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19 December 2005

BRA100767.E

Brazil: Treatment of gay men, lesbians and bisexuals; recourse available (2003 - 2005)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

General situation

Brazil is confronted with several contradictions in its perception and treatment of its gay and lesbian citizens (ILGA 4 Apr. 2004; Rede Social de justiça e direitos humanos n.d.). It is becoming more tolerant of homosexuality, but at the same time there have been "also some reversals and the loss of individuals of great importance to the [gay rights] Movement" (ibid.; see also ILGA 4 Apr. 2004).

Research directed by the Grupo Gay da Bahia (Gay Group of Bahia, GGB), based on newspaper reports (Grupo Dignidade 29 Nov. 2005), established that the number of murders of homosexuals in Brazil increased 27 per cent in 2004 compared to 2003 (GGB 28 Nov. 2005; O Globo 19 May 2005). According to GGB's study, there were 158 registered deaths in 2004 versus 125 in 2003 (ibid.). In correspondence with the Research Directorate, a representative of the Grupo Dignidade (Group Dignity) noted that "[t]here are no official statistics as to hate crimes against people due to their sexual orientation ... since not all the country's newspapers are monitored and only those reports that specifically mention the victim's sexual orientation are included" (29 Nov. 2005).

On 21 October 2005, Claudio Alves dos Santos, a gay activist, was murdered (Brazil 21 Oct. 2005). Due to the violent circumstances of his death and growing concern with the increase of homophobic violence in Brazil, the authorities have stated that the case will be closely followed (ibid.).

Grupo Dignidade, in correspondence dated 29 November 2005, stated that

[i]n Curitiba this year there has been an outbreak of neo-nazi anti-gay material stuck on buildings and lampposts in the city's central area and violent attacks against young gay men at night. Grupo Dignidade was sought by two such young men, one of whom was stabbed in the stomach and has a scar from his chest to his abdomen. The other was beaten in the face with a chain, causing permanent damage to one eye and the need to undergo plastic surgery. Grupo Dignidade worked with the local police on the case and several of the neo-nazi gang were caught and are awaiting trial. The police believe that there is an organised network of such gangs, operating in São Paulo and Rio de Janeiro as well.

However, the representative of Grupo Dignidade also noted that "[t]he abuse of authority and violence by police is not uncommon, especially against transgender commercial sex workers. Last year in Curitiba an underage gay youth was beaten up by on-duty policemen in the city centre in front of several onlookers" (29 Nov. 2005).

An estimated two million people danced and marched through Sao Paulo on 29 May 2005 in what was possibly the world's biggest Gay Pride Parade (CNN 30 May 2005; BBC 30 May 2005). The parade's main

theme was "the legalization of civil unions" (ibid.; CNN 30 May 2005). Pedro Almeida, a spokesman with the Brazilian Gay, Lesbian, Bisexual and Trans-gender Pride Parade Association, noted that with such a huge turnout "the parade is a major step to strike people's prejudice against gays everywhere" (ibid.).

Regarding the specific situation of lesbians, research published on 23 July 2003 and conducted by Miriam Martinho, co-founder of the first lesbian group in Brazil, established that "[t]he majority of Brazilian lesbians hide their sexual orientation from their families.... The discrimination and stigma that Brazilian lesbians experience can cause feelings of marginalization, anxiety and isolation.... Lesbians encounter violence within and outside the family" (IGLHRC 23 July 2003).

No information about the situation of bisexuals in Brazil could be found among the sources consulted by the Research Directorate.

Legal situation

Brazilian law bans discrimination based on sexual orientation and imposes sanctions for discrimination based on sex (*Country Reports 2004* 28 Feb. 2005, Sec.5). In some states, such as Bahia, Santa Catarina, Rio de Janeiro, the law can impose fines against people or institutions found guilty of anti-homosexual discrimination (Grupo Gay de Bahia n.d.d). No information on whether or not these laws have been applied was found among the sources consulted by the Research Directorate.

In 2003, at the 59th session of the United Nations Human Rights Commission, Brazil presented a resolution on "Human Rights and Sexual Orientation," calling on nations to protect the rights of all persons, "regardless of their sexual orientation" (AI 14 March 2004; HRW 11 Mar. 2004). The resolution was presented again in 2004 (ibid.). In 2003 and 2004, due to pressure brought from some countries, the vote on this resolution was postponed and was to be reintroduced again in 2005 (Rede Social de justiça e direitos humanos n.d.; CNS 30 Mar. 2004; ILGA 12 May 2005).

According to the Centro latino americano em sexualidade e direitos humanos (CLAM), Brazil "has shown a high degree of institutional protection" (n.d.).

- From 12 to 16 May, Brazilian activists and political leaders met to plan the presentation of the UN gay rights resolution and to discuss plans to actively promote the rights of the homosexual community in Brazil (LifeSite 20 May 2004).
- In May, the government launched a plan called "Brazil without Homophobia, ... a National Program for Combating Violence and Discrimination Against Gays, Lesbians, Transgenders and Bisexuals (GLTBs) and for the Promotion of the Citizenship of Homosexuals" (Brazil 20 Oct. 2005; CLAM n.d.; ILGA 4 Apr. 2004). The program "is focused on the defense of rights of the LGBT community" (ILGA 4 Apr. 2004).
- In March, a panel of judges in the southern state of Rio Grande do Sul allowed same-sex unions to be registered in a ruling that "gives same-sex couples broad rights in areas like inheritance, child custody insurance benefits and pensions. ... [C]ivil unions between homosexual couples [were] not recognised officially in Brazil" (BBC 5 Mar. 2004).
- Since 2004, "Brazil recognises stable same-sex unions between a Brazilian person and a foreigner as being sufficient grounds for immigration of the foreign partner on a permanent basis" (Grupo Dignidade 29 Nov. 2005).

In contrast to these measures adopted by the Brazilian government, in November 2004, the Christian Democrat Deputy Edino Fonseca of Rio De Janeiro drafted a bill to set up an "'aid program for persons who voluntarily opt to change sexual orientation from homosexuality to heterosexuality'" (AFP 13 July 2004; *The Independent* 29 Aug. 2004; Rede Social de justiça e direitos humanos n.d.). In addition, Federal Deputy Elimar Maximo Damasceno proposed a law prohibiting persons of the same sex to kiss in public (ibid.). A representative of the Grupo Dignidade stated in correspondence with the Research Directorate that "the Brazilian National Congress is dominated by conservative legislators. Bills to promote equal rights are boycotted both by fundamentalist evangelical and Catholic congressmen and women" (29 Nov. 2005).

In January 2005, a federal prosecutor, Joao Gilberto Goncalves Jr. "asked a judge to order justices of the peace throughout Brazil to perform same-sex marriages ... a move likely to stir controversy in the world's largest predominantly Roman Catholic country" (AP 20 Jan. 2005; Gay.com UK and Ireland 28 Feb. 2005; *The Miami Herald* 20 Jan. 2005). On 28 June 2005, according to an article published by *Brazil Magazine*, this bill was already in Congress and was waiting to be discussed (28 June 2005). No further information or whether or not the bill has been accepted by Brazilian Congress could be found among the sources consulted by the Research Directorate.

Regarding the situation of lesbians in Brazil, Miriam Martinho noted that sexual relations between women are allowed under Brazilian law. However, there are some laws that can be used against lesbians:

1. Violent sexual assault (Article 214 of the Penal Code): "To coerce someone, using violence or serious threat, to practice or allow that a libidinous act with him/her distinct from a carnal union be practiced. Carnal union is understood here as heterosexual intercourse." Sentence: two to seven years in prison.
2. Sexual assault by fraudulent means (Article 216 of the Penal Code): "To induce an innocent woman by means of fraud, to practice or allow that a libidinous act distinct from a carnal union be practiced with her." Sentence: one to two years in prison, in the case where a victim is over age 18; from two to four years if the victim is under 18.
3. Corrupting a minor (Article 218 of the Penal Code): "Corrupting or facilitating the corruption of a person older than 14 and under 18 years of age, practicing libidinous acts with her or coercing her to practice them or witness them." Sentence: one to four years in prison.
4. Abduction (Articles 219-222 of the Penal Code) "To abduct an innocent woman using violence, serious threat, or fraud for libidinous aims." Sentence: two to four years in prison. If the woman in question is 14 to 21 years old, her family can allege that abduction has occurred regardless of whether the woman acted under her own free will. Sentence: one to three years.
5. Obscene Act (Article 233) "The practice of an obscene act in a place that is public or openly exposed to the public." Sentence: three months to one year (IGLHRC 23 July 2003).

Grupo Dignidade noted, in correspondence with the Research Directorate, that "even though the country's laws are slow to accompany social reality as far as (GBLT) are concerned, several important victories have been won in the courts, thereby creating jurisprudence that often helps other people to win their cases too" (29 Nov. 2005). For example, homosexuals have won the right to receive their partners' social security benefits and pensions after their partners die (Grupo Dignidade 29 Nov. 2005).

Non-governmental organizations (NGOs)

The Grupo Gay da Bahia (GGB), located in Bahia, is an association promoting human rights for homosexuals in Brazil (GGB n.d.a). The association is dedicated to defending the rights of Brazilian gays, lesbians, bisexuals and transsexuals and fighting against any form of discrimination against them (ibid.). GGB organizes diverse meetings and informative lectures and helps the victims of discrimination through support and information on services regarding avenues of recourse. This organization provides the names of 60 organizations for gays, lesbians and transsexuals in Brazil on their Website, located at <<http://www.ggb.org.br/grupgays.html>> (GGB n.d.b). GGB's Website provides information on cultural events, Brazilian legislation and GGB's publications (GGB n.d.c). It also publishes news, studies, articles and links to other international gay, lesbian, bisexual and transsexual associations (ibid.).

The Grupo Dignidade (Group Dignity) operates in the capital of the southern Brazilian state of Paraná, Curitiba to protect and promote the rights of gay, lesbian and transgendered people (Grupo Dignidade 29 Nov. 2005).

The Instituto PROMUNDO is a Brazilian non-governmental organization (NGO) that works "to promote sexual and reproductive health among adolescent males" (RHO n.d.; KIT n.d.). The Institute works with males 15 to 24 years of age, through a number of projects (ibid.; RHO n.d.).

According to Miriam Martinho, there are several lesbian groups focussed on human rights for gays and lesbians in Brazil: Um Outro Olhar (Other look), Afins (Desire) in Santos, Coletivo de Feministas Lesbicas Lesbian Feminist Collective), Deusa Terra (Earth Goddess) and Estação Mulher (Women's Season) in Sao Paulo, Colectivo de Lesbicas (Lesbian Collective) in Rio, and Grupo Lesbico da Bahia (Lesbian Group of Bahia) in Salvador (IGLHRC 23 July 2003).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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