

# RIGHTS OF THE LGBTQIA+ POPULATION IN BRAZIL

PARLIAMENTARY OBSERVATORY OF THE UNIVERSAL PERIODIC REVIEW\*

## RECOMMENDATIONS TO BRAZIL

3RD CYCLE OF THE UNIVERSAL PERIODIC REVIEW (2017 - 2021)

**11** Recommendations

3  in progress

2  in retrogression

6  not fulfilled

In connection to the following sustainable development goals:

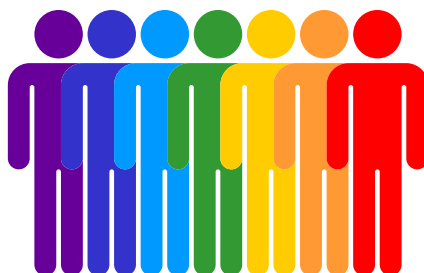


## LEGAL SANCTIONS FOR DISCRIMINATION AGAINST LGBTQIA+ PEOPLE

### ACTIONS FROM THE JUDICIARY



**ADO No. 26/2019** – The Direct Action of Unconstitutionality by Omission (ADO) No. 26/2019, which equated homophobia with the crime of racism, can be considered the most forceful measure of the Brazilian State in recent years to combat discrimination against LGBTQIA+ people.



\* The Observatory is a government mechanism to monitor the effectiveness of the recommendations made to Brazil in order to improve our human rights situation. It is a partnership between the House of Representatives and the United Nations in Brazil (UN Brazil)



Within the scope of this ADO (Direct Action Based on Unconstitutionality due to Omission), the Federal Supreme Court (STF) recognized the existence of **“serious offenses against the fundamental rights” of LGBTQIA+ people** as a result of “unreasonable delays necessary for the implementation of the constitutional commandments of criminalization established by the constitutional text”.

The main grounds for the decision was **item XLI of art. 5 of CF/1988**, which states that the **“law will punish any discrimination that violates fundamental rights and freedoms”**.

The American Convention on Human Rights was also mentioned, since § 5 of its art. 15 states that **“the law must prohibit any propaganda in favor of war, as well as any condemnation of national, racial or religious hatred that constitutes incitement to discrimination, hostility, crime or violence”**.

As a result of the measure, the STF informed the National Congress of its “unconstitutional state of default” and **determined the immediate framing of the practices of “homophobia and transphobia”**, through interpretation according to the Constitution, according to the concept of racism provided for in Law No. 7.716/1989.

The court also defined that, in the event of intentional homicide, **“homophobia and transphobia” would be qualifying circumstances**, as they constitute gross motives under the terms of item I of § 2 of art. 299 of the Brazilian Penal Code.



## ACTIONS FROM THE LEGISLATIVE BRANCH



**Bill No. 7,582/2014** – Bill No. 7,582/2014 – The bill, which is pending at the House of Representatives, defines crimes of hatred and intolerance, including those based on victims' sexual orientation and gender identity, and was approved by the Commission on Human Rights and Minorities of the House.



However, it still doesn't constitute a formal commitment by the Brazilian Congress since there is still a long way ahead until the final approval of the bill.



# ISSUES RELATED TO VIOLENCE AGAINST THE LGBTQIA+ POPULATION

## INTERSEX PEOPLE<sup>1</sup>

Suffer recurrent violation of **rights to civil registration** because their sex is not strictly defined as male or female. In addition, intersex children can undergo **arbitrary and early surgeries**, due to alleged problems of undefined sex, which could cause deep physical and psychological damage to them and their guardians.

This surgical practice is based on a Resolution from the Federal Council of Medicine No. 1.664/2003, which is considered **outdated today**.

It may generate consequences even for these people's legal guardians, due to **difficulties in accessing rights** such as maternity leave.



### RED FLAGS:

- Lack of regulations that ensure the rights of intersex people at SUS (Unified Public Health System), limiting their access to health and the recognition of their specificities in health treatments.
- Absence of actions from any of the public powers for the protection of the rights of this segment.

### PROTECTIVE ACTIONS:

**ADPF No. 787/2021** – At the final judgment of this action's precautionary measure, Minister Gilmar Mendes determined, among other provisions, that the Ministry of Health “make **all necessary changes to SUS information systems**, so that appointments and examinations of all medical specialties are made **regardless of the registered biological sex**”.

**Provision No. 122/2021 of the CNJ** – The plenary of the National Council of Justice approved this measure that modified the possibilities for the **designation of sex** at the **civil registry at the birth of individuals** and in **their death certificate**.

## ATTACKS ON POLITICAL PARTY LEADERS

The Brazilian Association of Lesbians, Gays, Bisexuals, Transvestis, Transgender and Intersex people (ABGLT) reported cases of murders of their leaders, mostly trans women and travestis.

The same association recommended the effective implementation of the National Plan for the Protection of Human Rights Defenders, expansion of its budget and structure and creation of a LGBTQIA+ section within the Plan, among other suggestions.

According to a report by the Marielle Franco Institute on the **political violence suffered by black candidates**, among the candidates who denounced episodes of racism or LGBT phobia, 70% “said that the denunciation and referral of the case to the authorities did not bring more security for the exercise of their political activity”.

<sup>1</sup>According to the presidency of the Brazilian Association of Intersex people (ABRAI), at the occasion of the public hearing held at the Commission on Human Rights and Minorities of the Chamber of Deputies, on June 18, 2021.

# RECORDS OF HUMAN RIGHTS VIOLATIONS OF LGBTQIA+ PEOPLE



There is **currently** no active dissemination of data by the Ministry of Health regarding the violence suffered by the LGBTQIA+ population or of any comprehensive strategies for the dissemination of adequate data collection in the health system. In the absence of a consolidated registry system of homo-transphobic crimes by the Brazilian State, civil society entities have collected data on murders and other types of violence against LGBTQIA+ people in the country, such as the Gay Group of Bahia and the National Association of Travestis and Trans people (**Grupo Gay da Bahia** e a **Associação Nacional de Travestis e Transexuais**).

Data from the Information System of Notification Grievances (Sinan) 2015-2017



There were 24,564 notifications of violence against LGBTQIA+ people registered

Besides pointing out an **absolute high number of self-inflicted injuries in LGBTQIA+ adolescents...**<sup>2</sup>

The **victims** with the most notifications of violence are:



- lesbians
- transgender women
- black people and
- people with a low levels of education

## STATES AND CRIMINAL RECORDS AGAINST LGBTQIA+ PERSONS

Until 2018



10 states presented records of **intentional homicides**  
9 states reported occurrences of **intentional body injuries**

In 2019



15 states presented records of **intentional homicides**  
14 states reported occurrences of **intentional body injuries**



Data from the Brazilian Public Security Forum<sup>3</sup>

Between June 2019 and June 2020

Of the **161** occurrences of **homophobic and transphobic crimes**



Only **16 states** had statistics

<sup>2</sup> PINTO, Isabella Vitral et al. Profile of notifications from lesbians, gays, bisexual, transvesti and transgender people registered in the Information System for Notification Grievances, Brazil, 2015 to 2017. **Revista Brasileira de Epidemiologia**, v. 23, 2020.

<sup>3</sup> FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA (BRAZILIAN FORUM OF PUBLIC SECURITY). **Anuário Brasileiro de Segurança Pública 2020 (Brazilian Public Security Yearbook 2020)**. Available at: <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>. Accessed on: 5/24/2021.

<sup>4</sup> As available in GONÇALVES et al. **A violência LGBTQIA+ no Brasil**. São Paulo: Clínica de Políticas de Diversidade da FGV Direito SP, 2020. Available at [https://www.fgv.br/mailling/2020/webinar/DIREITO/Nota\\_Tecnica\\_n.pdf](https://www.fgv.br/mailling/2020/webinar/DIREITO/Nota_Tecnica_n.pdf). Accessed on: 6/3/2021.



### Bottlenecks in data collection:

- Absence of a standardized model to register occurrences in order to examine what drives LGBTphobia;
- The non-compulsory completion of the motivation fields, which leads to the lack of specific data on the motivations driving LGBTphobia;<sup>5</sup>
- Difficulties in research, because there is no criminal offence named "homophobia, LGBTphobia or transphobia";
- Prejudice from health professionals;
- Lack of knowledge about equity policies carried out within the scope of SUS;<sup>6</sup>
- The Brazilian Institute of Geography and Statistics (IBGE) does not systematically produce demographic data on the LGBTQIA+ population;
- The Ministry of Women, Family and Human Rights (MMFDH) did not manage to include questions of interest to the LGBTQIA+ population in the next IBGE census.<sup>7</sup>



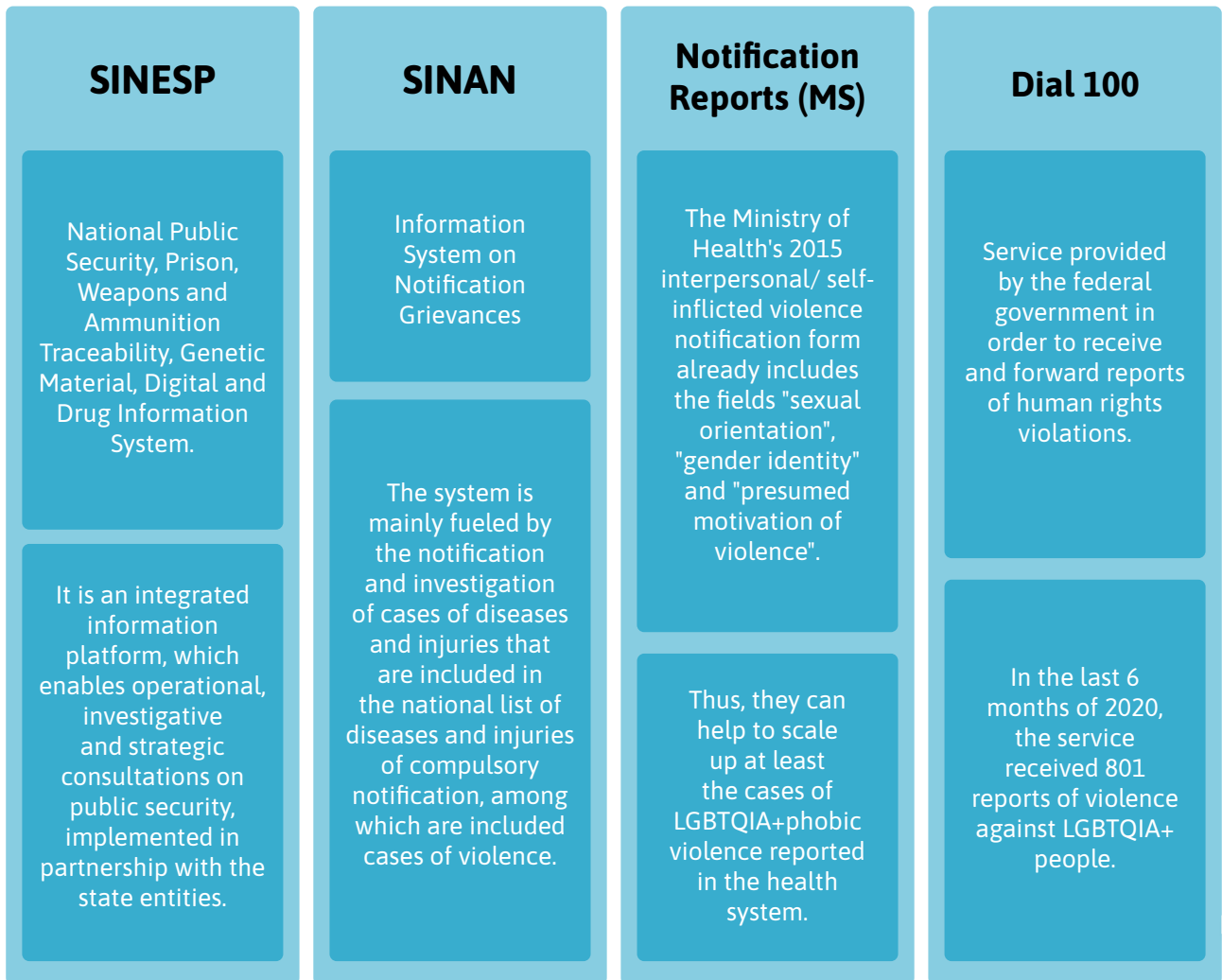
<sup>5</sup> Idem.

<sup>6</sup> PINTO, Isabella Vitral et al. Profile of notifications from lesbians, gays, bisexual, transvesti and transgender people registered in the Information System for Notification Grievances, Brazil, 2015 to 2017. **Revista Brasileira de Epidemiologia**, v. 23, 2020.

<sup>7</sup> Available at: [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra?codteor=2023908&filename=Tramitacao-RIC+494/2021](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2023908&filename=Tramitacao-RIC+494/2021).

Accessed on: 02/10/2022.

Existing systems and tools for data collection.



Although there may have been efficiency gains in hiring the Dial 100 service provider, the reduction in the amounts paid for its scope **between 2018 and 2020** should be highlighted, as it points towards possible harm to protecting LGBTQIA+ human rights and other segments of the Brazilian population.



# POSSIBLE STRATEGIES FROM THE LEGISLATIVE BRANCH TO IMPROVE THE REGISTRY SYSTEM



A public hearing was held including the IBGE, the National Secretariat of Public Safety, the Ministry of Health's Health Surveillance Secretariat, the Ministry of Women, Family and Human Rights, specialists and social movements and other civil society entities to discuss the improvement of the systems and instruments that were mentioned, including evaluating implementation through legislation, such as creating a National Information System for LGBTQIA+ people.



Provision in federal law of the fields "**social name**", "**gender identity**" and "**sexual orientation**" for registries in police occurrences and procedure records; and the field "**presumed motivation**" in the occurrence bulletins.



Active publication of bulletins, regarding health, and reports on the various types of violence that LGBTQIA+ people are victims of in Brazil.



Some existing  
Legislative  
proposals

- Bill No. 2.777/2019
- Bill No. 2.653/2019
- Bill No. 3.774/2019
- Bill No. 96/2021

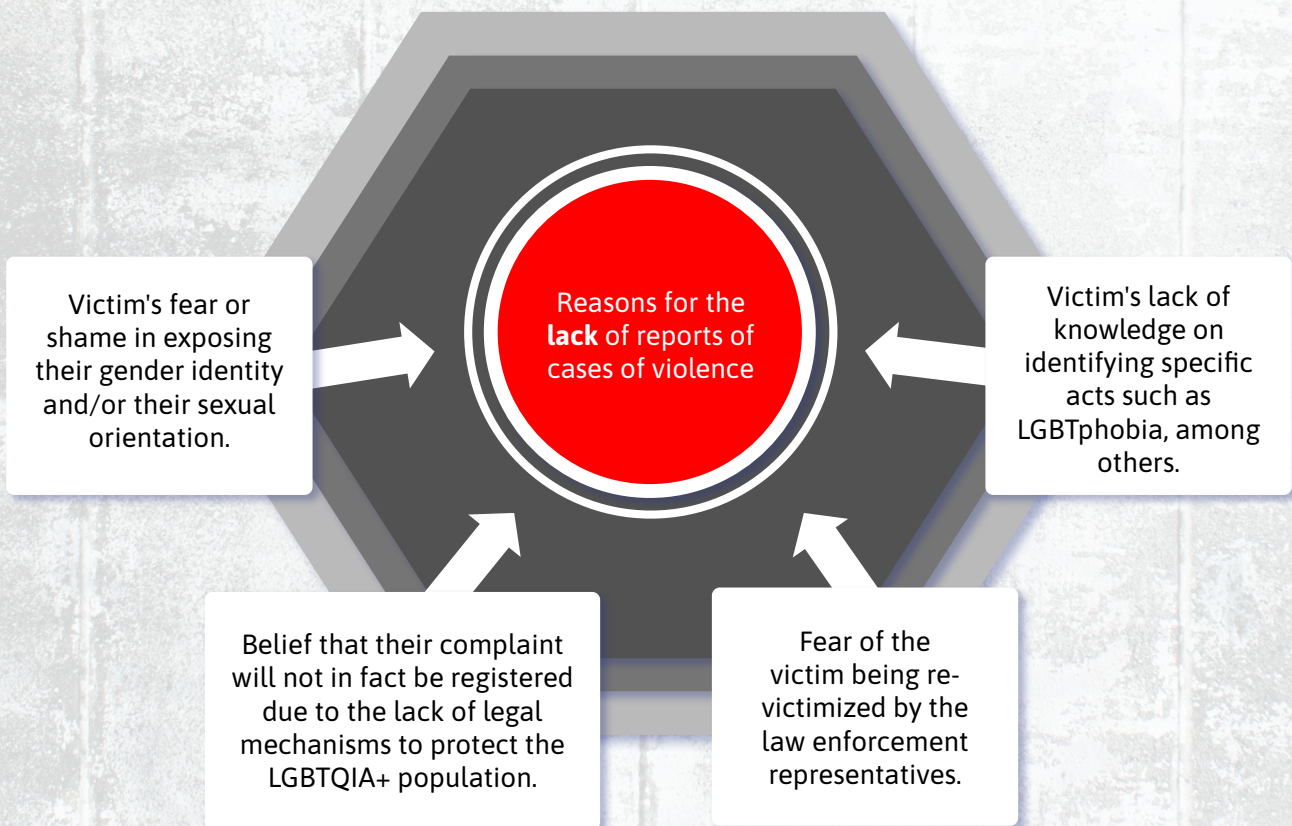




## PUBLIC SAFETY AND LGBTQIA+ PEOPLE



There is no legislation providing protocols to law enforcement agencies for proper assistance to LGBTQIA+ people



Source: data from the Institute of Public Security of Rio de Janeiro (Instituto de Segurança Pública do Rio de Janeiro).<sup>8</sup>

<sup>8</sup> MATOS, Victor Chagas; LARA, Erick Batista Amaral de (eds.). **LGBT+ 2018 dossier**. Rio de Janeiro: RioSegurança, 2018. Note: the dossier was launched before the Supreme Court's decision on homotransphobic crimes, previously discussed.



**3**

is the number of states that have specialized police stations to serve LGBTQIA+ people.

**24%**

of the content circulating in groups and profiles linked to the military police on social media are related to LGBTphobic comments, contrary to LGBTQIA+ rights, which amounts **to the second largest agenda of these profiles.**

9

10

As for the education programs for law enforcement agents...

**Information Request No. 1.097/2020**

In the midst of the process, the Ministry of Justice and Public Security reported that **there are no courses for law enforcement agents aimed at protecting the LGBTQIA+ population.**

The only course related to the theme, **"Police Performance with Vulnerable Groups"**, had an average of **4,600 students** between 2017 and 2020.

That is, only **6.5%** of the approximately **700 thousand civil, federal and military police and law enforcement officers** in active service.

**Paragraph 2 of art. 39 of Law No. 13.675/2018:**

"Education programs [for law enforcement agencies] should be in line with the principles of the national curriculum matrix"

**...which means that**

"(...) the topics related to Human Rights, especially those linked to socio-cultural differences of gender, sexual orientation, ethnicity, origin and generation, must permeate all disciplines, bringing out human values and issues that establish a dialogue between different fields of knowledge that are part of Training Actions of Public Safety and Law enforcement Professionals".

**There is no provision for sanctions** in case of non-compliance with the aforementioned provision;

**There is no provision for federative induction mechanisms.**



<sup>9</sup> FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA (BRAZILIAN FORUM OF PUBLIC SECURITY). **Anuário Brasileiro de Segurança Pública 2020 (Brazilian Public Security Yearbook 2020)**. Available at: <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>. Accessed on: 5/24/2021.

<sup>10</sup> BRAZILIAN PUBLIC SAFETY FORUM; DECODE PULSE. **Political and religious belief among the military, civilian, and federal police of Brazil (first results)**. FBSP/Decode Pulse, 2020. Available at: <https://forumseguranca.org.br/wp-content/uploads/2018/05/pesquisa-politica-e-fe-entre-os-policiais-militares-civis-e-federais-do-brasil-0608.pdf>. Accessed on: 5/18/2021.



### Some existing legislative proposals

- **Bill No. 2.653/2019** – provides a protocol of care for LGBTQIA+ victims of violence resulting from police authority.
- **Bill No. 8.032/2014** – extends the protection of the Maria da Penha Law to trans people.



According to the Ministry of Justice and Public Security (RIC No. 402/2021), there is only one pilot project, implemented in São Paulo, that is focused on comprehensive public policies for the care of LGBTQIA+ people **deprived of their liberty** by the federal government – the Women and Diversity Center (Central Mulher e Diversidade).



A **promising initiative** was a diagnosis elaborated on the situation of the LGBTQIA+ prison population (MMFDH Notice No. 11/2018), which resulted in the publication of the document “LGBT in Brazilian prisons: diagnosis of institutional procedures and incarceration experiences”<sup>11</sup> in 2020.

## POINTS OF CONCERN



- Only **508** of the 1,499 prison units answered the questionnaire;
- Only **20%** of the responding units have a designated space for the custody of cisgender homosexual, bisexual, trans people and heterosexual cisgender men who maintain affective-sexual relations with LGBTQIA+ people.
- It was difficult to separate the LGBTQIA+ issue from structural problems of the Brazilian prison system, such as it being overcrowded, which hinders any kind of progress in special protection of LGBTQIA+ people deprived of their liberty.

<sup>11</sup> PASSOS, Amilton Gustavo da Silva. **LGBT nas prisões do Brasil: diagnóstico dos procedimentos institucionais e experiências de encarceramento**. Brasília: Ministério da Mulher, da Família e dos Direitos Humanos, 2020.



## PUBLIC POLICIES IN STATES



**0,2%**

of Brazilian municipalities have a Management Committee to combat LGBTIphobic violence.

**1,7%**

has a specific law on the protection of LGBTQIA+ rights.

**14,8%**

of municipalities have programs and actions aimed at the LGBTQIA+ population.

13

**National Pact to Combat LGBTIphobic Violence** – is the **main instrument of federative induction** of the federal government for the promotion of LGBTQIA+ rights and was instituted by Ordinance No. 202/2018.

The instrument, however, does not contemplate direct articulation with the **municipalities**, as suggested by the recommendations received by the universal periodic review.

The only initiative resulting from the pact was the conclusion of an agreement with the state of Maranhão for the assistance of its LGBT population and actions of education in human rights.

According to **MMFDH's response to RIC No. 494/2021**, there was no indication of a specific budget for actions of the pact.

**Ordinance No. 766/2013** – Established the National System for the Promotion of Rights and Combating Violence against Lesbians, Gays, Bisexuals, *Travestis* and Transgender people. It has the “purpose of organizing and promoting policies to promote LGBT citizenship and rights” and already contains a pact to combat violence against LGBTQIA+ people.

It was discontinued and replaced, years later, by the aforementioned National Pact to Combat LGBTIphobic Violence.

## EDUCATIONAL POLICIES TO PREVENT AND COMBAT VIOLENCE

Launch of the Brazil with no Homophobia Program (2004)

Regulation for treatment process for trans people in SUS (2008)

Creation of the National Council Against Discrimination and Promotion of LGBT Rights (2010)

National Comprehensive Health Policy LGBTT (2011)

Decree No. 8,727/2016, on using one's social name within the scope of public administration

### ON THE OTHER HAND...

- Extinction of the National Council to Combat Discrimination and Promote the Rights of Lesbians, Gays, Bisexuals, Transvestis and Trans people (CNCD/LGBT), through Decree No. 9.883/2019, replacing it with the **National Council to Combat Discrimination**.

- The deliberative nature of the Council was removed in the new decree;
- There is no more mention of a National Plan for the Promotion of LBTQIA+ Citizenship and Human Rights;
- The composition was reduced from 30 full members to 7 members, and civil society representation was reduced from 15 to only 3 members, with no specific representations, as provided for in the previous decree, for organizations defending the rights of LGBTQIA+ people.

- Extinction of SECADI/MEC, a secretariat of the Ministry of Education that focused, among other things, on promoting diversity.

As for **BUDGETARY RESOURCES**, none were found in the years **2008, 2017** and **2020** which focused on the topic, as shown in the table below:

Year	Authorized	Committed	Paid
2008	-	-	-
2009	907.400	590.005	198.211
2010	1.036.646	96.304	18.651
2011	178.224	-	-
2012	3.612.321	1.644.207	5.615
2013	3.618.398	2.262.946	-
2014	4.355.864	1.083.640	-
2015	2.309.673	1.264.078	624.236
2016	71.773	-	-
2017	-	-	-
2018	1.025.272	995.788	632.454
2019	2.684.938	2.581.726	396.847
2020	900.000	893.512	-

Values adjusted by the IPCA at 2020 average prices.

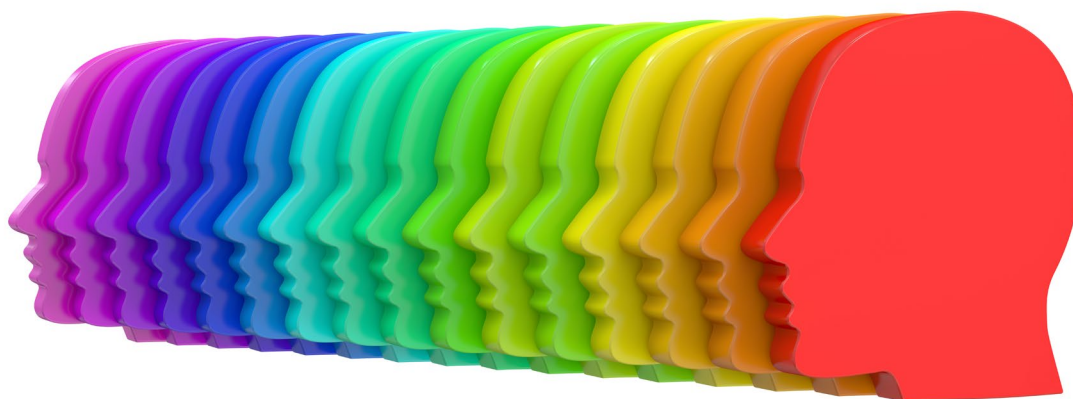
Source: Integrated System for Budgetary Planning (SIOP). Prepared by the authors.





## POINTS OF CONCERN

- During the pandemic, mental health and the lack of income and work for LGBTQIA+ people;<sup>13</sup>
- Exclusion of LGBTQIA+ people from the labour market;
- The absence or rather deficient presence of official statistics and data on this population;
- Low degree of institutionalization of LGBTQIA+ policies in Brazil;
- Insufficient budget for the adoption of measures aimed at the LGBTQIA+ population.



## LEARN MORE



### Full report – Rights of the LGBTQIA+ Population in Brazil

- [Public Hearing held on 6/18/21](#)
- [Report on the hearing](#)
- [Parliamentary Observatory of the Universal Periodic Review](#)

<sup>13</sup> Points raised by the organizations #VoteLGBT and BOX1824, which are not addressed in the UN recommendations.