



ASSOCIAÇÃO BRASILEIRA DE GAYS, LÉSBICAS, BISSEXUAIS,  
TRAVESTIS E TRANSEXUAIS

## CONTRIBUTION BY ABGLT – BRAZILIAN GAY, LESBIAN, BISEXUAL AND TRANS ASSOCIATION – TO THE UNIVERSAL PERIODIC REVIEW

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### About ABGLT:

ABGLT<sup>1</sup> – the Brazilian Gay, Lesbian, Bisexual and Trans Association – founded in 1995 – is a national network, present in all of Brazil's states, having 204 member organizations (*appendix 01 and 01a*), comprised of 144 gay, lesbian, bisexual and trans organizations, and a further 60 collaborating organizations involved in defending human rights relating to sexual orientation and gender identity. It is the largest GLBT<sup>2</sup> network in Latin America.

ABGLT's mission is *"to promote the citizenship and defend the rights of gay men, lesbians, bisexuals and trans persons, contributing towards the construction of a democracy free from all forms of discrimination, affirming free sexual orientation and gender identity."*

In Brazil much progress has been made throughout the history of the GLBT Movement (which has been in existence for approximately 27 years) towards ensuring that gay men, lesbians, bisexuals and trans persons can live with the same dignity and respect to which all people have a right. However, as aptly pointed out by the Principles of Yogyakarta<sup>3</sup>, which have been widely supported and publicized by the Brazilian government: *"human rights violations targeted toward persons because of their actual or perceived sexual orientation<sup>4</sup> or gender identity<sup>5</sup> constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability, or economic, social or other status."*

In the survey entitled "Youth and Sexuality"<sup>6</sup> undertaken in schools in 14 Brazilian state capitals (Belém, Cuiabá, Distrito Federal, Florianópolis, Fortaleza, Goiânia, Maceió, Manaus, Porto Alegre, Recife, Rio de Janeiro, Salvador, São Paulo and Vitória) it was noted that *"violence against homosexuals, contrary to violence of other kinds, such as that relating to racism and sexism, is not only more openly displayed, in particular by young students, but also valued among them, which suggests a standard of masculinity defined by stereotypes and a fear of strangeness, or others, at close quarters, and who must not be confused with oneself"*.

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<sup>1</sup> For further information, visit [www.abgl.org.br](http://www.abgl.org.br)

<sup>2</sup> Abbreviation referring to gay men, lesbians, bisexual and trans person identities.

<sup>3</sup> The address of the Yogyakarta Principles' site is [http://www.yogyakartaprinciples.org/principles\\_sp.htm](http://www.yogyakartaprinciples.org/principles_sp.htm) and the text of the Principles is available at [http://www.yogyakartaprinciples.org/docs/File/Yogyakarta\\_Principles\\_EN.pdf](http://www.yogyakartaprinciples.org/docs/File/Yogyakarta_Principles_EN.pdf)

<sup>4</sup> Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. (Yogyakarta Principles, 2006)

<sup>5</sup> Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. (Yogyakarta Principles, 2006)

<sup>6</sup> ABRAMOVAY, Mirian; CASTRO, Mary Garcia; SILVA, Lorena Bernadete da. *Juventudes e Sexualidade*. Brasília: UNESCO, 2004



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According to Guacira Louro Lopes<sup>7</sup> "*homophobia, (...) can also express itself as a kind of terror in relation to the loss of gender, i.e., the terror of no longer being considered as a real or authentic man or woman.*"

When the students in the survey referred to above were asked whom they would not like to have as colleagues in the classroom, approximately ¼ of the 16,422 students interviewed said that they would not like to have a homosexual as a class colleague.

When asked to indicate what they considered to be the five most serious forms of violence, teenage boys and girls selected the same items, with one notable exception: the issue of aggression against homosexuals. Beating up homosexuals was classified by the girls as the third most serious form of violence, whereas for the boys it came in sixth place, thus not even being included among the five most serious for them.

In Brazil homophobia<sup>8</sup>, like racism, sexism and xenophobia, are everyday illnesses that democratic societies have attempted to combat, placing respect for plurality as a common objective. The process of globalization is often opposed to diversity, and for this reason democratic social projects define diversity as a something precious to be promoted. Our society behaves and educates as if there were only one way to love (normal and recommendable). Heteronormativity generates social injustice and inequality, violating human rights, since it is based on the partial or total denial of the humanity of the "other". Homophobia is part of the hard core of heteronormativity, and forms a strategy of social control that permits discrimination against and the subalternity of those who break away from the heterosexual model. Combating homophobia and educating for sexual diversity is a question of democratic prophylaxis.

According to Mirian Maluwa<sup>9</sup> "*international human rights law protects all persons equally, without distinction or discrimination. The broad range of human rights- civil, political, economic, social and cultural- should be equally enjoyed by all groups of individuals. The protection of the basic human rights of men who have sex with men is therefore, grounded in a human rights framework that all people are worthy of equal respect and dignity whatever their situation. (...)*

*As members of the United Nations the States are bound to respect, protect and fulfil human rights<sup>10</sup>. The obligation to respect implies that the States should abstain from interfering directly or indirectly in the exercising of human rights.<sup>11</sup>*

In the light of the above, we wish to request that as part of Brazil's Universal Periodic Review the agenda of those who defend the human rights of GLBT be analysed taking into consideration three issues which we consider to be essential and in relation to which we request OHCHR intervention / action in relation to the Brazilian Government.

### **Progress, regression and challenges in the Brazilian context:**

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<sup>7</sup> LOURO, G.L. *Gênero, sexualidade e educação: uma perspectiva pós-estruturalista*. 2.ed. Rio de Janeiro: Editora Vozes Ltda., 1997.

<sup>8</sup> According to Borrillo, in *Homofobia*, Bellaterra, 2001 – Homophobia is the intolerance, rejection, fear, prejudice and persecution of people who do not abide by the predominant male gender role, by the role culturally established for men and women by male power.

<sup>9</sup> MALUWA M., A Rights Based Framework for Preventing the Transmission of HIV among Men Who Have Sex With Men, WHO/UNAIDS, 2002.

<sup>10</sup> See Committee on Economic, Social and Cultural Rights, General comment 14. The right to the highest attainable standard of health adopted 11 august 2000.E/C. 12/2000/4,#34-37. See also <http://www.unhchr/html/menu2/6/cescr.htm>

<sup>11</sup> For example, refraining from identifying or limiting equal access of all persons, including men who have sex with men (...) or abstaining from enforcing discriminatory practices as State policy.



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**1) Brazil without Homophobia:**

ABGLT recognizes in a considerably positive way the efforts made by the Brazilian government in launching the Brazil Without Homophobia Programme in 2004<sup>12</sup> (*appendix 02*) following a series of discussions between the government and civil society, with the aim of promoting GLBT citizenship, by ensuring equal rights and combating homophobic violence and discrimination. However, ABGLT also recognizes that there is still much to be done to make the Programme effective and produce real changes for this community, since, to use a metaphor, a glass containing water up to the middle can often either be a half-full glass or a half-empty one.

It is expected that the interministerial integration proposed by the Programme, in partnership with the GLBT movement, should prosper and advance in the implementation of new parameters for the definition of public policies, including in an ample and dignified manner millions of Brazilians who are treated like second class citizens, since our legal system at the federal level does not have any laws that promote or protect the rights of gay men, lesbians, bisexuals or trans persons.

**Among the various actions that need to be undertaken in order for the Programme's objectives to be achieved, we would highlight: a) support to projects intended to strengthen both public and non-governmental organizations that work to promote GLBT citizenship and/or to combat homophobia; b) capacity-building for professionals and representatives of the GLBT movement who work to defend human rights; c) dissemination of information about rights, and to promote GLBT self-esteem; and d) encourage the reporting of human rights violations in relation to GLTB.**

We also need the various Ministries to incorporate the Brazil Without Homophobia Programme into their agendas in an organic manner, thereby generating State policies for the GLBT population, and not just government policies which may not be adopted and fail to become enduring, so that the defence of the human rights of GLBT are truly incorporated.

**2) Extrajudicial executions of GLBT and impunity with regard to the crimes committed:**

Professor Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions visited Brazil at the beginning of November 2007 to inquire into the phenomenon of extrajudicial executions, and in his press statement (*appendix 03*) he made the following revelation "***In Rio de Janeiro and São Paulo, only about 10% of homicides are tried in the courts; in Pernambuco it is about 3%. Of that 10% tried in São Paulo, about 50% are actually convicted***".

**In Brazil we do not have institutional research carried out by the Federal Government to quantify the execution of GLBT.** The data that is available is the result of work done by the Grupo Gay da Bahia which systematizes information provided by GLBT groups in the 27 Brazilian states derived from local newspaper reports on the execution of members of our community<sup>13</sup>. **2.745 GLBT were murdered in Brazil between 1980 and June 2007, for the most part victims of homophobic crimes**

<sup>12</sup> [http://www.presidencia.gov.br/estrutura\\_presidencia/sedh/brasilem/](http://www.presidencia.gov.br/estrutura_presidencia/sedh/brasilem/)

<sup>13</sup> See the complete report in <http://www.ggb.org.br/assassinatos2005.html> and <http://www.ggb.org.br/assassinatos2005c.html>



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**in which the hatred of homosexuality is manifested through the cruelty that characterizes these homicides.**

The Third National Report on Human Rights in Brazil (2005), which focuses on the period 2002-2005, produced using information collected by the University of São Paulo Violence Studies Centre (NEV-USP) and by the Teotônio Vilela Human Rights Commission (CTV) from national and foreign governmental and non-governmental organizations, states that "the number of homosexuals murdered in Brazil ranged between 126 in 2002, 125 in 2003, and 157 in 2004. This figure reduced significantly to 78 in 2005, but it must be stated that many states do not have in-depth information on the murder of homosexuals."<sup>14</sup>

An example of a crime of this nature, committed in the town of Montes Claros in the State of Minas Gerais and characterized by cruelty, is the murder of the dancer Igor Xavier<sup>15</sup> on March 1<sup>st</sup> 2002. Ricardo Athayde Vasconcelos, who confessed to the crime, having his son, Diego Athayde, as his accomplice, first tortured and then killed Igor by shooting him five times. The crime happened in an apartment block in the centre of the town. Other people who live in the same block and neighbours repeatedly called the police. But the police did not come to the scene of the crime. The murderers dragged the body down three flights of stairs, in total disrespect, put it into the car boot and threw it onto the roadside outside of the town, where they threw away their arms and fled to the state capital of Belo Horizonte. The police only arrived in the morning when the murderers were well on their way to safety in the capital. To this day the defendants have not been tried.

Professor Philip Alston said in his statement that "*I should emphasize that human rights law not only prohibits governments from committing extrajudicial executions, but that it also requires governments to protect their people from murderers. Indeed, one of the central pillars of the idea of human rights has always been the right to life and the freedom from fear.*"

We therefore request that as part of the Universal Periodical Review process the OHCHR urges the Brazilian Government to approve legal mechanisms to inhibit impunity and protect the GLBT community.

**3) Civil Partnership between people of the same sex, pending in the National Congress for 12 years:**

If the rights of minorities and respect for differences are prerequisites of democracy, prejudice and discrimination towards homosexuals must be seen as a form of violence and a backward step for our culture, needing to be combated by all those who engage in the construction of a just and humane society.

**Ever since October 26th 1995, Bill No. 1151/1995 (*appendix 04*) concerning Civil Partnership between people of the same sex has been ready to be voted by the House of Representatives. It has not been voted owing to non-republican interferences by representatives who do not respect the fact that Brazil is a Lay State and invoke religious issues when legislating on civil rights, including the human rights of millions of Brazilian GLBTs.**

<sup>14</sup> MESQUITA NETO, P; ALVES, R. 3º **Relatório Nacional de Direitos Humanos**. São Paulo: Universidade de São Paulo, Núcleo de Estudos da Violência, 2007. 584 p. Relatório.

<sup>15</sup> See

[http://64.233.169.104/search?q=cache:JAJa2WLxv88J:www.onorte.net/noticias.php%3Fid%3D8690+%22Igor+Xavier%22&hl=pt-BR&ct=clnk&cd=6&gl=br&lr=lang\\_pt](http://64.233.169.104/search?q=cache:JAJa2WLxv88J:www.onorte.net/noticias.php%3Fid%3D8690+%22Igor+Xavier%22&hl=pt-BR&ct=clnk&cd=6&gl=br&lr=lang_pt)



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The recognition of civil union between homosexuals represents progress in terms of reducing the intolerance present in the history of the human race and is an example of successful resistance to oppression which, in all its forms, has produced historical and cultural ruptures through the ages.

Given this inertia on the part of the House of Representatives, the Attorney General of the Republic, Antonio Fernando Souza, is analysing a request for his Office to file a suit in the Federal Supreme Court claiming Failure to Abide by Fundamental Precepts (constitutional precepts), so that stable unions between people of the same sex be recognized as families.

The state attorneys claim that the failure to recognize gay and lesbian civil union deprives homosexual couples of their patrimonial rights (maintenance allowance, inheritance, joint income tax declaration, etc.) and non-patrimonial issues, such as damaged self-esteem, public disparagement, human rights violation and homophobia.

According to the state attorneys, Article 226, paragraph 3, of the Brazilian Constitution<sup>16</sup> provides for stable union between a man and a woman, but does not prohibit union between people of the same sex. Their report states: *"given the lack of a law that regulates civil union between people of the same sex, such unions should be governed, by analogy, by the rules that govern stable union between a man and a woman"*.

**It is our understanding that the denial of this right to homosexual couples is a human rights violation. The State's obligation to protect its GLBT citizens should bind the State to adopting legislative, judicial and other measures necessary for all citizens to have full access to their human rights.**

We remain at your disposal to answer any queries that may arise and trust that our contribution will be considered in the review which will be concluded in 2008.

Yours sincerely,

São Paulo, November 20th 2007.

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President - ABGLT

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<sup>16</sup> Paragraph 3: For the purpose of protection by the State, stable union between a man and a woman is recognized as forming a family, and the law must facilitate its conversion into marriage.