Role of States.” *Icelandic Human Rights Centre*, www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-actors/the-role-of-states. Accessed on February 4th, 2020

¹¹ Michels, Eduardo, et al. *População LGBT Morta No Brasil*. 2018, pp. 1–25, *População LGBT Morta No Brasil*.

Originally theorized by Max Weber, the idea behind this is that the state is the only political actor with the right to use physical force.¹² If NGOs could enforce human rights, this would violate the states monopoly on the use of violence. Clearly stronger institutions are needed, however this seems unlikely to happen under Bolsonaro's government. The current minister of women, the family and human rights, Damares Alves, was a formal evangelical pastor who famously encouraged boys to wear blue and girls to wear pink.¹³ Despite the very real and notable impact of NGOs, the role of enforcing human rights has to go to the state, and the inaction on the part of the Brazilian government, along with its explicit homofobia, means that discrimination and homophobic violence will likely worsen. Promotion and monitoring on the part of NGOs might have been enough if homofobia was not as rampant in Brazilian society, as one study by the University of São Paulo showed that around 25% of Brazilians self identify as homophobic, with this being partly attributed to religious reasons.¹⁴ Overall, it becomes clear that civil society and NGOs are incredibly important for the promotion and monitoring of LGBT rights in Brazil, however for enforcement of the existing laws to be effective, the state will have to step in and take a more active approach, which clearly will not happen in the current administration.

Some limitations exist to my engagement activities. Both reiterated the importance of passing legislation protecting LGBT people, and I could have included some counterviews. Some more extreme libertarians argue that anti-discrimination laws weaken freedom of speech. However, it is worth mentioning that anti-discrimination laws, such as the one passed by the state of São Paulo in 2001, deal more with discriminatory actions, such as in employment and education, and thus, do not

¹² Munro, André. "State Monopoly on Violence." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 6 Mar. 2013, www.britannica.com/topic/state-monopoly-on-violence. Accessed on March 10th, 2020

¹³ Cordeiro, Felipe. "Relembra as Polêmicas Da Ministra Damares Alves." *Terra*, Terra, 26 Dec. 2019, www.terra.com.br/noticias/brasil/cidades/relembra-as-polemicas-da-ministra-damaraes-alves,e39919c669f1a41d9bdc48ec93b867c21a7urtnq.html. Accessed on January 28th, 2020

¹⁴ Menezes, Caroline Dias. "Um a Cada Quatro Brasileiros é Homofóbico." *AUN USP*, Universidade De São Paulo, 2013, usp.br/aun/antigo/exibir?id=5195&ed=919&f=1. Accessed on March 1st, 2020

necessarily upfront freedom of speech.¹⁵ Still, including more varied perspectives would have strengthened my engagement activity. Another limitation is the fact that many of the people speaking in the public debate were current or former politicians, who might politicize their support for LGBT rights, which was the case with one of the attendees. If the debate had issues with politicization, then that would have diminished the extent to which I actually engaged with the issue. That being said, while many of the attendees of the debate were involved in politics, many were not, and the event was very diverse, with members from all branches of the LGBT community. So even though politicization was present in the debate, I still experienced a wide variety of perspectives and viewpoints.

With all of this being said, **why is the enforcement of laws protecting the LGBT minority in Brazil so problematic?** The homophobic attitudes displayed by members of the current administration hinder the enforcement of existing LGBT protection laws because the government spends less time and effort in promoting the laws, which means that law enforcement bodies, as well as the public at large, will not be aware of the existence of any laws, and thus cannot take action to help enforce the law. The homophobic attitude of the administration also emboldens homophobia, making homophobic attacks and incidents more common, something that [redacted] mentioned. The government's homophobia also makes the law less legitimate in the eyes of law enforcement, who then choose to spend less effort enforcing the law, delegitimizing the law for many people, almost creating a cycle which leads to a lack of enforcement. Intersectionality makes enforcement more complicated, as certain members of the LGBT population who suffer from other kinds of oppression, will have a harder time having their rights protected. Homophobic attitudes are not exclusive to administration members. Roughly a quarter of Brazilians self identified as homophobic, and many of

¹⁵ Assembleia Legislativa do Estado de São Paulo, *Lei 10.948*, 5th of November 2001, available at: <https://www.al.sp.gov.br/repositorio/legislacao/lei/2001/lei-10948-05.11.2001.html>, Accessed on August 31st, 2019

those used religion to justify their homofobia.¹⁶ While the focus of this internal assessment was on the enforcement of laws, it is also worth mentioning the difficulties with codifying laws protecting the LGBT minority. Politicization of human rights leads to political deadlock, hampering the government's ability to codify laws against LGBT discrimination. As previously mentioned, politicization is clearly present on both sides of this political issue, which I observed in the public debate, although homophobic politicization is far more damaging. No singular factor explains the difficulties in enforcement of LGBT rights laws in Brazil, however it is clear that while these laws are necessary, for the time being, they will continue to be largely ineffective.

¹⁶ Menezes, Caroline Dias. "Um a Cada Quatro Brasileiros é Homofóbico." *AUN USP*, Universidade De São Paulo, 2013, usp.br/aun/antigo/exibir?id=5195&ed=919&f=1. Accessed on March 1st, 2020

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