



TRANSGENDER FAMILIES IN BRAZIL

The paradox of rights' evolution and the transphobic epidemic

by Patricia Sanches¹

INTRODUCTION

1.

Transgender is the “T” into the large LGBT net protection all over the world. LGBT fights comprise the guarantee of a safe life, dignity, freedom and equality opportunities.

Transgenders have a different gender identity from their biological aspect of their body.

Gender identity is an individual right and exactly because of the Governments cannot determine whether using it or not.

2.

Transgender is a person who has the intimate conviction of belonging to the opposite gender of their biological sex: a man in a woman's body (FtM) or a woman in a man's body (MtF)

Transgender Family has, at least, one transgender person in the couple, or a transgender son/daughter;

3.

Brazil is one of the most advanced countries in LGBT rights in the world. Government allows free hormone therapy and sex reassignment surgery for transgenders. Decisions from Supreme Court ensure name and sex changing in transgender's birth certificate, as well as allows marriage and adoption.

4.

The LGBT Rights in Brazil have been developed since the last Federal Constitution in 1988, that guarantee dignity, equality and freedom without any discrimination. In 2008, the Ministry of Health recognizes sexual orientation and gender identity as determinant and conditioner of good health situation². In 2011, the Supreme Court recognized the same-sex union as a family for legal purposes. In 2013, the National Council of Justice allowed registration of same-sex marriage. Until May of 2017, at least 15,000 same-sex marriages were registered in Brazil³. In 2015 and 2016 Decrees of former President Dilma Rousseff allowed transgender to use their social name in all educational system in the whole country. In 2017, the Superior Court allowed name and sex change in civil registry of trans people independently of any kind of surgery.

¹ Patricia Correa Sanches Lamosa is Doctor degree in Juridical Science, professor in Family Law at the School of Magistrature of the Court of Rio de Janeiro State, director of Brazilian Law Family Institute in Rio de Janeiro State (IBDFAM), lawyer in Brazil and member of the Committee for LGBTI Rights in the Brazilian Bar Association.

² Ministry of Health Ordinance nº 1707/2008.

³ http://biblioteca.ibge.gov.br/visualizacao/periodicos/135/rc_2015_v42.pdf#page2



5.

Any Judicial decision, because of a Superior Court precedent, cannot determine surgery or hormone therapy as condition to change name and sex in the civil register of transgenders, including any sterilization method. It ensures that gender identity is more important than the biological form of the body.

6.

However, transgender rights evolution is not protected by any specific law. The Judicial courts applies its decisions based on fundamental human rights, such as dignity, equality and freedom laid out in the Brazilian Federal Constitution⁴:

Article 1º. The Federative Republic of Brazil, formed by the indissoluble union of States and Cities and Federal District, consists of a Democratic State with Rule and Law and has as foundations:

(...)

III – the dignity of the human person;

As well, this democratic Federal Constitution ensures welfare protection without any sex prejudice (IV of article 3º), with liberty and equality (article 5º).

7.

Transgenders are just allowed to change their names and sex in their birth certificates after a judicial proceeding, in which, judges will verify the real gender identity and will decide according to his/her interpretation of the facts.

8.

In Brazil, there is no special law or statute protecting transgender people, like in other branches of the law, such as asylum law, hate crime or hate speech law. All policies and legal framework related to transgenders are decided by courts and administrative bodies and rules. .

9.

Unfortunately, the fact that there is no law in the Federal level explicitly protecting transgenders' rights can cause discriminatory treatment against this group and legal uncertainty about their rights. Since 2013, a project of law⁵ enabling all transgenders in Brazil to change their names and sex on their birth certificate directly with the Register Office and without mandatory judicial proceedings has been debated into the Deputy Chamber of the national Congress. This Project of gender identity law is named Joao Nery law, in honor of the first FtM transgender in Brazil.

10.

Hate crimes direct at the LGBT community has been increasing in Brazil, which is one of the most violent countries in the world for LGBT people. A project of law against the LGBT hate

⁴ The democratic Brazilian Federal Constitution was introduced in 1988 after 25 years of military dictatorship.

⁵ Project of law nº 5002/2013.

http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1059446.



crime, determining high punishment for those crimes, was filed before being voted in the Federal Congress.

Nowadays, the majority of federal legislators are conservative politicians and the projects of law that protect the LGBT rights have been debated in a slow-motion way and probably will not be approved.

11.

A very important project of law named Statute of Sexual Diversity, was written to propose the creation of a unique law statute with more than 100 articles, comprising the LGBT rights such as hate crime, transgender rights, same-sex marriage, etc.

The organizer of this important project is Mrs. Maria Berenice Dias who is a retired Judge – one of the most important LGBT fighter jurist in Brazil, and the responsible for the first decisions to protect those rights.

12.

Because of the legislative problem, the Superior Court and Supreme Court in Brazil have been protecting the LGBT rights in name of dignity, liberty and equality principles.

Since 2013, the same-sex marriage is allowed by the National Council of Justice with the same rights as a straight civil union.

Legally, in order to get married, independently of sexual orientation or gender identity, the couple must present in the Register Office the documents required by the law and two witnesses. There is a fast proceeding and then the date of marriage can be scheduled.

In case of the groom or the bride be a transgender, the marriage has the same rules, because it doesn't matter if it is a straight or same-sex couple. If the transgender changed the sex and name in the civil register, no restriction will also have to get married.

13.

Also because of the dignity and equality principles, the name and sex changing of transgenders will not affect his/her previous relationships and status such as existing marriage or parenthood.

None civil rules prevent a biological reproduction for any person, including transgenders.

So, the ones who are able to reproduce are allowed to do that – even though if a transgender-man (FtM) will give birth or a transgender-woman (MtF) will inseminate her spouse.

14.

Brazil admits child adoption for any kind of couple, independent of sex orientation or gender identity, but a regular civil union is mandatory.

After an average of one year of judicial proceedings to check the couple's ability to adopt, they must wait an available child for their profile. Depending on the couple's chosen profile, there isn't any wait, and adoption can happen very soon.



15.

But on the other hand of advanced rights, Brazil is also one of the most violent country for LGBT people. In 2016 there were 332 registered LGBT murders in Brazil – 144 were transgenders. Between 2008 and 2016 there were 938 trans murders in Brazil, that is the 4th most violent country in worldwide considering per million inhabitants. The unreported cases should be also considered⁷.

Those numbers are a shame for a country like Brazil that currently has in place one of the most developed system for transgenders in the world – with rights such as get married, child adoption, non sterilization rule, social name usage, etc.

16.

CONCLUSION

The problem in Brazil is the lack of a legislation ensuring direct protection and same rights to all transgenders all over the country. Transgenders depend on judicial decisions which can be different from one judge to another, obligating the person to prosecute the State until the Supreme Court, what can take several years.

Nowadays, the hate crimes have been increasing and the LGBT prejudice, moral damages, and murders have been treating as a common crime not stopping hate and discrimination.

The hate-speech is a political flag for many politicians, inflaming intolerance and hate that are hidden behind religious fundamentalism. This year, the current illegitimate Federal Government removed the sex diversity of the educational basic guidelines⁸. The backward legislative and government are murdering every day.

17.

To change the numbers of violence against transgender in Brazil depends on public policies to maintain the young transgender into the educational system, to introduce them in the labor market, guarantee their life, dignity and welfare, and taking care of their families given them the necessary support for acceptance and comprehension.

The usage of fundamental human rights and principle like equality and liberty for LGBT people caused a reaction from conservative groups all over the world. In Brazil, political fundamentalist religious groups have brought a great uncertainty about the future of those rights.

Therefore, currently, Brazil has a big paradox when contemplating its future because of the declared war between the ultra-conservative legislators and the advanced judicial power.

Thank You!

⁷ 2017 Transgender Europe's Trans Murder Monitoring (TMM) – www.transrespect.org

⁸ <http://agenciabrasil.ebc.com.br/educacao/noticia/2017-04/mec-retira-termo-orientacao-sexual-da-versao-final-da-base-curricular>
http://basenacionalcomum.mec.gov.br/images/BNCC_publicacao.pdf