



RIGHTS FOR LGBTIs IN BRAZIL: THE OUTLIERS OF LEGISLATIVE AGENDA?

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Introduction

The objective of this article is to elaborate a theoretical analysis regarding the format and compliance by the Brazilian State of a political agenda aimed at ratifying civil, political and social rights to the population entitled LGBTI, composed of lesbians, gays, bisexuals, transgender, transsexual, transvestite and intersex. Since the last decade, in particular, it has been observed that national governments have focused more attention and political resources to address some of the historical claims of these groups, which have facilitated the debate and implementation of compensatory social policies, taking into account the remarkable degree of vulnerability and sub-citizenship to which these collectives have historically been subjected. From this, until then unpublished, recognition, the actions undertaken by the Federal Executive found resistance, especially of interest groups of the National Congress, beginning a process of political embarrassment that imposed restrictions on the leverage of a Brazilian LGBTI agenda in its fullness. In addition to initiatives to oppose these legislative projects for diversities, the Judiciary was frequently seen as a "third way" aimed at providing juridical maintenance of the rights conquered since the last decade.

Considering the context described above, an interdisciplinary bibliographical review is proposed in order to undertake the discussion of this theme by epistemic communities and by civil society as a whole. The paper is divided into four topics, the first of which seeks to rescue the history and political memory of these movements for sexual and gender diversity in Brazil as a result of redemocratization; the second item seeks to establish an analysis of the recent interaction between the three spheres of the Republic - Executive, Legislative and Judiciary - in the implementation of LGBTI demands; while the third part will describe how this intergenerational struggle has been the object of resistance, especially with regard to the definition of a political

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agenda that contemplates rights to sexual and gender diversity; Finally, the final considerations summarize the contributions proposed by the present study and indicate trends for the context of this analysis.

The relentless pursuit of justice: LGBTs in Brazil

Sexual and reproductive rights are recurrent themes in the political agenda of Brazilian governments and the media since the country's redemocratization. The first legal initiative in favor of the LGBT population was the attempt to include discrimination based on sexual orientation in article 5 of the Federal Constitution of 1988, a proposal vetoed by the Parliament of the time, which would be indicative of the difficulties of leverage these rights that would lead to the Brazilian political arena in the aftermath (IRINEU, 2014). Carrara (2010, p.139) describes that despite this constitutional defeat,

[...] new rights have been recognized by deriving from the general principles that inspire the Charter of 1988 and sexual rights become, especially in the hands of the constitutionalists, an exemplary case of the way in which new rights can be created from principles without the need for the creation of new laws.

In spite of the formalization of the new Constitution, in the 90's the reform of the Brazilian National State was highlighted, which established as a priority the fulfillment of a neoliberal agenda aimed at the orthodox stabilization of the economy in detriment of the guarantee of social rights (GOMES , UNGER, 1996). The Washington Consensus of 1989 represented the global framework of neoliberalism and its implications: the rise of the market economy and the role of private actors in the construction of a state model aimed at regulating the provision of services that historically were linked governments as the main providers (MAJONE, 1999; PAREDES, ROADE, 2006). Thus, the resumption of the democratic regime in Latin America was confined to a scenario of extensive reduction of the capacity of the public sector to perform, which, in a way, prevented the consolidation of the fundamental rights and guarantees signed with society by the new Constitutions. The inability of the "new" state to comply with the social legislation promulgated after redemocratization meant that from the 1990s "the concept of exclusion as non-citizenship, especially the idea of a comprehensive, dynamic process and multidimensional "(VÉRAS, 1999, p.35).

In any case, this process has also been reflected in the lack of political action by governments to confront homophobia and to meet other needs of these and other social groups, which are by consensus numerically minorities (IRINEU, 2014). Considering this context, policies for diversity were basically limited to prophylaxis programs for sexually transmitted diseases, especially the fight against HIV within homoerotic communities (DA COSTA SANTOS, 2007; PAIVA, 2000), and mention only of homosexuals - and not to the LGBT community as a whole - in the First National Human Rights Plan (PNDH), undertaken in 1996 by

the government of former President Fernando Henrique Cardoso. Despite this latest initiative, the latent absence of the federal executive, and its support base in the National Congress, in the absence of any initiative in the form of a Provisional Measure and / or Bill, respectively, in favor of lesbians, gays, bisexuals, transvestites, transsexuals, transgenders and other genders (FACCHINI, 2009; MELLO et al., 2012). By prioritizing the demands of the market, it is well known that Latin American neoliberal governments have long failed to meet the standards of recognition of citizenship and social justice, in short, of the human rights of their peoples, which has also contributed to the aggravation of the scenario of inaction around the rights for LGBT people observed in the period.

Silva (2006) also reports that, in the 90's, there was a process of massification of these Brazilian uprisings. It is important to highlight the organization of pro-LGBT institutions in the form of networks and national meetings on diversity issues. In 1995 the Brazilian Association of Gays, Lesbians, Transvestites and Transsexuals (ABGLT) was founded, representing the one that would be the first national instance in favor of these populations. The XVII International Gay and Lesbian Association (ILGA) Conference in Rio de Janeiro, and the strengthening of the Brazilian Gentlemen, Lesbian and Transvestite Meetings (EBGLT) and the Brazilian Meetings of Gays, Lesbians and Transvestites Working with AIDS (EBGLT-AIDS) (DA COSTA SANTOS, 2007). In addition to these new forms of political participation and pressure on governments, still in 1995, the first Brazilian Gay Pride Parades emerged in Curitiba and Rio de Janeiro, thus inaugurating a new modality of social mobilization that, until then, was present in the USA and Europe only (SILVA, 2006; ORTOLANO, 2014).

The year 2003 would open a new panorama of LGBT movements in Brazil, given the public recognition of the need to combat the inequality of civil, political and social rights and the multiple forms of homobitranphobic violence. The Special Secretariat for Human Rights (SEDH), responsible for the first major political decision on the Brazilian LGBT agenda: the Program to Combat Violence and Discrimination against GLTB and the Promotion of Homosexual Citizenship, the "Brazil Program without Homophobia ", of 2004 (IRINEU, 2014, ORTOLANO, 2014). An inter-ministerial initiative from the government of Luís Inácio Lula da Silva, this program was structured:

(...) "from topics related to the way in which issues such as work, health, education, culture, security, women and racial issues are structured in the federal government and proposes the articulation between Secretariats and Ministries at the federal level, with the objective of" promote the citizenship of gays, lesbians, transvestites, transgenders and bisexuals, based on the equalization of rights and the fight against homophobic violence and discrimination, respecting the specificity of each of these population groups "(BRASIL, 2004, p. 11).

Mello et. (2012), Ortolano (2014) and Facchini (2009) emphasize that, based on these theoretical frameworks, the Federal Executive implemented a series of actions focused on

diversity, especially the 2008 LGBT National Conference, the the National Plan for the Promotion of Citizenship and Human Rights of Lesbian, Gay, Bisexual, Transgender and Transgender (PNDCDH-LGBT), the foundation in 2010 of the National Council to Combat Discrimination and Lesbian, Gay, Transsexual and Transgender (CNCD-LGBT), the creation of the National LGBT Council, the inclusion of homobitransphobic violence in the "Dial 100", the formalization of the National Lesbian, Gay, Bisexual, Transsexual and Transgender Integral Health Policy in the within the scope of the Unified Health System and the holding of the 2nd LGBT National Conference, all in 2011, the launch of the 1st Report on Homophobic Violence based on the denunciations collected by the " Disque 100 ", " Ligue 180 ", " SUS Ombudsman "and" Disque Saúde "in 2012, the creation of the National System for the Promotion of Rights and Coping with LGBT Violence in 2013, and in the same year the Ministry Health has undertaken a review of the process of gender reassignment carried out under SUS.

However, the rejection of the School Project without Homophobia of 2009, an initiative of the Ministry of Education (MEC) in the legal framework of the "Brazil without Homophobia Program", was widely noted, a rejection widely reproduced by conservative parliamentarians, who are responsible for the government's withdrawal in distributing the educational material produced by associating it with what they characterized as a "gay kit" (MELLO et al., 2012). From 2013 onwards, the debate about the Family Statute could be monitored as a way to curtail the recognition of family homoffective compositions, as well as the filing in the Senate in 2015 of the House Bill (PLC)) nº 122/2006, authored by Federal Iara Bernardi (PT) and aimed at criminalizing homobitransphobic violence.

Contrary to the legal achievements observed in Argentina since 2003, notably the approval of the Sexual Education Law of 2006, the Equal Marriage Law of 2010, and the Gender Identity Law of 2012 (RABBIA, IOSA , 2011), the agenda for Brazilian sexual and gender diversity was not contemplated by the adoption of any national law, adding to this fact the growing political initiatives and discourses of opposition, undertaken by conservative part of the Parliament, to the population of LGBTs . According to Irenaeus (2014: p.161), this describes a reality "(...) of little effectiveness in the materialization of sexual and reproductive rights. In addition, there is also a continuous movement of advances and setbacks in the field of the right to non-discrimination based on sexual orientation and gender identity in the Brazilian public sphere. " Taking into account this scenario, there is a worrying panorama of the violence due to sexual orientation and / or gender identity in Brazil described by Ortolano (2014, p.100):

In the report organized by SDH-PR (BRAZIL, 2011), we find some figures referring to homophobia in 2011. Although we consider underreporting due to the obstacles that limit the reports, it is worth noting the high numbers that reveal a scenario of serious homophobic violence: 6,809 human rights violations against LGBTs involving 1,713 victims and 2,275 suspects. More than 18 complaints per day of homophobic human rights violations in 2011.

In this way, it is known that the Brazilian LGBT agenda has been leveraged in the form of judicial initiatives - the Federal Supreme Court (STF), the Supreme Court of Justice (STJ) and the National Justice Council (CNJ), in particular - and / or through Decrees of the Federal Executive, which, in short, maintains almost untouched the reality of social exclusion of these collectives, constituting, according to Mello et. all (2012), government policies and non-state policies, that is, there is no guarantee of the permanence of these punctual actions in the medium and long term.

Investment in social participation policies such as the Councils at national, state and municipal level (PETINELLI, 2013) has been notable, although they represent an instance of little capacity for political deliberation, and since 2010 the LGBT National Council has ratified the need to comply with a series of actions and demands - such as the criminalization of physical and psychological violence directed at these collectives and the inclusion of gender and diversity content in school curricula - that the federal government, especially from 2011, in consideration. It was also seen that the aforementioned initiatives in the form of Executive Decrees and Ministerial and Interministerial Ordinances arising from Lula da Silva's efforts have been continued in the governments of Dilma Rousseff, although the opposition's political pressure, especially in the Legislative federal and in the media, has prevented the advance of these, as well as its formalization in the form of a law.

In this way, it is seen that the resumption of democracy in Latin America represented, first of all, the opportunity for LGBTs to extrapolate the ghettos, the spaces of repression and silencing and, finally, to undertake their political reorganization with a view to the social recognition of their situation of multiple social vulnerability and marginalization. In addition to this process, it was also seen that neoliberal-based governments ended up contributing to the non-fulfillment of the needs and aspirations of these collectives, making the Brazilian political context of the last two decades characterized by moderate advances in the LGBT agenda that will be analyzed with greater depth below.

Executive, Legislative and Judiciary: a dystopian political articulation

In the 1990s, there was a scenario in which the federal executive eventually formulated most of the policies that were approved by legislators, in addition to the fact that the presidents had, in the post-Constitution scenario of 1988, "(...) initiative (...) of administrative organization and ... to initiate legislation in certain areas, but also have the power to unilaterally force the assessment of the matters it introduces within certain deadlines "(FIGUEIREDO & LIMONGI, 1999, p. 25), not to mention the possibility of publishing provisional measures in exceptional situations, generating a situation of greater power to impose its agenda and induce the Legislative to greater cooperation to its projects of interest. According to Figueiredo and Limongi (1999), in this model of coalition presidentialism there were two important points to the maintenance of

executive power: party discipline and partisan coalitions.

Arnes (2001) emphasizes the political influence of Brazilian legislators in shaping a non-decision context, a scenario in which, given the strong influence of the opposition to the government installed in the National Congress, the Executive it even chooses to send to the Legislature part of its projects, even though they consider them essential to the fulfillment of its government agenda and that take into account the opportunity costs that will result from this state of inaction. Another way in which this opposition to the government appears is in the form of long delays in the parliamentary decision on legislative matters of interest to the Executive. Although there is a possibility that government projects may be approved, they are likely to incur "(...) weakening of the original proposal, as well as heavy spending on projects of purely particularistic interests for congressmen" (ARNES, 2001, p. 255). This context describes the capacity of some legislators to exercise influence by essentially defending issues of their interest with the Executive Branch and the leaders of their party, these being "public works projects" (ARNES, 2001, p.261). bring important electoral returns to these parliamentarians.

In a complementary way, Amorim Neto (2009) describes Brazilian democracy as a consociative one, given the presence of clientelism, the lack of governmental effectiveness, and the indiscriminate use of Provisional Measures by the Executive as a unilateral instrument to overcome the lack of support from the Legislative, in addition to the large presence of budget amendments requested by regional counterparts and interests responsible for co-opting the government and impacting the conduct of legislative projects and national public policies, revealing that the Brazilian institutional structure would reflect the level of heterogeneity of society, its interests and the political representatives it elects. Thus, Arnes (2001) and Amorim Neto (2009) point out one aspect in common: the difficulty faced by the Federal Executive in leveraging the agendas of its interest, given the scenario of systematic political opposition installed in the National Congress. About this impasse, Fernando Limongi reports that:

It is clear that the power of the Executive's agenda is not sufficient to ensure the approval of its propositions. The success of the Executive can only be guaranteed through the explicit support of most legislators. Laws are only approved if voted by the Legislature. And this is also true for the extreme manifestation of the Executive's agenda power, the Provisional Measures. For them to become laws, they must be passed by the majority. In other words, the power of the agenda does not confer on the Executive the possibility of opposing or circumventing the opposition of the Legislature (LIMONGI, 2008, p. 48) (emphasis added).

Although the Federal Executive has control over budget execution, it does not have enough capacity to leverage all the issues considered as priorities, and it is up to the legislature to consider them. In this way, the presidential cabinet seeks to establish a set of party coalitions aimed at the implementation of public policy projects, especially those contemplated by the government plan established with civil society in the run-up to the elections. However, the presence of these political-partisan adherents does not guarantee that presidents have support in

all the proposals of their interest, a factor that can generate impasses between these branches of the Republic (LIMONGI, 2008; ARNES, 2001).

This is exactly what appears to have happened with House Bill No. 122, of 2006, aimed at equating homobitranphobic violence with the already predicted racism crime, and with the School of Homophobia Project of the Ministry of Education (MEC), initiatives circumscribed to the plan of action for LGBTs proposed by the federal Executive in 2004: the Brazil Program without Homophobia. When entering the legislative arena, these proposals were subject to great embarrassment, given the political strategy of conservative sectors to construct a negative political image about them. Irineu reports that this context of demoralization and interruption of the LGBT agenda by the National Congress:

[...] indicates progress and setbacks in the anti-homophobia agenda, such as the veto of the 'School Kit without Homophobia', in 2011, supported by President Dilma's statement that in her government she would not make 'sexual propaganda'. There are also examples of the withdrawal of the term 'gender' from the National Education Plan (PNE), in 2014, the introduction of the Statute of the Child, which is waiting to be voted on, and the Draft Decree-Law that became known as the "Cura Gay", filed by the author's own decision due to the June demonstrations in 2013. The resurgence of conservatism, facing the demands of the movements that fight for the insertion of the sexual and reproductive rights agenda, parallels the achievements of these groups in the field of citizenship (IRINEU, 2014, p. 168).

Considering this complex Brazilian scenario, the intervention of the Judiciary Power was present in the recent guarantee of sexual and reproductive rights. In addressing the growing politicization of the judiciary in the post-re-democratization period, Taylor (2007: 229) describes that "the classic view of the courts as strictly legal instances" has been overcome, taking into account the growing role of the Courts in political role capable of influencing the Executive's agenda and, consequently, the decision-making process. In this way, Brazil would be characterized by a "atomized political system" (TAYLOR, 2007: 231), a situation in which there is a high conflict of interests that complicates decision-making, given the presence of a historically centralizing Executive Power and of a regionalized Legislative Power, which refers to the need for extensive political bargaining to approve the legislative agenda of the Executive.

In this context, the same author exposes the Judiciary as an actor responsible for creating opportunities for minority interest groups to reaffirm their demands on the political scene, and this politicization (venue-seeking) expresses the courts' ability to recommend decisions and to include new actors in the political arena, thus modifying the combination of priorities that make up the agenda of governments at a given historical moment (TAYLOR, 2007).

Thus, it can be seen that the influence of judges and ministers does not occur only in the implementation and monitoring of policies, but it can start already in the process of discussion that anticipates the possible legislative approval of these, revealing the capacity of the Judiciary to exercise points of veto in the course of the decision-making process. Thus, Matthew Taylor

describes a scenario in which representatives of the Judiciary "[...] signal their preferences publicly long before final project approval" (TAYLOR, 2007, 241), calculating in advance the impact they can exert on the deliberation of the agenda the policy of the Executive and the Legislative, "[...] eliminating some alternatives and constraining the freedom of action of other political actors" (Taylor, 2007: 241). Although the representatives of the Judiciary are within a legal-institutional culture that regulates their autonomy, not necessarily this fact annuls that certain aspirations, individual and collective, of these do not influence the decisions of the State in a certain period. The importance that a given public policy has for law-makers may shape or act on it, either by creating obstacles or facilitating their approval, given their ability of the courts to issue "public faith" (TAYLOR, 2007, which, according to the same author, have a democratizing function, after all, they are responsible for providing a "balance between ... efficiency in decision-making by the political system, and [...] the country's ability to follow a stable and relatively erratic path in terms of the adoption and implementation of public policies "(Taylor, 2007: 249).

On the need for the spheres of republican power to be interdependent, Madison et. all (1997) describes the fact that, in representative democracies, a greater possibility of usurpation of the power of the State was associated with the Executive Power, which, according to this author, is not necessarily true, since the Legislative Power has considerable influence to do so, considering that the latter may "[...] mask its intrusions in parallel powers in the form of complicated and indirect measures" (MADISON et al., 1997, p.339), as the control of decision regarding gains pecuniary powers of other instances of the Republic, for example, creating a negative relationship of dependency between the powers. It also states that the best alternative to promote equality between the three powers is to adjust the organizational structure of the state to regulation and equalization between them so that one sphere depends as little as possible on the other. In this respect, it recommends a democratic model in which it would be possible "... to give to those who administer each power the necessary constitutional means and personal motives to resist the abuses of others" (Madison et al., 1997, 350).

Still on this scenario of possible dominance of one's power over others, attention must be paid to the need to avoid tyrannies, aiming "not only to protect society against the oppression of its rulers, but to protect a part of society against the injustice of the other "(Madison et al., 1997, p.351), thus characterizing a democracy that values justice and the common good of all society. In addition to this, and on the inevitability of the balance between the three powers, the checks and balances of politics, Montesquieu (1988, 168) reports that "all would be lost if the same man [sic], or the same the body of the principal, or the nobles, or the people exercised the three powers: that of making the laws, of executing public resolutions, and of judging crimes or quarrels between individuals".

In this way, it was found that for Madison *et. al* (1997), Taylor (2007) and Montesquieu (1988), the balance between the three powers is a fundamental prerequisite for the legitimacy and continuity of a democracy. As a way of circumventing the arbitrariness of the Legislative, we have noticed a greater role of the Judiciary in the decisions of the Democratic State of Law in Brazil. Thus Taylor and DaRos (2008, p. 842) point out that the judicialization of public policies is an "instrument of government" used when the higher courts of the Judiciary end up favoring policies of interest to the Executive, reinforcing the coalition between these spheres of state power. Undoubtedly, this seems to be the case with the Brazilian LGBT agenda of the past decade.

Taking into account the constraint of the Executive's agenda, by national legislators, Brazil has lived - and to a certain extent still lives on - a political scenario in which the guarantee of sexual rights has taken place through the judicial process. According to Dias (2011, page 174), it is observed that "the right to citizenship depends on recognition in the legal sphere. But when it comes to the rights of gays, lesbians, transvestites and transsexuals, it is up to the judiciary to remedy the legislator's omissions. " Among the advances to be highlighted, the National Court of Justice (CNJ), decision 175, of 2013, which regulates civil marriage between persons of the same sex in Brazil, and individual judicial conquests for the right to adoption by homosexual couples and by the right to the use of the social name, which is defended historically by trans people, transvestites and transsexual people. According to Maria Berenice Dias, these interventions were necessary considering that "the absence of a law, which leads to the exclusion of the legal system, is the most perverse form of condemnation of invisibility" (DIAS, 2011, p. 164).

Despite the recent positioning of the Judiciary in favor of LGBT rights in the Brazilian context, it is a mistake to place exclusively on this sphere the expectations of a future leverage of the country's sexual and gender diversity agenda (BAHIA et al., 2013). The judicialization of policies for LGBTs can be considered as a measure that, in a way, weakens the republican structure of Brazilian political institutions, since it does not guarantee the effectiveness of the fulfillment of a given right in the long term by hiding, and subjugating, a more worrying: the Parliament's co-optation of the executive's political agenda. According to Bruna A. Irineu, this fact reveals "the process of" judicialization "of rights that we have undergone, whose effects recreate fallacious understandings of full LGBT citizenship, since these" achievements "are conditioned to fragile legal instruments that can be revoked and withdrawn at any time "(IRINEU, 2014, p.).

Still on the impacts of the Legislative's omission in relation to the historical claims of the LGBT collective, Dias (2011, p. 168) advocates that:

It is the legislative power to protect the right of all citizens, especially those who are vulnerable. And, of all the excluded, homosexuals, transvestites and transsexuals are the biggest victims, because they are hostages not only of social prejudice, since they are rejected by the family itself. Hence the need to deserve differentiated tutelage. It is necessary to build a microsystem, as it happens with the other segments that are entitled to the special guardianship.

For a representative democracy to be fully exercised, it is indispensable to have a legitimately elected government and an opposition that serves the interests and aspirations of other sectors of society that disagree with the guidelines of this majority coalition. However, this ideal political relationship must be differentiated from what has occurred in the Brazilian scenario, in which there is a repeated action by sectors of the Federal Legislature to constrain projects of national interest in order to weaken the Executive and its priorities. The importance of the Judiciary to guarantee, immediately, civil and social rights to the Brazilian population of LGBTIs, however, is remarkable that the interruption of the Executive's agenda by the Legislative - main problem, responsible for generating the difficulty of access to these rights - is a theme little explored by the epistemic communities, which, to a certain extent, reinforces an unfeasible belief that the articulations of the Judiciary Power, by themselves, would suffice to guarantee compliance with the political agenda of diversity.

Below is a descriptive table of the actions carried out by the Federal Executive, Federal Legislative and Federal Judiciary in favor and disfavor of LGBT groups in the period that involves the launch of the Brazil without Homophobia Program in 2004, and the current.

Table 1 – Information on recent initiatives aimed at LGBTs in Brazil (2004-2016)

YEAR	POWERS OF THE REPUBLIC.		
	EXECUTIVE	LEGISLATIVE	JUDICIARY
2004	Program to Combat Violence and Discrimination against LGBT and Promotion of Homosexual Citizenship (Brazil without Homophobia Program).	Proposition of PL n° 3817 that establishes as heinous the crime committed against homosexuals because of their sexual orientation (filed).	
2006		Proposition of PL n° 7052 that establishes the day 17 of May like the National Day of Fight against the Homophobia (filed). PLC No. 122, of equating homobitransphobic violence with the crime of racism, is sent to the Federal Senate..	
2008		LGBT National Conference. Proposition of PL n° 2976 that establishes on the right to the use of the social name in the public registries (appended to PL n° 70 of 1995).	
2009	National Plan for the Promotion of Citizenship and Human Rights of Lesbian, Gay, Bisexual, Transvestite and Transsexual (PNDCDH-LGBT). Project "School without Homophobia" (MEC)).	Proposition of PL n° 5167 that establishes that no homoffective relation can be equated to the marriage or the familiar entity (appended to PL n° 580 of 2007).	
2010	National Council to Combat Discrimination and Promotion of Lesbian, Gay, Transvestite and Transgender Rights (CNCD-LGBT)).		

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<p>2011</p>	<p>LGBT National Council. Inclusion of homobitransphobic violence in the "Dial 100". National Policy of Integral Health of Lesbian, Gay, Bisexual, Transvestite and Transsexual within the scope of the Unified Health System. LGB II National Conference</p>	<p>Proposition of PL n° 1672 that establishes the Day of Heterosexual Pride, to be celebrated on the third Sunday of December (in process). Proposition of PL n° 1846 that predicts to characterize as a crime of torture to embarrass someone because of sexual discrimination (in process).</p>	<p>Recognition of homoffective relations as a family entity.</p>
<p>2012</p>	<p>I Report on Homophobic Violence - denunciations of Dial 100, Ligue 180, SUS Ombudsman and Dial Health.</p>	<p>Proposition of PL n° 4916 that foresees on the revision of the bidding process, ensuring preference to companies that have pro-LGBT programs (attached to PL n° 2304, of 2003). Proposition of the PRC n° 152 that foresees the inclusion of LGBT subjects as a thematic field of the CDHM (attached to PRC n° 62 of 2011).</p>	
<p>2013</p>	<p>Creation of the National System for the Promotion of Rights and Coping with Violence against LGBT. Review of the process of gender reassignment carried out under SUS.</p>	<p>Proposition of PL n° 6424 that establishes the compulsory notification of violence against LGBTs in public equipment (in process). Proposition of PL n° 5002 that establishes on the right to the gender identity (in process). PLC no. 122/2006 appended to the already extinct Senate Bill No. 236/2012, Reform of the Brazilian Penal Code. Proposition of PL n° 5120 that provides on the recognition of civil marriage and civil union homoaffectives (attached to PL No. 580 of 2007).</p>	<p>Recommendation of the National Council of Justice (CNJ) so that the authorities did not impose any obstacle to the qualification and celebration of civil marriage between people of the same sex.</p>
<p>2014</p>		<p>Proposition of PL n° 7524 that deals with the Revision of the Statute of the Elderly to include respect for sexual orientation and gender identity (in process). Proposition of PL n° 7582 that typifies crimes of hate and intolerance against LGBT and creates mechanisms to curb them (in process). Proposition of PL n° 8032 that extends the protection of transsexuals and transgenders in the Maria da Penha Law (in process). PLS No. 310 proposing punishment for crimes resulting from discrimination based on sexual orientation and / or gender identity (taken from the author).</p>	
<p>2015</p>		<p>Proposition of the PDC n ° 16 that supported the application of Resolution No. 12 of January 16, 2015, of the Secretariat of Human Rights of the Presidency of the Republic, which establishes parameters for guaranteeing the conditions of access and permanence of transvestites and transsexuals - and all those with unrecognized gender identity in different social spaces - in education systems and institutions, formulating guidelines for the institutional recognition of gender identity and its operationalization (in process). Proposition of the PDC No. 17 that supports the application of Resolution No. 11, dated December 18, 2014, of the Secretariat of Human Rights of the Presidency of the Republic, which establishes the parameters for the inclusion of the items "sexual orientation", "gender identity "And" social name "in the case reports issued by the police authorities in Brazil (pending). Proposition of the PDC # 18 that supports the effects of the entire content of Resolutions 11 of December 18, 2014 and No. 12 of January 16, 2015 of the National Council to Combat Discrimination and Promotion of</p>	

the Rights of Lesbian, Gay, Transvestites and Transsexuals (CNCD / LGBT), of the Secretariat of Human Rights, both published in Section 1 of Official Gazette No. 48, dated March 12, 2015 (attached to PDC # 17 of 2015).

Proposition of the PDC nº 26 that supports application 12 of January 16, 2015, of the National Council to Combat Discrimination and Promotions of Lesbian, Gay, Transvestite and Transsexual Rights and other measures (attached to PDC nº 16 of 2015).

CNP / LGBT Resolution No. 12, dated January 16, 2015, of the National Council to Combat Discrimination and Promotion of the Rights of Lesbian, Gay, Transsexual and Transgender (CNDC / LGBT), which "Establishes parameters for the guarantee of the conditions of access and permanence of transvestites and transsexuals - and all those whose gender identity is not recognized in different social spaces - in educational systems and institutions, formulating guidelines for the institutional recognition of gender identity and its operationalization "(joined to PDC nº 16 of 2015).

Proposition of the PDC No. 48 that supports the application of Resolution No. 12, dated January 16, 2015, of the Secretariat of Human Rights of the Presidency of the Republic, which establishes parameters to guarantee the conditions of access and permanence of transvestites and transsexuals - and all those that have their unrecognized gender identity in different social spaces - in educational systems and institutions, formulating guidelines regarding the institutional recognition of gender identity and its operationalization to PDC No 16 of 2015).

Proposition of PDC nº 61 that supports the effects of Ordinances n. 11 of December 18, 2014 and No. 12 of January 16, 2015, of the National Council for Combating Discrimination and Promotion of the Rights of Lesbian, Gay, Transgender and Transgender Persons - CNCD / LGBT - of the Human Rights Secretariat of the Presidency of Republic (attached to PDC no. 18 of 2015).

Proposition of the PDC no. 90 that supports the effects of the entire content of Resolution No. 11 of December 18, 2014 and No. 12 of January 16, 2015 of the National Council to Combat Discrimination and Promotion of Lesbian, Gay, , Transvestites and Transsexuals - CNCD / LGBT, of the Presidential Secretariat of Human Rights (attached to PDC no. 18 of 2015).

Proposition of the PDC nº 91 that supports the application of Resolution no. 12, dated January 16, 2015, of the Secretariat of Human Rights of the Presidency of the Republic (attached to PDC no. 16 of 2015).

Proposition of the PDC No. 115 that supports the application of Resolution No. 12, dated January 16, 2015, of the Secretariat of Human Rights of the Presidency of the Republic, which establishes parameters for guaranteeing the conditions of access and permanence of transvestites and transsexuals - and all those that have their gender identity not recognized in different social spaces - in education systems and institutions, formulating guidelines regarding the institutional recognition of gender identity and its operationalization (attached to PDC nº 16 of 2015).

<p style="text-align: center;">2016</p>		<p>Proposing PDC No. 395, which promulgates Decree No. 8,727, of April 28, 2016, which "provides for the use of the social name and recognition of the gender identity of transvestites and transsexuals within the scope of the federal public administration, autarchic and foundational "(in process).</p> <p>Proposition of PL No. 4870, which deals with the substitution of a first name and a change of gender in the civil birth register of transsexuals and transvestites (attached to PL nº 70 of 1995).</p> <p>Proposition of PL 5774 which provides for the amendment of article 42 of the Criminal Offenses Act to constitute contravention of the person who uses the public restroom other than the male or female sex).</p> <p>Proposição do PL nº 5686 que prevê contravenção penal to the person who uses the public restroom other than their male or female gender (taken from the author).</p> <p>Proposition of PL nº 6005 that establishes the program "Free school" in the whole national territory (attached to PL nº 867 of 2015).</p>	
<p style="text-align: center;">Result</p>	<p>It proposed a political agenda that included rights for sexual diversity and gender identity established with civil society in the run-up to the presidential elections (2002, 2006 and 2010).</p>	<p>It has constrained politically part of the proposals for LGBTs hitherto present on the Executive's agenda, such as the formalization of eleven Draft Legislative Decree for the Suspension of Normative Acts of the Executive Branch (PDC) presented in 2015 and 2016 that oppose formulated pro-LGBT programs and implemented by the Federal Executive through presidential decrees.</p>	<p>Provided a precarious guarantee of civil and social rights, since the regulations of the STF and CNJ, for example, are not laws.</p>

Source: Prepared by Lauro Victor Nunes.

LGBTI movements: the struggle for recognition.

Since the 1990s, LGBTI studies have been a research agenda on the rise. Louro (2008) describes that the investigations regarding sexual diversity and gender identity, from the second half of the XX century, have moved from the "bio-medical-psychic" field to the "moral-political-cultural" field, in a scenario of greater protagonism and visibility of these demands facing society. Since then, we have seen the composition of a pluralistic political agenda of diversity, but not always cohesive in its demands and needs. It is known that the leverage of policies aimed at guaranteeing human rights is directly impacted by the non-decision of governments. With the LGBTI agenda it would not be different: to stop prioritizing sexual and reproductive rights is to choose the permanence of sub-citizenship that historically has affected these groups. It is to decide for the maintenance of homobitranphobic exclusions and violence brought about by patriarchy and science sexualis (FOUCAULT, 1988) and legitimized by the National States.

Considering that the State's resources, material and immaterial, are exhaustible and linked to a budgetary capacity which, in turn, is limited to the level of tax collection and the capacity of public sector financing in a given historical period, it is concluded that government activity has, by limit, a certain degree of execution of public resources. Thus, it is to be expected that its action in the face of multiple societal and market demands is insufficient (PAREDES, ROADE, 2006;

MAJONE, 1999). Given these facts, the government defines a political agenda, that is, a list of priorities to be met within a given timeframe (SARAVIA, 2006).

Since democracy is the main policy guideline in the Western context today and considering its capacity to provide opportunities for social participation in political decision-making (PATERMAN, 1992; DAHL, 2001; SEN, 2000), it is expected that multiple actors to defend their interests and aspirations. In this scenario, the social groups' agenda is formed as the first step towards consolidating the proposals they seek. However, it should be emphasized that this set of priorities defined by the different sectors of society will not necessarily be treated by the State as public policy projects to be fulfilled immediately, considering that, as already mentioned, the budgetary and technical-administrative execution of governments is scarce. In this way, it is assumed that the definition of the state agenda constitutes a period of tension between the different interests of organized groups that end up putting pressure on the government for the immediate fulfillment of their demands. Decision-making on what is on the priority list is also influenced by actors outside the government, such as the media, Third Sector organizations, trade unions, epistemic communities, free market institutions, religious organizations, among others (Saravia, 2006, HOWLETT et al., 2013, KINGDON, 2006). Thus, there is a context in which:

[...] the recognition of a social issue as a problem of government or state is not a simple and immediate process that responds automatically to the statistics available, however revealing the seriousness of the question, when compared to other countries or times of the past. It is not the will of a public sector technician, an academic researcher or elected official, with a consistent empirical knowledge of the reality or bold vision that immediately guarantees its incorporation into the formal government agenda "(JANNUZZI, 2011, p. 260).

In this way, the entry of social problems into the state agenda is the start for the action of the government entities in front of a matter of public interest (HOWLETT et al., 2013). According to Saravia (2006, p.29), "the public policy process does not have a manifest rationality. It is not a quiet order in which each social actor knows and plays the expected role ", which reveals that the scenario in which these projects emerge will not always be favorable to their approval, considering that the choice for investment in a public policy is a venture replete with political, economic and / or social tensions and adjustments. It should be noted that the action or inaction of governments is limited to previously calculated decision-making processes, a scenario in which the choice to not act on a problem, collective or individual, represents the formalization of a decision by the State. According to Thomas Dye (1972, apud HOWLETT et al., 2013: page 6), public policy constitutes "everything a government decides to do or fails to do".

It is precisely in this definition of Dye (1972) that the construction of the problem question of this article is based. Since politics is what governments also fail to do, this means that states of inaction, or of non-decision, also represent political decisions, after all, when governments are aware of a problem and do not act towards its solution, they end up being held responsible for the negative externalities produced by their permanence. For the case here analyzed, these

externalities are the historical inactivity of LGBTs to certain civil, political and social rights, as well as the physical and / or psychological violence directed at them, due to the lack of adequate coping with homophobia.

Based on the assumptions of Baumgartner and Jones's Theory of Equilibrium (1993, 2002), Ana Claudia N. Capella (2007, p. 113) points out that certain public interest issues are not automatically considered a priority at all, "For a problem to draw the attention of the government, it is necessary that an image or a consensus around a policy makes the connection between the problem and a possible solution." Thus, the "Brazil without Homophobia Program" represented the first major initiative of the public sector to guarantee the recognition of rights to LGBTs today. However, when these initiatives were considered by the Legislative, there was a strong demoralization of the projects in question, based on the construction of political discourses that promoted the non-prioritization of the agendas of these vulnerable social groups, which is responsible for producing a deadlock between the three powers of the Republic: when co-opted by the federal legislature, the Federal Executive's agenda that contemplated sexual and gender diversity was eventually leveraged, in part, by judicial decisions, which, on the one hand, guaranteed and allowed immediate access to these sexual and reproductive rights, on the other, does not solve the secular problem of the sub-citizenship of these groups.

Thus, a set of civil, political and social rights for LGBTs has been formalized through political mechanisms that are not stable in time-space, such as the Decrees of the Federal Executive, Ministerial and Interministerial Orders, and the recommendations of the institutions of the Judiciary, such as the Federal Supreme Court and the National Justice Council, which highlights the absence of the Brazilian Parliament in the promotion of rights, in the form of a law, to these collectives.

Final considerations

The regulation of sex, sexuality and gender are not recent political endeavors, they go back to the Old Age and still permeate Western culture of the present. According to Borrillo (2010), the State, the family and the Church were the principal instances of reiteration of what the author called differential heterosexualism, that is, the typical production of a model of society centered on the morality and customs of the bourgeois tradition: marriage, procreation and inheritance, pillars of contemporary capitalism. In this context, and especially since the mid-twentieth century, the emergence of LGBT movements as producers of counter-cultural uprisings has been denounced, denouncing the system of multiple oppressions and suppressions of civil and political rights that historically have affected those who have sustained a non- the majority of the expression of their sexual orientation and / or their gender identity, seeking to transcend the rigid "sex-gender" duality and recognize the ambivalence of sexual identities (LOURO, 2008; MISKOLCI, 2012; 2014, 2015). On this aspect, Alonso (2009, p.40) reports that "there is a

relationship between identity and society, between individual desire and pleasure and expected sexual roles. Such a relationship may be more peaceful or more controversial, insofar as the individual complies with or defies the agreement of the group. " Taken as standards to be obeyed, heterosexuality and the predominant manifestation of the cisgeneros eventually led to oblivion, silencing and marginalization of those who did not exercise it.

Considering this intergenerational context of legitimizing multiple injustices, this work represented the collective effort to undertake an interdisciplinary analysis that could describe how the state decision making is complex and involves the articulation of different actors, institutions and discourses, not always convergent. Therefore, it is confirmed that the Brazilian scenario was characterized by the low materialization of rights for sexual and gender diversity after 2003, and the achievements were made especially by the initiative of the Federal Executive and the Judiciary in a scenario in which the federal legislature eventually co-opted many of the priority themes of the Executive's agenda for LGBTs, given the numerous propositions - exact eleven - of Legislative Decree Provisions for the Suspension of Normative Acts of the Executive Branch (PDC) as the main strategy to counteract legislative initiatives of the Federal Executive to guarantee and redistribute rights to diversity.

The growing religious representation within the National Congress is pointed out in thesis, as a worrying factor for guaranteeing civil, political and social rights for historically vulnerable groups (IRINEU, 2014; ZAMBRANO, 2011), however, it is believed that characterizing the opposition of religious actors as the sole and / or main factor of failure of the Brazilian LGBT agenda is incomplete, after all, there are other problems arising from the relationship between the Executive and the Legislative and the forms of political participation of LGBTs that can point to credible causal theories to understand the low degree of fulfillment of these rights milestones sexual and reproductive.

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