

## **Access to justice for the LGBTQIA+ population and the role of the Public Defender's Office of the State of Paraná in the implementation and guarantee of fundamental rights\***

### ***Acesso à justiça da população LGBTQIA+ e o papel da Defensoria Pública do Estado do Paraná na efetivação e garantia dos direitos fundamentais***

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#### **Abstract:**

This article proposes an analysis of the performance of the Public Defender's Office of the State of Paraná (DPE-PR) in the face of violence and human rights violations against the LGBTQIA+ community, especially after the equivalence of LGBTphobia to the crime of racism by ADO No. 26/STF. Adopting the triangulation methodology, the research collected data on the violence and discrimination faced by this community while assessing the effectiveness of DPE-PR in ensuring the fundamental rights of the LGBTQIA+ population, using bibliographic research. Additionally, a deeper investigation was conducted through an online form made available to both civil society and the institution under study. Despite the progress represented by the criminalization of LGBTphobia, the research reveals gaps in the recognition and access to justice for the LGBTQIA+ population, emphasizing the crucial importance of education, awareness, and the implementation of public policies to foster inclusive environments. Furthermore, the article highlights challenges in the performance of the Public Defender's Office, emphasizing its welcoming role, yet being relatively unknown to civil society. This underscores the urgency of actions aimed at the digitization of the services provided by the institution, aiming to increase visibility and understanding of its role in defending LGBTQIA+ rights.

**Keywords:** LGBTQIA+; access to justice; Public Defender's Office; recognition; ADO 26.

#### **Resumo:**

*Este artigo propõe uma análise da atuação da Defensoria Pública do estado do Paraná (DPE-PR) frente às violências e violações de direitos humanos contra a comunidade LGBTQIA+, especialmente após a equiparação da LGBTfobia ao crime de racismo pela ADO nº 26/STF. Adotando a metodologia de triangulação, a pesquisa coletou dados sobre a violência e discriminação enfrentadas por essa comunidade, enquanto avaliava a eficácia da DPE-PR na garantia dos direitos fundamentais LGBTQIA+, utilizando pesquisas bibliográficas. Além disso, foi realizado um aprofundamento por meio de um formulário online disponibilizado tanto para a sociedade civil quanto para a própria instituição pesquisada. Apesar do progresso representado pela criminalização da LGBTfobia, a pesquisa revela lacunas no reconhecimento e*

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*acesso à justiça para a população LGBTQIA+, destacando a importância crucial da educação, conscientização e implementação de políticas públicas para fomentar ambientes inclusivos. Além disso, o artigo aponta desafios na atuação da Defensoria Pública, ressaltando seu papel acolhedor, porém pouco conhecido pela sociedade civil. Isso destaca a urgência de ações voltadas para a informatização dos serviços prestados pela instituição, visando a aumentar a visibilidade e o entendimento sobre seu papel na defesa dos direitos LGBTQIA+.*

**Palavras-chave:** LGBTQIA+; acesso à justiça; Defensoria Pública; reconhecimento; ADO 26.

## 1 Introduction

The advancement in the recognition of LGBTQIA+ rights, driven by social movements, has marked the last ten years. This progress has been strengthened by notable decisions that have effectively contributed to the consolidation of human rights for the community in focus.

According to Galanter (2010), the phenomenon of access to justice unfolds from situations of injustice, progressively encompassing social issues previously neglected by the judiciary. Proceduralist Thaís Paschoal (2023) emphasizes the importance of considering crucial elements—such as race, gender, and social class—when reflecting on access to justice, warning of the risk of intensifying new forms of inequality if these elements are overlooked.

Recognition, as proclaimed by the fundamental principles of equality, dignity, and freedom, is a first step. However, the effective implementation of these principles in practice demands a critical analysis of the capacity of the political-legal structure to establish tangible means for their realization.

The struggle for the conquest of rights and access to justice by the LGBTQIA+ community in a constitutional context seeks to achieve equality in its broadest sense.

The study "Access to Justice for the LGBTQIA+ Population: An Analysis Based on the Public Defender's Office" highlights the relationship between the recognition of the LGBTQIA+ population and access to justice, revealing obstacles that legitimize inequality and contribute to the scarcity of data on violence and discrimination:

The lack of recognition, which begins at the police station, is endorsed by other institutions. According to the Public Defender's Office of the Southern Region, everything begins with the police report, as it is this document that is sent to the Public Security Department. The defenders explain that the police report has, among many impacts, an effect on the Medical Examiner's Office, whose system is still binary (Martins; Pessoa; Garcia, 2023, p. 80)<sup>2</sup>.

The National Council of Justice – CNJ (2022) points out that the lack of recognition begins in police stations, with frequent reports of delays in investigations and resistance to recognizing LGBTphobia. This invisibility persists through the Public Prosecutor's Office and, in many cases, is validated by the Judiciary.

Furthermore, data shows that Brazil is the country with the highest number of murders of trans people in the world. According to a survey by the National Association of

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<sup>2</sup> A falta de reconhecimento, iniciada na delegacia, são endossadas por demais instituições. Segundo a Defensoria Pública da região Sul, no boletim de ocorrência é onde tudo acontece para a Secretaria de Segurança Pública. Explicam os Defensores e Defensoras que o boletim de ocorrência tem, dentre tantos outros impactos, um viés no IML cujo sistema ainda é binário.

Transvestites and Transsexuals (ANTRA), between 2017 and 2022, the state of Paraná ranked 7th among Brazilian states with the highest number of trans murders, totaling 42 cases (Benevides, 2023).

In this context, the CNJ's research on "Discrimination and Violence Against the LGBTQIA+ Population" highlights the Public Defender's Office as the main support institution for victims of LGBTphobic violence and human rights violations.

In light of this, it is imperative to analyze the role played by the Public Defender's Office of the state of Paraná in promoting and guaranteeing the rights of the LGBTQIA+ population, especially after the criminalization of LGBTphobia under the same legal framework as racism. This analysis aims to understand how this legal equivalence influences institutional action, reinforcing a commitment to the effective defense of LGBTQIA+ fundamental human rights.

To answer this question, the methodology used was data triangulation, consisting of three stages: (i) research on the violence faced by the LGBTQIA+ population; (ii) data collection; and (iii) analysis of the collected data. These stages will be explored further in a specific section. In addition to triangulation, bibliographic review was also used, drawing on various authors to enhance the development of this article.

Finally, this article is structured as follows: (i) Gender, Sexuality, and the LGBTQIA+ Movement in Brazil; (ii) Analysis of ADO No. 26; (iii) The Public Defender's Office of Paraná as a Resource for Access to Justice; (iv) Methodological Procedures; (v) The Role of the Public Defender's Office in Defending LGBTQIA+ Rights; (vi) The Public Defender's Office and ADO No. 26/STF; and (vii) Final Considerations.

## **2 Gender, Sexuality, and the LGBTQIA+ Movement in Brazil**

The reality of Brazil regarding the recognition of the LGBTQIA+ population demands a critical and profound reflection on the paradoxical coexistence of progress and challenges in this domain. While the country has held the grim title of global leader in the murder of trans people for 14 consecutive years, it has also seen the election of 30 trans and travesti individuals to political office (Antra Brasil, 2020; Ker, 2022). This intrinsic duality prompts an analysis of how social recognition has been managed on a national scale.

To broaden our understanding, we turn to the perspective of Simone de Beauvoir (1980), who, in addressing the condition of women, sheds light on fundamental social dynamics. The philosopher notes that the so-called "female world" does not constitute an

autonomous and isolated society but is part of a collectivity governed by men, occupying a subordinate position. The solidarity among women, Beauvoir emphasizes, is more mechanical than organic—a union limited by similarity, not by intrinsic cohesion.

The 'female world' is sometimes opposed to the male universe, but it must be emphasized once again that women have never constituted an autonomous and closed society; they are integrated into the collectivity governed by men, within which they occupy a subordinate place; they are united only as similars by a mechanical solidarity; there is not among them that organic solidarity on which a unified community is based; they always struggle. (Beauvoir, 1980, p. 407)<sup>3</sup>.

This analysis serves as a starting point for asserting that, just as women have not formed an autonomous society free from cisheteronormative impositions, the LGBTQIA+ population is also unable to establish itself in a peaceful space.

In Simone de Beauvoir's analogy (1980), women are always treated as children. This means there is widespread acceptance of rules and laws established by men, since women's position is one of submission and obedience. This lived reality without autonomy reflects a context in which certain segments of society are compelled to accept external impositions, to the detriment of their self-determination.

Despite the premise of a democratic state that proclaims equality before the law and equitable access to healthcare, justice, and respect, the lived experiences of some individuals diverge significantly from this ideal. The path to the full realization of these rights—though it should be linear—reveals itself for many as a tortuous journey filled with obstacles. The challenge remains to reconcile the aspirations of an inclusive, respectful society with the reality of marginalized segments still seeking legitimation and space within the social fabric.

This lack of legitimacy is closely tied to the concept of vulnerability and its intersection with the population under analysis. One of the main factors that heightens this vulnerability is associated with the triad of stigma, prejudice, and discrimination, as discussed by Parker (2013).

In this context, Parker explains that stigma and prejudice exist on a theoretical level, while discrimination is the practical consequence of these prior beliefs. In terms of health vulnerability, for example, this results in illness among individuals whose gender identity or sexual orientation differs from the cisheteronormative model.

The LGBTQIA+ population faces vulnerabilities that expose them to high levels of

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<sup>3</sup> Opõe-se por vezes o “mundo feminino” ao universo masculino, mas é preciso sublinhar mais uma vez que as mulheres nunca constituíram uma sociedade autônoma e fechada; estão integradas na coletividade governada pelos homens e na qual ocupam um lugar de subordinadas; estão unidas somente enquanto semelhantes por uma solidariedade mecânica; não há entre elas essa solidariedade orgânica em que assenta toda uma comunidade unificada; elas se esforçam sempre.

violence, stemming from deep social inequalities. This reality is linked to multiple factors such as race, age, ethnicity, poverty, and low levels of education. The intersection of these conditions further exacerbates the challenges faced by this group, negatively impacting even their physical and mental health (Paula; Silva; Bittar, 2017).

Almeida et al. (2024), in a literature review, identify several factors impacting the vulnerability of this group. These include mental and physical vulnerability resulting from violence; vulnerability within educational environments, which contribute to exclusion processes in schools; and increased vulnerability during the COVID-19 pandemic, which directly affected travestis and transsexuals who rely on sex work for survival.

Legal scholar Paulo Iotti (2018) sharply distinguishes between democracy and the dictatorship of the majority. He explains that although majority decisions play a key role in democratic systems, this principle is not absolute. The rights of minorities cannot be subjected to the whims of the majority.

In this regard, Patrícia Campos Mello emphasizes the constitutional jurisdiction's duty to adopt a counter-majoritarian stance in decisions involving vulnerable populations, particularly the LGBTQIA+ community::

It is argued, however, that with regard to vulnerable and minority groups, constitutional and supreme courts can and must operate based on a more activist standard and, therefore, with less deference to majority deliberations. These groups, by definition, have less access and voice within representative bodies. They fail to have their rights recognized. They are stigmatized and treated unequally compared to other citizens. Therefore, they depend on constitutional jurisdiction as the main—and sometimes only—channel for institutional access, to have their demands heard and to seek inclusion, which is a prerequisite for their participation in democratic life. In this sense, constitutional and supreme courts are essential agents in protecting such groups. (Campos Mello, 2020, p. 22)<sup>4</sup>.

From this premise arises the legitimacy of sexual and gender minorities within the democratic context. Their claims and rights are supported by the foundational principles of democracy, grounded in the inalienable right to non-discrimination, equality, and the prerogative to be true to oneself. This recognition not only highlights the importance of safeguarding minority rights but also underscores the essence of democracy as a system that protects and promotes diversity, individuality, and equity.

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<sup>4</sup> Defende-se, contudo, que, no que respeita a grupos vulneráveis e minoritários, as cortes constitucionais e supremas cortes podem e devem funcionar com base em um standard mais ativista e, portanto, com menor deferência às deliberações majoritárias. É que esses grupos têm, por definição, menor acesso e menor voz no âmbito das instâncias representativas. Não conseguem ter seus direitos reconhecidos. São estigmatizados e tratados em condições de desigualdade comparadamente aos demais cidadãos. Dependem, portanto, da jurisdição constitucional como principal e, às vezes, como único canal de acesso institucional, para ter seus pleitos ouvidos e para buscar uma inclusão que é pré-condição para sua participação na vida democrática. Nessa medida, cortes constitucionais e supremas cortes são agentes essenciais para a proteção de tais grupos

Sherry Wolf (2021) argues that the subjugation of all sexual minorities is an intricate and conflicting facet of the contemporary capitalist system. While capitalism fosters the material conditions for sexual autonomy, it simultaneously imposes heterosexual norms to maintain economic, social, and sexual order.

Capitalism creates the material conditions for men and women to lead autonomous sexual lives, but at the same time, it seeks to impose heterosexual norms on society to ensure the maintenance of economic, social, and sexual order. While there are famous lesbians like Melissa Etheridge, who sells out concert halls, and comedian Ellen DeGeneres, who hosts an award-winning talk show, homophobic laws continue to permit discrimination in the workplace and in marriage. LGBT people like Matthew Shepard are brutally beaten to death by bigots [...]. (p. 63)<sup>5</sup>.

According to Judith Butler's (2022) perspective, a contradiction inherent in the capitalist system is intertwined with the complex Brazilian reality. Butler highlights a contradiction in which capitalism not only coexists with, but also perpetuates, the contradiction experienced by queer and trans communities. Within this paradigm, the capitalist system adopts marketing practices that apparently celebrate the lives of the queer and trans community, transforming identities into consumable spectacles. However, recognition hovers over the spectacle and does not go beyond the recognition and appreciation of LGBTQIA+ lives.

Thus, the instrumentalization of LGBTQIA+ lives as spectacles for consumption, instead of being valued, creates a dynamic in which the LGBTQIA+ person is reduced to an abstract object, disconnecting the basic needs of real life. In this context, the LGBTQIA+ community is not fully recognized, being perceived only as a source of entertainment to be consumed and discarded as convenient.

The term pink money<sup>6</sup> illustrates this dynamic, denoting the commercial exploitation where the identities of sexual minorities are capitalized without a genuine commitment to their fundamental needs and rights.

The inherent characteristics of capitalism, such as competition between work, housing and education, have given rise to a society shaped by individuality, paving the way for the development of sexual autonomy (Wolf, 2021).

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<sup>5</sup> O capitalismo cria as condições materiais para que homens e mulheres levem vidas sexuais autônomas, mas, simultaneamente, procura impor normas heterossexuais na sociedade para garantir a manutenção da ordem econômica, social e sexual. Ao mesmo tempo que existem lésbicas famosas como Melissa Etheridge, que lota salas de show, e a comedianta Ellen De Generes, que apresenta um programa de entrevista muito premiado, leis homofóbicas defendem a discriminação no trabalho e no casamento. Pessoas LGBT como Matthew Shepard são brutalmente espancados até a morte por preconceituosos [...].

<sup>6</sup> The term pink money emerged in the last decade through economists who noticed the consumption potential of LGBTQIA+ people and began investing in products aimed at this public, with an emphasis on selling more with more targeted products. The market reality seeks to expand by offering a supposed space and support.

Based on these premises, it is clear that the conception of gender roles has undergone profound changes throughout societies and historical periods. These transformations include a notable evolution in relation to our bodies, which have been radically shaped by changing socioeconomic and material conditions.

The institution of the family has not always existed; yet, this institution, exalted by the right and represented in a utopian and idealistic way, has had the transformative power to change throughout human history. An example of this is the division of labor between men and women in pre-class societies, where there is no evidence to suggest the position of women as subordinate.

In this sense, anthropologist Elenor Burke Leacock concludes in her studies of primitive societies that "With regard to women's autonomy, nothing in the structure of egalitarian band societies required any deference to be given to men" (Leacock, 2019, p. 181). Thus, anthropological studies lead us to clear evidence that the oppression of women corresponds to the formation of the first class divisions in society and the creation of the monogamous family unit, with defined gender roles that are difficult to negotiate.

In the words of Sherry Wolf (2021):

Before the human ability to store food and other goods as surplus, there was no "wealth" to accumulate, making class inequality between different groups of people impossible. Classes emerged when humans found new ways to ensure survival. New methods of production required that some people be required to work, while others needed to be released from this work to coordinate the organization of the group and ensure that a surplus was stored for times when crops failed or the group grew.<sup>7</sup>

The imposition of monogamy and the institution of the family served as a means to ensure the transmission of property from wealthy men to their future generations. This scenario differs considerably from the idealized meaning often portrayed in margarine commercials, where the family is romanticized. In reality, the family institution throughout history has often represented, essentially, a vehicle for the perpetuation and accumulation of property, going beyond idealistic conceptions.

In this regard, Elgels (2019, p. 76) wrote:

The first class antagonism that appeared in history coincides with the development of the antagonism between man and woman in monogamous marriage, and the first

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<sup>7</sup> Antes da capacidade humana de armazenar alimentos e outros bens como excedentes, não havia "riqueza" para ser acumulada, impossibilitando a desigualdade de classes entre diferentes grupos de pessoas. As classes surgiram quando os seres humanos encontraram novas formas de garantir a sobrevivência. Novos métodos de produção exigiam que algumas pessoas fossem necessárias para trabalhar, enquanto outras precisavam ser liberadas desse trabalho para coordenar a organização do grupo e garantir o armazenamento de um excedente para os momentos em que as safras eram perdidas ou que o grupo crescesse



class oppression coincides with that of the female sex by the male sex. Monogamous marriage was a great historical advance, but at the same time, it inaugurated, alongside slavery and private wealth, the era that endures to this day, in which every advance simultaneously constitutes a relative regression, in which the well-being and development of some are imposed by the pain and oppression of others..<sup>8</sup>

Thus, it can be seen that the patriarchal family represented a dominant form of family structure, imposing its personal precepts on those who did not possess their own wealth. Parallel to the imposition of gender roles, the unjustified restriction of rights, combined with the lack of recognition of the LGBTQIA+ community, emerges as a legacy that accompanies the capitalist system.

This historical retrospective, combined with Brazil's specific narrative, can provide a basis for reflection on the Brazilian contradiction. While the country has elected 30 trans people to national political representation, it persists, for the 14th consecutive year, as the leader in the dismal ranking of nations with the highest number of homicides of trans people (Benevides, 2023). This apparent dichotomy highlights the complexity of the social and political issues at stake, prompting a critical analysis of the challenges faced by the LGBTQIA+ community even amid progress in other spheres.

### **3 Análise da ADO nº 26/STF**

First of all, it is important to highlight the substantial increase in the number of people seeking recognition of the rights of the LGBTQIA+ population in the courts. The lack of initiatives by the National Congress to legislate on issues related to gender and sexuality equality is one of the reasons that drives the community to seek the Judiciary. This phenomenon is identified as the Judicialization of Politics and becomes more prominent as the LGBTQIA+ community seeks the necessary support in the judicial system in the face of legislative inertia.

It is also important to highlight that the phenomenon of the realization of fundamental rights does not necessarily need to be included in the Constitution in a positive form in terms of human rights. Guzman explains about this: (2023, p. 5):

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<sup>8</sup> O primeiro antagonismo de classes que apareceu na história coincide com o desenvolvimento do antagonismo entre homem e mulher no casamento monogâmico, e a primeira opressão de classe coincide com a do sexo feminino pelo sexo masculino. O casamento monogâmico foi um grande progresso histórico, mas, ao mesmo tempo, inaugura, ao lado da escravidão e da riqueza privada, a época que perdura até hoje, em que cada progresso constitui simultaneamente um retrocesso relativo, em que o bem-estar e o desenvolvimento de uns se impõem pela dor e pela opressão de outros

De este modo, la enunciatividad responde a que los derechos fundamentales se presentan como una infinidad de posibilidades que no son previsibles por el legislador y de allí, que todo aquello que forme parte del libre e inocuo desenvolvimiento de la personalidad, deba ser considerado un derecho humano. Por tal motivo, teóricamente no importa si los derechos humanos están taxativamente dispuestos en la Constitución, ya que la enunciatividad no presupone la existencia de una norma constitucional para dar vigencia a un derecho fundamental.

In this context, the exercise of constitutional control enables the Judiciary to play the role of defender of citizenship and social democracy, aiming to implement fundamental rights established in the Federal Constitution of 1988. This is how several precedents judged by the Federal Supreme Court that seek to ensure and protect the rights of the LGBTQIA+ population are highlighted.

Before addressing the decision of Declaratory Action of Constitutionality No. 26, it is extremely important to mention other relevant decisions of the Federal Supreme Court that affirm equal rights for the LGBTQIA+ population. Among the most significant decisions of the STF, the following stand out: ADPF 132/ADI 4277: Recognition of same-sex unions as a family entity; RE 845779: Social treatment of transgender people; RE 846102: Adoption by same-sex couples; ADPF 291: Military Penal Code; ADI 5971: Concept of family; ADPF 462: Education on gender and sexual orientation; ADI 5543: Restriction on blood donation by homosexuals; ADPF 467: Education on gender and sexual orientation.

These decisions, by recognizing rights and guarantees for the LGBTQIA+ community, contribute to strengthening equality and inclusion, establishing important legal precedents within the scope of the Federal Supreme Court.

Direct Action of Unconstitutionality by Omission (ADO) 26 was instituted by the Popular Socialist Party (PSS) due to the alleged legislative inertia attributed to the National Congress, which would be frustrating the processing and assessment of legislative proposals aimed at criminalizing all forms of homophobia and transphobia.

Initially, the lawsuit rested on the following measures:

(a) that it be recognized that homophobia and transphobia fall within the ontological-constitutional concept of racism (STF, HC No. 82,424/RS), in order to include them in the constitutional order of criminalizing racism as set out in art. 5, item XLII, of the CF/88; (b) that the delay of the National Congress in the specific criminalization of homophobia and transphobia be declared unconstitutional [...]; (c) that a reasonable deadline be set for the National Congress to approve legislation criminalizing all forms of homophobia and transphobia [...], suggesting here a one-year deadline since the National Congress has been debating the issue for approximately twelve years; (d) if the term set by this Supreme Court passes without the National Congress carrying out the aforementioned criminalization/specific criminal punishment, or if this Court deems it unnecessary to set such a term, [it is requested] that homophobia and transphobia be effectively classified as specific

crime(s) by decision of this Supreme Court, due to the change of subject and atypical legislative activity of the Court, given the unconstitutional inertia of Parliament in doing so, in order to comply with the constitutional order to criminally punish homophobia and transphobia [...], overcoming the requirement of strict parliamentary legality; (e) the inclusion of the specific criminalization of all forms of homophobia and transphobia, especially (but not exclusively) offenses (individual and collective), homicides, aggressions, threats, and discrimination motivated by the victim's sexual orientation and/or gender identity, real or supposed, in the Racism Law (Law No. 7,716/89) or in another law that may replace it, determining the application of said law (and another that may eventually replace it) to punish such acts until the National Congress deigns to criminalize such behavior; and (f) that the civil liability of the Brazilian State be established, including that of the parliamentarians responsible for the State's unconstitutional inaction as joint and several debtors, given that they are effectively responsible for such inaction, given the State's objective liability (art. 37, §6, of the CF/88) to compensate victims of all forms of homophobia and transphobia.<sup>9</sup> (Brasil, 2019, s. p.).

Furthermore, according to the political party, the inertia contributes to an adverse stance towards the National Congress, characterizing itself as a significant violation of constitutional precepts, notably those derived from an order of fundamental rights and principles, such as those that prohibit discrimination against fundamental rights and freedoms (art. 5, XLI, CF) and that criminalize the practice of racism (art. 5, XLII, CF).

On June 13, 2019, the STF concluded the judgment of Direct Action of Unconstitutionality by Omission (ADO) No. 26 and Injunction Writ (MI) No. 4733, which discussed the existence or non-existence of omission by the National Congress in legislating regarding the criminalization of homophobic and transphobic acts.

With a total of ten votes, the Supreme Federal Court recognized the omission of the National Congress in addressing the issue. This means that only one Supreme Court justice

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<sup>9</sup> **(a)** que seja reconhecido que a homofobia e a transfobia se enquadram no conceito ontológico-constitucional de racismo (STF, HC nº 82.424/RS), de sorte a enquadrá-las na ordem constitucional de criminalizar o racismo constante do art. 5º, inc. XLII, da CF/88; **(b)** que seja declarada a mora inconstitucional do Congresso Nacional na criminalização específica da homofobia e da transfobia [...]; **(c)** que seja fixado prazo razoável para o Congresso Nacional aprovar legislação criminalizadora de todas as formas de homofobia e transfobia [...], sugerindo-se aqui o prazo de um ano já que o Congresso Nacional debate o tema há aproximadamente doze anos; **(d)** caso transcorra o prazo fixado por esta Suprema Corte sem que o Congresso Nacional efetive a criminalização/punição criminal específica citada ou caso essa Corte entenda desnecessária a fixação desse prazo, [requer-se ] sejam efetivamente tipificadas a homofobia e a transfobia como crime(s) específico(s) por decisão desta Suprema Corte, por troca de sujeito e atividade legislativa atípica da Corte, ante a inércia inconstitucional do Parlamento em fazê-lo, de sorte a dar cumprimento à ordem constitucional de punir criminalmente a homofobia e a transfobia [...], superando-se a exigência de legalidade estrita parlamentar; **(e)** a inclusão da criminalização específica de todas as formas de homofobia e transfobia, especialmente (mas não exclusivamente), das ofensas (individuais e coletivas), dos homicídios, das agressões, ameaças e discriminações motivadas pela orientação sexual e/ou identidade de gênero, real ou suposta, da vítima na Lei de Racismo (Lei n.º 7.716/89) ou em outra lei que venha a substituí-la, determinando-se a aplicação da referida lei (e outra que eventualmente a substitua) para punir tais atos até que o Congresso Nacional se digne a criminalizar tais condutas e **(f)** que seja fixada a responsabilidade civil do Estado Brasileiro , inclusive dos parlamentares responsáveis pela inércia inconstitucional do Estado como devedores solidários por serem eles os efetivamente responsáveis por tal inércia, ante a responsabilidade objetiva do Estado (art. 37, §6º, da CF/88) em indenizar as vítimas de todas as formas de homofobia e transfobia

disagreed, Justice Marco Aurélio. And, by a majority of votes, that is, 8 votes in favor and 3 votes against, the Court equated the crime of homophobia and transphobia to the criminal type established in the Racism Law (Law No. 7,716/1989), until the National Congress enacts a law on the matter. In this context, the votes of Justices Ricardo Lewandowski, Dias Toffoli and Marco Aurélio were defeated, who argued that these behaviors could only be penalized through the approval of a law by the Legislature.

It is important to explain the grounds of the ADO 26 ruling for the use of the technique used to interpret the omission. Therefore, permission is requested to express an excerpt from the vote of Justice Celso de Mello.:

It is worth noting, on the other hand, at this point, that the interpretation of the positive legal system, especially when carried out by the Judiciary, should not be confused with the process of normative production. In fact, this Supreme Court has already emphasized on more than one occasion that the hermeneutic procedure carried out by bodies of the Judiciary aims to extract the interpretation of the various legal diplomas in force that make up the normative framework established by the State, in order to obtain, by reason of the intelligence and exegetical sense that it gives them, the elements necessary for the exact application of the law, and therefore should not be confused with the process of legislative elaboration. [...] <sup>10</sup>. (grifos nossos)

For Minister Alexandre de Moraes:

Within the scope of Constitutional Jurisdiction, the hermeneutic function of the SUPREME COURT allows the use of the so-called interpretation in accordance with the Constitution, which will be possible to adapt and reconcile the meaning of the law with the exact constitutional commands, when the norm has multiple meanings, some compatible with constitutional norms and others not, or, in the words of CANOTILHO, “interpretation in accordance with the Constitution is only legitimate when there is a decision-making space (= space of interpretation) open to various interpretative proposals, some in accordance with the Constitution and which should be preferred, and others in disagreement with it” [...] The supremacy of constitutional norms in the legal system and the presumption of constitutionality of laws and normative acts issued by the competent public authority require that, in the hermeneutic function of interpreting the legal system, preference always be given to the meaning of the norm that is adequate to the Federal Constitution. (emphasis added) <sup>11</sup>

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<sup>10</sup> Cabe advertir, de outro lado, neste ponto, que **a interpretação do ordenamento positivo, notadamente quando efetivada pelo Poder Judiciário, não se confunde com o processo de produção normativa**. Com efeito, esta Suprema Corte, por mais de uma vez, já acentuou que o procedimento hermenêutico realizado por órgãos do Poder Judiciário objetiva **extrair a interpretação dos diversos diplomas legais vigentes que compõe o quadro normativo positivado pelo Estado, para, em razão da inteligência e do sentido exegético que lhes der, obter os elementos necessários à exata aplicação do direito, não se confundindo, por isso mesmo, com o processo de elaboração legislativa**. AI 161.396-AgR/SP, Rel. Min. CELSO DE MELLO, v.g.

<sup>11</sup> No âmbito da Jurisdição Constitucional, **a função hermenêutica da SUPREMA CORTE permite a utilização da denominada interpretação conforme a Constituição**, que será possível para adequar e compatibilizar o significado da lei aos exatos comandos constitucionais, quando a norma apresentar vários significados, uns compatíveis com as normas constitucionais e outros não, ou, no dizer de CANOTILHO, “a interpretação conforme a constituição só é legítima quando existe um espaço de decisão (= espaço de interpretação) aberto a várias propostas interpretativas, umas em conformidade com a constituição e que devem

Now for Minister Rosa Weber:

There is no violation of legal certainty, since the definition of the legal-constitutional concept of race and racism was established in a precedent of the Plenary of this Court and is currently reiterated in a decision with general effect and *ex nunc* effects. [...] It should also be noted that, in redefining the concept of racism, this Supreme Court has not filled any gaps, which allows the argument of analogy to be dismissed from the outset. [...] Starting from the literal concept of race, this Court, in the judgment of HC 82.424, extracted more than the concept of the Black race, to recognize that other forms of discrimination are covered. By avoiding the supremacy of one human group over another, supported by an ideology of domination, the practice of racism goes far beyond discrimination—also extremely serious—based on race or ancestry..<sup>12</sup> (grifos nossos)

It is thus observed that it is feasible to employ the technique of interpretation in accordance with the Constitution to ensure the uncontested supremacy of the constitutional text over the legal system, giving it unquestionable normative force. In the words of Paulo Iotti (2020):

As can be seen, the grounds for the winning votes demonstrate that the Supreme Federal Court (STF) neither "legislated" nor performed an "analogy" or "extensive interpretation" of the criminal offense. Anyone who asserts this simply, without addressing the Court's grounds, simply demonstrates that they have not read or are misrepresenting the decision<sup>13</sup>.

Essentially, the ADO 26<sup>14</sup> thesis dealt with three argumentative points, which are:

**(I) Until a law is enacted by the National Congress to implement the criminalization mandates defined in items XLI and XLII of article 5 of the Constitution of the Republic, homophobic and transphobic behavior, real or alleged, that involves hateful aversion to someone's sexual orientation or gender identity, because it reflects expressions of racism, understood in its**

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ser preferidas, e outras em desconformidade com ela” [...] **A supremacia das normas constitucionais no ordenamento jurídico e a presunção de constitucionalidade das leis e atos normativos editados pelo poder público competente exigem que, na função hermenêutica de interpretação do ordenamento jurídico, seja sempre concedida preferência ao sentido da norma que seja adequado à Constituição Federal.** (grifos nossos)

<sup>12</sup> Não há violação à segurança jurídica, porquanto a delimitação do conceito jurídico-constitucional de raça e racismo fora firmada em precedente do Plenário desta Corte, sendo presentemente reiterada em decisão dotada de eficácia geral a que se atribui efeitos *ex nunc*. [...] Note-se, ainda, que, ao ressignificar o conceito de racismo, este Supremo não colmatou qualquer lacuna, o que permite o afastamento desde logo do argumento da analogia. [...] Partindo do conceito literal de raça, esta Corte extraiu, no julgamento do HC 82.424, mais do que o conceito de raça negra, para reconhecer abrangidas outras formas de discriminação. Ao se evitar a supremacia de um grupo humano sobre o outro, respaldada por uma ideologia de dominação, a prática de racismo vai muito além da discriminação – também gravíssima – por cor ou ascendência. P. 431-432, 435-436 do PDF do acórdão da ADO 26.

<sup>13</sup> Como se vê, os fundamentos dos votos vencedores demonstram não ter o STF “legislado” nem realizado “analogia” ou “interpretação extensiva” do tipo penal. Quem afirma isso singelamente, sem enfrentar os fundamentos da Corte, simplesmente demonstra não ter lido ou estar deturpando a decisão

<sup>14</sup> Trechos presentes na Tese ADO 26. Disponível em <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=754019240>.

social dimension, conforms, by identical reason and through typical adequacy, to the primary precepts of incrimination defined in Law No. 7,716 of January 8, 1989, also constituting, in the case of intentional homicide, a circumstance that qualifies it, as it constitutes a base motive (Penal Code, art. 121, § 2, I, “in fine”);

(II) Criminal repression of homophobia and transphobia does not affect, restrict, or limit the exercise of religious freedom, regardless of the denomination professed, whose faithful and ministers (priests, pastors, rabbis, mullahs, or Muslim clergy, and leaders or celebrants of Afro-Brazilian religions, among others) are guaranteed the right to preach and disseminate, freely, by word, image, or any other means, their thoughts and to express their convictions in accordance with what is contained in their sacred books and codes, as well as to teach according to their doctrinal and/or theological orientation, and may seek and win converts and perform acts of worship and respective liturgy, regardless of the space, public or private, of their individual or collective activity, provided that such manifestations do not constitute hate speech, understood as those expressions that incite discrimination, hostility, or violence against people based on their sexual orientation or gender identity;

(III) The concept of racism, understood in its social dimension, extends beyond strictly biological or phenotypic aspects, as it results, as a manifestation of power, from a historical-cultural construction motivated by the objective of justifying inequality and aimed at ideological control, political domination, social subjugation and the denial of otherness, dignity and humanity of those who, because they are part of a vulnerable group (LGBTI+) and do not belong to the class that holds a hegemonic position in a given social structure, are considered strange and different, degraded to the condition of marginalized people within the legal system, exposed, as a result of hateful inferiorization and perverse stigmatization, to an unjust and harmful situation of exclusion from the general system of legal protection..

The classification of acts of homophobia and transphobia as crimes, under the provisions of Law No. 7,716/89, that is, the equivalence of LGBTphobia to the crime of racism, constitutes the explicit recognition of the unconstitutionality resulting from the omission and inertia of the National Congress in the face of the manifest violence and discrimination directed at the LGBTQIA+ population.

This process of equivalence is, effectively, a response to the legislative gap highlighted by the Legislative Houses, highlighting the urgent need for specific legislation. Such legislation must not only address, but also effectively classify discriminatory behavior, as recommended by the Constitution in its art. 5, notably in items XLI and XLII. Thus, the equivalence serves as a provisional measure to fill the normative gap, until the National Congress enacts legislation that comprehensively and specifically addresses issues related to LGBTphobia, in line with the fundamental principles of the Magna Carta. This is a landmark judgment that effectively seeks to apply the constitutional principle of proportionality. This judgment aims to ensure effective protection for the LGBTQIA+ population by using Criminal Law as an instrument to safeguard human rights, embracing a concept aligned with the fundamental principles established by the 1988 Federal Constitution.

In this legal analysis, we can see the intention to balance the severity of violations of the

rights of the LGBTQIA+ population with punitive measures (this does not mean that this is the best response), demonstrating a commitment to proportional justice and the defense of the fundamental principles of the Constitution.

This judgment, therefore, not only marks a significant legal advance, but also reinforces the importance of the legal system in safeguarding human rights, especially when it comes to historically marginalized groups.

#### **4 Public Defender's Office of the State of Paraná as a contribution to access to justice**

The historic judgment of Direct Action of Unconstitutionality by Omission (ADO) No. 26, which equated homophobia and transphobia with the crime of racism, highlights not only the response of the Judiciary to the legislative gap, but also highlights the relevance of the legal system in protecting human rights, especially for historically marginalized groups. In view of this, access to justice is noted as a crucial component for the realization of these rights, ensuring that all citizens, regardless of their condition, can seek equity, protection of rights and compensation for damages. In this sense, the work of the Public Defender's Office of the State of Paraná emerges as an essential contribution, playing a significant role in access to justice for the LGBTQIA+ population, which can occur in various ways. It is important to highlight that the connection between the LGBTQIA+ population and the legal concepts of “needy” (art. 134 of the Federal Constitution) and “vulnerable” (art. 4, XI, of Complementary Law No. 80/1994) is essential to legitimize and promote the work of the Public Defender's Office in promoting their rights. The traditional notion of “needy,” understood only in economic terms, was overcome by a broader concept of vulnerability, recognized by both the Federal Supreme Court and the Superior Court of Justice, as a criterion for legitimizing the work of the defense.

In the judgment of ADI 3943, the STF reinforced that the Public Defender's Office has a constitutional mandate to act not only in favor of the financially disadvantaged, but of all vulnerable social groups, including for reasons of sexual orientation, gender identity, race, ethnicity, physical or mental condition, among others. EREsp 1,192,577, of the STJ, stated that the condition of vulnerability is not limited to economic poverty, encompassing other forms of inequality and social exclusion that impede full access to justice.

These decisions support a reading of art. 4, XI, of LC nº 80/1994 in line with the principle of human dignity and with the international human rights commitments assumed by Brazil.

From this perspective, LGBTQIA+ people must be recognized as a vulnerable group, given the historical social marginalization, systematic violence, family exclusion, barriers in the labor market and the lack of inclusive public policies. Vulnerability, therefore, is not an abstract or neutral condition, but a structural fact that justifies the affirmative action of the State, especially through the Public Defender's Office, a body constitutionally dedicated to the defense of human rights and the promotion of equality.

Access to justice is one of the fundamental pillars of any society, as it is what ensures that all citizens have the capacity to seek and receive help. It is essential, as this principle ensures that all citizens, regardless of their origin, social or economic status or other circumstances, have the capacity to access and receive assistance in the search for equity, protection of their rights and reparation for damages. In the words of Mauro Cappelletti and Bryant Garth (1988, p. 7):

The term "access to justice" is admittedly difficult to define, but it serves to define two basic purposes of the legal system—the system by which people can claim their rights and/or resolve their disputes under the auspices of the state. First, the system must be equally accessible to all; second, it must produce outcomes that are individually and socially just<sup>15</sup>.

It is understood that access to justice, from a perspective directed at the Public Defender's Office of the State of Paraná, is of transcendental importance for society as a whole. This access, primarily, ensures the realization of rights free of charge, playing a fundamental role in supporting the underprivileged portion of the population that, on many occasions, lacks the necessary means to bear the costs associated with legal services.

The Public Defender's Office's work, therefore, is not limited to traditional legal assistance, but also includes education on rights, strategic litigation and the formulation of inclusive public policies, reaffirming its role as an instrument of social transformation and resistance against structural LGBTQIA+phobia. In this scenario, recognizing and legally affirming the structural vulnerability of the LGBTQIA+ population is an indispensable condition for effective access to justice in its most substantial dimension.

The important role played by the Public Defender's Office is supported by article 134 of the Federal Constitution, which establishes:

Art. 134. A Defensoria Pública é instituição permanente, essencial à função jurisdicional do Estado, incumbindo-lhe, como expressão e instrumento do regime

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<sup>15</sup> A expressão "acesso à justiça" é reconhecidamente de difícil definição, mas serve para determinar duas finalidades básicas do sistema jurídico - o sistema pelo qual as pessoas podem reivindicar seus direitos e/ou resolver seus litígios sob os auspícios do Estado. Primeiro, o sistema deve ser igualmente acessível a todos; segundo, ele deve produzir resultados que sejam individual e socialmente justos



democrático, fundamentalmente, a orientação jurídica, a promoção dos direitos humanos e a defesa, em todos os graus, judicial e extrajudicial, dos direitos individuais e coletivos, de forma integral e gratuita, aos necessitados, na forma do inciso LXXIV do art. 5º desta Constituição Federal. (Brasil, 1988, n. p.).

According to the aforementioned article, it is understood that the Public Defender's Office has the responsibility to offer comprehensive legal support to all underprivileged individuals, not being limited to providing assistance, but also promoting legal guidance, extrajudicial negotiation and conflict resolution.

At the Public Defender's Office of the State of Paraná, service begins upon the request of the person seeking legal assistance from the defense agency. This search can occur in three ways: (i) in person; (ii) online; or (iii) contact by telephone and/or WhatsApp. According to the institution's own guidelines, with the Constitution as a background, in order to access assistance from the Public Defender's Office, the interested person must prove certain requirements, such as: (i) demonstrating that they do not have sufficient financial resources to cover the costs of private legal services; (ii) having an income of up to three minimum wages. In specific cases such as (i) people facing charges related to intentional crimes against life, tried by a jury; (ii) people involved in criminal proceedings; (iii) women in situations of domestic violence and (iv) collective lawsuits, even if the income exceeds the equivalent of three minimum wages, it is possible to receive legal assistance (Public Defender's Office of the State of Paraná, 2023).

Also with regard to access to justice, it is important to highlight the challenging scenario imposed by the Covid-19 pandemic. The services provided by the Public Defender's Office in Paraná were adapted to an online format, in order to avoid the lack of legal assistance at a critical time. Subsequently, this virtual service modality was implemented permanently, thus providing greater practicality in providing assistance to those who, for various reasons, are unable to appear in person at the Public Defender's Office facilities. In a general context, in 2022, according to information obtained through the website of the Public Defender's Office of the State of Paraná (2023), 200,633 thousand services were carried out since the opening of the headquarters in the state. With an eye on the LGBTQIA+ community, according to an article published by Revista COR in January 2023, the Public Defender's Office of the State of Paraná has become the main gateway for complaints and legal assistance for the LGBTQIA+ community.:

Reporting LGBTIphobia should have its institutional entry point at police stations, but these often serve as a filter for these reports. Therefore, the research revealed that the Public Defender's Office and civil society organizations play a fundamental role in addressing violence and rights violations against the LGBTQI+ population,

whether by receiving reports of human rights violations or providing counseling<sup>16</sup>. (Martins; Pessoa; Garcia, 2023).

According to information obtained personally in a conversation with the Public Defender coordinator of the Specialized Center for Citizenship and Human Rights (NUCIDH), Antonio Vitor Barbosa de Almeida, in relation to the Center for Citizenship and Human Rights (NUCIDH), Center for the Promotion and Defense of Women's Rights (NUDEM) and the Ombudsman's Office, demands related to the LGBTQIA+ community represent between 30% and 40% of the services provided.

In theory, the gateway for reporting violence is the police station. However, according to a report published by the National Council of Justice (2022), the police station is an institution that reinforces stereotypes and reproduces violence against the LGBTQIA+ population, for example, by not providing the service adequately, still adopting a binary system, reinforcing discrimination against trans and transvestite people, as they do not recognize their identity. Thus, while the violation is not recognized, it is reinforced..

Civil society organizations, such as the Gay Group of Bahia, have been pointing to the lack of official, systematized data on violence against the LGBTQIA+ population, indicating the severe underreporting of cases, as well as a continuous process of erasing reported cases (MICHELS; MOTT, 2014; OLIVEIRA; MOTT, 2021). In this sense, it is also relevant to inform that service at police stations appears in research as one of the elements that distances victims and impacts the low number of complaints.<sup>17</sup>. (Conselho Nacional de Justiça, 2022, p. 46).

Considering the tendency to avoid reporting to police stations due to the experience of receiving assistance, it is observed that the Public Defender's Office, as already mentioned in this study, is emerging as the main gateway for those seeking assistance and justice. This dynamic is largely driven by the differentiated treatment provided in police station services, which, unfortunately, results in victims being turned away and, consequently, in a reduction in the number of reports in the appropriate places.

It is important to emphasize that this diversion of seeking assistance to the Public Defender's Office is not a spontaneous preference, but rather a reaction to the inadequacy of

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<sup>16</sup> A denúncia da LGBTfobia deveria ter como porta de entrada institucional as delegacias de polícia, no entanto, essas funcionam na maior parte das vezes como um filtro dessas denúncias. Logo, foi possível identificar ao longo da pesquisa que a Defensoria Pública e organizações da sociedade civil desempenham um papel fundamental no tratamento da violência e violações de direitos da população LGBTQI+, seja recebendo denúncias de violações de direitos humanos ou prestando assessoria

<sup>17</sup> Organizações da sociedade civil, como o Grupo Gay da Bahia, vêm apontando para a falta de dados oficiais sistematizados sobre as violências contra a população LGBTQIA+, indicando a severa subnotificação de casos, bem como um contínuo processo de apagamento dos casos que são notificados (MICHELS; MOTT, 2014; OLIVEIRA; MOTT, 2021). Também nesse sentido, é relevante informar que o atendimento nas delegacias aparece em pesquisas como um dos elementos que afasta as vítimas e impacta o baixo número de denúncias

the reception at police stations, which does not occur at the Public Defender's Office. It is possible to consider that such demand is directed to the public defender's office and not the police station – as it should be – due to the existence of specialized centers, such as the Center for Citizenship and Human Rights (NUCIDH) and the Center for the Promotion and Defense of Women's Rights (NUDEM), which have a more accessible treatment for the LGBTQIA+ population, as well as being more sensitive, making them accessible, thus increasing the demand directly from the Public Defender's Office of the State of Paraná.

The specialized centers of the Public Defender's Office of the State of Paraná are not limited to individual services, there is also collective service, thus increasing the participation of the LGBTQIA+ community, for example, in name rectification campaigns, which initially occurred only in Curitiba, and with the support of the Public Defender's Office, began to occur in other cities due to the high demand, as rightly pointed out in an article prepared by the newspaper *Gazeta do Povo* in October 2022:

Since May, the Paraná State Public Defender's Office (DPE-PR) has been carrying out campaigns to rectify the name and gender of trans people in several cities across the state. Last Wednesday (26), the action took place in Maringá, where 70 people were assisted. The campaign also went to Foz do Iguaçu in September, and to the capital in May and June, with the aim of guiding transgender and transvestite people over 18 on how to make the change.<sup>18</sup>. (Derevecki, 2022, n. p.).

It is worth mentioning that the name and gender rectification drive, wisely called “My name, my right”, began as a local initiative and expanded due to high demand.

Furthermore, in addition to name rectification, the Public Defender's Office of the State of Paraná also works on cases of assistance in access to hormone therapy services and gender reassignment surgeries, violence and discrimination for the LGBTQIA+ population, thus helping to guarantee and enforce rights for the community, as well as increasing the demand for justice from the LGBTQIA+ population.

Finally, the role of the Public Defender's Office of the State of Paraná is of great importance when it comes to access to justice, as it is the efficient channel for the underprivileged population, as well as for those who have their rights violated, including the LGBTQIA+ community who, at times, prefer to seek assistance from the Public Defender's Office rather than the Police Station, aiming for a resolution in a way that does not involve discrimination, as well as sensitive and welcoming treatment..

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<sup>18</sup> Desde maio, a Defensoria Pública do Estado do Paraná (DPE-PR) tem realizado mutirões para retificar nome e gênero de pessoas trans em diversas cidades do estado. Na última quarta-feira (26), a ação ocorreu em Maringá, onde foram feitos 70 atendimentos. O mutirão também passou por Foz do Iguaçu em setembro, e pela capital nos meses de maio e junho com o objetivo de orientar transgêneros e travestis com mais de 18 anos a respeito de como realizar a alteração

## 5 Methodological Procedure

This article was developed using a qualitative approach, utilizing bibliographical materials, official documents, bibliographical documents, and forms, with the aim of understanding the recognition of violence directed at the LGBTQIA+ population and the representation and importance of the Public Defender's Office in promoting and guaranteeing the fundamental rights of this community. To achieve this purpose, we adopted data triangulation, which comprises three stages: pre-content analysis, data collection, and analysis of the obtained data.

Initially, we conducted an analysis based on available research on violence, discrimination, and prejudice faced by the LGBTQIA+ community. According to a dossier published by ANTRA, between 2017 and 2022, the state of Paraná recorded 42 murders, ranking 7th among the states with the highest number of homicides of trans people. In addition, several studies and surveys prepared by Grupo Dignidade and the National Council of Justice (CNJ) demonstrate the existence of high rates of violence directed at LGBTQIA+ individuals, manifesting itself through physical aggression, verbal violence, threats, social exclusion, and discrimination in various spheres of daily life.

Our initial exploratory research indicated that the Public Defender's Office is the main gateway for victims of violence and discrimination due to LGBTphobia. This is due to the existence of specialized centers to deal with these demands and the wide dissemination of the activities and assistance provided by the Public Defender's Office of the State of Paraná. Therefore, it is essential to understand the role of the Public Defender's Office, focusing on the state of Paraná, as well as to understand why the LGBTQIA+ community seeks this institution to report violence, instead of going to the police stations.

The Public Defender's Office, in a broad sense, has the responsibility of providing free and comprehensive legal assistance to people who do not have the resources to pay for legal costs and attorney fees. In the case of the LGBTQIA+ community, the Public Defender's Office plays a crucial role in protecting rights and combating discrimination and violence.

In the second stage, related to data collection, we used sources such as: (i) Google search engine; (ii) the official website of the Public Defender's Office of the State of Paraná; (iii) the official websites of the Court of Justice of Paraná (TJPR) and the Federal Supreme Court (STF); and (iv) research developed by the National Council of Justice (CNJ).

Regarding the search using the Google indexer, the relevance criterion was used for the

data found on the first three pages of search results, with terms such as "violence against the LGBTQIA+ population in Paraná", as shown in the example table below.:

Palavra-chave	Indexador	Observação
Violência contra a população LGBTQIA+ no Paraná	Google	Três primeiras páginas analisadas

The data collection process, conducted through the official website of the Public Defender's Office of the State of Paraná, was based on official documents from specialized centers working to promote the rights of the LGBTQIA+ population, such as the Center for the Promotion and Defense of Women's Rights (NUDEM), the Center for Citizenship and Human Rights (NUCIDH), and the Public Defender's External Ombudsman's Office. This information was also collected through forms sent to civil society. The goal was to obtain more accurate information about the assistance provided by the Public Defender's Office of the State of Paraná, the recognition and importance of Direct Action of Unconstitutionality by Omission (ADO) No. 26, and the identification of the proportion of violations suffered by the affected population.

In the third stage, we analyzed the collected data to structure the project and address the previously stated objectives. We also conducted a preliminary analysis of the data, highlighting the role played by the Paraná Public Defender's Office and the impact of ADO No. 26 of the Federal Supreme Court in addressing cases of violence suffered by the LGBTQIA+ population.

The analysis of the collected data allowed for a deeper understanding of the reality of violence, discrimination, and prejudice faced by the LGBTQIA+ community. Through available research, it was possible to identify the rates of human rights violations and the difficulties faced by LGBTQIA+ people.

Based on the results of this analysis, we established a connection with the work of the Paraná Public Defender's Office in combating violence and discrimination against the LGBTQIA+ population. Specifically, we sought to examine: (i) the role played by the Paraná Public Defender's Office in defending the rights of the LGBTQIA+ community; (ii) the training of public defenders to deal with cases of LGBTphobic violence; (iii) and identify the awareness-raising and legal guidance initiatives promoted by the Paraná State Public Defender's Office. In the pre-data analysis phase, we also highlighted the importance of ADO No. 26, which resulted in the criminalization of LGBTI-phobia by the Federal Supreme Court.

Furthermore, we examined the impact of this decision on the protection of the rights of the LGBTQIA+ community and how the Paraná Public Defender's Office began to act in accordance with this decision, seeking effective law enforcement and the punishment of discriminatory and violent acts.

Finally, following the triangulation steps presented above, that is, data collection, we structured this article, outlining the actions and strategies to achieve the proposed objectives.

## **6 Data analysis and results**

### *6.1 Role played by the Public Defender's Office of the State of Paraná in defending the rights of the LGBTQIA+ community*

Complementary Law No. 80 of 1994, in its article 1, establishes that the Public Defender's Office is an essential body for the state's jurisdictional function, with the mission of ensuring access to justice for all, especially for those who do not have the resources to pay for private legal assistance (Brazil, 1994). In the context of the LGBTQIA+ community, which often faces discrimination, prejudice and violence, the Public Defender's Office plays a crucial role, since this community is at greater risk of facing complex legal issues related to civil, family and equality rights. In view of the violations and discrimination suffered by the LGBTQIA+ population, following the book *Sexual Diversity and Homophobia in Brazil*, the following question must be asked: “Is vulnerability related to visibility? The greater the visibility, the less vulnerability? Should we bet on the general and unrestricted visibility of sexual identities to contain vulnerability?” (Venturi; Bokany, 2011, p. 162). It is understood that, because the LGBTQIA+ population is a “group” with less visibility, and therefore with fewer rights, their vulnerability to violence and violations becomes greater and incomparable to that of the heterosexual population.

The Legal Guidance and Handbook of the Public Defender's Office of the Union points out some forms of violence suffered by the LGBTQIA+ population, namely: (i) Violence, including sexual abuse, torture or murder by state, community or family actors; (ii) Lack of police protection; (iii) Discrimination and exclusion from access to health systems, housing, education, work and other social services; (iv) Arbitrary arrest, detention or extortion, especially in countries that criminalize relationships between people of the same gender; (v) Social banishment from family or community, as well as other support mechanisms (Brazil, 2023).

That said, the Public Defender's Office of the State of Paraná offers several services that assist and bring the LGBTQIA+ population closer to the institution. It is important to emphasize that, in the face of discrimination, the population ends up not having access to basic rights. Therefore, free access to justice is essential for reporting violations and violence.

As highlighted in the specific topic on the Public Defender's Office as a support for access to justice, specialized centers for serving the LGBTQIA+ population stand out for their specialized and humanized work. This is taken from material obtained on the Public Defender's Office website, according to the legal advisor of the Citizenship and Human Rights Center, Matheus Mafra:

The Public Defender's Office's mission is to combat LGBT+phobia, and in addition to this external work, it's important to have internal action, ensuring that the workplace where these activities are carried out is also free of LGBT+phobia. In addition to this internal preventive importance, having this policy ensures that any incidents within the institution receive specific treatment<sup>19</sup>. (Defensoria Pública, 2023, n. p.).

Promoting internal and institutional awareness plays a fundamental role in creating an inclusive and diverse work environment at the Paraná State Public Defender's Office. Through educational initiatives, the institution demonstrates its commitment to raising awareness among professionals both inside and outside the agency, establishing specialized practices that transcend the organization's internal boundaries.

Despite the equating of LGBTphobia with the crime of racism, as well as the Supreme Court's recent ruling that racial slurs are equated with LGBTphobia, the reality of the LGBTQIA+ community is one of facing numerous challenges related to discrimination, violence, and access to justice. This manifests itself in various ways, such as physical violence, social exclusion, and institutional discrimination that occurs in police stations when attempting to report crimes.

The lack of full recognition of the gender identity of transgender and transvestite people is another persistent problem. According to a dossier published by the National Association of Transvestites and Transsexuals (ANTRA)<sup>20</sup>, in 2022, there were 131 murders of trans people in Brazil, ranking it as the country with the highest number of murders of transgender people in the world for the fourteenth consecutive year. Specifically, in the state of Paraná, in 2022,

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<sup>19</sup> A Defensoria tem a missão de combater a LGBT+fobia e, além desse trabalho externo, é importante que haja a atuação interna, que o ambiente de trabalho onde essas atividades sejam desenvolvidas também sejam livres da lgbtfobia. Além dessa relevância interna preventiva, ter essa política garante que eventuais episódios dentro da instituição recebam um tratamento específico para cada situação

<sup>20</sup> BENEVIDES, Bruna G. Dossiê: assassinatos e violências contra travestis e transexuais brasileiras em 2022 / Bruna G. Benevides. ANTRA (Associação Nacional de Travestis e Transexuais) – Brasília, DF: Distrito Drag; ANTRA, 2023. P. 29 e 63.

the state ranked 7th among those with the highest number of murders against the trans population, with six murders. This situation is worrying and reflects the persistence and existence of deep-rooted and structural prejudices, as well as the lack of effective public policies to protect the trans population.

Given the alarming number of murders and the lack of recognition and justice, it is notable that the community is more vulnerable to hate crimes, intimidation, physical and emotional abuse, as well as difficulties accessing health services and employment. Therefore, the Public Defender's Office stands out through its specialized centers (NUCIDH and NUDEM), which assist in the provision of legal services to ensure the realization of the human and fundamental rights of the LGBTQIA+ community.

The specialized centers, especially NUCIDH, play an extremely important role in receiving complaints regarding violations suffered by the LGBTQIA+ population. As can be seen from Joint Resolution DPG/NUCIDH No. 01/2023, Article 7 states:

Art.7º. O NUCIDH será responsável pela recepção de casos, o acolhimento humanizado, eventual encaminhamento para a Ouvidoria/Corregedoria-Geral e demais providências que se fizerem necessárias para casos de LGBTI+fobia que ocorram na instituição. (Defensoria Pública do Estado do Paraná, 2023, n. p.).

The importance and necessity of specialized centers within democratic institutions for humane and specialized care is evident. Unlike what happens in police stations, victims are welcomed with compassion and respect.

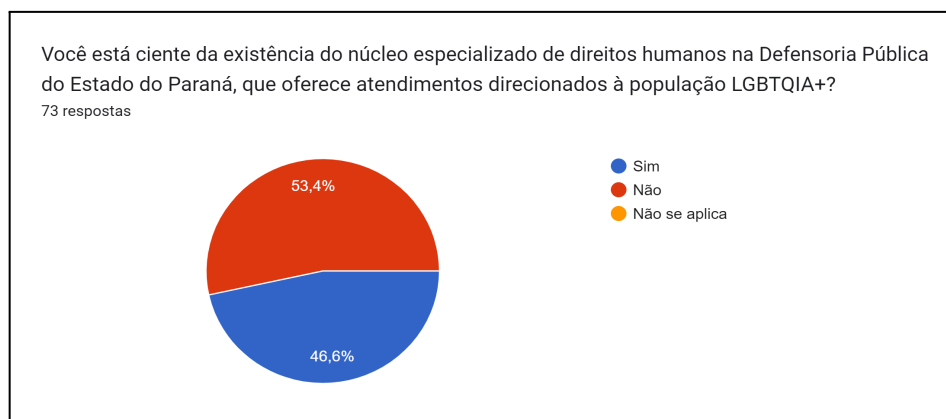
However, combating violence and discrimination against the LGBTQIA+ community is complex and requires a multidimensional approach, such as the implementation of inclusive public policies and increased awareness of legal assistance services. In a form developed by the authors and widely disseminated via social media and email, 53.4% of respondents were unaware of the existence of specialized centers within the Paraná State Public Defender's Office or that specialized services were available for the LGBTQIA+ population, as shown in chart<sup>21</sup> 1 below:

Gráfico 1 – Ciência sobre a existência da Defensoria Pública do Estado do Paraná

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<sup>21</sup> Os dados apontados no gráfico a seguir foram coletados em formulário elaborado para preenchimento da sociedade civil bem como Defensoria Pública para coleta de dados sobre o Reconhecimento e Acesso à Justiça da População LGBTQIA+.





Fonte: Gráfico extraído da coleta de dados

Although the institution is active on social media, promoting access to information, research shows that the medium used lacks the necessary reach to publicize the work of the Paraná State Public Defender's Office. Therefore, it is important to expand the channels for publicizing the services offered by the institution, especially for the most vulnerable groups in terms of rights and access.

Even with this necessary expansion of publicity, research focused on the services of the Paraná State Public Defender's Office reveals that the institution excels in some areas regarding guidance and awareness-raising efforts, both internally and externally, such as: (i) name and gender rectification, where the Paraná State Public Defender's Office assists trans, transvestite, and non-binary people in obtaining name and/or gender rectification on their documents; (ii) combating discrimination through policies to prevent and combat LGBT+phobia, as well as publicizing the services provided and the rights of the LGBTQIA+ population; (iii) legal assistance in cases of violence, through assistance and support for victims; (iv) promoting public policies that aim to guarantee the rights of the LGBTQIA+ community, including participation in public hearings and monitoring the implementation of laws related to gender equality and sexual orientation; and (v) ensuring access to specialized health treatment, assisting, for example, in the search for hormone therapy<sup>22</sup>.

It should be noted that, in addition to the aforementioned actions, the Public Defender's Office of the State of Paraná also works on collective actions, which are important because, by representing LGBTQIA+ groups in common issues, the Public Defender's Office works to

<sup>22</sup> Os dados foram extraídos da Portaria Conjunta nº 02/2021 (Defensoria Pública do Estado do Paraná, NUCIDH e NUDEM) e Resolução Conjunta DPG/NUCIDH Nº 01/2023 (Defensoria Pública do Estado do Paraná, NUDEM, Ouvidoria Externa e NUCIDH). Disponíveis em: [https://www.defensoriapublica.pr.def.br/sites/default/arquivos\\_restritos/files/migrados/File/Nucleos/NUDEM/Portaria\\_002\\_-\\_nucidh\\_nudem.pdf](https://www.defensoriapublica.pr.def.br/sites/default/arquivos_restritos/files/migrados/File/Nucleos/NUDEM/Portaria_002_-_nucidh_nudem.pdf) e [https://www.defensoriapublica.pr.def.br/sites/default/arquivos\\_restritos/files/documento/2023-06/res.\\_conjunta\\_nucidh.pdf](https://www.defensoriapublica.pr.def.br/sites/default/arquivos_restritos/files/documento/2023-06/res._conjunta_nucidh.pdf). Acesso em: 27 de out. 2023.

address systemic problems of discrimination and violence in contexts in which the LGBTQIA+ community may be the target of discrimination or neglect. Furthermore, according to Joint Ordinance No. 02/2021, which states:

Art. 2º As pautas gerais e coletivas da população LGBTQIA+, que transcendam o atendimento mais especializado por parte do NUDEM, serão atendidas pelo NUCIDH.

Art. 3º Entende-se, exemplificativamente, por demandas de mulheres pertencentes à população LGBTQIA+, dentre outras:

I – Atuação coletiva e estratégica em favor de mulheres LGBTQIA+ vítimas de violência sexual, violência doméstica e familiar, violência obstétrica e outras formas de violência patriarcal;

(...)

III – Atuação coletiva e estratégica referente a violações em direitos que ocorram em virtude da condição do gênero feminino;

IV – Retificação de nome civil e gênero de mulheres transexuais e travestis, conforme o Provimento nº 73 do Conselho Nacional de Justiça.

Art. 4º As hipóteses elencadas nos artigos anteriores não são taxativas, devendo as demandas serem analisadas caso a caso e priorizando a atuação estratégica e coletiva.

Collective action also occurs in specialized centers, which prioritize collective action. It is believed that collective action allows for the identification of patterns of discrimination and rights violations that can be more effectively prevented. Furthermore, by giving a voice to groups that often face difficulties in seeking their rights, the Public Defender's Office is granting access to justice for people whose rights have been violated, thus ensuring recognition and access to justice. Furthermore, collective action contributes to the promotion of equality and rights for the LGBTQIA+ community, which frequently faces discrimination, violence, and neglect in various aspects of its lives.

Finally, the work of the Public Defender's Office of the State of Paraná, through its specialized centers dedicated to the LGBTQIA+ population, plays a fundamental role in promoting equal rights and access to justice for this community, which persistently faces discrimination, prejudice, and violence. The Public Defender's Office not only provides specialized legal assistance but also plays an important role in raising internal and institutional awareness, creating an inclusive and diverse work environment.

However, the complexity of the challenges faced by the LGBTQIA+ community requires a multidimensional approach that goes beyond legal services. Lack of visibility and lack of awareness of the Public Defender's Office's services represent significant barriers for the community, which often lacks access to the resources available to protect their rights. Therefore, it is essential to expand the means of disseminating the services offered by the institution, especially to the most vulnerable groups.

Furthermore, the Public Defender's Office's collective work, which seeks to identify patterns of discrimination and rights violations, is crucial to preventing systemic issues of discrimination and neglect. By giving LGBTQIA+ groups a voice and representing them on common issues, the Public Defender's Office contributes to the promotion of equality and human rights, ensuring that this community has access to justice and is protected from the violence and discrimination they face in various areas of their lives.

## 6.2 Role of the Public Defender's Office of the State of Paraná and ADO No. 26/STF

In the pursuit of the realization of fundamental rights, the Public Defender's Office of the State of Paraná has emerged as a vital institution in promoting and ensuring access to legal defense. In a constantly evolving landscape, where the protection of individual and collective rights is imperative, the Public Defender's Office's work emerges as a beacon, guiding those who often find themselves on the margins of the justice system.

This analysis focuses on the role played by the Public Defender's Office of the State of Paraná, highlighting its mission, competencies, and contributions to building a more just and egalitarian society. It addresses the importance of Direct Action of Unconstitutionality by Omission (ADO) No. 26, tried in the Federal Supreme Court (STF), as a regulatory framework that strengthens the fundamental rights of the LGBTQIA+ population. Delving into these intricacies, we explore how the Public Defender's Office of the State of Paraná, in performing its primary functions, is intrinsically linked to the developments of ADO No. 26, reinforcing its mission to be the voice of those most in need while simultaneously shaping the state's legal landscape.

To this end, it is crucial to emphasize that homophobia and transphobia, to date, lack specific criminalization through specific legislation. This situation prompted the Supreme Federal Court, in ADO No. 26, to recognize and declare the Brazilian State's omission, equating such behaviors with crimes under the Racism Law.

During the research, a form was developed using the Google platform, the scope of which consisted of obtaining data from civil society and the Public Defender's Office of the State of Paraná. Electronic correspondence was sent to the institution's specialized centers, notably the Center for Citizenship and Human Rights (NUCIDH) and the Center for the Promotion and Defense of Women's Rights (NUDEM). The results allowed for the development of pertinent insights into the aforementioned centers' assessment of the institution's actions toward the LGBTQIA+ community, particularly by highlighting the

nuances of the post-equilibrium scenario.

The research documentation comprised a total of three responses from the Public Defender's Office of the State of Paraná. Regarding the potential improvement in the recognition and respect for the rights of the LGBTQIA+ community after the equating of LGBTphobia to the crime of racism, one of the three responses indicated a partial improvement, while the others reported little improvement.

Regarding the aspects still needing to be addressed to ensure the effective application of the Racism Law in the context of LGBTphobia, the Public Defender's Office of the State of Paraná presents the following considerations:

Difficulties when filing a report, as well as civil society's own understanding of what qualifies as homophobia and what doesn't. (answer 47 on the form)  
I don't believe this equivalence is appropriate. Racism is historical and has other biases. (answer 71 on the form)  
I understand there is a demand for social recognition that LGBTphobia is unacceptable, criminal, and deserves answers. (answer 73 on the form)<sup>23</sup>

Another topic addressed concerns the adequate recognition of the needs intrinsic to the LGBTQIA+ community. This question was framed as follows: "In your opinion, does the justice system adequately recognize and consider the needs of the LGBTQIA+ population?" In this context, two of the responses from the Public Defender's Office affirmatively point to partial recognition, while one expresses a contrary view, indicating scant recognition.

In a more open-ended question, aimed at gathering experiences and perceptions regarding recognition and access to justice for the LGBTQIA+ population, the Public Defender's Office of the State of Paraná expressed the following considerations.:

I believe there is a gap between the understanding of some sectors of the justice system (such as the Public Prosecutor's Office, the State Prosecutor's Office, and the Court of Justice) and the so-called frontline sectors (police, prisons, etc.) regarding changes in legislation and case law. (answer 47 on the form)  
I realize that this population has not had full access to justice. (answer 71 on the form)  
I understand that there have been important advances in recent times that reflect the struggle of organized social movements and create a favorable environment for internal pressure (in the judiciary and executive branches) in the formulation of public policies for LGBT people. On the other hand, there are also reactions from conservative groups trying to reestablish powers and prevent progress in implementing special protection measures for these groups. (answer 73 on the form)

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<sup>23</sup> Dificuldades no momento do registro de ocorrência, além de compreensão da própria sociedade civil do que pode ser tipificado como homofobia e o que não poderia. (*resposta 47 do formulário*)

Não acredito que essa equiparação seja adequada. Racismo é histórico e tem outros vieses. (*resposta 71 do formulário*)

Entendo que haja uma demanda por reconhecimento social de que a lgbtfobia é inaceitável, criminosa e merece respostas (*resposta 73 do formulário*)

form)<sup>24</sup>

This scope of inquiry sought not only to deepen understanding of the degree of recognition of the specific demands of the LGBTQIA+ community within the justice system, but also to capture nuances and perspectives that contribute to a more comprehensive analysis of the current landscape.

Finally, it is clear that the interconnection between the work of the Public Defender's Office of the State of Paraná and ADO No. 26 did not generate a significant impact. This finding is due, in part, as evidenced by the responses of the specialized centers on the form, to a noticeable disparity in understanding between the judicial sectors, coupled with obstacles during the incident reporting phase. On the one hand, the lack of understanding about the recognition of LGBTphobia in police stations is contrasted with the absence of protective measures for the LGBTQIA+ population. This scenario manifests itself tangibly in the work of the Public Defender's Office, manifesting itself both in the pursuit of safeguarding fundamental rights, due to civil society's lack of understanding of the scope of criminal classification, and in the conduct of proceedings, given that the disparity in understanding of changes in legislation and case law also creates obstacles within the Judiciary.

A report on Discrimination and Violence against the LGBTQIA+ Population issued by the National Council of Justice (CNJ) highlights that:

There is agreement among the legal professionals interviewed regarding the relevance of the Supreme Federal Court's decision on the criminalization of LGBTphobia. However, there is also a widespread understanding that there are still few criminal cases that characterize LGBTphobic criminal acts, with numerous interviews with professionals reporting never having encountered any such cases [...] <sup>25</sup> (Conselho Nacional da Justiça, 2022, n. p.).

This detailed analysis aimed not only to highlight the complexities arising from the interaction between the Public Defender's Office and ADO No. 26, but also to outline the areas that require attention and intervention for the effective implementation of legislative

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<sup>24</sup> Creio que existe um abismo entre a compreensão de alguns setores do sistema de justiça (como MP, DPE e TJ) e os ditos setores de ponta (polícia, presídios, etc) sobre as mudanças na legislação e jurisprudência. *(resposta 47 do formulário)*

Percebo que esta população não tem tido pleno acesso à justiça. *(resposta 71 do formulário)*

Entendo que houve avanços importantes nos últimos tempos que são reflexo da luta dos movimentos sociais organizados e constroem um cenário favorável para pressão interna (no judiciário e executivo) na formulação de políticas públicas para pessoas lgbt. Por outro lado, há, também, reações de grupos conservadores que tentam restabelecer poderes e impedir avanços da implementação de medidas de especial proteção a esses grupos. *(resposta 73 do formulário)*

<sup>25</sup> Há concordância entre os operadores do direito entrevistados sobre a relevância da decisão do STF sobre a criminalização da LGBTfobia. Contudo, há também um entendimento generalizado de que ainda existem poucas ações penais que caracterizem o ato criminoso LGBTfóbico, com numerosas entrevistas de operadores que relataram nunca terem tido contato com nenhum caso do tipo [...].

changes and the effective safeguarding of the rights of the LGBTQIA+ population.

Undoubtedly, what has been clarified so far is the pressing need to establish a convergent dialogue between the various sectors of the justice system, combined with an educational initiative aimed at the LGBTQIA+ population. This effort aims to comprehensively elucidate the meaning of equating LGBTphobia with the crime of racism, thus providing this community with the ability to seek informed and effective legal assistance and representation.

### *6.3 General analysis of the results obtained via the form*

The form designed as an integral part of this research proved to be an essential tool in understanding the complex dynamics between recognition and access to justice for the LGBTQIA+ population and the work of the Public Defender's Office of the State of Paraná. Analyzing the responses, significant questions emerge that shed light on challenges, gaps, and opportunities.

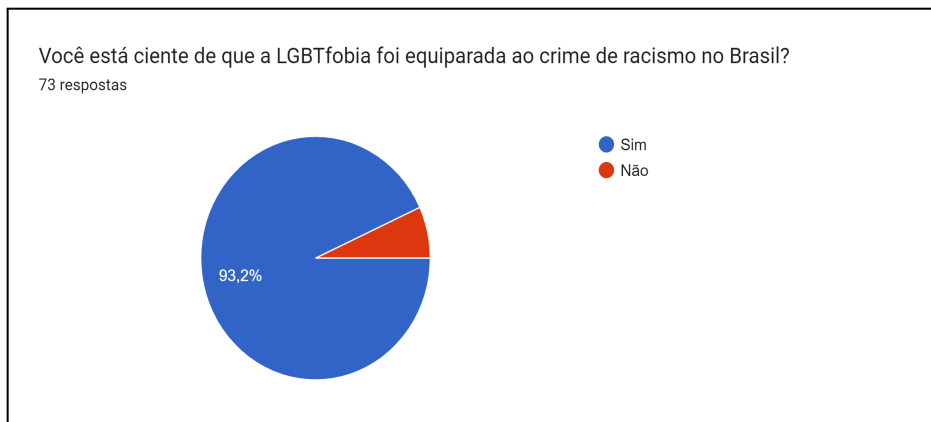
In this section, we outline the main conclusions drawn from the responses, highlighting identified patterns and the LGBTQIA+ population's perceptions of recognition and access to justice. This analysis aims not only to identify obstacles but also to identify ways to improve the effectiveness of the Public Defender's Office of the State of Paraná and promote more inclusive and equitable justice.

Important information should be highlighted before beginning the data analysis. The form was opened to the public on August 31st and closed on November 1st. During this period, efforts were made to disseminate the information through digital platforms such as WhatsApp and Instagram. In total, 73 responses were received. The data collection revealed that 43 people identified as women, representing 58.9% of those who voluntarily completed the form. Twenty-eight people (38.4%) identified as men, and two people (2.7%) identified as nonbinary.

Regarding sexual orientation, 33 people (45.2%) considered themselves bisexual, 21 (28.8%) identified as gay, eight people (11%) identified as lesbian, three (4.1%) identified as asexual, three people (4.1%) identified as heterosexual, and the remainder identified as pansexual. Of the total responses, 95.9% were from civil society, while 4.1% indicated that they were from the Public Defender's Office.

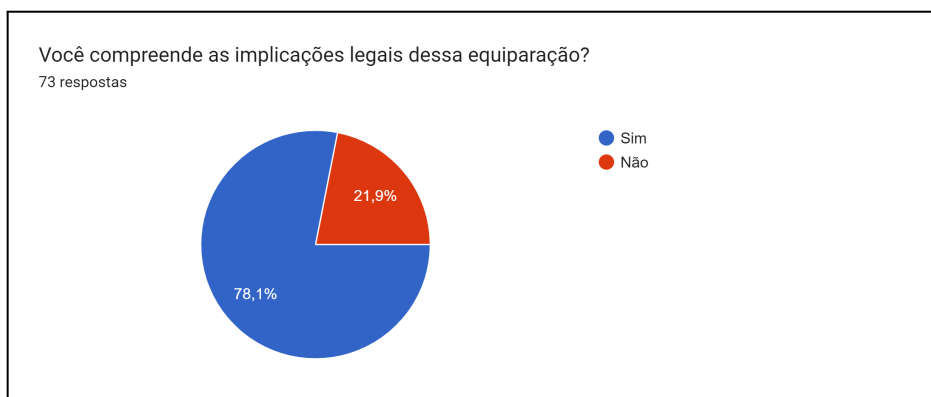
Please allow me to present a graph of the results obtained regarding the form topic "Criminalization of LGBTphobia.":

Chart 2 – Criminalization of LGBTphobia (A)



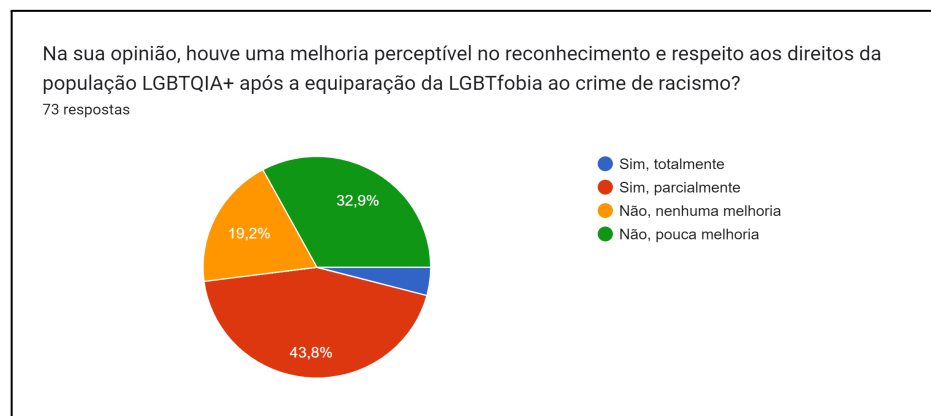
Fonte: Gráfico extraído da coleta de dados

Chart 3 – Criminalization of LGBTphobia (B)



Fonte: Gráfico extraído da coleta de dados

Chart 4 – Criminalization of LGBTphobia (B)



Fonte: Gráfico extraído da coleta de dados

In the context of criminalization, the question was asked about the elements that require attention to ensure the effective implementation of the Racism Law in cases involving

LGBTphobia. The response, based on subjective description, highlights the following highlighted excerpts:

I believe that equating LGBTphobia with the crime of racism is a partial measure that will solve problems in the short and medium term. However, for this change to be effective, it is necessary to reaffirm public policies that are already under discussion, such as increased oversight of cameras installed in the military, a specialized center for reporting complaints, since the women's police station is not a welcoming environment for LGBTQIA+ people, etc. (answer 8 on the form)

Education and training of the general population to provide a basis for legislation. A large portion of the population still does not understand the scientific aspects (biological, evolutionary, and psychological) that refute prejudice, generate respect, and reduce crimes against the LGBTQIA+ population. (answer 42 on the form)<sup>26</sup>

Still regarding criminalization, a notable similarity is observed in the responses, indicating a tendency to believe that the implementation of the Racism Law requires the implementation of educational actions aimed at informing both the victim and the aggressor. Furthermore, there is a difficulty in understanding the crime in specific sectors of justice and security, which is clearly evident in the following response:

In my opinion, there's a significant challenge in characterizing the crime of homophobia, starting with the frontline: the collection of reports by public security, which isn't always recognized by the police as a racist crime. For example, I've witnessed a case in which a gay man was beaten on the street. When the police were called, although the report contained several characteristics of a crime due to the individual's sexual orientation, such as insults like "faggot" and "faggot," there was no further follow-up by the police station to characterize it as a crime of homophobia, but rather as bodily harm. The same case was also received and pursued in the judiciary as bodily harm, as it "lacked the characteristics" that would define the crime of racism. The same situation occurs when the Maria da Penha Law is extended to trans men. The collection of statements/complaints isn't always done correctly, nor is access to this right provided. In this case, the aggravating factor of homophobia, which in most cases is one of the causes of violence, is also not highlighted. Therefore, in my view, the situation begins weakly at the public security level and extends to the judiciary. (answer 36 on the form)<sup>27</sup>

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<sup>26</sup> Acredito que a equiparação da LGBTfobia ao crime de racismo é uma medida parcial, que solucionará problemas a curto e médio prazo, entretanto, para que a mudança seja efetiva, é preciso uma reafirmação de políticas públicas que já vem sendo discutidas, como a fiscalização maior das câmeras instaladas na corporação militar, um centro especializado para as denúncias, já que a delegacia da mulher não é um ambiente acolhedor às pessoas LGBTQIAPN+, etc. (*resposta 8 do formulário*)

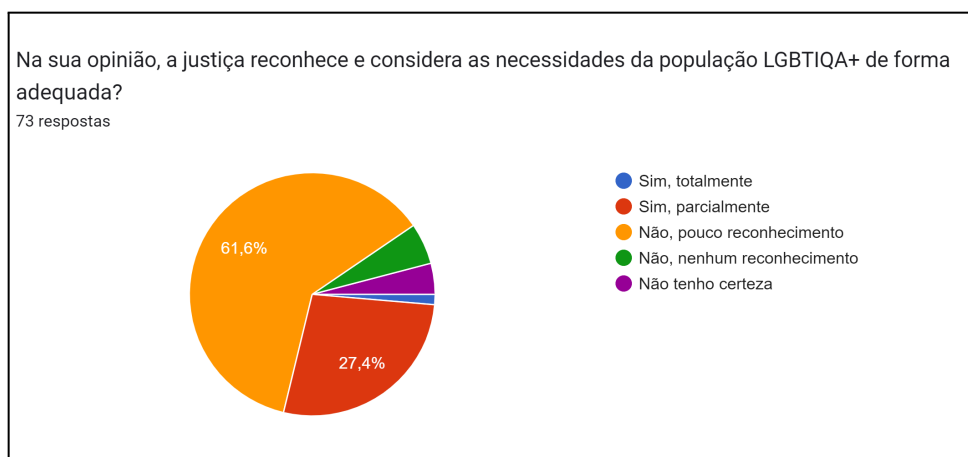
Educação e ensino da população em geral para dar base à legislação. Uma grande parcela da população ainda não compreende os aspectos científicos (biológicos, evolucionários e psicológicos) que refutam os preconceitos, geram respeito e diminuiriam os crimes contra a população LGBTQIA+. (*resposta 42 do formulário*)

<sup>27</sup> Na minha percepção, existe uma grande dificuldade da caracterização do crime de homofobia, começando da atuação da ponta: com a coleta de denúncias pela parte da segurança pública, no qual, nem sempre é reconhecido pelo policial como um crime de racismo. A título exemplificativo, já presenciei o relato de um caso em um que homem, gay, foi espancado na rua. Quando a polícia foi acionada, embora o relato no B.O tenha tido várias características de crime por conta da opção sexual do indivíduo, como xingamentos de "bichinha", "seu viado", não houve um acompanhamento maior por parte da delegacia que caracterizasse como um crime de homofobia, mas sim, de lesão corporal. O mesmo caso foi recebido e dado continuidade no judiciário, também, como lesão corporal, pois "faltavam características" que definissem o crime de racismo. A



It is clear that, although civil society understands the implications of equating LGBTphobia with the crime of racism, there is a significant consensus, representing 43.8%, that there has been an improvement in recognition and respect for the LGBTQIA+ population since equality. However, paradoxically, 61.1% believe that the justice system demonstrates insufficient recognition of the specific needs of the LGBTQIA+ community:

Chart 5 – Recognition of the needs of the LGBTQIA+ population



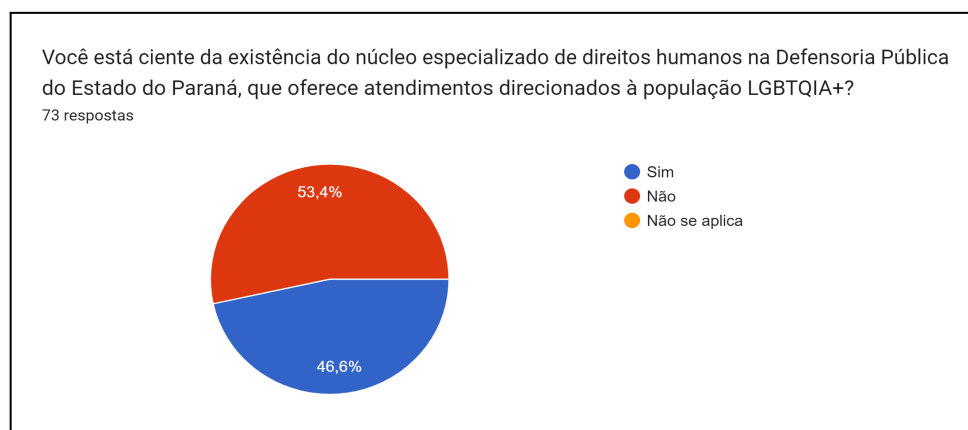
Fonte: Gráfico extraído da coleta de dados

When analyzing data related to the Public Defender's Office of the State of Paraná as a contribution to access to justice, the following findings stand out:

Chart 6 – Data on the Public Defender's Office as a contribution (A)

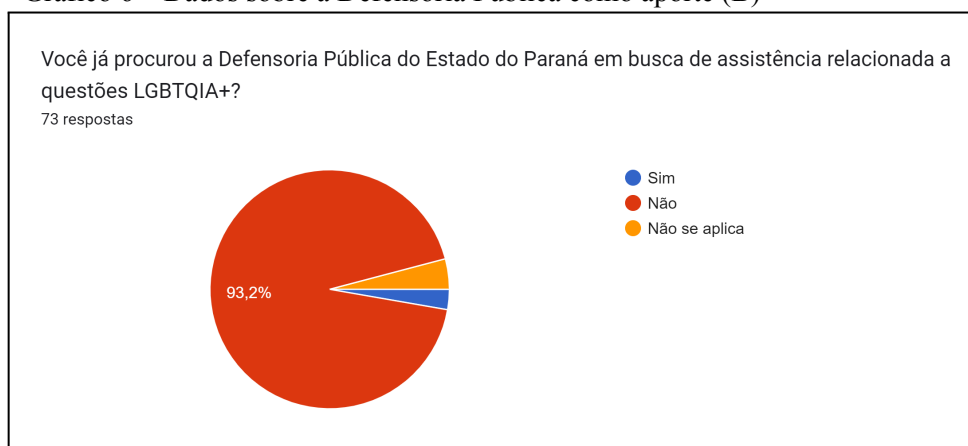
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mesma situação acontece quando há uma extensão da Lei Maria da Penha a Homens Trans. Nem sempre a coleta do depoimento/denúncia é feita de forma correta ou o acesso a esse direito é oferecido. Neste caso, tampouco é destacado o agravante do crime de homofobia que, em grande parte dos casos, é uma das causas das violências. Para tanto, a meu ver, começa desfalcado na ponta da segurança pública e se estende até o judiciário. *(resposta 36 do formulário)*



Fonte: Gráfico extraído da coleta de dados

Gráfico 6 – Dados sobre a Defensoria Pública como aporte (B)



Fonte: Gráfico extraído da coleta de dados

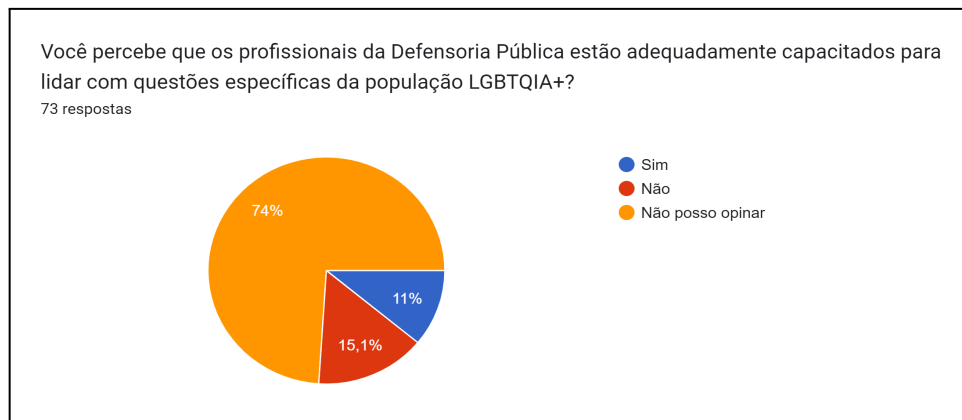
Chart 7 – Data on the Public Defender's Office as a contribution (C)<sup>28</sup>



Fonte: Gráfico extraído da coleta de dados

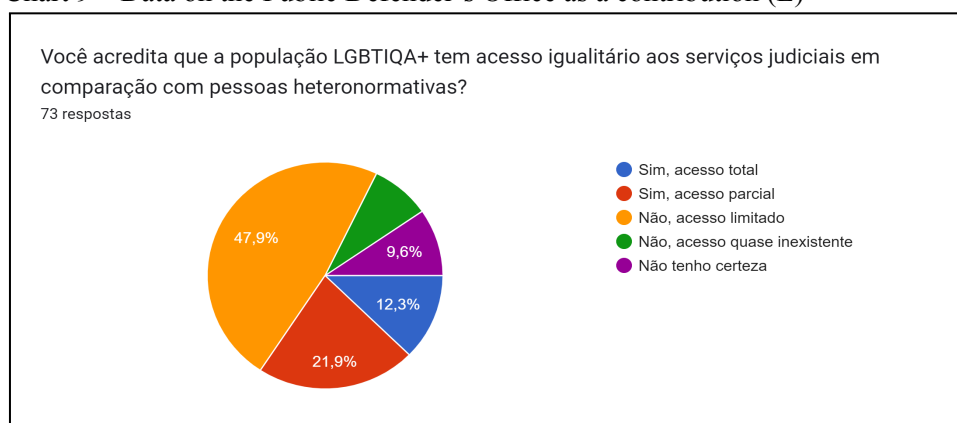
Chart 8 – Data on the Public Defender's Office as a contribution (D)

<sup>28</sup> De todos os campos disponíveis para resposta, sendo o "outro" o único que permitia uma descrição personalizada, com a exceção de uma resposta que mencionou a busca por tratamentos preventivos como PrEP, todas as demais respostas indicaram que nunca recorreram à assistência da Defensoria Pública do Estado do Paraná.



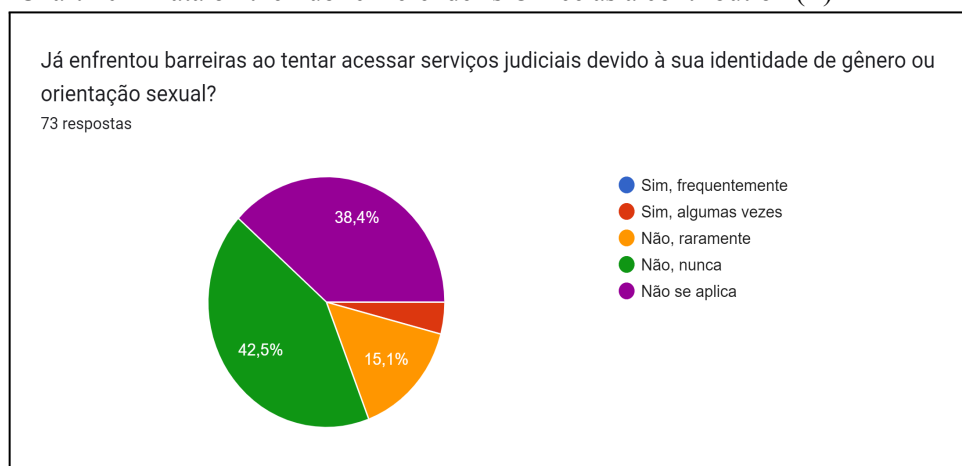
Fonte: Gráfico extraído da coleta de dados

Chart 9 – Data on the Public Defender’s Office as a contribution (E)



Fonte: Gráfico extraído da coleta de dados

Chart 10 – Data on the Public Defender’s Office as a contribution (E)



Fonte: Gráfico extraído da coleta de dados

It was observed that a significant portion of the participants who voluntarily completed the form demonstrated a lack of knowledge about the specialized centers of the Paraná State Public Defender's Office, especially those specifically geared toward serving the LGBTQIA+

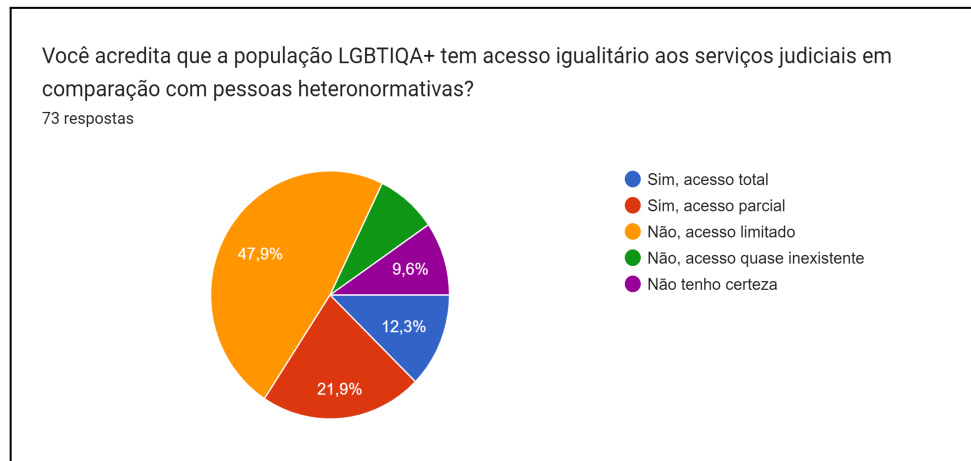
population. Notably, 93.2% of respondents stated that they had not sought the institution's services regarding issues related to the LGBTQIA+ population. In contrast, 86.3% agreed that implementing more training on gender diversity and sexual orientation would be beneficial for the Public Defender's Office.

This data highlights a notable gap in understanding the services offered by the institution, indicating a weakness in the responses provided. However, given the necessary educational efforts in the judicial sector, it is reasonable to infer that the Public Defender's Office also needs to make efforts to improve the dissemination of its services, particularly those aimed at the LGBTQIA+ population.

Additionally, it is noteworthy that only 4.1% of respondents identified as heterosexual. This data suggests that the majority of responses came from LGBTQIA+ individuals. Despite this identification, there remains a clear lack of knowledge about the services offered by the DPE-PR, especially regarding specialized centers. This reinforces the urgent need for a specific educational approach for the LGBTQIA+ population, aimed at informing them about their rights and how to effectively seek legal support and guidance.

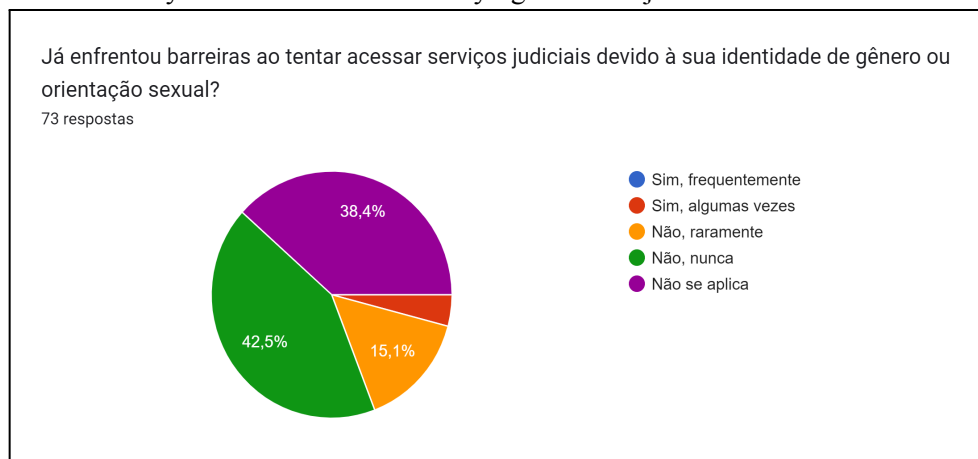
Regarding access to justice, it is noteworthy that 47.9% of participants express the perception that there is a disparity in treatment in judicial services when comparing the LGBTQIA+ population and the heteronormative population. This finding is intriguing, especially considering that 42.5% of respondents stated that they had not faced difficulties in seeking judicial services due to their gender identity or sexual orientation. This apparent contradiction between the perception of disparity and personal experience highlights the complexity and nuances involved in access to justice for the LGBTQIA+ community, suggesting the need for a more in-depth analysis to understand the factors underlying this perception.

Chart 11 – Equal access to services



Fonte: Gráfico extraído da coleta de dados

Chart 12 – If you faced barriers when trying to access judicial services



Fonte: Gráfico extraído da coleta de dados

The final topic, composed of objective questions, opened a crucial space for awareness and education, a gap identified during the literature search that highlighted the scarcity of educational initiatives in this area. As evidenced in the graphs, 69.9% of participants agree that discrimination against the LGBTQIA+ population negatively influences judicial decisions. Furthermore, a significant 82.2% believe that raising awareness about issues related to the LGBTQIA+ population among legal professionals is essential to ensure fair treatment.

Following this logical sequence, it is notable that 97.3% of respondents affirm the pressing need for awareness and education on LGBTQIA+ issues for civil society. Additionally, a significant majority, corresponding to 97.3%, recognize that the implementation of educational initiatives represents a significant step toward reducing the stigma associated with sexual orientation and gender identity.

These results not only corroborate the importance placed on education and awareness, but also suggest a significant call for initiatives aimed at transforming perceptions, expanding

understanding, and fostering a more inclusive and respectful environment for the LGBTQIA+ community.

At the end of the questionnaire, final considerations were opened, offering respondents the opportunity to share their experiences and perceptions regarding recognition and access to justice for the LGBTQIA+ community. In this context, the following initial response deserves special mention:

I was verbally assaulted and a homophobic adjective was used, and my pharmacy supervisor did nothing. I'm waiting for my attacker to return from vacation, and it's been a month since they did anything, and she's still working with me. My supervisor only said that the hospital doesn't tolerate homophobia, but she did nothing. I heard about another incident with another coworker in the same pharmacy department, but at a different time, and they didn't do anything. The hospital really cares about its image, not its employees. There was no advertising during Pride Month. It's no use being the best pediatric hospital in the country if they care more about their image than the people who work there. I appreciate the form, which helped me understand where I can go and pursue my rights. Thank you (form response 26)<sup>29</sup>

It is essential to note that the reality experienced by the respondent reflects the narrative of many LGBTQIA+ people. The lack of visibility and recognition of verbal abuse, combined with the inertia of the corporate world, calls us to reflect on specific issues related to LGBTQIA+ employability. At the end of the response, a lack of awareness about the reporting portal is noted, highlighting, once again, the pressing need for educational initiatives as a public policy to curb discriminatory practices.

These educational initiatives should be targeted at both victims and perpetrators, aiming to raise awareness among the general public about the nuances of LGBTphobia, its criminalization, and the legal consequences in cases of rights violations. Furthermore, educational initiatives are also crucial in private, philanthropic, and public corporate environments. The lack of awareness about reporting resources, coupled with the inertia of accountability when reporting within the company, highlights the need for information and awareness to foster more inclusive environments and promote equal opportunities in the professional landscape.

Furthermore, the positioning also stands out, which, again, finds similarity with other

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<sup>29</sup> Eu sofri uma agressão verbal e utilizaram adjetivo homofóbico e minha supervisora do setor de farmácia não fez nada, espere que minha agressora se volta de férias e já vai ser um mês e não fizeram nada e continua trabalhando comigo. Minha supervisora só falou que hospital não aceita homofobia, mas não fez nada. Soube de outro tipo de caso com outro colega de trabalho no mesmo setor de farmácia, mas em outro horário e nem fizeram nada. Realmente o hospital só pressa por sua imagem e não os funcionários. No mês do orgulho não teve nenhuma propaganda. Não adianta ser o melhor hospital pediátrico do país sendo que eles se importam mais com a imagem que com as pessoas que trabalham. Agradeço pelo formulário que me ajudou saber aonde posso ir e accionar meus diretos. Obrigado (resposta 26 do formulário)

responses and reaches a predicted positioning based on what can be inferred from the previous responses:

I think the biggest problem with access to justice in our country is precisely the lack of self-awareness in these environments. I've heard reports of people who simply felt no empathy when they needed to seek help. This drives people away from seeking resolution for their needs. In fact, access to justice for LGBTQIA+ members is limited, and this is a social construct. Although justice is "one" depending on who is seeking it, this can determine the legal professional's stance. It's very difficult to talk about how the law can protect non-heteronormative people when we suffer prejudice and discrimination in our own families. It's very difficult to understand that, yes, certain comments are a crime, and yes, you have the right to report them. But it's a difficult decision, so we end up letting it slide. (answer 56 on the form)<sup>30</sup>

Given the experiences shared by the respondents, which echo those of many LGBTQIA+ individuals, the urgency of effectively addressing and combating the lack of visibility and recognition of the target population becomes evident. The lack of knowledge about how to proceed in the face of violence or human rights violations underscores the imperative need for educational initiatives through public policies to curb discriminatory practices.

It is suggested that these educational initiatives should be broad and comprehensive, seeking to raise awareness about the complexities of LGBTphobia, its criminalization, and the legal consequences associated with rights violations.

As we reflect on these final considerations, we recognize the importance of fostering more inclusive, sensitive, and egalitarian environments. Raising awareness not only about the forms of discrimination, but also about the resources available for reporting, emerges as a crucial step in building a society and a workplace that values and respects diversity. In this sense, education proves to be a fundamental tool in building bridges for understanding, mutual respect and, consequently, the positive transformation of our reality.

## 7 Final Considerations

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<sup>30</sup> Penso que o maior problema de acesso a justiça no nosso país é justamente o de não se enxergar nesses ambientes. Já ouvi relatos de pessoas que simplesmente não sentiram nenhuma empatia quando foi necessário procurar ajuda. Isso afasta as pessoas da procura de resolução de suas demandas. Em verdade, o acesso a justiça para membros do grupo LGBTQIA+ é limitado e essa é uma construção social, pois em que pese a justiça seja "una" a depender de quem esteja buscando, isso pode ser determinante para qual será a postura do profissional da justiça.

É muito complicado falar em como a lei pode proteger as pessoas não hetero normativas, quando nós sofremos preconceito e discriminação na nossa própria família. É muito difícil entender que sim, certos comentários são crime, e sim vc tem o direito de denunciar. Mas é uma decisão difícil, por isso acabamos deixando passar. (resposta 56 do formulário)

As we celebrate the classification of acts of LGBTIphobia as crimes, a historic milestone in the recognition and protection of the rights of the LGBTQIA+ population, we cannot ignore the persistent need for specific legislation capable of comprehensively and specifically addressing the complexities related to LGBTIphobia. This legal advancement, while significant, highlights the continued importance of shaping a legal framework that is truly comprehensive and sensitive to the nuances of the LGBTQIA+ population.

It is notable that a significant portion of respondents were unfamiliar with the services of the Public Defender's Office of the state of Paraná. However, it is crucial to recognize the vital role this institution plays in defending and promoting the rights of the LGBTQIA+ population, especially through its specialized units. The Public Defender's Office emerges as a fundamental entity, filling gaps left by the inefficiency of other agencies, such as police stations, in handling issues related to gender identity and sexual orientation.

In light of the reflections presented, the urgent need to address existing gaps in the recognition and access to justice of the LGBTQIA+ population becomes undeniable. A detailed examination of the responses obtained through the questionnaire revealed a complex landscape, in which limited understanding of rights, a lack of visibility into discriminatory practices, and a scarcity of reporting resources highlight significant challenges.

The data point to a reality in which education and awareness are emerging as indispensable tools in promoting more inclusive environments, especially in the corporate world. The lack of knowledge about reporting resources highlights the importance of comprehensive educational initiatives, both for victims and potential perpetrators, aimed not only at prevention but also at transforming discriminatory mindsets and behaviors.

Given this context, the implementation of public policies aimed at raising awareness about LGBTIphobia, its legal impacts, and available reporting resources is imperative. These policies must extend beyond the judicial sphere, also encompassing the private, philanthropic, and public corporate sectors. Specifically regarding the Public Defender's Office of the state of Paraná, analysis of the data obtained from the questionnaire reveals a dichotomy in society's perception of its role in addressing LGBTQIA+ issues. On the one hand, the institution is recognized as a gateway for reporting violence and human rights violations, especially concerning the LGBTQIA+ community. However, on the other hand, the results reveal a significant lack of awareness among civil society regarding the services offered by the Public Defender's Office of the state of Paraná, especially those focused on LGBTQIA+ issues.

The data indicate that more than half of respondents (53.4%) are unaware that the



Public Defender's Office of the state of Paraná provides specific services for the LGBTQIA+ population. Furthermore, a significant portion, representing 93.2% of respondents, stated that they had not sought assistance from the institution on issues related to sexual and gender diversity. This disparity between the recognition of the Public Defender's Office as a welcoming agency and the lack of knowledge about its specific services reveals an alarming gap in communication.

By examining the essay responses, it was clear that LGBTQIA+ participants face discrimination, but due to a lack of access to police stations and a lack of knowledge of institutions that address LGBTIQ-phobia issues, they find themselves in a vulnerable position. This discrepancy between the real need and the awareness of the availability of legal resources suggests the urgency of effective outreach and awareness strategies.

In short, the conclusion highlights the urgent need for a collective commitment to education, awareness, and the promotion of inclusive environments.

However, there is also a clear need for a legislative approach that is aligned with the complexity of LGBTQIA+ experiences. The challenge persists; However, it is through a combination of legal advances, public and political awareness, and effective institutional action that we can aspire to a more equitable and respectful future, in which the fundamental rights of the LGBTQIA+ community are recognized, protected, and respected.

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