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03 September 2008

BRA102903.E

Brazil: The situation of homosexuals; availability of support groups and state protection
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Legal Rights of Homosexuals

In a May 2008 global survey of laws on homosexuality, the International Lesbian and Gay Association (ILGA) notes that homosexual acts have been legal in Brazil since 1831 (ILGA May 2008, 45) and that discrimination based on sexual orientation is prohibited by Brazil's constitution (*ibid.*, 47). In a survey conducted in 2006, Amnesty International (AI) indicates that "[a]nti-discrimination and anti-vilification laws" exist in some states (AI July 2006). With respect to employment matters, discrimination on the basis of sexual orientation is prohibited in several states including in Bahia, the Federal District, Minas Gerais, Paraíba, Rio de Janeiro, Rio Grande do Sul, Santa Catarina and Sao Paulo (ILGA May 2008, 46).

Legislation is pending on several proposals that affect the gay, lesbian, bisexual, transsexual and transgender (GLBT) community (UN Feb. 2008, notes 30 and 31). The proposals include legal recognition of civil partnerships between same sex couples (PL No. 1.151/95), criminalization of homophobia (PL No. 5.003/2001), authorization of change of given name of transsexual and transgender individuals (PL No. 6655/2006) and the establishment of a "National Day of Fight Against Homophobia" (PL No. 81/2007) (*ibid.*).

State Commitment to GLBT Rights

In June 2008, President Luiz Inácio Lula da Silva (President Lula) inaugurated the "First National Conference of Gays, Lesbians, Bisexuals Transvestites and Transsexuals", where he expressed his support for gay rights and called for a "time of reparation" (Pink News 11 June 2008). The conference was reported to be the first in the world to be convened by a government for the purpose of promoting GLBT rights (*ibid.*; *Christian Post* 15 June 2008; AI May 2008).

The "Brazil without Homophobia Program," a government-led initiative created to promote homosexual "citizenship" and eliminate discrimination against the GLBT community, resulted in the creation of 47 Human Rights Reference Centers aimed at preventing and fighting against homophobia (UN Feb. 2008, Sec. 3.13). The centres offer legal, psychological and social services and are available in all states in Brazil (*ibid.*). *Country Reports on Human Rights Practices for 2007* adds that in 2007, the government of the state of Rio de Janeiro created a support program for sexual minorities, which includes counselling services, medical assistance, rights defence and witness protection (US 11 Mar. 2008, Sec. 1c).

Brazil has also been an active promoter of GLBT rights on the international stage; in 2003 Brazil introduced the first resolution to the United Nations Commission on Human Rights (UNHCHR) calling for the protection of "the human rights of all people regardless of their sexual orientation" (AI 14 Mar. 2004). In addition, another Brazilian sponsored resolution, the "Resolution on Human Rights, Sexual Orientation, and Gender Identity," was adopted by the Organization of American States (OAS) on 3 June 2008 (HRW 6 June 2008).

A proposal to criminalize homophobia means that anyone convicted of "preaching" (Pink News 22 Mar. 2007) or "teaching" (LifeSiteNews.com 22 Mar. 2007) against homosexuality could be subject to a prison term of between two to five years if the legislation is passed (ibid.; Pink News 22 Mar. 2007). In expressing his commitment to "do all that is possible" to criminalize homophobia, President Lula was quoted as stating that homophobia is "the most perverse disease impregnated in the human head" (Pink News 11 June 2008; *The Christian Post* 15 June 2008). The global coordinator for the World Congress of Families expressed concern that the proposal could facilitate the suppression of "free speech" (ibid.) and concerns have also been raised about the implications for "religious persecution" (Pink News 22 Mar. 2007).

President Lula also made a public commitment in favour of legalizing civil unions between same sex couples (ibid. 11 June 2008). The only state in Brazil where same sex partnerships are legally recognized is Rio Grande do Sul, where committed couples may register at a notary public office and be granted the right to joint property ownership, shared custody of children and pension and property entitlement upon the death of the other partner (ibid. 26 Mar. 2008). In a precedent-setting court ruling in Rio Grande do Sul in March 2008, a homosexual man was awarded a share of his partner's assets, even though the two men did not cohabit and the partner was a married American citizen (ibid.).

Sex-change operations are available at no cost through Brazil's national public health care system following a court order issued in August 2007 (AP 17 Aug. 2007).

The Situation of Homosexuals Living in Brazil

In *Country Reports 2007*, the United States (US) Department of State maintains that in general, laws prohibiting discrimination based on sexual orientation are upheld by federal and state officials (US 11 Mar. 2008, Sec. 1c).

Sao Paulo hosts what is considered the world's largest pride parade (Pink News 26 May 2008; Reuters 25 May 2008). On 25 May 2008, the event attracted an estimated crowd of between one to five million participants (ibid.) and generated substantial economic benefits, including the creation of "thousands" of jobs (Pink News 26 May 2008). The Tourism Minister was supportive of the event, reportedly stating that "this is the diversity the country wants" (ibid.; Reuters 25 May 2008).

Nevertheless, discriminatory attitudes have been reported among persons of authority, including a judge who could face disciplinary action over statements he made suggesting that homosexuals should not play soccer (Pink News 16 Aug. 2007; BBC 4 Aug. 2008; AP 14 Aug. 2007). In a separate incident, controversy arose when an army sergeant was arrested by military police following a televised interview in which he appeared publicly with his partner to discuss their same sex relationship (Pink News 6 June 2008; AFP 6 June 2008). The army maintains that the sergeant was arrested for being absent without authorization, whereas the sergeant claims to be a victim of sexual discrimination (ibid.; Pink News 6 June 2008).

Despite legal protections for GLBT persons, AI notes that there are "high levels of homophobic violence" in Brazil (AI July 2006). In its report on the Universal Periodic Review to the Human Rights Council of the United Nations (UN), the government of Brazil corroborates this fact, noting that homosexuals are "frequent targets of [violent] acts and homicides" (UN Feb. 2008, Sec. 3.13).

According to a non-governmental organization (NGO) called Bahian Gay Group (Grupo Gay de Bahia), which is the oldest gay rights organization in Brazil (HRW 27 July 2007), the number of reported killings of sexual minorities in 2007 totalled 116, and included 83 homosexuals, 30 transvestites and 3 lesbians (US 11 Mar. 2008, Sec. 1c). Sixty percent of the reported killings occurred in the northeast region of Brazil (ibid.). Estimates of the number of homosexual murder victims between 1980 and 2006 range from 2,680 (Pink News 12 Feb. 2008) to 2,790 (UN Feb. 2008, Sec. 3.13). However, between 1980 and 2002, figures collected by the Mortality Information System of Brazil's Ministry of Health indicate that the homicide rate for the entire country rose from 11.4 per 100,000 population to 28.4 per 100,000 population, with a total figure of 249,570 recorded homicides for the year 2002 alone (US 5 Mar. 2004).

In September 2007, the winner of a local "Miss Gay" competition was found murdered in a town in northeast Brazil (Pink News 19 Sept. 2007), and in February 2008, the president of Sao Paulo's Gay Pride Association was beaten unconscious by "an unknown number of attackers" (ibid. 12 Feb. 2008). A special police unit called the "Racial Crimes and Crimes of Intolerance Division" was assigned to investigate the latter incident (ibid.).

Other Support Groups

In addition to the Bahian Gay Group, Human Rights Watch (HRW) lists six other organizations that serve the GLBT community in Brazil on its website (HRW 27 July 2007). One of these organizations, the Brazilian Gay, Lesbian, Bisexual, Transvestite and Transsexual Association (Associação Brasileira de Gays, Lésbicas, Bissexuais, Travestis e Transexuais, ABGLT), is the largest GLBT network in Latin America, consisting of 141 GLBT support groups in addition to 62 other organizations that collaborate on AIDS and human rights issues (ABGLT n.d.). An application by the ABGLT for consultative status at the UN was debated at the 29 May - 6 June 2008 session of the NGO Committee of the UN, a body of 19 member states representing "all regions," and will be given further consideration in January 2009 (Pink News 9 June 2008).

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 sources consulted in researching this Information Request.

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