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orientation and gender identity
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Palais des Nations
CH-1211 Geneva 10, Switzerland

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Ref.: *Submission to provide inputs on the protection against violence and discrimination based on sexual orientation and gender identity for the preparation of the report to be presented at the 50th Session of Human Rights Council.*

It is with great honor that the Critical International Law Study Group (DiCri), linked to the Study and Research Group in International Law (GEPDI/CNPq), affiliated to the 'Jacy de Assis Faculty of Law' of the Federal University of Uberlândia, Uberlândia/MG – Brazil, hereby, submit information regarding the issues concerning the realization of the right of persons affected by violence and discrimination based on sexual orientation and gender identity to the enjoyment of the highest attainable standard of physical and mental health, aiming at assisting the Commissioner on his report to the Human Rights Council 50th Session.

It is our intention to provide input on a number of problems and obstacles that prevent LGBTI and GNC population in Brazil – a country in the Global South – from fully enjoying their rights, including the right to health, because of violence and discrimination. We will address them in four topics, which will be exposed separately.

a) The current anti-gender politics in Brazil

In 2011, through the Resolution no. L9 of the United Nations Human Rights Council, Brazil recognized LGBTI rights as human rights, making it possible to develop policies regarding sexual orientation and gender identity.¹ Even before this, in 2008, Brazil proposed a draft resolution – approved unanimously – before the Organization of American States

¹ These are the Yogyakarta Principles (2007), available at: <<http://yogyakartaprinciples.org>>. Accessed on: 02 fev. 2022.

(OAS) on the extension of human rights also encompassing sexual orientation and gender identity. However, the current Brazilian policy, implemented since Bolsonaro's inauguration, presents an increasingly polarized and problematic discourse regarding gender identity and sexual orientation that threatens the agenda advanced, particularly in regard to LGBTI.²

Acts such as the bill to prevent the teaching of gender identity in schools³; the spread of fake news on the supposed "gay kit"⁴; the current "Ministry of Women, Family and Human Rights" (replacing the Ministry of Human Rights, which was known for defending LGBTI rights in various spheres, including health)⁵; the Brazilian foreign policy, which has shown a huge setback on LGBTI rights, as expressed when it voted in favor of protecting gender identity at the UN, but with reservations regarding "gender being related to one's biological sex"⁶; and the data that demonstrate the creation of public policies aimed at defending the LGBTI population has become stagnant in Brazil⁷, shows that the logic of the current administration is clearly anti-gender, and that it tends to replicate prejudices and stereotypes that directly threatens the LGBTI population in Brazil.

This is because such an anti-gender policy favor acts of violence, as it endorses hate speech by granting them a sort of "social validity"; making them "acceptable". In this sense, it can be said that because of such conducts, LGBTI bodies are currently being "silenced" and "forgotten" in Brazil – especially when it comes to public policies aimed at their protection. In 2016 Brazil recorded 2,964 human rights violations with an LGBTIphobic character; from January 2017 to September 2018, 167 transsexuals were murdered, and another 171 also died for the simple fact of being who they are between 2016 and 2017⁸. Current data is inexistant because the data are simply no longer computed⁹, which denotes precisely such a policy.

And this makes it very much difficult to some health-related issues policies surrounding

² FREIXO DE, Adriano. As relações exteriores – Bolsonaro, 100 dias. **Le Monde Diplomatique Brasil**, 10 apr. 2019. Available at <<https://diplomatique.org.br/as-relacoes-exteriores-bolsonaro-100-dias/>>. Accessed on 02 fev 2022.

³ DESIDERI, Leonardo. Bolsonaro quer lei contra ideologia de gênero. E não é o único. Veja como está a batalha no Congresso. **Gazeta do povo**, 17 may 2020. Disponível: <<https://www.gazetadopovo.com.br/vida-e-cidadania/ideologia-de-genero-lei-bolsonaro-congresso/>>. Accessed on 02 de fevereiro de 2022.

⁴ VEIGA, Edson. (2021). Livro popularizado pela fake news de Bolsonaro sobre "kit gay" faz 20 anos. **Brasil de fato**, 28 jun. 2021. Available at: <<https://www.brasildefato.com.br/2021/06/28/livro-popularizado-pela-fake-news-de-bolsonaro-sobre-kit-gay-faz-20-anos>>. Accessed on 03 de fevereiro de 2022.

⁵CUNHA, Leonam Lucas Nogueira. A antipolítica de gênero no governo Bolsonaro e suas dinâmicas de violência. In: **Revista de Estudos Brasileños**. v. 7, n. 14, 2020, p. 51-52.

⁶ DUCHIADE, André. Brasil vota a favor de proteção a identidade de gênero na ONU, mas ressalva que 'gênero é sinônimo de sexo biológico'. **O Globo**, 12 jul. 2019. Available at: <<https://oglobo.globo.com/mundo/brasil-vota-favor-de-protecao-identidade-de-genero-na-onu-mas-ressalva-que-genero-sinonimo-de-sexo-biologico-23804802>>. Accessed on 03 de fevereiro de 2022.

⁷ CETRONE, Camila. LGBTfobia não é combatida, mas impulsionada no Brasil de Bolsonaro. **Queer IG**, 17 may 2021. Available at: <<https://queer.ig.com.br/2021-05-17/lgbtfobia-nao-e-combatida--mas-impulsionada-no-brasil-de-bolsonaro.html>>. Accessed on 03 de fevereiro de 2022.

⁸ CUNHA, op cit., p. 57.

⁹ MAIA, Diogo. Apagão de dados sobre violência contra LGBTQIA+ atinge ao menos sete estados, aponta pesquisa. **Folha de São Paulo**, 15 jul. 2021. Available at: <https://www1.folha.uol.com.br/cotidiano/2021/07/apagao-de-dados-sobre-violencia-contralgbtqia-atinge-ao-menos-sete-estados-aponta-pesquisa.shtml>. Accessed on: 06 fev. 2022

this population in particular to be promoted. After all, with no data, it seems that the problem does not exist.

b) Sex Reassignment Process (SRP) through Hormone Therapy

The Brazilian scenario of fragility on the LGTBI health care is a fact that precedes the pandemic context, although it has been exacerbated by the global condition of calamity introduced by Covid-19. Researches indicate the law that regulates the access to the Brazilian Public Health Care System (SUS, in the Portuguese acronym) by the LGTBI community – Ordinance of Ministry of Health no. 2,836/11¹⁰ and Ordinance no. 2,803/13¹¹ – have not been enough to guarantee all the services they need.

According to Reis, Wandekoken and Rocon¹², SRP faces various obstacles, like discrimination at the health services; transsexuality pathologization; lack of resources; sex reassignment process as a requirement to be treated by the social name; etc. Moreover, as warned by Krüger *et. al.*¹³, it is common that *travesti* and transgender women acquire hormones for sex reassignment without a medical prescription or with safe guidance. Their research revealed this self-medicating behavior is caused and potentialized by the precariousness surrounding this population's access to public health care services.

If we compare the statistics, we can see that in 2019, SUS performed 13,255 outpatient services throughout the year, corresponding, on average, to 1.102 procedures per month, while in January 2020, only 307 services were performed¹⁴, showing a reduction of about 81% compared to the same period of the previous year. During the COVID-19 pandemic, this scenario got worse. As pointed by the Brazilian Ministry of Health, between 2008 and 2019, SUS performed 43,537 outpatient services, including regular clinical follow-up and hormone treatment; nevertheless, with the global health emergency, these procedures were not considered essential, reason why they were suspended in many states or moved to virtual appointments.¹⁵

¹⁰ BRAZIL. **Ordinance number 2.836, December 1st, 2011.** Union Official Diary. Executive Power, Brasília, DF. Institutes, at Unified Health System, the National LGBT Integral Health Care Policy. Available at: http://bvsmms.saude.gov.br/bvs/saudelegis/gm/2011/prt2836_01_12_2011.html.

¹¹ BRAZIL. **Ordinance number 2.803, November 19th, 2013.** Redefines and increases the Sex Reassignment Process (SRP) in the Unified Health System. Available at: http://bvsmms.saude.gov.br/bvs/saudelegis/gm/2013/prt2803_19_11_2013.html.

¹² REIS, Dominique da; WANDEKONE, Kallen Dettmann; ROCON, Pablo Cardozo. Analysis of challenges faced by the trans population in access to health. *In: IRINEU, Bruna Andrade et. al. (orgs.) Sexual, ethnics and gender diversity: plural knowledge and resistances.* Campina Grande: Realize, 2021.

¹³ KRÜGER, Alícia *et. al.* Characteristics of hormone use by travestis and transgender women of the Brazilian federal district. **Brazilian Epidemiologic Periodic**, v. 22, 2019. Available at: <https://www.scielo.br/j/rbepid/a/9Cshmsw95pNmdmGtxMZcqYc/?lang=en>.

¹⁴ FERREIRA, Lola; SANTOS, Sanara. Social isolation limits population access to Sex Reassignment in the Unified Health System. **Gender and Number**, 2021. Available at: <https://www.generonumero.media/isolamento-acesso-trans-saude/>.

¹⁵ Ibid.

Furthermore, as reported by Okamoto, psychiatrist and clinical research specialist of Mental Health Meraki Institute, “the disruption of the sex assignment process can lead to worsening symptoms of dysphoria – such as anxiety, hopelessness, sadness and mood swings”, since the discontinuation of hormone replacement treatments can bring back physical characteristics related to birth sex, leading to suffering due to feelings as uncertainty and insecurity, beyond the one of living in a body that the person does not identify herself.¹⁶

Thus, Brazil has been unable to ensure healthy lives, and to promote well-being for all persons, reason why the social inequality grew instead of reducing, particularly during the COVID-19 pandemic. In this regard, the realization of SDG 3 and SDG 10 in relation to persons affected by violence and discrimination based on sexual orientation and gender identity faces many barriers in Brazil, despite its international commitment to fulfilling the 2030 Agenda.

c) Access to Healthcare by LGBTI refugees

Since 2004¹⁷, there have been reports of asylum requests based on persecution motivated by sexual orientation and gender identity in Brazil¹⁸. In line with United Nations High Commissioner for Refugees’ (UNHCR) position, the Brazilian National Committee for Refugees (CONARE), organ responsible for analyzing requests and declaring refugee status in Brazil, categorizes LGBTI individuals (refugees and applicants) as belonging to a specific social group, so that the intersections between refuge, gender and sexuality be a matter of concern on the international and domestic human rights agenda.

Signatory to the 1951 Convention, Brazil guarantees the protection of refugee rights through the 1988 Constitution, in its fundamental objective of promoting the well-being of all, without any form of discrimination, as well as by extending the entire list of rights and fundamental guarantees to all migrants residing in Brazil¹⁹. Through Law No. 9,474 of 1997, Brazil is also committed to the achievement of durable solutions to guarantee the rights of refugees after their reception, encouraging the development of public policies aimed at

¹⁶ COSTA, Mariana. COVID-19 reduces the number of sex reassignment in the Unified Health System. **Metrópoles**, 07 feb. 2021. Available at: <https://www.metropoles.com/brasil/covid-19-reduziu-o-numero-de-atendimentos-do-processo-transsexualizador-no-sus>.

¹⁷ As it can be inferred from the request protocol number PJ 08460.006546/2004-09 before CONARE requesting the protection of the Brazilian State in 2004, in the case of two Colombian gay men from a region where paramilitaries promoted a moralistic and murderous campaign against homosexuals, considering them “harmful to society”. LEÃO, Renato Zerbini Ribeiro. **O reconhecimento dos refugiados pelo Brasil: decisões comentadas do CONARE**. [S. l.]: CONARE e ACNUR Brasil, 2007. p. 37-38.

¹⁸ A survey carried out by UNHCR, with support from the Brazilian government, identified 369 asylum requests to Brazil between 2010 and 2016 by LGBTI people, of which 130 were granted and 195 were still pending consideration. It is important to note that these data hardly reflect the totality of LGBTI asylum seekers, considering that sexual minorities who are victims of oppression and violence often fail to address such issues in their requests. ACNUR. **Perfil das solicitações de refúgio relacionadas à orientação sexual e à identidade de gênero (OSIG)**. Brasília, 2018. Available at: <<https://bit.ly/3INT01p>>. Accessed on 29 jan. 2022.

¹⁹ JUBILUT, Liliana Lyra. **O direito internacional dos refugiados e sua aplicação no ordenamento jurídico brasileiro**. São Paulo: Método, 2007. p. 182.

health²⁰.

In the area of health, in compliance with SDG 3, the promotion of actions to reinforce the health care of LGBTI refugees is highlighted, given that the notions of what health is are influenced by historical, economic, political, social and cultural aspects²¹, thus impacting the elaboration of public policies²², especially those aimed at a social group that comprises several minority and invisible categories, being subjected to the double stigma of xenophobia and homotransphobic discrimination.

It is worth noting the existing contradiction in the Brazilian case²³, which at the same time is the recipient of LGBTI refugees at the international level, but is also a State of origin of the same population seeking refuge abroad, due to the numerous situations of persecution and/or violence to which they are submitted to. It is worth recalling that Brazil is the world leader in homophobic²⁴ and transphobic death²⁵.

Hence, access to healthcare by LGBTI refugees encounters barriers that are characteristic of the intersectional discrimination this population is submitted to, such as (i) the existence of a 'policing model' that neglects the protection of vulnerable groups (when not antagonizing them); (ii) the disconnection between the institutional rules and practices; (iii) the complaints that are processed by institutions only when they receive media visibility; and, particularly, (iv) the political unwillingness of public institutions to promote LGBTI and refugee rights as an institutional mission²⁶.

Within the scope of the SUS, which guarantees free access to health care in Brazil (including migrants, refugees and asylum seekers indiscriminately), the experience of refugees sometimes involves adverse situations, such as violence related to the circumstances that led to displacement, language difficulties, loss of family and social

²⁰ As well as local integration, insertion in the labor market, access to education, housing and culture. Ibidem, p. 202.

²¹ WORLD HEALTH ORGANIZATION. **Closing the gap in a generation**. Available at: <<https://bit.ly/3B0eo2w>>. Accessed on 31 jan. 2022.

²² MELO, Izabella Rodrigues; AMORIM, Thatiane Hellen de; POLEJACK, Larissa; SEIDL, Eliane Maria Fleury. O direito à saúde da população LGBT: desafios contemporâneos no contexto do Sistema Único de Saúde (SUS), **Revista Psicologia e Saúde**, v. 12, n. 3, jul./set. 2020, p. 63-79. Available at: <<https://bit.ly/3HrMm2i>>. Accessed on 3 fev. 2022.

²³ Yet, at the same time that the Congress internalizes human rights and the Judicial Branch is becoming favorable to the protection of sexual minorities rights, the advancement of a conservative discourse in the media and in the public sector, particularly in the Executive Branch, has been increasingly "efficient" in implementing setbacks and denial of rights. GORISCH, Patrícia; MENDES, Victor. O Brasil como Estado de origem para refugiados LGBTI: contradição entre âmbitos interno e externo. **3º Seminário de Relações Internacionais da Associação Brasileira de Relações Internacionais – ABRI**. Florianópolis: UFSC, 2016.

²⁴ The reports from the Observatory of Violent Deaths of LGBTI+ in Brazil reveal that Brazil is the world leader of crimes against sexual minorities, estimating one death in every 36 hours. ACONTECE ARTE E POLÍTICA LGBTI+; GRUPO GAY DA BAHIA. **Observatório de mortes violentas de LGBTI+ no Brasil - 2020**. Available at: <<http://bit.ly/3odGLVI>>. Accessed on 30 jan. 2022. TRANSGENDER EUROPE (TGEU). **TMM Update Trans Day of Remembrance 2021**. Available at: <<http://bit.ly/33XLILv>>. Accessed on 30 jan. 2022.

²⁵ TRANSGENDER EUROPE (TGEU). **TMM Update Trans Day of Remembrance 2021**. Available at: <<http://bit.ly/33XLILv>>. Accessed on 30 jan. 2022.

²⁶ ALL OUT; INSTITUTO MATIZES. **LGBTIfobia no Brasil: barreiras para o reconhecimento institucional da criminalização**. Available at: <<https://bit.ly/35EvIyn>>. Accessed on 31 jan. 2022.

relationships, among others²⁷⁻²⁸. Therefore, cultural diversity is an obstacle to be faced in order to guarantee full access to health for this population and implement SDG 3 in Brazil. The application of protocols, diagnoses and treatments requires considering the cultural difference in the elaboration of strategies by for the health professionals, policymakers and civil society, prioritizing health education and values related to respect for life and human dignity²⁹.

d) Indigenous LGBTI and the battle against HIV

Brazil has a large concentration of indigenous peoples, according to data from the Brazilian Institute of Geography and Statistics (IBGE, in the Portuguese acronym) 896,917 individuals declared themselves indigenous, 57.7% of whom live on lands traditionally demarcated as indigenous territories.³⁰ It is clear that this population was profoundly affected by the colonization, a period in which catechesis and the concomitant acculturation project was established. History shows that colonization stimulated the indigenous peoples "whitening", aiming at making them Christian, monogamous and straight.³¹ There are studies that point to examples of homosexual affection within indigenous people since the 16th century, without repercussions of prejudice or aggression.³²

Nevertheless, the indigenous people were considered by the colonizers as "sodomites"³³, being the first case of execution for homophobia in Brazil of the colonial period: *Tibira*, a traditional person, was tied up in a cannon and fired from the *Forte de São Luiz* for being considered a "sodomite" (for carrying out what was considered "nefarious" practices). The act was justified by the authorities at the time as it was thought that, by acting so, it

²⁷ SANTANA, Carmen. Humildade cultural: conceito estratégico para abordar a saúde dos refugiados no Brasil. **Caderno de saúde pública**, Rio de Janeiro, v. 11, n. 34, 2008. Available at: <<https://bit.ly/3Hqzd9G>>. Accessed on 3 fev. 2022.

²⁸ The National LGBT Health Policy (PNSLGBT, in the Portuguese acronym) of the SUS, formulated based on the Yogyakarta Principles with the objective of implementing social change actions in the fight against LGBTphobia in public health care and management environments, had its guidelines published in 2013 in a text that, yet, has not been revised, and face issues When it comes to its full implementation, such as the lack of training of professionals and the need for different treatment for each of the acronyms. ROCHA, Lucas. 10 anos da política nacional de saúde LGBT: colocá-la em prática ainda é um desafio. **CNN Brasil**, São Paulo, 2021. Available at: <<https://bit.ly/3AUzSNY>>. Accessed on 3 fev. 2022.

²⁹ SILVEIRA, Matheus. Por uma agenda de cuidado à saúde de refugiados LGBTI: reflexões a partir da Bioética e das Relações Internacionais, **Cadernos de gênero e tecnologia**, Curitiba, v. 12, n. 39, p. 71-87, jan./jun. 2019. Available at: <<https://bit.ly/3onZnm2>>. Accessed on 3 fev. 2022.

³⁰ IBGE. Conheça o Brasil - População Indígenas. **IBGE Educa**, [s.l.], 2010. Available at: <https://educa.ibge.gov.br/jovens/conheca-o-brasil/populacao/20506-indigenas.html>. Accessed on: 06 fev. 2022

³¹ FERNANDES, Rafael Fernandes. O que a homossexualidade indígena pode ensinar sobre colonialismo – e como resistir a ele. **Somanlu**, [s.l.], v. 17 n. 1, p. 103 - 118, jun. 2018.

³² FERNANDES, Estêvão Rafael. Homossexualidade indígena no Brasil: Um roteiro histórico-bibliográfico. **ACENO**, [s.l.], v. 3, n. 5, pp. 14-38, 2016.

³³ FERNANDES, Estêvão Rafael. Quando o armário é na aldeia: Colonialidade e normalização das sexualidades indígenas no Brasil. **X Simpósio Linguagens e Identidades da/na Amazônia Sul-Ocidental**. Rio Branco/AC: UFAC, 2016, p. 2.

would free the person from its sin (it was seen as a “civilizing” action).³⁴

This ideology appears to have taken root in Brazil, since it placed the image of the LGBT traditional person as less indigenous than the heterosexual one, which has gained space even between the communities.³⁵ Individuals reported this prejudice to the LGBT within traditional communities today, where it has become a general assumption that “homosexuality is very much rejected among indigenous peoples; [...] [and] many deny that there are LGBT people in their communities, because they believe that being gay is a ‘white thing’”.³⁶ Such denial within indigenous societies may prove to be a profound problem not only on social issues insofar as they deny their own history and ancestry, but also on perspectives of personal dignity and health. An example of this, is precisely the battle against HIV that is inserted in the Agenda 2030, under SDG 3.3.³⁷

The road towards achieving this objective is deeply linked to sex education, the promotion of sexual rights and sexual health. These factors are unusual for individuals belonging to the LGBT community who constantly experience discrimination by their own family and the State.³⁸ This problem is even more aggravated within indigenous communities, which are shown to be more vulnerable to the infection of HIV due to their poor living conditions, lower socioeconomic and educational levels, not to mention social exclusion and lower access to basic health services.³⁹

This factor is not exclusive to the indigenous peoples of Brazil, but of America as a whole. An example is the case of urban indigenous men who sought to return to their traditional community because they suffered from complications from the HIV infection, and who were not ‘accepted back’ as they had the “white gay disease”, reaffirming not only the occurrence of acculturation deriving from colonialism, but also the poor assistance this group has to health services, health education, etc.⁴⁰ And this situation exposes a problem to fulfilling SDG 3, especially concerning indigenous LGBTI.

In light of the inputs provided, we hope to have helped the Independent Expert with enough information to ponder over the protection against violence and discrimination based

³⁴ Ibidem, p. 5.

³⁵ FERNANDES, Rafael Fernandes, op cit., pp. 103 - 118.

³⁶ TUXA, Eduarda. **Pelo direito de ser quem eu sou: mulher indígena e sapatão.** s/l, 2019, <<https://aldeialiteraria.blogspot.com/2019/02/pelo-direito-de-ser-quem-eu-sou-mulher.html?m=1>>. Accessed on: 06 de fev. 2022.

³⁷ UNITED NATION. Transforming Our World: The 2030 Agenda for Sustainable Development. **A new era in global health.** 2018. Available at: <https://connect.springerpub.com/binary/sgrworks/5a007a6a8bcfbf37/aa83f24d1287818042ba529d285259918518e6a4beef1dfefa93cbbc53784b93/9780826190123_ap02.pdf>. Accessed on: 06 fev. 2022

³⁸ LOGIE, Carmen Logie *et al.* Barriers and facilitators to HIV testing among young men who have sex with men and transgender women in Kingston, Jamaica: a qualitative study. **Journal of the international AIDS society**, Nova Jersey, v. 20, N.1. 01 jan. 2017.

³⁹ NEGIN J, et al. HIV among Indigenous peoples: a review of literature on HIV-related behaviour since the beginning of epidemic. **AIDS Behav**, v. 19, n. 9, pp. 1720-1734, 2015.

⁴⁰ BRUNETTE, Peter. “Na Annotated Bibliography of Books, DVD’s, and Internet Resources on LGBTQ/Two-Spirit Native American and First Nations People”. **GLBTRT Resources Committee.** 2017, pp. 1-20.

on sexual orientation and gender identity and the realization of SDG 3, aiming at presenting a comprehensive report over the matter to the Human Rights Council.

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