

# Brazil

## Sexual Politics and Sexual Rights in Brazil: A Case Study



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### Introduction

Few countries have an image as connected with eroticism and sexuality as Brazil. The country abounds with symbols of sexual freedom depicted in pictures of everything from carnival and beaches to inter-racial relationships, transvestites and samba. However, this representation belies the realities of Brazilian society; beneath a feigned liberalism the country is deeply affected by sexism, homophobia and racism, which when taken together with other social markers creates a reality of massive inequality. To examine the construction of sexual rights in Brazil requires analysis of this contradictory view while recognizing its local impacts and avoiding traditional stereotypes.

The analysis of sexual politics and rights in Brazil involves going beyond a mere description of conceptions and practices associated with a single sexual culture. One must focus on the context in which these rights have developed, giving consideration to the legal structure, political process and social actors. The objective of this paper is to examine this context starting with themes that are especially relevant to the very configuration of these rights in Brazil:

reproduction/abortion, STDs/AIDS and sexual diversity. It aims to provide a wide informative view, concentrating on the identification of the main actors, existing legal instruments and those still being discussed, and, finally, the public policies that have been adopted in the last two decades. Notwithstanding the text's informative nature, we will also introduce the issues that can and must contribute to any conceptual discussion on sexual rights.

This discourse holds that the 1988 Brazilian Constitution — widely known as the Citizen's Constitution — must be considered the catalyst that inspired civil society's demands for new rights, while also generating public policies and legal instruments to satisfy those demands. The promulgation of the 1988 Constitution put an end to the long period of authoritarian rule instituted by the 1964 military coup, and its contents reflect the re-democratization process that began in the late 1970s. The process brought about a convergence of left-wing political forces displaced by the military coup and new social actors who organized around issues of gender, race and sexuality. As in other Latin American countries, the struggle to reinstate democratic political rights took place in tandem with demands for the implementation of a larger human rights agenda; social rights were brought forward, along with women's rights and the rights of racial, ethnic and sexual minorities.

In terms of social rights, the fact that health care was acknowledged as a fundamental right in the new constitution had crucial consequences for reproductive rights and for the Brazilian response to HIV/AIDS. According to the constitution the right to health must be “guaranteed through social and economic policies aiming at reducing the risk of any illness and other disorders and providing universal and equalitarian access to actions and services for its promotion, protection and recovery.” Moreover, health care was considered both an individual as well as a trans-individual right.<sup>1</sup>

As to specific rights, the 1988 Constitution reflected the configuration of forces in different social movements. In some cases achievements were impressive; the formulation of gender equality as a constitutional right and the legal acknowledgement of various kinds of family clearly reflect the power of women's and feminist groups. Gender equality — understood in the constitution as equal rights for men and women — appears both in general articles

<sup>1</sup> Rios, R. R. (2002). Respostas jurídicas frente à epidemia de HIV/AIDS. In R. Parker, V. Terto, & C. Pimenta, (Eds.) *Aprimorando o Debate: respostas sociais frente à AIDS. Anais do Seminário Solidariedade e Cidadania: princípios possíveis para as respostas ao HIV/AIDS*. Rio de Janeiro: ABIA.

and in others more specific like family planning, which couples are free to choose and the state is required to provide. The constitution also forbids labor-market discrimination on the grounds of “sex, color, age or marital status.” Many of these clauses have been expanded into specific federal laws.

But the political climate did not favor Brazil’s lesbian, gay, bisexual and transgender communities; sexual orientation is not included in the constitution. In spite of the LGBT movement’s call for discrimination based on sexual orientation to be outlawed this issue is still in debate in advocacy efforts for a constitutional amendment. In fact, the constitution’s general frame of respect for human rights is a useful tool for advocates seeking to consolidate new rights. For example, the state is obliged to implement international agreements it has signed, allowing activists wider advocacy options.

The contradiction arising is that national legal codes, such as penal laws, were not brought in line with the constitution, although more recently some civil laws have been changed.<sup>2</sup> In the case of penal legislation, for example, one sees terms like “crimes against *family*” or “crimes against *customs*” (our emphasis), which contradict the principles of gender equality laid down in the constitution. Moreover, even in those cases where infra-constitutional legislation was intended to implement the new constitutional principles, public policies to support this were not instituted.

Given all this, the process of affirming sexual rights in Brazil is a complex and heterogeneous space, in which different types of legislation (penal, civil, labor) with different scopes (federal, state and municipal) correspond to equally varied public policies in their formulation and range. Another important element lies in the judiciary system itself; although jurisprudence does not have the power of law in Brazil like in countries ruled by common law, it is noteworthy that countless judges, as they seek to interpret constitutional principles, have granted rights that are not explicitly included in the laws.

The process of building sexual rights in Brazil is marked by ambiguity. There is a very strong commitment to producing and implementing human rights, especially given international

<sup>2</sup>Although Brazilian states have their own constitutions, their independence as regards legislative capacity is very limited. Besides respecting the constitution, they must submit to the civil and penal codes, which are in the scope of federal legislation. The current penal code dates back to 1940 and the civil code, adopted in 1916, was only recently revised in 2002.

obligations, but this commitment is constantly threatened by deep social, racial, ethnic and gender inequalities. Even as social movements have strived to re-democratize the country, conservative lobbies — especially those backed by religion-oriented political parties — have sought to prevent the advance of rights related to sexual diversity or the individual's right to sexuality and reproductive choices.

### **Reproductive policies and rights**

The demands for gender equality in the Brazilian legal structure are a result of the work undertaken by feminist militants and organizations since the 1970s, combined with mobilizing efforts for the country's return to democracy. The 1960s and '70s were as much a landmark in Brazil's feminist movement as in the region and internationally. To the picture of urbanization and modernization begun in the 1950s — marked by the growing participation of women in the labor market and at universities — was added the effervescence of a counter-culture and opposition to military rule established after 1964. Women's participation in the armed struggle represented only the most dramatic aspect of that resistance; the presence of women's groups in popular organizations played a significant role in building what some authors call an “interclass movement.”<sup>3</sup>

The 1975 United Nations International Year of Women legitimized and brought visibility to groups like *Brasil Mulher* (Woman Brazil), *Nós Mulheres* (Us Women) and *Movimento Feminino pela Anistia* (Amnesty Feminine Movement), among others.<sup>4</sup> In spite of its own concerns, the feminist movement was constantly in touch with left-wing groups and especially the progressive wing of the Catholic Church, in opposing the military dictatorship. In this broader struggle, opportunities arose to advance women's rights; for example, one of the achievements under military rule was the repeal, in 1962, of the Married Women Statute in the civil code, which required married women to have their husbands' permission for reproductive procedures among other things, and, in 1977, the Divorce Law, which was weighted against women.

<sup>3</sup> Sarti, C. A. (2004). O feminismo brasileiro desde os anos 1970: Revisitando uma trajetória. *Revista Estudos Feministas, UFSC*, v. 12, n. 2, pp. 35-50.

<sup>4</sup> Sarti, C. A. *op cit.*

The 1980s was a progressive period for gender equality, especially in the areas of violence against women and woman's health. Organizations like SOS-Mulher (Woman SOS) in São Paulo were set up to help women in situations of violence perpetrated by husbands, partners and boyfriends. The campaign slogan, Lovers Don't Kill, became popular as a symbol of the struggle against gender violence and the impunity of honor crimes and crimes of passion.<sup>5</sup> As a result of the campaign, in 1985 the first Police Station for Women's Assistance was created in São Paulo, and the *Conselho Nacional de Direitos da Mulher* (Women's Rights National Council) was instituted.

After much criticism from feminist organizations and professional groups advocating a radical reform of the public health system, the main public policy body on reproductive issues, *Programa de Saúde Materno-Infantil* (Health-Care Program for Mothers and Children), was replaced with PAISM – *Programa de Assistência Integral à Saúde da Mulher* (Women's Health Integral Assistance Program). Unlike the previous scheme, which was centered on a mother/child binomial, PAISM had a more integrated health-care approach that emphasized women's need for support at all stages of their lives as well as the importance of access to information and family planning.<sup>6</sup>

This experience was extremely valuable in later efforts to introduce reproductive rights into the constitution, and in subsequent laws broadening the right to maternity leave and criminalizing the stipulation that women produce pregnancy or sterilization certificates to find or to retain employment. It took longer, until 2002, to win the right to maternity leave in cases of adoption or warding, evidence that the biological bias still permeates reproductive rights in the country. Paternity leave has remained at just five days since 1988.

The constitution has also brought about important advances in family planning, defining the issue as follows: "Founded on the principles of the human being's dignity and responsible paternity, family planning is a free decision of the couple, the state being bound to propitiate educational and scientific resources for the exercise of these rights, forbidding any coercive

<sup>5</sup> Costa, A. M. (1999). Desenvolvimento e implantação do PAISM no Brasil. In K. Giffin, S. Costa, & S. Hawker, (Eds.) *Questões da Saúde Reprodutiva*, pp. 319-336. Rio de Janeiro: Fiocruz.

<sup>6</sup> For a better understanding of this context, see: Costa, A. M. (1999). Desenvolvimento e Implantação do PAISM no Brasil. In K. Giffin, S. Costa, & S. Hawker, (Eds.) *Questões da Saúde Reprodutiva*, pp. 319-336. Rio de Janeiro: Fiocruz.

measures by official or private institutions” (Art. 226 § 7). In 1996 a new law defined family planning as a set of actions to regulate fertility that grants equal rights to the woman, the man or the couple to constitute, limit or augment children – presupposing equal access to available information, means, methods and techniques.

The hardest point to define in the law was the regulation of surgical sterilization.<sup>7</sup> Debates on mass sterilization since the 1980s had given rise to a Parliamentary Commission in 1991. According to the Commission’s official report, presented two years later, the large number of sterilization procedures could be ascribed to the absence of contraceptive alternatives and to suspicious political practices aimed at demographic control and vote-seeking. Finally, in 1997 the vetoes relating to surgical sterilization were withdrawn and the conditions under which it could be carried out were established. In order to be sterilized women and men must be over 25 years of age (the age of consent) or already have a minimum of two children in the case of those under 25.

Despite the emphasis on information and free choice in the case of contraceptive methods or on family-planning strategies legislated since 1988, many organizations linked to the women’s and feminist movements have questioned the conditions under which such choices are made. For instance: What about effective access to other contraceptive means that are low-risk and reversible? General data on maternal death rates indicate, in turn, the need for effective implementation of the integral support proclaimed by PAISM, both in terms of antenatal and childbirth assistance.<sup>8</sup>

Conclusions developed by the Parliamentary Commission on Maternal Mortality (1996-2001) point in this direction. According to the Commission’s report, difficult access to contraception, including discontinuity or absence of programs in many municipalities, contributes significantly to the state of affairs. On the other hand measures to address the situation are difficult to implement given low reporting and the absence of maternal deaths committees or an ombudsman to receive complaints. Lastly, the Commission reiterated points

<sup>7</sup> See also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN, p. 319; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 104-105; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 137-140; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 285-289.

<sup>8</sup> See the data published by *Rede Nacional Feminista de Saúde, Direitos Sexuais e Direitos Reprodutivos* (Feminist National Network of Health, Sexual Rights and Reproductive Rights), especially the dossiers *Aborto Inseguro* (Unsafe Abortion) and *Mortalidade Materna* (Maternal Mortality), available at [www.redesaude.org.br](http://www.redesaude.org.br).

made many times by feminists about the profile of those affected – primarily low-income and uneducated women – and the role played by clandestine abortions.<sup>9</sup>

Considering the distance between the initial definition in the constitution and the current legislation that effectively regulates family planning, it is important to look at the role played by the main UN international conferences that dealt with the theme.<sup>10</sup> Both the 1994 International Conference on Population and Development (ICPD) in Cairo, Egypt, and the 1995 Fourth World Conference on Woman (FWCW) in Beijing, China, were decisive in putting reproductive rights and sexual rights, linked or not to reproductive rights, on the human rights agenda.<sup>11</sup>

Legalization of abortion remains the sticking point in the construction of reproductive and sexual rights in Brazil. Abortion is still a crime except in those cases of pregnancy resulting from rape or to save the life of the pregnant woman. Between the mid-1970s and the beginning of the constitutional process, draft bills aimed at legalizing or expanding abortion rights were systematically rejected by the National Congress. Feminists brought up the issue at the start of the National Constitutional Assembly in the 1986 Brazilian Women's Letter to the Constitutional Assembly, calling for a woman's right to decide what to do with her body whether in terms of antenatal, childbirth and post-childbirth assistance, or to interrupt pregnancy. At the same time, anti-abortion congressional representatives, very much in tune with the strategies of the Vatican, argued that the constitution should include the right to life from the moment of conception, but this clause was not included in the final text.<sup>12</sup> Feminists did gain some ground at state level, however; "legal abortion" was included in eight state constitutions written in 1989.<sup>13</sup>

<sup>9</sup> For more about the Parliamentary Commission on Maternal Mortality, see also the Brazilian report for CEDAW, 2002.

<sup>10</sup> For a detailed overview, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN.

<sup>11</sup> Corrêa, S. (2002). From Reproductive Health to Sexual Rights: Achievements and Future Challenges. In M. Ventura, (Ed.) *Direitos reprodutivos no Brasil*. São Paulo; Buglione, S. (2002). Reprodução e sexualidade: Uma questão de justiça. In R. Cook et al., & S. A. Fabris, (Ed.) *Reprodução e Sexualidade: uma questão de justiça*. Porto Alegre: Themis.

<sup>12</sup> For a detailed account of this development, see: Pandjarian, V. *Aborto (Abortion), Estudo Comparativo da Regulamentação Jurídica do Aborto na América Latina e Caribe*. CLADEM ([www.cladem.org.br](http://www.cladem.org.br)); de Oliveira, G. C. (2001). *Direito ao Aborto em Debate no Parlamento*. Rede Saúde/Cfemea.

<sup>13</sup> See Pimentel, S. (1993, December). Direitos Reprodutivos e Ordenamento Jurídico Brasileiro: subsídios a uma ação político-jurídica transformadora. *Cadernos CCR*.

In the early 1990s, proposals defending women's right to have an abortion in the first three months of pregnancy and to expand the basis for legal abortion were put forward. Of these, the most relevant is a 1991 draft bill laying down not only the right of women to voluntarily end pregnancy but also the guarantee of access to abortion through the public health system.

Anti-abortion groups supported by religious parliamentary blocs (Catholic and Protestant) put forward counter-proposals to suppress abortion and on the right of the fetus to life,<sup>14</sup> polarizing the discussion within parliament. With no decisive victory on either side, last year's debates were tense, with both sides assuming a defensive attitude and progressives concerned with protecting their gains, especially regarding assistance in the public health system.

Despite the ongoing parliamentary debate there have been some national-level achievements on the right to abortion. In 1989, the city of São Paulo was the first to pass municipal legislation regulating assistance through the public health services in those limited number of abortion cases approved by the penal code. The main national-level change came in 1997 when the Health Care National Council approved a resolution to regulate assistance by the public health system. The following year, a regulation for "prevention and treatment of injuries resulting from sexual violence against women and adolescents" stipulated the conditions by which this assistance must be administered. These include emergency contraception in cases of rape, prevention of sexually transmitted diseases (STDs), and, if the woman wishes, termination of a pregnancy resulting from sexual violence up until 20 weeks of gestation.

In 2005 came an unprecedented initiative; for the first time, a tripartite commission was formed to examine and revise all abortion legislation. The commission included representatives of the executive and legislative branches of government as well as social movements. This initiative resulted in the National Policies Plan for Women. Launched in December 2004 this national plan was based on the agreements reached at the Cairo and Beijing conferences. A report was prepared, with the 1991 draft bill as its basis, which highlighted the importance of decriminalizing abortion and of putting forward legislative proposals in this direction. At the same time feminist organizations organized the Brazilian Journeys for Abortion

<sup>14</sup> For further examples of fetal politics, see also in this publication: Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 136-137; Nowicka, W., The struggle for abortion rights in Poland, pp. 180-181.



Rights Conference, in which they came up with short and medium-term strategies to reach their goal. Also, the debate on abortion rights was increasingly visible in the media, though, as the participants in the Journeys Conference pointed out, the coverage was on abortion as an isolated issue disconnected from the broader sphere of sexual and reproductive rights.

Significant pressure was exerted by the *Conferência Nacional dos Bispos Brasileiros* (Brazilian Bishops National Conference) during the entire process of the Commission's work. In the face of this pressure combined with the serious political crisis of this period, the government decided it would not support what it termed the "anti-life" policies of the Commission's report – a dubious compromise given its decisive role, represented by the Secretary of Policies for Women, in promoting the Commission.

The difficulties faced by feminist and women's organizations, as well as by congressional representatives favorable to decriminalizing abortion throughout this process, reflect the moral and emotional complexities of this issue. The session where the Commission's report was put before the Social and Familial Security Parliamentary Commission, involved vociferous opposition from religious groups. To date the proposal has still not been put to a vote.

The issue of abortion in Brazil necessitates a discussion about the depth of the country's social inequality. Upper and middle-class women have the option of using a well-equipped network of clandestine clinics, consigning abortion to a private-life experience, but the large majority of women don't have access to these privileges, and have to depend on more dangerous means. This situation carries obvious consequences; health professionals have made public several cases of women that ended up in hospitals after clandestine abortions. A dramatic example took place in Rio de Janeiro in 2002 when a doctor denounced a young woman in his care who was kept handcuffed to a bed until the police arrived. Moreover, reports are common about doctors who neglect or delay assistance to women suffering complications after clandestine abortions, even to the point of refusing them drugs for pain relief. It is clear that there is an urgent need for greater political action beyond initiatives at the legislative level.

Another important battle centers on fetal anencephaly, a condition where the fetal neural tube fails to close (usually between the twenty-third and twenty-sixth days of pregnancy)

resulting in babies being born without the part of their brain responsible for high-level cognition. In 2004, the case of a young woman pregnant with an anencephalic fetus came before the Federal Supreme Court. Indications were that the plea for termination would be greeted favorably but the process took so long that the child was born before the judges handed down their ruling. In April 2005, however, six of 11 government ministers stood in support of “therapeutic anticipation of childbirth” whenever required by pregnant women in cases of encephalic fetuses. One month earlier the Health Care National Council had made similar declarations. It is important to note that opting for terminology that doesn’t use the word “abortion” has been effective, but it’s still too soon to evaluate the value of this strategy.

Another issue worth mentioning is access to assisted reproduction technologies, in relation to which Brazilian legislation is just catching up. In 1992, the Brazilian Medical Association approved a resolution to define ethical norms in the use of assisted reproduction technologies. Among the defined norms are the informed consent of patients and donors, the prohibition of embryonic reduction in cases of multiple-pregnancy, and the prohibition of commerce. In the case of married women or women in stable relationships, the consent of the husband or partner is required, which indicates how the concept of “couple” is central to this process and can limit a woman’s right to choose.

Legally speaking, however, what exists today is a set of proposals in process of assessment with no constituted legislation on the theme. And, according to *Centro Feminista de Estudos e Assessoria* (Feminist Center of Studies and Consultancy), all these proposals focus on infertile women (after all other methods are exhausted), and they forbid commercialization like the sale of egg or sperm cells or the hiring of surrogate mothers (popularly known as “rent-a-belly”). The heterosexual bias of these policies is quite clear, as is the emphasis on the biological dimension of reproduction, whereby infertility is the central motive for resorting to such technologies.

### **Brazilian STDs and AIDS policies**

In the first years of the AIDS epidemic in Brazil, the society’s tremendous inequality and the intense discrimination surrounding the disease added to the challenges of the characteris-

tic virulence of HIV.<sup>15</sup> Non-governmental organizations working on HIV/AIDS appealed for solidarity in the face of discrimination and prejudice, and the lack of assistance for those infected. The first activist groups to engage in the struggle against AIDS, such as *Grupo de Apoio à Prevenção à AIDS* (AIDS Prevention Support Group) in São Paulo and *Associação Brasileira Interdisciplinar de AIDS* (Brazilian Interdisciplinary AIDS Association) in Rio de Janeiro, sprung up in the second half of the 1980s. (Aside from international organizations, about 700 groups are currently active around HIV/AIDS assistance or prevention in Brazil.) In 1989, the first national meeting of Brazilian AIDS-related NGOs took place. In order to exert pressure on the state, these diverse groups, aside from offering legal assistance to HIV patients, included advocacy in their work. Despite different outlooks they shared a concern for a more significant kind of intervention in the elaboration of public policies, especially in relation to discrimination against HIV-positive people. Since the beginning, the struggle against discrimination was linked to the social prejudices against sexual minorities affected by HIV/AIDS — especially homosexual men, transvestites and sex workers. In this sense, AIDS activism played a crucial role in building a platform for advocating sexual rights in the early 2000s.

HIV/AIDS organizations participated in the general movement for Brazilian state reform, especially for a new public health-care policy, and in doing so they established a strong link with left-wing political forces working on constitutional reform. One of the most important achievements of Brazilian health reform was in winning the constitutional text that deems health care “the right of everyone and a state duty...” Besides introducing universal health care, the 1988 Constitution endeavored to promote social equality and justice as it introduced many legal devices to combat different kinds of discrimination, with crucial consequences for AIDS policy. One of the most important HIV/AIDS policy developments stemming from the 1988 Constitution came in 1996 when it became mandatory for the state to make available free supplies of all necessary medicines to HIV/AIDS patients through the public health system. Two years later, in 1998, AIDS was included in the list of diseases health plans offered by insurance companies are obliged to cover.<sup>16</sup>

<sup>15</sup> For a more thorough reflection on the theme, see: Parker, R. & Aggleton, P. (2001). *Estigma, Discriminação e AIDS*. Rio de Janeiro: ABIA.

<sup>16</sup> The judiciary also played an important role in this field. Even before these laws were passed, legal actions had already been taken (and won) by individuals, leading local law courts, as in the case of São Paulo, to declare the clause that had excluded AIDS treatment from private health-care plans since 1994 an abuse. For a broader picture of legal actions, see: Rede Nacional de Direitos Humanos em HIV/AIDS (1997). *HIV nos Tribunais*. Brasília: Ministério da Saúde, (access) at [www.aids.gov.br](http://www.aids.gov.br).

While steps were being taken to formulate a legal framework to deal with the epidemic, the federal government was moving to implement new measures and respond to new demands. Following a period of institutional crisis, between 1990 and 1991, in 1992 the STD/AIDS National Program was reorganized and a department to deal with civil society organizations was set up. This department has been a critical channel for transferring government resources to civil society organizations to fund and support prevention and assistance projects.<sup>17</sup> This institutional format marked a significant change from the usual administrative model and resulted in closer collaboration between the state and the Brazilian AIDS social movement.<sup>18</sup>

The Brazilian government not only sponsors projects executed by these organizations but also supports the creation and strengthening of groups nationwide. Project *Somos* (We Are) is an example of this cooperative approach. Managed by the Brazilian Association of Gays, Lesbians, Transvestites, and Transsexuals (ABGLT), Project *Somos* supports 24 new groups that promote the human rights of homosexual men and work on the prevention of STDs/AIDS nationwide. There are also remarkably large numbers of professionals working within NGOs and state organs to incorporate civil society methodologies into public policies.

Progressive change in the fight against HIV/AIDS is also discernible in the advertising campaigns launched by the Ministry of Health. Early advertisements were widely criticized for engendering fear of the virus (and of the patients). Over time the ads began to incorporate prevention models developed by organizations like ABIA, and to target specific groups like women, teenagers, lorry drivers, drug addicts, sex professionals, and gay men. Besides being committed to defending the human rights of HIV-positive people, these new campaigns have excelled in using plain language about sexuality, and in promoting the use of condoms. The messages, shown on TV and posters, have a light and playful tone.

<sup>17</sup> At the same time, in 1992, negotiations began with the World Bank for the first loan agreement for Projeto Controle da AIDS e DST (AIDS and STDs Control Project), known as AIDS I. This agreement was decisive in the reformulation of HIV/AIDS policies in the country. The resources obtained through AIDS I were, in turn, renewed by means of two new agreements, AIDS II, for the 1998-2002 period, and AIDS III, begun in 2003. For a detailed analysis and chronology of this and other initiatives, see: Parker, R., Galvão, J., & Bessa, M.S. (1999). Introdução: Políticas sociais, desenvolvimento econômico e saúde coletiva: o caso da AIDS. In R. Parker, J. Galvão, & M. S. Bessa, (Eds.) *Saúde, Desenvolvimento e Política: respostas frente à AIDS no Brasil* (p. 34). Rio de Janeiro: ABIA, São Paulo; Galvão, J., (Ed.) (2000). *Aids no Brasil: A agenda de construção de uma epidemia* (p. 34). Rio de Janeiro: Abia, São Paulo; Galvão, J. (2002). 1980-2001: *Uma cronologia da epidemia de HIV/AIDS no Brasil e no Mundo*. Rio de Janeiro: ABIA.

<sup>18</sup> See, among others, the debates in the seminar, Solidarity and Citizenship, promoted by ABIA in 2002. Parker, R., Terto, V., e Pimenta, C. (2002). *Aprimorando o Debate: Respostas sociais frente à AIDS*. Anais do Seminário Solidariedade e Cidadania: princípios possíveis para as respostas ao HIV/AIDS. Rio de Janeiro: ABIA.

One extremely popular short film shown before and during the 1995 carnival, and aimed at poor and working-class men, used the slogan, *Live With Pleasure, Live With Safe Sex*. The film, broadcast nationwide by TV networks, showed a man talking to his penis and trying to convince it to wear a condom. Another, directed at teenagers during the 2003 carnival, showed a female singer, very popular among young Brazilian girls, buying condoms; her message: “Show people that you’ve grown up and you know what you want; during this carnival, wear condoms.” It is not surprising that these ad campaigns have attracted strong criticism from the most conservative sectors of Brazilian society, especially the Catholic Church. The campaigns are sometimes criticized by the AIDS movement for being inconsistent since they are shown only at certain times of the year, such as carnival. But on the positive side they have avoided taking a moralistic or judgmental stance; they don’t condemn any kind of sexual practice but simply emphasize the importance of sexuality and the use of condoms.

This tendency could be noticed in another public information campaign, developed by the STD/AIDS National Program with the aim of fighting discrimination against HIV-positive people and different sexual minorities, especially those most affected by HIV/AIDS (gay men, transvestites, and sex workers). A typical message reads, “Transvestites and respect: it is high time the two were seen together. At home. At night-clubs. At school. At work. In life.” Some of the information packages developed for this campaign are directed towards health-care and education professionals.

As regards women, government initiatives have lagged behind the work of the women’s movement and prevention campaigns begun in the 1990s, becoming visible only in the last few years. Among these initiatives was the inclusion, in 2002, of the female condom in prevention programs, and a 2003 regulation establishing free access through the public health system to treatments to reduce HIV transmission from mother to child. In spite of the growing pressure exerted by social movements, the sexual health of lesbians has not yet been fully incorporated into government programs and policies.<sup>19</sup>

<sup>19</sup> Another demographic group recognized only recently is that of people over 60, who were included in prevention programs only in 2001 after it was detected that the epidemic was growing among them.

The attitude that has been guiding governmental campaigns regarding sexuality involves a general strategy to “reduce any harm.” People are not expected to radically change their sexual practices or to abstain from pre-marital sex or sex outside marriage; homosexuality or prostitution among free and responsible adults is not morally condemned. The emphasis is on persuading people to wear condoms when having sexual intercourse as an essential measure to avoid contagion. In this sense, campaigns have shown a commitment to the rights of gays, lesbians, transgendered people, and sex workers.

This policy has been clashing head-on with those of the United States; since the American government seeks to impose its viewpoint beyond its territory through its development agencies, tension has been inevitable in this field. It became most evident in 2005 in relation to prevention programs for sex workers. In May 2005, the Brazilian press reported on the Brazilian government’s refusal to change its policy despite American demands and its subsequent decision to forego grants promised by USAID. This was above all a symbolic act but it received immediate international attention. A news item published in *The Lancet* stated that the action by Brazil was important because “it spreads the message that grants discriminating against people because of their race, religion, sexuality or even profession, are unhelpful and unwanted.” In July 2005, the STD/AIDS National Program Coordinator told the *New York Times* that the way the USAID grants were being employed harmed the Brazilian program “from the viewpoint of its scientific credibility, ethical values and social commitment.”<sup>20</sup>

The success of the Brazilian policy to combat and prevent AIDS is undeniable, even though other epidemic diseases get less attention and it sometimes seems that the policies and programs are an international showcase for displaying Brazil’s “modernity.” At any rate, the Brazilian AIDS-related program has had an international impact (similar to the impact of its syphilis program in the past)<sup>21</sup> becoming a reference point for other countries, whether from the viewpoint of assistance or prevention.

<sup>20</sup> For more on the local influence of international donor policies, see also in this publication: Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 102, 114. Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 140-141; Beresford, B., Schneider, H., & Sember, R., Constitutional authority and its limitations: The politics of sexuality in South Africa, p. 238; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 281-283.

<sup>21</sup> See: Carrara, S. (1996). *Tributo a Vénus: A luta contra a sífilis no Brasil*. Rio de Janeiro: Fiocruz.

The Ministry of Health, through the STD/AIDS National Program, has played a crucial role in legitimizing sexuality beyond its reproductive aspect and in fighting discrimination against gays, lesbians and transgendered people. The program has impacted Brazilian LGBT activism in three fundamental ways: it has increased LGBT visibility thereby diffusing prejudice within the wider society; LGBT activism following promulgation of the 1988 Constitution achieved the first acknowledgement of the human rights of HIV-positive people; and, since the early 1990s, the AIDS struggle has been an important base for the organization of new activist groups.<sup>22</sup>

### From homosexual rights to LGBT rights

In Brazil, public criticism of the view that homosexuality is a mix of immorality, dishonor, sin and disease began in the late 1970s as the re-democratization process in the country progressed.<sup>23</sup> Homosexuality began to emerge as a political issue and gays, lesbians and transgendered people started to become citizens with rights. In the beginning, besides promoting political awareness among its members, the movement struggled against prejudice, endeavoring to change stigmatizing stereotypes.

In its first stages the Brazilian homosexual movement was dominated by men. Lesbians generally participated through mixed groups, and this still happens in many activist groups. It was only in the latter half of the 1990s that the lesbian movement became stronger and achieved autonomy in relation to mixed groups and the feminist movement. The First Lesbian National Seminar took place in 1996, and in 2003 a Brazilian Lesbian League was founded and had its first meeting the following year.<sup>24</sup> Today, the Brazilian lesbian movement even has its own calendar, celebrating the National Day of Lesbian Pride (August 19) and the National Day of Lesbian Visibility (August 29).

<sup>22</sup> Observing the groups present at the different national meetings between 1980 and 1997, one notices that there were at least eight active groups in 1980 and only four in 1984. After 1992, this number starts increasing tremendously, and by 1998 there were 68 groups affiliated to ABGLT.

<sup>23</sup> This criticism sprung up initially in the universities, in the counter-culture sphere, and, above all, among the first groups of homosexual activists. This period was marked by the rise of a politically engaged homosexual press beginning with the launch of a newspaper, *O Lampião da Esquina*, in 1978 by intellectuals from Rio de Janeiro and São Paulo, and by the 1979 founding of the group, *Somos*, which became the nucleus of homosexual activism in the country. See: Fry, P. H. & MacRae, E. (1983). *O que é homossexualidade*. São Paulo: Brasiliense; and, MacRae, E. (1990). *A construção da igualdade: Identidade sexual e política no Brasil*. Campinas: Editora da Unicamp.

<sup>24</sup> See: Almeida, G. (2005). *Da invisibilidade à vulnerabilidade: Percurso do corpo lésbico na cena brasileira face à possibilidade de infecção por DST e Aids*. Tese de Doutorado em Saúde Coletiva/Universidade do Estado do Rio de Janeiro.

Transvestites were not always welcomed by the first activist groups,<sup>25</sup> and only began organizing independently in the early 1990s. Their first national meeting, called National Meeting of Transvestites and Liberated People, took place in 1993, and in 1995, transvestite militant groups began to participate in national gay and lesbian meetings. By 1996, transvestites had mobilized sufficiently within the arena of HIV/AIDS to organize a National Meeting of Transvestites and Liberated People Fighting against AIDS. Transvestite activists were now a visible force to be reckoned with.

The language used for national meetings reflected the political emergence of new sexual identities and inclusion of new groups in the movement: while the first six meetings (1980-1992) were called Brazilian Meeting of *Homosexuals* (our emphasis), the seventh (1993) was called the Brazilian Meeting of *Lesbians and Homosexuals*; the eighth, the Brazilian Meeting of *Lesbians and Gays*; and the ninth (1997), Brazilian Meeting of *Lesbians, Gays, and Transvestites*. After this, until the twelfth meeting in 2005, they were called Brazilian meetings of *Lesbians, Gays, and Transgenders*. The category “transgender,” an umbrella term assigned to transvestites and transsexuals, is controversial, finding great resistance among transvestites.<sup>26</sup> Perhaps for this reason, the twelfth national meeting was designated *Lesbian, Gays, Bisexuals, and Transgenders*; besides including *bisexuals*, the “T” in LGBT was seen as covering both *transvestites* and *transsexuals* instead of just *transgendered* people.

The year 1995 must be considered a landmark in the LGBT movement’s history both on the national and international level. First, the Brazilian Association of Lesbians, Gays and Transvestites was founded during the Eighth National Meeting of Lesbian and Gays.<sup>27</sup> And second, the state and the movement began building closer ties, as federal grants were made available to activist groups for meetings and projects.<sup>28</sup> The government grants (initially made through the STDs/AIDS National Program) and those provided by state and municipi-

<sup>25</sup> The conflict between transvestites and gay/lesbian activists is evident in the rhetoric that one of the most important leaders of the movement used to argue for including non-discriminatory sexual orientation in the new constitution during the National Constitutional Assembly. In his opinion, it was fundamental to combat the tendency of the media to equate “homosexual” and “prostitute/transvestite” because this was a manifestation of prejudice and a way of “sully” homosexuality (Câmara, 2002, p. 116).

<sup>26</sup> Facchini, R. (2005). *Sopa de letrinhas? Movimento Homossexual e produção de identidades coletivas nos anos 90*. Rio de Janeiro: Garamond.

<sup>27</sup> Nowadays called *Associação Brasileira de Gays Lésbicas e Transgêneros – ABGLT* has 144 affiliated groups in Brazil. For more information see: [www.abgl.org.br](http://www.abgl.org.br).

<sup>28</sup> For an excellent analysis of these relations, see Facchini, 2005.



pal governments (initially through their health-care bureaus) were directed at first to groups dealing with HIV-prevention activities or assistance to AIDS patients, and later extended to the national meetings, which began to take place simultaneously with AIDS-related national lesbian, gay and transvestite meetings.

At the international level, it was also in 1995 that the International Lesbian and Gay Association (ILGA) meeting took place in Rio de Janeiro, with financial support from the federal government through the STDs/AIDS National Program. It was the first time that the ILGA organized its annual meeting in a South American country. During the meeting the first LGBT pride parade in Brazil took place. Since then LGBT pride parades have been organized in different Brazilian cities with an increasing number of participants, becoming the most eloquent symbol of the enormous visibility the movement has achieved in the second half of the 1990s. The last one, held in São Paulo in 2006, drew more than two million people and is now considered the most important tourist event of the city's annual calendar.<sup>29</sup> In addition to the massive visibility of the parades, the LGBT community has attracted more and more coverage in the Brazilian media, whether in national newspapers and magazines or on TV shows with huge audiences (especially soap operas and reality shows).

Even though homosexuality is not a crime in Brazil, discrimination against gays, lesbians, transvestites and transsexuals remains rife and has thus been the movement's active focus since the beginning. The achievement of rights by sexual minorities has been reached by taking action against discrimination, whether through legal channels or by seeking to extend the civil and social rights enjoyed by heterosexuals to these minorities. One of the fundamental roadblocks to progress was the fact that the 1988 Constitution did not directly address discrimination on the basis of sexual orientation. When the National Constitutional Assembly first began meeting it was a period of political reorganization within the Brazilian homosexual movement.<sup>30</sup> Although the now defunct group, *Triângulo Rosa*, from Rio de Janeiro, led a campaign for its inclusion, the term "sexual orientation" was withdrawn from the final text.

<sup>29</sup> Data collected in Brazilian parades (Rio de Janeiro, Porto Alegre and São Paulo) indicated that, besides an important heterosexual attendance, these social gatherings now include the participation of various groups that comprise the movement today and even of politicians aligned with the cause, as well as segments of the thriving Brazilian pink market. See: Carrara, S., Ramos, S., & Caetano, M. (2003). *Políticas, Direitos, Violência e Homossexualidade: 8ª Parada do Orgulho LGBT – Rio de Janeiro – 2003*. Rio de Janeiro: Pallas.

<sup>30</sup> Facchini, R. (2005). *Sopa de letrinhas? Movimento Homossexual e produção de identidades coletivas nos anos 90*. Rio de Janeiro: Garamond; Câmara, C. (2002). *Cidadania e orientação sexual: a trajetória do Grupo Triângulo Rosa*. Rio de Janeiro: Academia Avançada.

Since 2001, in the ambit of the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Brazil has played an important role in efforts to include the expression “sexual orientation” in the idiom of human rights at the United Nations. In 2003, the Brazil delegation put before the UN Human Rights Commission a resolution on sexual orientation discrimination as a human rights violation. Militant groups from all over the world as well as many governments expressed their support for this Resolution. Besides lobbying the UN’s Human Rights Commission, ILGA organized an international campaign in support of the resolution, creating a website and collecting 45,000 signatures in a petition. But under strong pressure from Muslim countries and the Vatican, a vote on the resolution was postponed until 2004. When it came up again Brazil, realizing that the resolution did not yet have enough support, requested that the discussion be postponed once more. However, Brazil did not present the resolution in 2005, due to pressure from Muslim countries related to trading concerns. Although the resolution is no longer on the Commission’s agenda, the debate and the international coalition created to support it have helped to consolidate the place of the LGBT movement in the human rights international agenda.<sup>31</sup>

In terms of state and municipal legislation, several important measures have been put in place. According to ABGLT, more than 70 municipalities have enacted laws to protect LGBT communities. Three states have prohibited sexual discrimination in their constitutions and another five, as well as the Federal District, have sanctioned important measures. However, sanctions and legislative guidelines are inconsistent. In some cases, the focus is on discrimination at the workplace and on contractual agreements like renting property, in others, on the repression of public displays of affection between people of the same sex.<sup>32</sup> Some of these laws are explicit about who is being protected, whether homosexuals, bisexuals and/or transgendered people. Others are based on more general principles, such as a law recently passed in Rio Grande do Sul, that “deals with the promotion and acknowledgement of the freedom of orientation, practice, manifestation, identity and preferences as regards sex,” and emphasizes the relationship between such freedoms and the “uniform dignity of the human person.”

<sup>31</sup> For a detailed account and analysis, see also in this publication: Girard, F., *Negotiating sexual rights and sexual orientation at the UN*, pp. 339-351.

<sup>32</sup> Since homoerotic manifestations of affection are not a crime — in the penal code, there is only one article dealing with “obscene acts” — the legal battle that is needed is one to criminalize repressive and violent behaviors towards such manifestations. In this sense, there is a bill now before the federal legislative aimed at modifying the penal code and law 7.716, which criminalize color or race prejudice, including punishment for gender and sexual orientation discrimination and prejudice.

The visibility of LGBT rights has also been increased due to activism for legal recognition of homosexual partnerships. A 1995 federal bill to regulate “the civil union between people of the same sex,” reinforced this issue since it was the first attempt at such legislation and there was predictably strong public and political reaction to it. The rights to property and inheritance are central to this bill, since it intends to redress judicial injustices. After being scrutinized by a Special Commission in 1996, the bill was modified, including replacement of the term “union” with “partnership,” and watering down the reference to “affectionate bonds” between the partners. The amendment details the property issues at stake, including those related to inheritance.

More significant than these changes, however, is the inclusion of a paragraph vetoing “any agreement on adoption, tutelage or warding of children and adolescents, even if they are the children of one of the partners...” The inclusion of this paragraph in the amendment illustrates the tension around the full recognition of civil partnerships as family. Although the Partnership Bill, as it is called, emphasizes that civil partnerships are not equivalent to marriage or to stable unions, the presence of articles dealing with the marital status of partners, or laying down its exclusivity, sounds very similar to commitments in marriage.<sup>33</sup> The bill goes halfway towards effectively accepting homosexual unions — on the legal level at least — while at the same time consigning such relationships to a subordinate status.<sup>34</sup>

Congressional representatives who disagree with the bill depict it as the sanctioning of gay marriage, which they deem an aberration. The bill has never been brought to a vote because Congressional representatives favorable to its passing have calculated it does not have the necessary support.<sup>35</sup> This strong parliamentary resistance is in keeping with other initiatives taken by religious groups and institutions to block any bills they view as a threat to the family, as for example those seeking to legalize abortion.<sup>36</sup> In spite of its limitations, the Partnership

<sup>33</sup> See Uziel, A. P. (2002). *Família e homossexualidade: velhas questões, novos problemas*, Phd Thesis, IFCH/Unicamp.

<sup>34</sup> Arguing from the constitutional definition of family, which includes single parent families, Rios points out that “family” and “marriage” are not necessarily related. See: Golin, C., Pocahy, F.A., & Rios, R.R. (2003). *A justiça e os direitos de gays e lésbicas: Jurisprudência comentada*, p. 180. Porto Alegre: Nuances/Sulina.

<sup>35</sup> For a more multi-layered analysis of the discussions on civil partnerships taking place in the House of Deputies, see: Mello, L. (2005). *Novas famílias. Conjugalidade homossexual no Brasil contemporâneo*. Rio de Janeiro: Garamond.

<sup>36</sup> According to press reports in 2001, when the Partnership Bill was ready to be voted on, the Brazilian Bishops National Conference sent a letter to all 513 deputies on the “dangers” of “anti-natural” unions. This attitude, in turn, is perfectly in agreement with that of the Vatican in its document, *Family, Matrimony and de facto Unions*, (2000, July 26, Vatican City: Pontifical Council for the Family).

Bill has given more visibility to the rights of gays, lesbians and transgendered people in the national media. Although there is some opposition, the mainstream current of the movement, headed by ABGLT, supports the Bill.<sup>37</sup>

In an effort to challenge the forces of social conservatism in the Brazilian Legislature and to support bills related to LGBT rights, the House of Deputies created the Mixed Parliamentary Front for Free Sexual Expression in October 2003. It came as a result of collaboration between activists and 75 deputies and nine senators from different political parties.

The judiciary has been another important arena for building up the rights of sexual minorities. In many cases, especially those involving social welfare and the rights of HIV-positive people, some actions by the judiciary have paved the way for legislative changes. For example, the public prosecutors in Rio Grande do Sul, acknowledging criticisms voiced by the activist organization, Nuances (from Porto Alegre), successfully brought a civil action against the Brazilian Social Welfare Institution (INSS) to extend the benefits of death pensions and other rights to homosexual couples. The favorable judgment eventually forced national acknowledgement of such rights.<sup>38</sup>

In other areas the situation has not been as clear-cut. For example, with regard to the custody and adoption of children by same-sex couples, since the judiciary cannot acknowledge the existence of homosexual couples, judges have sometimes used the Child and Adolescent Statute and the new civil code to concede these rights to individual partners. Such rulings, however, depend very much on the views of individual judges and can be affected by the sex of the child involved.<sup>39</sup> Highly visible cases, such as that granting custody of the child of a famous Brazilian female singer to her female partner after her death, are important for mobilizing public opinion but not enough to establish a clear policy.

<sup>37</sup> For some, it represents a step forward to a more comprehensive law. The defense of same-sex unions or civil partnerships has been a recurrent theme of the main gay pride parades. In 2004, in Curitiba, the slogan was, Family, Pride and Respect; in Rio, Civil Union Now; in Blumenau, Homosexuality, A Family Subject; and lastly, in São Paulo, We Have Pride and Family (Carrara & Ramos, 2005). In 2005, the São Paulo parade, one of the largest in the world, had as its theme, Civil Partnerships Now! Same Rights! Neither More nor Less. See more at <http://www.comunidadeLGBT.com.br/>.

<sup>38</sup> For comments by the federal attorney in charge of the action, on the free expression of sexuality and the many stages in the process, see: Golin, C., Pocahy, F. A., & Rios, R. R. *A justiça e os direitos de gays e lésbicas: Jurisprudência comentada*. Porto Alegre: Nuances/Sulina.

<sup>39</sup> Uziel, A. *Op cit.*

In the criminal field, a recent case with great impact involved the murder of Edson Néris in February 2000 in the city of São Paulo. Néris was lynched by a skinhead group, for the “crime” of walking hand in hand with another man. The case was characterized as a “hate crime” by the prosecutor in charge, a term previously unused by the Brazilian judiciary. But besides this, the severe sentence handed down by the jury — about 20 years — and the emphasis placed on Néris’ right to equality regardless of his sexual orientation, turned the case into a landmark one in the debate around violence against homosexuals. Before this, even though some cases of homosexual murders resulted in rigorous sentences, an examination of legal actions reveals a very stereotyped view of homosexuality, which is often portrayed as a dangerous lifestyle or even as a kind of pathology.<sup>40</sup>

As the LGBT movement has been saying for decades,<sup>41</sup> homosexuals and transgendered people are subject to many forms of violence aside from murder. Recent data on victimization,<sup>42</sup> compiled from surveys conducted at LGBT gay pride parades in Rio de Janeiro, Porto Alegre and São Paulo, have noted that 60 percent of those interviewed report having been victims of some discrimination or violence. Verbal violence (abuse, jokes, aggressive threats) is the main complaint. Situations of violence and discrimination involve strangers as well as family members, colleagues and even sexual partners. The data, produced in 2004, in Rio, revealed that most discrimination takes place among friends and neighbors (33.5%), followed by family members (27%).<sup>43</sup>

<sup>40</sup> For more about the way the Brazilian judiciary treated homosexuality in murder cases in former periods, see: Carrara, S., & Vianna, A. (2004). *As vítimas do desejo: os tribunais cariocas e a homossexualidade nos anos 1980*. In A. Piscitelli, M. F. Gregori, & S. Carrara, *Sexualidades e saberes: Convenções e fronteiras*. Rio de Janeiro: Garamond.

<sup>41</sup> Mott, L. (2000). *Violação dos direitos humanos e assassinato de homossexuais no Brasil*. Salvador, Editora Grupo Gay da Bahia; Mott, L. & Cerqueira, M. (2001). *Causa mortis: Homofobia*. Salvador: Editora Grupo Gay da Bahia.

<sup>42</sup> Carrara, S. & Ramos, S. (2005). *Política, direitos violência e homossexualidade: Pesquisa da 9ª Parada do Orgulho LGBT – Rio, 2004*. Rio de Janeiro: CEPESC.

<sup>43</sup> An important initiative towards identifying and ending such forms of violence, rarely supported in an effective way by local governments, is the creation of support services. The first one, called DDH (Dial Homosexual Defense), was created in Rio de Janeiro in 1999, and others were set up later in other cities, such as *Campinas* (Homosexual Defense Center) in Brasília, and Dial Homosexual Citizenship in Salvador. The merit of such initiatives lies in forging closer relations between LGBT groups and the security organs; in offering the possibility of counseling to victims; and, lastly, by establishing a quantitative information databank — though partial — on the kind of violence to which these groups and individuals are subjected.

In relation to media bias, the Citizen Rights Regional Attorney in São Paulo, together with LGBT and human rights organizations brought a successful civil suit against the TV network *Ômega Ltda* (also known as *Rede TV*) and the presenter of a show called *Hot Afternoons*, for broadcasting jokes that ridiculed and humiliated people on the basis of their sexual orientation. The action also extended to the Federal Union, which is responsible for the concession of sound and vision broadcasting services. In a preliminary order the network's TV signal was suspended for 48 hours when it refused to acknowledge the guilty verdict. Under pressure the network signed an agreement in November 2005, pledging to broadcast, in the *Hot Afternoons* slot, 30 human rights programs presented by the organizations that brought the action. It also had to pay the Diffuse Rights Defense Fund some US\$200,000 and withdraw all "insults to homosexuals, afro-descendants, women, elders, disabled persons, Indians, children and adolescents." The overall cost of the action was around US\$10 million and the presenter was dismissed. For the first time in the country, a commercial network was obliged to change its programming for disrespecting human rights.

This case and its underlying acknowledgement of the diverse forms of violence against homosexuals led to a new initiative, the creation of Brazil without Homophobia: A Program to Combat Violence and Discrimination against LGBTs and to Promote Homosexual Citizenship, which was launched by the federal government in May 2004.<sup>44</sup> A Commission, comprising representatives from *Conselho Nacional de Combate à Discriminação* (Discrimination Combat National Council) and the Ministry of Health devised the program with the participation of many activists and militant organizations, such as ABGLT. Its wide-ranging recommendations include the stipulation that state institutions, especially those concerned with education, security, law, health care and supervision, must take steps to ensure their policies and practices are non-discriminatory and inhibit violence. The Commission also calls for incentives to encourage LGBT movement leaders to participate in the different social-control councils and mechanisms created by the federal government; dissemination of information about homophobic violence and discrimination and about the health condition of gays, lesbians and transgendered people; and support for Brazilian initiatives acknowledg-

<sup>44</sup> Brasil Sem Homofobia: Programa de Combate à Violência e à Discriminação contra LGBT e Promoção da Cidadania Homossexual. Brasília: Ministério da Saúde, 2004, at [www.mj.gov.br/sedlh/ct/004\\_1\\_3.pdf](http://www.mj.gov.br/sedlh/ct/004_1_3.pdf).

ing and protecting LGBT rights at the international level, especially with regard to the creation of the Sexual and Reproductive Rights International Convention.

Some of the program's guidelines have been executed, further strengthening the partnership between the state and civil society. In 2005, the Republican Presidency General Bureau launched a competition among public institutions and NGOs to design projects aimed at combating and preventing homophobia, to include the provision of legal and psychosocial advice for victims, guidelines on taking legal action, and conflict management and mediation. Also in 2005, the Ministry of Education launched a competition for projects to qualify education professionals to advise people on sexual orientation and gender identity.

In the absence of an explicit penal sanction against homosexuality in Brazil since the beginning of the nineteenth-century, the critique of psychological/medical discourses and pathology-oriented processes became paramount. One of the movement's greatest achievements in this regard was its success, in 1985, in getting homosexuality withdrawn from the roll of diseases acknowledged by the Brazilian Medical Association (which even the World Health Organization did not do until 1993). In 1999 the Psychology Federal Council followed with a ruling that no professional could "favor pathological diagnoses of any homoerotic behavior or practice," and that psychologists "shall not adopt coercive action to direct patients to non-required treatments." The ruling expressly stated that professionals "shall not collaborate with events and services that propose treatment for and cure of homosexuality."

Still, the process of ending medical prejudice to homosexuality is complex and the struggle is not over. The Psychology Federal Council's resolution has become the target of attacks from psychologists affiliated with evangelical religious groups. Arguing that homosexuality is not an innate characteristic and that those who "suffer" because of their sexual orientation have a "right to be taken care of," these groups have organized with the aim of getting the resolution annulled.<sup>45</sup>

The LGBT movement is considering its response but some of its leaders have tended to adopt a dangerous naturalizing and innate conception of homosexuality (that is, what is innate cannot be cured) as a way to oppose it.

<sup>45</sup> A psychologist from the so-called Rede Cristã de Profissionais de Saúde (Health-Care Professionals Christian Network) is founding a movement to revoke the resolution.

There is one area in which the traditional medical/psychological discourse still dominates: the right of transgendered people to undergo sex-change surgeries and change their legal identity. Until 1997 the Brazilian Medical Association considered this kind of surgery as non-ethical, and it could be criminally interpreted as “bodily harm.” A 1997 resolution established the conditions for legal surgery but it stipulated that “the patient must be a trans-sexual with permanent psychological deviation of his/her sexual identity, phenotype rejection and tendencies to self-mutilation, and/or self-extermination,” thereby depicting trans-sexuality as an extreme pathology. In addition, changes to the civil register are only allowed after surgery is completed and legal permission obtained. This mechanism not only shows the distance between the different disciplines involved (medicine, psychology and legal), and the concrete experiences of social individuals, but also suggests, under the pretext of “healing,” an inherent unsuitability between sex and gender; in other words, the reinstitution of a perverse duality.<sup>46</sup>

## Conclusion

As we can see from the history presented above, sexual rights in Brazil have advanced significantly over the last three decades. Anchored in the legal structure allowed by the constitution and in important international landmarks, like the Cairo and Beijing conferences, a plethora of organizations have won a variety of legislative and judicial rights, and new and revised public policies. The strong resistance put up by conservative groups, especially towards LGBT and abortion rights, however, should not be forgotten; as we have seen, the circumstances of extreme social inequality in Brazil brings into question the true extent of those victories, especially when there are no all-inclusive and effective public policies to fight the disparities.

The trajectory of social movements has resulted in real progress, especially on HIV/AIDS policies, but there are risks that must be noted. If, on the one hand, closer ties between civil society organizations and the state can empower these organizations, it can also curb their critical potential, creating situations of patronage and cooptation. On the other hand, as it takes steps forward gathering social and political support, the movement for sexual rights tends to frag-

<sup>46</sup> For recent works dealing with the theme in Brazil, see: Bento, B. (2004). *A (re)invenção do corpo: gênero e sexualidade na experiência transsexual*. In A. Piscitelli, M. F. Gregori, & S. Carrara, *Sexualidades e saberes: Convenções e fronteiras*. Rio de Janeiro: Garamond; Zambrano, E. (2003). *Trocando os documentos: um estudo antropológico sobre a cirurgia de troca de sexo*. Dissertação de Mestrado, PPGAS/UFRGS.



ment into different identity groups with their own specific demands and agendas. The competition for public resources tends to exacerbate such fragmentation along sexual orientation and gender lines. It is significant that the sex orientation anti-discriminatory law passed in São Paulo was used for the first time by a transvestite group against gay nightclubs that forbid their entry or membership.<sup>47</sup>

Despite its potential for weakening the struggle, such fragmentation and in fighting can create original ideas and unexpected opportunities for progress. Recently, for example, transgender organizations, especially those of transvestites, have approached feminist organizations, participated in some of their discussion forums, raised an important and delicate debate on the state of feminine identity and criticized the naturalization of the category “woman.” In the process of becoming progressively autonomous and, in certain contexts, presenting itself as a dissident voice more concerned with gender than sexuality, the transgender movement seems to oscillate between belonging to the homosexual and feminine fields.

In this sense, beyond specific demands, the greatest development in the struggle for sexual rights in Brazil has been the reshaping of alliances among different groups of activists. Throughout 2005 LGBT and feminist groups, committed to building a common agenda, held a series of strategic dialogues. Though these meetings were sometimes marked by tension between transgender and feminist militants, they presented an opportunity to strengthen the commitment of gay militants to the abortion cause, and to bring sex workers and feminists together. The alliance was best summarized in two of the banners at the last LGBT gay pride parade in São Paulo; behind the main banner that read, Homophobia is a Crime, there was another flying high and it read, Sexual Rights Are Human Rights.

<sup>47</sup> França, I. L. (2006). *Cercas e pontes: o movimento LGBT e o Mercado GLS na cidade de São Paulo*. Dissertação de Mestrado em Antropologia/FFLCH/USP.