**Inputs for the Report on Data Collection of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity**

**Rafael Carrano Lelis**

*Manager of TODXS Núcleo*

**Pedro Alves Bernardes**

*Researcher at TODXS Núcleo*

**About our organization:** TODXS Núcleo is a research center focused on LGBTI+ Public Policy that works within the NGO “TODXS”. Our current investigations are directed to understanding the violence against LGBTI+ persons in Brazil, as well as analyzing the government’s policies (or the lack of them) regarding LGBTI+ individuals. More information about the research center and the NGO can be found at: <https://nucleo.todxs.org/> and <https://www.todxs.org/>. E-mail for contact: rafael.lelis@todxs.org.

**Questions and Inputs:**

**1)** What are the current efforts by States to increase their knowledge of the LGBT population? Specifically, are questions about sexual orientation and gender identity included in government surveys (e.g. the census, national health surveys, income and living condition surveys, or other surveys funded or mandated by the State), administrative records (e.g. birth certificates/birth registries, identity Cards, school records, professional licenses, social security and public benefit records, and other government documents)?

**Input:** Current efforts made by the Brazilian government in terms of LGBTI data collection are generally unsatisfactory. The only governmental survey that presented a slight picture of the Brazilian LGBTI population was the last national census, implemented in 2010 by the Brazilian Institute of Geography and Statistics (IBGE), which allowed respondents to report whether they cohabited with same-sex partners, revealing the existence of more than 60.000 Brazilian people living in this situation. However, there was no question specifically regarding gender identity and/or sexual orientation, evidencing the underreporting of the other realities of the LGBTI population.

Considering the lack of State efforts to gather official information, most of data collection about LGBTI persons in Brazil has been executed by civil society organizations. Although, such data collection by civil society is usually focused in the number of assassinations of LGBTI persons and do not cover broader fields of information. In that sense, the two biggest reports produced are from GGB – Grupo Gay da Bahia (“Gay Group from Bahia”) and ANTRA – Associação Nacional de Travestis e Transexuais (“National Association of Travesties and Transsexuals”). Moreover, even though the effort made by civil society is remarkable, the lack of structure to conduct the data collection makes it very difficult to reach precise and reliable numbers. For example, since there is no official registry of specific LGBTI-motivated crimes, the NGOs rely only on media coverage as well as “local informants” to collect the data for the reports.

Currently, our organization, TODXS, is preparing to conduct a national survey in Brazil (having already finalized the first tests) in order to expand the knowledge about the LGBTI population and data collection regarding the areas of personal identities, health, discrimination, access to education, employment and income.

**2)** What kinds of data can be collected by government to understand the nature and extent of violence (e.g. through statistics on LGBT-phobic hate crimes and hate speech), discrimination, and disparities in health, education, labour, civic participation, and other important areas?

**Input:** Violence based on one’s actual or perceived sexual orientation, gender identity or expression and sex characteristics are not considered, under Brazilian criminal law, a specific type of hate crime. Therefore, they are included within general crimes established. Because of this, there is no national policy that obliges, for example, that such data is collected when a crime is reported. Thus, the collection of such data varies among the states. A minority of Brazilian states include in the report form a “pre-fixed” option to include the person’s sexual orientation and/or gender identity, while others allow the inclusion of the motivation of the crime, where could be stated that it was a LGBTI-phobic crime. In addition, since 2013 patients that are treated in the public national health system (SUS) can inform if the violence they suffered was motivated by homophobia. However, there is no information regarding the *de facto* application of such mechanism as well as the use of this data.

 The Brazilian government has a well-equipped structure for data collection, especially regarding the national survey. Thus, it is possible, if willing, to collect a lot of essential data and information about the LGBTI population in order to promote public policy. Nonetheless, as mentioned, almost all of this data collection is done by NGOs and other civil society organizations. In that sense, our organization, TODXS, has developed a smartphone app that allows persons to report violence against LGBTI individuals. The app was launched in mid of 2017 and thus far it has received around 200 reports. Among those, approximately only 7% of the victims indicated that they had reported the violence to the official authorities, which illustrates the great amount of underreporting of this type of violence in Brazil.

 More recently, in 2018, the Brazilian government, through its former “Human Rights Ministry”, released a [report](https://www.mdh.gov.br/biblioteca/consultorias/lgbt/violencia-lgbtfobicas-no-brasil-dados-da-violencia) on “LGBT-phobic violence in Brazil: violence data”. The report analysis covers LGBT-phobic violence from the year of 2016. However, in regard to the method, it is highly dependable on the data produced by civil society. As described in the report, the data analyzed was collected from the report of two Brazilian NGOs – GGB and Rede Trans Brasil (“Trans Network Brazil”). The only source of data directly collected by the government were the complaints delivered in the “Human Rights Helpline”, established to receive reports of general human rights violations.

**3)** What safeguards are in place, and what safeguards are needed, to protect the human rights of individuals providing personal data as well as individuals collecting such data? This question includes the following:

**a.** Safeguards to protect the privacy of individuals who provide data about their sexual orientation/gender identity, and the confidentiality of the data provided by these individuals.

**b.** Broader statutory rules or administrative policies to insure transparency and accountability of government institutions such as statistical bodies.

**Input:** Despite the absence of specific content regarding LGBTI persons, protection and confidentiality of data collected by governmental institutions, such as the IBGE (Brazilian Institute of Geography and Statistic), are guaranteed by law and respect the United Nations Fundamental Principles of Official Statistics. [Federal Decree No. 73.177 (1973)](http://www.planalto.gov.br/ccivil_03/decreto/Antigos/D73177.htm), [Law No. 5.534 (1968)](http://www.planalto.gov.br/ccivil_03/leis/L5534.htm) and [No. 5.878 (1978)](http://www.planalto.gov.br/ccivil_03/leis/L5878.htm) establish the secrecy and obligation for statistical purposes only of the information collected by governmental bodies. Moreover, it is also important to mention the [General Law on Protection of Personal Data](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Lei/L13709.htm), which was approved in 2018 (although only applicable by August of 2020) and provides protection of data and privacy of Brazilian citizens. This legislation establishes some types of data, considered as “sensitive personal data”, that deserves special protection. In the definition of what would be this sensitive data, the law states that those are the ones regarding “racial or ethnical origin, religious conviction, political opinion, filiation to union or organization of religious, philosophical or political character, data regarding health or **sexual life**, genetic or biometric data, when attached to a natural person”. Despite the fact it mentions “sexual life” as a sensitive data type, it is still unsure whether this will apply to protect data regarding sexual orientation or not. For example, the European [General Data Protection Regulation](https://eur-lex.europa.eu/eli/reg/2016/679/oj) explicitly mention sexual orientation, besides “sex life”, which guarantees juridical certainty with regard of the protection of this kind of data.

**4)** What are the risks associated with the collection and management of data on sexual orientation and gender identity and initiatives to overcome those?

**Input:** The main challenge regarding collection and management of data on sexual orientation and gender identity is certainly that some people may not feel comfortable or may even feel afraid of disclosing their identities, due to the history of discrimination experienced by LGBTI people in Brazil and in the rest of the world. Individuals may be also reluctant to take part in data collection processes if this risk disclosing their identities without their consent.

A possible mean of overcoming reluctance to disclose sexual orientation, gender identity or sex characteristics is the implementation of anonymous online surveys. Nevertheless, results of online survey may reflect those who are already more open about their sexuality and gender identities in websites/social networks, besides not covering those people who do not have access to internet in Brazil (almost 63 million people, according to the IBGE). Therefore, it is also important to display physical copies of the anonymous surveys in local application centers, such as civil society LGBTI organizations and public spaces frequented by LGBTI population.

**5)** Are there circumstances where data collection is ill-advised, such as in countries that criminalize same-sex behavior or where particular government agencies have demonstrated a cause for concern regarding their treatment of issues related to sexual orientation and gender identity?

**Input:** Brazil’s current president was elected under an extremely conservative and LGBTI-phobic agenda. During the campaign he openly spoke against LGBTI rights already guaranteed in Brazil (such as same-sex marriage and rights of trans persons to change their name and gender assigned at birth). He also made several declarations indicating that sexually diverse persons should suffer violence and that no kind of sexual education should be contemplated in school’s curricula. In addition to his systematic homo and transphobic behavior, he assigned an extremely conservative politician and with religious background to the “Ministry of Woman, Human Rights and Family”. She has more than once have spoken against LGBTI rights and abolished the special organ focused in LGBTI issues within the Ministry. Moreover, she has repeatedly made declarations reinforcing gender binarism. Given this context, it is difficult to assert if a massive data collection regarding LGBTI issues, conducted by the government, would be advised at this time. That is because in view of the highly anti-LGBTI positionings of the current government and its conservative agenda, the data collected could be misused in order to harm LGBTI persons. Therefore, although the Brazilian government still has to advance greatly in data production and collection about LGBTI people, any initiatives conducted by the current government must be closely and carefully monitored.

**6)** When States engage in data gathering activity, to what extent is civil society able to meaningfully participate in the design and implementation of these programs? This question includes the following:

**a.** Do states have policies that guide the process of civil society participation national statistical programs and other State efforts to increase knowledge about LGBT populations?

**b.** Does civil society have the capacity, in terms of expertise and technical knowledge, to meaningfully participate in State efforts to gather data?

**c.** What constitutes meaningful participation in this area?

**Input:** As previously mentioned there have not been any State effort to conduct national data collection regarding the LGBTI population. Thus, there is no information about the participation of civil society in such specific data collection initiatives. Nonetheless, it is of general concern that the current government will not be open to dialogue with civil society organizations, especially the ones dedicated to “human rights issues”, since the government has made it clear that they are against the activities conduct by such organizations given that they represent “interests of the left”. In this sense, it has even issued an [executive measure](http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Mpv/mpv870.htm) that gives the government the power to monitor the activities of NGOs in all national territory. This measure was seen with great concern by all civil society since it has shown yet another explicit attempt to control and impair NGO’s activities.

With regard to what constitutes meaningful participation in data collection, it is essential that civil society has a real influence (meaning that their suggestions are effectively and not only formally considered) in the definition of what types of data will be collected, what questions will be asked, and also in what regions and what method will be applied. Otherwise, the participation of civil society may be used only to legitimate an arbitrary and non-inclusive process of data collection that may lead to unwanted or useless results.

**7)** Does the lack of a global classification scheme carry risks that data will not be useful for international comparisons or will not accurately reflect the identities and lived realities of local populations?

**Input:** Although a global classification scheme may be of great help in the comparison of realities around the world, its absence does not necessarily mean that the data will be useless. It is important, however, that every classification is well described, so that persons from different realities can understand the meaning of the classification from elsewhere. Moreover, it is important to note that there seems to be an actual risk of invisibilizing and erasing regional identities when establishing a unique scheme for classification worldwide. That is because it is really difficult to establish a common ground for such classification. Even when focusing only in status language (i.e. sexual orientation, gender identity and expression and sex characteristics) rather than identity language (i.e. lesbians, gays, bisexuals, trans and intersex), there is an actual problem of erasing identities. That is because mentioning only “diverse sexual orientation”, for example, is too abstract and general and would not cover different realities as well as differentiated exposure to violence and discrimination suffered by persons that experience sexuality in profoundly distinct ways.