

BINGO REGULATION IN BRAZIL AND RECOMMENDATIONS FROM THE BINGO PROJECT: THE ODDS OF A SUSTAINABLE REGULATION OF THE SECTOR

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ABSTRACT: Bingo is a form of gaming that is often associated with good works, social services, low stakes entertainment, and working-class sociality. In many parts of the world bingo halls are the province of charities, veterans' clubs, older women, and families: But not in Brazil. Commercial bingo grew rapidly in Brazil during approximately a decade of legality that ended in 2007. Legal bingo halls employed tens of thousands of people and the game was widely played by middle-class and well-educated Brazilians as well as older workingclass women and men. However, the game, or more precisely the bingo halls in which it was played, came to be regarded as laundries for dirty money, sources of corruption of public powers, and risks to the security of urban neighbourhoods. Using contextualised socio-legal analysis of the places that Brazilian bingo halls became and their place in Brazilian society, this article summarises findings and conclusions from The Bingo Project¹ and outlines key topics to be considered in framing new regulation on the controversial topic of gambling legalisation in Brazil. Its specific focus is the regulation of bingo to contain the risks the game poses and provide a foundation for the redevelopment of bingo as a legal leisure practice.

KEYWORDS: Bingo; gambling regulation; consumer protection; crime prevention

(...) Today's decision casts a cloud upon this Court's prior decisions, as well as numerous trial court judgments addressing the legality of various bingo operations. What has been an orderly process, I suspect, will soon resemble a three-ring circus².

I. Context: the peculiar case of bingo in Brazil

Until 1993, bingo was included within Brazil's 50-year-old prohibition against non-state suppliers of popular gambling experiences and products. Prohibition had been established during the 1940s under two Criminal Contravention Acts that consolidated piecemeal bans on specific games into a default rule of illegality for all forms of gambling that were

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¹ The Bingo Project was an ESRC-funded comparative research project that critically examines bingo regulation in different parts of the world. For further information, see our website: <<https://www.kent.ac.uk/thebingoproject/>> and BEDFORD, Kate et al, *The Bingo Project: Rethinking Gambling Regulation* (2016), online (pdf): <https://www.kent.ac.uk/thebingoproject/resources/Bingo_Project_report_final.pdf> Access in: 28 Feb 2019.

² 43 So. 3d 587, 595 (Ala. 2010) (Woodall, J. dissenting). In fn 01 apud KITTY ROGERS B and BEVAN, D. BINGO IN ALABAMA: MORE THAN JUST A GAME, 41 Cumb. L. Rev. 509

not specifically exempted³. This stance was in part justified by lawmakers as being in accordance with widespread anti-gambling values in the international arena⁴ (for comparison purposes, it is useful to recall that Brazil is one of only three G20 countries⁵ that currently bans non-state providers of gambling products). During prohibition, bingo was played on a small scale by religious organisations for fundraising purposes in some parts of Brazil, but these activities – although widely tolerated – do not appear to have been subjected to formal state oversight.

However, in 1993 Brazil exempted bingo from prohibition⁶. The federal government created the exemption to raise funds for the democratisation of sports, an obligation that the Brazilian state had assumed under the 1988 post-dictatorship constitution. The legalisation of bingo was intended to provide an income-generating opportunity for sports organisations. Lacking the required expertise and investment capacity to run bingo businesses, such organisations partnered with commercial operators. Large and profitable bingo halls were established in many cities, particularly in Brazil's prosperous South and South East regions. Bingo businesses grew rapidly, creating lots of jobs and generating sustained revenue streams for municipal, state, and federal governments. The game was widely played by middle-class and well-educated Brazilians as well as older workingclass women and men. But the Brazilian bingo industry and its regulators also were repeatedly ensnared in corruption, organised crime, and money laundering scandals. Just seven years after opening the licensed bingo market the federal government attempted to close it⁷. Closure was resisted through political processes⁸, legal actions and defiance – unlicensed bingo is played illegally to this day – but by 2007 prohibition had been, in effect, reinstated as Brazil's regulatory instrument for governing bingo, and the game had been driven largely underground.

It becomes then important to learn the lessons from that failure, to understand why bingo – a game that in Brazil (as elsewhere) evokes family holidays, charitable fundraising and older women's sociality – acquired such menacing connotations during its brief period of commercialisation. We can summarise a conjuncture of three key events during 2006-7 that finally brought about closure of Brazil's formal bingo market. They are:

³ Decreto-Lei nº 3.688/41 (art. 50) and Decreto-Lei nº 9.215/46.

⁴ According to the Decreto-Lei nº 9.215/46 initial considerations, in the original: "O Presidente da República, usando da atribuição que lhe confere o artigo 180 da Constituição, e

Considerando que a repressão aos jogos de azar é um imperativo da consciência universal;

Considerando que a legislação penal de todos os povos cultos contém preceitos tendentes a êsse fim;

Considerando que a tradição moral jurídica e religiosa do povo brasileiro e contrária à prática e à exploração e jogos de azar;

Considerando que, das exceções abertas à lei geral, decorreram abusos nocivos à moral e aos bons costumes;

Considerando que as licenças e concessões para a prática e exploração de jogos de azar na Capital Federal e nas estâncias hidroterápicas, balneárias ou climáticas foram dadas a título precário, podendo ser cassadas a qualquer momento: (...)"

⁵ The others are Saudi Arabia and Indonesia.

⁶ BRASIL. Presidência da República. Lei nº 8.672, de 06 de julho de 1993.

⁷ BRASIL. Presidência da República. Medida Provisória nº 168, de 20 de fevereiro de 2004. Rejeitada.

⁸ The "Medida Provisória nº 168/2004" was never approved by the Senate. In the 5th of May of 2004, the Senate Plenary rejected the constitutionality of the norm because, it would not fulfil the requisites of public interest and urgency.

a) A special investigation by the Federal Police and Prosecution Services (Operation Hurricane⁹) confirming corrupt practices in some courts that had been extending bingo licences through judicial order, undermining public confidence in the integrity of courts.

b) The affirmation by Brazil's Constitutional Supreme Court that the federal government has exclusive control over gambling regulation¹⁰. This ruling established that Brazil's state governments lacked the competence or power to enact legislation to permit bingo businesses to operate. As, by that time (2007), there was no longer any federal legislation that allowed bingo operations, this ruling meant that state courts could not issue any further judicial injunctions to extend operating licences, since state level legislation authorising bingo was not valid (unconstitutional).

c) A Parliamentary Commission of Inquiry (the CPI dos Bingos) reported that businesses representing the interests of organised crime – both domestic and international – had captured much of the Brazilian bingo market. The report found that criminals were using bingo halls to launder money and that proceeds were diverted to corrupt government officials, from federal to municipal levels¹¹. Despite finding that the enabling regulation enacted during the 1990s had not adequately protected legitimate bingo businesses and Brazilian public administration against the activities of criminal organisations, the Inquiry recommended re-opening the bingo market with stronger and more effective regulation. Several legalisation bills have been proposed since 2007, and in 2015 two Special Parliamentary Commissions were created to work on reform. However, no measures have as yet come through the legislative process successfully.

II. The choice is between legal or illegal bingo: the limits of control through prohibition.

It is difficult to see the benefits to Brazil of its current approach to bingo. The lack of a regulatory model for legal bingo may reduce the number of providers and players's access to the game but it does not stop those who want to play. Illegality generates costs of enforcement, corruption and foregone jobs and taxable revenues. Illegality also tends to drive gambling problems, including the exploitation of vulnerabilities and fraud, further underground. For reasons such as these there is considerable support within Brazil's Congress to legalise bingo and other forms of gambling, particularly to realise the fiscal and economic benefits that liberalisation is expected to create.

However, the legacy of the criminality, corruption, and ensuing loss of confidence in regulatory capacity that ultimately destroyed Brazil's retail bingo market, together with

⁹ ALVIM, J. *Operação hurricane: um juiz no olho do furacão*. São Paulo: Geração Editorial, 2011.

¹⁰ See Supremo Tribunal Federal, Sumula Vinculante n° 2 DJe n° 31 de 06/06/2007, p. 1. DJ de 06/06/2007, p. 1. DOU de 06/06/2007, p. 1.

¹¹ BRASIL Senado Federal. *Relatório da comissão parlamentar de inquérito referente ao relatório final da CPI: Bingos. CPI dos Bingos*. Brasília, DF: Senado Federal, 2006. Available at: <<http://www2.senado.leg.br/bdsf/item/id/82024>>. Access on: 20 Feb. 2016; pp. 12, 134, 122-149.

concerns about consumer vulnerability that are articulated in case law¹² and by mental health treatment providers, pose serious obstacles to successful legalisation. Additionally, the efficiency and dimension of problem gambling treatment and prevention have been subject to multiple and growing concerns, even where gambling regulation is already established¹³.

Furthermore, at the time of writing, Brazil has just elected a new president, with strong ties to the evangelical community that traditionally has opposed gambling liberalisation.¹⁴ Meanwhile the country is still dealing with the effects of one of the largest and most extensive corruption scandals in its history, which potentially will exacerbate opposition to the idea of re-opening a bingo market. For reasons such as these it is doubtful whether the legalisation of bingo is sustainable without a deliberate strategy to rebuild trust and public confidence that the sector will be less corrupt and be better protected against capture by organised crime than it was during the 1990s.

The Bingo Project concluded that a good case can be made that the benefits of lawful bingo – to the communities of players and workers as well as to the state – outweigh the risk of harms¹⁵. For bingo to play a role in Brazil’s future, however, it must be provided in a way that marks a clean break with the past. We consider it implausible that Brazil at this moment can create a trusted licensed bingo market populated by private sector businesses without robust, effective and well-funded regulation.

The reopening of the licensed bingo market, therefore, requires a regulatory system that is comprehensive, integrated, responsive to the distinctive nature of bingo, well-staffed and properly funded to develop staff expertise and conduct effective inspections. Regulation of bingo in Brazil also must be tailored to the country’s distinctive history, cultures, legal institutions and political arrangements. While we consider that Brazil should not simply transplant a regulatory model from elsewhere to govern its bingo market, it is useful to consider best practice from other jurisdictions.

Traditionally, there are three main goals that regulation through entry requirements mechanisms (licensing) is intended to advance. These are: “(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; (b) ensuring that gambling is conducted in a fair and open way, and (c) protecting children and other vulnerable persons from being harmed or exploited by

¹² Superior Tribunal de Justiça: REsp 1509923/SP, Rel. Ministro HUMBERTO MARTINS, SEGUNDA TURMA, julgado em 06/10/2015, DJe 22/10/2015.

¹³ MIERS, David. “Regulation and the management of risk in commercial gambling in Great Britain”. *International Gambling Studies*, (2015) 15:3, 422-434, DOI: 10.1080/14459795.2015.1068352.

¹⁴ KLEIN, Cristian. “Bolsonaro acena com liberação de jogos de azar no Brasil.” *Valor Econômico*. 21/05/2018. Available at: <<https://www.valor.com.br/politica/5538469/bolsonaro-acena-com-liberacao-de-jogos-de-azar-no-brasil>>. Access in 16 Feb 2019.

¹⁵ BEDFORD, Kate et al, *The Bingo Project: Rethinking Gambling Regulation* (2016), online (pdf): <https://www.kent.ac.uk/thebingoproject/resources/Bingo_Project_report_final.pdf> Access in: 28 Feb 2019.

gambling”¹⁶, a group that has been called, under Brazilian Consumer System as “hipervulnerable” (hipervulneráveis¹⁷).

The prohibition of commercial gambling by the private sector in Brazil, as a modality of regulation¹⁸ does not fulfil any of these goals, since the costs of legal uncertainty in all Brazilian domains — from practice to law, from politics to economy — are clearly visible and illegality creates additional societal costs. For example, recent news reports have suggested the opacity of rules leads to both the potential corruption of public servants who allegedly blackmail owners and turn a blind eye to clandestine activity and extortion by other individuals and gangs offer to provide security to these illegal establishments. This sort of “service” is not optional. The offer cannot be refused¹⁹. Documentaries have claimed that such compulsory protection payments to private providers and to corrupt local authorities can escalate into problems beyond just the closure of a gambling establishment, including murder²⁰.

Other complexities of relying on the criminal law as an important regulatory instrument in this context are illustrated by recent conflicts within the Court of Appeals in Rio Grande do Sul (Turmas Recursais do Tribunal de Justiça do Estado do Rio Grande do Sul [TJRS]). One division of this court has been acquitting gambling establishment owners by stating that the 1941 legislation²¹ is outdated in the current societal context. This notion that the legal prohibition of gambling is no longer binding (and not continued by the Brazilian Constitution of 1988²²), has enormous implications. Conversely, in 2017, another division of the same court (TJRS) ruled that the criminal prohibition does exist, is still in force, and that a criminal law cannot be revoked simply by practice; the prohibition could be only revoked formally, by the law, and not informally, by social acceptance²³. As a result of this conflict, an appeal was taken to the Brazilian Supreme Court, which accepted the case, recognising the relevance of the topic on social,

¹⁶ For instance, “The first of the social responsibility provisions under the heading ‘Protection of Children and Other Vulnerable Persons: Combating Problem Gambling’ requires that all licensees ‘must have and put into effect policies and procedures intended to promote socially responsible gambling’ (Gambling Commission, 2015a, Part II, section 3.1.1).” MIERS, David. “Regulation and the management of risk in commercial gambling in Great Britain”. *International Gambling Studies* (2015) 15:3, 422-434, DOI: 10.1080/14459795.2015.1068352.

¹⁷ BENJAMIN, Antonio Herman. GRINOVER, Ada Pellegrini e outros (coord). Código Brasileiro de Defesa do Consumidor comentado pelos autores do anteprojeto. Rio de Janeiro: Forense Universitária, 1991. p. 343. In the original: “O consumidor é, reconhecidamente, um ser vulnerável no mercado de consumo (art. 4º, I). Só que, entre todos que são vulneráveis, há outros cuja vulnerabilidade é superior à média. São os consumidores ignorantes e de pouco conhecimento, de idade pequena ou avançada, de saúde frágil, bem como aqueles cuja posição social não lhes permite avaliar com adequação o produto ou serviço que estão adquirindo. São por esta razão, também denominados de ‘hipervulneráveis’.” BENJAMIN, Antônio Herman V. In: BENJAMIN, Antônio Herman V.; MARQUES, Cláudia Lima; BESSA, Leonardo Roscoe. Manual de Direito do Consumidor. São Paulo: RT, 2007. p. 220.

¹⁸ Some academic researchers argue that prohibition should not really be considered a form of regulation, since the term implies a preference for less coercive mechanisms of shaping behavior. For example in her book on regulation of the British Railways, Bridget Hutter argues that “The very use of the word regulation signals a toleration of the activity subject to control. Regulation is not an attempt to eradicate risk, crucially it is an attempt to manage it.”⁸ Others argue that some states are increasingly relying on criminal law as a form of regulation, in arenas such as anti-social behaviour.⁹ In our Bingo Project and final report we include criminal law within our research on regulation. The Bingo Project, Final Report. P 6.

¹⁹ Cid Martins & Victor Rosa, “Tensão abala elo de facções e jogos de azar,” Zero Hora 2d ed (3 December 2017) 28.

²⁰ Cid Martins & Victor Rosa, “Tensão abala elo de facções e jogos de azar,” Zero Hora 2d ed (3 December 2017) 28.

²¹ Specifically, article 50 of the Decreto-Lei nº 3.688/1941.

²² TJRS, Recurso Crime Nº 71006284962, Turma Recursal Criminal, Turmas Recursais, Relator: Luis Gustavo Zanella Piccinin, Julgado em 07/11/2016.

²³ TJRS, Apelação Crime Nº 70074080524, Primeira

Câmara Criminal, Tribunal de Justiça do RS, Relator: Jayme Weingartner Neto, Julgado em 18/10/2017.

economic, political and juridical grounds and seeing a coherent question to be answered.²⁴ However, at the time of writing no decision has yet been issued.

In the sphere of Administrative Law, controversial legal interpretations have created possibilities for gambling halls to be run under the general allowance of the Brazilian Racecourse Betting Act of 1984, also known as “Lei do Turfe”²⁵. Under its art. 14²⁶, this act authorises Jockey Clubs to run other modalities of lotteries, a loophole under in which some people consider that bingo operations could be run. Entrepreneurs have been interpreting this specific provision according to their own interests and even though doubts may be raised in terms of adequacy – since ideologically and historically, this additional source of revenue through lotteries (*lato sensu*) should have been used to improve horsebreeding and the culture of the sport of horseracing²⁷ (as was done in the UK)²⁸, and not uniquely for profit –, until a judicial pronouncement is made about the case, a number of bingo halls are being opened, run and expanded. For instance, in Porto Alegre, the capital of the State of Rio Grande do Sul, there are 2 (two) gambling halls that are daily opened under these premises, with bets varying from only R\$ (Brazilian Reals) 2.00 (two reals) and offering payouts higher than R\$ 5,000.00 (five thousand reals)²⁹ while not being subject to any additional surveillance or specific requirements. What is more, the establishment’s intention is to open more units in the capital and in the countryside.

In sum: in the absence of rules, no one can predict how or where bingo games, in fact, are played. But it is evident that they are being played. For example, in 2016, the Public Secretary of São Paulo estimated that 2.7 bingo establishments were being closed each day in the city of São Paulo³⁰. According to the data, table bingo and slot-machines were the games most widely provided in these bingo halls. Not coincidentally, the electronic gaming machines (EGM) are the most harmful for consumers and problem gamblers, even in jurisdictions where the practice is formally allowed by the law.

²⁴ Tema 924. RECURSO EXTRAORDINÁRIO. CONTRAVENÇÃO PENAL. ARTIGO 50 DO DECRETO-LEI 3.688/1941. JOGO DE AZAR. RECEPÇÃO PELA CONSTITUIÇÃO FEDERAL. TIPICIDADE DA CONDUTA AFASTADA PELO TRIBUNAL A QUO FUNDADO NOS PRECEITOS CONSTITUCIONAIS DA LIVRE INICIATIVA E DAS LIBERDADES FUNDAMENTAIS. ARTIGOS 1º, IV, 5º, XLI, E 170 DA CONSTITUIÇÃO FEDERAL. QUESTÃO RELEVANTE DO PONTO DE VISTA ECONÔMICO, POLÍTICO, SOCIAL E JURÍDICO. TRANSCENDÊNCIA DE INTERESSES. EXISTÊNCIA DE REPERCUSSÃO GERAL. RE 966177 RG/RS. D.J.: 10 out 2016.

²⁵ Lei Nº 7.291, de 19 de dezembro de 1984

²⁶ In the original. “Art.14 - As entidades promotoras de corridas de cavalos com exploração de apostas poderão ser autorizadas pelo Ministério da Fazenda a extrair "sweepstakes" e outras modalidades de loteria, satisfeitas as exigências estipuladas pela Secretaria da Receita Federal, quanto aos Planos de Sorteios.”

²⁷ Ives Gandra Martins comments on IRION, A and ROSSLING, C. “A estratégia jurídica de empresários para abrir casas de jogos no RS”, ZH (06 Oct 2017), online:

<<https://gauchazh.clicrbs.com.br/grupo-de-investigacao/noticia/2017/10/a-estrategia-juridica-de-empresarios-para-abrir-casas-de-jogos-no-rs-cj8gxxalm00lv01mq962godah.html>>. Access in: 16 Feb 2019.

²⁸ MIERS, David. “Lotteries in Great Britain: Regulatory and Social Responsibility Issues in the Funding of Quasi-Public Goods. *Gaming Law Review*. Published in Volume: 22 Issue 7: September 12, 2018.

²⁹ KERVALT, Marcelo. “Três casas de apostas são inauguradas em Porto Alegre e Passo Fundo” (01 Dec 2017), online: <<https://gauchazh.clicrbs.com.br/geral/noticia/2017/12/tres-casas-de-apostas-sao-inauguradas-em-porto-alegre-e-passo-fundo-cjao7yqgu00ta01mk2owjxjq.html>> Access in: 16 Feb 2019.

³⁰ RESEK, Felipe, “Polícia fecha 2,7 bingos ilegais por dia na capital,” Estadão (17 July 2017), online: <saopaulo.estadao.com.br/noticias/geral,policia-fecha-2-7-bingos-ilegais-por-dia-na-capital,10000063349>. Access in: 24 Feb 2019.

III. Regulatory content: addressing integrity and coherence of the system, providing safe risk and avoiding gambling mistrust

The Bingo Project proposed that regulated liberalisation was the most rational and reasonable way forward for Brazil, even though there are costs and externalities associated with it (as there are with prohibition or unregulated liberalisation). However, by properly addressing the main criticisms of legal gambling markets, which are based on the risks of addiction, of frauds, money laundering and criminality, the benefits of regulated liberalisation would outweigh its drawbacks and rebuild public trust. To this end the Bingo Project concluded that the regulation should address several key concerns including:

- a) The legalisation of bingo as part of an integrated set of reforms to legalise gambling in Brazil: Although other forms of gambling were outside the scope of The Bingo Project research, we concluded that inclusion of bingo legalisation within a more general legalisation programme would help to avoid the problems that occurred when the game was legalised as an exception to a general norm of prohibition;
- b) The definition of the game: Because a blurring of the lines between bingo and casinos contributed to the downfall of the legalised bingo market and it is still controversial even in well-established gambling friendly jurisdictions³¹, we consider that it is desirable clearly to differentiate bingo as a specific form of gaming distinct from slotmachines and casino games in order to start the process of rebuilding trust in the bingo sector. We recommend the creation of a comprehensive definition to cover land, online and mobile bingo. The rationale for a comprehensive definition is to encourage regulators to think about what kinds of play should be licensed as bingo games across the different modalities, and to help reinforce the distinctive character of the game. To carry out this definitional work effectively – in particular to reduce the risks of land-based bingo once again being conflated with casinos and to demarcate clearly the boundaries of online and mobile bingo – bingo regulators will require training to develop expertise in bingo operations;
- c) The Scope of bingo legalisation: We concluded that legalised bingo in Brazil should encompass online and mobile bingo as well as the terrestrial form. This broad scope will allow Brazil to capture some of the revenues currently flowing to

³¹ For instance, in the UK, according to Miers, “The 2005 Act does not permit bingo venues to profit directly from the games played, but they are permitted to install gaming machines. As in the case of Licensing Betting Offices (LBOs), the contribution that its machines made to the bingo sector in 2013/14 was also more than half of that sector’s total GGY (Gambling Commission, 2015e). Seeking to attract more customers, their operators have developed ‘machine’ bingo games that look like but are not in law ‘gaming machines’, and are thus beyond the Commission’s closer regulatory reach. For its legality and effectiveness this development places a considerable burden on the definition of bingo. But the Act says only that “‘bingo” means any version of that game, irrespective of the name by which it may be described’. This definitional lacuna prompted the Commission to publish a list of bingo’s key characteristics. As operators have developed new products, it later provided a further statement of where it considers the boundaries between bingo and other forms of gambling to lie (Gambling Commission, 2014a). A Commission statement of this kind has no authority in law. But it is typical of how it ‘legislates’ for unforeseen gaps in its regulatory reach where, for example, the internal features of the Act’s ‘interpretation of key concepts’ have raised questions of regulatory clarity (Gambling Commission, 2014c).” MIERS, David. “Lotteries in Great Britain: Regulatory and Social Responsibility Issues in the Funding of Quasi-Public Goods. *Gaming Law Review*. Published in Volume: 22 Issue 7: September 12, 2018.

Portuguese language bingo sites outside the country that are marketed to Brazilians and create a foundation for Brazil to respond effectively to growth in online and mobile forms of bingo;

d) The idea of achieving and maintaining the “safe risk” element. There is a public interest in ensuring that bingo operations are held with “safe risk”; that is, “one in which citizens are properly informed about the probabilities of winning and losing.” The respective obligation becomes a core element in the so called ‘Reno Model’, which conceptualizes *gambling as a leisure activity to be engaged in as an informed individual choice*³². Analogically, the model also compares gambling licenses to the authorisation of risky financial products offer, when the state should also ensure that those operators do not compromise this safe risk, “whether by manipulating the conditions under which the risk is realized or by the misleading or improper use of information about the risk parameters;³³”

e) A proactive response to the public mistrust caused by the levels of criminality associated with the country’s previous experience of lawful bingo: In addition to articulating a regulatory objective to prevent crime, requiring providers to comply with Anti-Money Laundering provisions as is done elsewhere, and locally, as they are being redesigned³⁴, and researching best practice in other jurisdictions we consider it advisable for Brazil to impose on bingo providers a specific duty to prevent gambling related financial crime, including fraud, money laundering, bribery and corruption;

f) Development of an effective compliance strategy that requires providers regularly to report on the success of measures they take to advance regulatory objectives and attain regulatory outcomes. Providers’ reports would be subject to audit during regulatory inspection and supervision processes and be made publicly available. While there are good reasons for the regulation to be drafted as universally applicable, consideration should be given to exemptions from more onerous requirements for small-scale, non-profit and charitable providers of bingo;

g) Investment in the sites of regulatory authority and institutions: It is imperative that Brazil settles upon a viable structure of regulatory institutions for legal bingo and then invests sufficient resources for them to function effectively. The first and most critical choice is the locus of regulatory authority in light of the perennial conflicts between federal and state power. We recommend the placing of licensing, inspection, revenue distribution, consumer protection and enforcement powers at the state level as is done in other federal jurisdictions and we think that Brazil would benefit significantly from

³² Blaszczyński, Ladouceur, & Shaffer apud MIERS, D. “Regulation and the management of risk in commercial gambling in Great Britain”. *International Gambling Studies* (2015) 15:3, 422-434.

³³ MIERS, David. “Regulation and the management of risk in commercial gambling in Great Britain”. *International Gambling Studies* (2015) 15:3, 422-434.

³⁴ “Bolsonaro assina pacote anticrime de Moro; textos devem chegar ao Congresso ainda nesta terça”. *Pacote anticrime. Migalhas*. 19/02/19. Available at: <<https://www.migalhas.com.br/Quentes/17,MI296601,21048-Bolsonaro+assina+pacote+anticrime+de+Moro+textos+devem+chegar+ao>>. Access in: 25 Feb. 19.

a formal means to share and sometimes to coordinate regulatory practice across different states. We therefore recommend that Brazilian policy makers introduce a network model of regulation through which “epistemic communities” of state regulators work to achieve uniformity without centralisation³⁵;

h) Developing civic society institutions to strengthen regulatory capacity: In terms of institutional practices, that Brazil could adopt to help develop a strong and generally accepted licensed bingo sector, we also consider that regulatory capacity would be enhanced if a portion of the revenues from legalised bingo were used to fund specialist NGOs to develop expertise in gambling regulation, data analysis, and communications. The role of these “Bingo Watch” organisations would be to strengthen the capacity of civil society, independently of the regulator, to assess and where necessary critique the performances of bingo providers against their regulatory duties to treat consumers fairly and prevent crime;

i) Finally, recognising the contributions of players and workers to the value that bingo creates, we recommend that a portion of bingo revenues be ring-fenced to support local services and causes and that staff and players be given a voice in the distribution of these bingo revenues.

IV. Governing relationships between providers and consumers

In addition to conventional forms of regulating market entry, inspection and supervision, which have historically been used for land-based bingo, it is important for Brazil to create systematic and effective conduct of business regulation to govern relationships between providers and players. Even though all sort of games based on luck contain randomness as a key element, it is important for consumers to understand, in the first place, the rules of the game, to be able to access the transparency of their results and to be well informed about the potential extension of their losses.

Regulation of these relationships should be based on the principles of “Know Your Customer” (KYC) and “Know Your Provider” (KYP). The KYC principle is usually associated with crime control and security, particularly in relation to account based play online. But we consider that the principle is important also for player protection and as such should influence regulation of the risks that providers may exploit vulnerable consumers. The KYP principle reflects the idea that players are entitled to feel confident that products and services are safe, of good quality and delivered on fair non-abusive terms.

One option for giving effect to KYC and KYP principles is to treat bingo players as consumers under Brazil’s Código de Defesa do Consumidor (Consumer Protection Code) and create a regulatory duty on bingo providers to demonstrate how they “treat consumers

³⁵ The idea of governance through regulatory networks has been developed most systematically in fields such as competition policy and financial regulation where the domestication of international standards may play a significant role in national regulation. The idea of a loose confederation of “epistemic communities” at state levels, sharing practice through activities coordinated by the Union government could potentially be adapted to the Brazilian context. For a useful summary and discussion of regulatory networks see: Ramsay, Iain. “Consumer law, regulatory capitalism and the new learning in regulation.” *Sydney L. Rev.* 28 (2006): 9.

fairly”. This duty would require bingo providers to report to the regulator and the public on the measures they take to ensure that bingo is provided in ways that uphold the consumer’s rights under the Brazilian Consumer Code. These rights are based on the Code’s general understanding of a consumer’s vulnerability and/or hipervulnerability as the weaker party in transactions and more specifically rights to protection against harmful products and services, rights to fair dealing, including protection against misleading and abusive advertising, coercive or unfair business methods and abusive practices, and rights to disclosure and education, quality products and accessible dispute resolution.

Reporting of bingo providers’ compliance with the duty to treat consumers fairly would require providers to document their strategy to achieve the specified outcomes, report regularly on the measures taken to achieve the outcomes and their success. These reports would be subject to audit as part of regulatory inspection and supervision and be made publicly available. Ideas brought and inspired from the British model based on the Reno model, with the understanding of responsible gambling that gambling “benefits a lot of people a little and harms a few people a lot³⁶” should be taken with caution, since experts have constantly questioned the efficiency and desirability of a system based on the idea of the responsible gambler, the one who should take fully responsibility for his decisions, notwithstanding the surrounding conditions under which they are made. For another perspective, it is of great importance to work on the idea of the responsible operator, where suppliers are properly behaved not only in relation to the pathological or problematic gambler, but with all and that customer funds are viewed as safe from any purpose connected with financial crime.

V. Current Brazilian Bills related to gambling liberalisation and prospects

Legislatively, two important draft bills have been discussed in Brazilian National Congress lately; one, in the Senate (PLS 186/2014) and the other in the Chamber of Deputies (PL 442/1991). The draft bill in the Senate has amended multiple times. It returned to the Senate agenda at the beginning of 2018, but in the special commission session on 7 March 2018, the draft was rejected (thirteen against, two in favour).

For its turn, the Chamber of Deputies has not announced when PL 442/1991 will be back for consideration. In relation to its content, it should be pointed out that the practice of responsible gambling, as described in the bill (specially in the articles 15 and 16) shall not be restricted to the “black list” system, since it should guarantee more than the prohibition of the entrance of pathological players, but the protection of the wide range of consumers (players), according to minimal standards of safety and quality.

Besides the mentioned bills, meanwhile, politicians have been pointing out the potential for interference from international businesses interested in narrowing the scope of the bill from multiple games of chance (bingo, “jogo do bicho,” slots, among others) to casinos only³⁷. Additionally, while, justifiably, debates have been treating the risk of

³⁶ MIERS, D. “Regulation and the management of risk in commercial gambling in Great Britain”. *International Gambling Studies* (2015) 15:3.

³⁷ JOSÉ, Magnho. “Deputado César Halum denuncia ‘maracutaia’ na Câmara para aprovar cassinos,” BNL Data (1 March 2018), online: <www.bnldata.com.br/deputado-cesar-halum-denuncia-maracutaia-nacamara-para-aprovar-cassinos>. Access in 24 Feb 2019; JOSÉ, Magnho. “Equivocadamente, Rodrigo Maia volta a defender a

frauds and money laundering, the discussions related to consumers' protection, fair dealing and problem gambling have not been that significant.

VI. Conclusion

The continuing uncertainty surrounding the legalisation of bingo and other forms of gambling is the product of a lack of serious analysis about gambling regulation in Brazil, a gap to which we hope this paper responds. Only through further rigorous and critical research can Brazil hope to harness gambling in all its modalities as an economic resource and respond to the risks of criminality and exploitation that it potentially poses to social development. The work started by the Bingo project has a contribution to make to ongoing debates and projects of law reform. Whether the bills outlined above or others yet to be drafted will be turned into law, the legitimacy of their provisions will strongly depend on the quality of the research and discussions that underpin them, the clarity of their content and the commitment of the actors – specially providers, government and regulators – to effectively implement the main goals of legalisation. For that the implementation of a workable regulatory toolkit that encompasses effective responses to the potential harmfulness and risks posed by the sector remains a non-negotiable condition.

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