Revista Direito e Praxis

[Unpublished articles]

Sexual and reproductive rights in the Brazilian congress: a decade of struggle (2010s)

Direitos sexuais e reprodutivos no congresso brasileiro: uma década de disputa (2010)

Lívia Gonçalves Buzolin[1]

[1] FGV Direito São Paulo, São Paulo, Brasil. E-mail: livia_gb@hotmail.com e livia.buzolin@fgv.br. ORCID: https://orcid.org/0000-0003-1881-0792.

luciana gross cunha[2]

[2] FGV Direito São Paulo, São Paulo, Brasil. E-mail: luciana.cunha@fgv.br. ORCID: https://orcid.org/0000-0002-7396-1879.

Artigo recebido em 22/06/2023 e aceito em 14/07/2024.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

Abstract

The article analyses the sexual and reproductive rights policy agenda in the Brazilian National Congress from a state-centred perspective to verify whether over the last decade the inability to legislate on these topics has persisted in the federal arena and whether the centrality of the debate in the electoral sphere has also been translated to the legislative branch. To do so, it employs document analysis of legislative proposals, namely 184 of 43,124 bills submitted to the National Congress from 2011 to 2020. Out of this amount, 93 bills refer to LGBT rights and 91 to abortion. These were classified according to the date of submission, type and procedural status, author of the distribution, as well as whether their content is favourable or contrary to the rights of LGBT people and to abortion. The results point to a scenario with few changes in legislative behaviour in the 2010s, in which these issues remain non-central in the Brazilian Congress and a low probability that any of the proposals will be converted into law persists, although there was an increase in lawmakers' interest on this agenda during the last legislative term and a shift in the assessment of the bills submitted in 2020.

Keywords: Abortion; LGBT rights; Legislative studies; Parliamentary behaviour; Sexual and reproductive rights.

Resumo

O artigo analisa a agenda política de direitos sexuais e reprodutivos no Congresso Nacional brasileiro a partir de uma perspectiva centrada no Estado para verificar se na última década a incapacidade de legislar sobre esses temas persistiu na esfera federal e se a centralidade do debate na esfera eleitoral também foi traduzida para o poder legislativo. Para tanto, utiliza a análise documental de proposições legislativas, ou seja, 184 dos 43.124 projetos de lei apresentados no Congresso Nacional no período de 2011 a 2020. Desse total, 93 projetos de lei referem-se a direitos LGBT e 91 ao aborto, que, por sua vez, foram classificadas quanto à data de apresentação, tipo e situação processual, autor da distribuição, bem como se seu conteúdo é favorável ou contrário aos direitos das pessoas LGBT e ao aborto. Os resultados apontam para um cenário com poucas mudanças no comportamento legislativo na década de 2010, em que essas questões permanecem como não centrais no Congresso brasileiro e persiste uma baixa probabilidade de que alguma das propostas seja convertida em lei,

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

embora tenha havido um aumento no interesse dos legisladores sobre o tema durante a última legislatura e uma mudança na valoração dos projetos de lei apresentados em 2020.

Palavras-chave: Aborto; Direitos LGBT; Estudos legislativos; Comportamento parlamentar; Direitos sexuais e reprodutivos.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

Introduction

Sexual and reproductive rights are under dispute and are highly politicized around the world. According to Siri Gloppen (2021, p. 2), these rights comprise a broad field that encompasses a set of rights related to the protection against gender-based violence, one regarding sexual orientation, gender identity and expression - which we will refer to as a synonym for the rights of LGBT people - and yet another regarding reproductive rights, in which the right to abortion is included[1].

The struggle around these rights can be analysed from different viewpoints, such as, for example, from progressive social movements' mobilization (COACCI, 2020), counter-mobilization of conservative groups (BIROLI *et al*., 2020; MACHADO, 2017; SOARES & RICOLDI, 2022), institutional activism among bureaucrats (PEREIRA, 2020), civil society's actions and backlash (SEGATTO *et al*., 2022), and so forth. The debate that we propose here is state-centred[2], that is, we describe how struggle over these rights has been carried out by state actors, although we are aware that they are often informed by external players and that there is a wider context surrounding this debate.

The sexual and reproductive rights' recognition, especially since the 2000s, has been happening through the Courts in different corners of the world. In the last 23 years, judicial rulings protecting sexual rights have been issued in African countries such as South Africa, Botswana, Kenya and Uganda (JJUUKO, 2020) and in several US states (KECK, 2009), until the Supreme Court of the United States of America ruled that the same-sex marriage was legal in all 50 states in the Obergefell v. Hodges case in 2015.

In Latin America, rulings by the Constitutional Courts of Colombia, Mexico and Argentina were crucial to reforms that liberalized abortion regulation (RUIBAL, 2014, p. 125). According to Alba Ruibal (2014) these decisions allowed abortion in cases of rape, risk to the life or health of the woman and severe foetal malformation in Colombia (2006); abortion legalization up to 3 months of pregnancy in Mexico City (2007); and abortion legalization in all cases of rape in Argentina (2012). More recently, in 2022, the Constitutional Court of Colombia decriminalized abortion undertaken up to 24 weeks of pregnancy.

[1] For this article, we refer only to LGBT rights and abortion when addressing sexual and reproductive rights because these were the themes selected to be mapped in Congress. Gender-based violence and other reproductive rights were not addressed in this work.

[2] Because of this, the terminology we employ is often a reproduction of the narrative from state actors themselves, even if such terminology is not the most inclusive or recent.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

The process of recognising these rights in the Brazilian case has been no different. In the last decade, the Federal Supreme Court was called upon and ruled on five landmark cases whose results guaranteed advances in sexual and reproductive rights: same-sex civil partnership (2011), the possibility of anencephalic foetus abortion (2012), the right of transgender people changing their names and gender markers in official documents (2018), criminalization of homophobia and transphobia (2019) and the possibility of men who have sex with men to be blood doners (2020).

The recognition of these rights by the Courts goes hand in hand with a diagnosis of the federal legislative branch's inability to pass any federal law addressing sexual and reproductive rights. Research that examined the debate around abortion and LGBT rights in the Brazilian National Congress during the 2000s reached very similar conclusions regarding an ongoing deadlock on those issues, even though there is mobilization around them.

Marta Rodriguez de Assis Machado and Débora Alves Maciel analysed 50 bills dealing with abortion that were submitted to Brazilian Congress from 1995 to 2006, reaching the conclusion that "pro-choice" and anti-abortion advocates created a deadlock in the legislative arena, with the majority of the abortion bills never becoming law (MACHADO & MACIEL, 2017, p. 124). Rafael de la Dehesa (2010) noted the absence of federal law on LGBT rights, stressing that by 2007 Brazil had, at the municipal and state level, a corpus of law on sexual orientation that was relevant if compared to global standards, while constitutional amendments on antidiscrimination based on sexual orientation had been defeated twice at the federal level.

To further contribute to this debate and, to a certain extent, update it, we present a descriptive analysis of the bills on sexual and reproductive rights submitted to the Brazilian National Congress between 2011 and 2020, which corresponds to the 54th, 55th and first half of the 56th legislative terms. This is thus a research inserted in the field of legislative studies, in which we conducted a case study on abortion and LGBT rights in the Brazilian National Congress based on document analysis.

We are mindful of the reminder made by Juliana Cesario Alvim Gomes that "undifferentiating between sexual rights and reproductive rights has the potential to subordinate and condition the former to the latter, rendering them invisible" (2021, p. 26). However, we chose to jointly approach the issues of abortion and LGBT rights in what we call, in this research, the agenda of sexual and reproductive rights in the Brazilian National

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

Congress, to highlight shared analytical points between these issues from the moment they are addressed by state actors.

The article is divided into three sections, in addition to this introduction. The next section is dedicated to presenting the literature on legislative studies in Brazil. Next, we present the methodological criteria applied in this research and then discuss the findings that point to few changes in the legislative scenario during the 2010s. This agenda continues to have little representation in the legislative debate and the likelihood of bills becoming law remains low. At the same time lawmakers are increasingly interested in these issues and there has been a shift in the bills submitted in 2020, that are no longer predominantly opposing and are now more favourable.

Towards an analysis of the gender and sexuality agenda in legislative studies

During the military dictatorship (1964-1985), and following the patterns of consensus democracies, Brazil experienced an increase in the legislative powers of the Executive Branch (LIJPHART, 2003, p. 55), which was linked to the low legislative efficiency of Congress, seen by political scientists as a body that was "not very flexible, resistant to change, whose performance is almost always slowed down by its adherence to traditional practices of political behaviour" (ABRANCHES & SOARES, 1973, p. 74). This scenario persisted even with the process of re-democratisation, since "many of the legislative powers obtained by the Executive Branch during the authoritarian period were not suppressed by the 1988 Constitution" (FIGUEIREDO & LIMONGI, 2001, p. 43).

In this context, after the process of re-democratisation, the legislative studies carried out in Brazil focused above all on the relationship between the executive and legislative branches. The choice made by the Constitution to delegate legislative powers to the Executive Branch revealed that the relationship between the Executive and the Legislative Branch is characterised by boundaries that "are highly contingent upon political and economic factors" (PEREIRA *et al.,* 2004, p. 196).

Diagnoses regarding the Brazilian National Congress carried out since then have pointed to the difficulty of the Legislative Branch in approving its own bills, especially those that reflect its social agenda (FIGUEIREDO & LIMONGI, 2001, p. 62). The legislation written

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

by Congress itself was not characteristic of a broad programme of public policies, "but rather of intervention in topical issues pertinent to the everyday life of ordinary citizens" (AMORIM NETO & SANTOS, 2002, p. 108).

One can observe a high rate of legislative success of Brazilian Presidents from 1990 to 2006 (84 percent), while in the same period, the Congress had one of the lowest success rates in Latin America: 1.9 percent, while most Latin American Congresses approved more than 10 percent of their proposed legislation, with some countries having even higher rates, such as Honduras (42.3 percent), Panama (39.9 percent) and Paraguay (36.9 percent). Therefore, Mercedes García Montero (2009) classified the Brazilian Legislative Branch as reactive, which did not necessarily reflect an institutional crisis or the irrelevance of our Congress.

It was only in 2008 that, for the first time, legislation written by Congress exceeded the Presidential, inaugurating a period of unprecedented parliamentary domination (ALMEIDA, 2020). Institutional changes, such as modifications in the procedural rules for provisional measures[3] and for Mandatory Budget[4], are pointed out as the reason for the empowerment of the Brazilian National Congress. In the last legislative term (56th), this scenario was further complemented "by the disorganization of the Executive Branch and the belligerent rhetoric of the president [Bolsonaro] and his entourage that drive the Legislative Branch to take on a leading role in the political system" (FREITAS, 2020, p. 49).

The overview here presented is part of the Brazilian scientific production in the field of legislative studies, developed mainly based on studies about the American legislative branch and its proactive behaviour, with a predominance of quantitative methods as a methodological choice. Although it is a field that has developed a lot, there is still, however, "a very significant limitation in legislative studies in Brazil" (SANTOS, 2008, p. 81).

The author indicates a path that should be further explored in this field: the relationship between the legislative branch and the judicial branch, another political player that is especially relevant in the debates over the recognition of rights (SANTOS, 2008, p. 82).

[3] In the Brazilian political system, Provisional measures (MPs) are rules enforceable as law, in situations of relevance and urgency, written by the President and submitted to the National Congress for analysis. MPs have immediate legal effect, as soon as they are issued, for a period of 60 days, automatically extended for an equal period if the voting process in Congress has not been concluded. If the MP is not submitted to voting within 45 days of its issuance by the President, it enters into an emergency regime, with the suspension of all other legislative deliberations.

[4] In 2015, the National Congress approved an Amendment to the Constitution (EC n. 86), which establishes the obligatory execution of individual amendments to the Public Budget made by congressmen. This legal instrument is called the Mandatory Budget (*Orçamento Impositivo*).

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

This relationship regarding the dynamics involved in the recognition of the same-sex marriage in Brazil let to the conclusion that it was a complex process, marked "by struggles of majorities and divergences in the Judicial System and that, in turn, are reproduced in the Legislative Branch in its own dimension" (BUZOLIN, 2019, p. 137).

However, this article proposes to go down another path that is also little explored in legislative studies: the study of specific agenda issues, which may enable us to find new evidence on the functioning of the National Congress or even on parliamentary behaviour when faced with a particular agenda. In line with the approach proposed by Suely Mara Vaz Guimarães de Araújo and Rafael Silveira e Silva, we believe that it is possible to go beyond "summarising the performance of legislators only in terms of the bills they have written that effectively become law" (ARAÚJO & SILVA, 2012, p. 64), carrying out more in-depth research that presents mid-range conclusions and is important for the field, even though it cannot be generalised at first.

Thus, the study of how the sexual and reproductive rights agenda is addressed in the National Congress is relevant for at least two reasons. Firstly, the historical inability to pass federal legislation on the subject (MACHADO & MACIEL, 2017; DEHESA, 2010). This is an agenda that has been under dispute in the federal level of the Legislative Branch since the Constitutional Assembly (1987-1988) and whose own contours challenge findings regarding the pattern of parliamentary behaviour, namely, the imposition by the Executive Branch of its legislative agenda, which is more likely to be enacted, since it assumes a parliamentary behaviour based on the indication of the party leaderships, giving rise to greater discipline from the members of Congress.

Even when the elected leaders of the Executive Branch were engaged in the debate around sexual and reproductive rights, there was no legislation enacted via the National Congress. For example, during President Lula's government, in 2005, was the moment that we came closest to decriminalising abortion in the country, when a tripartite commission was formed, made up of members from civil society and representatives of the Executive and Legislative Branches. However, due to the influence of religious countermobilization combined with the effects of corruption scandals, the Executive Branch withdrew its support and the bill that established the decriminalization of abortion up to 12 weeks of pregnancy was shelved (MACHADO & MACIEL, 2017, p. 125).

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

A similar movement was observed in the case of same-sex civil partnerships. Legislators and activists interviewed by Rafael de la Dehesa (2010) explained that both Presidents Fernando Henrique Cardoso (1995 - 2002) and Lula (2002 - 2010) declared their support for the cause, but did not come around to including a bill on the subject in the policy agenda, partly because the government's coalition agreement that formed the congressional base was comprised of religious conservatives, meaning that party leaders refrained from forcing discipline on the so-called "moral agenda", making room for private choices in the public domain (DEHESA, 2010, p. 119).

Luiz Mello and Camilo Braz (2020, 173) question the absence of federal legislation by recognizing that it was during the eight years of Lula's government that the LGBTT population received attention from the Executive in an unprecedented manner, but that the absence of a legal framework approved by the National Congress and of federal laws providing for transversal actions and programmes kept these advances from becoming State policies.

The second reason why it is pertinent to analyse this agenda in the National Congress is the growing importance of this debate in the electoral arena, having been mobilised in presidential campaigns with the purpose of shaping voters' opinions either to attract votes or to make opposition candidates lose them.

In the 2010 presidential elections, the abortion issue was extensively explored during the electoral campaign period, with an average publication of 4 texts per day in the written press (FONTES, 2012, p. 1808), and was used by conservative segments to try to discredit Dilma Roussef's and the Workers' Party's candidacy based on their position on abortion (MACHADO, 2012). The subject of sexual diversity was deployed in a similar way in the 2018 presidential elections, when content published by Jair Bolsonaro and Carlos Bolsonaro about the so-called "kit gay"[5] and the danger of "gender indoctrination" were employed to damage Fernando Haddad's candidacy (LEITE, 2019).

In this way, the analysis of the bills on abortion and LGBT rights submitted in the last decade has the ability to reveal whether the inability to legislate on these topics persists in the federal arena - be it even contrary to the recognition of rights through the influence of an Executive Branch that holds this stance - and whether the centrality of the debate in the

[5] During the 2018 presidential elections, then candidate Jair Bolsonaro accused Fernando Haddad of creating the so-called “kit gay”. It referred, in fact, to an educational material, called *Escola sem Homofobia* (Schools without Homophobia), ordered by the Congress’ Human Rights Commission to the Ministry of Education, in a period when Haddad w**a**s its head. The material was part of a policy to educate children and teenagers on values related to non-discrimination against LGBTT people. The material never came to be distributed in public schools.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

electoral sphere was also translated to the legislative field. In the next section we explain our methodological choices and the research design and then discuss the findings in comparison with the literature.

Methodology and research design

We used the online search engine made available by the Chamber of Deputies[6] and the Federal Senate on their respective websites to access the bills. In the advanced search tab, the following proposition types were selected: Supplementary Bill of Law, Bill of Law, Constitutional Amendment Bill and Legislative Decree Bill, which are the types of proposals most likely to be chosen by lawmakers to address LGBT rights and abortion. The period surveyed included bills submitted from 1 January 2011 to 31 December 2020.

At first, a survey was conducted without any keyword in the subject field to verify the total amount of legislation proposals in the analysed period and 43,124 bills were found. For the bills on LGBT rights, in the "subject" box the following keywords were used: "gay*", "homosexual*", "lesbian*", "bisexual*", "transgender*", "transvestite*", "LGBT*", "homoafetiv*"[7] and "same sex". To locate the legislative proposals on abortion, the same types of propositions mentioned above were selected, with the keywords "abortion", "interruption of pregnancy" and "unborn child" in the "subject" box. Subsequently, we checked the proposals individually with respect to the explanatory memorandum to exclude those that were not directly related to the specific subjects of this research.

In the end, 43,124 bills were located. Of this sum, 184 represent the bills related to the subject matter of this article, being 93 on the LGBT rights and 91 on abortion. In this data set, we identified the date of presentation, the type and proceeding status of the bill, if the distribution was made by a deputy, senator or by the Executive Branch, as well as if its content is favourable or contrary to the rights of LGBT people and to abortion.

[6] The Brazilian National Congress is bicameral and is composed of the Federal Senate (the upper house), which represents the 26 states and Federal District, with three representatives for each, comprising 81 seats; and the Chamber of Deputies (the lower house), whose representatives are elected through a system of proportional representation, with 513 seats in total.

[7] These keywords use a mechanism of the search engine that allows to use the operator * to capture words that begin with the selected prefix and end with any other suffix (for example, homosexua* captures homosexuality, homosexualism, homosexuals, etc.).

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

Discussing the findings: an almost unyielding *status quo*

The distribution of bills on sexual and reproductive rights in the National Congress from 2011 to 2020 represented only 0.42 percent of the total amount of bills presented in the same period. Most of these proposals (85) are being jointly processed or were appended to others, which means that they are grouped together and will receive only one advisory opinion from the rapporteur. Shelving is the second most frequent proceeding status among the proposals: 34 have been shelved. The rest (64) are awaiting a rapporteur to be appointed, a referral or an advisory opinion, among other developments. Only one proposal is ready for floor deliberation: Bill 191/2017, originally from the Federal Senate, which amends the Maria da Penha Law (Law N. 11.340/2006) to ensure protection to women, regardless of their gender identity. Table 1 below summarizes the bills status when data was collected for this article (2022).

Table 1 - Status of bills on sexual and reproductive rights in the National Congress presented from 2011 to 2020.

Status	Number of Bills
Ready for floor deliberation	1
Returned to Author	1
Waiting deliberation	5
Withdrawn by Author	6
Ready for the agenda	9
Waiting definition	14
Waiting opinion	14
Waiting rapporteur to be assigned	15
Shelved	34
Jointly processed or appended	85

Source: elaborated by the authors based on data obtained from the Chamber of Deputies and the Federal Senate.

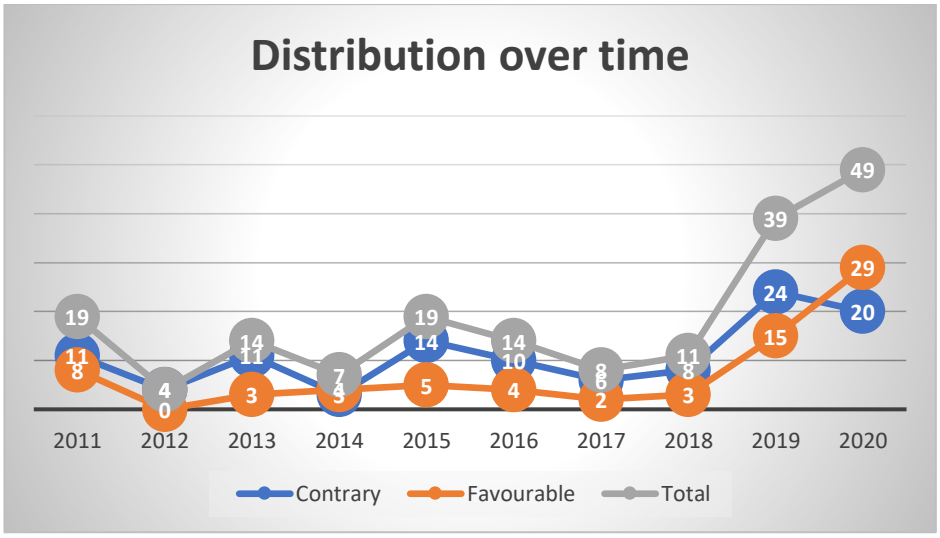
As we explore below, this scenario reveals that sexual and reproductive rights do not seem to be central and significant in the legislative agenda, despite having been widely mobilised during the electoral campaigns of many of the elected members of Congress and being politically challenged in different social arenas.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

The allocation of bills between 2011 and 2020, as depicted in the chart below, shows that there has been a growing interest by legislators on these issues over time - particularly evident in the number of bills submitted during half of the 56th legislative term, in 2019 and 2020. Although this is an incipient movement, it is interesting to observe that most of the bills were opposed to the recognition of sexual and reproductive rights from 2011 to 2019. In 2020, this scenario was shifted: more bills favourable to the recognition of these rights were submitted[8].

The results confirm the diagnosis known as the "honeymoon", a period right after the elections and at the beginning of legislative terms when it is more favourable for bills to be submitted by Executive and Legislative branches (MONTERO, 2009, p. 30). As shown in the chart below, there is a large number of bills submitted during the first year of each legislative term (2011, 2015 and 2019).

Chart 1 - Distribution of bills on sexual and reproductive rights in the National Congress over the years 2011 to 2020.



Source: elaborated by the authors based on data obtained from the Chamber of Deputies and the Federal Senate.

Regarding the origin of these proposals, 87 percent were distributed by deputies and 13 percent by senators. One relevant fact is that not a single proposal was submitted by a

[8] The shift in the valuation of the bills lies exclusively in the greater distribution of bills favourable to the LGBT rights. When abortion is analysed separately, the predominance of a higher number of opposing bills remains. In any case, as an agenda, these findings may have several causes, such as, for example, a strengthening of policies contrary to LGBT rights and abortion by the Executive Branch in 2020, resulting in a greater distribution of bills opposing these policies. However, it is beyond the scope of this article to explore the cause and consequence relationship.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

body from the Executive Branch or by the President during the analysed period, which demonstrates that the Legislative Branch is not the elected forum for discussing and implementing public policies related to sexual and reproductive rights by the Executive Branch, regardless of the latter's stance on the matter.

In a context in which "Congress appears willing to facilitate the processing of presidential proposals and, above all, to remove possible obstacles to presidential action" (FIGUEIREDO & LIMONGI, 2001, p. 42), the fact that the Executive Branch does not access the Legislative Branch with bills on sexual and reproductive rights, in addition to indicating that this is not an accredited arena for discussing and implementing public policy in this topic, may also be a symptom of the perception that the probability of passing any legislation on these issues is low. We highlight that this finding does not mean that these rights are not under dispute by the Executive branch, but that the Legislative Branch is not the arena where this has been taking place, being indicative of the low incidence of this debate within the National Congress.

Regarding the type of legislation, 125 are ordinary bills of law (PL), 57 are legislative decree bills (PDC), and 2 are constitutional amendment bills (PEC). It is noteworthy that almost one third of the proposals are legislative decree bills and this type of legislation can be used as a reaction to some administrative act from another government body or branch. Thus, this result allows us to verify which actions concerning sexual and reproductive rights have triggered a direct reaction from the Legislative Branch and reinforces the diagnosis that in contemporary democracies, there is more reactivity than proactivity on the part of the Legislative Branch (PEREIRA *et al.,* 2005, p. 194).

The legislative decree bills that were discovered had the objective of suspending regulatory decrees issued by the Executive Branch, under the terms of article 49, V, of the Federal Constitution[9] (72 percent), and also had the objective of suspending the effects of decisions by the Judiciary Branch (23 percent) and the Federal Council of Medicine (5 percent) - even though there is no constitutional provision in this regard. Table 2 below shows the number of legislative decrees that were presented in the analysed period divided by which body the National Congress is reacting to.

[9] Article 49, item V, Federal Constitution: "It is the exclusive competence of the National Congress: (...) V - to halt regulatory acts of the Executive Branch that exceed the regulatory power or the limits of legislative delegation; (…).

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

Table 2 - Number of legislative decrees according to the reaction to another government body or branch presented from 2011 to 2020.

Reaction to an Administrative Act From	Executive	Judiciary	Federal Council of Medicine
Number of Legislative Decrees (PDC)	41	13	3

Source: elaborated by the authors based on data obtained from the Chamber of Deputies and the Federal Senate.

In the 54th and 55th legislative terms, we noticed that congressmen and congresswomen submitted legislative decree bills with the purpose of suspending the effects of acts by other branches of government that were recent, i.e., that took place during that same legislative term, such as the Supreme Court decision that recognized same-sex civil partnership (ADI No. 4277 and ADPF No. 132, 2011), the Resolution by the National Council of Justice on same-sex marriage (CNJ, Resolution 175, of 2013), the Resolution by the Secretariat of Human Rights that established parameters for guaranteeing conditions of access and permanence of transgender people in education systems and institutions (Secretariat of Human Rights, Resolution 12, of 2015), among others.

In the 56th legislative term this behaviour was also noticed, but there were also legislative decree bills submitted with the purpose of halting the effects of acts from previous administrations, namely, policies that were in effect for more than a decade, such as, for example, the National Human Rights Program of 2009, Ordinance no. 1.508 of 2005 of the Ministry of Health and technical regulations from the Ministry of Health on sexual violence from 1998, both addressing legal abortion.

Alexis Sales de Paula e Souza and Fernando Boarato Meneguin (2020) identified that the mere filing of a legislative decree bill can constrain and/or pressure the Executive Branch to withdraw a regulatory act. This happened when the regulatory act object of the legislative decree bill was amended within one year of the legislative decree bill filing, without even the need for its approval.

In the cases on sexual and reproductive rights, three normative regulatory acts from the Executive Branch were repealed within one year of their entry into force, which were subject to 11 legislative decree bills[10]. However, it is not possible to state that the filing of

[10] PDC n. 1487/2014; 1490/2014; 250/2020; 251/2020; 259/2020; 381/2020; 383/2020; 385/2020; 386/2020; 387/2020 e 413/2020.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

the legislative decree bill had any impact on this repeal, because there were particular contours to the elimination of each one of these regulatory acts.

Ordinance No. 415 of 21 May 2014 of the Ministry of Health, which provided for " procedures for pregnancy termination / therapeutic anticipation of childbirth" was repealed by the Ministry itself a few days after its enactment and on the same day that the Legislative Decree Bill No. 1490/2014 was filed. Technical Note No. 16/2020 of the Ministry of Health was removed from the website and led to the exoneration of the experts who had worked on the drafting of that document, after the President at that time, Jair Bolsonaro, had complained about the “apocryphal draft ordinance on abortion that circulated on the internet”[11]. Finally, Ordinance No. 2.282 of 7 August 2020 was repealed by Ordinance No. 2.561 of 23 September 2020 of the Ministry of Health, and both ordinances are very similar and were equally disavowed by civil society organizations for placing obstacles to access legal abortion[12]. Hence, in the three cases where the act challenged by the legislative decree bill was modified, the repeal was more closely associated with decisions taken by the Executive Branch than with the capacity for constriction engendered by the legislative decree bills submitted to the National Congress.

This phenomenon was not observed in the case of the Judiciary's acts on sexual and reproductive rights, since both the Federal Supreme Court's decisions and the CNJ's resolutions continue to be in force. Nor has there been any change in Resolution No. 2,265 of 2019 of the Federal Council of Medicine that provided for the specific care to people with gender incongruence or transgender people and that was challenged by three legislative decree bills.

One last relevant finding is the fact that we found only one legislative proposal that could be placed in the intersection between sexual and reproductive rights, namely, the Statute of the Family (Bill of Law No. 6583/2013, from the Chamber of Deputies), which popped up as a result for both research criteria, due to the fact that it states that the family is exclusively composed of a man and a woman and that life begins with conception, which

[11] Source: O Globo. Access on 24 June 2022. Available on: < https://oglobo.globo.com/brasil/ministro-da-saude-exonera-autores-de-nota-sobre-acesso-aborto-legal-durante-pandemia-1-24464481>.
[12] Source: CEPIA. Access on 24 June 2022. Available on: < https://cepia.org.br/2020/09/29/nota-de-repudio-a-nova-portaria-do-ministerio-da-saude-que-impoe-entraves-a-realizacao-de-procedimento-previsto-em-lei-de-interrupcao-de-gravidez-em-caso-de-estupro/#:~:text=%E2%80%9CAs%20entidades%20signat%C3%A1rias%2C%20v%C3%AAm%2C,da%20Interrup%C3%A7%C3%A3o%20da%20Gravidez%20nos >.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

thus makes it contrary to LGBT people rights and the right to abortion. We did not find any proposals comprising such an intersection that were favourable to these rights.

Final reflections

Little change was observed in legislative behaviour regarding sexual and reproductive rights in the 2010s. The difficulty in passing any federal legislation that had already been noted in previous decades by Marta Rodriguez de Assis Machado and Débora Alves Maciel (2017) regarding abortion, as well as by Rafael de la Dehesa (2010) on LGBT rights, persists.

From 2011 to 2020, only 0.42 percent of the total amount of proposals submitted pertained to sexual and reproductive rights. The fact that only one of the 184 proposals is ready for the floor to deliberate, in addition to the absence of any legislative proposal presented by the Executive Branch during the period, underscores the lack of centrality these themes hold in the National Congress and the low probability that any of the bills will become law. These issues still lack prominence and centrality in the National Congress, even though sexual and reproductive rights are being widely mobilized during electoral campaigns and are subject of policies by the Executive Branch in other forums, such as, for example, the Ministries of Health and Education.

Nor has the significant number of legislative decree bills had the capacity to modify or reorient decisions on abortion and LGBT rights made by other branches of government during the 2010s. Decisions by the Judicial Branch and the Federal Council of Medicine are still bearing effects, and the amendment of regulatory acts by the Executive Branch was more closely associated with decisions by the Executive Branch itself to repeal such policy than with the capacity for constraint generated by the bills submitted to the National Congress.

Finally, the data collected in this study revealed that there was a considerable growth in the number of legislative proposals on abortion and LGBT rights, especially in the last legislative term (56th). This growth occurred simultaneously with a shift in the valuation of the proposals, which, in 2020, went from being mostly opposed to these rights to being more favourable.

However, the historic of presenting contrary bills for most of the 2010s decade may have left its marks for the 2020s period. Congressmen against LGBT and abortion rights have

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

recently tried to advance old and new bills to make a statement against same-sex marriage (PL 5167/2009) and legal abortion in cases of rape (PL 1904/2024) which could be a strategy to translate the discourse of the electoral arena into effective action in the National Congress and fuel fear and uncertainty in the Brazilian society. If this is a new pattern of legislative behavior, only future research will investigate.

Another path to be further explored by new research are the causes for changes noticed in the end of the 2010s, to determine whether they are a result of greater public acceptance of these subjects or the mobilization of this agenda by new players in the National Congress, among other possible hypotheses. The persistence of a certain "state of things" also deserves attention: the reasons why the Executive Branch has not been accessing the National Congress to design public policies on sexual and reproductive rights and further investigating the absence of proposals that address sexual and reproductive rights in an intersectional manner are also issues that have the potential to enrich the field of legislative studies in Brazil.

References

ABRANCHES, Sérgio Henrique Hudson de, and Soares, Gláucio Ary Dillon. **As funções do legislativo**. Revista Administração Pública, 1973, p. 73-98.

ALMEIDA, Acir. **Relações Executivo-Legislativo e Governabilidade à luz da crise da COVID-19**. Nota Técnica IPEA. 2020. Available in: <https://www.ipea.gov.br/portal/index.php?option=com_content&view=article&id=35450>. Access in 25 July 2022.

ALMEIDA, Ronaldo. **A religião de Bolsonaro: populismo e neoconservadorismo**. In: AVRITZER, Leonardo. KERCHE, Fabio. MARONA, Marjorie. Governo Bolsonaro: retrocesso democrático e degradação política. Autêntica, 2021, p. 409-426.

AMORIM NETO, Octavio and SANTOS, Fabiano. **A produção legislativa do Congresso: entre a paróquia e a nação**. In.: VIANNA, Luiz Werneck. A democracia e os três poderes no Brasil. Editora UFMG, 2002, p. 91-140.

ARAÚJO, Suely Mara Vaz Guimarães de. SILVA, Rafael Silveira. **Reflexões e Novas Agendas de Pesquisa para os Estudos Legislativos no Brasil**. Revista Ibero-americana de Estudos Legislativos, n. 2, 2012, p. 58-74.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

BIROLI, Flavia; VAGGIONE, Juan Marco. MACHADO, Marias das Dores Campos. **Gênero, neoconservadorismo e democracia: disputas e retrocessos na América Latina**. São Paulo: Boitempo, 2020.

BUZOLIN, Lívia Gonçalves. **Direito Homoafetivo: criação e discussão nos Poderes Judiciário e Legislativo**. São Paulo: Thompson Reuters Brasil, 2019.

COACCI, Thiago. **Contando as mortes: coproduzindo gênero, conhecimento e política no movimento trans**. In: FACCHINI, Regina. FRANÇA, Isadora Lins. Direitos em disputa: LGBTI+, poder e diferença no Brasil contemporâneo. Campinas: Editora da Unicamp, 2020.

DEHESA, Rafael de la. **Queering the Public Sphere in Mexico and Brazil**. Sexual Rights Movements in Emerging Democracies. Duke University Press, London, 2010.

FIGUEIREDO, Argelina Cheibub. LIMONGI, Fernando. **Executivo e Legislativo na nova ordem constitucional**. Rio de Janeiro: Editora FGV, 2001.

FONTES, Maria Lucineide Andrade. **O enquadramento do aborto na mídia impressa brasileira nas eleições 2010: a exclusão da saúde pública do debate**. Ciência & Saúde Coletiva, 2012, p. 1805-1812.

FREITAS, Andréa. **Auxílio emergencial: o presidente e a resposta do Congresso ao Covid-19**. In: Cadernos Adenauer XXI, nº 4. Participação e instituições democráticas no combate à pandemia. Rio de Janeiro: Fundação Konrad Adenauer, 2020.

GLOPPEN, Siri. Conceptualizing Abortion Lawfare. Revista Direito GV, São Paulo, v. 17, n. 3, e2143, 2021. https://doi.org/10.1590/2317- 6172202143.

GOMES, Juliana Cesario Alvim. **Direitos sexuais e reprodutivos ou direitos sexuais e direitos reprodutivos? Dilemas e contradições nos marcos normativos nacionais e internacionais**. Revista Direito GV, São Paulo, v. 17, n. 3, e2136, 2021. https://doi.org/ 10.1590/2317-6172202136.

JJUUKO, Adrian. **Strategic Litigation and the Struggle for Lebian, Gay and Bisexual equality in Africa**. 2020. Available in: https://www.lawtransform.no/wp-content/uploads/2020/10/Strategic_litigation_wCover-j6uuzr-1.pdf .

LEITE, Vanessa. **"Em defesa das crianças e da família": refletindo sobre discursos acionados por atores religiosos "conservadores" em controvérsias públicas envolvendo gênero e sexualidade**. Sexualidad, Salud y Sociedad, 2019, p. 119-142.

KECK, Thomas M. Beyond backlash: **Assessing the impact of judicial decisions on LGBT rights**. Law & Society Review, 2019, p. 151-186.

LIJPHART, Arend. **Modelos de Democracia**. Rio de Janeiro: Civ. Brasileira, 2003.

MACHADO, Lia Zanotta. **O aborto como direito e o aborto como crime: retrocesso neoconservador**. Cadernos Pagu, 2017, https://doi.org/10.1590/18094449201700500004

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

MACHADO, Maria das Dores Campos. **Aborto e ativismo religioso nas eleições de 2010**. Revista Brasileira de Ciência Política, 2012, p. 25-54.

MACHADO, Marta Rodriguez de Assis. MACIEL, Débora Alves. **The Battle Over Abortion Rights in Brazil's State Arenas, 1995-2006**. Health and Human Rights Journal, 2017, p. 119-131.

MELLO, Luiz. BRAZ, Camilo. **Entre o desmonte e a resistencia: reflexões críticas sobre cidadania, direitos humanos e políticas públicas para a população LGBTT no Brasil contemporáneo**. In: Facchini, Regina and França, Isadora Lins. Direitos em disputa: LGBTI+, poder e diferença no Brasil contemporâneo. Campinas: Editora da Unicamp, 2020.

MONTERO, Mercedes García. **Presidentes y Parlamentos: ¿quién controla la actividad legislativa en América Latina?** Madrid: Centro de Investigaciones Sociológicas, 2009.

ORO, Ari Pedro. **A política da Igreja Universal e seus reflexos nos campos religioso e político brasileiros**. Revista Brasileira de Ciências Sociais, v. 18, n. 53, 2003, p. 53-69. https://doi.org/10.1590/S0102-69092003000300004.

PEREIRA, Carlos. POWER, Timothy J. RENNÓ, Lucio. **Under What Conditions Do Presidents Resort to Decree Power? Theory and Evidence from the Brazilian Case**. The Journal of Politics, vol. 67, n. 1, 2005, p. 178-200.

PEREIRA, Matheus Mazzilli. Ativismo Institucional no Poder Legislativo: confrontos políticos, assessores ativistas e frentes parlamentares. Revista Brasileira de Ciência Política, nº 31, Brasília, 2020, p. 301-338.

RUIBAL, Alba M. **Feminismo frente a fundamentalismos religiosos: mobilização e contramobilização em torno dos direitos reprodutivos na América Latina**. Revista Brasileira de Ciência Política, Brasília, n. 14, 2014, p. 111-138. http://dx.doi.org/10.1590/0103-335220141405.

SANTOS, Manoel Leonardo. **Teoria e Método nos Estudos sobre o Legislativo Brasileiro: uma revisão da literatura no período 1994-2005**. BIB, São Paulo, nº 66, 2008, p. 65-89.

SEGATTO, Catarina Ianni. ALVES, Mario Aquino. PINEDA, Andrea. **Uncivil society and social policies in Brazil: The backlash in the gender, sexual, and reproductive rights and ethnic and racial relations fields**. Public Administration and Development, 2022, p. 1–10. https://doi.org/10.1002/pad.1992

SOARES, Felipe Furini. RICOLDI, Arlene Martinez. **A escalada neoconservadora e a agenda antigênero: o caso da participação do Brasil na Cúpula Demográfica de Budapeste**. Revista brasileira de Estudos de População, v. 39, 2022, p. 1-22. http://dx.doi.org/10.20947/S0102-3098a0183

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

SOUZA, Alexis Sales de Paula. MENEGUIN, Fernando Boarato. **O decreto legislativo e o controle da atividade normativa do Poder Executivo**. Revista de Gestão, Economia e Negócios, v. 1, 2020, p. 73-103.

About the authors

Lívia Gonçalves Buzolin
FGV Direito, São Paulo, São Paulo, Brasil. E-mail: livia_gb@hotmail.com e livia.buzolin@fgv.br. ORCID: https://orcid.org/0000-0003-1881-0792.

luciana gross cunha
FGV Direito, São Paulo, São Paulo, Brasil. E-mail: luciana.cunha@fgv.br.ORCID: https://orcid.org/0000-0002-7396-1879.

The authors contributed equally for the writing of the article.

https://doi.org/10.1590/2179-8966/2025/77189 | ISSN: 2179-8966 | e77189

Lívia Gonçalves Buzolin, luciana gross cunha

Sexual and reproductive rights in the Brazilian congress: a decade of struggle (2010s)
Direitos sexuais e reprodutivos no congresso brasileiro: uma década de disputa (2010)

Revista Direito e Práxis
vol. 16, no. 1, e77189, 2025
Universidade do Estado do Rio de Janeiro,
ISSN-E: 2179-8966

DOI: https://doi.org/10.1590/2179-8966/2025/77189