

Hate-motivated crimes in Brazil: an overview of crimes against LGBTQI+ people

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Abstract

Purpose – This paper aims to provide an overview of the nature of hate-motivated crimes in Brazil by focusing on offenses against LGBTQI+ people and discussing the current legal approaches to combating hate-motivated crimes.

Design/methodology/approach – The paper draws on secondary sources and analysis of existing literature in the field, which is primarily in the Portuguese language.

Findings – There is no formal definition of hate crime in Brazil. However, it is estimated that Brazil has one of the highest rates of hate crimes perpetrated against LGBTQI+ people in the world, and lethal violence against this group has been on the increase since 2000, especially among black and brown LGBTQI+ people. In more than half of the lethal incidents in public places, often in large cities, the victims and the perpetrators are typically young. The study shows how the lack of a unified legal definition for hate-motivated crimes directly impacts LGBTQI+ people, poses challenges for organizations when collecting data on this group and highlights the need for legislation and enforcement agencies to promote transparency around hate crimes in Brazil.

Research limitations/implications – The study shows how the lack of a unified legal definition for hate-motivated crimes directly impacts LGBTQI+ people, poses challenges for organizations when collecting data on this group and highlights the need for legislation and enforcement agencies to promote transparency around hate crimes in Brazil.

Originality/value – The paper contributes to the literature on gender violence through the analysis of various data sources, created and disseminated by advocacy agencies and other related institutions, on hate crimes against LGBTQI+ people in Brazil.

Keywords Violence, Homophobia, Queer, Discrimination, Gender, Global South

Paper type Literature review

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Introduction

Brazil has one of the highest rates of hate crimes perpetrated against LGBTQI+ people in the world (Brasil de Fato, 2022). Recent data have shown that the violence tends to intersect with social inequality and racism in the country (e.g. Cerqueira, 2021; FBSP [1], 2022; Benevides, 2023). Even though the societal perception of violence and discrimination against LGBTQI+ people have changed [2] in the past few decades, leading to the establishment of legal frameworks in defence of different minority groups, information about hate crimes against the LGBTQI+ is limited. Likewise, there is no specific law for the protection of LGBTQI+ people.

This article contributes to this knowledge base by providing an overview of hate crime against LGBTQI+ people, and discussing the current legal approaches to, and/or public policies, concerning hate-motivated crimes in Brazil. In doing so, the article will explore the types and trends of hate-motivated crimes against LGBTQI+ people, and the intersectionality of their experiences of hate crimes in the absence of legislative protection intended specifically for them.

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Brazil constitutes an interesting case study for several reasons. Firstly, the country has one of the largest numbers of transpeople killed in the world, and figures show that public security is still gender-blind in many states, in that they do not collect data on homophobia and transgender people (Brasil de Fato, 2022). Second, the country has transitioned from past military dictatorship to democracy in the past few decades, which presents an interesting experience of data disclosure and institutional modernisation, especially for those involved in criminal law enforcement. There is a need for unified legislation applying specifically to hate crimes and promoting evidence-based strategies for dealing with violence against LGBTQI+ people. Thirdly, the biases toward a significant share of the population are perpetuated by the absence of effective policies and support, as well as “the invisibility” of victimisation of the most vulnerable groups (Swift, 2023), evident by the absence of official data (p. 10); stigmatisation of the victims (for example “putafobia”) (p. 14); and normalisation of violence (such as in jokes and hate speech) and criminalisation in the military code (p. 4). Added to this, no criminal offence exists for discrimination and hate speech against LGBTQI+ people.

In conducting the secondary research for this paper, the authors first carried out a literature review of theses and dissertations published in Brazil on “hate crimes” by using the Brazilian National Digital Library of Theses and Dissertations (Biblioteca Digital Brasileira de Teses e Dissertações, 2023). The system identified 47 manuscripts published between 2004 and 2022 (the majority of which were published between 2018 and 2021), with 18 of them focusing on gender-based violence as the primary topic. These works provided valuable insights into the current state of research on “hate crimes” within Brazilian literature written in the Portuguese language.

Secondly, the authors focused on collecting the most recent information about hate-motivated crimes in Brazil from a gender-based violence perspective. The two most recent reports – “Atlas of Violence 2021” and the “Brazilian Public Security Yearbook of 2022” – were from Fórum Brasileiro de Segurança Pública, the main organisation that collects data on violence in Brazil. The authors also consulted reports, produced by Acontece Arte e Política LGBTI+ *et al.* and Antra [3], that Fórum Brasileiro de Segurança Pública referenced regarding violence against LGBTQI+ and transfeminine people. Finally, considering the gathered data, a brief and selective overview of Brazilian legislation was conducted to provide key references to how violence has been interpreted by the federal government from the early twentieth century to today.

The making of hate crime against LGBTQI+ people in Brazil: a brief overview

The United Nations Human Rights Council’s July 2011 Resolution 17 / 19 expresses “grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.” [United Nations High Commissioner for Refugees (UNHCR), 2015]. In Brazil, the situation is not any different as described below. Despite the lack of a formal definition of hate crime in the country, according to Benevides (2023), these crimes differ from other crimes because their motivation tends to be more serious than many other offenses. They are committed against a particular person due to the offender’s intolerance, which is better expressed in the forms of social phobias – such as homophobia, biphobia and transphobia – as those feelings are exposed through violence (physical and psychological) and discrimination (direct, indirect, institutional, etc.) (Benevides, 2023).

In 1978, the SOMOS group, in São Paulo, became the first modern formal organisation to fight for LGBTQI+ rights and to represent their interests in the country. According to Lins (2017), back in the 1980s, there was still great resistance to the concept of “sexual orientation” separated from “biological sex”. The use of the term sexual orientation in the final version of the Brazilian Constitution of 1988 was a significant achievement for the queer movement, even though several parliamentarians at the time associated homosexuality and

other deviant sexualities with AIDS (Lins, 2017). Nowadays, grassroots organisations have taken on the responsibility of gathering and disseminating data on violence against the LGBTQI+ community based on a collection of reports of victimizations they have received. For instance, organisations, such as Acontece Arte e Política LGBTI+, the National Association of Transvestites and Transsexuals, and the Brazilian Association of Lesbians, Gays, Bisexuals, Transvestites, Transsexuals and Intersex, have been consulted by numerous researchers and policymakers.

Not only does the lack of effectiveness of enforcement agencies play a determining role in perpetuating violence against LGBTQI+ people today, but the military dictatorship in Brazil in 1964–1985 also had its own guidelines for persecuting public agents identified as LGBTQI+ by the regime [Comissão Nacional da Verdade (CNV), 2014] [4]. Despite the end of media control and the official persecution of civil public institutions by the military government in the mid-1980s, homosexuality was, according to the military penal code, a criminal offence until 2015 (Art. 235, Brazilian Military Penal Code) when the Brazilian Supreme Court ruled the existence of this offence to be unconstitutional (ADPF 291 STF [5]). In other words, during the first three decades of the newly born Brazilian democracy in 1990–2020, all soldiers, members of the police, and firefighters were still not allowed to embrace their true gender identity and sexual orientation.

In 2004, the federal government established the programme *Brasil sem Homofobia* (“Brazil with no homophobia”), which determined 53 actions in 11 different categories to reinforce better practices by public agencies working with health, public security, and the judicial system (Horst, 2016). According to Horst, these actions were delegated to states and municipalities, whose efficiency was compromised by the lack of representativeness [6] in public institutions and across the country. However, no criminal offence against LGBTQI+ was created by legislators, while many other vulnerable groups were better ensured as victims of hate-motivated crimes, as shown in Table 1.

This table demonstrates that these laws were created to prevent criminality and discrimination against particularly vulnerable groups, such as offences perpetrated against older people and people with physical or mental disabilities (Cerqueira, 2021). However, the legislative support necessary to protect LGBTQI+ people against hate-motivated crimes is still non-existent. For example, the Anti-Racism Act defines it as a criminal offense to not accept someone in a commercial place based on their race (article 5 of Lei n.7.716/89), but there would be no offense with the same conduct based on gender/sexual orientation. According to some scholars (e.g. Mason-Bish, 2015), this is a problem for hate crime victimisation, considering that some groups are recognised and represented as

Table 1 Brazilian legislation against offenses regarded as hate crimes: a selection of laws

<i>Date</i>	<i>Description of the law</i>
1951	The Afonso Arinos Act (Law no.1.390/1951)
1973	The Indian Statute (Law no.6.001/1973)
1989	The Anti-Racism Act(Law no.7.716/89)
1990	The Statute of the Child and Adolescent(Law n.8.069/1990)
2003	The Elderly Statute(Law no.10.741/2003)
2006	The Maria da Penha Act (Law no. 11.340/2006)
2014	The anti-HIV discrimination Act(Law no.12.984/14)
2015	Revision of the criminal code revision regarding femicide(Law no.13.104/2015)
2015	Revision of the criminal code regarding violence against public security agents/their relatives(Law no.13.142/2015)
2015	(Law no.13.146/2015)
2022	The prevention and combat of domestic violence Act(Law no.14.344/2022)

Source: Authors’ own creation

victims while others are not, thereby promoting a feeling of “competition” among vulnerable groups. When a new law is created for one group, another one might resent it, thus increasing its feeling of exclusion and lack of protection. In other words, once one group is better represented than others, the group might be seen by the others as privileged (Mason-Bish, 2015).

The lack of a formal definition of hate crimes promotes unequal development of legislation in Brazil. This problem is not only about different laws (or lack of laws) for different groups but also about how opposing models of criminal policy are driven solely by the differing extent to which political influence is exerted on policymakers by these different groups. In the absence of models of criminal policy that are evidence-based, the most rational choice, from the perspective of the authors of this article, would be the development of legislative reform that does not individualise victims, but instead adequately identifies crime motivations.

In 2013, the Popular Socialist Party (PPS) presented a lawsuit to the Supreme Court regarding the unconstitutional legislative omission of LGBTQI+ phobia criminalisation [7]. As the Brazilian Constitution states that the Brazilian state would prohibit any form of discrimination, including discrimination on the grounds of gender and sexual orientation, the legislature could not renounce its obligation to enact a specific penal provision for those who practised homophobic or transphobic actions. Thus, not only was it necessary for the state to recognise its own legislative mistake (25 years after the Constitution was promulgated), but the judiciary was also obliged to present a solution until the legislators presented an adequate measure. In 2019, the Brazilian Supreme Court unanimously recognised the legislative omission of criminal liability for LGBTQI+ phobia and decided to apply homophobia and transphobia to the same interpretation given to the concept of racism, making all institutions accountable in such situations. All the criminal offences related to racism are now applied to LGBTQI+ phobia, such as refusing to serve a gay man in a restaurant, not accepting a trans woman into a hospital, or offending a lesbian for her sexual orientation.

The temporal analysis of data on violence indicates that none of these laws shown in Table 1 resulted in a reduction in violence. On the contrary, records suggest that violence increased (Cerqueira, 2021; FBSP, 2022), suggesting that the Federal Supreme Court ruling had an impact on crime reporting but did not serve as a solution to structural problems of homophobia or transphobia. Thus, while there was no specific law for LGBTQI+ phobia, the decision of the Federal Supreme Court imposed the application of anti-racism criminal offences to cases of homophobia and transphobia.

Although the debate on hate crimes in Brazil started in the late 20th century, driven by LGBT movements (Melo, 2017), the issue of discrimination and social fragmentation [8] around gender violence has been part of academic discourse for several decades. Two key concepts were developed in Brazilian sociology that are worth mentioning in this context. Firstly, the Brazilian “prejudice of prejudice” (Fernandes, 1972, p. 23) has been used to explain the Brazilian image of “warming people”, which allows structural violence to be practised and perpetuated “as long as decorum is maintained” (Fernandes, 1972). Secondly, the concept of “human frontiers”, developed by Martins (2019) in the early 1990s, is based on Henri Lefebvre’s studies of time and production of spaces. According to Martins (2019), there is a clash between traditional values (such as slavery) and modern demands (such as global chains) when they come into contact with each other; they might contradict each other and also coexist in their contradictions, creating a whole new space in their dynamics. In that sense, hate crimes are not only a feeling or a clash between temporalities, but they also take the form of traditional prejudice in a transforming world. Hate crimes exemplify new relations of power that play an important role in social stratification (Quijano, 2005; Ferdinand, 2022; Rivera Huertas, 2021) in the unequal Brazilian society.

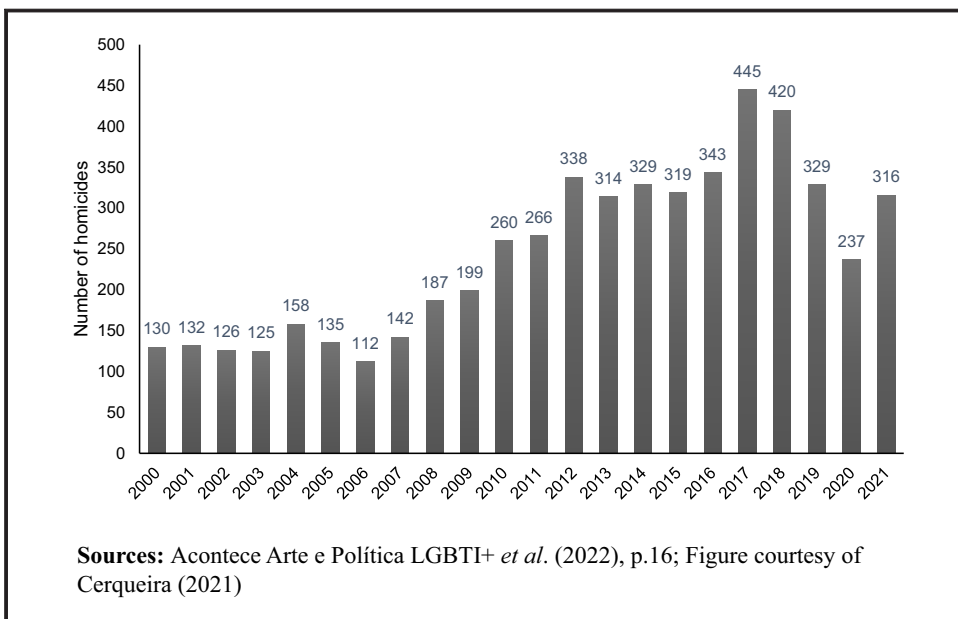
Hate crimes against LGBTQI+ people also differ in their types and patterns. Cavichioli (2019) presents two brutal executions of transwomen practiced with torture and public humiliation, including symbolic actions with their dead bodies. Melo (2017, p. 175) presents a case of a well-known gay man found dead in his own house “throat slit, and skull crushed, in addition to bites to various parts of the body”. These expressions of lethal violence are meant to be symbolic. França (2013) investigated the attack against the “Gay Parade” in São Paulo in 2009 during which 57 people were injured by bombs and attacked in ambushes, with a clear intention to convey an anti-LGBTQI+ message and to punish those advocating their rights. As another example, Serra (2019) presents four cases of trans women murdered in the same month in 2018, in different cities and regions of Brazil, but during the national elections when many anti-trans messages were propagated by conservatives.

The intentions of hate crime perpetrators may be to send a disapproving “message” to the community (Perry, 2015); hence, hate crimes are highly underreported worldwide and are often normalized in several societies in which they are perpetrated (Mason-Bish, 2015). Chakraborti (2015) notes that individuals might feel unsafe reporting or even reluctant to recognise themselves as victims. In Brazil, the misclassification and ambiguity of public data are so deep that their flaws might indicate how hate crimes are unofficially (yet, structurally) supported by public agencies (Rosa, 2019; Cavichioli, 2019; Oliveira, 2017; Lima, 2021; Silva, 2022). According to the Atlas of Violence in Brazil, the rate of violent deaths without an identified cause reported by the police increased significantly in the past few years, compromising the quality of data (Cerqueira, 2021). The assumption of Cerqueira (2021) and his team is that the decrease in murders in Brazil might be related to the increase in deaths with non-identified causes. So, the increase in deaths poorly registered (because the police do not declare the causes) compromises the data and our conclusions about hate-motivated crimes. In the state of Rio de Janeiro, violent deaths without an identified cause increased 232% between 2018 and 2019 (Cerqueira, 2021).

Trends in violence against LGBTQI+ people in Brazil

Figure 1 shows the increase in the number of LGBTQI+ victims of homicides from 2000 to 2021 in Brazil. A few hypotheses could be suggested for this increase:

Figure 1 Number of LGBTQI+ victims of homicides in Brazil per year



- The increase in absolute numbers of homicides in Brazil is due to violence in the war between the country and drug organisations during 2010–2012 (Feltran, 2012), which impacted everyone, including the LGBTQI+ population.
- There was a growth in conservative rhetoric during this same period (2010-2012) which, according to França (2013), may have stimulated greater violence against this group, including the formation of skinhead groups.
- During this period, the first decade of 2000, various municipal and state initiatives to prevent violence against LGBTQI+ individuals emerged, bringing greater visibility to such cases of gender-based violence (Lins, 2017).

According to Figure 1, published by the Atlas of Violence (Cerqueira, 2021), there was a reduction in the number of reports of violence against LGBTQI+ individuals between 2012 and 2019, including a decrease in the number of reports of bodily harm. However, there was a considerable increase in the number of reported homicides in 2017 and 2018, followed by a sharp drop in 2020, most likely an effect of the pandemic on crime reporting practices, as figures in 2021 returned to levels similar to those in 2015.

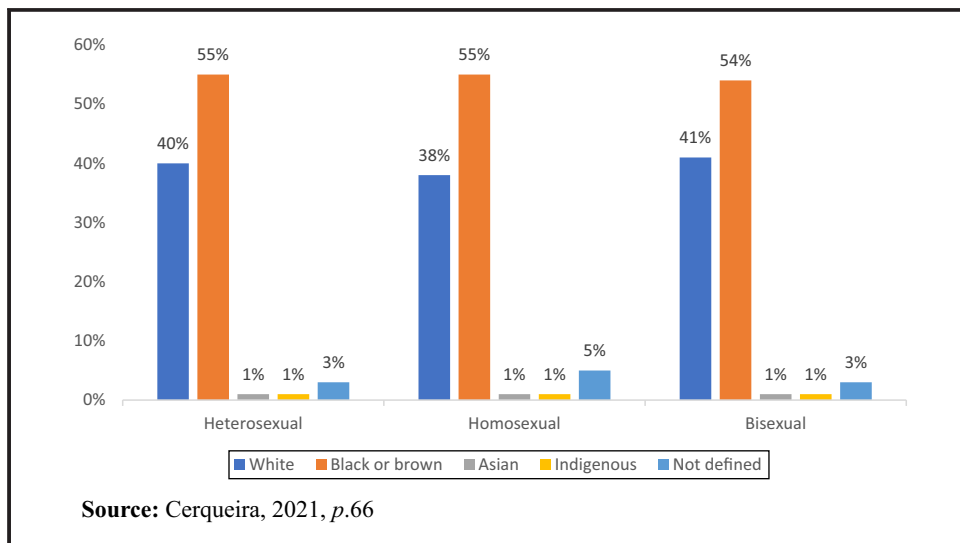
The rates of physical and psychological violence reported against LGBTQI+ individuals between 2018 and 2019 (Cerqueira, 2021) show increases of 5.4% against homosexuals, and 37.1% against bisexuals. As regards violence against transgender people, the data were as follows: 5.6% for reports of physical violence; 13.5% for reports of psychological violence; and 30% for “other types of violence”. Given the pandemic, figures from 2020 and 2021 have been affected by, at least, 20% underreporting (Nabhan and Sousa, 2022).

Both the Atlas of Violence (Cerqueira, 2021) and the Brazilian Public Security Yearbook (FBSP, 2022) refer to the reports of 316 violent deaths of LGBTQI+ people in 2021, of which 145 victims were gay men (46%), 141 victims were transfeminine (45%), 12 victims were lesbian women (4%), 8 were transmen (2%), 3 were bisexual (1%), 3 belonged to another segment (1%) and for 4 there was no information available. However, women who are homosexual are the most common victims of reported violence in general (including psychological violence) (49.5% of the victims), while men who identify as homosexual are the second (36.1% of the victims), women who identify as bisexual are the third (11.5%), and men who declare themselves to be bisexual are the fourth (2.7%).

Figure 2 shows that there is no overrepresentation of black and brown people among the victims of violence toward heterosexual victims, homosexual victims and bisexual victims. According to the latest Brazilian census (2022), 42.8% of the population is identified as white, 45.3% as brown and 10.6% as black [Instituto Brasileiro de Geografia e Estatística (IBGE), 2023], excluding the category of indigenous people. However, there is an overrepresentation of black and brown people among victims of homicides (Cerqueira, 2021).

Investigating data on murder of LGBTQI+ people in Brazil between 2002 and 2016, Mendes and Silva (2020) show that: 32.4% of the LGBTQI+ victims of homicide were professionals with higher education, such as teachers and business people; 41.9% of the victims were aged between 15 and 29, and 26.3% were 30–39 years old; 56.2% of the victims were attacked in public places, while 36.1% were murdered at home. In Brazil in 2019, 51.3% of LGBTQI+ homicide victims were between 15 and 29 years old (Cerqueira, 2021). On the other hand, Mendes and Silva (2020) point out that the perpetrators of the homicide of LGBTQI+ people are of a young age (46.3% are between 20% and 29%, while 28.2% are between 15 and 19%). Most of the perpetrators attained lower educational levels, and their victims comprised 43.7% sex professionals and 30.1% military members. These data suggest different scenarios of victimisation and different contexts of victimisation (as demonstrated by the place where the violence occurred).

Figure 2 Victims of violence in Brazil by their sexual orientation and race/colour



Moreover, violence against homosexual people is more common in urban areas (80.3% of the victims) than in rural areas (5% of the victims) and peri-urban areas (0.6%). For violence against bisexual people, the figures are 13.1% of victims in urban areas and 0.7% in rural areas. The higher number of reports of violence in cities could suggest that informal social control mechanisms in rural areas might be stronger, which prevents people from revealing their “true gender identity,” so there would be an apparent overrepresentation of this population in urban areas. Another possible reason for the silencing of violence is the normalisation of such violence in rural areas, and finally, remoteness and poor access to justice would demotivate victims from coming forward to report the crime.

The dossier published by Antra in 2023 (Benevides, 2023) also presents some key information about murders of trans people in Brazil. Between 2008 and 2022, an average of 121 transgender individuals were killed per year – 131 in 2022 – with a tendency to increase. Within this period, 52.1% of the victims were between 18 and 29 years old. Between 2017 and 2022, 79.8% of the victims were black or brown; and between 2017 and 2022, 23 trans men were murdered, which represents 2.5% of all trans victims in that period in Brazil.

In line with the above-mentioned scenario on violence against LGBTQI+ people, violence against transpeople seems to follow similar patterns. According to Benevides (2023), the life expectancy of trans people in Brazil is 35 years. Benevides also highlights that most of the murders of transfeminine people happen in public places by day, and at least 54% are sex workers. Brutality during a murder is also a constant, as illustrated in public humiliation and the disfigurement of the body (Cavichioli, 2019). In that sense, hate crimes are not about hate, but also about shame, stigmatisation and “false moralism,” as exemplified in “hooker-phobia” [9] (*putafobia*).

Brazil is not only the country with the highest rate of murders of trans people (37.5% of all global records), but also the country that consumes the most transgender online pornography (Benevides, 2023, p. 40, 60–61). Although eight states have the highest numerical concentration of murder incidents, many transfeminine people consider migrating to other countries to find better acceptance. However, their safety is not guaranteed in countries outside Brazil. Between 2017 and 2022, at least 12 transfeminine Brazilian immigrants were killed in Europe, which demonstrates that these individuals are not immune to attack in other societies.

The intersectionality of safety does not operate as an arithmetical calculus, but data might provide different pictures. For example, lesbian women might not be as vulnerable as straight women to domestic violence perpetrated by their partners; however, other interactions might create a higher risk of violence for lesbian women. Although violence is perpetrated in numbers, that may be proportional to different sexual orientations, it does not mean the different groups are subjected to the same kind of violence. For example, there is an overrepresentation of black and brown people among victims of homicides of LGBTQI+ people (Cerqueira, 2021). In hate crimes, intersectionality poses a greater risk for data misunderstanding and misinterpretation since many situations are still underreported thereby creating an additional need for public programs of social awareness and support for victims.

Conclusions and recommendations

This study sets out to provide an overview of the nature and trends of hate-motivated crimes in Brazil, focusing on crimes against LGBTQI+ people. Brazil has one of the highest rates of hate crimes against LGBTQI+ people in the world, but it is difficult to follow trends because data sources are not systematic over time, and methods of data collection differ. Although current analyses focusing on individuals' age, socio-economic status and ethnic identity might offer a handle for comparisons of victimisation against LGBTQI+ people in the global south and northern countries, there is evidence that violence against this group is, in terms of total numbers and forms, not of the same nature in Brazil as in other countries. Brazil has the highest number of deaths of trans women, often as a result of brutal attacks. The high number of LGBTQI+ violence is also influenced by the lack of law enforcement. The situation of LGBTQI+ violence demands not only specially adapted legal support, policy interventions but also most importantly context-specific frameworks to support victims and promote a better understanding of the mechanisms that generate this violence.

A legal definition of hate-motivated crimes would overcome biases in the law, especially the "competition for representation" among minorities, and promote a more democratic criminal response to violence. Moreover, it would enhance data collection, providing a deeper understanding of intersectionality and its role in distinct social contexts (e.g. rural areas, urban areas and traditional communities) and allow follow-ups over time.

Despite advancements in legislation for hate crimes in general over the past decades, the path has been far from linear, suffering from barriers in practice. More research is needed to provide information about the effectiveness of the legislation (regarding the hate crimes law landscape as a whole) and other interventions (such as programmes to endorse tolerance and diversity campaigns, for example "Brasil sem homophobia") against gender-based crimes, especially about the preventive measures against hate crimes introduced in specific regions and localities that have had the most effect in Brazil.

Although this article has paid little attention to online crimes against LGBTQI+ people, future research should unravel whether and how information and communication technologies can serve as a tool to provide an arena for those most affected victims of hate crime. Nowadays, violence is not only organised in social media by individuals with shared interests, but it may also be managed, instigated, and taught through these networks. Future research could therefore explore ways of building more tolerant and diverse networks to turn these technologies into better instruments for promoting gender equality and social integration.

Notes

1. Fórum Brasileiro de Segurança Pública
2. Cases of violence have become more significant in the media and at the same time different forms of violence have become more unacceptable (see Lins, 2017).

3. *Acontece Arte e Política LGBTI+* and three other social movements/organisations are responsible for monitoring cases, and they created an unofficial report about violence against LGBTQI+ people. *Antra* is a social movement/organisation that also compiles cases of violence against trans people. Both are among the better records in Brazil. *The Fórum Brasileiro de Segurança Pública* is the most important research agency when it comes to publishing data about violence in Brazil, but their only resources about LGBTQI+ victims come from the organisations that are mentioned above.
4. The Transitional Justice Commission was created in 2011 to investigate the crimes of the Brazilian dictatorship.
5. Ação de Descumprimento de Preceito Fundamental (a lawsuit proposed against a Constitutional principle violation); STF (Supremo Tribunal Federal – Federal Supreme Court).
6. In the form of people who hold political and non-political positions, such as mayors, governors, deputies, judges, police staff and prosecutors.
7. In Portuguese, Ação Direta de Inconstitucionalidade por Omissão – ADO n. 26, STF.
8. Social fragmentation is a sociological Brazilian concept to describes the different divisions in communities (Martins, 2019). For example, in Los Angeles, white people, black people and Latinos fight each other for territories. This violence is a demonstration of social divisions. Social classes, economic activities, racism and religious perspectives might legitimate this fragmentation.
9. It is an expression used in the Antra report to refer to hate crimes against sex workers, highlighting the moralist prejudice.

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