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## **The Brazilian private sector LGBTI<sup>I</sup> agenda: a response to the pressures of social movements in the new consumption and market relations**

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**Abstract:** There are many Brazilian companies that have been carrying out initiatives aimed at the human rights of the LGBTI community (lesbian, gay, bisexual, trans, and intersex people). This article, therefore, aims to highlight the role of social movements [and civil society] as inducers of human rights transformations for the LGBTI community, which go beyond the public sphere (State) and have a direct catalyst impact on corporate practices and policies that meet the demands of sexual orientation, gender identity/expression, and sex characteristics. For this, we will analyze (i) interrelations among private sector, human rights, and social movements, and (ii) companies that have met the social demands of the LGBTI community.

**Keywords:** Private sector; LGBTI; social movements.

### **A agenda LGBTI do setor privado brasileiro: uma resposta às pressões dos movimentos sociais nas novas relações de consumo e mercado**

**Resumo:** Hoje, há uma quantidade significativa de empresas brasileiras que têm ensejado iniciativas voltadas aos direitos humanos da comunidade LGBTI (lésbicas, gays, bissexuais, pessoas trans e intersexo). Este artigo, pois, objetiva evidenciar o papel dos movimentos sociais [e da sociedade civil] como indutores de transformações em matéria de direitos humanos da comunidade LGBTI, que vão além do âmbito público (Estado) e têm impacto catalisador direto em práticas e políticas corporativas que atendam às demandas de orientação sexual, identidade/expressão de gênero e características sexuais. Para isso, teremos como objeto de análise (i) interrelações entre setor privado, direitos humanos e movimentos sociais e (ii) casos de empresas que têm atendido a demandas sociais da comunidade LGBTI.

**Palavras-chave:** Setor privado; LGBTI; movimentos sociais.

SIMÕES, N. C.

## Human Rights and Business

Historically, corporate policies to promote Diversity & Inclusion (D&I) and to confront human rights violations in business environments stem from two main elements: (i) prominent legislation<sup>III</sup> and public policies on market social responsibility; and (ii) active strategic advocacy and litigation by civil society in the face of cases of harassment, discrimination, and prejudice within the private sector. Nevertheless, the issue of human rights and business has increasingly gained attention from public opinion and even from the international community, given the preparation of technical documents such as the **Guiding Principles for Business and Human Rights**<sup>IV</sup> and the **Standards of Conduct for Companies** facing discrimination against lesbian, gay, bisexual, transvestite, trans and intersex people<sup>V</sup>.

In general, the companies, based on corporate-strategic social responsibility, assume social welfare obligations such as compensation to society for its interests and profits; namely institutional practices for the quality of work of its staff, contribution to community causes, preservation [and restoration] of the environment of surrounding places, among others. In addition to philanthropic actions, it is essential to understand that the market<sup>VI</sup> has a commitment to the promotion of individual and collective citizenship, given that companies are international actors that structurally shape social relations, as well as agents as socially responsive as individuals, the State, civil society, political parties, and churches.<sup>VII</sup> It is no wonder that the aforementioned Ruggie Principles, for example, bring the triad State, market and society as central elements for protection, respect, and reparation in human rights.

Thus, companies have gradually been fundamental to the fulfillment of human rights standards, the advancement of their horizontal effectiveness and the implementation/visibility of social issues agendas, see the increasing relevance of forums such as the UN Global Compact<sup>VIII</sup> and the Working Group on Business and Human Rights<sup>IX</sup>. This indicates the **social responsibility of the market**: business actions to improve society, which focus on areas such as education, environment, culture, sport, leisure<sup>X</sup> and **Diversity & Inclusion (D&I)**. Here we will pay closer attention to sexual orientation, gender identity/expression, sex characteristics, and diversities for LGBTI people, in view of the Standards of Conduct and the elements of human rights.

These substrates instruct two analytical-conceptual categories in the theme of business and human rights: **active responsibility of the private sector** and **intersectoriality**. The first assesses the fact that companies, in the figure of actors that contract objective international obligations and, in the capacity, to constitute social relations, have a much greater duty with agendas of social issues and human rights than that of only being responsible for not perpetrating abuses<sup>XI</sup>. And the second category comprises the facet of social management, enhanced and optimized when it allows an intersectoral articulation between various social actors in the scope of public policies and public-private partnerships.<sup>XII</sup> With this, it is necessary the joint action between State, market, and society so that the corporate environment is socially responsive and responsible in matters of sexual orientation, gender identity/expression and sex characteristics, so that we strengthen the list of intersectoral initiatives, public policies and strategic partnerships for equality and fair treatment of the LGBTI population, in accordance with the Standards of Conduct.

These interconnections reveal the need for companies to participate in the implementation of domestic and international human rights norms, as well as sexual orientation, gender identity/expression, and sex characteristics. This is because the new market logics demand concrete positions and initiatives on the part of companies in relation to social and human rights issues, since, increasingly, these are demanded of consumers to engage socially responsible and environmentally sustainable services and products. This is interesting to observe as (i) the potential

SIMÕES, N. C.

for LGBTI purchases occupies a significant percentage of the Brazilian GDP (studies estimate 10% in 2015)<sup>XIII</sup>; and (ii) the legalistic perspective on the theoretical definitions of human rights is not sufficient to guarantee the LGBTI community the legal, moral and political foundation of its dignity and humanity<sup>XIV</sup>, considering that the advancement of public policies on human rights in the Brazilian State stems from a historical process of articulation and mobilization of social movements in favor of their agendas<sup>XV</sup>.

There are several Brazilian companies that, in addition to being signatories to domestic and international commitments to LGBTI populations, engage institutional practices – such as Atento's trans employability actions – and participate in intersectoral actions with bodies such as the Public Ministry of Labor (MPT) and the International Labor Organization (ILO) for culture and market access for LGBTI people<sup>XVI</sup>. Companies such as Itaú and Natura combine communication and *marketing* actions aimed at the LGBTI public with institutional strategies to train staff and combat homotransphobic discrimination. Also, the representation of LGBTI characters in series and films of Netflix and local broadcasters and in the Brazilian dramaturgical scene; the campaigns that the social networks Facebook and Google promote for the International Day against Homophobia and LGBTI Pride Month; and business communities such as the LGBTI+ Business and Rights Forum are key to the visibility of issues of sexual orientation, gender identity/expression, and sex characteristics in the private sector.

Finally, it is also worth highlighting the lucrative dimension of LGBTI inclusion in companies, which adds to the credibility and importance of the agenda in contemporary market dynamics and constitutes the basis of the private sector: delivering products and services, preferably of quality, to the public, in the expectation of financial return. According to studies by the International Labor Organization<sup>XVII</sup> and McKinsey<sup>XVIII</sup>, thinking about diversity in the corporate environment enhances profits. The productivity and profitability of companies are related to the comfort and quality of work of employees, the diversity and performance of teams and the innovative ability to define market strategies. By way of illustration, McKinsey<sup>XIX</sup> observed that companies with more diversity in their executive boards presented better financial results between 2008 and 2010. Companies like Adidas, which has diversified staff and set targets for increasing the number of women among management positions, rated return on equity (ROE) 53 percent higher than those in the least diverse quartile and scored earnings before interest and taxes (EBIT) 14 percent higher on average than the ones with less diversity.

Once again, we must think about the interface between human rights and business, when it comes to diversity agendas and mutual advantages for the market and society of respect for LGBTI rights in the private sector, to also include the compatibility of business policies aimed at Diversity & Inclusion with norms and guidelines of the State, and even of international devices. Thus, the multiplicity of social actors, which goes beyond the harvest of public policies *per se*, is a key point for the relevance of the theme, understanding, here, the LGBTI community as a catalyst and recipient of business initiatives in sexual orientation, gender identity/expression and sex characteristics.

### **The LGBTI agenda in the Brazilian private sector and the role of social movements**

One of the multiple pieces of evidence of Brazilian companies' accountability in protection, respect, and reparation of the human rights of the LGBTI community is the **Forum of Companies and LGBTI+ Rights**, a business community that brings together private sector initiatives for the respect of **Diversity & Inclusion (D&I)**. The Forum is a network that brings together companies around **10 Commitments**, which focus mainly on three axes of the Charter of

THE BRAZILIAN PRIVATE SECTOR LGBTI AGENDA: A RESPONSE TO THE PRESSURES  
OF SOCIAL MOVEMENTS IN THE NEW CONSUMPTION AND MARKET RELATIONS

SIMÕES, N. C.

Adherence to the Forum: (i) improve business management practices to add value to the brands of the participating companies and their *stakeholders*; (ii) combat homotransphobia and its harmful effects on people, businesses and society; and (iii) influence the corporate environment and society in the adoption of practices in respect of LGBTI rights<sup>XX</sup>.

Two elements are essential to our analysis. The first concerns the role delegated to the community and civil society of the Commitments, the Charter of Adhesion and the Manifesto of the Forum, such as the demand that it brings to the participating companies to promote and support actions in favor of LGBTI rights in the community, in intrinsic dialogue with what the Standards of Conduct will call public action and advocacy of companies for the causes and agendas of the LGBTI social movement. And the second point relates to the civil society organizations that actively and directly participate in the deliberative processes and managers of the Forum, including renowned NGOs<sup>XXI</sup> in the Brazilian LGBTI political scene.

This is because, historically, the LGBTI social movement itself has been the main inductor and catalyst of the conquest of rights and public policies concerning the demands of sexual orientation, gender identity/expression and sex characteristics. Be it worldwide with the demands of Stonewall in 1969, which culminated in the establishment of LGBTI Pride Month in June, or in the Brazilian context with resistance to the military dictatorship (1964-1985), depathologization of homotranssexuals with the Psychology Councils, guarantee of national policies of integral health and combat/prevention of HIV/AIDS and technical resolutions reaffirming rights to social name and gender identity, LGBTI people have always challenged public and private entities in favor of their human rights.

An example of this is the National Council for Combating Discrimination and Promotion of LGBT Rights (CNCND/LGBT), a member of the National System of Social Participation (SNPS), which composes a democratic instance of dialogue and joint action between federal public administration and civil society in the discussions of the State and in the processes of formulation of public policies. To this end, the Council was created, aiming:

To meet a historical demand of the Brazilian LGBT movement and with the purpose of enhancing public policies for the LGBT population, the now CNCND/LGBT now aims to formulate and propose guidelines for government action, at the national level, aimed at combating discrimination and for the promotion and defense of the rights of Lesbians, Gays, Bisexuals, Transvestites and Transsexuals.<sup>XXII</sup>

The National Conferences promoted by the CNCND/LGBT, for example, signal the importance of social mobilization and joint participation of the community, governments, social organizations and, especially for this article, companies in confronting and eradicating social, political, and economic problems that cross the LGBTI community. The proceedings of the 1st National Conference<sup>XXIII</sup>, for example, highlighted actions relevant to the business agenda on LGBTI human rights, such as:

[...] Create a national seal that identifies the companies that support all cultural and educational manifestations of the LGBT population, stimulating the support of public and private companies.

[...] Create laws and other normative instruments aimed at promoting affirmative action with respect to the LGBT population in the hiring of apprentices by companies.

[...] Promote, together with the Labor Secretariats in the States, [...] professional training partnerships involving entities in this area (...) aiming at the professionalization of the LGBT population, especially the transvestites, as well

THE BRAZILIAN PRIVATE SECTOR LGBTI AGENDA: A RESPONSE TO THE PRESSURES OF SOCIAL MOVEMENTS IN THE NEW CONSUMPTION AND MARKET RELATIONS

SIMÕES, N. C.

as a campaign to raise awareness of the business community for the insertion of this population, ensuring the seal of social employability with these companies.

[...] Create legislation with the purpose of prohibiting the participation, in competitions and bids at the federal, state, and municipal levels, of companies condemned for the practice of discrimination against the LGBT population.

[...] To guarantee, through the Presidency of the Republic, the use of the social name of transvestites and transsexuals in the federal public service, both in the direct administration and in autarchies, foundations and public companies. Create legislation to guarantee the use of the social name of transvestites and transsexuals in private companies.

[...] Promote, through the Ministry of Labor, campaigns aimed at raising awareness among companies and departments in charge of selecting employees for non-discrimination at the time of hiring or dismissal of LGBT youth, creating mechanisms of protection by unions and the MPT.

[...] Stimulate the participation of institutions linked to the LGBT movement in municipal, state and national councils and conferences of social assistance and promote, among the criteria for measuring the social responsibility of public and private companies, the development and inclusion of projects to combat discrimination based on sexual orientation and gender identity.<sup>XXIV</sup>

We perceived, then, the cadence of the theme of LGBTI human rights and companies since at least 2008, given the numerous mentions of different axes of social responsibility of the market in education, culture, employability and non-discrimination, as well as the importance pointed out in the highlighted excerpt of a joint action between State, market and society, something that would come to be recognized in the aforementioned Ruggie Principles and Standards of Conduct. Added to the processes of strategic litigation with the Judiciary, that is, the denunciation and judicialization of cases of violence and discrimination against LGBTI people in the labor market, which force a *status quo ante* reparation of cessation to the violation of human rights of a homotransphobic nature, all this evidence the role of interpellation of social movements with the public power and the corporate environment.

Finally, it is also interesting to think about a third element, concerning the role of civil society organizations as consultancies and technical advisors for companies in the field of Diversity & Inclusion. Several LGBTI entities, such as Mais Diversidade and the TODXS Association, are third sector institutions that foster and strengthen actions aimed at the agendas of sexual orientation, gender identity/expression and sex characteristics, providing services of (i) training and qualification of the staff of the companies regarding the non-discrimination of LGBTI people, (ii) mobilization and communication campaigns to accelerate affirmative action corporate policies for hiring transgender people and extending parental leave for same-sex couples, to name a few examples, and (iii) building policies, regulations and statutes specifically aimed at diversity, inclusion and business practices of respect for human rights [LGBTI].

Currently, after a series of lawsuits favorable to the LGBTI cause, an expansion of the socio-political participation<sup>XXV</sup> of social movements both in the sphere of the State and in the diligence with the private sector and a *boom* in the appreciation of sexual, racial and gender diversity within the field of corporate sustainability and the financial investment market, numerous brands and companies have advanced the agendas of sexual orientation, gender identity/expression and sex characteristics in their internal and external spheres. Therefore, given the last object of analysis of this article, I will mention some business initiatives that respect the human rights of the LGBTI community, and that nowadays serve as a reference within the agenda of corporate social responsibility:

a) Training programs, hiring and well-being of self-declared LGBTQIA+ people, support for the

SIMÕES, N. C.

possibility of leave, psychological support and free legal assistance for employees who are victims of homotransphobic situations, paid time off for employees in gender transition processes (such as hormone therapy and gender reaffirmation surgeries) and affinity groups (Pride+) – TIM.

b) Affirmative vacancies in all hiring screenings, including processes exclusive to trans people, and 2030 strategic diversity and inclusion plan for the corporate organizational culture and the entire chain of operations – Cielo.

c) Partnership with Casa 1, an NGO<sup>XXVI</sup> that is a reception center for LGBTQIA+ youth expelled from home, through makeup and training courses for trans residents of the place; as well as awareness weeks, affinity groups, LGBTI demographic composition goals in its workforce, social name policy and extension of health benefits and parental leave – Natura & Co.

d) Partnership with *TransEmpregos*, a civil society organization for the inclusion of trans people in the labor market, regarding the participation in employability fairs aimed at trans professionals; bathroom use policy according to gender identity and social badge policy – Atento.

e) Reformulation of the ethics channel for recording deviations related to diversity, to include cases of homotransphobia, anonymous diversity census for the workforce, sponsorship of the Diverse Fair and <sup>XXVII</sup> adherence to the Citizen Company Law, which extends the aforementioned parental leaves and adoption rules – EDP<sup>XXVIII</sup>.

In addition to the importance of the initiatives recorded above – which, I stress, are not exhaustive – it is also essential to highlight the role that the business community takes and should actively take in financing and promoting LGBTI causes. Brands such as Absolut, Amaro, Burger King, Casai, Disney, Doritos, Dow, Eataly, Havaianas, Levi's, Lojas Renner, Mercado Livre, Nivea, Nubank, O Boticário, Quem Disse, Berenice?, Skol Beats and Vivant have a history of mobilizing campaigns to raise profits and resources for civil society organizations that have an impact on the cutting edge of the respect for the human rights of the LGBTI community, especially for people in vulnerable situations, such as shelters, social projects, and protection and training entities<sup>XXIX</sup>.

## Conclusion

Finally, it is undeniable that, in the last two decades, the discussion on corporate sustainability and respect for human rights in the business sector has expanded. Both the pressure of organized and unorganized civil society, through social movements and Non-Governmental Organizations, and the greater demand of consumers on traceability and social responsibility of the market have designed new relations of consumption and interaction of the private sector with the State, society and LGBTI people.

Whether through advocacy, judicialization, strategic litigation and *naming and shaming*, or through litigation and interpellation with direct incidence on the State, in the spheres of democratic participation and in the large capital movers; once again, social movements and civil society organizations have established themselves as key actors in the design, implementation, monitoring and evaluation of public policies on human rights and corporate practices in accordance with the agendas of sexual orientation, gender identity/expression, and sex characteristics. Now, we dispute the academic harvest to guide LGBTI bodies and subjectivities as subjects of our histories and owners of the narrative about the effective Diversity & Inclusion in all fields, State, market, and society, which goes far beyond *pink money*<sup>XXX</sup> and the emptying of political struggles.

THE BRAZILIAN PRIVATE SECTOR LGBTI AGENDA: A RESPONSE TO THE PRESSURES OF SOCIAL MOVEMENTS IN THE NEW CONSUMPTION AND MARKET RELATIONS

SIMÕES, N. C.

If we do not have our rights respected even in our work environment, how will we fight for our dignity and humanity in all the spaces we occupy? Claiming rights implies recognizing that the market must be held accountable, not only as a potential entity for human rights abuse, but also as an active agent of change.

## Notas

<sup>I</sup> Despite the acronym 'LGBTI' not be exhaustive, due to the multiplicity of sexual and gender identities (as advocated by the *queer* theories captained by Judith Butler, for instance), I chose the most recurrent form of its' use in public policy documents and international reports.

<sup>II</sup> Master's Degree in Human Rights, Citizenship and Public Policies at the Federal University of Paraíba (UFPB), and Bachelor in International Relations from the University of Brasília (UnB).

<sup>III</sup> In the case of Paraíba Brazilian state, for instance, Law 7,309/2003 prohibits discrimination based on sexual orientation or gender identity in public and private establishments in the state; and Law 10.895/2017 brings the obligation of posters in commercial establishments and public agencies clearly mentioning the Law 7.309/2003.

<sup>IV</sup> (Ruggie Principles, 2011).

<sup>V</sup> (2017).

<sup>VI</sup> Because of its role, for example, in international trade and the financial system.

<sup>VII</sup> NETO & FROES, 2001, p. 26-27.

<sup>VIII</sup> (2000).

<sup>IX</sup> (2011).

<sup>X</sup> CHIAVENATO, 1999, p. 121; QUEIROZ, EXTEND & GALVÃO, 2014.

<sup>XI</sup> Here understanding that the classical literature and doctrine impute to the State the role of exponent and maximum subject of International Law, to which the institution of objective international responsibility is exclusively competent. Within other perspectives of international law, such as the idea of postmodern international law, we revisit Accioly, Silva and Casella (2018), also to think about a growing role of companies and corporations in this equation, bearing in mind, for example, that postmodern international law itself has recognized the centrality of the individual within the international system, such as his accountability to international criminal law and the international crimes typified in the Rome Statute.

<sup>XII</sup> GARAJAU, 2013.

<sup>XIII</sup> 'LGBT procurement potential [...]', O Globo, 2015.

<sup>XIV</sup> LOHMANN, 2013.

<sup>XV</sup> CARLOS, 2021.

<sup>XVI</sup> The example of the Kitchen + Voice project, a partnership between MPT, ILO, private companies, and chef Paola Carosella for the employability of trans people through training in the culinary niche.

<sup>XVII</sup> (ILO, 2002).

<sup>XVIII</sup> (2012).

<sup>XIX</sup> (2012).

<sup>XX</sup> LGBTI+ BUSINESS AND RIGHTS FORUM, 2023.

<sup>XXI</sup> Some of the partner organizations are: ABRAFH, AIDS News Agency, Bicha da Justiça, Grupo Arco-Íris, Câmara LGBT, Fundo Positivo, IGLTA, Instituto +Diversidade, Mães pela Diversidade, ParadaSP and TransEmpregos. The full list can be found on the Forum's website: <https://www.forumempresaslgbt.com/>.

<sup>XXII</sup> (MINISTRY OF HUMAN RIGHTS AND CITIZENSHIP, 2018).

<sup>XXIII</sup> (2008).

<sup>XXIV</sup> (MINISTRY OF HUMAN RIGHTS AND CITIZENSHIP, 2008, pp. 206-214, translation and emphasis added).

<sup>XXV</sup> In the 2022-2023 election, we reached a record number of openly LGBTI candidacies in the different spheres of the Legislative Power in Brazil, as well as an increase in the representation of race and gender, and finally the election of the first trans parliamentarians in the history of the National Congress (CNN BRAZIL, 2022).

<sup>XXVI</sup> The partnerships between business and civil society reiterate the object of study of this article.

<sup>XXVII</sup> Largest recruitment event for LGBTI youth in Latin America and the Caribbean.

<sup>XXVIII</sup> CNN BRAZIL, 2020; Adams, 2021.

<sup>xxix</sup> EXAM, 2021.

<sup>xxx</sup> *Pink money* is a nomenclature used to designate the marketing of products and services to the LGBTI public, such as pieces of clothing that print the rainbow flag. Some currents of thought and some sectors of public opinion defend the idea that companies and brands only appropriate LGBTI causes to increase profit and productivity, emptying the true socio-political meaning of resistance to the struggles of social movements. Campaigns or unit sales, in fact, can represent strategic marketing opportunism for companies; however, if accompanied by structural actions that transversalize the areas and planning of corporations and promote an internal and external culture of respect for LGBTI human rights, understood as a salutary and necessary business movement to embrace Diversity & Inclusion.

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THE BRAZILIAN PRIVATE SECTOR LGBTI AGENDA: A RESPONSE TO THE PRESSURES  
OF SOCIAL MOVEMENTS IN THE NEW CONSUMPTION AND MARKET RELATIONS

SIMÕES, N. C.

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