

LGBTI refugees: the Brazilian case

Henrique Rabello de Carvalho

Brazil has a long tradition of providing shelter and protection to people persecuted for political, racial and social reasons. Following the directives of UNHCR concerning the definition of a 'social group' as a cohesive and vulnerable group whose members share essential characteristics of identity, Brazil's National Committee for Refugees (CONARE¹) has determined that sexual minorities should be considered as a social group for the purposes of applying the 1951 Refugee Convention and Brazil's Refugee Law.²

In analysing the question of the well-founded fear of persecution as grounds for claiming asylum, CONARE includes consideration of the criminalisation of sexual relations between same-sex adults when assessing the potential risk to life or freedom of the refugee applicant in their country of origin. 78 countries out of 193 still have legislation criminalising same-sex consensual acts between adults. Punishments range from a number of lashes (e.g. Iran) or two months in prison (e.g. Algeria) to life imprisonment (e.g. Bangladesh) or even death (Iran, Mauritania, Saudi Arabia, Sudan, Yemen).³ By contrast, in May 2011 the Supreme Court of Brazil recognised that homosexual couples have the same rights as heterosexual couples, including the right to being treated equally and the right not to be discriminated against.

However, public policies in defence and in favour of LGBT people are neither sufficient nor effective in reducing homophobic violence in Brazil. Violence against gays and lesbians – including murder – continues to rise. Brazil has no hate crime law and no public institution or specific project monitoring the occurrence of homophobic crimes and violence. A bill criminalising homophobia has been pending in the National Congress for more than ten years.

In the meantime, recognition of sexual minorities as a social group in terms of claiming and providing asylum means that Brazil's Refugee Law and the 1951 Refugee Convention continue to be the most powerful tools in the defence of LGBTI refugee rights in Brazil.

Henrique Rabello de Carvalho is a lawyer in Rio de Janeiro and member of LGBTI Rights Commission of the Brazilian Bar Association; he was formerly a lawyer with Caritas and the UNHCR office in Rio de Janeiro. This article reflects the personal views of its author henrique.carvalho@aol.com

1. Established by the Ministry of Justice.

2. Law nº 9.474/1997

3. International Lesbian, Gay, Bisexual, Trans and Intersex Association <http://tinyurl.com/ILGA-State-Homophobia-2012>