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Open Government Review of Brazil

TOWARDS AN INTEGRATED OPEN GOVERNMENT AGENDA



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Foreword

Open government is defined by the OECD as “a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth”. The concept is based on the idea that citizens and the public should be enabled to see, understand, contribute to, monitor, and evaluate public decisions and actions. Open government can increase the legitimacy of public decision making and improve its outcomes, by informing and involving citizens - including those usually underrepresented - and by answering to people’s real needs. In the long term, open government reforms can help foster trust in government and reinforce democracy.

Brazil is recognised as a regional leader in the area of open government thanks to the design of innovative initiatives, including the first participatory budget in the city of Porto Alegre in 1989, its ambitious national transparency agenda, and its role as a founder of the Open Government Partnership in 2011. In 2019, Brazil adhered to the OECD Recommendation of the Council on Open Government, demonstrating the country’s commitment to the principles of transparency, integrity, accountability and stakeholder participation.

In order to continue making progress towards an integrated open government agenda, the Brazilian government requested the support of the OECD in identifying the strengths and opportunities for improvement of its current strategies and initiatives. The *OECD Open Government Review of Brazil* takes stock of past reform efforts, analyses the present scenario and provides a path for Brazil in the short, medium, and long term. This Review provides an evidence-based assessment of the country’s frameworks for and governance of open government reforms and their implementation against the ten provisions of the OECD Recommendation of the Council on Open Government (2017). It is also the first OECD Open Government Review to integrate a civic space perspective, recognising the importance of promoting and protecting fundamental democratic rights for a successful open government agenda. This Review benefitted from more than 40 interviews with governmental and non-public stakeholders, data collected through questionnaires answered by 52 public institutions at the Federal and subnational levels and 24 non-public stakeholders, and extensive desk research by the OECD Secretariat.

Brazil has a long history of implementing the pillars of open government, delivering important results, and resulting in a comparatively mature governance architecture for open government. The Review identifies opportunities to further integrate the open government agenda and suggests that the adoption of a Federal Open Government Strategy can support Brazil in setting a vision, objectives, and a narrative for the medium and long term. Ultimately, the Strategy could constitute an opportunity to broaden the understanding of open government by fully embracing the protection of civic space as an enabler for it and by linking open government reforms more directly with the improvement of citizens’ trust in public institutions and strengthening Brazil's democracy. The *OECD Open Government Review of Brazil* includes key actions for Brazil to consider in the coming years to strengthen its open government initiatives at the Federal level, including in the areas of transparency and open data, citizen and stakeholder participation, social accountability and the protection of the civic space.

The Open Government Review Brazil builds on the OECD’s historically strong relationship with Brazil as a key partner and now accession candidate country. It is part of a broader co-operation agreement between

the OECD and Brazil on improving public governance, including on public sector integrity, the function of the centre of government, digital government, and public sector innovation. The OECD looks forward to further collaboration with Brazil on effective public services and trust in public institutions, and stands ready to support the implementation of the recommendations presented in this review to continue improving open government in the country. This document was approved by the Public Governance Committee via written procedure on 2 June 2022 and prepared for publication by the OECD Secretariat.

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In particular, the OECD would like to thank the team of the Directorate for Transparency and Social Control in the Federal Comptroller General of the Union (CGU) for their dedication and commitment throughout the process, including mobilising all relevant stakeholders. The leadership of Minister Wagner de Campos Rosário, and Roberto César de Oliveira Viégas, Secretary for Transparency and Prevention of Corruption, were essential for this Review. Special thanks go to Breno Cerqueira Alves (Director of Transparency and Social Control), Rogerio Vieiria dos Reis (General Co-ordinator of Open Government and Transparency) and to Priscilla Haueisen and Tamara Figueiroa for their commitment and continuous support. The OECD would also like to thank their predecessors, especially Otavio Castro Neves and Marcelo Vidal, for their early involvement and valuable contribution to this Review.

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This Review would not have been possible without the important contribution of the Peer Reviewers, who shared their extensive country-based knowledge and experience during the process, namely:

Mr. Armando Navarro, Coordinator of Open Government and the Anti-corruption Observatory, Secretariat for Transparency, Government of Colombia.

Ms. Carolina Cornejo, Director for Open Government, Under-secretariat for Open Government and Digital Country, Government of Argentina.

This Review was prepared by the Public Governance Directorate (GOV) of the OECD led by Director Elsa Pilichowski. The report was drafted under the strategic direction of Alessandro Bellantoni, Head of the Open Government and Civic Space Unit in GOV. The review process was led by David Goessmann, with the support of Mauricio Mejia. A number of authors drafted the report. Mauricio Mejia wrote Chapter 1 on the context of open government and Chapter 5 on citizen and stakeholder participation. David Goessmann drafted Chapter 2 and 3 on the integrated open government agenda and provided strategical comments and feedback on all chapters. Cibele Cesca and Claire McEvoy wrote Chapter 4 on civic space. Under the

supervision of Emma Cantera, Carla Musi authored Chapter 6 on Transparency and Marie Whelan wrote Chapter 7 on accountability. Marianne Barbieri wrote Chapter 9 on open government data under the guidance of Arturo Rivera. Benedict Stefani co-ordinated the data collection efforts for this Review, and drafted sections for Chapters 1, 2, 3 and 5. Joshua Yeremiyew provided administrative support throughout the Review and prepared the document for publication. The OECD team would also like to thank the academics that provided substantive contributions to the Review, namely Gregory Michener (Associate Professor - Getulio Vargas Foundation) and Thamy Pogrebinschi (Senior Researcher - WZB Berlin Social Science Center). In addition, the Review team would like to thank those OECD colleagues who provided comments: Charles Baubion, Frederic Boehm, Ieva Cesnulaityte, Claudia Chwalisz, Pietro Gagliardi, Fabio Gehrke, Johannes Klein, Paulina Lopez Ramos, Craig Matasick, Camila Saffirio, Gavin Ugale, and Andrea Uhrhammer.

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Abbreviations and acronyms

ATI	Access to Information
ANPD	Brazil's National Authority for Data Protection
CGU	Comptroller General of the Union
CSO	Civil society organisation
CTPCC	Council for Public Transparency and Fight against Corruption (*Conselho de Transparência Pública e Combate à Corrupção*)
CIGA	Interministerial Committee on Open Government (*Comitê Interministerial Governo Aberto*)
ENAP	National School for Public Administration (*Escola Nacional de Administracao Publica*)
GT	Civil Society Working Group for Advice on Open Government (*Grupo de Trabalho da Sociedade Civil para Assessoramento em Governo Aberto)*
IPEA	Institute for Applied Economic Research (Instituto de Pesquisa de Economia Aplicada)
LAC	Latin America and the Caribbean
LGBTI	Lesbian, Gay, Bisexual, Transexual, Intersex persons
OGP	Open Government Partnership
OGD	Open Government Data
OGR	Open Government Review
OGS	Open Government Strategy
PPA	Multiannual Plans (*Plano Plurianual*).
SEGOV	Secretariat of Government of the Presidency of the Republic (*Secretaria de Governo da Presidência da República)*
STF	Federal Supreme Tribunal (*Supremo Tribunal Federal*)
TCU	Court of Accounts of the Union (Tribunal de Contas da Uniao)

Executive summary

Open government has been a priority of the Brazilian federal government for more than a decade. Some initiatives, such as the creation of the Transparency Portal or the municipal participatory budgets, have inspired other countries, and made Brazil a leader in this agenda.

To develop an open government culture across the government and society, Brazil intends to broaden the focus beyond transparency and anti-corruption and develop a coherent vision at the federal level. Political support at the highest level, as well as a protected civic space and a favourable environment for civil society organisations, will be crucial for greater openness and, ultimately, a more robust Brazilian democracy.

The *OECD Open Government Review of Brazil* analyses open government policies and practices in Brazil over the past decade. Many current achievements, as well as challenges, stem from reforms undertaken by several Brazilian administrations. The policy recommendations included in this Review provide a medium to long-term path towards a fully integrated and sustainable open government agenda.

Key findings

- While the Federal Comptroller General of the Union (CGU) has made efforts to mainstream the open government agenda, the concept and its benefits could be better known across the public administration. Public officials often associate open government with transparency and open data, and do not consider participation and civic space part of open government.
- As in many OECD countries, Brazil's open government policy framework is built around the Open Government Partnership (OGP) Action Plans and complemented by policy documents on transparency, open data, and accountability. There is scope for increasing the coherence, ambition and harmonisation of this framework.
- Brazil's constitution and legislation provide far-reaching legal guarantees related to civic space (e.g. freedoms of expression, peaceful assembly, and the rights to privacy and non-discrimination). Nevertheless, freedoms and rights remain unequally protected and are at times obstructed.
- Citizen and stakeholder participation has been a core feature of Brazil's institutional architecture, and includes good practices, such as the National Conferences and the "*Participa Mais Brasil*" platform. However, since 2014, government support for participation has steadily decreased in both quantity and quality.
- Brazil has made efforts to reduce discriminatory practices. However, structural inequality and violence are pervasive and continue to affect the ability of certain groups to engage in public life on an equal basis. Afro-Brazilians, indigenous peoples, women, LGBTI persons, land defenders and human rights defenders are particularly at risk of violence and exclusion.
- Restrictions on freedom of expression coupled with the spread of mis- and disinformation are restricting public debate; the environment for journalists is increasingly difficult, exacerbated by rising violence against them and related impunity.

- Subnational governments are implementing numerous open government initiatives and the CGU supports them through initiatives such as TIME Brazil, a programme providing resources and skills to increase access to information and participation. However, there is yet no action to develop a structured open state framework to promote co-ordinated open government reforms across branches of power and levels of government.
- The federal government has made important progress in implementing the 2011 Access to Information (ATI) Law. However, further efforts are needed to ensure an equal uptake across the public sector, including in the other branches and levels of government**,** and to improve the quality of information provided.
- The CGU has a strong mandate for transparency and for overseeing the ATI law at the federal level. While its leadership is well established and recognised, the effective oversight of the law is hindered by its historic mandate for internal control, a lack of autonomy, and limited capacities and resources.
- Brazil lacks a fully-flegded Ombudsman institution, in line with the Paris Principles, with a mandate to monitor, investigate, and sanction. The Citizen Complaint Offices (*ouvidorias*) partially compensate and have a prominent role in advocating for social accountability, but are more reactive than proactive.
- Brazil has sound governance frameworks for open data. Nevertheless, challenges remain in the use of open data to support wider policy goals.

Key recommendations

- Adopt a more ambitious approach to open government that explicitly recognises the enabling role of protected civic spaces and fundamental democratic rights.
- Adopt a Federal Open Government Strategy to provide an umbrella policy framework and outline the government's vision for transparency, accountability, and participation, including a commitment to protect civic space.
- Update and broaden Decree 10.160 establishing the National Open Government Policy to support a harmonised and coherent implementation of existing legal and regulatory provisions.
- Establish the National Open Government Council and Institutional Open Government Co-ordinators in all public institutions to foster co-ordination at the Federal level.
- Improve the enabling environment for Civil Society Organisations (CSOs) by facilitating access to funding and simplifying the legal regime; consistently involve CSOs in reviews of legislation and policies that affect their work and society more broadly.
- Take strong, concrete actions to reduce exclusion and violence against specific groups, affecting their ability to engage in public life on an equal basis, especially for groups that are particularly affected, and to reduce related impunity.
- Create the Transparency Observatory and provide additional training and resources for federal public institutions to implement the proactive and reactive obligations of the ATI law.
- Strengthen access to information oversight by ensuring that the relevant institution has the necessary autonomy and independence to ensure impartiality.
- Acknowledge and commit to reversing negative trends related to the promotion and protection of civic space, especially freedom of expression and assembly, as a means of protecting fundamental democratic norms. Ensure that legal frameworks to counter terrorism and fake news do not infringe upon fundamental civic rights.

- Strengthen existing participatory processes such as the Conferences, the OGP Process and the *Desafios* platform, and encourage more continuous practices such as representative deliberative processes.
- Consider a review of Decree 9.759 in consultation with all relevant stakeholders, ensuring it improves and not hinders the impact of the *colegiados*.
- Consider empowering the *Defensoria Pública* with the entitlements of a fully-fledged Ombudsman institution and allocate the human and financial resources necessary to fulfil this role.
- Scale up the strategic, social and economic value of open data by using it to fight against misinformation and to co-design public services; publish more granular data on vulnerable and marginalised groups; engage with watchdogs to validate its trustworthiness; and explore data partnerships and donorship with businesses and civil society.

1 Assessment and Recommendations

This Chapter provides an overview of the assessment and the recommendations included in this Review. It presents key information further developed in the following Chapters, and highlights the main recommendations for Brazil to consider in the coming years to strengthen its open government initiatives at the Federal level, including in the areas of transparency and open data, citizen and stakeholder participation, accountability and the protection of the civic space.

The context and drivers of open government in Brazil

Brazil has a long history of implementing the pillars of open government, delivering important results that are domestically and internationally recognised

While the term “open government” may be relatively new, Brazil’s Federal and subnational governments have been implementing initiatives to make public action more transparent, integer, accountable and participatory for decades. This is the case for example of participatory practices such as the National Health Council created in 1944 and the participatory budgeting in Porto Alegre established in 1989, as well as the Law on administrative improbity passed in 2000 and the creation of the Transparency Portal in 2004. In 2011, Brazil was part of those countries that founded the Open Government Partnership (OGP), setting the scene for the first international platform in the field. As founding member, Brazil contributed to establishing an ambitious community of reformers and hosted the first Global Summit in Brasilia in 2012. Since then, the country has been an active member of the Partnership, delivering five OGP National Action Plans including 122 commitments.

As a result of the reforms implemented over the years, Brazil scores today comparatively well in international indices on open government policies and practices, such as the OECD OURData Index. The country is recognised for its transparency agenda and some more recent initiatives such as the creation of the Fala.BR platform. Both the Federal and subnational levels of government have implemented ambitious and innovative mechanisms for citizens and stakeholders to participate in public decisions, placing the country as a democratic innovator, with global recognition from other countries, as well as international organisations such as the United Nations. However, recent years have also seen the emergence of new trends, and sometimes the reinforcement of often pre-existing ones, such as a shrinking civic space and diminishing levels of commitment to the open government agenda, which provide an obstacle to the continued implementation of open government reforms. The situation has been made worse by some of the government's responses to the COVID-19 outbreak, which particularly targeted the capacity of citizens and civil society organisation to participate in public life.

This Review assesses Brazil against the OECD Recommendation on Open Government

The analyses in this report are based on the OECD Recommendation of the Council on Open Government (the “OG Recommendation”) which was adopted in 2017 as the first and only internationally recognised legal instrument in the area. The OG Recommendation contains ten provisions that guide countries in their quest for more transparent, accountable, integer and participatory governments. Brazil adhered to the OG Recommendation in 2019.

The assessment presented in this Review reflects the OECD Framework for Assessing the Openness of Governments (2020) through its different chapters. The Framework – based on the OG Recommendation - clarifies the interplays between all the elements necessary for an open government culture of governance. Chapters 3, 4 and 5 focus on inputs and processes of open government and the following chapters primarily take into consideration the outputs and outcomes of open government, each dealing with a distinct principle.

Finally, the Open Government Review of Brazil is the first to include a dedicated chapter on the protection and promotion of the civic space as a prerequisite to successful open government reforms. The OECD defines civic space as the set of legal, policy, institutional and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organise and participate in public life. This dimension has been added to the analytical framework of the Open Government Reviews following the established of the OECD Observatory of Civic Space in 2019. The OECD recognises a healthy civic space as a precondition for and facilitator of open government initiatives. Governments need to ensure that their civic space is open, protected and promoted through clear policies and legal

frameworks that set out the rules of engagement between citizens and the state, framing boundaries, and defending individual freedoms and rights.

Moving towards an integrated open government agenda in Brazil

Brazil's understanding of open government has a strong focus on transparency and integrity

The Brazilian government has multiple definitions of open government in place, creating an obstacle to a consistent and coherent implementation of initiatives across the public sector. For example, one of the most used definitions is included in the Decree 10.160 from 2019, which defines open government as "a policy that aims to enhance transparency and access to information, strengthen integrity and improve public service delivery".

Interviews have shown that the concept of open government is not widely known beyond the OGP community and its understanding does vary from institution to institution. The Comptroller General of the Union (CGU) has led some efforts to disseminate the concept through videos and communications, but it remains associated with the process of the OGP Action Plans and mostly understood as the release of open government data and linked only to the concepts of transparency and anti-corruption. Policies and practices relating to citizen and stakeholder participation and accountability are less commonly seen as part of an open government agenda. In addition, as per the historical role played by CGU, open government is understood through the lenses of internal control and compliance by a vast majority of public servants in Brazil.

In addition to Constitutional provisions, Brazil had adopted many laws and regulations related to the open government principles

The Federal Constitution of Brazil does not include any specific references to the concept of open government. However, in line with practices in OECD Member and Partner Countries, it contains a number of provisions concerning the open government principles, especially on participation and transparency, as well as numerous provisions relating to the protection and promotion of civic space. Beyond the Constitution, open government policies and practices are also enshrined in Brazil's legal and regulatory framework. For example:

- The Access to Information Law (Law 12.527 of 2011) provides for the procedures to be followed by the Union, States, Federal District and Municipalities in order to guarantee access to information.
- The Decree 8.777 of 2016 establishes the Open Data Policy and makes biannual Open Data Plans (*PDA Plano de Dados Abertos*) mandatory for all public institutions.
- The Decree 10.160 of 2019 sets out guidelines for the National Policy on Open Government as well as the Inter-ministerial Committee on Open Government (CIGA).

Legislative provisions relating to the open government principles and their protection and promotion in Brazil are extensive and comprehensive and the legal and regulatory foundations for open government are aligned with OECD standards. As a next step, the legal basis for open government reforms in Brazil could be further harmonised.

The adoption of a Federal Open Government Strategy can support Brazil in moving towards an integrated and holistic approach to open government

The policy framework for the promotion of openness in Brazil is very diverse, reflecting the breadth of initiatives implemented. As for many OECD Member and Partner Countries, Brazil's OGP action plans have been the main driver of the country's open government agenda and have allowed the government to push for ambitious and far-reaching reforms. However, these action plans focus on short-term policy objectives, the so-called low hanging fruits, rather than providing a comprehensive and integrated vision to transform Brazil's public administration. The National Policy on Open Government (*Política Nacional de Governo Aberto*), established through Decree 10.160, provides CGU with the mandate to co-ordinate the design of the biannual OGP action plans. The title "National Policy on Open Government" can be misleading as it only focuses on elements relating to the OGP process.

A number of other policy documents include initiatives to foster the open government principles have emerged in recent years (e.g. the Governance Policy, the National Strategy for Digital Government and the National Open Data Policy). In order to align all policy documents in this field, and create an umbrella framework for all open government reforms within a country, the OECD recommends the development of a whole-of-government Open Government Strategy (OGS or *Estratégia de Governo Aberto do Poder Executivo Federal*).

An Open Government Strategy can be a tool to set a vision and objectives for Brazil's open government agenda and create a narrative for the medium and long term that goes beyond transparency and anti-corruption as to include the areas of participation and accountability. Ultimately, the Strategy could constitute an opportunity to broaden the understanding of open government by fully embracing the protection of civic space as an enabler for it and by linking open government reforms more directly with the improvement of citizens' trust in public institutions and in strengthening Brazil's democracy.

Brazil's governance of open government

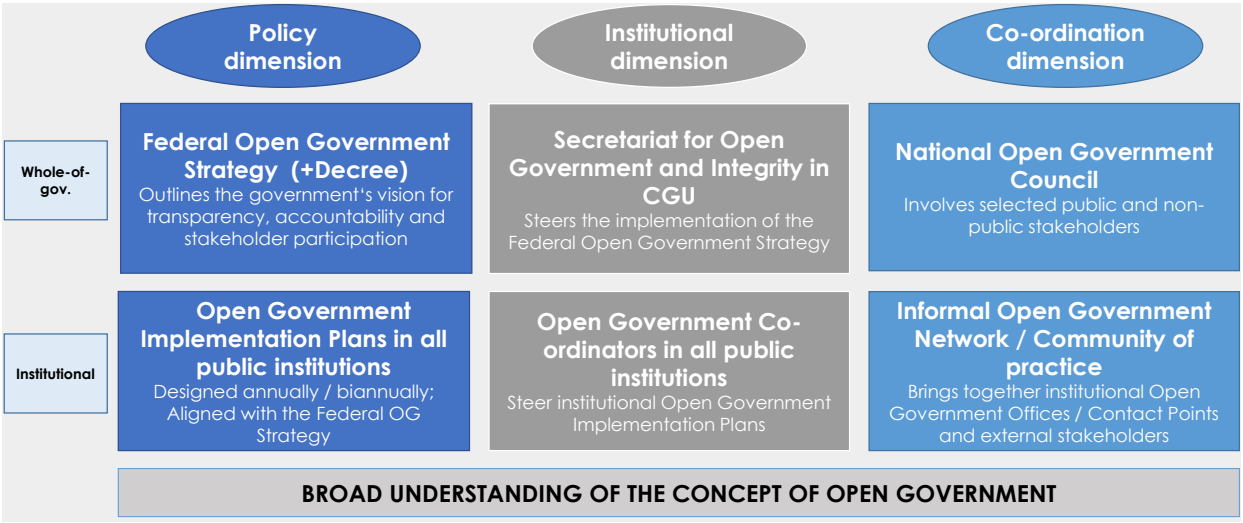
The Comptroller General of the Union (CGU) and its Directorate for Transparency and Social Control are at the heart of Brazil's open government institutional architecture. According to its institutional mandate, the CGU is responsible for assisting the President of the Republic on matters related to the defence of public assets and the increase in transparency within the scope of the federal executive branch. Its broad range of responsibilities and competences includes the roles of co-ordinator of the OGP process, national open data co-ordinator, access to information agency, ombudsman, and anti-corruption agency.

The CGU has a clear understanding of the potential of open government reforms and aims to move towards a more integrated federal agenda, beyond the OGP process. However, it does currently not have the mandate to coordinate an integrated open government agenda, as for example, key areas such as citizen participation are responsibility of other public authorities. In addition to the CGU, other federal government institutions contribute to the wider open government agenda, notably the General Secretariat of the Presidency of the Republic, the Secretariat of Government of the Presidency of the Republic (SEGOV), the Ministry of Economy, the Casa Civil, the Court of Accounts of the Union (TCU), the Offices of the Public Defender and the Ministry of Women, Family and Human Rights. Given its broad set of responsibilities and its recognised competence and leadership in this domain, the CGU would be in an ideal position to become the country's dedicated Open Government Office and, as such, the co-ordinator of an integrated open government agenda and the main entity responsible for the suggested Federal Open Government Strategy.

Open government policies are transversal by nature, thus co-ordination and cooperation between public and non-governmental stakeholders is key to promote a coherent approach to the creation of a culture of openness. Brazil has created institutional co-ordination mechanisms in different areas of open government, including the Interministerial Committee on Open Government *(Comitê Interministerial Governo Aberto,*

CIGA) which is made up of federal government institutions and the Civil Society Working Group for Advice on Open Government (*Grupo de Trabalho da Sociedade Civil para Assessoramento em Governo Aberto,* GT) which is composed of civil society stakeholders. However, these arrangements have been driven by the country's participation in the OGP and those mechanisms remain largely within OGP-boundaries. This means that important areas of open government such as citizen participation are not being properly addressed by these forums. Brazil has the opportunity to build an integrated institutional architecture for its open government agenda to ensure the sustainability and efficiency of its open government reforms.

Figure 1.1. A proposal for an integrated open government institutional architecture in Brazil



Source: Author's own elaboration.

Open government literacy can foster the creation of a culture of open government in the Brazilian public sector

The promotion of open government literacy, including competences and skills for public servants and awareness for citizens, can support changes in individual and institutional values, beliefs, norms of conduct, and expectations and move an entire country towards an open government culture of governance. The CGU, in collaboration with other federal institutions such as the National School for Public Administration (ENAP) has taken important steps to increase literacy in- and outside of government, with initiatives such as the Open Government Game, the CGU's Knowledge Base and the civic education programs directed to young students. Brazil is in line with OECD standards when it comes to the availability of written guidance and trainings on open government policies and practices, with 22 different toolkits, manuals and guidelines and 24 different trainings available for public authorities.

While the federal government has established numerous innovative initiatives aiming to promote open government literacy, degrees of awareness, knowledge, and skills on open government policies and practices across Brazil continue to differ substantially and the literacy among non-public stakeholders remains limited. Hence, there is a need to further harmonize existing efforts and support them with other informal mechanisms, such as the creation of communities of practice or reward mechanisms (e.g. an "Open Government Award").

Monitoring and evaluation of open government reforms can enable Brazil to move towards stronger implementation

Given their multidimensional and cross-cutting nature, open government policies are inherently difficult to monitor and evaluate. The creation of more solid monitoring and evaluation (M&E) systems for open government is a challenge faced by many OECD Member and Partner countries, including Brazil. OECD evidence shows that most countries only monitor the implementation of their OGP action plans and collect limited data and evidence on the broader effects of open government initiatives

In this sense, Brazil has developed advanced mechanisms to monitor the implementation of different open government policies. In particular, online panels (*paineis)* are also used to monitor the implementation of other open government policies and practices across the federal government and the monitoring system around the OGP action plan is well established. However, Brazil has a relatively weak evaluation culture in the field of open government and there is a need to develop a clearer understanding of causal effects relating to open government reforms. The adoption of a Federal Open Government Strategy marks an opportunity for Brazil to develop a maturity model coupled with metrics and indicators to monitor the implementation of its open government agenda and evaluate its broader impact.

Making strategic use of external and internal communication for open government reforms

Public communications is a key lever of government that can be deployed both *internally* (across and within public entities) and *externally* (with the broader public) and serve as a tool of policy implementation and service design and delivery. It implies a two-way relationship that allows understanding, listening, and responding to citizens. As part of its effort to communicate around open government reforms, Brazil has established multiple portals and websites such as the CGU's open government website. However, evidence collected by the OECD indicates that the effectiveness of communication on open government policies and practices could be further improved.

Brazil has a unique window of opportunity to expand the ambition of its open government agenda by promoting public communications as effective tools to support sustainability, bolster the impact of open government initiatives and promote a culture of openness across the public sector and the wider society.

The move from open government to open state

This Review focuses on the open government agenda of the Federal government. However, it acknowledges that subnational governments, the Legislature, and the Judiciary are also contributing to the country's open government efforts with innovative and ambitious initiatives. For example, the Federal Chamber of Deputies has an ambitious agenda of transparency, citizen participation and innovation led by the HackerLab – a permanent space for collaborative development of digital solutions. Several municipalities in Brazil have developed initiatives of transparency, open government data, citizen participation and accountability. Notably, the municipality of Fortaleza has experimented with innovative approaches to citizen participation, such as the 2019 Citizen Council where randomly selected citizens produced recommendations on waste management. In 2020, the cities of Osasco, Santa Catarina and Sao Paulo joined the local government program of the Open Government Partnership.

The CGU has put in place several mechanisms to support the pursuit of openness of the subnational level, including the TIME Brazil initiative. However, there is currently no integrated vision or action to move towards an open state that is shared across levels of government. While the limitations of interference between different levels of government and different branches of power are clear, both constitutionally and legally, there are no rules in Brazil that prohibit co-operation, collaboration or co-ordination between the various branches of power and the different levels of government. On the contrary, co-operation and co-ordination are the mechanisms to which a federal state can resort when it aims to promote national public

policies across levels of government and branches of the state. The development of a Federal Open Government Strategy can be a powerful way to create a shared commitment to the principles of open government across the entire Brazilian public sector, including in all branches of power and at all levels of government.

Key recommendations

In light of the key assessments above, which draw on the main findings and analysis included in Chapter 3 and Chapter 4 of this Review, the Brazilian government could consider implementing the following policy recommendations:

Key recommendations and detailed recommended actions
1. Adopt a single and broader definition of open government • Consider (co-)creating or adopting a single definition of open government that is accepted by the whole public sector and external stakeholders alike. • Shift the understanding of open government from an emphasis on control/anti-corruption to accountability and participation, and include the overall long-term goal of increasing citizens' trust and reinforcing democracy. • Consider adding the dimension of civic space in a new definition of open government to explain how the concepts are linked and reinforce each other.
2. Update Decree 10.160 from 2019 and foster a harmonized legal and regulatory framework for open government • Consider updating and widening Decree 10.160 from 2019 establishing the National Open Government Policy to ensure a harmonised, synergic, and coherent implementation of the provisions on the open government principles that are part of the existing legal and regulatory framework. • Include an explicit reference to the Open Government Strategy and the National Open Government Council in the revised decree. • Make use of the decree to review and deepen the mandate of the current Secretariat for Transparency and Prevention of Corruption. • Create a compendium of all laws and regulations that relate to the open government principles in order to increase legal clarity for both citizens and public officials and identify gaps and overlaps in existing legislation.
3. Design and adopt a Federal Open Government Strategy • Include a compelling vision and measurable objectives for Brazil's open government agenda in the Open Government Strategy. • Ensure that the Open Government Strategy covers all open government principles and fully integrates a civic space perspective. • Mandate the adoption of Institutional Open Government Programmes (*Programas Institucionais de Governo Aberto, PIGA*) by all public institutions and agencies to implement the Open Government Strategy. • Establish provisions for systematic monitoring and evaluation in the Open Government Strategy and develop a specific annual M&E plan for the Strategy.
4. Establish a Secretariat for Open Government and Integrity (*Secretaria de Governo Aberto e Integridade, SGI*) and Institutional Open Government Co-ordinators (Coordenadores Institucionais de Governo Aberto) • Consider transforming the current Secretariat for Transparency and Prevention of Corruption into the Secretariat for Open Government and Integrity (*Secretaria de Governo Aberto e Integridade, SGI*) and the Directorate for Transparency and Social Control into the Directorate for Open Government (*Diretoria de Governo Aberto, DGA*). • Increase the human and financial resources of the Secretariat for Open Government and Integrity in order for it to be able to become the co-ordinator of the integrated open government agenda and shift towards becoming a centre of expertise on a wide range of open government issues (rather than a comptroller). • Consider creating dedicated Institutional Open Government Co-ordinators *(Coordenadores Institucionais de Governo Aberto*) in all public institutions and agencies, as a means of fostering co-ordination and translating high-level objectives into institutional realities.
5. Create a National Open Government Council and integrate the OGP Multi-stakeholder Forum in it • Consider creating a National Open Government Council to co-ordinate the implementation of all policies and practices that fall under the realm of the concept of open government, including the recommended Open Government Strategy. • Create sub-committees of the COGA to focus on specific thematic areas (such as Access to Information; Open Government and Education; etc.) as well as for specific processes. • Create a dedicated Multi-stakeholder Forum to co-ordinate the OGP process as a sub-committee of the recommended National Open Government Council by revising the composition of both the current Interministerial Committee on Open Government (*Comitê Interministerial Governo Aberto*, CIGA) and of the current Civil Society Working Group for Advice on Open to form one integrated committee, comprised of both public institutions and non-public stakeholders.
6. Foster public servants' open government literacy, including competences and skills • Consider designing Open Government Toolkits for specific audiences (e.g. public officials; citizens; etc.) and a single training catalogue that lists all trainings on open government policies and practices that are offered by different public institutions and that are available for public officials. • Consider including a dedicated course on open government in mandatory training requirements for all newly hired public officials to

introduce them to the concept. • Move towards the creation of a community of practice on open government by setting up an Open Government Network, bringing together public officials and non-public stakeholders. • Consider creating an annual Open Government Award (Prêmio de Governo Aberto, PREGA) to stimulate more ambitious reforms and provide incentives to public officials and non-public stakeholders.
7. Improve the use of public communications for open government • Consider creating an integrated Open Government Portal (*Paneil de Governo Aberto*), as a one-stop-shop for all information and data gathered on different open government policies and practices.
8. Enhance monitoring and evaluation of open government reforms • Develop open government maturity models to allow public institutions and agencies to assess, monitor and compare core elements of their open government agendas.

Civic space as an enabler of open government in Brazil

The OECD recognises protected civic spaces as a precondition for and facilitator of open government initiatives

By fully integrating civic space into its governance work, the OECD is advocating for an expansive and holistic understanding of open government that explicitly recognises the importance of the enabling environment. The OECD views civic space as an enabler of government transparency and accountability, as a prerequisite for citizen participation, and a crucial element of functioning democracies. Effective participation is only possible when all members of society have an equal chance of being consulted, informed, listened to and of expressing their opinions. The OECD is raising the bar in terms of creating a more ambitious and impactful context for the next generation of open government initiatives. To support this, it has adopted an all-encompassing analytical framework for civic space that focuses on four core pillars: 1) civic freedoms and rights; 2) the impact of media freedoms and digital rights on civic space; 3) the enabling environment for CSOs; and 4) citizen and stakeholder participation. This framework places cross-cutting issues such as equality, non-discrimination and inclusion at its core.

As a young democracy, Brazil has come a long way since 1985 in terms of creating an enabling environment for civil society and effective public participation. As a leader in the open government movement, Brazil has an opportunity to move from the current technical, compliance-driven approach to open government to a more comprehensive understanding that recognises the crucial role of protected civic spaces for all members of society, both online and offline. The OECD's civic space recommendations are aimed at a broad range of government institutions and some will require cross-government discussions and approaches, in which the CGU is well placed to play a leadership and coordination role.

Brazil's Constitution and legislation provide far-reaching legal guarantees related to civic space but the country faces challenges regarding the protection of civic freedoms and rights

Similar to the vast majority of OECD countries, Brazil has adopted legislation to reflect and ratify key international and regional treaties governing civic freedoms and rights. Brazil's Constitution and legislation provide far-reaching legal guarantees related to civic space, with core rights largely protected in law. In addition, Brazil has taken commitments at the international level, as in the 2021 US Summit for Democracy, where the government submitted a wide range of commitments to advance civic space. At the same time, there are some gaps coupled with significant concerns about a recent increase in activity by the executive, mainly through the approval of decrees and provisional measures, that side-line the legislature in its role as an independent body in charge of law making.

There are also concerns that an ongoing review of legislation governing counter-terrorism may also have a negative impact on civic freedoms. The introduction of broad and imprecise terminology in security and

counterterrorism legislation has been central to the closure of civic space and restrictions on civil society across the globe, leading to the arbitrary application of laws and the criminalisation of otherwise peaceful and legitimate activities.

Table 1.1. Selected laws in Brazil protecting aspects of civic space

Civic freedoms and rights	Constitutional provision	Subsequent legislation
Freedom of peaceful assembly	Article 5 of the Constitution (Item XVI)	Not applicable
Freedom of association	Article 5 of the Constitution (Items XVII, XVIII and XXI)	Law 10406 of 10 January 2002
Freedom of expression/speech	Article 5 (Items II, IV and IX) and 220 of the Constitution	Law 5250 of 9 February 1967 Criminal Code of 1940 with Amendments through 2017 Law 9029 of 13 April 1995
Press freedom	Articles 220 (§ 1, 2 and 6)	Law 2083 of 12 November 1953 Law 5250 of 9 February 1967
Privacy, data protection and cybersecurity	Article 5 (Items X-XI and XII) of the Constitution	Law 10406 of 10 January 2002 Law 13709 of 14 August 2018 Law 14155 of 27 May 2021
Open Internet	Not applicable	Law 12965 of 23 April 2014
Racial equality	Article 5 of the Constitution	Law 12288 of 20 July 2010 Law 7716 of 5 January 1989 Law 12711 of 29 August 2012 Law 12990 of 9 June 2014
Gender equality and women's rights	Article 5 of the Constitution (Item I)	Law 6515 of 26 December 1977 Law 8213 of 24 July 1991 Law 8861 of 25 March 1994 Law 9876 of 26 November 1999 Law 9504 of 30 September 1997, amended by Law 12034/2009 Law 13165 of 29 September 2015 Law 11340 of 7 August 2006 Law 13505 of 8 November 2017 Law 13641 of 3 April 2018 Law 13772 of 19 December 2018 Law 13467 of 13 July 2017
Indigenous rights	Article 231 of the Constitution	Law 10406 of 10 January 2002
LGBTI rights	Not applicable	Not applicable

Source: Author's own elaboration

According to Article19's *Global Expression Report 2021*, which assesses the state of freedom of expression around the world, Brazil has fallen from an "open" to a "restricted" environment in the last ten years, with restrictions on freedom of expression affecting a wide range of groups such as CSOs, trade unions, communicators, indigenous persons, academics, artists, politicians, and public figures. Brazil experienced the world's biggest drop in score over one, five and ten years, a decline that has accelerated in the last couple of years. The COVID-19 pandemic consolidated this trend. It is key for Brazil to stem this decline and restore this fundamental democratic right.

In addition, in the context of a heightened number of protests arising from social discontent across the entire LAC region, it is crucial for Brazil to protect freedom of peaceful assembly, as a cornerstone of democracy. International guidance in this area states that governments have an obligation not just to refrain from violating the rights of those assembling but to actively ensure their rights and to facilitate and enable assemblies. Although the right to peaceful assembly is generally respected in Brazil, law enforcement officials have been accused of employing excessive force against demonstrators. Brazil would benefit from

a detailed protocol, developed in partnership with civil society, on implementation of this right in order to avoid arbitrary and inconsistent handling of assemblies, to ban the use of indiscriminate force, and to ensure a consistently favourable environment for assemblies. In a positive step in 2021, the Supreme Federal Court ruled that meetings and demonstrations are permitted in public places regardless of prior official communication to the authorities, which reflects the practice in many OECD countries, and also international human rights standards.

Discrimination is assessed in the context of Open Government Reviews, as it affects people's relationship with the government, in addition to their ability and willingness to engage with public institutions if they feel undervalued, excluded, or threatened. Brazil faces long-standing challenges related to inequality and discrimination due to complex historical as well as socio-economic specificities that existed even prior to the country's independence. To counter this, it has implemented programmes and initiatives over the years to address pervasive obstacles to the exercise of rights on an equal basis. However, structural inequality and violence continue to disproportionately affect particular groups, are anchored in discriminatory attitudes, and can act as a form of oppression and intimidation, particularly when public actors are involved.

Afro-Brazilians, women, LGBTI persons, people defending land rights, indigenous peoples, and human rights defenders are identified as groups that are particularly at risk. For example, according to the Brazilian Forum of Public Security, Afro-Brazilians represent 56% of the population but they make up 76% of victims of homicide and 79% of victims of lethal police violence. Among the 50 033 intentional violent deaths in Brazil in 2020, police interventions were responsible for 6 416, the highest number in years, representing a total of 13% of these deaths. Amid a recent rollback in protection for LGBTI rights, a report by the oldest LGBTI rights organisation in Latin America estimates that 237 LGBTI people died due to violent attacks in 2020. Brazil has a dedicated Programme for the Protection of Human Rights Defenders (PPDDH) but according to Global Witness, the country is identified as among the most dangerous in the world for land and environmental defenders, the majority of whom are killed in the Amazon Region. The situation is aggravated by historical disputes over land and environmental degradation, in addition to deforestation and displacement caused by extractive industries, agribusiness and infrastructure projects. Official, comprehensive, disaggregated and standardised country-wide data on groups of people who are at a heightened risk of violence, whether from state or non-state actors, and more effective programmes and initiatives to protect them are lacking. They are essential to design and implement effective policy responses and would help to improve transparency, accountability and citizen and stakeholder engagement, in addition to building greater trust between citizens and their government.

Civil society as a partner for open government reforms

Civil society organisations (CSOs) contribute to society in many ways, including through their by advocacy work and by providing basic services, protecting the environment, defending the interests of vulnerable groups, conducting social research and analysis, and delivering basic services. For example, formal and informal civil society organisations played an important role during the COVID-19 pandemic, collecting and distributing donations, food, hygiene products, and other goods for those most affected. Brazilian civil society is diverse, vibrant, and offers expertise to the government on a variety of issues. According to the Institute for Applied Economic Research (IPEA), in 2021, 815 676 registered CSOs exist in Brazil. Close to half of them work on development issues and defence of rights, followed by religious initiatives, and culture and recreation.

CSOs have been partnering with the Brazilian government in supporting the open government agenda, playing an important role in improving policies, engaging in participatory mechanisms, and helping to increase transparency and accountability. Civil society initiatives have used public information and data to help the government reduce spending and identify fraud, highlighting the value of partnerships between

the state and civil society. Additionally, CSOs are active members of the National Policy Councils, and the National Conferences, ensuring vitality to those participatory spaces.

However, the environment for CSOs to operate in has become more difficult in recent years. The Regulatory Framework for Civil Society Organisations (known as MROSC) regulates partnerships between the government and CSOs, but there is no policy or strategy to promote an enabling environment for these organisations. Evidence collected by the OECD suggests that the deterioration of the enabling environment is partially due to a decrease in available public funding, a reduction in opportunities to engage in policy-making and a negative discourse on CSOs from public officials. Although CSOs are legally entitled to a range of potential public and private funding sources in Brazil, their availability has declined and obtaining them remains a challenge in practice, especially for smaller and more informal organisations and those working for the rights of vulnerable people. Moreover, in recent years, the relationship between CSOs and the government has become conflictual and polarised, with a negative impact on the whole sector.

The information ecosystem in Brazil

A healthy information ecosystem has a direct impact on open government initiatives and on civic space, as it allows diverse opinions and sources of information to circulate and inform national debates and decision making.

Brazil is facing challenges regarding its information ecosystem, with negative effects on trust, democracy and the open government agenda. The environment for journalists and communicators continues to decline, resulting in journalists practising self-censorship for fear of civil lawsuits, criminal prosecution, and professional reprisals or attacks on their reputation. In addition, targeted violence is on the rise. The National Federation of Journalists considered 2020 to be the most violent year since the 1990s for Brazilian journalists, with 428 cases of reported violence – covering physical as well as other forms of violence – against media outlets and journalists (compared to 208 cases in 2019). Brazil also has a high concentration of media channels and a high risk of political affiliation and media control.

Mis- and disinformation obstruct citizens' access to factual information, including in the context of COVID-19, and contributing to rising polarisation within Brazilian society. Elections in Brazil have been particularly affected by the spread of false material about candidates, parties and the electoral system. In a positive steps, during the 2020 municipal elections the Superior Electoral Court partnered with roughly 50 public and private institutions, social media platforms, and fact checking groups, to discourage the proliferation of false content and to improve the identification of practices disseminating misleading content. CSOs and media outlets also play an important role in fact checking by collecting information from reliable sources, consulting specialists and debunking false claims.

The government acknowledges its responsibility in protecting journalists at risk because of their profession and several initiatives are ongoing in this regard. As an example, the Programme for the Protection of Human Rights Defenders explicitly includes "communicators" since 2018 (now the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists), an essential step given the rising and targeted violence against them. The challenge now is to make related initiatives more effective.

Privacy and personal data protection are a prerequisite for open government

Privacy and data protection are core components of civic space as they help to create the conditions for citizens to inform and express themselves freely, in addition to debating ideas. The recent introduction of the Personal Data Protection Law and the establishment of Brazil's National Authority for Data Protection (ANPD) are important advances for the protection of Brazilians' right to privacy and personal data protection. Brazil faces the challenge of building a national digital security culture that brings together the various relevant government entities, in addition to CSOs and citizens. Another is to ensure that personal

data protection efforts focus on protecting people and their privacy rights, and to ensure a separation of this area from that of national security and surveillance. It is key to ensure that measures to protect citizens from security threats and to simplify their access to public services through the collection, use and sharing of personal data do not further erode fundamental civic freedoms and rights foreseen in the Constitution.

Key recommendations

In light of the assessment above, which draw on the main findings and analysis included in Chapter 5 of this review, the Brazilian government could consider implementing the following policy recommendations:

Key recommendations and detailed recommended actions
1. Support to the protection of the civic space as part of the open government agenda • Adopt a more ambitious approach to open government that explicitly recognises the enabling role of promoted and protected civic spaces and fundamental democratic rights, in line with the constitution and recent commitments at the US Summit for Democracy.
2. Ensure the protection of fundamental rights and freedoms • Consistently protect the right to peaceful assembly as a cornerstone of democracy and consider developing a detailed protocol, in partnership with civil society, on implementation of the right in order to ban the use of indiscriminate force and to ensure a consistently favourable environment for the exercise of this right, accompanied by specific and compulsory training for police on implementation. • Commit to reversing negative trends related to freedom of expression by refraining from measures that limit or censor the expression of views and by ensuring accountability for violations of this right in line with the Constitution. • Systematically engage CSOs in developing and revising laws addressing societal challenges, and in conducting human rights impact evaluations on them in an inclusive and comprehensive manner, to ensure they do not further restrict civic space in Brazil. • Ensure that legal frameworks to counter terrorism, mis- and disinformation, and to manage the COVID-19 pandemic do not infringe upon fundamental civic rights.
3. Engage in actions to reduce violence, especially for those groups facing particular risks • Step up implementation of the Unified Public Security System and prioritise and centralise gathering of official up-to-date, comprehensive, standardised, country-wide data on groups that are particularly affected by violence, including as open data, to facilitate monitoring and impact evaluations of measures to stem such violence. Ensure that such programmes are adequately coordinated and resourced. • Ensure that acts of violence committed in connection with interventions by the police are routinely registered, investigated and prosecuted in an impartial manner and improve training for public security agents with a focus on human rights. • Invest in the implementation of protection measures for female victims of violence as foreseen in legislation, including by ensuring adequate resources and geographical coverage. • Establish a legal framework for the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists to ensure its stability and expand the programme to all states. • Ratify the Escazú Agreement and increase transparency and effective and inclusive public participation in discussions around new bills that relate to the environment and ensure they do not threaten indigenous rights. • Consider the development of a legal framework and public policies specific to LGBTI persons to contain targeted violence and tackle discrimination.
4. Support the enabling environment for CSOs • Engage in positive public communications about the important contribution of CSOs to society. • Ensure the protection of CSO rights to operate without interference and ensure that any cases of arbitrary arrest, unwarranted interference or abuse of power are duly prosecuted. • Build on existing partnerships with CSOs by expanding public funding opportunities, supporting tax incentive funds and facilitating private donations. • Seek to reinforce CSO capacity related to public funding application processes, in addition to those related to administrative and tax requirements and consider adopting a simplified legal regime for CSOs to comply with labour, social security and tax legislation.
5. Strengthen the information ecosystem • Strengthen and expand successful government initiatives to tackle mis- and disinformation, support efforts by non-governmental actors to fact-check, and reinforce information literacy. • Develop and deploy comprehensive awareness raising, education and communication programmes to the public to increase citizens' resilience to disinformation.
6. Protect online civic space • Continue prioritising the operationalisation of the National Authority for Data Protection (ANPD) and safeguard its full independence. The ANPD's Board of Directors would benefit from the inclusion of representatives from civil society with expertise. • Ensure a clear separation between the protection of privacy and personal data protection and the defence of national security. • Prioritise increasing Internet access in addition to digital literacy efforts, including media and information literacy for adults, to enable citizen participation and informed engagement. • Preserve the multi-stakeholder nature of the Brazilian Internet Steering Committee so that that it incorporates voices from a range of

citizens and stakeholders, including vulnerable and marginalised groups, in initiatives to overcome the digital divide.

Citizen participation in Brazil: Involving citizens and stakeholders in policy making and service delivery

Social participation is a core element of Brazil's democratic architecture

Since its democratisation process, Brazil has shown commitment to include citizens and stakeholders in policymaking and service delivery at the Federal and subnational levels of government. Citizen and stakeholder participation is enshrined in the country's democratic architecture through institutionalised mechanisms such as the National Policy Councils and Conferences. Social participation is the term regularly used in Brazil to refer to the participation of citizens and stakeholders in policymaking and service delivery. This concept is used both in the legislation (i.e. Article 193 of the Federal Constitution), as well as in the day-to-day communications of public institutions. Nonetheless, Brazil does not have a commonly agreed definition and thus the understanding of what social participation entails is not harmonized nor common to all public institutions. Hence, visions are not always aligned and practices are not harmonized.

Participation is well-established in Brazil, with different mechanisms in place across all public institutions in the Federal and subnational levels of government. Brazil is considered as a democratic innovator, and the birthplace of internationally applauded innovations such as the participatory budget. In a recent study, the LATINNO project placed Brazil as the country with the largest number of democratic innovations in Latin America, gathering almost 112 million participants in the participatory processes organized from 1990 to 2020. However, starting from 2014, there has been a steady decrease of government support for participatory mechanisms, both in terms of the quantity of processes organized and the quality (lack of representation and inclusion). After a wave of institutionalisation of participatory practices, through for example the National Policy on Social Participation, in recent years, the Federal government has taken a reverse path aiming at dismantling certain practices such as the Councils, the Conferences and the National System of Social Participation.

Table 1.2. Main participatory mechanisms implemented by the Federal government in Brazil according to the OECD ladder of participation

Participatory mechanism	Description	Citizens / stakeholders	Level of participation
Online platform Participa Mais Brasil	Online digital platform which aim at centralising different participatory mechanisms at the Federal level: public consultations, public hearings and opinion polls.	Citizens	Consultation
Public consultations	Participatory mechanisms where the organizing public authority aims at gathering inputs, opinions, ideas from citizens and stakeholders on a specific question or decision.	Citizens and stakeholders	Consultation
Collegial bodies (National Policy Councils)	Permanent bodies, at the Federal and subnational levels, with both governmental and non-public stakeholders with the mandate to participate in the prioritisation of topics in the policy agenda, as well as in the formulation and evaluation of public policies. The Councils are usually involved in the organisation of the National Conferences and can issue normative texts such as opinions or guidelines.	Stakeholders	Engagement
Collegial bodies (National Conferences)	National participatory process organised periodically, to gather all relevant governmental and non-public stakeholders to evaluate the situation and propose guidelines for policy formulation in the dedicated policy area. Conferences are multi-level processes with stages at the Municipal, State and Federal level and are usually framed around a specific question or policy question.	Stakeholders	Engagement

OGP Process	Participatory process for the OGP Action Plan which includes consultation and co-creation steps, with online and in-person mechanisms.	Citizens and stakeholders	Consultation and engagement

Source: Author's own elaboration

The legal and policy framework covering citizen and stakeholder participation is comprehensive

Legal and policy provisions on citizen and stakeholder participation are important not only to frame the mechanisms and practices, but to provide mandates for public authorities. In addition, it gives participation a high degree of institutionalisation and embeds these practices in the institutional architecture.

The Federal Constitution of 1988 establishes principles and general guidelines to frame the understanding of citizen and stakeholder participation in the Brazilian context. It establishes citizen and stakeholder participation as a constitutional principle and a pillar of the democratic system. In addition, Brazil has a patchwork of dozens of legal provisions covering citizen participation at the Federal and subnational levels as well as in specific policy areas and for targeted groups. This rich framework is comprehensive but it is disconnected from the open government agenda nor the specific areas of transparency, accountability, and the civic space. This in turn creates overlaps and complexity both for public authorities and the public.

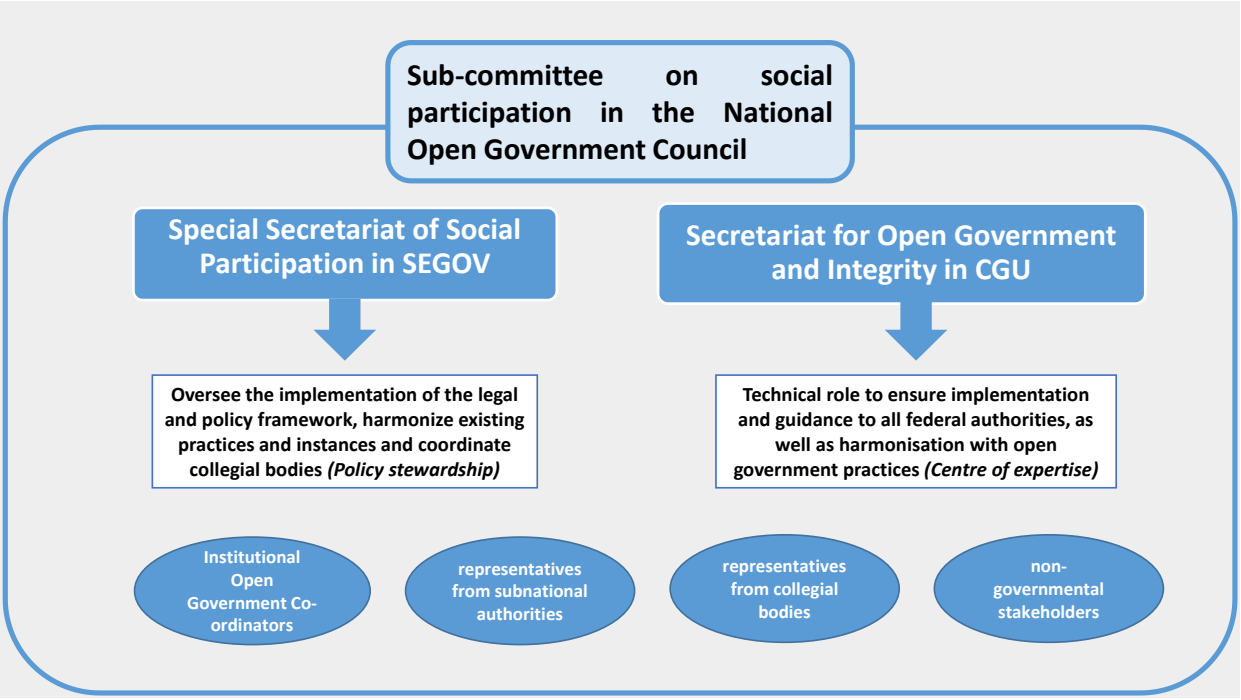
Brazil has included elements of citizen and stakeholder participation in a diverse set of policy documents, such as the OGP action plans and the Multiannual Plans (PPA). However, these elements are scattered, without an overarching policy on citizen participation, or a strategic vision to drive the participation agenda. The 2014 National Policy on Social Participation attempted to harmonize the legal and policy framework but was revoked in 2019 and has not yet been replaced.

Brazil is lacking clear institutional leadership to move the federal participation agenda forward

The participation agenda in Brazil is steered by three public institutions: the Special Secretariat of Social Articulation in the Secretariat of Government of the Presidency of the Republic, the Casa Civil and the CGU. On the one hand, this setting means that the participatory agenda is located within public authorities in the Centre of Government with Ministerial rank and with an inter-ministerial perspective, giving high-level visibility and a transversal vision to the agenda. However, on the other hand, different public authorities and non-public stakeholders raised the concern of the lack of clarity and consistency on the institution leading the participation agenda**.**

Coordination among the different entities overseeing the same agenda is important to ensure coherence and support the move towards common objectives. Evidence gathered by the OECD point out to a lack of coordination as one of the main challenges to implement participatory practices in Brazil's Federal Government. At the institutional level, the OECD found that 70% of public institutions at the Federal level do not have a central unit or person in charge of their institutions' participation agendas, hindering the effective implementation of participatory practices.

Figure 1.2. Suggested institutional setting for citizen and stakeholder participation in Brazil



Note: Author's own elaboration

Federal public institutions involve citizens and stakeholders regularly, but these practices could become more representative, inclusive and engaging

Almost all Federal public institutions involve citizens and stakeholders at some point of their respective policy cycles, whether in the design and delivery of public services or in drafting or implementation of a policy. Evidence collected by the OECD highlight some trends: the provision of information is done on a regular basis, participatory opportunities are more important and regular in early stages of the policy cycle but decrease in later stages (evaluation) and the most used participatory mechanism are the collegial bodies (Councils and Conferences). Additionally, the use of digital tools for participation is important across Brazilian public institutions. The Federal Government put in place a centralized participatory portal (*Participa Mais Brasil*), including consultations and information about some instances such as the Councils. This digital platform can be considered a good practice among OECD countries, but there is room for improvement in increasing the feedback to participants and encouraging more public authorities to use this tool. In addition to consultation mechanisms, the OECD collected some good practices of more engaging opportunities for citizens and stakeholders to influence policies and services through mechanisms such as co-creation platforms (*Desafios*), and deliberative bodies (National Conferences). The subnational level of government (both States and Municipalities) is a very rich playground for citizen participation, with innovative and impactful mechanisms such as participatory budgeting, local councils and pilots of representative deliberative processes.

Besides moving towards more engaging practices, Brazil faces some challenges to ensure participatory spaces are representative and inclusive – meaning that they represent the voices of all groups of society, including the "silent majority" or usually underrepresented groups such as women, youth, LGBTI persons and Indigenous populations.

The Councils and Conferences are the backbone of Brazil's participatory system

The *colegiados* (National Policy Councils and the National Conferences) are a unique participatory institution mixing stakeholder participation and deliberation with mandate that can vary from body to body including binding opinion, regulation, and advice to co-ordination among stakeholders. The Councils and Conferences are the backbone of the participatory system in Brazil, as they constitute spaces for non-governmental stakeholders to inform policy making and provide recommendations to policy makers**.** They allow for participation of government representatives (public officials, elected members, etc.) and non-public stakeholders (civil society organisations, union representatives, etc.) rather than individual citizens. The Councils and Conferences have demonstrated concrete and tangible impact in policymaking and service delivery. For example, a recent study on municipal health management in Brazil shows that the Health Councils had a positive impact on the reduction of corrupted practices at the local level. On a national level, The legal framework of the Brazilian Unified National Health System (SUS) extensively incorporated the inputs coming from the National Health Conferences.

Despite their proven impact, in recent years, there has been an uncoordinated multiplication of these instances, affecting their efficiency and impact. Furthermore, the diversity of the Councils' members could be strengthen to better represent the Brazilian society as research led by IPEA shows than on average, 63% of members are men, the majority self identifies as white (66%) and 58% are between 40 and 60 years old.

In 2019, as part of overall efforts of the current administration to "rationalise and de-bureaucratise the Federal administration", the Brazilian Federal government adopted Decree n° 9.759 which closed several collegial bodies, modified the mandate and composition of other bodies, and revoked both the National Policy on Social Participation and the National System of Social Participation. The Decree has faced strong criticism from public authorities and civil society, and there is a lack of clarity on its impact and achieved results.

Key recommendations

In light of the assessment above, which draw on the main findings and analysis included in Chapter 6 of this review, the Brazilian government could consider implementing the following policy recommendations:

Key recommendations and detailed recommended actions
1. Build a coherent and clear framework for citizen and stakeholder participation • Consider establishing a coherent and harmonized definition of citizen and stakeholder participation common to all public institutions at the Federal level in Brazil. • Foster the harmonisation of the legal framework on citizen and stakeholder participation as part of the suggested revision of Decree 10.163 or as a dedicated law. This could be an opportunity to detail the application of Article 193 of the Federal Constitution. • Adopt an overarching policy (or strategical document) for citizen and stakeholder participation to streamline the vision across government, enforce stewardship and support implementation. This unified framework could be part of the recommended Federal Open Government Strategy.
2. Establish a more efficient institutional architecture • Mandate clear institutional responsibilities for participation and strengthen its link with the open government coordinator (CGU) to support coordination among federal public institutions. • Consider reducing the public authorities with a mandate on participation to simplify coordination to two levels: Policy stewardship and coordination in a Special Secretariat for Secretariat for Social Participation (in SEGOV or Casa Civil) and a centre of expertise for technical support and coherence with open government in the CGU. • Consider the creation of an inter-institutional coordination mechanism to oversee the implementation of citizen and stakeholder participation across the federal government, potentially as a subcommittee on citizen participation in the recommended National Open Government Council
3. Strengthen existing participatory processes and move beyond consultation • Ensure that dedicated resources are available and secure at the Federal level to support the implementation of participatory processes. • Support the participation of under-represented groups by generalizing reaching out campaigns and providing tailored support such as digital training or cover transport costs.

- Pursue the dissemination of the *Participa Mais Brasil* platform, and provide support and guidance to all relevant stakeholders.
- Encourage all federal institutions, including Ministries and Agencies, to use the Desafios platform, organize hackathons, or other practices such as the OGP Process methodology, participatory budgets, or deliberative assemblies.

4. Ensure quality, efficiency and impact of both National Councils and Conferences

- Consider a revision of Decree 9759 of 2019 to ensure the Councils are efficient, representative and inclusive. Undertake a mapping exercise of all existing Councils, including their membership, mandate, outcomes, costs, etc. This data should be public to enhance transparency and generate opportunities for collaboration. Consult all relevant stakeholders such as Council members, experts, public officials, and civil society representatives throughout the process.
- Develop clear guidelines, in collaboration with all relevant stakeholders, to harmonisee the Councils/Conferences to facilitate coordination, support evaluation, and increase understanding and acculturation from public and non-public stakeholders.
- Support the diversity of participants in the Conferences, especially at the initial stages in the Municipal level to include actors beyond the "usual suspects". Sortition-based recruitment could increase diversity and improve representation.
- Ensure an equal representation of non-governmental stakeholders and governmental stakeholders as a minimum requirement for all Councils.

Transparency in practice in Brazil

The transparency agenda has been a high-level priority of Brazil and can be considered the cornerstone of the open government agenda

Transparency is underpinned by the right to access to information (ATI), which is understood as the ability for an individual to seek, receive, impart, and use information effectively. Transparency has been a high-level political priority in Brazil and transparency-related policies have helped paved the way for the open government agenda. The approach of the government of Brazil to transparency is trifold: publishing information proactively, guaranteeing citizens' right to information, and providing open government data, with the overarching aim of allowing citizens and stakeholders to use information and data to engage and monitor government action.

For many years, transparency initiatives have been a key building block of Brazil's open government agenda. For example, the four past Open Government Partnership (OGP) action plans have had transparency-related focus, contributing to advance the transparency agenda on several fronts, from supporting subnational governments with ATI obligations to developing a federal open data policy, to fostering active transparency in environmental and health issues. Moreover, the open government community both in the public sector and in civil society is strongly linked to the transparency agenda (open data, access to information, etc.). As in many OECD countries, this focus has resulted in an overlap of the conceptual understanding of transparency with open government, meaning that the two terms are often used as synonyms.

Transparency and the right to access public information are anchored in Brazil's legal framework but its uptake remains unequal

Brazil has developed a comprehensive regulatory framework through several laws, decrees and policies with varying scopes of application that regulate several transparency provisions. These provisions are either interlinked or complementary to access to information, such as open data, protection of personal data and archives. The complex interaction of regulations and processes can represent confusing obligations, burdensome reporting lines and bureaucratic procedures, particularly for subnational governments.

The right to information is recognised in the Brazilian Constitution and Brazil has ratified relevant international treaties and conventions that recognize it. The access to information (ATI) law of Brazil was adopted in 2011, and represented an important milestone for the national open government agenda. In broad terms, the law itself is robust and its provisions fall, in general, within OECD standards. The ATI law has a wide scope of application but its uptake remains relative weak in other branches of government and in subnational governments. The complex federative structure, regional disparities, limited capacities and

a lack of oversight and enforcement partly explain this. To counter the weak compliance by Brazilian municipalities, the CGU developed the Brazil Transparency Programme (*Programa Brasil Transparente* - PBT) initiative. Established in 2013, the PBT is a voluntary programme that encourages subnational governments to commit to regulate the national ATI law, by providing implementation support through capacity building activities, technical materials, among other measures. Despite these positive steps taken by the CGU, further efforts are needed to promote the adoption of ATI obligations from the national ATI law across levels and branches of the state.

The CGU has led efforts to ensure the implementation of transparency policies and obligations

Overall, proactive disclosure of information at the federal level in Brazil exceeds national legal requirements as well as OECD good practices. The CGU has led efforts to implement proactive disclosure obligations of the access to information law at the federal level, including the centralisation of information related to federal expenditures with the Transparency Portal, which represents a major landmark for Brazil's open government agenda. However, evidence gathered by the OECD shows that implementation varies widely due, in part, to the different technical capacities across the 300 federal bodies. While a significant volume of information has become available, the lack of a centralised and unique web page mapping all of the existing information across the numerous existing portals and panels, hinders efficiency and creates confusion for users. To counter these challenges, the Council for Public Transparency and Fight against Corruption (*Conselho de Transparência Pública e Combate à Corrupção* - CTPCC) proposed the creation of an active Transparency Observatory to expand the monitoring capacity for the proactive publication or withdrawal of information as well as for disseminating new information.

The process for reactive disclosure is well-established at the federal level through the use of the Fala.br platform. By centralising ATI requests into a single system, this platform has simplified the process for citizens and for federal bodies. Moreover, the CGU has made efforts to improve the quality of information at the federal level, reflected by a high response rate and an increase of user satisfaction with requests. However, a more efficient appeals process and stronger sanctions for non-compliance could stir federal government institutions to systematically provide information that is of higher quality.

Beyond the executive, the legislature, the judiciary, and the other levels of government broadly comply with their proactive transparency obligations and have developed tools and mechanisms to promote the access and use of their published information and data. However, the implementation of reactive disclosure measures varies. At the subnational level in particular, important challenges remain due to resources, capacities and a lack of incentives and leadership.

The existing institutional arrangements for transparency are built around the CGU

An important factor for the effective implementation of ATI laws is the existence of robust institutional arrangements to ensure their application. The CGU is the institution in charge of co-ordinating the transparency agenda and ensuring the correct implementation of the ATI law. As part of its attributions, the CGU is responsible for increasing awareness, providing training, promoting a culture of transparency, and submitting an annual report to the National Congress. In practice, these responsibilities are divided among three bodies within the CGU:

- the Directorate of Transparency and Social Control (DTC) leads the co-ordination of the transparency policies, and the oversight and monitoring of the implementation of the ATI obligations at the federal level, in particular with compliance with deadlines and procedures. This body also conducts capacity building and awareness raising activities related to ATI and the broader transparency agenda.

- the Federal *Ouvidoria*'s Office (OGU) acts as external appeals body (3rd level) for ATI requests made at the federal level.
- the Federal Internal Affairs Office (CRG) is in charge of enforcement and sanctioning, for instance, with cases raised by the DTC.

Another relevant body in the governance of transparency is the Council for Public Transparency and Fight against Corruption (*Conselho de Transparência Pública e Combate à Corrupção* - CTPCC). The Council's mandate is to debate and suggest measures for the improvement and promotion of federal policies and strategies, and it is composed of fourteen members (seven representatives of the Federal Executive Branch and seven from organized civil society). This body represents an opportunity to further engage non-governmental stakeholders in the elaboration, implementation and monitoring of transparency agenda to increase awareness and buy-in.

The CGU's ministerial status provides high visibility and authority to its actions. However, given its historic mandate for internal control, the approach to transparency is often perceived by federal bodies as a control issue rather than an attempt to change the administrative culture, limiting the potential that this agenda has in terms of inclusive policy- and decision-making.

All federal bodies have established a SIC (ATI office) and a monitoring authority. At the Federal Level, this role is mostly allocated to the *Ouvidoria*. However, few states and municipalities have done so. At all levels, there are relevant challenges for these offices. According to data gathered by the OECD, 55% of federal government institutions and 62% of subnational governments report the lack of staff and/or financial resources as one of the main challenges to implement ATI provisions.

The lack of autonomy of the CGU is hindering the effective oversight of the ATI provisions at the federal level.

The OECD has gathered evidence that supports having an autonomous institution in charge of the enforcement and oversight of the ATI legislation is a good practice. The status of the CGU as a federal government ministry limits, to some extent, the possibility to carry out its enforcement function and a proper appeals process in a neutral and autonomous way Moreover, its limited capacities and resources, both financial and human, hinder the effective oversight of the ATI law. This situation raises concerns regarding the level of independence and a potential conflict of interest given the duality between the CGU's role both in making the transparency policy, as well as in being in charge of the implementation and oversight of the ATI provisions at the federal level. Beyond the Federal executive branch, the Federal Public Prosecutor has the mandate to enforce ATI at the subnational level but is impeded by its limited human and financial resources and heavy workload. The legislature and the judiciary have both designated an internal body in charge of ATI oversight, however, few states and municipalities have done so.

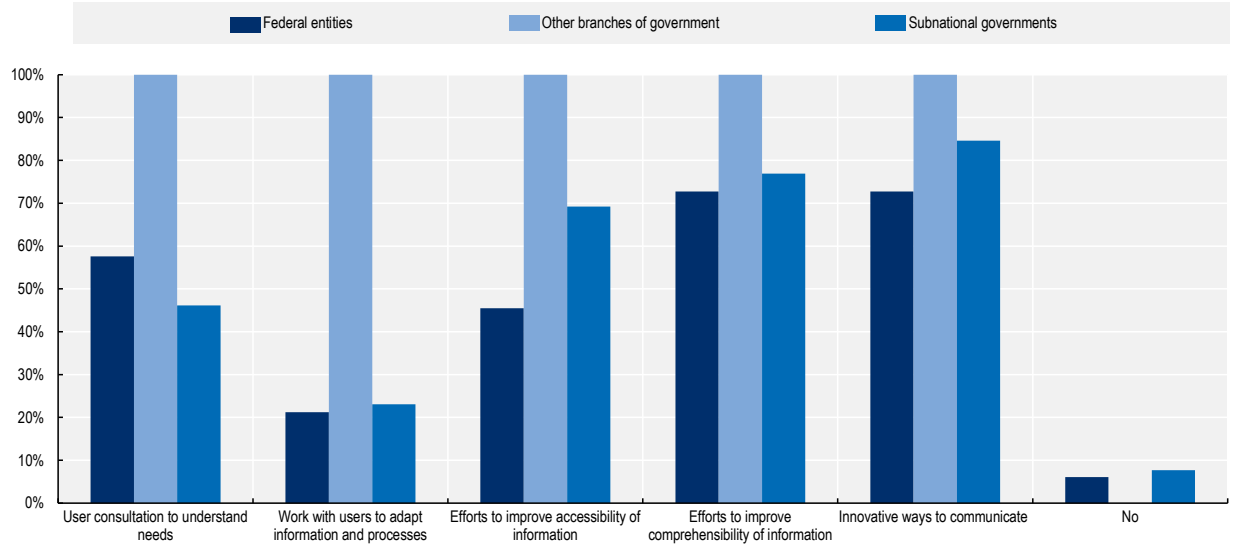
There is an opportunity to increase the oversight of the ATI law by ensuring that in the long term, the institution with the oversight mandate of the national ATI law has the necessary institutional autonomy and the independence of public officials within the organisation to ensure impartiality of the decisions and the operations.

The move towards a second generation of transparency policies can reinforce a culture of transparency in Brazil

Governments across the OECD Membership have recently started to shift from solely publishing information and data, towards a more targeted disclosure that is more useful and impactful for stakeholders. In doing so, governments enable a two-way relationship with stakeholders encouraging more accountability and participation by opening the decision-making process and the actions taken by public officials at every stage of the policy cycle. This second generation of transparency policies, also understood as

targeted transparency, uses disclosure as a means to attain or improve other policy objectives (i.e. transparency in budgeting to decrease corruption) and to contribute to value co-creation with stakeholders.

Figure 1.3. Initiatives taken at different levels and branches of government to ensure that the information and data is relevant and used by stakeholders



Note: Responses were provided by 33 federal bodies, 3 representatives of other branches of government at the federal level (Chamber of Deputies, Senate and Judiciary), and 13 subnational governments (9 states, 4 municipalities).
Source: *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*.

Brazil is taking steps in this direction, with increasing initiatives from public institutions to make information and data useful for citizens. For example, by improving the comprehensibility of information with simple language, glossaries or dictionaries on technical terminologies. 58% of federal bodies and 46% of subnational governments conduct user consultations to understand needs. For instance, the *Casa Civil* and the Ministry of Justice and Public Security consulted stakeholders on open data needs and the Chamber of Deputies integrated feedback from stakeholders to improve the usability of its portal created in 2019. The Ministry of Economy developed several portals and tools to allow citizens to access and monitor information and data related public procurement process and the budget cycle at the federal level. Another relevant example created by non-government stakeholders is the QEdu platform, which uses open data from the Ministry of Education to show the performance of students by state-municipality-school in a user-friendly way. Despite these islands of good practice, a systemic understanding of transparency as a way to achieve broader objectives, such as citizen participation or government accountability, could contribute to build a more robust open government agenda in Brazil.

Key recommendations

In light of the assessment above, which draw on the main findings and analysis included in Chapter 7 of this review, the Brazilian government could consider implementing the following policy recommendations:

Key recommendations and detailed recommended actions
1. Strengthen the existing legal, policy and institutional frameworks for transparency • Continue with the creation of the Transparency Policy by integrating access to information, open data and other transparency related-elements into a single decree for federal government institutions. • Leverage the use of the Council for Public Transparency and Fight against Corruption in the elaboration, implementation and monitoring of its transparency agenda to go beyond the usual suspects.
2. Improve the proactive disclosure of information • Continue working towards the creation and implementation of the Transparency Observatory. • Provide additional training and awareness raising activities for federal public institutions laying out the importance and impact of proactive disclosure to increase compliance. • Create a centralised and unique website mapping all of the existing pages and portals (*paneis*) where proactive information is disclosed.
3. Strengthen the implementation of reactive disclosure of information • In the longer term, if the law is reformed, include a clause of anonymity to ensure the protection of requesters at all levels and branches of government. • Increase uptake at the subnational level by providing stronger incentives for adopting the Fala system. • Create interactive guidelines or manuals for citizens and stakeholders on how and where to request government information depending on the type of information. • Advocate to include the possibility of providing the information free of charge if it is deemed in the public interest, or in setting a minimum threshold of pages that can be delivered free of charge in the national ATI law if it is reformed. • Provide more time for requesters to file appeals, ideally, 60 business days for internal and external appeals to ensure that stakeholders have enough time to file it. • Consider changing the composition of the CMRI beyond the executive branch to include stakeholders from other state institutions including autonomous bodies. • Provide the DTC with the authority to issue binding decisions when information should be disclosed by a public body following an appeal.
4. Strengthen access to information oversight capacities for a more effective implementation • The government could consider ensuring that the institution with the oversight mandate of the national ATI law has the necessary institutional autonomy and the independence of public officials within the organisation to ensure impartiality of the decisions and the operations. • In the short term, strengthen the capacities of the DTC, the CRG, the OGU within the CGU and the Federal Public Prosecutor by increasing their human and financial resources. • Create a special task force between the CGU and the Federal Public Prosecutor in order to increase compliance and enforce oversight of the ATI law at all levels of government and in all branches of the state. • Reinforce the information office or officer in each public body by increasing the number of officials solely in charge of ATI and including key competencies and knowledge in a dedicated competency framework, a code of conduct. • Encourage the appointment of a person or unit in charge of the ATI law within subnational governments.
5. Use targeted transparency measures to further engage with stakeholders. • Raise awareness on the importance and the benefits of the ATI law and transparency policies. • Carry out awareness raising campaigns for public officials to move from a control approach into transparency as a new culture of governance that supports an open government. • Establish a comprehensive approach towards targeted transparency with mechanisms that provide and communicate information and data in a way that is relevant and can be used by stakeholders. • Conduct consultations with stakeholders to ensure that mechanisms are user-friendly and improve usability.

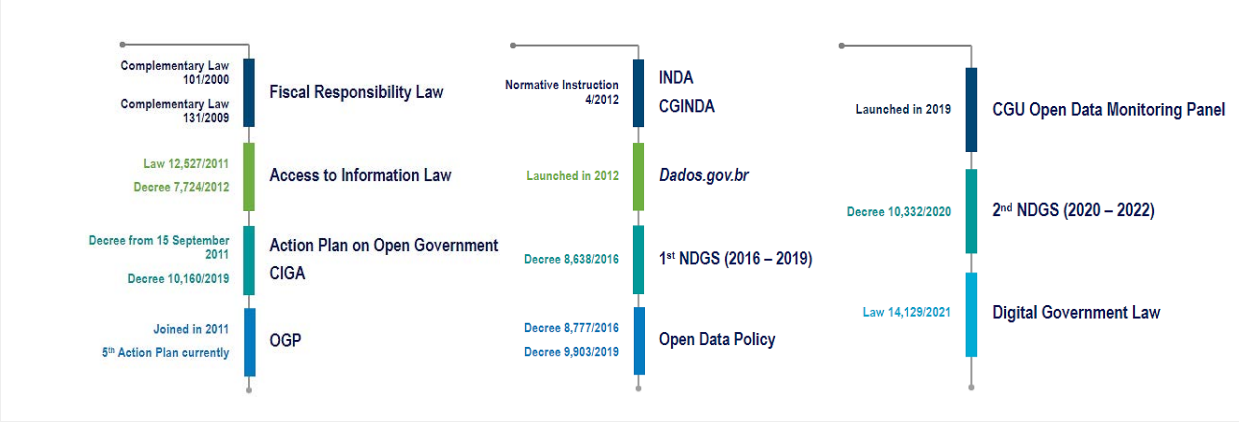
Open Government Data in Brazil

As part of its open government agenda, Brazil has a longstanding commitment to the open government data movement

The inception of open government in Brazil is synergic to the development of its open government data (OGD) agenda. Key legislation on open government included provisions regarding OGD. For example, the

ATI Law (2011) introduced the concept of open data for the first time in the Brazilian legal framework. In addition, since 2011, open data-related commitments have been systematically included in Brazil's OGP Action Plans, with tangible results such as the creation of the Open Data Portal (*dados.gov.br*), launched in 2012, and Brazil's Open Data Reference Model developed as part of its 4th OGP Action Plan.

Figure 1.4. Milestones of Open Government Data Policy in Brazil (2000 – 2022)



The open government data movement also considers the access, use and re-use of datasets as important enablers for more democratic, collaborative and innovative societies and economies. Despite significant positive synergies between the open government and open data agendas, there is still some confusion among public stakeholders about the scope of each. Notably, a considerable number of public officials understands open government data as a synonym for transparency, which is an important aspect, but does not grasp the full picture of open government data.

Brazil has a sound enabling environment for open government data

Brazil has a sound legal framework and key strategic plans to structure its open government data agenda. The country counts with a national open data policy (Decree 8,777/2016) setting transparency and social control among the guiding principles of open government data at the federal Executive level. Every two years, the federal Executive publishes a comprehensive medium-term action plan on open government data (*Plano de Ação de Infraestrutura Nacional de Dados Abertos - INDA*), setting clear actions and objectives, concrete steps and deadlines for implementation. In addition, Brazil's National Digital Government Strategies (2016 – 2019 and 2020 – 2022), and the 2021 Digital Government Law have contributed to the promotion of open government data at the national level. These instruments have broadened the understanding of open government data beyond the transparency agenda and reaffirmed its importance in the context of digital transformation in the public sector.

Likewise, Brazil has specific governance mechanisms and initiatives that help leverage and monitor the implementation of open government data in the country. Beyond its responsibilities regarding the open government agenda, the Federal Comptroller General (CGU) is responsible for implementing the Federal Open Data Policy. Decree 9,903/2019 shifted the management and oversight of the open data policy at the federal Executive level from the Ministry of Economy to the CGU and supported a strategic vision with the Federal Open Data Policy and the institutional Open Data Plans. As part of its responsibilities, in 2017, the CGU launched the Open Data Monitoring Portal to help enforce the duties from the Open Data Policy of opening government database (Decree 8,777/2016, Article 8) in more than two hundred public institutions at federal level. This tool allows monitoring federal public institutions' progress in disclosing their databases following open standards.

Brazil scores fairly high in the OECD Open, Useful and Re-usable data (OURdata) Index 2019

Brazil's efforts in open government data were reflected in the country's performance in OECD's Open, Useful and Re-usable data (OURdata) Index 2019, which benchmarks the design and implementation of open government data policies at the national level across OECD member and partner countries.

Brazil performed above the OECD and Latin American and the Caribbean (LAC) averages, and among the top three leading countries in the region. Compared to other LAC countries, Brazil's overall results illustrate the country's commitment to the open data agenda in the past years, and results from the availability of sound institutional, policy, legal and regulatory frameworks supporting strong governance for open government data in the country. Compared to LAC countries, Brazil's overall results for 2019 illustrate the country's commitment to the open data agenda in the past years, and were the outcome of the availability of sound institutional, policy, legal and regulatory frameworks supporting strong governance for open government data in the country.

Despite the country's efforts in the past few years, evidence suggests that Brazil can further advance to increase the impact of its OGD. For example, public authorities could advance in implementing open data requirements (e.g. the provision of timely and machine-readable data) as part of performance indicators for all public sector organisations. Results of the OECD OURdata Index suggest that main challenges remain in having mechanisms in place to ensure that open government data initiatives comply with formal requirements on security, privacy and confidentiality to maximise benefits of open data while managing risks.

Looking Ahead: Next Steps of the Open Data Agenda in Brazil

Despite all the positive advancements in open government data, there are still some areas of opportunity to connect this agenda to the broader efforts on open government and achieve higher levels of trustworthiness, better design and delivery of policies and services, and value creation through collaboration with actors outside the public sector.

Open government data can further play an important role in supporting the protection of online civic spaces, and promoting inclusion. The ethical management of data throughout the data value cycle from its generation to its publication can help ensure that open data aligns to efforts aiming at the mitigation of biases affecting the generation or collection of data by public sector organisations. Publishing disaggregated data may help uncover bias and monitor social injustices and policy challenges hidden in data, and inform policies to fight exclusion, discrimination and violence.

In addition, the access to and sharing of trusted data sources is crucial to help individuals navigate information overload, and channel them to reliable sources of information and facts. The spread of dis- and misinformation online threatens citizens' capacity to make well-informed decisions, contribute to social fracture, and jeopardise democracy. Open government data can be a tool to counter dis- and misinformation by helping public authorities to fill in data vacuums, contributing to informed discussions and decisions, and allowing fact checking.

Brazil has an untapped opportunity to advance in the re-use of open government data to create public value on the basis of people's needs, and promote citizen and stakeholder participation. While much of the efforts on open government data to date have focused on making large quantities of government data available (e.g. increasing the number of datasets in *dados.gov.br*), challenges remain to translate open government data into a strategic asset for improved service delivery and addressing people's needs in their daily lives. Moreover, Brazil could explore the potential of non-governmental data (from public sector for example) and build partnerships with non-governmental stakeholders to use data as a strategic asset to create public value.

Key recommendations

In light of the key assessments above, which draw on the main findings and analysis included in Chapter 9 of this review, the Brazilian government could consider implementing the following policy recommendations:

Key recommendations and detailed recommended actions
1. Strengthen the provision of open government data • Sustain efforts to ensure that public bodies follow practices and implement initiatives towards a demand-driven data publication. Publishing the results of open data consultations in the central open data portal would also contribute to increase accountability in terms of commitments for data publication. • Explore the use of enforcement mechanisms and financial levers such as budget allocation processes to promote the publication of PDAs. • Sustain efforts to transform *dados.gov.br* into a thriving tool for data communities, collaboration and data crowdsourcing. • Run assessments and training exercises to support the publication of open government data while respecting the legitimate interests of stakeholders in line with available legislation, rules and guidelines on privacy, data protection, business confidentiality and intellectual property.
2. Improve the quality and usability of open government data • Run assessments and consultations to understand the main barriers to the re-use of open government data among civil society organisations and businesses, and support research on the social and economic impacts of open government data. • Advance and sustain sound initiatives (e.g. formal training programmes, performance incentives, catalogues, guidelines, laboratory for innovation) to foster public servants' expertise and data re-use within the public sector. • Strengthen stakeholder engagement for enhanced data quality and completeness, by collecting feedback from current data users on the quality and relevance of the data shared in the portal. This would also imply sustaining efforts to ensure that data shared in *dados.gov.br* meet open data requirements in terms of machine-readability, licensing, and value for stakeholders. • Connect open government data efforts to formal performance monitoring and indicators in the public sector, considering milestones, goals and timeframes defined in the INDA and the Open Data Monitoring Panel.
3. Make use of open government data to support the open government agenda and the creation of public value • Sustain co-creation with businesses and civil society organisations to support data re-use and promote the co-creation of public services, including with actors from the Govtech ecosystem. The close collaboration between the CGU and other actors, such as the Secretariat of Digital Government at the Ministry of Economy, will be key to further connect the open government and digital government agendas in the Country. • Define and/or support partnerships for the access to and sharing of open data by private sector actors (e.g. data donorship), and crowdsource open data from other actors in *dados.gov.br*. • Publish disaggregated and granular open data, specifically in relation to vulnerable, marginalised and population groups at risk. This would also require connecting OGD initiatives to broader data governance and management efforts in the public sector to mitigate biases affecting the generation or collection of representative and inclusive data by public sector organisations. • Engage in social dialogue with key actors inside and outside the public sector (e.g. autochthonous communities, women, LGBTI groups) to identify gaps in representation and inclusiveness of datasets. • Connect the publication of open government data to public communication efforts in order to channel information recipients to trusted data sources, including the open data portal • Consider increasing the number of partnerships with journalists, civil society organisations and academics to test the trustworthiness of open data and information released by the public sector. • As feasible, provide tools such as APIs to promote real-time integration of open government data in value chains, including those from private sector actors.

Towards a more accountable government in Brazil

Accountability is often perceived as a bookkeeping and internal control and compliance practice in Brazil

The concept of accountability has its historical origins in bookkeeping and the need for individuals and organisations to provide an account of their financial activities and their use of public funds, originally intended as a way to track government spending and demonstrate evidence against wrongdoing. The modern movement for accountability has grown to encompass a much wider range of possibilities than the sole responsibility and duty of a public official or public body to citizens, to now consider a complete

reconfiguration of government structures and the fundamental ways in which public bodies operate, with citizens and stakeholders at the centre.

The legal, policy, and institutional frameworks for the different types of accountability are well-established in Brazil. However, as is the case in many OECD countries, Brazil's definition of and overall approach to accountability is not clearly defined in any policy document. Brazil's view of accountability emphasises sharing documentation, offering an account of decisions made, and showing how funds have been used, as accountability tends to be related mostly to internal and social control. Accountability is thus perceived as a bookkeeping and internal control and compliance practice rather than a forward looking interpretation centred on strengthening the government-citizenship relationship.

The Brazilian Constitution and other relevant national legislation provide safeguards for social accountability

The Constitution establishes safeguards for both horizontal accountability (i.e. the reciprocal oversight between different state institutions) and vertical accountability (i.e. the direct relationship between the government and citizens in democratic systems, both within and outside electoral channels)). in Brazil. In addition, there is a wide range of legislation relevant to horizontal accountability, including laws and decrees on administrative improbity, public integrity, lobbying, fiscal responsibility and whistleblowing, among others, with the aim of guiding public officials on their duties and responsibilities to the public, including:

- the Law on Administrative Improbity (Law 8.429 from 1992) provides for the punishment and sanctions applicable to public officials in case of unlawful behaviour in the exercise of their role.
- the Brazilian Anti-Corruption Act (Law 12.846 from 2013), which targets corrupt business practices in Brazil and defines administrative and civil penalties for any individuals involved
- the Law on Conflicts of Interest (Law 12.813 from 2013) prohibits any public officials from engaging in activities that may involve the disclosure of information that benefits either themselves or a third party.
- Decree 10.153 from 2019 provides means to protect whistle-blowers who denounce misconduct in public bodies.

A number of additional legislative frameworks, ordinances and decrees solidified and consolidated the importance of stakeholder participation for vertical social accountability over the last decade, demonstrating Brazil's commitment to improving responsiveness and receiving feedback from citizens.

The institutional setting for social accountability is complex and requires extensive co-ordination

Currently, Brazil has a wide range of mechanisms for vertical and horizontal social accountability that span different forms, including administrative, fiscal, and budget, and policy outcome accountability, many of which are led by the CGU with involvement from different public bodies. To implement and oversee these mechanisms, Brazil has an institutional framework that includes several public bodies, namely the CGU, the Government Secretariat of the Presidency of the Republic (SEGOV), the *Casa Civil,* the Federal Court of Accounts (*Tribunal de Contas da União - TCU*) and the network of *Ouvidorias*.

Due to the complex institutional arrangement for accountability in Brazil, most public bodies with a mandate for social accountability collaborate and coordinate. In fact, several have existing cooperation agreements to this effect, with the number of such agreements increasing.

There is a need to strengthen existing oversight bodies and establish a body with the traditional mandate of an Ombudsman institution

Brazil does not have a traditional and independent Ombudsman institution that has a mandate for all steps of a social accountability cycle, that is to say: to monitor, investigate and sanction. Furthermore, no institution is currently fully in line with the Paris Principles and accredited by the Global Alliance for National Human Rights Institution.

Nevertheless, two institutions cover common responsibilities of an Ombudsman institution. The Federal Public Ministry (*Ministério Público)* and the Public Defender's office (*Defensoria Pública)* play an important role concerning government oversight. In addition, a number of bodies collaborate at the national and subnational levels to ensure accountability for human rights abuses and to protect civil liberties in particular.

The Federal Public Ministry has a mandate of overseeing compliance with the law at each level of government in Brazil and undertakes investigations. However, public prosecutors have a large volume of work, which can be detrimental to the quality of investigations. The Public Defender's Office ensures access to justice and is responsible for defending human rights and providing legal advice and guidance to citizens, especially those who are not able to afford such costs. This public body in particular shows potential to fulfil the traditional responsibilities of an Ombudsman institution. However, both institutions suffer from a lack of sufficient resources, both financial and human, to fulfil their respective missions.

Brazil has established the ouvidorias to promote social accountability but could improve responsiveness by taking a proactive approach and creating feedback loops

Social accountability relies on citizen engagement and interaction with the government to hold public bodies to account and can include a wide range of methods and strategies to assist stakeholders – including civil society, the media, and academia – to track public policy making and the use of public funds. While public bodies in Brazil are receptive to feedback and offer a range of opportunities for citizens to offer inputs, the quality of these responses and the level of satisfaction among citizens can be quite low. Furthermore, statistics on requests, suggestions and complaints are available but the data is not disaggregated nor does it provide enough detail available on the substance as well as the eventual outcome of the requests, which highlights a need for evident feedback loops. Lastly, citizens can find it difficult to decipher where to direct their request and the stages and timelines involved at each stage of the process.

When it comes to engaging with citizens and allowing them to provide feedback across the public administration, the *ouvidorias* are the main interface for this government-stakeholder relationship and represent a complex network of offices that handle citizens' requests and demands. These *ouvidorias*, which exist at both the national and sub-national levels have wide-ranging responsibilities and competences aiming at building a more bottom-up approach to accountability and enable more direct interaction with citizens. Nevertheless, the *ouvidorias* tend to operate reactively rather than proactively and how they function varies widely with no national comprehensive standard across the federal, state, and municipal levels regarding their level of development. The *ouvidorias* have the potential to bolster the move towards a culture of open government as pillars of a renewed citizen-state relationship.

Key recommendations

In light of the key assessments above, which draw on the main findings and analysis included in Chapter 8 of this review, the Brazilian government could consider implementing the following policy recommendations:

Key recommendations and detailed recommended actions
1. Promote a forward-looking approach to accountability • Brazil could use the proposed Federal Open Government Strategy as a tool to further a more concrete and forward-looking interpretation of social accountability that prioritises a two-way government-citizen relationship rather than focusing on control/answerability alone. This could include elaborating a definition for social accountability that promotes dialogue with civil society organisations and citizens, as was done in Colombia. • Consider making use of the OGP Process to foster accountability with measurable targets and commitments to improve existing mechanisms in OGP Action Plans.
2. Ensure high-level commitment and coordination between relevant bodies • SEGOV and the Casa Civil could utilise suggested legal harmonisation of the open government agenda and the design of Brazil's Federal Open Government Strategy to articulate and promote a more pioneering approach to social accountability and collaborate on high-level messaging to increase support across the public administration.
3. Empower oversight bodies and establish a traditional Ombudsman institution to improve accountability • Commit to the norm of a Triple List appointment process for the head of the *Ministério Público* by legally installing this practice and producing clear guidelines. • Improve the transparency of the *Ministério Público* by further promoting and using the data collected e.g. on the complaints received from citizens, how many cases were filed as judicial actions, and how many were archived. • Consider the evolution of the *Defensoria* into a traditional Ombudsman institution in line with the Paris Principles, with entitlements similar to other countries in the Latin American region. • Empower the *Defensoria* to be fully recognised as a strategic body for the protection of human rights and channel the appropriate financial resources and protect them in the future through for example, earmarking their allocation. • Ensure *Defensoria's* independence to ensure their ability to respond to the growing demand for their services and to fulfil their core mandate.
4. Improve social accountability for greater responsiveness through the *Ouvidorias* • The *Ouvidorias* could take a more proactive rather than reactive approach to encouraging citizens to engage with the government and introduce a system based on feedback loops • They could engage in awareness-building and dissemination activities, for example through information-sharing sessions with both public officials and stakeholders • The National Network of *Ouvidorias* could be used to promote a comprehensive standard for these offices and could be used to further communicate and collaborate, engage in cross-learning, identify common challenges and co-source solutions to common issues, for example, through online spaces and forums and meetings between *ouvidorias*. • The Network could also take a more central role in increasing the visibility of their work and could encourage more training and capacity-building not only within but also outside of the Network.
5. Elucidate the mechanisms, systems and processes for requests and complaints • Consider producing guidelines on good practices for responding to requests and encourage a step-by-step process to be undertaken by *ouvidorias* to communicate the stages of the process • Ensure that *ouvidoria* offices are as well shielded from political interference as is possible given their positioning within each respective body and their budget should remain earmarked and appointments protected.

2 The context and drivers of open government in Brazil

The cultural, historical, political and socio-economic context that defines a country influences the design, implementation and evaluation of open government reforms. This Chapter first situates Brazil's open government agenda in the wider context, analysing the main achievements and identifying areas of opportunity moving ahead. The second part of this Chapter introduces the OECD's approach to open government and explains the methodology used for the collection of data and the elaboration of the Review's policy recommendations.

Introduction

Open government constitutes a fundamental transformation of the way in which governments and society interact. While most countries have implemented initiatives that aim to promote the open government principles of transparency, integrity, accountability, and stakeholder participation for a long time, the concept of open government aims to go one step further and establish a culture of governance that ensures that these principles, implemented in synergy, guide any government action from its conception to its evaluation.

Open government touches upon every single aspect of public governance. The creation of an open government culture means that citizens understand how government works and are able to collaborate with public authorities to improve public decision, policies, services and all kinds of governmental processes (e.g. procurement, budgeting, etc.). Over time, open government approaches can alter the core functioning of public institutions and democracy itself. From co-creating environmental policies with concerned stakeholders to fostering transparency in the health sector, countries are starting to recognise that open government approaches have the potential to act as a catalyst for the attainment of broader policy goals such as fostering socio-economic development, increasing trust and ultimately improving democracy. Recognising this, the OECD Recommendation of the Council on Open Government (OECD, 2017a) defines open government as “a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth”.

Brazil has historically been a leader in the field of open government. The country has a longstanding history of open government reforms, introducing practices such as the participatory budget of the city of Porto Alegre, as well as modern day standards like the Transparency Portal. As a founding member of the Open Government Partnership (OGP), Brazil has globally pushed for ambitious open government reforms.

As a result of the reforms implemented over the years, Brazil scores today comparatively well in international indices on open government policies and practices, such as the OECD OURData Index. The country is internationally recognised for its transparency agenda and some more recent initiatives such as the creation of the Fala.BR platform and of different monitoring panels on open government policies and practices. However, recent years have also seen the emergence and / or reinforcement of (often pre-existing) worrisome trends, such as a shrinking civic space which provides an obstacle to the implementation of open government reforms. At the same time, levels of commitment to the open government agenda have seemingly dropped in the past years and policies that aim to promote openness have suffered from the public responses to the COVID-19 outbreak.

It is against this backdrop that this OECD Open Government Review (OGR) of Brazil takes stock of past reform efforts and provides a path for Brazil to foster its openness in the short-, medium- and long term. The OGR examines diverse reform areas that were jointly identified as priorities by Brazil and the OECD for bolstering the effectiveness and sustainability of the country’s open government agenda. In addition to discussions on the governance of open government (Chapters 3 and 4) and on the implementation of the open government principles of citizen and stakeholder participation (Chapter 6), transparency (Chapter 7) and accountability (Chapter 8), the Review – for the first time – fully integrates a civic space perspective (Chapter 5), recognising the importance of a protected civic space for a successful open government agenda. Moreover, noting its importance in Brazil’s open government agenda, the Review includes a full chapter dedicated to open government data (Chapter 9).

The present chapter (Chapter 2) provides an introduction to the OECD’s wider work on open government and discusses Brazil’s main achievements and emerging areas of opportunities. It ends by presenting the Review’s methodological approach.

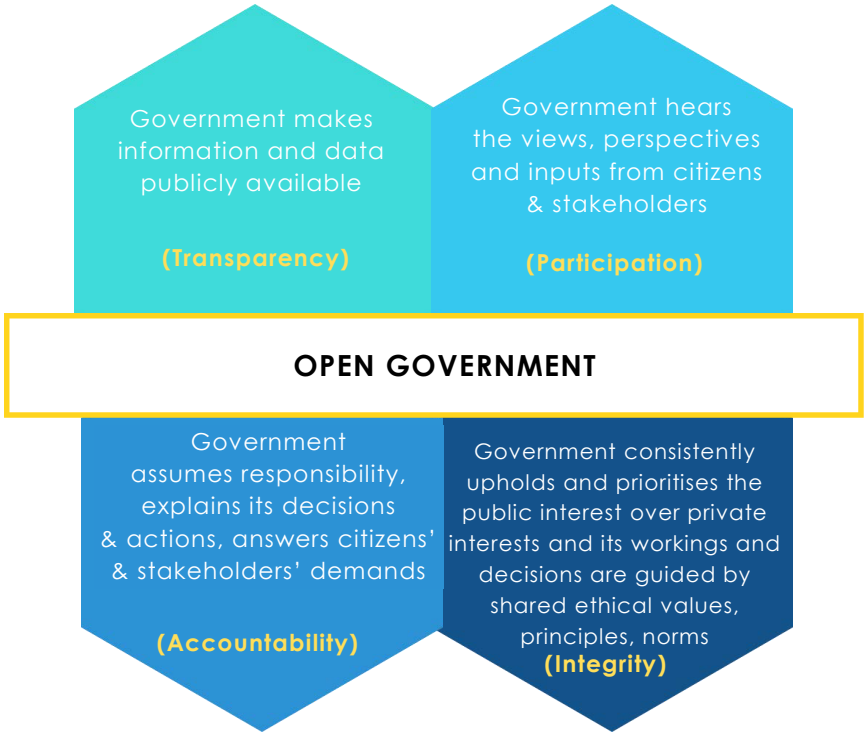
Open government is a driver of democratic transformation and innovation

Open government is a wide concept that has seen increased levels of global attention following the creation of the Open Government Partnership in 2011. Governments – both at central / federal and at subnational level, individual public institutions, international organisations and civil society organisations have adopted their own definitions of the concept. The OECD Recommendation of the Council on Open Government (2017[1]), the first and only internationally recognised legal instrument in the area of open government (see Box 2.2), defines open government as **"a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth".**

As such, the OECD definition identifies two overarching objectives – fostering democracy and inclusive growth – as well as four transformation principles to achieve them. The principles of open government – transparency, integrity, accountability and stakeholder participation – are deeply related and intertwined in practice. Conceptually, they can be defined as:

- **Transparency** is understood as the disclosure of relevant government data and information in a manner that is timely, accessible, understandable, and re-usable (OECD, forthcoming[2]).
- **Public sector integrity** refers to the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests (OECD, 2020[3]).
- **Accountability** is a relationship referring to the responsibility and duty of government, public entities, public officials, and decision-makers to provide transparent information on, and be responsible for, their actions, activities and performance. It also includes the right and responsibility of citizens and stakeholders to have access to this information and have the ability to question the government and to reward/sanction performance through electoral, institutional, administrative, and social channels (OECD, forthcoming[2]).
- **Citizen and stakeholder participation** includes all of the ways in which stakeholders[1] can be involved in the policy cycle and in service design and delivery through information, consultation and engagement (OECD, 2017[1]).

Figure 2.1. The pillars of open government



Source: Author's own elaboration.

Open government is a culture of governance

Putting the principles of open government into practice, is not simply a technical matter of having the right legislation or systems in place. Rather, it is about transforming the entire culture of governance so that citizens are enabled and empowered to understand how governments work, to scrutinise their action and to participate in the decisions that matter the most to them. This is especially relevant for those citizens whose interests are usually underrepresented in government institutions and processes.

The prevailing governance culture of a country touches upon every institution and every individual public official and has deep implications for the relationship between public institutions and citizens. An open government culture of governance requires governments to be receptive to citizens' demands and change their daily operations as to include them and serve their needs. In sum, an open government requires a culture of governance that puts citizens at the hearth of any public action and decision. In this sense, open government can produce iterative loops that blur the traditional distinctions between provider and user, representatives and electorate, and allow citizens to co-produce policies and services.

Such a transformation requires cultural changes for both public officials and citizens. This involves changes in individual and institutional values, skills, beliefs, norms of conduct, and expectations, which are materialised in new policies, practices, services and public goods, among others. At the institutional level, it requires a new set of processes to transform the internal ways of working, and new norms and values that integrate open government as an intrinsic responsibility of the State. At the individual level, this new paradigm means new ways of thinking public service and adapted skills to deliver public action in a transparent, accountable and participatory manner. At all levels, the cultural change requires an adapted mind-set that understands the benefit of citizens' inputs.

What are the benefits of an open government?

Many countries, including Brazil, are already implementing a great variety of innovative strategies and initiatives that aim to connect them with their citizens under the umbrella of the concept of open government. At its heart, open government is about strengthening democracy through renewed government–citizen interactions. Open government reforms are built on the idea that promoting transparency, integrity, accountability and participation enables governments to work more efficiently, deliver the services their citizens want and need, and ultimately enhances trust in the legitimacy of decisions.

Open government reforms improve the traceability of political decision-making processes and enables citizens, civil society and private sector stakeholders to play a more active role in mastering societal challenges through their active participation in different forms. This in turn can increase the efficiency and effectiveness of a democratic system and increases trust in public institutions.

Table 2.1. Implications of the open government principles for citizens, stakeholders and the government

Open Government Principle	What this means for citizens and stakeholders?	What this means for governments?
Transparency	Citizens and stakeholders have access to, understand and can (re-)use information and data the government creates and collects. If the government has not published relevant information or data pro-actively, citizens and stakeholders can request access from government. Further, they can reuse government information and data for private matters and thereby contribute to societal development, for example by developing a business idea.	The government makes relevant information and data publicly available in an appropriate format and through sufficient channels to ensure that citizens and stakeholders can access, understand and (re-)use them. At a minimum, this includes information and data on all the decisions taken by public officials, their circumstances and the outcomes and impact they entail. The government can publish the data and information either proactively or reactively at the request of citizens and stakeholders.
Integrity	Elected and non-elected representatives of the state treat all citizens and stakeholders impartially, independent of their characteristics or status. This means that no individual or particular group – including public officials themselves – can gain any benefit from the exercise of governmental authority, which contradicts the political equality of each citizen.	Ensuring that elected and non-elected representatives of the state act impartially in the exercise of their authority, not discriminating between citizens based on their characteristics or status. This includes prioritising public interest over the interests of private individuals or particular groups, also in situations of discretion.
Accountability	Citizens and stakeholders have the rights and tools at disposal to: (a) Demand justifications for government decisions, for example through a comprehensive access to information law that establishes an open by default principle (see also Transparency), and (b) Reward or sanction their government and related public bodies based on the performance evaluation citizen and stakeholders conduct. These include administrative and judicial complaint and appeal mechanisms and elections. Citizens and stakeholders can rely on mechanisms and institutions which law determines as a protection against the abuse of authority to highlight and correct these infringements. This can include, among others, contestability of public authorities' decisions and protection for whistle-blowers.	Government satisfies citizens and stakeholders' need for justification of government actions through providing related information and data in an appropriate manner. This can happen in anticipation or following a concrete request (see also Transparency). Further, government reacts to the (dis-)approval of government actions – expressed through rewards or sanctions – by citizens and stakeholders in such a way that approval is optimized. Systems of checks and balances – between government entities as well as between government and citizens or stakeholders – monitoring and safeguarding the proper execution of authority throughout the policy cycle and in service delivery are maintained and strengthened.
Citizen and Stakeholder Participation	Citizens and stakeholders have the equal opportunity to influence public decision-making throughout the policy cycle and in service delivery between elections by sharing their perspectives and input with public authorities concerning all issues that affect them.	Government collects contributions from citizens and stakeholders, considers and integrates them into public decision-making, and provides an account of this process. It provides opportunities and resources necessary for citizen and stakeholder participation and takes special efforts to ensure equal participation opportunities among all societal groups. Further, it supports freedom of expression and a strong,

		independent and active civil society as the basis of political participation.

Source: OECD Handbook on Open Government for Peruvian Civil Servants (2021[4]), https://www.oecd.org/gov/open-government/guia-de-la-ocde-sobre-gobierno-abierto-para-funcionarios-publicos-peruanos.htm

The space for open government in Brazil: A snapshot of the socio-economic context

In order to better understand open government reforms in Brazil, this Review takes into account the country's particularities in terms of governance, economic development, as well as social and cultural aspects (see also the Framework for Measuring the Openness of Government (OECD, 2020[5]) below). This chapter does not aim at providing a comprehensive review of the socio-political-economic panorama of Brazil, but rather acknowledge that economic development, wellbeing, social inequalities, trust in government and democratic quality can foster or undermine the impact of a country's open government agenda.

The institutional, administrative and cultural context of a country shapes its open government approach

The Federative Republic of Brazil, situated in South America, is the world's fifth largest country in surface with a population of 214 million people (IBGE, 2022[6]). The Federal Constitution sets the foundations for the administrative and political organisation of the country. It establishes Brazil as a Federal Republic, divided into 26 states, a federal district (Brasilia) and more than 5,500 municipalities. States and municipalities have autonomous administrations. States are headed by a governor and municipalities by a mayor. Both entities have elected legislative bodies.

The executive power lies in the President of the Republic, who is both head of state and head of government. The president is elected by universal suffrage for a four-year mandate, and can be re-elected. The judicial power is exerted by different organs and courts at national and state level (Europarl, 2021[7]). Brazil's legislative body is the National Congress, which is composed of the Chamber of Deputies and the Federal Senate. Deputies are elected, on the basis of population, for a term of four years. Senators serve 8-year terms, with three senators elected from each of the states. The Federal institutions are based in the capital, Brasilia, which serves as the political centre of Brazil. Following the 2018 legislative elections, at the time of writing, there were 30 different parties represented in the Chamber of Deputies and 21 in the Senate (Europarl, 2021[7]). The federal nature of a country, as well as the geographical extension, can play a role in shaping the multi-level governance of open government. In this scenario, the central government can support and coordinate initiatives with the subnational level, but every State has the prerogative to develop its own legislation and policy.

Brazil is also a very diverse country in terms of ethnicity, culture and religion. This diversity is the result of the mix between Indigenous populations, and several migration waves coming from Portugal and other European countries (Italy, Germany), Middle East (Lebanon), Asian countries (Japan), as well as the large waves of immigration coming from African countries. According to the Brazilian Institute of Geography and Statistics (2021[8]), in 2018, Brazil's population officially described as 43.1% "white", 46.5% "brown", 9.3% "black", and 1.1% "yellow" and indigenous. Table 2.2 captures Brazil's diversity in terms of demographics and religion.

Table 2.2. Basic statistics of Brazil

PEOPLE AND ELECTORAL CYCLE		DEMOGRAPHICS AND SOCIETY	
Population (2022 in million)	214	**Catholic (2010 in % of total population)**	64.6
Gross domestic product (2019 in billion USD)	1841.5	**Protestant - including evangelical churches (2010 in % of total population)**	22.2
Relative poverty rate (2016 in %)	24.5	**Without religion or not willing to declare (2010 in % of total population)**	9
Income inequality (Gini coefficient, OECD: 2016)	0.543	**White (2018 in % of total population)**	43.1
Latest general election	October 2018	**Brown (2018 in % of total population)**	46.5
Next general election	October 2022	**Black (2010 in % of total population)**	9.3

Source: Author's own elaboration with a selection of the indicators included in OECD's Economic Surveys Brazil 2020, https://doi.org/10.1787/250240ad-en; and in Brazil's 2010 Census published by the Brazilian Institute of Geography and Statistics, https://www.ibge.gov.br/estatisticas/sociais/populacao/9662-censo-demografico-2010

High social inequalities can decrease the impact of an open government agenda

In the past decades (and especially from 2000 to 2011), Brazil has been one of the world's fastest-growing economies. Brazil is today the 12th largest economy in the world and the largest in Latin America (World Bank, 2021[9]). Brazil is a member of the MERCOSUR trade agreement as well as other South American cooperation organisations, and is the only Latin American country member of the BRICS, the emerging markets group of countries.

According OECD data (OECD, 2020[10]), Brazil has made progress over the last decade in terms of improving the quality of life of its citizens. During the first decade of the millennium, inequality and poverty declined, while improvements in access to education and in social transfers reinforced well-being. 33 million Brazilians have escaped poverty since 2003 (OECD, 2020[10]). However, Brazil remains a country with high social inequalities. According to the OECD Economic Survey of Brazil (2020[10]), large inequalities are one factor affecting well-being and they have been rising again after years of decline. The bottom 40% of income earners receive 10% of disposable incomes, while the top 10% earn more than four times as much. Female workers earn 20% less than men, compared to 13% for the OECD average. White Brazilians earn two thirds more than other ethnic groups, while the latter are 60% more likely to lack access to basic sanitation and more than twice as likely to be illiterate (OECD, 2020[10]). Regional disparities between the northern and southern states are another crucial challenge. For example, labour market informality and illiteracy are three to four times more common in the poorer north-eastern states than in the relatively affluent southeast. High levels of inequalities require great efforts from governments to reach out to the "silent majority" and create the conditions for traditionally excluded groups of society to be informed, and participate (OECD, 2020[11]).

The OECD Better Life Index allows to understand what drives well-being of people and nations and what needs to be done to achieve greater progress for all. It aims at looking to broader indicators beyond the GDP to evaluate a country's wellbeing beyond economic development. Brazil's wellbeing is lower than the OECD average, as the indicators in Table 2.3 show. This is especially important with regards to trust in government, gender parity in politics and safety.

Table 2.3. Brazil's wellbeing compared to OECD countries

Indicator	Trust in government	Women in national parliament	Employment rate	Years in education	Income poverty	Stakeholder engagement for developing regulations	Voter turnout	Life expectancy	Homicide rate
Unit	Average (2020)	Ratio (2020)	Percentage (2018)	Years	Ratio (2017)	Average score	Percentage average (2016 – 2019)	Years (2017)	Ratio (2016)
OECD average	51	30.7	76.5	17.2	11.8	2.4	68	80.6	2.39
Brazil	36	15	67.7	16.2	20	2.2	79	75.7	26.7

Source: Author's own elaboration with a selection of the indicators included in the OECD Your Better Life Initiative 2020, data extracted on February 2022: http://oecd.org/statistics/Better-Life-Initiative-2020-country-notes-data.xlsx ; Data for the trust in government indicator is based on OECD's Government at a Glance 2021 using Gallup World Poll data from 2020, https://doi.org/10.1787/888934259123 ; Data for the Women in national parliament indicator is based on OECD's Economic Surveys Brazil 2020, https://doi.org/10.1787/250240ad-en

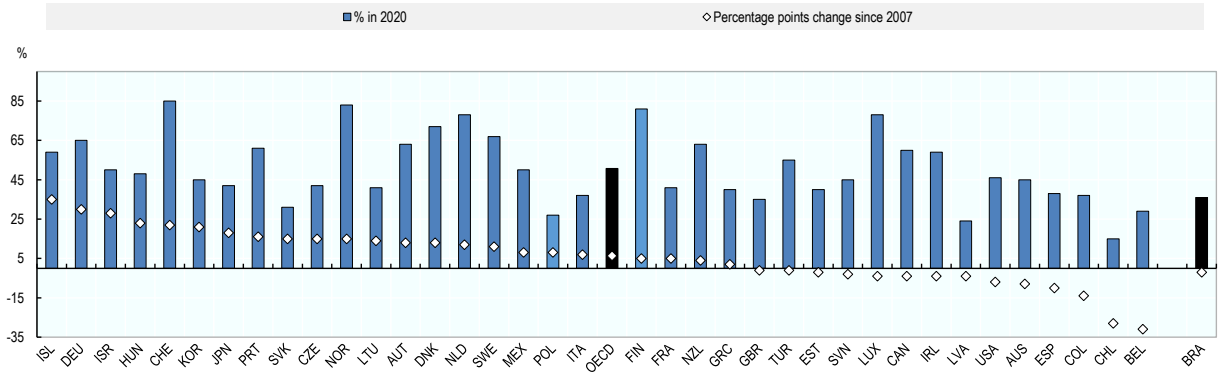
The democratic quality and trust in government can influence open government reforms

Democracy is a layer of institutions, policies, rights, freedoms and practices that put together allow citizens to express their views, elect their representatives and participate in public life. Brazil's democracy is rather young compared to most OECD countries. Brazil became independent in 1822, and elected its first President in 1894. However, democracy was interrupted by military coups, first in 1930 and then in 1964. Brazil remained under a military regime until 1985 and adopted its current Constitution in 1988, which re-established a democratic form of government. Today, Brazil is considered a functioning democracy that holds regular and competitive elections (Freedom House, 2021[12]). Voter turnout, a measure of citizens' participation in the political process, was 79% during the 2018 presidential elections (IDEA, 2021[13]). This figure is higher than the OECD average of 68%, and reflects the practice of compulsory voting in Brazil (OECD, n.d.[14]). Concerning the public sphere, there is a strong sense of community and high levels of civic participation in Brazil, where 90% of people believe that they know someone they could rely on in time of need, broadly in line with the OECD average of 89% (OECD, n.d.[14]).

However, in recent years, the democratic quality in Brazil has been gradually decreasing, echoing a regional and global trend. The Democracy Perception Index (DPI) measures public dissatisfaction with democracy by looking at the difference between how important people say democracy is and how democratic they think their country (Latana, 2021[15]). Latin America stands out as the region in the world with the largest dissatisfaction with the state of democracy and Brazil ranks with the highest deficit in the region, only before Venezuela and in 2020, more than 70% of Brazilians considered that their government only served the interest of a small group of people (Latana, 2021[15]). In 2021, the International Institute for Democracy and Electoral Assistance (IDEA) listed Brazil as one of the ten democracies with the greatest decline in the past decade. This decline refers to a loss in democratic quality, observed through different aspects including the independence of the judicial system, attacks to civic space and media, and high levels of corruption among others (IDEA, 2021[16])

Citizens' trust in government is a common indicator of public administrations' performance and a measure of how well democracies are functioning. Trust in government is essential to ensure compliance, legitimacy of public decision-making as well as to secure social cohesion and well-being. In 2020, 36% of Brazilians trusted their central government, a figure two percent lower compared to 2007 (OECD, 2021[17]).

Figure 2.2. Trust in government in OECD countries and Brazil



Note: Percentage who answered "yes" to "Do you have confidence in the national government?".
Data for Chile, Estonia, Greece, Hungary, India, Indonesia, Israel, Latvia, Lithuania, Mexico, Luxembourg, Costa Rica, Romania and South Africa are for 2019 rather than 2020. Data for the Czech Republic are for 2018 rather than 2020. Data for Iceland are for 2017 rather than 2020. Data for Austria, Finland, Ireland, Norway, Portugal, the Slovak Republic, Slovenia and Switzerland are for 2006 rather than 2007. Data for Iceland and Luxembourg are for 2008 rather than 2007. 2007 is used as a benchmark as the year before the global financial crisis.
Source: World Gallup Poll.

Many factors can affect public trust in government. The OECD identifies five main drivers: government's responsiveness, its reliability in delivering public services and anticipating new needs, as well as the principles of integrity, openness, and fairness (Brezzi et al., 2021[18]). Corruption can undermine the efficiency of government, and directly affect trust in public institutions and democracy as a whole. According to the Corruption Perception Index (Transparency International, 2021[19]), the perceived level of public sector corruption in Brazil has increased since in the past decade. In 2019, 54% of Brazilians thought corruption increased in the previous 12 months and a staggering 63% consider that most or all Members of Parliament are corrupt (Transparency International, 2019[20]).

In addition, Brazil faces several challenges in respect to its civic space[2] that are undermining trust and democratic quality. Long-standing challenges such as discrimination towards afro-Brazilian populations and violence against woman and LGBTI persons, are combining with more recent trends. Police violence, attacks to the media, killings of activists and an increasingly complex environment for civil society organisations to operate are among the recent challenges cited by several international organisations such as Amnesty International (n.d.[21]) , CIVICUS (2021[22]) and Human Rights Watch (2020[23]).

COVID19 has strongly affected the rollout of Brazil's open government agenda

According to the World Health Organisation (WHO), by February 2022 there had been more than 626 000 deaths due to the COVID19 pandemic in Brazil (2022[24]). Measures taken to contain the spread of the virus have impacted the economic development of Brazil, with OECD projections of a GDP decline by 5% in 2020 (OECD, 2020[10]). Since the beginning of the outbreak, Brazil – as many other countries -has also observed a sharp rise of mis- and disinformation regarding the virus, the treatments and the vaccine (Ricard and Medeiros, 2020[25]). As noted by the OECD (2020[26]), disinformation can affect countries' responses to the global pandemic by undermining trust, amplifying fears, and sometimes leading to harmful behaviours.

As in many OECD member and partner countries, the COVID19 pandemic has had both a direct and indirect impact on the open government agenda of Brazil. It has directly impacted it by postponing or affecting certain participatory mechanisms such as elections or participatory budgets. Notably, the 2020 municipal elections were postponed due to COVID19 related restrictions and the turnout was six points below the previous municipal election in 2016 (Gabriela Tarouco, 2021[27]). In addition, several participatory

budgets were postponed, or their scope reduced to only virtual session as in the State of Maranhao (2021[28]) or the Municipality of Duas Estradas (2021[29]). The pandemic also affected the public's access to information, especially on the management of the pandemic and the emergency procurement by the government. Civil society groups have warned the Inter-American Commission on Human Rights (IACHR) about the Federal Government's violation of access to information and transparency during the COVID19 pandemic and a coalition led by Open Knowledge Foundation published evidence pointing to inconsistencies in the published information and an inadequate handling of access to information requests related to the vaccination campaign (Article 19, 2020[30]) (Open Knowledge Brasil, 2021[31]). Finally, the pandemic has impacted the confidence of citizens in government, and has put more pressure on an already shrinking civic space (Amnesty International, n.d.[21]).

Brazil's path towards a more open government

Brazil has a long history of implementing reforms that aim to foster the transparency and accountability of government and at improving the relationship between government and citizens. Brazil is seen as a leading actor in the open government community and has been recognised as a champion in certain areas.

Brazil's open government agenda has achieved positive results that are domestically and internationally recognised

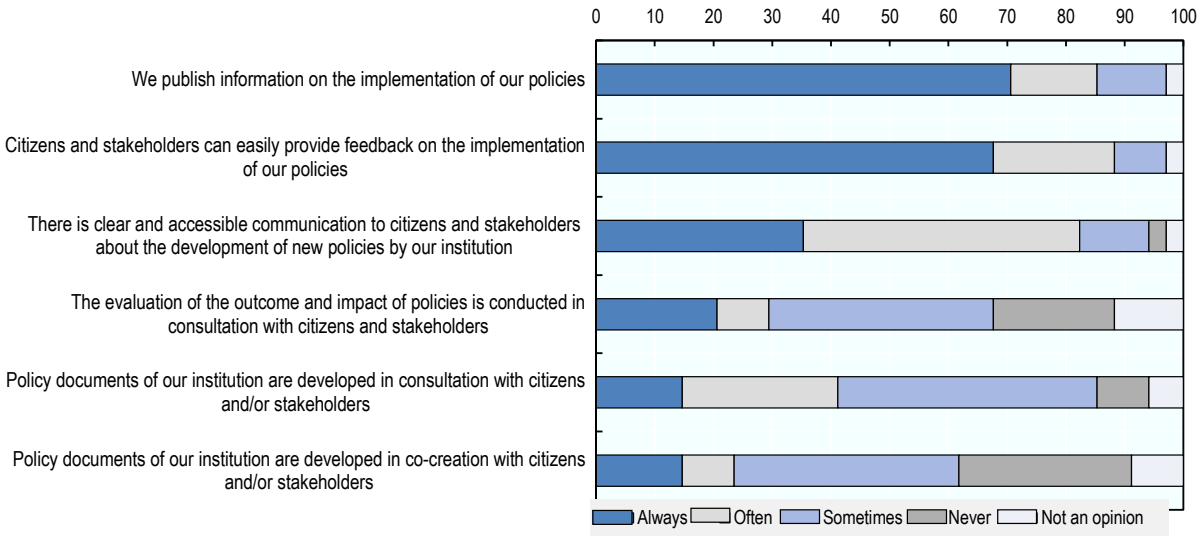
Brazil has a long history of implementing the pillars of open government

Brazil's path towards building an open government can be traced back to the 1989 Federal Constitution which marked the transition to democracy. The Constitution aimed at creating safeguards to protect the democratic system and culture in Brazil by creating strong independent institutions and empowering citizens and non-governmental stakeholders. It includes a large number of articles related to the open government principles of transparency, accountability, integrity and participation, as well as the protection of the civic space (freedoms and liberties). A complete overview of the provisions on the open government principles in Brazil's Constitution can be found in Chapter 3.

While the term "open government" may be relatively new, Brazil's Federal and subnational governments have been implementing initiatives to make public action more transparent, accountable and participatory for decades. This is the case for example of the National Health Council created in 1944, the participatory budgeting in Porto Alegre established in 1989, the Law on administrative improbity passed in 2000 and the creation of the Transparency Portal in 2004.

Open government policies and practices, while not always called as such, are today widely spread in Brazil. For example, according to results of the OECD Survey on Open Government in Brazilian Public Institutions (OECD, 2021[32]), more than 80% of public institutions regularly – 'always' or 'often' – publish information on the implementation of policies or provide clear and accessible communication about the development of new policies. Similarly, 82% indicate that they always or often provide citizens and stakeholders the opportunity to provide easily feedback on the implementation of policies. However, initiatives that aim at increasing citizen and stakeholder participation are less frequent as shown in Figure 2.3.

Figure 2.3. Open government practices by Brazilian public institutions



Source: OECD (2021[32]), Survey on Open Government for Brazilian Public Institutions.

Brazil is widely recognised as an international and regional leader in the field of open government

Brazil has played a protagonist role in the global open government movement. In 2011, Brazil was part of the countries[3] that endorsed the Open Government Declaration and founded the Open Government Partnership (OGP), setting the scene for an international platform in the field. As founding member, Brazil contributed to establishing an ambitious community of reformers and hosted the first Global Summit in Brasilia in 2012. Since then, the country has been a very active member of the Partnership, delivering five Action Plans including 122 commitments.

In addition to the OGP, Brazil is also an active partner of other international coalitions and organisations that promote the principles of open government. Since 2010, Brazil has been part of the G20 Anti-Corruption Working Group. The CGU has equally collaborated in working groups of the World Bank, the Organization of American States (OAS), and the United Nations (UN) to ensure adherence to the respective conventions. In preparation of the Access to Information Law's approval, Brazil concluded a technical cooperation agreement with UNESCO in 2010 and a complementary agreement specifically on the issues relating to Open Government was signed with UNESCO in 2018.

Brazil is also an important partner of the OECD in the area of open government. The country adhered to the OECD Recommendation of the Council on Open Government in 2019, is an active member of the OECD Working Party on Open Government and is the co-chair[4] of the OECD Network on Open and Innovative Government in Latin America and the Caribbean. In addition to the OECD Recommendation, Brazil is a signatory of more than fifteen international treaties and conventions that aim to contribute to building an open government culture (Table 2.4)[5].

Table 2.4. Overview of the most relevant conventions, treaties and declarations in the area of open government signed / ratified by Brazil

Name of convention / treaty / declaration	Year of first adoption	Year of adoption/accession by Brazil	Year of ratification by Brazil
OECD Recommendation of the Council on Open Government	2017	2019	Not applicable
Lima Commitment: "Democratic Governance in the Face of Corruption"	2018	2018	Not applicable
Iberoamerican Open Government Charter (CLAD)	2016	2016	Not applicable
Declaration on the Fight Against Foreign Bribery - Towards a New Era of Enforcement	2016	2016	Not applicable
GIFT High-level Principles on Fiscal Transparency, Participation and Accountability	2012	2012	Not applicable
Open Government Declaration (OGP)	2011	2011	Not applicable
Declaration on Propriety, Integrity and Transparency in the Conduct of International Business and Finance	2010	2010	Not applicable
United Nations Convention against Corruption (UNODC)	2003	2003	2005
American Declaration of Principles on Freedom of Expression	2000		
Convention on Combating the Corruption of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD)	1997	2000	2000
Inter-American Convention against Corruption (Caracas Convention) - OAS	1996	1996	2002
Financial Action Task Force Forty Recommendations and Special Recommendations on Terrorist Financing	1990/2001	2000	Not applicable
International Covenant on Civil and Political Rights (ICCPR)	1976	1992	1992
Inter-American Convention on Human Rights	1968/1978	1992	1992
Universal Declaration of Human Rights (UDHR)	1948	1948	Not applicable

Source: Author's own elaboration, based on Government of Brazil (2021[33]).

Brazil's participation in the OGP has delivered positive results

The OGP process has delivered important results in support of greater transparency, stakeholder participation, integrity and accountability in Brazil. In the preparation of the different OGP Action Plans, the Office of the Comptroller General of the Union (CGU) has benefited from the participation of more than 839 actors, including 130 civil society organisations, 86 public authorities at the Federal level, as well as actors representing the subnational level, the Legislative and Judiciary powers, researchers, citizens and private sector representatives (Government of Brazil, 2021[34]).

Brazil's participation in the OGP is regulated through the National Policy on Open Government (*Política Nacional de Governo Aberto*) established through Decree 10.160 (Government of Brazil, 2019[35]). This document provides the CGU with the mandate to co-ordinate the design of the biannual OGP action plans. Chapter 3 describes the policy, legal and institutional frameworks for open government in Brazil, and provides recommendations to increase its ambition and integration. In addition, the OGP process is coordinated by several bodies, including the Interministerial Open Government Committee (CIGA) and the Civil Society Working Group for Open Government. Chapter 4 discusses the governance mechanisms of the open government agenda and provides recommendations to improve its functioning.

The OGP-process has been among the key drivers of open government in Brazil. Some commitments included in Brazil's action plans have established the building blocks for key open government areas, namely:

- To promote transparency and access to public information, as both the Federal System for Access to Information, and the Federal open data platform were initially commitments in Brazil's First National Action Plan.
- To increase citizen and stakeholder participation, as the digital platform for participation (*Participa* platform – now running under the name *Participa Mais Brasil)* was created as part of a commitment in Brazil's Second National Action Plan.
- To move towards an Open State, as Brazil's Third National Action Plan included several commitments to increase support open government reforms at the subnational level and in the Legislative power.

Chapter 3 includes a detailed analysis of Brazil's OGP Action Plans, as well as their contribution to move from a technical and compliance-driven perspective of open government towards a more transformative perspective that recognises the value of open government for wider policy objectives.

Brazil has a vibrant and diverse civil society

Civil society has been an integral part of the democratic life in Brazil for decades, contributing to essential public policies and services such as the creation of the Unified Health System or the protection of the Amazonas. Brazilian civil society is vibrant and diverse, with expertise on a wide range of issues. Partnering with the government of Brazil, it has played an increasingly important role in improving policies, engaging in participatory mechanisms, delivering services and helping to increase transparency.

The participation of civil society in public life and the collaboration with public authorities in benefit of the wider society is a core element of an open government. Chapter 5 provides a detailed analysis of the civic space in Brazil, and Chapter 6 provides examples of the value of government-civil society collaboration for better public policies and services.

Brazil has taken important steps towards a transparent government

Brazil has implemented several actions to increase the transparency of its government. In particular, the country has taken effective steps to develop a robust legal and institutional framework for access to information (ATI), including through the 2011 Law on Access to Information and the 2016 Open Data Policy. In addition, the Federal government has created platforms such as the open data portal and Fala.br to support the publication – and request – of government information and data, and created the TIME Brazil program to support subnational authorities in their transparency efforts.

These actions have resulted in a significant volume of information becoming available alongside a simplified process to request information at the federal level. According to the OECD Survey on Open Government for Brazilian Public institutions (OECD, 2021[32]), 94% of the surveyed institutions are currently implementing – or have implemented in the last three years – initiatives to publish government information and data.

Chapter 7 covers the open government principle of transparency and provides an in-depth assessment of the legal and institutional framework for access to information, the mechanisms and tools for proactive and reactive disclosure, as well as recommendations to take this agenda forward. A dedicated analysis of Brazil's open government data agenda can be found in Chapter 9.

Brazil has implemented several democratic innovations

Brazil has a long history implementing citizen and stakeholder participation processes in public decision-making. The processes led both by the Federal government as well as subnational authorities have been ambitious in the scope, degree of citizen empowerment and in the use of innovative approaches to participation, including deliberation, direct decision-making, as well as online participation. These experiences have placed the country as a democratic innovator, with global recognition from other countries, as well as international organisation such as the United Nations[6]. Notable innovations include for example:

- Collegial bodies (*colegiados*) – including the National Conferences and the National Policy Councils - are permanent bodies, at the Federal and subnational levels, with both governmental and non-public stakeholders with the mandate to participate in the prioritisation of topics in the policy agenda, as well as in the formulation and evaluation of public policies.
- Participatory budgeting which are mechanisms that allow citizens and stakeholders to influence public decisions through the direct allocation of public resources to priorities or projects. It is organized usually at the subnational level and can include several stages such as deliberative assemblies, digital voting platforms and co-creation workshops.
- Digital participation – such as the E-democracia platform in the Brazilian Chamber of Deputies which is a digital participatory platform allowing citizens to follow the legislative process (interactive hearings), co-draft legislations (WikiLegis), and influence the agenda setting (participatory agenda).

Chapter 6 analyses in detail the different participatory practices in Brazil as part of the open government agenda and provides recommendations to increase the level of inclusion and the impact of these processes.

Good practices are being implemented in the Legislature and in State capitals

Brazil implements several good practices in the area of transparency, participation and accountability beyond the central Federal government. This Review covers the open government agenda of the Federal government, but acknowledges that the subnational level and the Legislature are also contributing to the country's openness efforts with innovative and ambitious initiatives.

For example, the Federal Chamber of Deputies has an ambitious agenda of transparency, citizen participation and innovation led by the HackerLab – a permanent space for collaborative development of digital solutions. Beyond the famous case study of Porto Alegre, several municipalities in Brazil have developed initiatives of transparency, open government data, citizen participation and accountability. For example, the city of Sao Paulo has implemented a civic education program to increase awareness and literacy on open government. The municipality of Fortaleza has experimented with innovative approaches to citizen participation such as the 2019 Citizen Council where randomly selected citizens produced recommendations on waste management. In 2020, the cities of Osasco, Santa Catarina and Sao Paulo joined the local government program of the Open Government Partnership.

Brazil scores comparatively well in international indices and indicators in different areas of open government

As described in this section, open government initiatives have been a reality in Brazil for several years. Consequently, Brazil has been ranked in several indices on the topic.

- The **Rule of Law Index**' (World Justice Project, n.d.[36]) sub-dimension "Open Government" assesses the "extent to which a government shares information, empowers people with tools to

hold the government accountable, and fosters citizen participation in public policy deliberations". Brazil achieves 0.6 points, placing it above the global (0.53) and the regional (0.52) averages.

- In terms of **Rule of Law**, a necessary precondition for the success of open government, Brazil achieves a score of 0.5 out of 1 in 2021 according to the World Justice Project (World Justice Project, n.d.[36]). This places Brazil on the 77th rank out of 139 countries globally and on the 16th rank out of 32 in Latin America and the Caribbean.
- The **Civil liberties index** (Pemstein et al., 2021[37]) evaluates the "absence of physical violence committed by government agents and the absence of constraints of private liberties and political liberties by the government" (Coppedge et al., 2021, p. 292[38]). On a scale of 0 to 1 – with 1 representing the maximum – Brazil scores 0.70 in 2020, translating to rank 104 out of 179 countries.
- The **Global Right to Information Rating** evaluates Brazil's legal framework on access to information with 108 out of 150 points, placing it on rank 29 out of 134 countries (Centre for Law and Democracy, n.d.[39]). Not considering potential problems in the implementation of relevant legislative provisions, this indicates that there is a solid basis for a state transparent to its citizens.
- The **Government Transparency Index** (ERCAS, 2021[40]) combines elements of *de jure* and *de facto* transparency. Out of a maximum of 100 points, Brazil achieves 84 in regards to freedom of information legislation and international agreements with transparency provisions. The country scores 72 in respect to transparency in practice, e.g. the availability of all laws and regulation in online searchable form. In total, this places Brazil 6th in the LAC region and 30th globally.
- Brazil ranks 6th out of 117 countries in the 2019 **Open Budget Index** (International Budget Partnership, 2020[41]), certifying an "extensive amount of information available" on the central government's income and spending.
- Brazil scores 0.63 out of 1 in **OECD's OURData Index** in 2019 (OECD, 2020[42]). This score is the third highest in Latin America and above the OECD average (0.60). According to this index, Brazil's strength in the area of open government data lies in Availability (0.69) and Accessibility (0.78). Challenges exist in Promoting Awareness and Re-Use of open government data (0.42).
- In the **OECD Indicators of Regulatory Policy and Governance** (iREG), Brazil scores 2 out of 4 points regarding stakeholder engagement during the development of subordinate regulations (OECD, 2019). This indicates that Brazil is above LAC average, but slightly below OECD standard in relation to the adoption of good practices to engage with interested parties when developing new regulations.
- The **Accountability Index** (Lührmann, Marquardt and Mechkova, 2020[43]) assesses accountability understood as "constraints on the government's use of political power through requirements for justification for its actions and potential sanctions" (Coppedge et al., 2021, p. 285[38]). According to this Index, Brazil achieves 0.87 out of the maximum of 1 in 2020, meaning rank 56 out of 179 countries.
- The **OECD Digital Government Index** (OECD, 2020[44]) evaluates, among others, the extent to which the open by default principle is realised, i.e. whether a country makes government data and policy-making processes available to the public. A score of 0.61 out of 1 places Brazil on the 14th rank out of 33 OECD and selected non-member countries.

The OECD's approach to the Open Government Review of Brazil

What are Open Government Reviews?

OECD Open Government Reviews (OGRs) support national and subnational governments in their efforts to build more open, participatory and accountable governments that can restore citizens' trust and promote

inclusive growth. OGRs are based on the ten provisions of the OECD Council Recommendation on Open Government (OECD, 2017[1]).

Open Government Reviews provide in-depth analysis of countries' open government policies and practices coupled with actionable recommendations to help embed the principles of open government in the policy making cycle and to evaluate their impact. They usually cover multiple aspects of open government and benefit from different relevant areas of OECD work, including digital government, public sector innovation, public sector integrity, budgetary governance, territorial development, amongst others.

Because they are developed in partnership, OGRs are tailored to the needs of the requesting government. Accordingly, OGRs are sensitive of the specific context, such as cultural, historical and legal specificities, and inclusive of all relevant actors outside and within government (Box 2.1).

Box 2.1. Examples of past OECD Open Government Reviews and Scans

Open Government Scan of Lebanon (OECD, 2020[45])

Successive Lebanese governments have taken various steps to implement reforms based on the open government principles and aligned with the OECD Recommendation on Open Government. This Scan supports the government's efforts to build more transparent, participatory, and accountable institutions.

Open Government Review of Argentina (OECD, 2019[46])

Argentina has undertaken an ambitious reform to move beyond open government to become an "open state". Based on extensive data gathered from all branches and levels of government, as well as civil society, this Review assesses the progress made to date and highlights good practices. It also provides guidance on how Argentina can better align its public sector reform with the Recommendation to achieve its vision.

Open Government in Biscay (OECD, 2019[47])

This Review is the first OECD Open Government Review carried out in a subnational government of an OECD member country. It assesses the province of Biscay's initiatives regarding open government principles and how they impact the quality of public service delivery. This review has a focus on the implementation and the creation of a sound monitoring and evaluation system.

Open Government in Costa Rica (OECD, 2016[48])

Costa Rica has been one of the first countries to involve the executive, legislative and judicial branches of the state in the design and implementation of its national open government agenda. This review supports the country in its efforts to build a more transparent, participatory, and accountable government as an essential element of its democracy. It includes a detailed and actionable set of recommendations to help the country achieve its goal of creating an open state.

Source: OECD (2020[45]), Open Government Scan of Lebanon, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/d7cce8c0-en.; OECD (2019[46]), Open Government in Argentina, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/1988ccef-en.; OECD (2019[47]), Open Government in Biscay, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/e4e1a40c-en.; OECD (2016[48]), Open Government in Costa Rica, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/9789264265424-en.

The basis: The OECD Recommendation of the Council on Open Government and the OECD Framework for Assessing the Openness of Government

While initiatives to foster open government principles have been a priority on countries' policy agendas during the past decades, it is only in recent years that governments have started to move towards a more holistic and integrated approach to the promotion of openness (OECD, 2020[5]). The OECD has been at the forefront of this development and established the OECD Recommendation of the Council on Open Government in 2017 (OECD, 2017[1]). This document is the first internationally recognised legal instrument in the area. It contains ten provisions that cover all relevant elements of open government reforms and guide countries in their quest for more transparent, accountable, and participatory government (Box 2.2).

Box 2.2. The 10 provisions of the OECD Recommendation of the Council on Open Government

RECOMMENDS that Adherents develop, adopt and implement open government strategies and initiatives that promote the principles of transparency, integrity, accountability and stakeholder participation in designing and delivering public policies and services, in an open and inclusive manner. To this end, Adherents should:

1. take measures, in all branches and at all levels of the government, to develop and implement open government strategies and initiatives in collaboration with stakeholders and to foster commitment from politicians, members of parliaments, senior public managers and public officials, to ensure successful implementation and prevent or overcome obstacles related to resistance to change;
2. ensure the existence and implementation of the necessary open government legal and regulatory framework, including through the provision of supporting documents such as guidelines and manuals, while establishing adequate oversight mechanisms to ensure compliance;
3. ensure the successful operationalisation and take-up of open government strategies and initiatives by: (i) Providing public officials with the mandate to design and implement successful open government strategies and initiatives, as well as the adequate human, financial, and technical resources, while promoting a supportive organisational culture; (ii) Promoting open government literacy in the administration, at all levels of government, and among stakeholders.
4. co-ordinate, through the necessary institutional mechanisms, open government strategies and initiatives - horizontally and vertically - across all levels of government to ensure that they are aligned with and contribute to all relevant socio-economic objectives;
5. develop and implement monitoring, evaluation and learning mechanisms for open government strategies and initiatives by: (i) Identifying institutional actors to be in charge of collecting and disseminating up-to-date and reliable information and data in an open format; (ii) Developing comparable indicators to measure processes, outputs, outcomes, and impact in collaboration with stakeholders; and (iii) Fostering a culture of monitoring, evaluation and learning among public officials by increasing their capacity to regularly conduct exercises for these purposes in collaboration with relevant stakeholders.
6. actively communicate on open government strategies and initiatives, as well as on their outputs, outcomes and impacts, in order to ensure that they are well-known within and outside government, to favour their uptake, as well as to stimulate stakeholder buy-in;
7. proactively make available clear, complete, timely, reliable and relevant public sector data and information that is free of cost, available in an open and non-proprietary machine-readable format, easy to find, understand, use and reuse, and disseminated through a multi-channel

approach, to be prioritised in consultation with stakeholders;

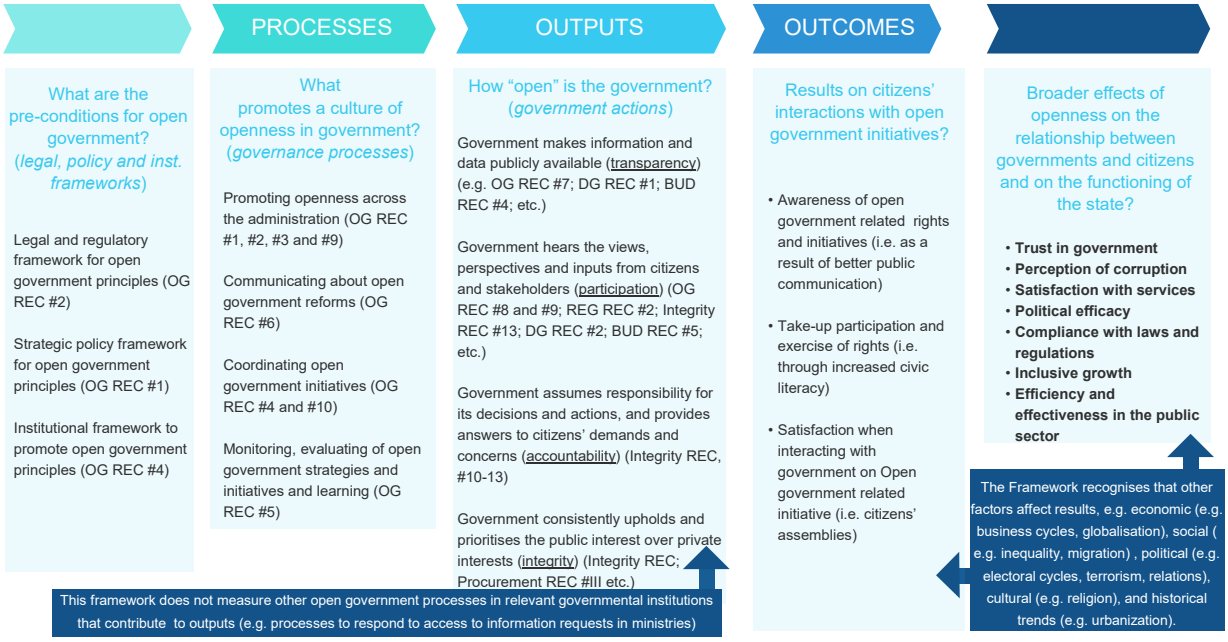
8. grant all stakeholders equal and fair opportunities to be informed and consulted and actively engage them in all phases of the policy-cycle and service design and delivery. This should be done with adequate time and at minimal cost, while avoiding duplication to minimise consultation fatigue. Further, specific efforts should be dedicated to reaching out to the most relevant, vulnerable, underrepresented, or marginalised groups in society, while avoiding undue influence and policy capture;
9. promote innovative ways to effectively engage with stakeholders to source ideas and co-create solutions and seize the opportunities provided by digital government tools, including through the use of open government data, to support the achievement of the objectives of open government strategies and initiatives;
10. while recognising the roles, prerogatives, and overall independence of all concerned parties and according to their existing legal and institutional frameworks, explore the potential of moving from the concept of open government toward that of open state.

Source: OECD Recommendation of the Council on Open Government (2017[1]), https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0438.

As the global open government movement has become more mature, an increasingly loud call for performance indicators to measure their contribution to broader policy goals such as trust in government and, more generally, to socio-economic outcomes has evolved. The OECD Recommendation of the Council on Open Government recognises “the need for establishing a clear, actionable, evidence-based, internationally recognised and comparable framework for open government, as well as its related process, output, outcome and impact indicators taking into account the diverse institutional and legal settings of the Members and non-Members” (OECD, 2017[1]).

The OECD Secretariat elaborated the OECD Framework for Assessing the Openness of Governments (OECD, 2020[5]), proposing a roadmap for the development of open government indicators. The framework clarifies the interplays between all the elements necessary for an open government culture of governance. The result is a systematic overview of how the inputs of open government can lead to increased openness and in turn contribute to the achievement of broader policy goals, such as trust in government (Figure 2.4).

Figure 2.4. The OECD Framework for Assessing the Openness of Government



Source: OECD (2020[5]), *A Roadmap for Assessing the Impact of Open Government Reform*, OECD Working Paper; OECD (2017), *Recommendation of the Council on Open Government*, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0438

The structure: The chapters of this Review

This Review reflects the Framework for Assessing the Openness of Governments (2020) through its different chapters. The first three chapters focus on inputs and processes of open government:

- Chapter 3: *The enabling environment for open government in Brazil: From multiplicity to integration* discusses the legal framework, strategic policy documents, and institutional coordination mechanisms necessary for the implementation of open government initiatives.
- Chapter 4: *Strengthening governance processes and mechanisms for an integrated open government agenda in Brazil* focuses on key processes that should be led by any government that aims to promote a coherent approach to the creation of a culture of open government, including fostering open government literacy and monitoring and evaluation of open government policies and practices.
- Chapter 5: *Civic space as an enabler of open government in Brazil* explains the role of civic space as a facilitator of inclusive and effective open government initiatives. It includes a review of the key institutional, legal and policy frameworks governing civic space in Brazil, followed by an analysis of current implementation challenges and opportunities.

The following chapters primarily take into consideration the outputs and outcomes of open government, each dealing with a distinct area:

- Chapter 6: *Citizen participation in Brazil: Involving citizens and stakeholders in policy making and service delivery* analyses participatory practices in Brazil. It examines the existing frameworks that create the enabling environment for participation and reviews the implementation of participatory processes at the Federal level.
- Chapter 7: *Transparency for Open Government in Brazil* provides an in-depth assessment of the legal and institutional framework for access to information, the mechanisms and tools for proactive

and reactive disclosure, as well as the role of transparency policies to enable stakeholder engagement in policy-making.

- Chapter 8: *Towards a more accountable and responsive government in Brazil* focuses on the current status of accountability in Brazil and seeks to identify ways to improve its implementation within a broader integrated open government agenda. It elucidates the main web of public bodies with a mandate for accountability and suggests recommendations to improve upon their autonomy, independence, and responsibilities.
- Chapter 9: *Open Government Data in Brazil* offers an assessment of the availability, accessibility and government suppport for data re-use in Brazil. It highlights current challenges and next steps to advance Brazil's open government data agenda.

While the Open Government Review of Brazil is the first, all forthcoming OECD Open Government Reviews will include a chapter dedicated to the protection and promotion of civic space. By fully integrating civic space into its governance work, the OECD is advocating for an expansive and holistic understanding of open government that explicitly recognises the importance of the enabling environment. To support this, the OECD has adopted an analytical framework for civic space (OECD, 2020[49]) which forms the basis of its recommendations in the area of civic space (see Chapter 5).

Box 2.3. OECD work on the protection and promotion of civic space as an enabler of open government reforms

The OECD defines civic space as the set of legal, policy, institutional and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organise and participate in public life. The OECD recognises a healthy civic space as a precondition for and facilitator of open government initiatives. Governments need to ensure that their civic space is open, protected and promoted through clear policies and legal frameworks that set out the rules of engagement between citizens and the state, framing boundaries, and defending individual freedoms and rights (OECD, 2016[50]).

In 2019, the OECD and its partners launched the OECD Observatory of Civic Space to promote and protect civic space as a precondition for good governance and inclusive growth. In this regard, the OECD publishes a Global Civic Space Report (forthcoming), which outlines key trends in the field, and provides Civic Space Scans for selected countries.

A Civic Space Scan is a qualitative assessment of the laws, policies, institutions, and practices that support civic space in OECD member and partner countries. Designed to protect fundamental freedoms and promote good practice, the scans are accessible studies that include tailored, timely, and actionable recommendations to help governments respond to evolving challenges and opportunities in their efforts to protect and protect civic space. The first civic space scan has been published for Finland (OECD, 2021[51]). Currently, civic space scans are ongoing for Portugal and Romania.

Source: OECD (2016[50]), Open Government: The Global Context and the Way Forward, OECD Publishing: Paris, https://doi.org/10.1787/9789264268104-en; OECD (2021[51]), *Civic Space Scan of Finland*, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/f9e971bd-en.

The methodology: The peer review

OGRs involve peer reviewers from OECD Member and Partner countries. These are public officials, experts in the field of open government, which enable peer dialogue and share their experiences. Throughout the process, this Review benefitted from the input of peer reviewers from:

- **Argentina:** Ms Carolina Cornejo, Director of Open Government, Subsecretariat of Open Government and Digital Country, Secretariat for Public Innovation, Chief of the Cabinet of Ministers.
- **Colombia:** Mr Armando José Navarro Burgos, Coordinator of Open Government, Anti-Corruption Innovation Lab Group, Presidency of the Republic of Colombia.

The OECD Secretariat and the CGU selected the peer reviewers in close coordination. The selection is based on the experiences Argentina and Colombia had in respect to their countries' open government agenda and the value added this presents to Brazil. The concerned public officials kindly volunteered for their involvement.

These two peer reviewers were constantly engaged during the collection of evidence and the drafting of this review. They actively participated during the interviews conducted with a variety of stakeholders (see Interviews below). Further, they provided feedback on (intermediate) findings and recommendations by the OECD secretariat. With their comments, they enriched the present analysis from a practitioner's perspective.

The scope: The federal open government agenda

Brazil's size and the complexity of its social, economic and political structures demand setting a clearly defined scope for this review. In close consultation with the Brazilian government, the Secretariat therefore decided to focus primarily on the open government agenda of the federal level. Consequently, a range of open government frameworks and practices at other levels of government could not be considered in detail, especially at subnational level.

Notwithstanding the focus on the federal level, the Open State Approach remains highly relevant to this OECD Open Government Review. All chapters take a holistic perspective on open government that – to the extent possible – includes all relevant public stakeholders. Therefore, the analyses make reference not only to the executive branch and its entities, but also Parliament, independent public institutions and others.

The ambition: Support Brazil in its move towards an integrated open government agenda

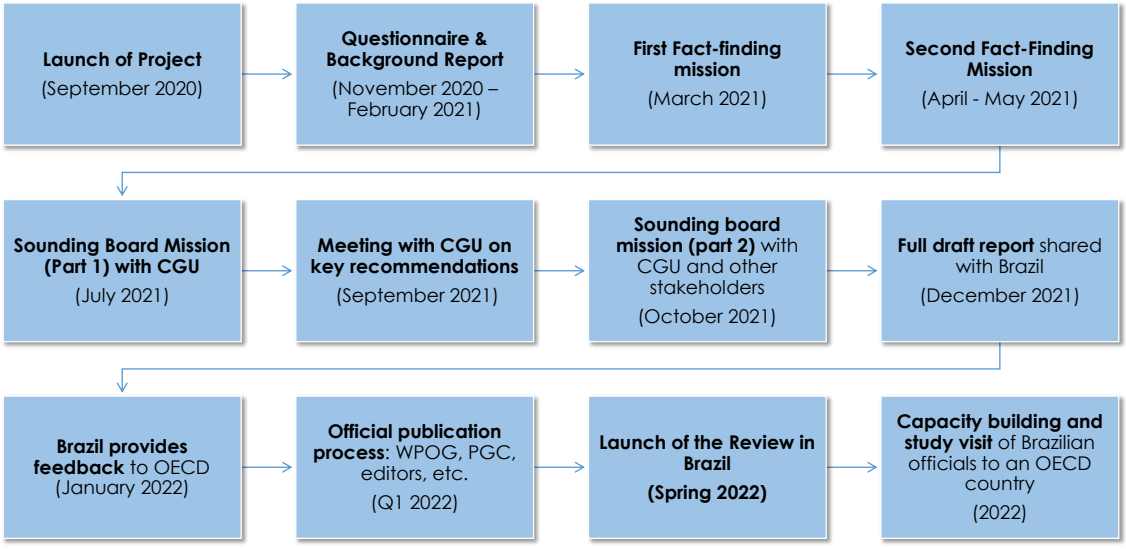
Brazil has been actively designing and implementing open government initiatives. However, the approach has not always been fully effective as the open government agenda appears to be fragmented. A consolidated and holistic open government ecosystem would contribute to delivering full impact. This enabling environment encompasses a policy for open government, responsible institutions, and co-ordination processes between them. Paired with a high-level political commitment and a compelling definition of open government, this presents the basis for more fruitful open government initiatives. In particular, chapters 3 and 4 on the "inputs" of open government outline recommendations on how Brazil could move closer to an integrated open government agenda.

The evidence: The OECD Open Government Review of Brazil is based on extensive data collection

Roll-out

The Review was formally launched during a high-level event with more than 300 participants from the Brazilian public administration and civil society on September 2, 2020, by Mr. Wagner de Campos Rosário, Minister of the Office of the Comptroller General, Mr. Walter Souza Braga Netto, Chief of Staff of the Presidency and Mr. Jeffrey Schlagenhauf, Deputy Secretary-General, OECD. This has also marked the beginning of the data collection process including a scoping mission as well as a fact-finding mission followed by several follow-up interviews The OECD presented initial findings and related recommendations to the Brazilian government and the peer reviewers during sounding board missions in July and October 2021. The full draft report then shared the Brazilian government in December 2020.

Figure 2.5. Timeline of the Open Government Review of Brazil



Sources

The OECD Secretariat collected evidence from three main sources: desktop research, interviews and surveys.

Interviews

The OECD conducted a scoping mission as well as a fact-finding missions and follow-up interviews. These events had the purpose to consult with a broad range of stakeholders. The interviews were held under Chatham House rules. All interviews took place virtually. In total, the OECD conducted 42 interviews with a length of 60 – 90 minutes each (Table 2.5 and Table 2.6).

Table 2.5. Scoping mission, 9-11 December, 2020

Type of interviewee	Name of affiliated institutions
Government	Comptroller General of the Union, Federal Government of Brazil
Academia	1 Brazilian National Institute of Science & Technology in Digital Democracy (Instituto Nacional de Ciência e Tecnologia em Democracia Digital) 2 Center for Political Research (Centre de recherches politiques de Sciences Po) at Sciences Po 3 OGP IRM for Brazil 4 Open Government Institute (Instituto Governo Aberto) 5 Political Observatory of Latin America and the Carribean (Observatoire politique de l'Amérique latine et des Caraïbes) at Sciences Po
Civil Society Organisations	1 Ethos 2 Igarapé Institute 3 Open Knowledge Foundation Brasil 4 Socio-environmental Institute (Instituto Socioambiental) 5 The Articulation of Indigenous Peoples of Brazil (Articulação dos Povos Indígenas do Brasil) 6 Transparency Brazil (Transparência Brasil)

Source: Author's own elaboration

Table 2.6. Fact-finding mission (1-12 March 2021) and follow-up interviews

Type of interviewee	Name of affiliated institution
Public stakeholders	Legislative actors: 1 Chamber of Deputies (Câmara dos Deputados) Judicial actors: 2 Federal Court of Accounts (Tribunal de Contas da União) (9 June) 3 The Supreme Federal Court (Supremo Tribunal Federal) (19 July) Executive actors: 4 Civil House of the Presidency (Casa Civil da Presidencia) 5 Civil Society's Advisory Working Group on Open Government (Grupo de Trabalho da Sociedade Civil (WG) para aconselhamento sobre o Governo Aberto) 6 Federal *Ouvidoria*'s Office (Ouvidoria-General de la Unión) within the CGU 7 General *Ouvidoria* in the Government of the Federal District (Ouvidoria-Geral do Distrito Federal) 8 Ministry of Communications (Ministério das Comunicações) 9 Ministry of Economy (Ministério da Economia) 10 Ministry of Education (Ministério da Educação) 11 Ministry of Environment (Ministério do Meio Ambiente) 12 Ministry of Foreign Affairs (Ministério das Relações Exteriores) 13 Ministry of Health (Ministério da Saúde) 14 Ministry of Justice and Public Security (Ministério da Justiça e Segurança Pública) 15 Ministry of Science, Technology and Innovation (Ministério da Ciência, Tecnologia, Inovações) 16 Ministry of Women, Family and Human Rights (Ministério da Mulher, da Família e dos Direitos Humanos) 17 National Council for Human Rights (Conselho Nacional de Direitos Humanos - CNDH) 18 National Council for Human Rights (Conselho Nacional de Direitos Humanos) 19 National Council on Education (Conselho Nacional de Educação) 20 National Council on Health (Conselho Nacional de Saúde) 21 National School of Public Administration (Escola Nacional de Administração Pública) 22 *Ouvidoria* in the Ministry of Infrastructure (Ouvidoria do Ministério da Infraestrutura) 23 Public Defender's Office 24 Secretariat for Transparency and Prevention of Corruption (Secretaria de Transparência e Prevenção da Corrupção) of Comptroller General of the Union (CGU) 25 Secretariat of Government of the Presidency of the Republic (Secretaría General de la Presidencia de la República)

	26 Social Communication Office (Assessoria de Comunicação Social) of Comptroller General of the Union (CGU) Subnational actors: 27 Secretariat of Transparency (Secretaria Municipal de Transparência e Controladoria), Municipal Government of Porto Alegre
Non-public stakeholders	Private sector representatives: 1 Brazilian Association of Information Technology and Communication Companies (Associação Brasileira de Empresas de Tecnologia da Informação e Comunicação) 2 Brazilian Federation of Banks (Federação Brasileira de Bancos) 3 Confederation of Agriculture and Livestock of Brazil (Confederação da Agricultura e Pecuária do Brasil) 4 National Confederation of Industry (Confederação Nacional da Indústria) 5 National Confederation of Trade in Goods, Services and Tourism (Confederação Nacional do Comércio de Bens, Serviços e Turismo) Civil society organisations: 6 AAVE Group – AIDS: SUPPORT, LIFE, HOPE (Grupo AAVE – Aids: Apoio, Vida, Esperança) 7 Amnesty International (Anistia Internacional) 8 Article 19 (Artigo 19) 9 Articulation of the Indigenous Peoples of Brazil (Articulação dos Povos Indígenas do Brasil) 10 Brazilian Association of Investigative Journalism (Associação Brasileira de Jornalismo Investigativo) 11 Climate observatory (Observatório do Clima) 12 Coalition for Rights on the Net (Coalizão Direitos na Rede) 13 Conectas 14 Coordination of Indigenous Organizations of the Brazilian Amazon (Coordenação das Organizações Indígenas da Amazônia Brasileira) 15 Criola 16 Data Privacy Brasil 17 Delibera 18 Geledés 19 Getulio Vargas Foundation (7 June) 20 Grupo Esquel Foundation (Fundação Grupo Esquel) 21 Human Rights Watch 22 Igarapé Institute 23 Imaflora 24 Institute of Action (Instituto Atuar) 25 Institute of Collective Law (Instituto de Direito Coletivo) 26 Institute of Socioeconomic Studies (Instituto de Estudos Socioeconomicos) 27 Land of Rights (Terra de Direitos) 28 LATINNO Project (8 April) 29 National Coordination of Articulation of Rural Black Quilombola Communities (Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas) 30 Oncoguia Institute (Instituto Oncoguia) 31 ONG Chapada 32 Open Government Institute (Instituto de Governo Aberto) 33 Public Agenda (Agenda Publica) 34 Socio-environmental Institute (Instituto Socioambiental) 35 The Life Center Institute (Instituto Centro de Vida) 36 UNEafro Brasil 37 Vladimir Herzog Institute (Instituto Vladimir Herzog) 38 WWF Brasil

Source: Author's own elaboration

Surveys

An extensive Background Report was compiled by the CGU – the main counterpart of the review process – in January 2021. The Background Report was based on a detailed questionnaire provided by the OECD. The CGU also answered the 2020 OECD Survey on Open Government. Additionally, five targeted surveys were sent out to different types of stakeholders (Table 2.7), namely:

- public institutions that are part of the executive branch;
- the legislative branch;
- the judicial branch;
- sub-national governments at both state and municipal level; and
- non-public stakeholders.

Table 2.7. Surveys conducted for the OGR Brazil

Type of stakeholder and data collection period		Institution
33 public institutions, December 2020 – February 2021	1	Anísio Teixeira National Institute for Educational Studies and Research (Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira)
	2	Brazilian Institute of the Environment and Renewable Natural Resources (Instituito Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis)
	3	Central Bank of Brazil (Banco Central do Brasil)
	4	Civil House of the Presidency of the Republic (Casa Civil da Presidência da República)
	5	Federal Highway Police (Polícia Rodoviária Federal)
	6	Federal Police (Polícia Federal)
	7	General Secretariat of the Presidency of the Republic (Secretaria-Geral da Presidência da República)
	8	Ministry of Agriculture, Livestock and Food Supply (Ministério da Agricultura, Pecuária E Abastecimento)
	9	Ministry of Communications (Ministério das Comunicações)
	10	Ministry of Defense (Ministério da Defesa)
	11	Ministry of External Relations - Inspectorate General for Foreign Service (Ministério das Relações Exteriores - Inspetoria-Geral do Serviço Exterior)
	12	Ministry of Health (Ministério da Saúde)
	13	Ministry of Infrastructure (Ministério da Infraestrutura)
	14	Ministry of Justice and Public Security (Ministério da Justiça e Segurança Pública)
	15	Ministry of Mines and Energy (Ministério de Minas e Energia)
	16	Ministry of Regional Development (Ministério do Desenvolvimento Regional)
	17	Ministry of Science, Technology and Innovations (Ministério da Ciência, Tecnologia e Inovações)
	18	Ministry of Women, Family and Human Rights (Ministério da Mulher, da Família e dos Direitos Humanos)
	19	National Archive (Arquivo Nacional)
	20	National Civil Avitation Agency (Agência Nacional de Aviação Civil)
	21	National Electric Energy Agency (Agência Nacional de Energia Elétrica)
	22	National Health Surveillance Agency (Agência Nacional de Vigilância Sanitária)
	23	National Institute of Social Security (Instituto Nacional do Seguro Social)
	24	National Land Transport Agency (Agência Nacional de Transportes Terrestres)
	25	National Penitentiary Department (Departamento Penitenciário Nacional)
	26	National Petroleum, Natural Gas and Biofuels Agency (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis)
	27	National Supplementary Health Agency (Agência Nacional de Saúde Suplementar)
	28	National Telecommunications Agency (Agência Nacional de Telecomunicações)
	29	National Water and Basic Sanitation Agency (Agência Nacional de Águas e Saneamento Básico)
	30	National Waterway Transport Agency (Agência Nacional de Transportes Aquaviários)
	31	Secretariat for Climate and International Relations, Ministry of Environment (Secretaria de Clima e Relações Internacionais, Ministério do Meio Ambiente)
	32	Secretariat of Government of the Presidency of the Republic (Secretaria de Governo da Presidência da República)

	33	Solicitor General of the Union (Advocacia-Geral da União)
14 subnational governments, May – June 2021	States:	
	1	Alagoas
	2	Espríto Santo
	3	Minais Gerais
	4	Paraíba
	5	Parana
	6	Pernambuco
	7	Rio de Janeiro
	8	Rio Grande do Sul
	9	Santa Catarina
	10	Tocantins
	Municipalities:	
	1	Belo Horizonte
	2	Curitiba
	3	Rio Branco
	4	São Paulo
2 institutions from the legislative branch, January – February 2021	1	Chamber of Deputies (Câmara dos Deputados)
	2	Senate (Senado Federal)
3 institutions from the judicial branch, January – February 2021	1	National Council of Justice (Conselho Nacional de Justica)
	2	Superior Electoral Court (Tribunal Superior Eleitoral)
	3	Superior Labour Court (Tribunal Superior do Trabalho)
24 non-public stakeholders, December 2020 – February 2021	1	Article 19 (Artigo 19)
	2	Brazilian Association of Collective Health (Associação Brasileira de Saúde Coletiva)
	3	Brazilian Association of Fundraisers (Associação Brasileira de Captadores de Recursos)
	4	Brazilian Institute for Planning and Taxation (Instituto Brasileiro de Planejamento e Tributação)
	5	Collaboratory for Development and Participation (COLAB - Colaboratório de Desenvolvimento e Participação)
	6	Conectas
	7	Datapedia
	8	Democratic City Institute (Instituto Cidade Democrática)
	9	Educadigital Institute (Instituto Educadigital)
	10	Ethos Institute of Business and Social Responsibility (Instituto Ethos de Empresas e Responsabilidade Social)
	11	Freedom Network of the Institute Sou da Paz (Rede Liberdade do Instituto Sou da Paz)
	12	IMAFLORA
	13	Innovation Centre for Brazilian Education (Centro de Inovação para Educação Brasileira)
	14	Institute for Socioeconomic Studies (Instituto de Estudos Socioeconômicos)
	15	Institute of Technology and Society in Rio (Instituto de Tecnologia e Sociedade do Rio)
	16	Life Center Institute (Instituto Centro de Vida)
	17	Movement Against Electoral Corruption (Movimento De Combate A Corrupção Eleitoral)
	18	Non-employment Idealist Movement associated with different organizations (Movimento Idealistas sem vínculos empregatícios, associado a diferentes organizaçõe)
	19	Open Government Institute (Instituto de Governo Aberto)
	20	Open Knowledge Brasil
	21	Public Agenda (Agenda Pública)
	22	Social Observatory of Brazil (Observatório Social do Brasil)
	23	Transparency Brazil (Transparência Brasil)
	24	Transparent Pernambuco (Pernambuco Transparente)

Source: Author's own elaboration.

Complementarity: The Review is part of the OECD's larger collaboration with Brazil

Brazil and the OECD have been co-operating since 1994 and Brazil has been invited to all OECD meetings at Ministerial level since 1999. The OECD Council at Ministerial level officially recognised and strengthened this partnership by signing the Resolution on Enlargement and Enhanced Engagement (OECD Council at

Ministerial Level, 2007[52]) on 16 May 2007. This document defines Brazil as a "Key Partner" of the OECD besides China, India, Indonesia and South Africa. Consequently, Brazil can:

- access Partnerships in OECD Bodies;
- adhere to OECD instruments;
- integrate into OECD statistical reporting and;
- access sector-specific peer-reviews.

As a result of this long-standing relationship, Brazil today supports the work in various OECD Committees and participates in several bodies and projects. For example, Brazil has been part of the periodical OECD Economic surveys since 2001 (OECD, 2001[53]).

In May 2017, Brazil officially expressed its interest in becoming an OECD Member. Thereafter, the cooperation has been intensified to ensure a convergence in standards between OECD countries and Brazil concerning a broad range of governance issues. In January 2022, the OECD Council decided to open accession discussions with six candidates to OECD Membership, among them Brazil.

In respect to Open Government and public governance more generally, Brazil has become co-chair of the OECD Network on Open and Innovative Government in Latin America and the Caribbean in 2018. It adheres to the OECD Recommendation of the Council on Open Government (2017) since 2019.

The Open Government Review Brazil is anchored within a broader Co-operation Agreement on Public Integrity and Open Government between the Brazilian government and the OECD. This cooperation has led to a first Review on "Mainstreaming Integrity Policies in the Federal Executive Branch" (OECD, 2021[54]) and will be complemented by a full-fledged Integrity Review of Brazil. All Reviews that are part of this Co-operation Agreement are fully coordinated and aligned with each other. Recently, Brazil has further been subject to a Centre of Government Review (OECD, forthcoming) and a Digital Government Review (OECD, 2018[55]).

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World Justice Project (n.d.), *Rule of Law Index*, https://worldjusticeproject.org/rule-of-law-index/global. [36]

Notes

[1] The Open Government Recommendation (OECD, 2017[1]) defines "stakeholders" as "any interested and/or affected party, including: individuals, regardless of their age, gender, sexual orientation, religious and political affiliations; and institutions and organisations, whether governmental or non-governmental, from civil society, academia, the media or the private sector".

[2] The OECD defines civic space as the set of legal, policy, institutional, and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organise, and participate in public life. Chapter 5 on civic space covers Brazil's efforts in facing the mentioned challenges, as well as the areas of opportunity for Brazil to promote a healthier and vibrant civic space in favour of open government.

[3] The other countries were Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States.

[4] Colombia is the other co-chair of the OECD Network on Open and Innovative Government in Latin America and the Caribbean

[5] Specific discussions on these documents can be found in the respective implementation chapters of this Review. For example, Chapter 7 on Transparency discusses that Brazil has signed but failed to ratify the Regional Agreement on

Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazú Agreement

[6] IN 1996, UN Habitat recognized Porto Alegre's participatory budgeting as the Best Practice for Urban Management, and since then has supported the spread of this practice through its Participatory Habitat Initiative.

3 The enabling environment for open government in Brazil: From multiplicity to integration

This chapter takes stock of Brazil's legal, policy and institutional frameworks for open government and provides recommendations for their consolidation. It starts by discussing existing definitions of the concept open government in Brazil, followed by an overview of key laws, policies, and institutions that contribute to the promotion of openness in the country. The chapter finds that - like those of most OECD Member Countries - Brazil's enabling environment for open government is very wide, largely due to the country's long-term commitment to open government reforms. While many of the country's open government initiatives are mature and compare well with OECD good practices, Brazil could benefit from becoming one of the first countries worldwide to create a dedicated, integrated and coherent open government ecosystem. The creation of such an ecosystem could include the adoption of Brazil's first holistic Federal Open Government Strategy.

Introduction

In most countries, the enabling environment for open government is the result of a combination of different layers of laws, policies and institutions, coupled with very diverse implementation modalities and practices. Traditionally, public policies that aim to foster to the open government principles of transparency, accountability, integrity, and stakeholder participation have most commonly been treated as separate policy agendas, which, by themselves, have often resulted in positive outcomes for citizens. The concept of open government aims to further empower transparency, accountability, integrity, and stakeholder participation agendas by inviting countries to integrate them under the concept of open government. These integrated open government agendas put all policies that aim to foster government-citizen relationships under one common umbrella in order to achieve even more and better outcomes for citizens. For example, integrating the access to public sector information and open government data agendas under a coherent open government approach has shown to produce tangible results in terms of higher quality and accessibility of data and information.

The design and implementation of such an integrated open government approach is an ambitious undertaking which, so far, has been achieved by very few countries. It requires that countries create links between policy communities that have traditionally worked in silos. Ultimately, it requires the development of an administrative culture that is citizens-centred and aligned with the principles of open government. The pursuit of an integrated open government agenda therefore necessitates the creation of a dedicated enabling environment and, ultimately, a fully integrated open government ecosystem.

Box 3.1. Key definitions

Open government policies: Public policies that are linked to the promotion of the open government principles, ranging from citizen / stakeholder participation to open government data and transparency, etc.

Open government agenda: Public policy agenda to foster the open government principles in a country. The open government agenda usually consists of a number of open government policies.

Open government initiative: Actions undertaken by the government, or by a single public institution, to achieve specific objectives in the area of open government, ranging from the drafting of laws to the implementation of specific activities such as online consultations;

Open government strategy: a document that defines the open government agenda of the central government and/or of any of its sub-national levels, as well as that of a single public institution or thematic area, and that includes key open government initiatives, together with short, medium and long-term goals and indicators;

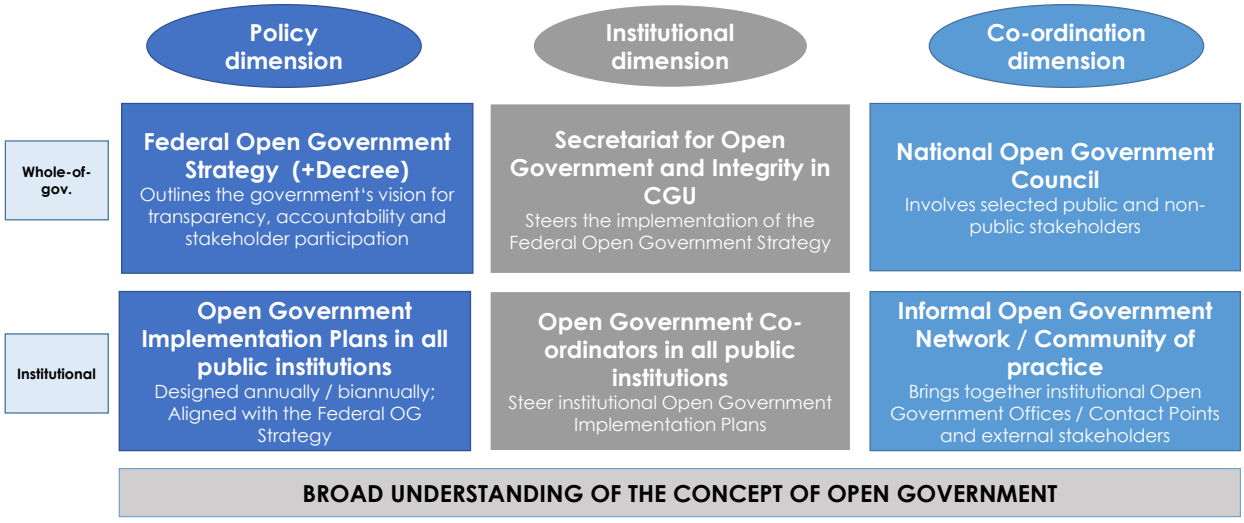
Source: Author's own elaboration based on OECD (2017[1]).

According to the *OECD Framework for Assessing the Openness of Government* (OECD, 2020), the inputs for open government reforms consist of laws, policies, and institutions:

- The **legal and regulatory framework** sets the preconditions for governments to put the open government principles into practice. It defines the rules and determines rights and obligations for citizens, stakeholders and the government. Traditionally, the legal framework is composed of laws that contain provisions on different open government policies (e.g. citizen participation, open data, accountability, etc.) as well as references to fundamental democratic rights (e.g. freedom of expression, association and assembly).

- The **policy framework** for open government provides policy guidance to the government for the medium or long term. It sets the roadmap for open government reforms defining the "what" and the "how" (OECD, 2019[2]). The policy framework usually consists of policy documents (e.g. strategies, action plans) that detail initiatives, commitments and projects that aim to foster the open government principles. Evidence suggests that an integrated open government approach can benefit from the adoption of a whole-of-government **Open Government Strategy**.
- The **institutional framework** for open government consists of all those public institutions that have responsibilities that are related to the co-ordination, promotion, oversight and implementation of different open government policies across government. Evidence suggests that an integrated open government approach can benefit from the creation of a dedicated **Open Government Office**.

Figure 3.1. Model of an enabling environment for an integrated open government agenda



Source: Author's own elaboration.

This Chapter is the first of the two dedicated to the governance of open government reforms and should, hence, be read in conjuncture with Chapter 4 on *Governance Processes and Mechanisms for an Integrated Open Government Agenda in Brazil*. Together, they present a roadmap for Brazil to move towards a fully integrated open government agenda. A joint conclusion for both Chapters is included at the end of Chapter 4.

The present Chapter assesses Brazil against key elements of Provisions 1, 2 and 4 of the OECD Recommendation of the Council on Open Government (Box 3.2). It starts by discussing existing definitions of the concept open government in Brazil, followed by an overview of key laws, policies, and institutions that contribute to the promotion of openness in the country. The Chapter finds that - like those of most OECD Member Countries - Brazil's enabling environment is very wide, largely due to the country's long-term commitment to open government reforms. While many of the country's open government initiative are mature and compare well with OECD good practices, Brazil could benefit from becoming one of the first countries worldwide to create a dedicated, integrated and coherent open government ecosystem, which moves the open government agenda beyond activities related to Brazil's participation in the Open Government Partnership (OGP). The Chapter acknowledges that the creation of such an ecosystem may require different kinds of policy, legal and institutional changes and therefore proposes an ambitious long-term agenda, which is complemented by short- and medium-term milestones that are proposed in the implementation Chapters of this Review (Chapters 6-8).

Throughout, this Chapter provides policy advice based on Brazil's responses to the *2020 OECD Survey on Open Government* (hereafter "OECD Survey") and draws on experience from OECD Member and Partner Countries to illustrate good practices in this field.

Box 3.2. Relevant provisions of the OECD Recommendation of the Council on Open Government

Provision 1

"Take measures, in all branches and at all levels of the government, to develop and implement open government strategies and initiatives in collaboration with stakeholders and to foster commitment from politicians, members of parliaments, senior public managers and public officials, to ensure successful implementation and prevent or overcome obstacles related to resistance to change".

Provision 2

"Ensure the existence and implementation of the necessary open government legal and regulatory framework, including through the provision of supporting documents such as guidelines and manuals, while establishing adequate oversight mechanisms to ensure compliance".

Provision 4

"Coordinate, through the necessary institutional mechanisms, open government strategies and initiatives - horizontally and vertically - across all levels of government to ensure that they are aligned with and contribute to all relevant socio-economic objectives".

Source: OECD (2017[1]), Recommendation of the Council on Open Government, OECD, Paris, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0438 (accessed 30 November 2018).

Adopting a single definition of open government as an enabler of an integrated open government approach

Open government is a wide concept with multiple definitions (see Chapter 2 and Chapter 3). Evidence gathered by the OECD shows that the way a country defines the concept of open government can have an important impact on the design and implementation of its open government agenda. In any country, delineating an official concept of open government and defining what it entails is therefore a pivotal first step to the development of a holistic and integrated open government approach (OECD, 2019[2]). According to the OECD (2016[3]), a country's definition of open government should be co-created with a wide range of stakeholders to ensure that it is recognised and supported by the whole of government as well as non-public actors. Box 3.3 provides an overview of the potential benefits of a solid definition of open government.

Box 3.3. The benefits of a solid definition of open government

The OECD Report on Open Government: The Global Context and the Way Forward (OECD, 2016) explains why a good definition of open government is crucial:

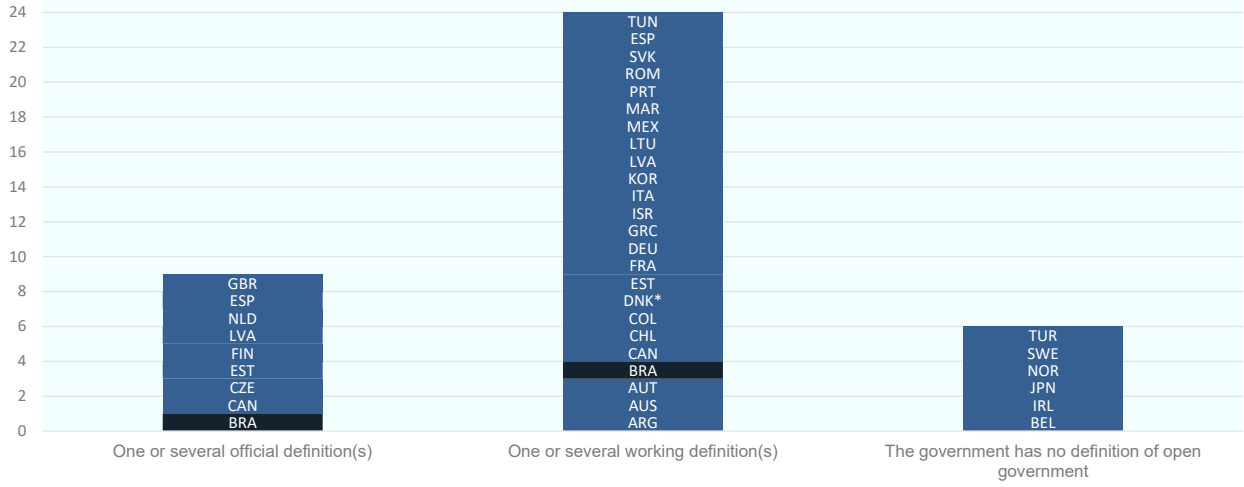
- It informs the public about the essential elements of open government, and the extent and limitations of the term.
- It facilitates common understanding and usage of the term, and aligns all stakeholders and policy makers towards the same goals.
- It facilitates robust analysis of the impacts of open government strategies and initiatives across different institutions and levels of government.
- It supports international comparisons of open government strategies and initiatives.

Source: OECD (2016[3]), Open Government: The Global Context and the Way Forward, OECD Publishing, Paris, https://doi.org/10.1787/9789264268104-en.

Brazil currently has multiple definitions of open government in place

According to preliminary results of the *2020 OECD Survey on Open Government* (OECD, 2021[4]), 30 (81.1%) out of the responding OECD Members and Adherents to the OG Recommendation have adopted either an official or a working definition of open government (Figure 3.2). Most of these definitions are inspired by the OECD's definition[1] (61.3%) or the OGP's definition (67.7%) and they most commonly link open government with the concepts of transparency, accountability, and citizen participation (OECD, forthcoming)[2].

Figure 3.2. Availability of definition(s) of open government in OECD countries and adherents to the OECD Recommendation of the Council on Open Government



Note: N=37. Data for Denmark is preliminary.
Source: OECD (2021[4]), 2020 OECD Survey on Open Government

The Brazilian government currently uses different definitions of open government:

- Decree 10160 from 2019 defines open government as “a policy that aims to enhance transparency and access to information, strengthen integrity and improve public service delivery”.
- The CGU’s official website highlights that “open government refers to a new vision of the public administration that promotes projects and actions based on the following principles: transparency (…); accountability (…); citizen participation (…); and technology and innovation (…)” (CGU, 2020[5]).
- Interviews conducted for this Open Government Review revealed that many public stakeholders also commonly use the OECD’s definition (see Chapter 3).

In their answers to the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* (OECD, 2021[6]), 70% of the responding institutions indicated that they used one of these definitions to guide their institutional open government agendas. However, interviews conducted during the OECD fact-finding missions revealed that conceptual understanding of open government are diverging - and sometimes even contradictory - across the Brazilian public sector and civil society. Most interviewed stakeholders associated open government mostly with the release of open government data and / or with the concept of transparency. Policies and practices relating to citizen and stakeholder participation, integrity, and accountability were less commonly seen as an integral part of the definition.

Brazil could consider adopting a single definition of open government

The existence of different definitions can constitute an obstacle to the harmonious implementation of open government reforms across the Brazilian public sector. In order to enable an integrated open government approach and create a common understanding of the potentials (and limitations) of open government reforms, Brazil could consider (co-)creating (i.e. by designing a new definition) or adopting (i.e. by selecting one of the existing definitions) a single definition of open government that is accepted by the whole public sector and external stakeholders alike. In case Brazil decides to co-create a new definition of open government, the country could consider including civic space and democracy-considerations in it (or in its explanatory note) to explain how the concepts are linked and contribute to each other. The process to design the next OGP action plan, or the process to design the recommended Federal Open Government Strategy (see below), could present an opportunity to launch a discussion on a single definition.

No matter if Brazil ultimately decides to adopt an existing definition or co-create a new definition of open government, once adopted, the single definition should be communicated widely to ensure that all public officials and non-public stakeholders are aware of it. In an ideal case, the President, the Cabinet or a Minister would endorse the single definition (e.g. through decree) and it would be used in speeches and official documents. As the institution leading Brazil’s open government agenda, the Office of the Comptroller General of the Union (CGU) could consider organising a dedicated communications campaign to promote the single definition.

Moving towards a single definition does not mean that all institutions necessarily have to use exactly the same definition (OECD, 2019[2]). Instead, it implies that all public and non-public stakeholders share a common understanding of what open government entails (and does not entail), and work towards a shared vision of openness.

Streamlining the legal and regulatory framework for open government in Brazil

A solid legal and regulatory framework for open government is an essential pre-condition for successful reforms (OECD, 2019[2]). Evidence collected by the OECD suggests that the underlying legal and regulatory basis for open government in OECD Member and Partner Countries is usually very large (OECD, forthcoming[7]). In most countries, it includes, among others, provisions relating to the principles of open government in countries' constitutions, as well as laws and regulations on stakeholder participation, anti-corruption, the protection of personal data and national archives, digital government, open data, whistle-blower protection, etc. (Box 3.4).

This section benchmarks Brazil against Provision 2 of the OG Recommendation[3], introducing the main laws, regulations and international treaties underpinning open government reforms in the country. A detailed analysis of specific laws and regulations and their effective implementation can be found in the implementation Chapters of this Review (see for example a discussion on the access to information law in Chapter 7 on Transparency).

Box 3.4. The legal and regulatory framework for open government reforms in OECD member and partner countries

- Laws and regulations on **access to public information** (ATI) form the backbone of an open government. All OECD countries now have these kinds of laws in place, foreseeing – in most cases – both proactive and reactive disclosure of information and data (OECD, forthcoming). ATI laws are often coupled with laws on the protection of personal data and provisions included in national archives laws / public record laws. In some countries, access to information laws also include specific rights and obligations regarding open government data.
- In some countries, laws on **citizen participation** complement constitutional rights and obligations (e.g. Colombia's Statutory Law on Citizen Participation from 2015). In addition, most countries have put in place legal requirements to involve stakeholders in law-making and in regulatory policy and in specific policy processes (e.g. environment, infrastructure, land-use). Moreover, forms of democratic participation, i.e. political rights (e.g. elections, petitions, referenda, etc.), are usually regulated by law (or in the Constitution) (OECD, forthcoming). Laws may also regulate specific participatory practices (e.g. the Government in the Sunshine Act in the United States from 1976 or the Participatory Budgeting Law in Peru from 2003).
- Laws on **accountability and integrity**, including those on conflict of interest, financial disclosure, lobbying, whistle-blower protection and foreign bribery, often include numerous provisions that contribute to openness (e.g. by providing mechanisms for citizen oversight). Some countries have even adopted specific legislation on accountability (e.g. Canada's Federal Accountability Act from 2006) which specify measures regarding administrative transparency and oversight. In addition, laws regulating the functioning of independent public institutions (e.g. Ombudsman, Comptroller, Audit institutions) usually include mechanisms for citizens to complain and oversee government actions and decisions
- Laws regulating the **organisation of the different levels of government** (e.g. decentralisation laws) can include provisions regarding the open government principles. In many cases, these frameworks reproduce the federal/central government responsibilities to local or decentralised levels, especially on citizen participation mechanisms.
- Laws promoting the **use of digital technology** (e.g. connectivity, e-government laws, etc.) sometimes foresee specific obligations regarding information transparency and / or their use for participatory practices.

- Lastly, **specific / sectorial laws** often include rights and obligations regarding the principles of open government. For example, in many countries, budget laws stipulate budgetary transparency and the participation of citizens and stakeholders in the budgetary process. Along similar lines, procurement laws may require the proactive disclosure of relevant information and consumer protection laws may establish complaint and feedback procedures.

Source: OECD (2020[8]), *Taking an integrated approach to the promotion of transparency, integrity, accountability and stakeholders' participation: Towards an Open Government Strategy*, Internal paper presented to the Working Party on Open Government, GOV/PGC/OG(2020)4/REV1

Open government principles and civic freedoms are protected by Brazil's Federal Constitution

Most OECD Member countries have included references to the principles of open government and specific rights and obligations associated with them in their constitutions (OECD, forthcoming). For example, many Constitutions of OECD Members establish access to public information and citizen participation as basic constitutional rights. Moreover, they usually include specific provisions on the protection of civic space (e.g. freedom of assembly, freedom of the press, etc.).

Brazil adopted its current Constitution on October 1988 after two years of deliberation among the elected Constitutional Assembly[4]. The Constitution establishes the administrative organisation of the Federation, the institutional architecture as well as the different prerogatives of the State. It also recognizes a diverse set of rights, from voting rights, to labour and economic rights and compared to previous constitutions, the current is citizen-oriented with the goal of fostering democracy. For these reasons, the Constitution is often referred to as the "Citizen Constitution" (Politize, 2018[9]).

The Federal Constitution of Brazil does not include any specific references to the concept of open government. However, in line with practice in many OECD Member and Partner Countries (Box 3.5), it contains a number of provisions concerning the open government principles, as well as numerous provisions relating to the protection and promotion of civic space (see Table 3.1 for a detailed overview). In particular, the Brazilian Constitution makes citizen and stakeholder participation a constitutional principle and a pillar of the democratic system. Participatory elements are spread throughout the document, with nine Articles referring to the involvement of citizens and stakeholders in public life (see Chapter 6). As a fundamental prerequisite to the transparency agenda, the Brazilian Constitution also establishes the right to access public information (see Chapter 7).

Table 3.1. The most relevant provisions on the open government principles in Brazil's Constitution from 1988

Article #	Provision/ Paragraph	Relevant open government principle	Article text	Further discussions in this OGR
5	I	Civic space	*"[M]en and women have equal rights and duties under the terms of this Constitution."*	Chapter 5 on Civic space
5	II	Civic space	*"[N]o one shall be obliged to do or refrain from doing something except by virtue of law"*	Chapter 5 on Civic space
5	IV	Civic space	*"[T[he **expression of thought** is free, and anonymity is forbidden."*	Chapter 5 on Civic space
5	VI	Civic space	*"**[F]reedom of conscience and of belief** is inviolable, the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed;*	Chapter 5 on Civic space
5	VIII	Civic space	*[N]o one shall be deprived of any rights by reason of **religious belief or philosophical or political conviction**, unless he invokes it to exempt himself from a legal obligation required of all and refuses to perform an alternative obligation established by law."*	Chapter 5 on Civic space
5	IX	Civic space	*"[T]he **expression of intellectual, artistic, scientific, and communications activities is free**, independently of censorship or licence.*	Chapter 5 on Civic space
5	XIV	Transparency	*"**[A]ccess to information** is ensured to everyone and the confidentiality of the source shall be safeguarded, whenever necessary to the professional activity."*	Chapter 7 on Transparency
5	XV	Civic space	*"**[L]ocomotion within the national territory is free** in time of peace, and any person may, under the terms of the law, enter it, remain therein or leave it with his assets."*	Chapter 5 on Civic space
5	XVI	Civic space	*"[A]ll persons may hold **peaceful meetings**, without weapons, in places open to the public, regardless of authorization provided that they do not frustrate another meeting previously called for the same place, subject only to prior notice to the competent authority."*	Chapter 5 on Civic space
5	XVII	Civic space	*"**[F]reedom of association** for lawful purposes is fully guaranteed, any paramilitary association being forbidden."*	Chapter 5 on Civic space
5	XVIII	Civic space	*"[T]the **creation of associations** and, under the terms of the law, that of cooperatives is not subject to authorization, and State interference in their operation is forbidden*	Chapter 5 on Civic space
5	XIX	Civic space	*"**[A]ssociations may only be compulsorily dissolved** or have their activities suspended **by a judicial decision**, and a final and unappealable decision is required in the first case."*	Chapter 5 on Civic space
5	XX	Civic space	*"[N]o one shall be compelled to become associated or to remain associated."*	Chapter 5 on Civic space
5	XXXIII	Transparency	*"[A]ll persons have the **right to receive, from the public agencies, information of private interest to such persons, or of collective or general interest**, which shall be provided within the period established by law, subject to liability, except for the information whose secrecy is essential to the security of society and of the State"*	Chapter 7 on Transparency
37	XXII, §3	Participation, Accountability, Access to Information	*The law shall regulate the **forms of participation of users in governmental entities and in entities owned by the Government**, especially as regards:* *I – claims relating to the rendering of public services in general, the provision of user services being ensured, as well as periodical assessment, both external and internal, of the quality of services;* *II – the access of users to administrative records and to information about Government initiatives, with due regard for article 5, items X and XXXIII* *III – the rules of a complaint against negligence or abuse in the exercise of an office, position or function in government services*	Chapter 6 on Participation, Chapter 7 on Transparency, Chapter 8 on Accountability
193		Participation in social policy	*The State will exercise its function of planning social policies guaranteeing, in the terms of the law, the **participation of society in the process of formulation, monitoring, control and evaluation** of those policies.*	Chapter 6 on Participation
198		Participation in health	*"Public health actions and services are part of a regionalized and hierarchical network and constitute a single system, organized according to the following*	Chapter 6 on Participation

			guidelines: (See ADPF 672) *[…]* *III - **community participation.”***	
205		Participation in education	*“Education, a right for all and a duty of the State and the family, will be promoted and encouraged with the **collaboration of society**, […]*	Chapter 6 on Participation
212A	X	Participation and accountability in education	*“t[T]he law will provide […] on: […]* *d) the **transparency, monitoring, inspection and internal, external and social control of the funds** referred to in item I of the caput of this article, ensuring the **creation, autonomy, maintenance and consolidation of monitoring and social control councils**, admitted their integration into the education councils; […]*	Chapter 6 on Participation,
216	§ 2	Transparency in culture	*“It is incumbent upon the public administration, in accordance with the law, to manage governmental documentation and take steps to **facilitate its consultation** to those who need it*	Chapter 7 on Transparency
216A		Participation in culture	*The National System of Culture, organized in a collaborative, decentralized and participatory manner, institutes a **process of joint management and promotion of public cultural policies, democratic and permanent, agreed between the entities of the Federation and society**, with the objective of promoting human, social and economic development with full exercise of cultural rights. […]”*	Chapter 6 on Participation
220		Civic space	*The manifestation of thoughts, the creation, the expression and the information, in any forms, processes or media will not suffer any restrictions, observing this Constitution* *§1 No law will have provisions that constitutes barriers to **full freedom of journalistic information in any sort of media**…* *§2 it is **forbidden any form of censorship** of political, ideological and artistic nature. […]*	Chapter 5 on Civic space

Source: Constitution of the Federal Republic of Brazil, 1988, as amended, http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Author’s own elaboration.

The protection of open government principles, policies and practices at the constitutional level provides Brazilian public institutions and stakeholders with a clear mandate to promote open government reforms. It further creates the necessary legal certainty and legitimacy for effective implementation of all subsequent legislation (OECD, 2019[2]) .

Box 3.5. Examples of open government-related principles in national constitutions

Norway’s Constitution, first adopted in 1814, has been amended over the years to reflect an ever-deepening commitment to openness and transparency. It emphasises the citizens’ right to trustworthy information: “Everyone has a right of access to documents of the State and municipal administration and a right to follow the proceedings of the courts and democratically elected bodies. (…) It is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse.”

Sweden’s Constitution states that citizens possess the right to freely seek information, organise and hold demonstrations, and found and join political parties. These rights are part of the Constitution, which is based on four fundamental laws: the Instrument of the Government, the Freedom of the Press Act, the Fundamental Law on Freedom of Expression and the Act of Succession. In 1766, Sweden became the first country in the world to incorporate the Freedom of the Press into its constitution. Freedom of the Press is based on freedom of expression and speech, which are among the most important pillars of democracy. In accordance with this principle, those in authority must be held accountable and all information must be freely available. The identities of people who work as sources and provide publishers, editors or news agencies with information are protected. The law on Freedom of Expression

was passed in 1991 to expand this protection to non-print media, such as television, film and radio. The law moreover seeks to ensure an unimpeded exchange of views, information and artistic creativity.

Colombia's 1991 Constitution stipulates that "Colombia is a Social State of Law organised as a unitary republic, decentralised, with autonomy of its territorial units, democratic, participatory and pluralistic" (Article 1). It further establishes that "(t)he essential goals of the state are ... to facilitate the participation of all in the decisions that affect them and in the economic, political, administrative and cultural life of the nation".

Source: Thurston, A. (2013[10]), "Openness and information integrity in Norway", Open Government Partnership Blog, https://www.opengovpartnership.org/stories/openness-and-information-integrity-in-norway/; Government of Sweden (n.d.[11]), "Openness shapes Swedish society", webpage, https://sweden.se/society/openness-shapes-swedish-society (accessed 17 December 2018).

Brazil has adhered to numerous conventions, treaties and declarations that are related to open government

Brazil has signed and ratified numerous international conventions, treaties and declarations which complement the country's constitutional and legislative frameworks for open government (Table 3.2). For example, Brazil has adhered to the 2017 OECD Recommendation of the Council on Open Government and it is a signatory of the Iberoamerican Open Government Charter. Specific discussions on these documents can be found in the respective implementation chapters of this Review. For example, Chapter 7 on Transparency discusses that Brazil has signed but not yet ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, also known as the *Escazú* Agreement.

Table 3.2. Overview of the most relevant conventions, treaties and declarations in the area of open government signed / ratified by Brazil

Name of convention / treaty / declaration	Year of first adoption	Year of adoption/accession by Brazil	Year of ratification by Brazil
OECD Recommendation of the Council on Open Government	2017	2019	Not applicable
Lima Commitment: "Democratic Governance in the Face of Corruption"	2018	2018	Not applicable
Iberoamerican Open Government Charter (CLAD)	2016	2016	Not applicable
Declaration on the Fight Against Foreign Bribery - Towards a New Era of Enforcement	2016	2016	Not applicable
GIFT High-level Principles on Fiscal Transparency, Participation and Accountability	2012	2012	Not applicable
Open Government Declaration (OGP)	2011	2011	Not applicable
Declaration on Propriety, Integrity and Transparency in the Conduct of International Business and Finance	2010	2010	Not appliable
United Nations Convention against Corruption (UNODC)	2003	2003	2005
American Declaration of Principles on Freedom of Expression	2000		
Convention on Combating the Corruption of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD)	1997	2000	2000
Inter-American Convention against Corruption (Caracas Convention) - OAS	1996	1996	2002
Financial Action Task Force (FATF) Forty Recommendations and Special Recommendations on Terrorist Financing	1990/2001	2000/2001	Not applicable
International Covenant on Civil and Political Rights (ICCPR)	1976	1992	1992
Inter-American Convention on Human Rights	1968/1978	1992	1992
Universal Declaration of Human Rights (UDHR)	1948	1948	Not applicable

Source: Author's own elaboration, based on Government of Brazil (2021[12]).

The legal and regulatory framework for open government in Brazil is wide

In recent years numerous laws and decrees on open government policies and practices have been adopted in Brazil, building on the constitutional framework presented above. Table 3.3 provides a non-exhaustive overview of the most important laws relating to the open government principles of transparency, integrity, accountability and stakeholder participation, while Table 3.4 shows the most important decrees and regulations on the principles that are currently in force. A more detailed discussion of laws that are related to each of the open government principles can be found in the implementation Chapters of this Review (Chapters 6-8). In particular:

- Chapter 6 on Citizen and Stakeholder Participation presents different laws and regulations that mandate the participation of non-public stakeholders in specific policy processes, as well as laws and regulations that mandate the participation of specific groups of stakeholders (e.g. youth). The Chapter also includes a discussion of the legal basis of Conferences and Councils and it analyses Decree 9759 of 2019, which revoked the National Policy and the National System on Social Participation (Decree 8243 of 2014).
- Chapter 7 on Transparency includes an in-depth discussion of Brazil's Access to Information Law (Law 12,527 of 2011) which outlines the general procedures for proactive and reactive disclosure for all levels and branches of government. The Chapter further details Brazil's wider transparency regulatory ecosystem, including a discussion of other laws, decrees and policies that regulate different transparency provisions that are either interlinked or complementary to access to information, such as those relating to open data, protection of personal data and archives.
- Chapter 8 on Accountability provides an overview of the current legal arrangements in place to ensure accountability in policymaking and service design and delivery in Brazil. The Chapter further details the laws and regulations in place for both horizontal and vertical accountability, for example, the range of existing frameworks that encourage government responsiveness, feedback and engagement with stakeholders and citizens, such as the decrees and ordinances underpinning the *ouvidorias* system.

Table 3.3. An overview of Brazil's most important laws on open government policies and practices

Law Number	Year	Name	Description	Relevant OG principle(s)	For further discussion see
Law 14,.129	2021	Digital Government Law	Provides principles, rules and instruments for digital government. Regulates the applicable fees for reproduction of material when requesting information	Transparency	Chapter 7 on Transparency
Law 13.,460	2017	Service User Defense Code	Provides for participation, protection and defence of the rights of users of public services offered by the public administration. It regulates the ouvidorias and establishes "basic norms for participation, protection and defense of the rights of users of public services provided directly or indirectly by the public administration"	Participation, Accountability	Chapter 6 on Participation
Law 12.813	2013	Conflict of Interest Law	Provides for the conflict of interests in the exercise of the position or employment of the federal Executive Branch and impediments after exercising the position or employment.	Accountability, Integrity	Chapter 8 on Accountability
Law 12.846	2013	Anti-corruption Act	Targets corrupt business practices in Brazil as well as defines administrative and civil penalties for any individuals involved	Accountability, Integrity	Chapter 8 on Accountability
Law 12,.527	2011	Access to Information Law	Provides for the procedures to be followed by the Union, States, Federal District and Municipalities in order to guarantee access to information	Transparency	Chapter 7 on Transparency
Law LC 101 and	2000	Fiscal Responsibility	Provide for the provision of detailed information on the budgetary and financial execution of the Union, the	Transparency	Chapter 7 on Transparency

Complementary Law 131	2009	Laws	States, the Federal District and the Municipalities, according to common standard and including through an online portal.		
Law 8.429	1992	Law on administrative improbity	Provides for the punishment and sanctions applicable to public officials in case of unlawful behaviour in the exercise of their role.	Accountability, Integrity	Chapter 8 on Accountability
Law 7716	1989	Racial Crime Law	Forbids discrimination or prejudice based on race, color, ethnicity, religion or national origin.	Civic Space	Chapter 5 on Civic Space
Law 6001	1973	Indigenous Statue	Establishes the **Indigenous Statute** and lines out corresponding indigenous rights.	Civic Space	Chapter 5 on Civic Space
Law 5.250	1967	Press Law	Outlines provisions on Freedom of Expression and Information.	Civic Space	Chapter 5 on Civic Space

Source: Author's own elaboration.

Table 3.4. An overview of the most relevant decrees on open government policies and practices

Regulation Number	Year	Description	Relevant OG principle(s)	For further discussion see
Decree 10.160	2019	Sets out guidelines for the National Policy on Open Government as well as its coordinating entity, the Inter-ministerial Committee on Open Government (CIGA).	Governance of OG	This chapter
Decree 9.759	2019	Revokes the National Policy and System on Social Participation, extinguishes part of the existing collegial bodies of the federal public administration and provides guidelines and rules for the remaining bodies.	Participation	Chapter 6 on Participation
Decree 9.,468	2018	Creates the Council for Public Transparency and Fight against Corruption	Transparency, Integrity	Chapter 7 on Transparency
Decree 9.203	2017	Manifests the National Policy for Public Governance which includes central principles, guidelines and mechanisms of public governance for the national public sector.	Governance of OG	This chapter, Chapter 8 on Accountability
Decree 8.777	2016	Establishes the Open Data Policy and thereby makes biannual Open Data Plans (PDA Plano de Dados Abertos) mandatory for all public institutions	Transparency	Chapter 7 on Transparency
Decree 7.,724	2012	Specifies the procedure to provide access to information in federal bodies and assigns oversight responsibility of the ATI obligations to the Comptroller General of the Union.	Transparency	Chapter 7 on Transparency

Source: Author's own elaboration.

The legal basis for open government reforms could be strengthened and harmonised

The analysis conducted in the implementation Chapters of this Review reveals that legislative provisions relating to the open government principles and their protection and promotion are extensive and comprehensive and that Brazil's legal and regulatory foundations for open government are aligned with OECD standards. In order to increase legal clarity for both citizens and public officials and identify eventual gaps and overlaps in the existing legislation, Brazil could consider creating a compendium of all laws and regulations that relate to the open government principles. This compendium could be integrated into the one-stop-shop open government portal that is recommended in Chapter 4.

The implementation Chapters of this Review also reveal that there are opportunities to strengthen the existing legal and regulatory framework for each of the open government principles:

- Chapter 6 on Participation finds that Brazil's legal framework for citizen and stakeholder participation is relatively strong. Provisions and rights on this open government principle are spread out over different legislative documents. Some address the implementation of Constitutional principles, while others create specific participatory mechanisms such as the Councils or the Conferences. In 2014, Decree 8.243 on the National Policy of Social Participation – which has by

now been revoked – attempted to streamline and harmonise provisions on citizen and stakeholder participation.

- Chapter 7 on Transparency finds that several laws, decrees and policies regulate –with varying scopes of application- different transparency provisions. While these legal obligations contribute to develop a more transparent culture in the public administration and provide concrete tools for citizens to monitor government actions, they can also represent confusing obligations, burdensome reporting lines and bureaucratic procedures, particularly for subnational governments. More clarity and coherence in regards to the primacy and complementarities across the laws, decrees and policies could help improve the overall understanding and implementation. The Chapter also finds that to improve the application of the access to information law, efforts could be taken to ensure that the law is effectively implemented by all bodies subject to the law. The Chapter recommends increasing efforts to improve the quality of information through a more efficient appeals process, providing stronger sanctions for non-compliance, and in the long-term, creating an independent institution to have the oversight mandate to ensure compliance to the law.
- Chapter 8 on Accountability finds that there are comprehensive legal frameworks for accountability. The Constitution outlines the separation of the legislative, executive and judicial powers, an essential element of state accountability. Furthermore, a range of legislation aims to increase accountability by combatting corruption and sanctioning misconduct and misuse of funds among public officials, including laws and decrees on administrative improbity, public integrity, fiscal responsibility, and whistleblowing. While these frameworks are extensive, they do not explicitly define Brazil's approach to accountability and the Chapter recommends that Brazil use their next OGP National Action Plan to advance specific commitments on improving accountability across the administration.

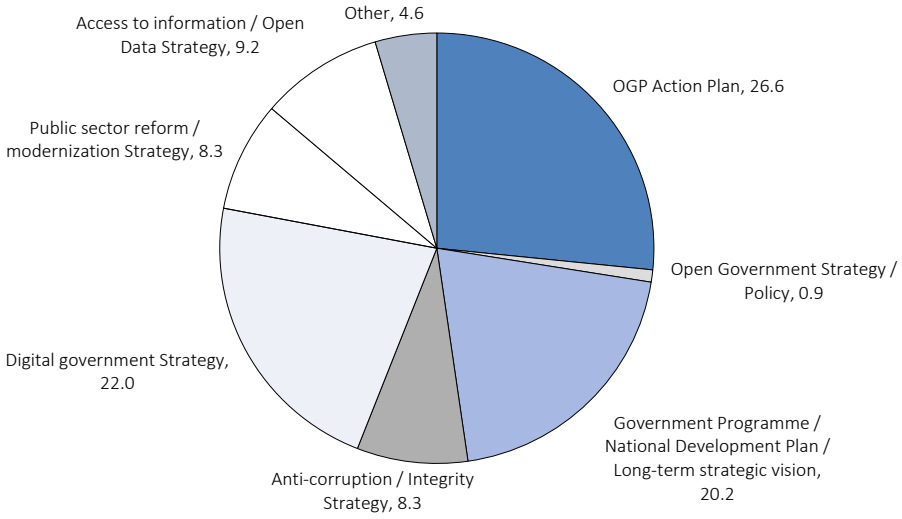
The review of Decree 10.160 from 2019 establishing the National Open Government Policy that is recommended below could provide a further opportunity to ensure a harmonised, synergic, and coherent implementation of the provisions on open government that are included in the existing legal and regulatory framework.

Fostering the policy framework for open government in Brazil

Policy documents (such as strategies, action plans, national policies, institutional plans, memos, etc.) give direction to a country's policy agenda, outline objectives, detail initiatives to achieve them and facilitate monitoring and evaluation of reforms. Policy documents can further be a tool to harmonise practices across government, facilitate communication with internal and external stakeholder, and support accountability of public action.

According to the results of the *2020 OECD Survey on Open Government* (OECD, 2021[4]), the policy frameworks for the promotion of openness in OECD Member and Partner Countries are usually very diverse, reflecting the breadth of initiatives that are related to the promotion of openness (OECD, forthcoming[7]). As visible from Figure 3.3, the main policy documents for open government include the OGP action plans; whole-of-government policy documents outlining the government agenda (e.g. National Development Plans); public sector reform and modernization strategies; as well as policy documents focusing on one or more of the open government principles (e.g. Access to Information / Open Data Strategies, Integrity Strategy).

Figure 3.3. Main policy documents on open government in OECD countries and Brazil



Note: Figures in percent. Includes 109 policy documents by 32 OECD countries and Brazil.
Source: OECD (2021[4]), 2020 OECD Survey on Open Government

This section assesses Brazil against provision 1 of the OECD Recommendation of the Council on Open Government (Box 3.2), introducing the main policy documents on open government in Brazil (Table 3.5). Rather than analysing the effective implementation of each of these policy documents (see Chapters 6, 7, and 8 for this), this section identifies areas of opportunities and challenges associated with their governance. It finds that, like in many OECD Member and Partner Countries, Brazil's OGP action plan marked the first attempt to group different initiatives relating to the open government principles under the umbrella of the concept of open government. The biannual OGP action plans have been the main driver of Brazil's open government agenda and have allowed the government to push for ambitious and far-reaching open government reforms.

The section also notes that, while a number of other policy documents including initiatives to foster the open government principles have emerged in recent years (e.g. the National Strategy for Digital Government and the National Open Data Policy), Brazil could benefit from the design of a whole-of-government policy framework for open government. To strengthen and streamline Brazil's policy framework and enable a holistic and integrated open government approach, the section suggests that Brazil considers designing a Federal Open Government Strategy.

Table 3.5. Overview of the main policy documents guiding open government reforms in Brazil

Name	Legal basis (if available)	Scope of application	Description	Further reading in this Review
Multi-annual Plan 2020-2023 "Plan, Prioritize, Achieve" (Plano Plurianual 2020-2023 "Planejar, Priorizar, Alcançar")	Law 13.971 of 2019	Federal	Key governmental planning instrument which defines objectives and goals for the federal governement over a period of four years.	Chapter 3 on Governance Inputs
National Strategy for Economic and Social Development for 2020-2031 (Estratégia Nacional de Desenvolvimento Econômico e Social 2020-2031)	Decree 10.531 of 2020	Federal	Brazil's long-term strategy to achieve sustainable development based on five axes: Economic, Institutional, Infrastructure, Environmental and Social.	Chapter 3 on Governance Inputs
National Policy on Open Government (Política Nacional de Governo Aberto)	Decree 10.160 of 2019	Federal	Regulates Brazil's contribution in the framework of the Open Government Partnership, for example by providing the CGU the mandate to coordinate the action plan design	Chapter 3 on Governance Inputs
Open Government Partnership (OGP) action plans	Based on the mandate provided by the Decree 10.160 of 2019	National	Biannual action plans which contain commitments on various dimensions of open government, desidgned in a consultative process between governmental and non-governmental stakeholders	Chapter 3 on Governance Inputs
Governance Policy of the Federal Government (Política de governança da administração pública federal direta, autárquica e fundacional)	Decree 9.203 of 2017	Federal	Establishes central principles and guidelines for public governance as well as mechanisms for their implementation, most importantly the CIGA.	Chapter 3 on Governance Inputs
National Strategy for Digital Government for 2020-2022 (Estratégia de Governo Digital para o período de 2020 a 2022)	Decree 10.332 of 2020	Federal	The strategy contains concrete commitments to improve transparency and participation as part of its plan to improve public service delivery.	Chapter 7 on Transparency
Open Data Policy of the Federal Executive Branch (Política de Dados Abertos do Poder Executivo federal)	Decree 8.777 of 2016 Decree 9.903 of 2019	Federal	The policy aims to promote the publication of open data in a sustainable, planned and structured way. The policy provides for almost every federal body to have a biannual Open Data Plan (PDA) containing an inventory of every dataset owned by the government body.	Chapter 3 on Governance Inputs, Chapter 7 on Transparency
National policy of public and private archives	Law 8.159 of 1991	National	Aims to document and protect archival documents as an instrument to support administration, culture, scientific development and as evidence and information.	N/A
National Policy on Personal Data Protection and Privacy	Law 13.709 of 2018, as amended	National	Regulates the processing of personal data by natural or legal persons, including by setting principles and requirements and holder's rights	Chapter 5 on Civic Space

Source: Author's own elaboration.

The Multi-annual Plan and the National Strategy for Economic and Social Development include commitments to the principles of open government

High-level policy documents are the expression of countries' political commitment, as they provide a medium and/or long-term vision for the government's policy agenda (usually for one electoral period but sometimes more) and involve the wider government. The inclusion of relevant references to the concept of open government in them gives great national relevance to the open government agenda and raise its profile. It can further provide a platform for civil society organisations and other stakeholders to push for ambitious reforms and monitor their implementation.

In Brazil, the Multi-annual Plan (*Plano Plurianual*, PPA) is the key governmental planning instrument. It defines objectives and goals for the country over a period of four years and sets the guidelines, goals, and objectives of the Federal Government as well as its expenditures. As explained in further details in the forthcoming OECD Centre of Government Review of Brazil, the PPA is prepared by the executive and approved by the legislature in the first year of each government term. It is therefore in effect from the second year of term until the end of the first year of the following term. The PPA is foreseen in articles 165 and 166 of the Federal Constitution (OECD, forthcoming[13]).

Law 13.971 of 2019 approved the current PPA for 2020-2023, entitled "Plan, Prioritize, Achieve" ("Planejar, Priorizar, Alcançar"). Article 3 of the law highlights "the improvement of governance, modernization of the State and federal public management, with administrative efficiency, transparency of State action, digitalization of government services and promotion of the productivity of the State's administrative structure" as one of its key directives. The Technical Manual of the Federal Government's 2020-2023 Pluriannual Plan (Government of Brazil, 2020[14]) also includes a section highlighting the importance of "social participation" in policy-making. Section 5.4 of the Manual reads:

> *Communication between government and society is one of the premises of government planning. In this sense, presenting information to the public is essential to publicize the main public policies that are being implemented by the federal administration. Likewise, it is essential to listen to society - the beneficiary of public policies - at all stages of the PPA (preparation, monitoring, evaluation and review). The importance of accountability, transparency and responsiveness of public policies implemented by the federal government must be emphasized. In the case of communication with society, in particular, social control (or vertical accountability) is of particular importance, which must be institutionalized together with horizontal accountability (between government agencies or between Powers).*

Along similar lines, the institutional axis of the National Strategy for Economic and Social Development for 2020-2031 (*Estratégia Nacional de Desenvolvimento Econômico e Social 2020-2031,* ENDE) (Government of Brazil, 2020[15]), Brazil's multiannual development strategy, highlights "improving mechanisms for transparency, accountability, integrity management, risks and internal controls and participation and social control" among the key action that are needed to strengthen public governance. The strategy further includes a number of commitments to promote and protect civic space including by "promoting actions for structuring and strengthening ombudsmen and internal affairs units and providing greater transparency to data on public security".

While the PPA and the ENDE refer to the open government principles, they do not explicitly mention the concept of open government. Nevertheless, the inclusion of commitments to transparency, accountability, integrity, and stakeholder participation in both documents provides a very strong mandate to the co-ordinating institutions to develop and implement a full-fledged open government reform agenda.

The National Policy on Open Government provides the framework for Brazil's OGP process

The National Policy on Open Government (*Política Nacional de Governo Aberto*) established through Decree 10.160 (Government of Brazil, 2019[16]) provides the Office of the Comptroller General of the Union

(CGU) with the mandate to co-ordinate the design of the biannual OGP action plans. Article 1 of the decree highlights that the Policy "will be operationalized through action plans consisting of initiatives, actions, projects, programs and public policies that expand transparency, access to information, improving public service delivery and strengthening integrity".

The title "National Policy on Open Government" can be misleading as it in fact only focuses on elements relating to the OGP process, rather than outlining the wider open government agenda. For example, the decree details the list of participants of the Interministerial Committee on Open Government (*Comitê Interministerial de Governo Aberto*, CIGA – see Chapter 4) and it elaborates on the substantive policy areas that the action plans are supposed to focus on. Given its limited focus, Brazil's National Policy on Open Government does not provide the basis for a holistic and integrated Open Government Strategy, as it is defined by the OECD (see Box 3.1).

The OGP action plans have been a key tool to foster open government reforms in Brazil since 2011

Members of the Open Government Partnership (OGP) have to develop bi-annual action plans. In line with OGP rules, these action plans have to be the product of a co-creation process in which government institutions and civil society work together to design commitments that aim to foster open government principles. Across the OECD, OGP action plans have become the most common form of action-oriented policy frameworks for the promotion of openness. At the time of writing, 29 out of 38 OECD countries were members of the OGP.

Brazil has been a founding member of the OGP, hosting the partnership's first international summit in 2011 and co-chairing it from 2012 to 2013. Between 2011 and 2018, Brazil made 111 open government commitments as part of its OGP action plans, producing some notable outputs (Box 3.6):

- 32 commitments in the first action plan;
- 52 commitments in the second plan;
- 16 commitments in the third action plan; and
- 11 commitments in the fourth plan (Government of Brazil, 2020).

Box 3.6. Notable outputs of Brazil's past OGP Action Plans

First Action Plan

- Establishment of the Federal System for Access to Information, which provided the Federal Government with a proper room for implementing the Access to Information Act (LAI),
- The restructuring of the Portal of Transparency,
- The establishment of the National Open Data Infrastructure (INDA)
- Creation of the Brazilian Portal of Open Government

Second Action Plan

- Enhancement on data transparency of the National Consumer Defense System (SINDEC),
- The Transparent Brazil Program,
- The joint construction of the Federal System of Ombudsmen's Offices,
- the opening of the Union's budget execution data, the government procurements, the provision of government systems information in open data format

Third Action Plan

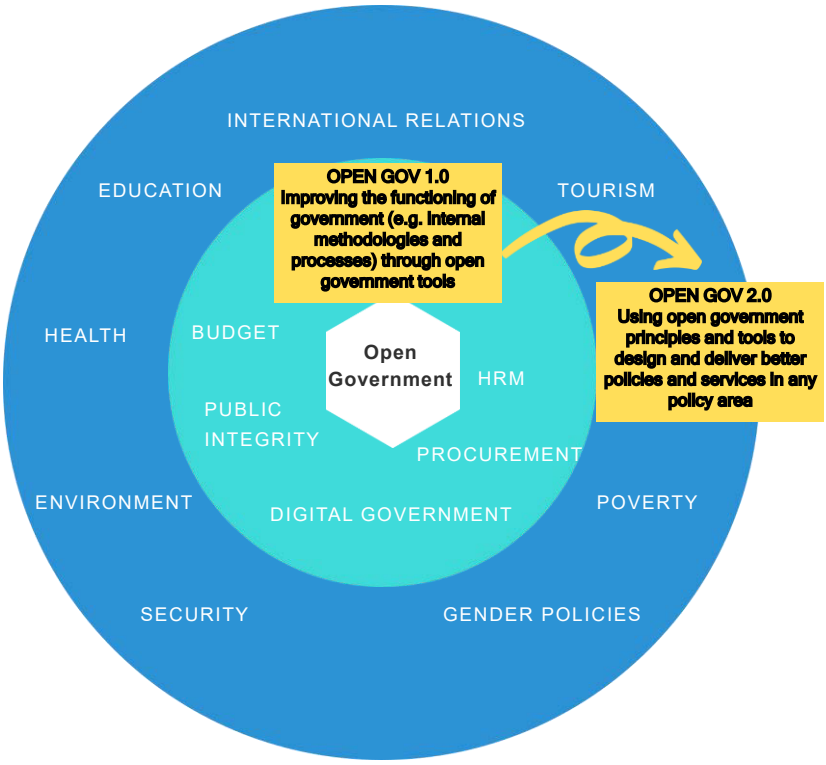
- Improved Access to Information procedures by establishing deadlines for responses including their monitoring as well as stricter rules for denying disclosure based on the "use of classified information" exception clause
- Launch of digital plattform with over 28 000 open educational resources which directly benefits more than 100,000 schools
- Institutionalisation of civil society participation in the Pluriannual Plan through a consolidation of methods of social participation

Source: OGP (2014[17]), Brazil Progress Report 2011-2013, https://www.opengovpartnership.org/documents/brazil-relatorio-do-progresso-2011-2013; OGP (2017[18]), Brazil End-of-Term Report 2013-2016, https://www.opengovpartnership.org/documents/brazil-end-of-term-report-2013-2016/; OGP (2020[19]), Brazil End-of-Term Report 2016-2018, https://www.opengovpartnership.org/documents/brazil-end-of-term-report-2016-2018/

An analysis of the four action plans reveals that, while the number of commitments went down over time, they have become more strategic, moving from a technical and compliance-driven perspective of open government towards a more transformative perspective that recognises its contribution to wider policy objectives. This shift could also be seen as the beginning of a move from the first generation of open government initiatives (OpenGov 1.0) towards OpenGov 2.0[5] (Figure 3.4).

Like those of many other OGP participants, Brazil's first (2011-2013) and second (2013-2016) action plans focused mainly on short-term deliverables and / or already ongoing initiatives. The third (2016-2018) and fourth (2018-2021) action plans then started including more innovative and strategic medium-term commitments. For example, the third action plan included an explicit link with the United Nations Sustainable Development Goals (SDGs). This trend is aligned with practice in other OGP member countries where the number of commitments also went down over time, while the breadth and depth of each commitment increased.

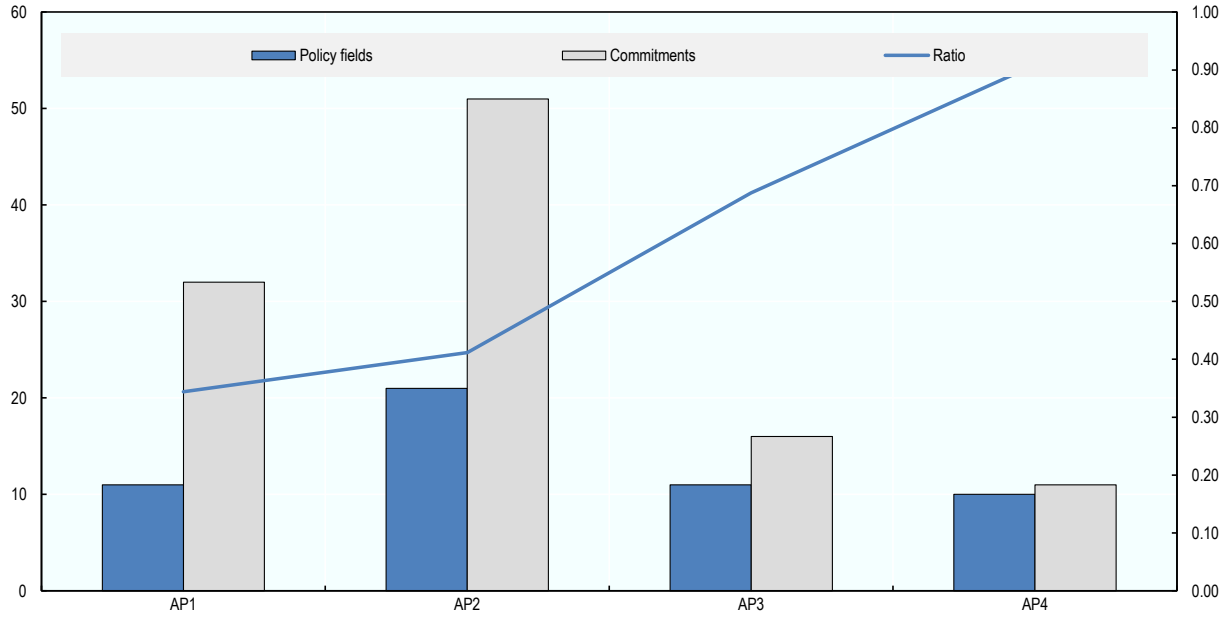
Figure 3.4. From Open Government 1.0 to Open Government 2.0



Source: OECD (2020[8]), *Taking an integrated approach to the promotion of transparency, integrity, accountability and stakeholders' participation: Towards an Open Government Strategy*, Internal paper presented to the Working Party on Open Government, GOV/PGC/OG(2020)4/REV1.

In terms of substantive focus, the action plans have also become broader over time. OGP's Public Commitment Database (OGP, n.d.[20]) contains 45 granular categories under seven umbrella topics. For example, under the umbrella topic 'Integrity' one can find the categories 'Asset disclosure', 'Beneficial Ownership' and 'Conflict of Interest', among others. A detailed analysis of Brazil's four action plans using this categorisation shows while the first action plan contained 0.34 policy fields per commitment (32 commitments covering 11 policy fields), this value has increased steadily to 0.91 policy fields per commitment in the fourth action plan (11 commitments covering 10 policy fields).

Figure 3.5. The diversification of Brazil's OGP action plans over time



Source: Author's own illustration, based on OGP (n.d.[20]), OGP Commitment Database, https://www.opengovpartnership.org/open-data/#comms_db

The 11 commitments included in the fourth action plan (Box 3.7) which was under implementation at the time of writing show that the federal government and stakeholders recognise the value of open government reforms to contribute to a positive change across a variety of areas. Its policy focus emphasises cross-cutting issues and includes a sectoral approach, with reference to topics such as climate change, water resources and food and nutrition, as advocated for by the OECD (OECD, 2019[2]).

Box 3.7. The 11 commitments included in Brazil's 4th OGP Action Plan

1. **Open Government on States and Municipalities**: Develop collaborative actions in order to disseminate knowledge and map good governmental practices to promote subnational involvement.
2. **Open Data Ecosystem**: Establish, in a collaborative way, a reference model for an Open Data Policy that fosters integration, training and awareness between society and the three government levels, starting from a mapping process of social demands.
3. **Innovation and Open Government in Science**: Establish scientific data governance mechanisms for the advance of open science in Brazil
4. **Strengthening Public oversight over the Food and Nutrition Security National Plan**: Implement training actions for public officials and civil society, in order to increase the recognition of the Human Right to Adequate Food as well as to strengthen public oversight towards the Food and Nutrition Security Policy.
5. **Analysis over the user's satisfaction and ANTTs regulation social impact**: Define mechanisms for data collection in order to improve the National Terrestrial Transport Agency's (ANTT) regulated services and encourage society participation on satisfaction surveys.
6. **Transparency and Public Oversight over Mariana´s Reparation Processes and other Municipalities in the Region**: Implement instruments and actions of transparency, access to

information and the development of capacities to expand and qualify the participation and public oversight on the reparation processes.

7. **Transparency in the Legislative Process**: Increase participation of various social segments on the legislative process (law drafting) through integrated efforts to increase transparency, adjust language, communication and promote innovation.
8. **Land Transparency**: Implement urban and rural base registries (National Rural Properties Cadaster – CNIR) on an integrated model, providing data to society, for the operationalization of the Territorial Information Managing National System (SINTER).
9. **Open Government and Climate**: Develop, collaboratively, a transparent mechanism for the evaluation of actions and policies related to climate changes.
10. **Open Government and Water Resources**: Improve the Information and Water Resources National System (SNIRH) for the strengthening of Committees located at critic areas in order to promote an integrated management over Water Resources.
11. **Governmental Transparency – Access to Information Act in States and Municipalities**: Develop a National Electronic System for Information Requests (National eSIC) in order to implement the Access to Information Act (LAI) in states and municipalities.

Source: CGU (2018[21]), *Brazil's 4th National Action Plan*, https://www.opengovpartnership.org/documents/brazil-national-action-plan-2018-2021/

As further discussed in Chapter 6 on Participation, Brazil's action plan cycles have involved an increasing number of institutions over time. While they initially only included contributions from a small number of federal government institutions and a limited number of CSOs, the fourth action plan cycle included sub-national governments, the legislature, the judiciary and a much broader range of non-public stakeholders. This move towards a broadened participation, as well as the progressive move towards an open state approach, can also be observed in many second and third generation action plans across the OGP membership.

The OGP process has provided Brazil's open government agenda with a structure and allowed the CGU to raise the profile of the concept of open government and of specific open government reforms. Some of the commitments that were included in past OGP Action Plans have made important contributions to fostering the openness of the Brazilian government (Box 3.6). Interviews conducted during the fact-finding missions confirmed that the co-creation process enabled the CGU to build relationships with internal and external stakeholders and put reforms in the spotlight of the national and international open government community. Over the years, a small but dedicated open government community has emerged in Brazil, consisting mainly of stakeholders in and around the capital city of Brasilia.

However, interviewees also noted that the Brazilian open government community has been facing an increasing number of challenges when trying to push for ambitious open government reforms. Direct channels of communication between public institutions and stakeholders have diminished and interactions have become less fluid. This tendency of increasingly complicated government-citizen/stakeholder relations in the framework of the OGP process should be seen as part of a wider trend of a shrinking civic space in Brazil, as further discussed in Chapter 5.

The process to design the next OGP action plan presents an opportunity to push for ambitious reforms

At the time of writing Brazil was finalising the implementation period of its fourth OGP action plan, while also co-creating the country's fifth OGP action plan. Brazil could strategically use its next OGP action plans to push for even more ambitious and far-reaching reforms. As done in the fourth action plan, Brazil could

for example include a number of second generation open government initiatives (i.e. those that focus on the ways in which the government designs policies and delivers services, using open government approaches and applying open government tools in different policy areas, including gender, environment, health, education, urban development etc.) in it.

Finally, the next OGP action plans could also provide an opportunity for Brazil to move forward with the creation of an integrated open government ecosystem. For example, the country could consider including the design of the recommended National Open Government Strategy (see below) as a commitment into the action plan, as for example done by Finland and Tunisia (Box 3.8).

Box 3.8. The inclusion of commitments on Open Government Strategies in Finland's and Tunisia's OGP action plans

High-level political commitment for a strategic open government approach in Finland. The country's Open Government Strategy 2030 was presented in 2020 as a chapter of the overall public administration strategy. It is therefore directly linked to the current Government Programme and enjoys high political priority. The four page document contains five sections:

- Vision: Outlines the purpose of open government in Finland. Open government is described as essential for "trust, security and confidence in the future" and built on four central statements. Its role is understood as promoting exchange and understanding between all relevant stakeholders across the governmental and non-governmental sector. Looking beyond its national borders, Finland seeks to promote its vision of open government also internationally.
- Key priorities: Directly related to the vision of open government, the strategy establishes objectives for each of the four vision statements. For example, the vision of open government reinforcing dialogue corresponds to the objective of improving "knowledge in the public sector about how digital interaction channels work, and to encourage their broader and more active use in dialogue.
- Definition: Provides a conceptual understanding of open government that includes transparency, integrity and accountability of government activities, and access to information and services. Further, this section outlines why the strategy is important and illustrates the elements of the Finnish Open Government Framework.
- Measuring progress: Sketches indicators for how to measure the strategy's objectives, such as "[a]n increase in the amount of dialogue […] and an increase in the number of users of dialogue methods in government".
- Monitoring and assessment: The implementation of the strategy shall be assessed and potentially modified periodically with each new OGP action plan until 2030.

Streamlining OGP activities in Tunisia

Commitment 8 of Tunisia's 2021-2023 action plan concerns the development of an indicator-based open government strategy. This document will primarily serve as strategic framework for the design and implementation of OGP action plans. In particular, it aims to coordinate and integrate the various OGP efforts across national and local levels. It pursues to spread the culture of open government across the public sector and all relevant stakeholders with a common understanding and purpose.

In this respect, the strategy will outline a short-, medium-, and long-term vision for open government, taking into consideration the views of all relevant stakeholders during consultative workshops. Further, it will operationalise the concept of open government and establish measurable goals and objectives

which allow to evalute the impact of open government. The OECD assists Tunisia in this project through an Open Government Scan. The strategy is envisioned to be launched in July 2022.

Source: Ministry of Finance of Finland (2020[22]), *Open Government Strategy 2030*, https://avoinhallinto.fi/assets/files/2021/03/Open_Government_Strategy2030.pdf; Presidency of the Government of Tunisia (2021[23]), *Action Plan for the Open Government Partnership 2021-2023,* https://www.opengovpartnership.org/wp-content/uploads/2021/08/Tunisia_Action-Plan_2021-2023_EN.pdf

The Governance Policy recognises the importance of transparency and integrity for good public governance

The Governance Policy of the Federal Government (*Política de governança da administração pública federal direta, autárquica e fundacional)* was adopted through Decree 9.203 from 2017 (Government of Brazil, 2017[24]). Establishing the Interministerial Governance Committee (*Comitê Interministerial de Governança*, CIG) as its co-ordinator (see Chapter 4), the Governance Policy aims to inaugurate a process of constant and gradual transformation of the federal public administration towards good public governance.

The Policy establishes integrity and transparency among the key principles of public governance and highlights the active participation of society as one of the directives for achieving good governance. As such, the governance policy recognizes the contribution of the principles of open government to public sector modernization. Most notably, the adoption of the Governance Policy has had a significant impact of Brazil's agenda to promote public sector integrity.

In 2019, the CGU published Ordinance No. 57 to implement the Governance Policy. The Ordinance establishes procedures for developing, implementing and monitoring integrity programmes in all federal public institutions. Integrity programmes are mandatory and include the establishment of Integrity Management Units in all public institutions. According to information received from the Brazilian government, at the time of writing, 182 public institutions had presented their Integrity Programmes.

Box 3.9. Integrity Programmes and Management Units (UGI) in Brazilian federal public institutions

An integrity programme is a structured set of institutional measures designed to prevent, detect, and sanction corruption, fraud, irregularities and ethical misbehaviours. It aims to ensure that those responsible for integrity-related activities and areas such as corruption prevention, internal audit, disciplinary enforcement and transparency work together in coordination to ensure integrity and minimize the potential risks of corruption.

The integrity programme has a preventive focus, since it is principally aimed at reducing the risks of corruption in a given organization. In this sense, developing an integrity programme is seen as going beyond mere compliance with regulations.

Integrity programmes have to develop along a number of axes established by Decree No. 9,203/2017:

- Commitment and support from senior management;
- Existence of a unit responsible for implementation in the organ or entity;
- Analysis, evaluation and management of risks associated with integrity; and
- Monitoring of the elements of the integrity program.

Establishing the Integrity Management Unit (UGI) is the first step in establishing the integrity program

because it will coordinate the development of the program, as well as its subsequent implementation, monitoring and review.

CGU Ordinance No. 1,089 of April 25, 2018 provides for the competencies and position of the UGI within public entities. In some cases, it is recommended that the UGI be established within the Special Office of Internal Control (AECIs), which already works with the topic of integrity; in other cases, it is recommended that the UGIs are established as a cross-cutting area with easy access to the other units of the organization, which is necessary for it to carry out their responsibilities.

Source: CGU (n.d.[25]), Integridade Pública, https://www.gov.br/cgu/pt-br/centrais-de-conteudo/campanhas/integridade-publica/integridade-publica

The Strategy for Digital Government has strong links with the promotion of openness

The Strategy for Digital Government for 2020-2022 (*Estratégia de Governo Digital para o período de 2020 a 2022*) adopted through Decree 10.332 from 2020 (Government of Brazil, 2020[26]) includes a number of commitments to foster transparency and participation as part of its ambition to improve public service delivery and digitalise the Brazilian public sector. For example, "a citizen-centered government" and "a transparent and open government, which acts proactively in making data and information available and enables the monitoring and participation of society in the various stages of services and public policies" are among the Strategy's six priority axes.

In particular, objective 13 aims to "review transparency and open data channels by, among other priorities, integrating the transparency, open data and ombudsman portals into the single gov.br portal (by 2020) and by expanding the number of open databases, in order to reach 0.68 points in the criterion of data availability of the OECD OURData Index by 2022". Furthermore, objective 14 targets "citizen participation in the elaboration of public policies" and includes an initiative to sign partnerships for the construction of social control applications. This initiative is supposed to be implemented through "three datathons or hackathons until 2022 as well an initiative to improve the means of social participation and provide a new participation platform by 2021".

The implementation of the Strategy is coordinated by the Secretariat for Digital Government (*Secretaria de Governo Digital*) in the Ministry of Economy. The Comptroller General of the Union actively contributed to the design of the Strategy and co-ordinates the implementation of those commitments that relate to its area of expertise. In order to achieve the Strategy's objectives, public institutions are also asked to prepare a Digital Transformation Plan (*Plano de Transformação Digital*), a Master Plan for Information and Communication Technology (*Plano Diretor de Tecnologia da Informação e Comunicação*) as well as an Open Data Plan (*Plano de Dados Abertos*) (see Article 3 of Decree 10.332 from 2020).

The National Strategy for Digital Government constitutes an important input for Brazil's open government agenda. However, it does not (and does not aim to) capture the full potential of open government, as it is limited to its contribution to specific open government objectives that relate to digitalisation.

The Open Data Policy has become an integral part of Brazil's wider open government agenda

The Open Data Policy of the Federal Executive Branch (*Política de Dados Abertos do Poder Executivo federal*) established through Decree 8.777 from 2016 (Government of Brazil, 2016[27]) and Decree 9.903 from 2019 (Government of Brazil, 2019[28]) defines rules for the provision of open government data within the scope of the federal executive branch. The Policy follows up on the access to information law's requirement to provide information in open data format. It established the obligation for public institutions (except companies) to create Open Data Plans (*Plano de Dados Abertos*). Each plan must contain the

data inventory of the public institution and a roadmap to publish data that is not yet available in an open data format. The institution responsible for managing and monitoring the Open Data Policy is the Federal Comptroller General (CGU).

The Open Data Policy has become a cornerstone of Brazil's wider open government agenda, most notably since the responsibility over the open data file was moved to the CGU in 2016. In case Brazil decides to move towards a fully integrated open government agenda, it will be primordial to ensure that the Open Data Policy is an integral part of it.

Public institutions implement a range of policy documents that are linked to the promotion of the open government principles

Brazilian public institutions at the federal level (i.e. ministries and agencies) do not have the obligation to produce any dedicated policy document on open government. Nevertheless, according to desktop research and the results of the *OECD Survey on Open Government for Brazilian Public Institutions* (OECD, 2021[6]), federal ministries and agencies are implementing a range of institutional policy documents that are linked to the promotion of openness. The most important include:

- Integrity Programmes, as mandated by the Governance Policy (see Box 3.9);
- Open Data Plans, as mandated by the Open Data Policy (see Chapter 7 on Transparency); and
- Digital Transformation Plans, as mandated by the Digital Government Strategy (see above).

Moreover, public institutions at the federal level are mandated by Decree 9.203 from 2017 and by instruction N°24 of 2020 to publish regular strategical plans to lay out their objectives to ensure public action is aligned with global government actions and the needs of the public (Government of Brazil, 2020[29]). These plans include the mission, the vision and the values of the institution, milestones to achieve, as well as metrics for evaluation. As per Decree 9.203, open government is not part of the elements that public institutions need to integrate in these plans. Nevertheless, many public institutions have include elements that are related to open government policies and practices in their strategical plans. For example, as further discussed in Chapter 6 on Participation, a large number of institutions have included measures related to the inclusion and participation of citizens and stakeholder. Others have made transparency a guiding principle of their institutional policy agendas. Relevant initiatives are scattered through different institutional policy documents and often implemented in isolation from each other.

Brazil could consider designing a whole-of-government Open Government Strategy

This section has shown that the policy framework for the promotion of the open government principles in Brazil, like in most OECD Member Countries, is wide and articulated in different policy documents. The main formal document that brings together a range of initiatives touching upon the open government principles is the OGP action plan. However, like in all OGP member countries, due to its focus on implementation and 2 year length, it is composed of a series of priority initiatives focusing on short-term policy issues, which does not allow it to provide a comprehensive and integrated vision of how all public institutions, in all branches of power, can contribute to transform Brazil's democracy as to make it more open, transparency and participatory.

In order to pursue a truly holistic approach to the promotion of openness, Brazil could consider adopting an integrated Open Government Strategy for the federal executive branch (*Estratégia de Governo Aberto do Poder Executivo Federal, EGA*). The OECD Recommendation of the Council on Open Government (2017) defines an Open Government Strategy as:

> *"A document that defines the open government agenda of the central government and/or of any of its sub-national levels, as well as that of a single public institution or thematic area, and that includes key open government initiatives, together with short, medium and long-term goals and indicators".*

An Open Government Strategy presents a whole of government roadmap for the open government agenda. It provides an umbrella policy framework to align all policy documents that are linked to openness (e.g. the OGP Action Plan, the Open Data Policy, Digital Government Policy, etc.) and bring them together under a coherent medium- to long-term narrative. Recognising the benefits of having an umbrella policy framework for open government (Box 3.10), an increasing number of OECD Member and Partner Countries, including Finland, Colombia, Italy, Argentina, Tunisia and Morocco, have started designing and / or implementing Federal / Central Open Government Strategies.

Ultimately, each country's Open Government Strategy has to be adapted to its specific context and priorities. The following sub-sections discuss key elements that Brazil could take into consideration when designing its own EGA. More detailed information on Open Government Strategies can be found in the paper *Taking an integrated approach to the promotion of transparency, integrity, accountability and stakeholder participation: Towards an Open Government Strategy* (OECD, 2020[8]).

Box 3.10. The benefits on a whole of government Open Government Strategy (OGS)

An OGS ensures whole-of-government policy coherence

An OGS can provide the umbrella for all open government initiatives implemented in a country and ensure that they follow similar methodological guidelines and contribute to a shared vision of openness. As such, a whole of government Open Government Strategy, besides putting new initiatives in place, makes those policies and initiatives that are already being implemented by public institutions more coherent and stronger by working together under the same coherent (and powerful) narrative and methodological setting.

An OGS ensures efficiency and intra-institutional knowledge sharing

An OGS is a tool to save resources and reduce costs. Government institutions spend time and public resources trying to develop solutions that might already be in place or build on lessons learned by other administration that have already successfully implemented certain reforms. An OGS helps to intensify efforts to create collaborative solutions to shared problems. A concerted OGS can help public institutions to elaborate a common understanding and shared standards relating to open government, thereby harmonising practices. As such, An OGS can enable the government to achieve outcomes – at a lower cost – that would not be possible to achieve if institutions work in isolation.

An OGS enables collaboration and co-ordination

The main purpose of whole-of-government frameworks is to enable different government entities to pursue joint objectives in a co-ordinated manner. The Australian government defines whole-of-government as "public service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues (…)". An OGS that includes clearly assigned responsibilities to the identified goals and objectives can be a valuable co-ordination and collaboration instrument.

An OGS acts as a tool for mainstreaming

The design and implementation of an OGS gives visibility to the concept of open government and puts open government reforms on all public institutions' agendas. An OGS, hence, mainstreams an openness culture by spreading and implementing the values and principles of open government across the entire administrations and all policy areas. In addition, it communicates to civil servants, citizens and stakeholders that the government embraces a new understanding of the way the state is run. As such, An OGS creates a powerful, compelling and coherent narrative that inspires policymakers to champion open government reforms in their own areas of work. Lastly, an OGS can help civil servants

and citizens to better understand the added value and concrete output of open government by applying it to the policy area of their interest and expertise.

An OGS is a formidable governance tool

An OGS allows for an effective management of a country's open government agenda. The development of an OGS is usually led by a high-level official (e.g. Minister, Secretary General, senior appointee, inter-ministerial delegate, etc.) and accompanied by concrete efforts to create institutional and governance mechanisms (e.g. inter-ministerial committees; monitor and evaluate mechanisms, training modules, HR performance evaluations; budget allocations, etc.). High-level commitment of a politician can also be a tool to foster the impact of the strategy (as per the resources, mobilisation power and symbolism). In addition, the adoption of an OGS empowers a person or office that will present the open government agenda to the wider public, monitor the follow up, and be the point of contact for the press and the wider public.

An OGS functions as a tool for public accountability

An OGS commits the government to certain key reforms and creates a pressure for institutions to deliver. At the same time, a strategy that commits the government to concrete, ambitious but feasible outcomes can be a message to the citizens emphasising that this is a serious endeavour. The identification of milestones and indicators allows stakeholders to monitor the government's implementation efforts and analyse their compliance with the strategy's objective. Hence, the strategy and the commitments made in it are a tool for stakeholders to hold the government to account and avoid "open washing". In addition, civil society can channel its demands through the strategy.

An OGS can give long-term sustainability to the open government agenda

The lack of a national coherent strategy can undermine the long-term sustainability of open government reforms and protects it from government instability. If designed for the long term, an OGS can give open government a non-political value and anchor the implementation of open government principles in internal action plans that can continue without high-level political support.

Source: OECD (2020[8]), *Taking an integrated approach to the promotion of transparency, integrity, accountability and stakeholders' participation: Towards an Open Government Strategy*, Internal paper presented to the Working Party on Open Government, GOV/PGC/OG(2020)4/REV1.

The Open Government Strategy should establish a compelling vision and measurable objectives for Brazil's open government agenda

An Open Government Strategy can be a tool to set a vision and objectives for a country's open government agenda. A vision constitutes a clear statement of what the government and stakeholders aim to achieve through the implementation of open government reforms (OECD, 2020[8]). According to OECD research (Ibid.), the vision should be ambitious, bold and inspiring and realizable in a realistic time horizon at the same time.

The Strategy's objectives then translate the vision into targets. According to the (OECD, 2020[8]) objectives should be measurable, achievable and relevant; evidence-based; ambitious without over-committing the government or creating unrealistic expectations; and budget responsible. Setting clear objectives is a key step to enable monitoring, evaluation and learning (see Chapter 4).

In addition, stakeholder participation in the definition of both the vision and the objectives is fundamental to ensure that they are widely shared and are clearly linked with broader government objectives and

priorities. Brazil could, for example, consider co-creating the vision and the objectives in the framework of the recommended Open Government and Integrity Council (Chapter 4).

An Open Government Strategy constitutes an opportunity to broaden Brazil's open government agenda and ensure that the protection of civic space becomes an integral part of it

An Open Government Strategy represents an opportunity to design an open government agenda that recognises the benefits of all of the open government principles. As discussed above, Brazil's open government agenda, driven through the OGP-process, has historically put a focus on measures relating to transparency and open government data,.

The design of an Open Government Strategy provides a unique opportunity to create links between different ongoing and scattered open government policies and fill existing policy gaps. For example, as further discussed in Chapter 6 on Participation, Brazil currently lacks an overarching policy framework for citizen and stakeholder participation at the level of the federal government. The EGA could become this framework and include a dedicated section on citizen and stakeholder participation.

Moreover, as discussed in Chapter 5 on Civic Space, no policy documents of the current administration recognise the critical role played by civic space as an enabler of open government and public governance reforms at large. Brazil could therefore consider including a roadmap on the protection of civic space and the enabling environment for civil society in the Open Government Strategy.

An Open Government Strategy could mandate the adoption of Institutional Open Government Programmes

In order for the Strategy to be effectively implemented by the whole of government, the Government of Brazil could consider mandating the adoption of Open Government Programmes by all public institutions and agencies. These Institutional Open Government Programmes (*Programas Institucionais de Governo Aberto,* PIGA) could be adopted on an annual or biannual basis and could outline each institutions' agenda to foster the open government principles and contribute to the shared objectives outlined in the EGA.

In order to reduce complexity, the Institutional Open Government Programmes could integrate the current institutional Open Data Plans, adding further institutional commitments relating to access to information, accountability, as well as citizen and stakeholder participation. The PIGAs would further need to be designed in close co-ordination with the institutional Integrity Programmes.

The PIGAs could for example be structured around three axes, transparency, citizen / stakeholder participation and accountability. The Open Government Directive of the United States of America provides an interesting example in this regard (Box 3.11).

Box 3.11. The Open Government Directive of the United States

United States

On 8 December 2009, as per the request of the President, the Office of Management and Budget (OMB) issued an Open Government Directive, which was informed by recommendations from the Federal Chief Technology Officer, who solicited public comments through the White House Open Government Initiative. The Directive is intended to direct executive departments and agencies to take specific actions to implement the principles of transparency, public participation and collaboration. In particular, the Directive requires executive departments and agencies to take the following steps:

- Publish government information online: each agency shall create a dedicated open government website that will allow them to publish information online in open formats and interact with the public by receiving inputs to which they will respond on a regular basis. The respective annual Freedom of Information Act Report shall be published on the website of each agency.
- Improve the quality of government information: agencies shall follow OMB guidance on information quality, and shall designate a high-level senior official who will be accountable for putting in place adequate systems and processes
- Create and institutionalise a culture of open government: **each agency shall develop and publish an Open Government Plan that will describe how it will implement the three principles of transparency, public participation and collaboration into its activities**. The plans shall be updated every two years.
- Create an enabling policy framework for open government: policies shall evolve to adapt to the use of emerging technologies which will open up new forms of communication between the government and the people.

Source: Government of the United States (2009[30]), "Open Government Directive", https://obamawhitehouse.archives.gov/open/documents/open-government-directive (accessed 10 October 2018).

The design and implementation of an Open Government Strategy requires an adequate legislative basis

The adoption of an Open Government Strategy requires strong political commitment from the highest level. In order to provide the necessary legal and institutional backing, Brazil could consider reviewing the decree on the National Policy on Open Government (Government of Brazil, 2019[16]) to provide a basis for the integrated open government agenda. In addition to providing a mandate for the development and implementation of an Open Government Strategy, the revised Decree could include the following elements:

- Article to introduce new definition of open government as suggested in this Chapter.
- Article on the objectives of the open government agenda;
- Article on the Open Government Strategy;
- Article to mandate the creation of Institutional Open Government Plans, as operational tools to implement the National Policy on Open Government.
- Article to enlarge the mandate of the Secretariat of Transparency and Prevention of Corruption and make the necessary changes to transform this entity into the Secretariat of Open Government and Integrity.
- Article to establish the Open Government Co-ordinators as institutional points of contact and coordinators of the Institutional Open Government Plans.
- Article to establish the Open Government and Integrity Council (see Chapter 4).

The Open Government Strategy could take an open state perspective

The development of an EGA can be a powerful way to create a shared commitment to the principles of open government across the entire Brazilian public sector, including in all branches of power and at all levels of government. This move towards what the OECD has termed an "open state" represents particular challenges in a federal country such as Brazil, as further explained in Chapter 2. The Brazilian federalism grants subnational units significant political and economic autonomy. Most fundamentally, an open state approach therefore needs to ensure to respect the division of powers between different levels of government.

While the limitations of interference between different levels of government and different branches of power are clear, both constitutionally and legally, there are no rules in Brazil that prohibit co-operation, collaboration or co-ordination between the various branches of power and the different levels of government. On the contrary, co-operation and co-ordination are the mechanisms to which a federal state can resort when it aims to promote national public policies across levels of government and branches of the state.

As a first step, Brazil could consider involving representatives from the Judiciary, the Legislature and from all levels of government in the process to create the vision and objectives of the EGA. In case Brazil wants to take a more ambitious open state approach, it could invite all branches of the state and all levels of government to include their own clusters of initiatives in the Strategy or even to include initiatives that would be co-implemented. Alternatively, Brazil could invite the Judiciary, the Legislature and all levels of government to formally adhere to the vision, principles and objectives that are outlined in the Open Government Strategy. The EGA could then include a template for those actors to develop their own strategic approaches to open government that contribute to the achievement of the overall vision.

In this regard, Brazil's National Strategy for Combatting Corruption and Money Laundering (Box 3.12) provides an interesting example on how to create a whole-of-state approach to specific policy challenges.

Box 3.12. Brazil's National Strategy for Combating Corruption and Money Laundering (ENCCLA)

The National Strategy for Combating Corruption and Money Laundering (ENCCLA), created in 2003, is the main platform for discussions on and the formulation of public policies and solutions aimed at combating the crimes of corruption and money laundering. It functions as network of articulation, bringing together a variety of agencies from the Executive, Legislative and Judiciary Powers at the federal and state levels and, in some cases, municipal, as well as the Public Ministry. The Department of Asset Recovery and International Legal Cooperation (DRCI), which is linked to the National Secretariat of Justice of the Ministry of Justice and Public Security, acts as executive secretary of ENCCLA.

The work is carried out in the so-called actions, which are prepared and agreed annually by the members of ENCCLA. For each of them, a working group is created, composed of several bodies and institutions, whose mandate is to reach one or more predefined products, through activities such as carrying out legal-normative studies and diagnostics and the composition of banks of data, preparing legislative proposals, verifying the state of the art of registration systems, investigating needs and promoting IT solutions, seeking efficiency in the generation of statistics and holding events aimed at the evolution of themes through debates. Working groups usually meet monthly.

Source: ENCCLA (n.d.[31]), Quem somos: Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro, http://enccla.camara.leg.br/quem-somos

Strengthening the institutional framework for open government in Brazil

Given the breadth of strategies and initiatives that relate to the promotion of openness, responsibilities and mandates for designing, co-ordinating and implementing different open government policies are usually spread across a number of public institutions in OECD Member and Partner Countries (OECD, forthcoming). For example, the institutional mandates for co-ordinating the OGP process and the open data file are often situated in a country's centre of government while the oversight of a country's access to information agenda is sometimes conducted by an autonomous public agency. At the same time, the citizen / stakeholder participation file is often managed in a decentralised way, and responsibilities for accountability mechanisms are usually shared between various institutions.

Following a brief introduction of the main institutions that form part of the open government ecosystem of Brazil, this section focuses on analysing the mandate and responsibilities of the Secretariat for Transparency and Prevention of Corruption (STPC) in the Office of the Comptroller General of the Union (CGU)[6]. The section finds that the STPC would be in an ideal position to become Brazil's dedicated Open Government Office, given its responsibilities for the co-ordination of the OGP process, the open data agenda, the public sector integrity agenda and the wider transparency agenda. The section concludes by recommending ways to further empower the STPC, including by giving it a clear mandate to co-ordinate and steer an integrated open government agenda, as well as increased financial and human resources.

The federal open government ecosystem of Brazil includes a wide range of public institutions

In all OECD Member and Partner countries, the design and co-ordination of open government policies across government involves a wide variety of public institutions. The following institutions can be considered key actors in the wider open government ecosystem at the level of the federal government in Brazil (see also Table 3.6).

- The **Federal Comptroller General of the Union** (*Controladoria Geral du União*, CGU) is responsible for assisting the President on matters related to the defense of public assets and to the increase of transparency, notably through activities such as internal control, public audit, and the prevention of and fight against corruption. The CGU is also the government institution in charge of co-ordinating Brazil's OGP process (see below).
- The **General Secretariat of the Presidency of the Republic** (*Secretaria Geral da Presidência da República*, SGPR) is a body that has the status of a ministry. It directly supports the Presidency of the Republic. The SGPR is led by the Chief Minister of State of the General Secretariat of the Presidency. At the time of writing, the SGPR is primarily responsible for formulating and defining the wider government strategy, and spearheading state modernization.
- The **Secretariat of Government of the Presidency of the Republic** (Secretaria de Governo da Presidência da República, SEGOV) is another body with the status of a ministry that is linked to the Presidency of the Republic. The SEGOV assists the President in fostering the government's relations with political actors and civil society at the national, subnational and international level. The SEGOV is also in charge of the government's internal and external communication. As further discussed in Chapter 6 on Participation, within the SEGOV, the **Special Secretariat for Social Articulation** (Secretaria Especial de Articulação Social) plays a key role in fostering participatory practices across government.
- The **Casa Civil** (*Casa Civil da Presidência da República)* is a Federal entity with Ministerial ranks and part of the Centre of Government. The Minister of Casa Civil functions as the chief of staff of the Presidency of the Republic. Casa Civil is in charge of the administrative function of the Presidency as well as of the articulation with the Legislative Power and the Subnational authorities. In relation to the open government agenda, and as further discussed in Chapter 6 on Participation,

the Casa Civil has some institutional responsibilities regarding citizen and stakeholder participation at the Federal level. Casa Civil is responsible for public consultations and Decree 1959 gave it the mandate to oversee Federal public authorities' participation in collegial bodies, such as the Councils.

- The **Ministry of Economy** (*Ministerio da Economia*) was created in 2019 under the current administration as the result of a merger of multiple Ministries (Finance; Planning; and Industry, Trade and Services). Although the Ministry is not part of the Presidency, it performs important centre of government duties relating to strategic planning, monitoring and evaluating, and elaborating the budget. As regards open government, the Ministry has relevant (co-)responsibilities over open budgeting and digital government policies. The **National School of Public Administration** (*Escola Nacional de Administração Pública*, Enap) is subordinate to the Ministry of Economy and is an important actor in the promotion of open government literacy in Brazil (see also Chapter 4).
- The **Court of Accounts of the Union** (*Tribunal de Contas da União*, TCU) is the external control body of the federal government that assists the National Congress in the mission of monitoring the country's budget and its financial execution. The TCU is further mandated to contribute to the improvement of public governance for the benefit of the whole of society.
- The **Offices of the Public Defender** (*Defensorias Públicas*) which exist both at federal and state levels provide legal advice and defend citizens' interests. They are foreseen in the Constitution as enabling access to justice to the population at large (Government of Brazil, 1988). In some states, Public Defenders' Offices play a fundamental role in ensuring accountability for cases of police violence, domestic violence, violence against indigenous people, and others.
- The **Ministry of Women, Family and Human Rights** (*Ministério da Mulher, da Família e dos Direitos Humanos*) also plays a role in the protection of human rights and promotion of policies for the inclusion of Afro-Brazilians, women, minorities and disadvantaged groups. It is home to the National Human Rights Hearing Office (*Ouvidoria Nacional de Direitos Humanos*), which manages the main channels for citizens to report violations (see also Chapter 5).

In addition to these institutions from the federal executive branch, the following entities from the other branches of the state can be considered part of the wider open state ecosystem in Brazil:

- The **Public Ministry** (*Ministério Público*, MP) which is headed by the **General Prosecutor of the Republic** (*Procurador-Geral da República*) is responsible for defending the legal order, the democratic regime and individual and collective rights. It plays a key role in the protection and promotion of civic space (see Chapter 5) and in fostering accountability (see Chapter 8), as it is mandated by the Constitution to "oversee the effective respect by public powers and services of the rights secured in the Constitution, promoting the necessary measures to guarantee them", including to "exercise external control over police activity" (article 129 II) (Government of Brazil, 1988). At federal level, the **Federal Prosecutor's Office for Citizens' Rights** (*Procuradoria Federal dos Direitos do Cidadão*), which is part of the Public Ministry, promotes citizenry and human dignity, and protects individual and collective rights, such as freedom, equality, social assistance, access to justice, the right to information, and non-discrimination, among others.
- The **Transparency Secretariat of the Senate** (*Secretaria de Transparência do Senado Federal)* is responsible for ensuring access to data, information and documents of collective or general interest that are produced or held in custody by the Federal Senate. It further promotes measures aimed at strengthen the transparency of public information of the Federal Senate pertaining to legislative, parliamentary or administrative activities, as well as using available means to disseminate this information. In addition, the Federal Senate has a **Transparency and Social Control Council** (*Conselho de Transparência e Controle Social do Senado Federal)* which is

responsible for debating and proposing actions that disseminate access to public information within the institution.

- The **Transparency Secretariat of the Chamber of Deputies** (*Secretaria de Transparência da Câmara dos Deputados*) supervises compliance with the Access to Information Law (Law 12,527 from 2011) and promotes a culture of transparency in the Chamber of Deputies. It further carries out research on the use of information and communication technology in the development of transparency, access to information and social control in the public administration.

The fragmentation of responsibilities over open government policies is common across the OECD and it creates a strong need for effective co-ordination between them, as further discussed in Chapter 4. As further discussed below and as visible from Table 3.6, the fact that the CGU is in charge of steering parts of the agenda to foster all four open government principles represents a unique opportunity.

Table 3.6. Overview of key institutional responsibilities for open government policies in Brazil

Responsibility	Name of the institution(s) / secretariat(s) / directorate(s) in charge	Specific attributions of the institution(s)
Co-ordination of an integrated open government agenda across government	NA	NA
Co-ordinating the OGP Action Plan across government	Office of the Comptroller General (CGU)	Manage the OGP process
Co-ordinating open government data initiatives across government	Office of the Comptroller General (CGU)	Manage the National Open Data Policy
Fostering transparency of government institutions	Office of the Comptroller General (CGU)	Promote Transparency of public resources; monitor transparency obligation Promote training of public servants Promote awareness of citizens.
Overseeing the implementation of the access to public information law	Office of the Comptroller General (CGU)	Monitor access to information obligations Promote training of public servants Promote awareness of citizens.
Protecting and promoting civic space	Public Ministry / Prosecutor's Office	Defense of the democratic regime Defense of the freedom of press.
Protecting and promoting CSOs	Secretariat of Government of the Presidency of the Republic	Coordinate government relationships with CSOs
Fostering citizen and stakeholder participation at the national level	Secretariat of Government of the Presidency of the Republic	Foster participation in the Federal Government
Fostering citizen and stakeholder participation at the sub-national level	Varies from government to government	Varies from government to government
Fostering citizen and stakeholder participation in thematic areas (environment, health, public services, etc.)	Line ministries responsible by policies and, in many cases, thematic Councils.	Varies as in some cases participation may or may not be mandatory; may or may not have a defined processes; may be led by public organizations or by the councils.
Overseeing integrity of public authorities and institutions	Office of the Comptroller General (CGU)	Main body for auditing and internal affairs.
Fostering an open budget (transparency and participation in fiscal decisions)	Office of the Comptroller General (CGU) and Ministry of Economy	Transparency of the budget and its execution (CGU) Maintenance of the central system and its transparency; also, in charge of the participatory process (Ministry of Economy)
Fostering vertical accountability (social auditing or control)	Office of the Comptroller General (CGU) and Councils	Promotes social control in general (CGU) Promote social control in their respective areas (Councils)
Fostering transparency in public expenses (procurement, contracting, budget implementation, etc.)	Office of the Comptroller General (CGU) and Ministry of Economy	Transparency of spending and related processes (CGU) Maintenance of the central system of procurements and contracts and its transparency (Ministry of Economy)
Coordinating the public innovation agenda of the Federal government	Ministry of Economy (also the National School of Public Administration, which is subordinate to the Ministry.)	Promotes innovation and digital government agenda

Co-ordinating open government data initiatives across government	Office of the Comptroller General (CGU)	Manage the National Open Data Policy
Fostering transparency of government institutions	Office of the Comptroller General (CGU)	Promote Transparency of public resources; monitor transparency obligation; promote training of public servants; promote awareness of citizens.
Overseeing the implementation of the access to public information law	Office of the Comptroller General (CGU)	Monitor access to information obligations; promote training of public servants; promote awareness of citizens.
Protecting and promoting civic space	Public Ministry / Prosecutor's Office	Defense of the democratic regime; defense of the freedom of press.
Protecting and promoting CSOs	Secretariat of Government of the Presidency of the Republic	Coordinate government relationships with CSOs
Fostering citizen and stakeholder participation at the national level	Secretariat of Government of the Presidency of the Republic	Foster participation in the Federal Government
Fostering citizen and stakeholder participation at the sub-national level	Varies from government to government	Varies from government to government
Fostering citizen and stakeholder participation in thematic areas (environment, health, public services, etc.)	Line ministries responsible by policies and, in many cases, thematic Councils.	Varies as in some cases participation may or may not be mandatory; may or may not have a defined processes; may be led by public organizations or by the councils.
Overseeing integrity of public authorities and institutions	Office of the Comptroller General (CGU)	Main body for auditing and internal affairs.
Fostering an open budget (transparency and participation in fiscal decisions)	Office of the Comptroller General (CGU) and Ministry of Economy	Transparency of the budget and its execution (CGU) Maintenance of the central system and its transparency; also, in charge of the participatory process (Ministry of Economy)
Fostering vertical accountability (social auditing or control)	Office of the Comptroller General (CGU) and Councils	Promotes social control in general (CGU) Promote social control in their respective areas (Councils)
Fostering transparency in public expenses (procurement, contracting, budget implementation, etc.)	Office of the Comptroller General (CGU) and Ministry of Economy	Transparency of spending and related processes (CGU) Maintenance of the central system of procurements and contracts and its transparency (Ministry of Economy)
Coordinating the public innovation agenda of the Federal government	Ministry of Economy (also the National School of Public Administration, which is subordinate to the Ministry.)	Promotes innovation and digital government agenda

Source: Author's own elaboration based on Government of Brazil (2021[12]), Background Report prepared for the OECD Open Government Review of Brazil (unpublished working paper).

The CGU is at the heart of Brazil's open government ecosystem

In Brazil, the most important co-ordinating institution for open government reforms at the level of the federal government is the Office of the Federal Comptroller General of the Union (*Controladoria-Geral da União*, CGU). The CGU was created by then President Fernando Cardoso in 2001, as the Internal Affairs Department of the Union. In 2003, its name was changed to Comptroller General of the Union (*Controladoria Geral du União*) through Law 10.683. In 2006, Decree 5.683 changed the structure of the CGU, and created the Secretariat of Prevention of Corruption and Strategic Information (SPCI), responsible not only to detect cases of corruption but also to develop mechanisms preventing it. In 2013, Decree 8.109 introduced further institutional changes and the SPCI became the Secretariat for Transparency and Prevention of Corruption (STPC). In 2016, with the publication of Law 13.341 the CGU was renamed Ministry of Transparency, Oversight and the Comptroller General of the Union. Finally, in 2019, the CGU received the open government data portfolio from the then Ministry of Planning and Provisional Measure 870 once again renamed it as Comptroller General of the Union (CGU). Despite the fact that it is currently not branded as a ministry, the CGU has ministerial status and the head of the institution has ministerial rank.

In its current setup, the CGU is responsible for assisting the President of the Republic on matters related to the defence of public assets and the increase in transparency within the scope of the federal executive branch. Its broad range of responsibilities and competences (Box 3.13) includes the roles of co-ordinator of the OGP process, national open data co-ordinator, access to information agency, ombudsman, and anti-

corruption agency. Overall, the CGU is central for three of the four open government principles, namely transparency, integrity and accountability.

In regards to its Ombudsman functions, the CGU has under its mandate the General Ouvidoria of the Union (*Ouvidoria-Geral da União*) – sometimes also called Federal Ombudsman Office. This office is the central entity within the Ouvidoria System of the federal Executive power to ensure its performance in regards to the handling of complaints and feedback and requests for administrative simplification. In this regard, it is not only responsible for establishing appropriate procedures to guarantee service users' rights, but also for promoting capacity-building as well as gathering and monitoring citizens' inputs received by the sectorial Ouvidorias. It coordinates the National Network of Ouvidorias (Decree 9.492 and Decree 9.723). In its role, the General Ouvidoria of the Union is essential for protecting the rights of public service users at federal level and for streamlining the work of Ouvidorias across the county (see Chapter 8 on Accountability for more information on the Ouvidorias).

While the co-ordination of the citizen participation file is formally under the Secretariat of Government and its implementation is decentralized, according to information collected by the OECD, the CGU has also started taking over an increasing number of responsibilities relating to participatory practices (e.g. it is responsible for public participation in accountability mechanisms such as the Fala.br platform or the User Councils) (see Table 3.6 and find a discussion on SEGOV's responsibilities in Chapter 6).

Box 3.13. The responsibilities of the Comptroller General of the Union (CGU)

The institutional mandate of the CGU (decree 9.681)

According to Decree No. 9.681, the CGU is the central body of the Internal Control System, the Correction System and the Ombudsman System of the Federal Executive Branch. It has the following matters as its area of competence:

- Adopting the measures necessary for the defence of public assets, internal control, public audit, correction, preventing and combating corruption, ombudsman activities and increasing the transparency and integrity of management within the Executive Branch federal; (Wording given by Decree nº 9.694, of 2019)
- Preliminary decision on complaints received, indicating the appropriate measures;
- Establishing administrative procedures and processes, constituting commissions, and request for the establishment of those unjustifiably delayed by the appropriate authority;
- Monitoring administrative procedures and processes in progress in federal executive branch bodies or entities;
- Carrying out inspections and recalling procedures and processes in progress in the federal executive branch, to examine their regularity and proposing measures or correcting failures;
- Effecting or promoting the nullity of an administrative procedure or process, in progress or already judged by any authority of the federal Executive Power, and, if applicable, the immediate and regular investigation of the facts involved in the case records and the declared nullity;
- Requisition of administrative procedures and processes judged less than five years ago or already filed, counted from the date of the trial or filing, within the scope of the federal Executive Branch, to review them and, if necessary, issue a new decision;
- Requisition of data, information and documents related to administrative procedures and processes already filed by the authority of the federal Executive Branch;
- Requisition of information and documents from agencies or entities of the Federal Executive Branch necessary for their work or activities;
- Requisition from public executive bodies or entities of public servants or employees necessary for the constitution of commissions, including those which are the object of the provision in item III, and of any public servant or employee indispensable for the instruction of the process or procedure;
- Proposing legislative or administrative measures and suggesting necessary actions to avoid the repetition of irregularities found;
- Receiving grievances from users of public services, in general, and verification of the negligent exercise of position, employment or function in the federal Executive Branch, when there is no legal provision that attributes specific powers to other bodies or entities;
- Technical supervision and normative guidance, as the central organ of the internal control systems, correction and ombudsman of the organs of the direct federal public administration, of the autarchies, of public foundations, of public companies, of mixed capital companies and of other entities controlled directly or indirectly by the Union;
- Executing controllership activities within the scope of the federal executive branch.

Further decrees detailing the CGU's responsibilities for open government and its principles

- Decree No. 7,724 / 2012 - regulates Law No. 12,527 / 2011 on access to information. According to article 68 of the Decree, the CGU is responsible for monitoring the Access to Information Law within the scope of the federal Executive Branch.
- Decree nº 8.777 / 2016 - institutes the Federal Executive Branch's Open Data Policy and establishes, in its article 10, the CGU as responsible for its monitoring.
- Decree nº 9.903 / 2019 - amends Decree nº 8.777 / 2016, defining, in article 5, CGU as the coordinator of the management of the Open Data Policy of the federal Executive Branch.
- Decree No. 10,160 / 2019 - institutes the National Open Government Policy and establishes CGU as the coordinating portfolio of the Interministerial Committee on Open Government (CIGA).

Source: Government of Brazil (2019[32]), Decreto Nº 9.681, de 3 de Janeiro de 2019, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9681.htm

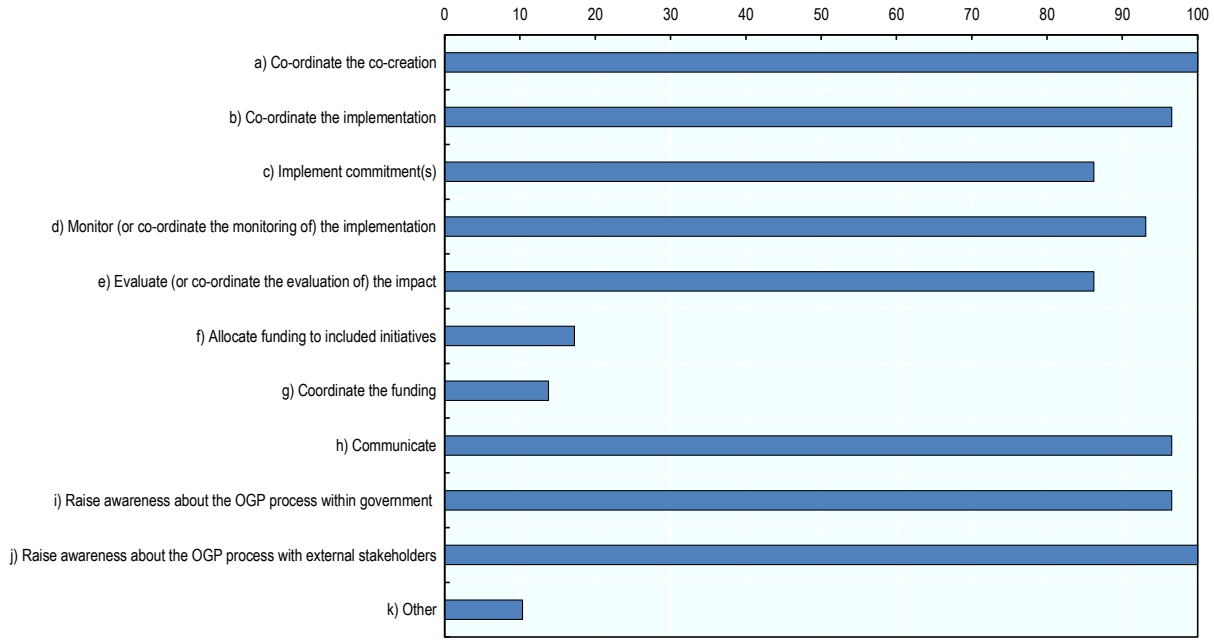
The Secretariat for Transparency and Prevention of Corruption of the CGU designs and co-ordinates the implementation of many relevant open government policies

Within the CGU, the Secretariat for Transparency and Prevention of Corruption (*Secretaria de Transparência e Prevenção da Corrupção*, STPC) is the key Secretariat in charge of designing and co-ordinating a number of relevant open government policies (Box 3.14). It is comprised of three Directorates, namely the Directorate for Transparency and Social Control; the Directorate for Promoting Integrity; and the Directorate for Preventing Corruption.

The Directorate for Transparency and Social Control (Diretoria de Transparência e Controle Social, DTC) has attributions relating to the design and co-ordination of the open data policy, the transparency and access to information policy, social control, budget transparency, as well as public sector integrity in the States, Municipalities and in the Federal District (Box 3.14).

The DTC is also in charge of acting as the government's co-ordinator and point of contact for the OGP process. The DTC's responsibilities relating to Brazil's OGP process are in line with those of OGP co-ordination offices in OECD Member Countries (Figure 3.6). Among the 24 OECD Member Countries and Brazil that provided answers to the 2020 OECD Survey on Open Government (OECD, 2021[6]), coordinating the co-creation process (100%) and its implementation (96.6%) is as much part of theses offices' portfolio as monitoring the implementation (93.1%), communicating about the OGP process (96.6%) or raising awareness both internally (96.6%) and externally (100%).

Figure 3.6. Responsibilities of OGP offices in OECD Member Countries and Brazil



Note: Values in percent. N=29, multiple selections possible.
Source: OECD (2021[4]), 2020 OECD Survey on Open Government.

The DTC's mandate explicitly mentions that it is the Directorate's responsibility to "co-ordinate open government policies, in accordance with current legislation" and "promote an open government culture" (Box 3.14). While the institutional mandate seems to establish the STPC (and the DTC) as the co-ordinator of the government of Brazil's wider open government agenda, interviews conducted during the fact-finding missions revealed that this co-ordination role is mainly limited to the OGP process and to making and co-ordinating policy on those files that are under direct control of the Secretariat (e.g. open government data, access to information). In its current role, the STPC does not function as a dedicated Open Government Office as it does not have the mandate to co-ordinate other policies that contribute to open government (e.g. citizen participation) and that are steered out of other government ministries and agencies.

Box 3.14. The responsibilities of the Secretariat for Transparency and Prevention of Corruption (STPC) and of the Directorate for Transparency and Social Control of the STPC of the CGU

Secretariat for Transparency and Prevention of Corruption (STPC)

- I - Formulate, coordinate, promote and support the implementation of plans, programs, projects and standards operation procedures (SOPs) aimed to prevent corruption, promote and strengthen transparency, access public information, open source government data, ethical conduct of public servants, social control, and the **principles of open government** in the federal public administration and, as well, integrity and ethical conduct between the private sector and its relationship with the public sector.
- II - Promote, coordinate and support studies/researches, meant to improve and disseminate knowledge in the areas to prevent corruption, promote transparency, access to information, ethical conduct, integrity and nonetheless share the main principles of open government and social control.

- III - Participate in academic forums, for national and international agencies related to fight and prevent corruption, promote transparency, access to information, ethical conduct, integrity and **the principles of open government** and social control, as well as to establish technical discussions regarding the referred issues in such instances.
- IV - Promote the implementation, enforce the execution, carefully coordinate and monitor Federal Law No. 12,527, of 2011, regarding the Open Data Policy of the federal Executive Branch, as per Decree No. 8,777, of May 11, 2016.
- V - Support, within the scope of its powers, the negotiation commissions for leniency agreements.
- VI - Propose developing measures to identify and prevent situations that constitute conflict of interest, as per describer by Law No. 12,813, of May 16, 2013.
- VII – Act as the Executive Secretary role of the Council for Public Transparency and Fight against Corruption - CTPCC.

Directorate for Transparency and Social Control of the STPC

- I - promote articulation with federal agencies and entities with a view to the elaboration and implementation of policies, practices and actions of transparency and **open government;**
- II - promote the implementation, execution, coordination and monitoring of Law No. 12,527, of 2011, and the Open Data Policy of the federal Executive Branch, pursuant to Decree No. 8,777, of 2016;
- III - support and guide States, Municipalities and the Federal District in the implementation of policies and programs for the prevention of corruption, the promotion of transparency, access to information, ethical conduct, integrity, the principles of open government and social control;
- IV - propose and coordinate actions that encourage citizens to participate in social control;
- V - supervise the management of the specific electronic system for registering requests for access to information established by Decree No. 7,724, of 2012;
- VI - supervise the management of the Federal Government's Transparency Portal;
- VII - promote the valorisation of ethical behaviour and the exercise of citizenship, with children, youth and adults;
- VIII - guide and exercise technical supervision of the activities of the teams designated in the CGU's regional units to carry out the activities related to the DTC's competence actions;
- IX - **coordinate open government policies**, in accordance with current legislation;
- X - **promote an open government culture** based on sustainable and innovative policies, based on transparency, participation and responsiveness of public bodies and entities;
- XI - promote actions that generate a response from the Federal Government bodies and entities to the participation of society resulting from actions of transparency, access to information, social control, open data and open government; and
- XII - approve, revise and revoke understandings on the application of Law No. 12,527, of 2011, due to the exercise of the powers provided for in items I, II, III and V of this article

Source: Government of Brazil (2019[33]), Ordinance No. 3553/2019, https://www.in.gov.br/web/dou/-/portaria-n-3.553-de-12-de-novembro-de-2019-227654932

The Secretariat for Transparency and Prevention of Corruption of the CGU could be transformed into the Secretariat for Open Government and Prevention of Corruption

In case Brazil decides to move towards a fully integrated open government agenda (e.g. by adopting an Open Government Strategy), there will be a need to upgrade and review the current institutional settings and arrangements in order to ensure that all relevant public institutions understand their roles and responsibilities as key contributors to the open government ecosystem. Ultimately, the pursuit of an integrated open government agenda requires the identification and empowerment of a dedicated Open Government Office that has a mandate and the capacity to steer and co-ordinate the national open government agenda, including an eventual Open Government Strategy. Strong institutional leadership can ensure co-ordination between the different agendas that are linked to the promotion of openness, and that all institutions work towards a shared vision, synergies are exploited, and good practices are shared.

The Secretariat for Transparency and Prevention of Corruption of the CGU would be in an ideal position to become the country's dedicated Open Government Office and, as such, the co-ordinator of an integrated open government agenda. As discussed above, it is already in charge of making and co-ordinating the implementation of many of the most relevant open government policies and it has the formal responsibility to co-ordinate the OGP process, providing it with leverage to involve other public institutions.

To formally establish the STPC as the Open Government Office, Brazil could consider transforming it into the Secretariat for Open Government and Preventing Corruption (*Secretaria de Governo Aberto e Prevenção da Corrupção,* SGA). The STPC's current Directorate for Transparency and Social Control could then become the new Directorate for Open Government (*Diretoria de Governo Aberto,* DGA). This change of name may require a review of the National Open Government Policy (Decree 10.160 from 2019) or the adoption of a new decree on the integrated open government agenda, as discussed above.

The SGA's and DGA's institutional structures could be aligned with the new integrated open government approach. Under the leadership of a new Secretary for Open Government and Preventing Corruption (*Secretario de Governo Aberto e Prevenção da Corrupção*) and the new Director for Open Government (*Diretor de Governo Aberto*), the DGA could consist of specific teams focusing on making and co-ordinating policies on access to information & open data; social participation (in close co-ordination with SEGOV); accountability and social control; as well as co-ordinating the OGP process (Figure 3.7).

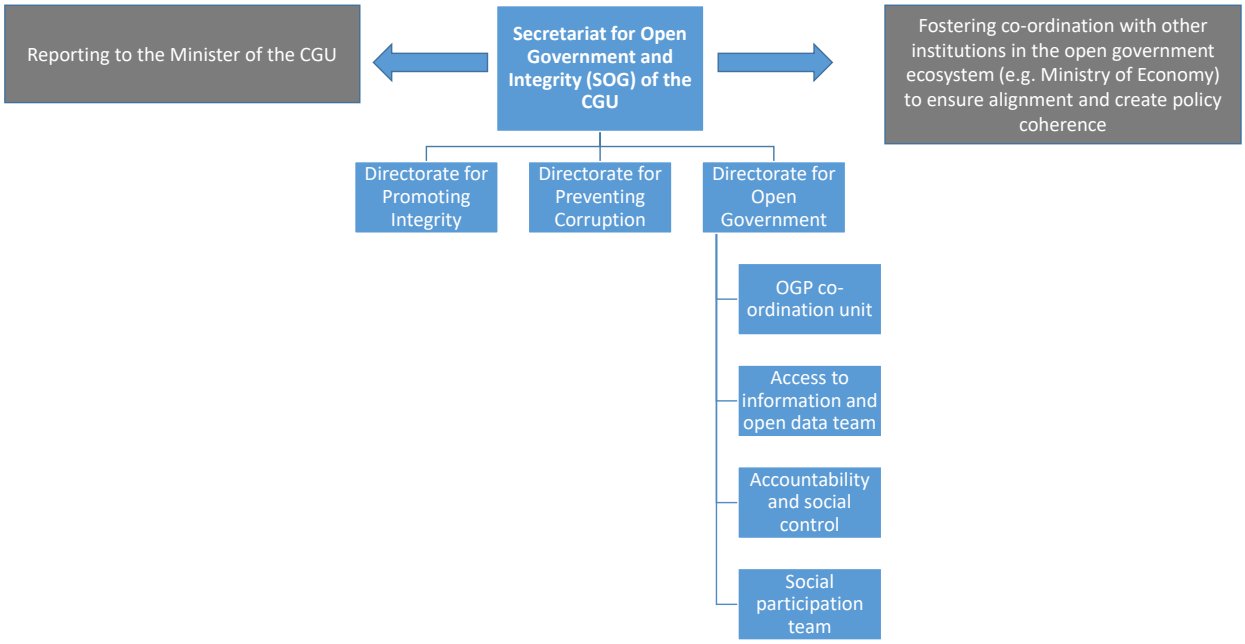
In summary, the new DGA could have the following key responsibilities:

- Co-ordinate the design, implementation, monitoring and evaluation of the recommended Federal Open Government Strategy (see above);
- Co-ordinate Brazil's OGP process, including the biannual Action Plans;
- Act as Secretariat to the recommended Open Government and Integrity Council (see Chapter 4); and
- Support the design and implementation of policies on open government data; access to public information; social participation (in close collaboration with SEGOV); accountability and social control; and ethics and integrity (in close collaboration with other Directorates of the new SGA) across the entire federal government.
- Foster the creation of an open government culture in the Brazilian public sector (in close collaboration with the National School of Public Administration).

Providing the SGA and the DGA with these responsibilities and establishing it formally as the co-ordinator of an integrated open government agenda would not mean that it would be in charge of designing and implementing all relevant open government policies. Rather, it would mean that the SGA and the DGA would have a formal mandate to create synergies and foster policy coherence across government. In practice, this means that the SGA would be charged to co-ordinate different open government policies, such as the implementation of participatory instruments across the federal government (which is the

competence of the Special Secretariat of Social Articulation of the SEGOV – see Chapter 6 on Participation), with the competent ministries and agencies.

Figure 3.7. Proposed structure of the Secretariat for Open Government and Integrity of the CGU



Source: Author's own elaboration.

Alternatively, in case Brazil decides to pursue an integrated open government agenda while keeping the institutional responsibilities as they are, it could consider creating a National Open Government Co-ordination Office (*Oficina Nacional de Coordenação de Governo Aberto*) as part of the centre of government. The National Open Government Co-ordination Office would not have substantive responsibilities relating to the design and implementation of open government policies. Rather, it would have the formal responsibility to co-ordinate the implementation of a possible Federal Open Government Strategy across the whole public sector and of ensuring effective enforcement and accountability (e.g. regular progress reports from public institutions could be sent to it).

The GoB could consider creating Institutional Open Government Co-ordinators in federal public institutions

The move towards an integrated open government agenda and the design of the recommended Open Government Strategy (see above) also requires reviewing institutional responsibilities across the wider government. For the moment, according to results of the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* (OECD, 2021[6]) no federal public institutions in Brazil has an office / person that is specifically dedicated to the co-ordination of the institutions' open government agenda.

Nevertheless, research also show that most public institutions have multiple offices / people that are in charge of key open government policies. For example, more than 90% of the public institutions that answered the Survey had a person / office in charge of open government data and 50% had an office / person in charge of co-ordinating their institution's participatory initiatives. In addition, more than 90% of public institutions had somebody responsible for integrity policies (as mandated by the Governance Policy, see above) and 95% have an office / person in charge of citizens' complaints and accountability mechanisms (this role is typically taken over by the *ouvidorias*). In addition, the CGU also created OGP

contact points in different public entities as part of the action plan processes. However, these contact points only oversee the implementation of the commitment(s) made by their entities in the OGP action plan and are not tasked with promoting and co-ordinating other open government policies within their institutions.

Brazil could consider creating dedicated Institutional Open Government Co-ordinators (*Coordenadores Institucionais de Governo Aberto*) in all public institutions, as a means of fostering co-ordination and translating high-level objectives into institutional realities. This becomes even more relevant, in case Brazil decides to design the recommended Open Government Strategy (and mandate the adoption of Institutional Open Government Plans, see above). Rather than taking over the substantive responsibilities of existing offices in each institution (i.e. the Open Government Data Office of the institution would continue implementing the institutional open data agenda), the Institutional Open Government Co-ordinator would ensure policy alignment and coherence across the house (e.g. ensuring that the open data and the wider transparency agendas of their institutions are linked). While public institutions in Brazil should be free to decide where to situate their dedicated institutional open government person / office, OECD experience shows that this person / office is best situated close to the institutional leadership (e.g. General Secretariat of a Ministry).

In sum, the Institutional Open Government Co-ordinator could have the following responsibilities:

- Co-ordinate the design, implementation, monitoring and evaluation of the recommended Institutional Open Government Plan (see above);
- Act as direct counterpart to the Secretariat for Open Government and Preventing Corruption in the CGU (see above);
- Ensure that all institutional processes that relate to openness (e.g. open budgeting; open contracting) share common objectives and are aligned with the recommended Open Government Strategy (see above);
- Participate in the Open Government Community of Practice to share good practices and experiences (see Chapter 5);
- Disseminate a culture of open government across the public institutions;
- Ensure the implementation of laws and policies relevant to open government principles,
- Provide individual and personalised support to the public officials of their institution.

Costa Rica's *Enlaces Interinstitucionales* and Canada's Departmental Open Government Co-ordinators provide interesting examples of existing Open Government Contact Points (Box 3.15).

Box 3.15. Costa Rica's *Enlaces Interinstitucionales* and Canada's Departmental Open Government Co-ordinators

Canada

In Canada, every governmental department has identified an open government co-ordinator. These individuals function as the entry point into the department for the Treasury Board Secretariat (TBS) – the main co-ordinating entity responsible for setting government-wide direction on open government – for all matters related to open government.

Open government co-ordinators:

- facilitate open government activities throughout their organisation
- assist content owners within the organisation with the process to release data (e.g. identification, preparation, approval mechanisms and entry into the Open Government Registry)
- provide recommendations to the senior official responsible for approving the data release

- provide assistance to clients within the organisation requesting information via open.canada.ca
- provide relevant training in the organisation, where possible
- participate in open government working groups, led by the Treasury Board Secretariat, where they share best practices and challenges related to open government.

Open government co-ordinators are typically appointed at the director level and below, and convene on a monthly basis through working group meetings co-ordinated by the Treasury Board Secretariat. TBS is also planning to create an online "co-ordinators corner" where co-ordinators can more easily interact if they wish.

Costa Rica

The Open Government Contact Points (*Enlaces interinstitucionales*) established to facilitate the design and implementation of Costa Rica's second OGP action plan represent an important tool to ensure inter-institutional coordination. The initiative to create the Open Government Contact Points was launched by the centre of government in Costa Rica, namely by the Deputy Ministry of the Presidency of the Republic (the main office responsible for open government initiatives in the country). Contact points were established in most central government ministries, decentralised institutions, some municipalities, the Ombudsman, and the Judiciary.

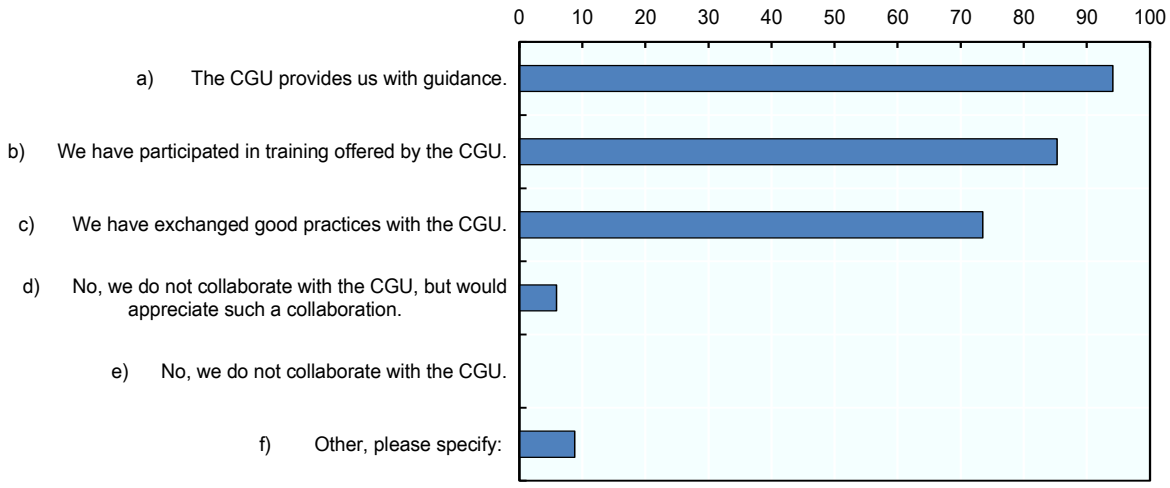
Ultimately, the Costa Rican government aims to create at least one Contact Point in each institution to help implement the wider open government agenda. The Contact Points meet regularly and benefit from capacity-building. While they do not formally report to the Deputy Ministry of the Presidency, the Contact Points voluntarily collaborate with this office and have the potential to provide the CoG with an effective co-ordination tool, both horizontally and vertically.

Source: OECD (2016[3]), Open Government: The Global Context and the Way Forward, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264268104-en

Increasing the human and financial resources of the CGU's open government team

Over time, the CGU has become an effective and efficient co-ordinator of open government reforms, largely due to a highly skilled (and convinced) core team working on co-ordinating the OGP action and the different open government policies under its purview. Interviews conducted during the OECD's peer-driven fact-finding mission and the results of the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* (OECD, 2021[6])show that most public institutions recognise the CGU's leadership on open government policies and have a general willingness to co-operate with it (Figure 3.8). Nevertheless, almost 80% of public institutions also saw a need to improve the collaboration between the CGU and their institutions. For example, public institutions suggest that the CGU could foster the exchange of good practices and experiences; offer more trainings and courses on specific open government policies for public officials; offer rewards / prices for good practices in the field of open government; and promote a unified definition of the concept of open government across the whole of government.

Figure 3.8. Collaboration of Federal public institutions with the CGU



Note: N=35
Source: OECD (2021[6]), *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*

Ultimately, the implementation of an integrated open government agenda will require a fundamental transformation of the role of the CGU. More than ever, the CGU will need to take over the role of whole of government co-ordinator (rather than comptroller). Increasingly, it will also need to move towards becoming a centre for expertise, providing advice and guidance to public institutions across government and offering trainings. The increased levels of responsibilities should be coupled with increased human and financial resources for the recommended Secretariat for Open Government and Preventing Corruption and the recommended Directorate for Open Government.

Conclusion and Recommendations

A joint conclusion and recommendations for chapters 3 and 4 can be found at the end of Chapter 4.

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Notes

[1] The OECD Recommendation of the Council on Open Government (OECD, 2017) defines open government as "a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth".

[2] Public sector integrity policies are closely related to open government policies, but will not be further analysed in this review, as they are the subject to a specific OECD Integrity Review of Brazil (forthcoming).

[3] Provision 2 stipulates that countries should "ensure the existence and implementation of the necessary open government legal and regulatory framework (…)" (see Box 3.2).

[4] The 1988 Constitution is Brazil's seventh Constitution, with prior versions from 1824, 1891, 1934, 1937, 1946 and 1967.

[5] The first generation of open government initiatives in most countries focused mainly on improving the functioning of government as well as its internal methodology and processes (e.g. access to information, innovation in public sector, open processes, accountability mechanisms, procurement, etc.). The latest generation of open government initiatives focuses on the ways in which the government designs policies and delivers services, and on using open government approaches and applying open government tools in different policy areas (e.g. gender, environment, health, education, urban development, etc.).

[6] Discussions on the CGU's role relating to specific parts of the open government agenda (e.g. the implementation of the access to information law), as well as of the roles of other public institutions relating to the implementation of the principles can be found in the dedicated implementation Chapters of this Review (see Chapters 5, 6 and 7).

4 Strengthening governance processes and mechanisms for an integrated open government agenda in Brazil

This chapter provides recommendations to create governance processes and mechanisms that are suitable for an integrated open government approach and that put reforms targeting transparency, accountability, integrity and participation at the centre of public sector reform. It highlights the need to design an integrated co-ordination space for all policies and practices that relate to openness and suggests the creation of a National Open Government Council. It further identifies opportunities to raise levels of open government literacy across the public administration and among non-public stakeholders. The chapter also proposes the creation of Open Government Maturity Models, coupled with a clear theory of change and dedicated open government indicators to move the agenda towards outcomes and impacts. Finally, it identifies ways to make strategic use of public communications as a tool to create a holistic understanding of the concept and its associated policies and practices.

In order to foster the creation of an open government culture, governments have to establish processes and mechanisms that transform inputs (e.g. laws, policies, institutional mandates) into outputs (i.e. openness) (OECD, 2020[1]). Recognising that countries are at different stages of their open government agendas and that there are different ways for governments to pursue openness, the *OECD Framework for Assessing the Openness of Governments* focuses on key processes that should be led by any government that aims to promote a coherent approach to the creation of a culture of open government, including:

- Co-ordinating open government policies and practices;
- Building capacity and fostering open government literacy in the administration and among stakeholders;
- Monitoring and evaluation of open government policies and practices;
- Making strategic use of external and internal communication for open government reforms.

These processes and mechanisms reflect provisions 3, 4, 5 and 6 of the OECD Recommendation of the Council on Open Government (Box 4.1) and they are interlinked. Chapter 3 on the Enabling Environment for Open Government in Brazil suggested first steps for Brazil to move towards a fully integrated open government agenda, discussing the legislative, policy and institutional frameworks. The present Chapter builds on the recommendations of Chapter 3 and provides advice on ways to create governance processes and mechanisms that are suitable for an integrated open government approach and that put reforms targeting transparency, accountability, integrity and citizen and stakeholder participation at the centre of public sector reform.

The first section of the Chapter highlights the need to design an integrated co-ordination space for all policies and practices that relate to openness and suggests the creation of a National Open Government Council. The second section identifies opportunities to raise levels of open government literacy across the public administration and among non-public stakeholders, including by designing an integrated Open Government Toolkit and by creating a community of practice on open government. The third section finds that while the Government of Brazil (GoB) is collecting increasing amounts of process and output data on the implementation of open government policies and practices, little is known about the wider outcomes and impacts of open government reforms. In order to address this challenge, it proposes the creation of Open Government Maturity Models, coupled with a clear theory of change and dedicated open government indicators. The last section of the Chapter finds that more can be done to use public communications as a tool to create a holistic understanding of the concept and its associated policies and practices across the whole of government and the whole of society. The section discussed the potential benefits of the creation of a one-stop-shop Open Government Portal as a basis for an integrated open government agenda.

Box 4.1. Provisions 3, 4, 5 and 6 of the OECD Recommendation of the Council on Open Government

Provision 3

Ensure the successful operationalisation and take-up of open government strategies and initiatives by:

- (i) Providing public officials with the mandate to design and implement successful open government strategies and initiatives, as well as the adequate human, financial, and technical resources, while promoting a supportive organisational culture;
- (ii) Promoting open government literacy in the administration, at all levels of government, and among stakeholders.

Provision 4

Co-ordinate, through the necessary institutional mechanisms, open government strategies and initiatives – horizontally and vertically – across all levels of government to ensure that they are aligned with and contribute to all relevant socioeconomic objectives.

Provision 5

Develop and implement monitoring, evaluation and learning mechanisms for open government strategies and initiatives by:

- (i) Identifying institutional actors to be in charge of collecting and disseminating up-to-date and reliable information and data in an open format;
- (ii) Developing comparable indicators to measure processes, outputs, outcomes, and impact in collaboration with stakeholders; and
- (iii) Fostering a culture of monitoring, evaluation and learning among public officials by increasing their capacity to regularly conduct exercises for these purposes in collaboration with relevant stakeholders.

Provision 6

Actively communicate on open government strategies and initiatives, as well as on their outputs, outcomes and impacts, in order to ensure that they are well-known within and outside government, to favour their uptake, as well as to stimulate stakeholder buy-in.

Source: OECD (2017[2]), Recommendation of the Council on Open Government, OECD, Paris, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0438 (accessed 21 June 2021).

Co-ordinating open government policies and practices across the Brazilian state

Open government policies are transversal by nature. The success of initiatives such as those focusing on increasing transparency or involving stakeholders in decision making therefore often depends on effective co-operation and co-ordination. This need for co-ordination and collaboration is further reinforced, once a country decides to pursue an integrated open government agenda that treats reforms to foster transparency, accountability and citizen/stakeholder participation as part of one coherent and holistic agenda (e.g. through an Open Government Strategy).

Policy co-ordination is the primary means to prevent fragmentation and ensure policy coherence across the whole public sector. Co-ordination is also key to ensuring that the open government agenda and other relevant national policy agendas (e.g. the digital government agenda) proceed in the same direction and contribute to common objectives. Accordingly, Provision 4 of the OECD Recommendation of the Council on Open Government (2017[2]) highlights the importance of effective horizontal and vertical co-ordination of open government policies "through the necessary institutional mechanisms (…) to ensure that they are aligned with and contribute to all relevant socioeconomic objectives" (Box 4.1).[1]

Co-ordination can be either formal (i.e. take place in regulated spaces of co-ordination) or informal (i.e. through ad hoc meetings, personal connections, etc.). In most countries, the beginning of the open government movement was characterized by bottom up dynamics (i.e. a "start-up approach" to open government) that often operated outside of formal spaces and relied on personal relationships rather than institutionalised frameworks. Over time, more and more OECD Member and Partner Countries have started establishing Multi-stakeholder Forums as dedicated co-ordination spaces, largely thanks to their inclusions in the OGP Participation & Co-creation standards (OGP, n.d.[3]).

This section assesses Brazil against Provision 4 of the OECD Recommendation of the Council on Open Government, analysing the functioning, composition and responsibilities of existing institutional mechanisms to co-ordinate open government policies and practices, both across government and with non-public stakeholders. It finds that while Brazil has created multiple institutional mechanisms to co-ordinate open government policies and practices, gaps remain. Accordingly, the section recommends creating a National Open Government Council for it to become the primary co-ordination space for an integrated open government agenda.

Brazil has created institutional co-ordination mechanisms in different areas of open government

Constructive dialogue between public and non-public stakeholders is at the heart of open government. Recognising that all open government policies and practices require the involvement of many relevant actors, the Government of Brazil has designed a multiplicity of Councils, Networks, Committees, etc. in different areas of open government. The most important mechanisms that have co-ordination responsibilities in the field of open government are detailed in Table 4.1 .

Table 4.1. Overview of the most important co-ordination spaces for open government policies in Brazil

Name	Key attributions	Participants	Co-ordinating public institution	Legal basis	Further information in this Review
Interministerial Committee on Open Government *(Comitê Interministerial Governo Aberto, CIGA)*	To co-ordinate the OGP process across government.	13 federal ministries	CGU	Decree nº 10.160/2019	Chapter 4 Chapter 7
Civil Society Working Group for Advice on Open Government (*Grupo de Trabalho da Sociedade Civil para Assessoramento em Governo Aberto*)	To co-ordinate civil society involvement in the OGP process.	Civil society stakeholders only		Resolution nº 1/2014	Chapter 4
Interministerial Committee on Governance	To advise the President of the Republic in conducting the governance policy of the federal public administration.	Minister Chief of the Casa Civil of the Presidency of the Republic (President); Minister of Economy; Minister of the CGU	Casa Civil	Decree nº 9.901/2019	Chapter 3
Open Data Infrastructure Steering Committee *(Comitê Gestor da Infraestrutura Nacional de Dados Abertos, CGINDA)*	To co-ordinate the implementation of the Open Data Policy of the federal executive branch	9 governmental organizations + 2 civil society representatives	CGU	Decree nº 8.777/2016	Chapter 9
Council for Public Transparency and Anti-Corruption	To debate and suggest measures for the improvement and promotion of policies and strategies in the areas of transparency and access to public information.	7 members from public organizations + 7 members of civil society organizations	CGU	Various decrees, including nº 9.986	

Transparency and Social Control Council of the Senate					Chapter 7
National Council for Internal Control *(Conselho Nacional de Controle Interno, CONACI)*	To promote integration between all the agencies responsible for controlling public spending in Brazil.	Representatives for Internal Control of the Federal district, the federal level, States, and Municipalities	The self-governing body called 'Forum' composed of seats for the States (26), the Federal district (1), the capital cities (26) and the union (1)	None	-
National Council for Human Rights *(Conselho Nacional de Direitos Humanos, CNDH)*	Promote and defend human rights in Brazil, among others by monitoring public human rights policies and the national human rights program	11 representatives from civil society, 11 from public authorities	A Board of Directors consisting of equal share for government and civil society	Law No. 4,319/1964 and Law No. 12.986/2014.	Chapter 5
Network of Ouvidorias	Consolidate a national agenda of public ombudsman and social participation to guarantee the rights of users of public services	2,142 ouvidorias	General Ouvidoria of the Union in the CGU	Decree No. 9.492/2018	Chapter 8
SIC Network (*RedeSIC*)	Annual event to promote cooperation and exchange of information knowledge and experience among the SICs and foster mutual assistance	Ca. 150 public officals working in SICs (varies per year)	CGU, Ministry of Economy	None	Chapter 7
National Council of Public Prosecutor's Office (CNMP)	Oversee the financial and administrative activities and decisions of the Ministry as well as handling disciplinary complaints and proceedings against prosecutors	14 members: Chaired by the Attorney General of the Republic, 4 members of Federal Public Ministry, 2 members of the Public Ministry of the States, 2 judges, 2 lawyers, 2 citizens	Public Prosecutor's Office	Constitutional Amendment No. 45 from 2004	Chapter 8
National Council of Justice (CNJ)	To monitor the transparency of the judiciary and the conduct of its members as well as its effectiveness more broadly	15 members: 9 judges, 2 members of the Public Ministry, 2 lawyers, 2 citizens	Federal Supreme Court	Constitutional Amendment No. 45 from 2004	Chapter 8

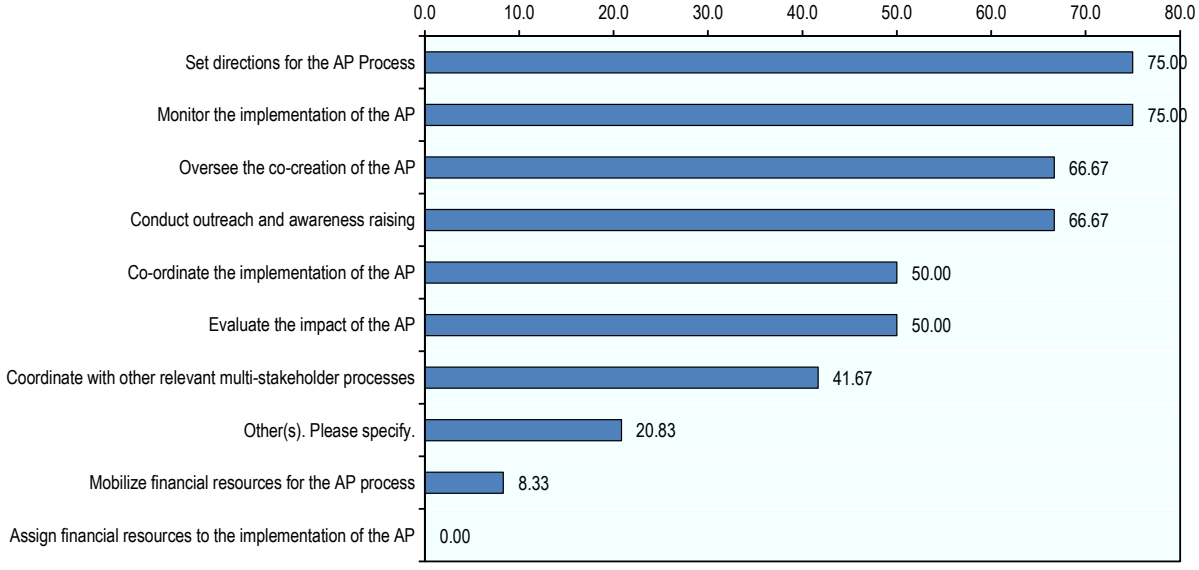
Source: Author's own elaboration.

The OGP process is co-ordinated through two different bodies

According to data collected by the OECD, almost all countries that participate in the Open Government Partnership (OGP) have created Commissions or Steering Committees (often called "Multi-stakeholder Forum" or MSF) to enable co-ordination and constructive dialogue between public institutions and non-public stakeholders throughout the OGP action plan cycles. Data from the *2020 OECD Survey on Open Government* further shows that these Forums are most commonly responsible for setting directions for the

action plan process (75%), monitoring the implementation of the action plan (75%), and overseeing the co-creation process (66.7%) (Figure 4.1).

Figure 4.1. The main responsibilities of Multi-Stakeholder Forums in OECD Member Countries



Note: Figures in percent. Only includes OECD countries who are part of the OGP and possess a MSF; N=24
Source: OECD (2021[4]), Survey on Open Government

Data collected by the OECD also suggests that, while MSFs were initially set up to co-ordinate the OGP process, some of them have started taking on other responsibilities relating to different areas of open government (OECD, forthcoming[5]). For example, the Czech Republic's Working Commission for Open Government and State Administration Transparency has a broad mandate to support integrity. As a permanent advisory body to the government and chaired by the Minister of Justice, its responsibility is to evaluate anti-corruption measures, to monitor the implementation by individual ministries and to propose measures to reduce corruption risks, including by fostering transparency of the public administration. Spain's MSF has taken the role of facilitating collaboration between government and civil society regarding all initiatives related to open government. In particular, it serves as a forum for dialogue with civil society and fosters the exchange of good practices, among others.

Whereas most countries have established a single MSF that includes both public and non-public stakeholders, Brazil currently has two different kinds of committees that meet separately in place, namely:

- 1) the Interministerial Committee on Open Government *(Comitê Interministerial Governo Aberto, CIGA)* which is made up of federal government institutions only; and
- 2) the Civil Society Working Group for Advice on Open Government (*Grupo de Trabalho da Sociedade Civil para Assessoramento em Governo Aberto,* GT) which is composed of civil society stakeholders only.

The Interministerial Committee on Open Government is the main mechanism to co-ordinate the OGP process across the federal government

The Interministerial Committee on Open Government (CIGA) was originally created by decree in 2011 in order to enable the co-creation and implementation of Brazil's first OGP action plan. The CIGA was initially

composed of 18 federal ministers, co-ordinated by the *Casa Civil* (Civil House). In addition to the CIGA, the founding decree also created an Executive Group of the Interministerial Committee on Open Government (GE-CIGA) which was supposed to provide the CIGA with support in carrying out its duties. and which was composed of seven government ministries. The core objectives of the GE-CIGA were: i) to draft the proposition of the Open Government National Action Plan and submit it for consideration of the CIGA; ii) to plan, execute and coordinate the consultation processes related with the Plan; and iii) to coordinate the Plan's implementation and execution. The CGU was the GE-CIGA's co-ordination body and provided administrative support and the means for the execution of the group's work.

According to information gathered during the fact-finding mission, the original CIGA only managed to have one meeting at Ministerial level and most of the substantive work was taken over by the GE-CIGA which met frequently. In order to simplify the institutional architecture and increase effectiveness, decree 10.160 from 2019 created a single government co-ordination committee. It abolished the GE-CIGA and mandated a transfer of co-ordination for the CIGA from the *Casa Civil* to the CGU. Furthermore, decree 10.160 no longer mandated the participation of Ministerial level representatives in the CIGA. Rather, article 5 established that "the members of the Interministerial Open Government Committee and their alternates will be appointed by the heads of the bodies they represent and appointed by the Minister of State of the Comptroller General of the Union". The decree also streamlined the CIGA's composition, reducing the number of participating ministries from 18 to 13 (Figure 4.2).

Figure 4.2. The current composition of the CIGA



Source: Author's own elaboration.

In line with practice in OECD countries (OECD, forthcoming[5]), the current CIGA includes government institutions with responsibilities for key open government policies, as well as representatives from implementing line ministries (e.g. Ministry of Environment, Ministry of Health, etc.). However, as mentioned above, unlike most Multi-Stakeholder Forums in OECD Member Countries, Brazil's CIGA does not involve

any non-public stakeholders, such as civil society organisations, academics or private sector representatives.

In terms of responsibilities, in addition to having a central role in facilitating the participation of Brazil in the OGP, the CIGA also has the mandate to "promote a culture of and knowledge about open government among federal public administration employees" (Article 4, Decree 10.160) (Box 4.2). Interviews conducted during the fact-finding missions revealed that the CIGA's role remains largely limited to the co-ordination of the design and implementation of the OGP Action Plan and that its meetings have become less frequent and less productive over the past years.

Box 4.2. Competences of Brazil's Interministerial Committee on Open Government

According to article 4 of Decree 10.160 from 2019, the CIGA has the following responsibilities:

- propose measures for development and implementation of the open government policy within the scope of the federal executive branch;
- promote culture and knowledge about open government among federal public administration employees
- propose priority actions to be implemented through national action plans on open government;
- promote necessary intra-governmental articulation for joint actions implementation, exchange of experiences, transfer of technology and training, within the scope of national action plans on open government;
- identify necessary research and development actions within the scope of national action plans on open government;
- guide preparation, implementation, monitoring and evaluation of national action plans on open government;
- approve the proposals for national action plans on open government and promote intra-governmental articulation for their implementation and execution
- identify necessary means for preparation, implementation and monitoring of national action plans on open government; and
- evaluate results and propose changes or revisions to the national action plans on open government.

Source: Government of Brazil (2019[6]), *Decreto Nº 10.160, de 9 de Dezembro de 2019: Institui a Política Nacional de Governo Aberto e o Comitê Interministerial de Governo Aberto*, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D10160.htm

The Civil Society Working Group for Advice on Open Government represents civil society's voices in the OGP process

A recommendation in the 2014 report of the OGP's Independent Reporting Mechanism suggested that the country should involve civil society in the broadest possible way in the design, execution, monitoring and evaluation of the OGP action plans. In response to this recommendation, Brazil created the Civil Society Working Group for Open Government Advisory (*Grupo de Trabalho da Sociedade Civil para Assessoramento em Governo Aberto*, GT) through Resolution 1/2014 in 2014. The group is currently made up of seven non-public stakeholders, namely four civil society organizations, one non-governmental organization connected to the academia/research; one association / organisation representing the private sector; and one association/union/organisation representing workers. Participants are selected by civil society entities themselves.

The main objective of the GT is to increase civil society participation in the OGP process of Brazil. The GT is, for example, in charge of providing advice to the CIGA and of working together with CIGA to develop the methodology for co-creating the OGP action plans. According to its mandate, the GT also participates actively in the process of implementing and monitoring the commitments contained in the action plans and can suggest improvements to the process.

Civil society organisations interviewed for this Review highlighted that the GT has been a valuable space to exchange ideas and experiences between civil society stakeholders. However, interviewees also stressed that its setup as an advisory body to the CIGA bears limitations. Civil society stakeholders sometimes feel side-lined and not fully involved in key decisions relating to Brazil's OGP process.

Brazil could consider creating a National Open Government y Council to enable an integrated open government agenda

In addition to the challenges associated with the co-ordination of the OGP process discussed above, the three implementation Chapters of this OECD Open Government Review (see Chapters 6-8) identify specific co-ordination challenges linked to the principles of transparency, accountability and citizen and stakeholder participation. For example, Chapter 6 on Citizen and Stakeholder Participation identifies a need to improve co-ordination between the Secretariat of Government, the CGU and the *Casa Civil*, as well as external stakeholders in making participation policy. It also notes the lack of formal co-ordination spaces in this important field of open government, following the revocation of decree that established the Government Committee on Social Participation (*Comitê Governamental de Participação Social*). Along similar lines, Chapter 6 on Transparency identifies a need for Brazil to further leverage the use of the existing Council for Public Transparency and Fight against Corruption to engage a wider range of stakeholders in the elaboration, implementation and monitoring of its transparency policies, as well as opportunities to expand the existing SIG Network.

In order to counter these challenges and enable the design and implementation of a Federal Open Government Strategy (see Chapter 3 on the Enabling Environment), Brazil could consider creating an Open Government Council (*Conselho de Governo Aberto,* COGA). The COGA would be a co-ordination mechanism that reflects the new, integrated open government approach, co-ordinating all policies and practices that fall under the realm of the concept of open government. In practical terms, the new Open Government Council could replace the existing CIGA and integrate the Open Data Infrastructure Steering Committee as sub-committees, as further described below. The new COGA could potentially also co-ordinate integrity policies and, as such, it could replace the existing Council for Public Transparency and Anti-Corruption.[2]

The COGA could be chaired by the CGU and the recommended Secretariat for Open Government and Integrity (see Chapter 3) and comprise senior representatives from the key institutions of the federal open government ecosystem, as well as key civil society representatives, academics, private sector representatives and trade unions. Overall, the Steering Committee would be made up of approximately 25-35 people. The CGU could function as the COGA's secretariat, facilitating and co-ordinating its day-to-day work.

Figure 4.3. The new National Council on Open Government



Source: Author's own elaboration.

The COGA could meet twice a year at Ministerial level and frequently at the level of senior public officials (e.g. Secretaries, Directors). The COGA's Ministerial meetings would serve to set the agenda and discuss progress in implementing Brazil's open government agenda, while the more regular meetings at the level of senior public officials could have the following tasks (among others):

- Ensure co-ordination and alignment between ongoing policies in the areas of transparency, accountability and citizen stakeholder participation (and, potentially, integrity – subject to the findings of the forthcoming OECD Integrity Review of Brazil);
- Lead the design and implementation of the Open Government Strategy, in case Brazil decides to accept this recommendation (see Chapter 3)
- Provide direction to and co-ordinating the implementation of Brazil's Open Government Strategy;
- Provide a forum for dialogue and exchange of good practices between institutions;
- Review Institutional Open Government Plans;
- Lead and co-ordinate the design and implementation of the OGP Action Plans of Brazil;
- Monitor and evaluate the implementation of the Open Government Strategy and of the OGP Action Plan;
- Promote Brazil's open government agenda nationally and internationally; and
- Foster the creation of an open government culture in the Brazilian public sector.

The creation of an Open Government Council could be institutionalised through an update of Decree 10.160 from 2019 establishing the National Open Government Policy.

Brazil could create sub-committees of the COGA to focus on specific open government policies

The Open Government Council could have a number of sub-committees, focusing on issues relating to specific processes and substantive priority topics. The sub-committees of the COGA would allow for

discussions at an expert/technical level and could be charged with translating the objectives outlined in the Federal Open Government Strategy and other relevant policies, such as the Open Data Policy (see Chapter 3) into concrete actions.

These sub-committees could actively engage the Institutional Open Government Offices Contact Points (proposed in Chapter 3), providing them with a space for policy exchange and dialogue while working on concrete agendas of relevance to their institutions. The sub-committees could also actively involve non-public stakeholders (e.g. civil society organisations, academia, private sector, unions, etc.), whenever relevant. For example, the COGA's sub-committee on the OGP Action Plan could become the dedicated Multi-Stakeholder Forum, comprised of both public institutions and non-public stakeholders, as recommended by OGP guidelines.

Sub-committees could also be created for thematic areas (such as Access to Information; Open Government and Education; etc.) as well as for specific processes (e.g. legal changes such as the elaboration of an Open Government Law). Italy's Open Government Forum which has six working groups for specific thematic areas of open government could provide inspiration in this regard (Box 4.3).

Box 4.3. Italy's Forum on Open Government

Italy established a Forum on Open Government in which 20 public administrations and 54 civil society organizations meet regularly. The Forum, co-ordinated by the Department of Public Administration of the Presidency of Council of Ministers, is open to any new organisation or administration, both central and local, which wants to participate in the development of open government policies or that intends to join the Open Government Partnership (OGP) process. The aim of the Forum on Open Government is to commit civil society organisations (CSOs) and public administrations to a long-term collaboration centred around co-designing the development and co-ordination process for implementing actions detailed in Italy's OGP National Action Plan. The Minster of Public Administration attends the Forum on a regular basis every six months. The Forum has clustered the thematic areas of open government into six groups: "Transparency", "Open Data", "Participation", "Accountability", "Digital Citizenship" and "Innovation and Digital skills". Each of these areas is the focus of a separate Working Group established by the Department of Public Administration, and all are open to Forum participants.

In this way, the Department has created a direct channel between public administrations and civil society organisations, enabling them to have regular meetings (every two to three months) and communicate online. The aim is to give the officials responsible for open government commitments (i.e. actions stipulated in the NAP) the possibility to consult with CSOs about specific questions and obtain their feedback. Additionally, CSOs can monitor the implementation of commitments and provide input and ideas on the development of new open government initiatives.

Source: Open Government Italy (n.d.[7]) Open Government Forum, http://open.gov.it/opengovernmentpartnership/open-government-forum (accessed 25 November 2021).

The creation of the recommended Open Government Council could be an opportunity to reinforce co-ordination and collaboration between levels of government and different branches of the State

In order to foster the move towards an open state and create a space that allows for dialogue and exchange of good practices between branches of power and levels of government, Brazil could also consider inviting actors from the legislature, the judiciary, independent public institutions (e.g. *Ministerio Público*), as well as subnational governments to become members of the COGA and include them both in the ministerial meetings and in the sub-committees (whenever relevant).

In case Brazil decides not to make public institutions outside of the federal executive branch of government members of the recommended COGA, the country could consider organising regular informal open state meetings within the framework of the COGA. It could be advisable for these open state meetings to take place at the highest possible level in order to generate the necessary buy-in for reforms. Colombia's and Costa Rica's Open State Committees (Box 4.4) provide interesting examples of ways to ensure political commitment for the open government agenda across branches of power and levels of government.

Box 4.4. Colombia's and Costa Rica's Open State Committees

Costa Rica

Costa Rica's National Commission for Open Government (CNGA) – attached to the Ministry of Communication – is institutionally highly diverse and encompassing. Consisting of 11 actors in total, it comprises representatives from 5 Ministries, 4 non-governmental organisations as well as the Judiciary and the Legislative with respectively one seat as observers. The scope of its mandate spans across governmental levels and also includes private entities which offer public service. The Comission's responsibilities include the OGP process, but go beyond it since they refer to Open Government more broadly. In that respect, the committee proposes policies, guidelines, and strategies, promotes the culture and education of citizens, and coordinates the implementation of open government activities, among others. Its central and integrative function becomes especially clear through its responsibility to support other governmental entities in creating open government legislation, to support "exchange between various actors at the national level to promote Open Government" and "to create synergies and opportunities for cooperation". To manage this workload, the CNGA possesses sub-committees which support its work. Initially, the corresponding decree establishes sub-committees for Transparency, Participation, Collaboration, Training and Support Systems. But the Commission can decide to change the system of sub-committees as deemed necessary.

Colombia

Members of Colombia's Open State Committee consist of permanent and non-permanent members. Permanent members are the Secretariat for Transparency, the Administrative Department of Civil Service and the Ministry of Information and Communications Technologies. Non-permanent members are announced every two years and must consist of two public entities at national level, one public entity at sub-national level and four civil society organisations. While the selection procedure has changed over time, the 2021-2023 committee has been selected by a committee of experts and on the basis of inputs by citizens. Thus, the composition signifies a remarkable diversity of actors. Besides a balance between governmental and non-governmental actors, it also includes both national and sub-national levels. The current committee even contains an institution outside the executive power (the Council of State).

The Committee has broad and far-reaching responsibilities. It is heavily involved in the design of the action plans by defining and implementing the associated methodology, providing guidance to participating stakeholders and coordinating the drafting process. Further, it has an important role for monitoring the action plans since it follows-up on the commitments and periodically reports back to the open government community on the implementation progress. A third area of responsibility related to the development of communication strategies on the OGP process and the open government principles.

Source: Presidency of Costa Rica (2015, as amended[8]), Executive Decree No 38994, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=79442; Open Government Partnership Colombia, (2021[9]), What is the Open State committee?, https://agacolombia.org/

Building capacity and fostering open government literacy in Brazil

The move towards an open government culture of governance (see Chapter 2) involves changes in individual and institutional values, beliefs, norms of conduct, and expectations (OECD, 2021[10]). Recognising that the creation of awareness, knowledge and skills play an important role in fostering a change towards an open government culture, Provision 3 of the OECD Recommendation of the Council on Open Government invites countries to promote "open government literacy[3] in the administration, at all levels of government and among stakeholders" (Box 4.1).

Along these lines, the *OECD Report Skills for a High Performing Civil Service* (2017[11]) introduces a framework for skills needed by today's public officials. One of the four pillars of this framework highlights that "new skills are required for public officials to effectively engage citizens, crowdsource ideas and co-create better services" (OECD, 2017, p. 9[11]). The framework explicitly recognises that public officials need dedicated resources and trainings to be able to develop an open government culture and work in partnership with civil society stakeholders.

However, the development of open government literacy is not only relevant for public officials. It also requires that citizens and non-public stakeholders are empowered, active, and engaged, and have agency and efficacy, and are able to collaborate and make informed decisions together with public institutions. The open government literacy of non-public stakeholders is strongly linked to the promotion and protection of civic space (see Chapter 5).

This section analyses efforts to foster the open government literacy of both public officials and non-public stakeholders in Brazil. It finds that – while the federal government has established numerous innovative initiatives aiming to promote open government literacy, including handbooks, trainings, videos and games – degrees of awareness, knowledge and skills on open government policies and practices across Brazil continue to differ substantially. These findings are confirmed by the results of the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* (OECD, 2021[12])according to which a large part of participating stakeholders saw the lack of specialized and well-trained public officials and of responsive and capable non-public stakeholders as a major obstacle to the harmonious implementation of open government policies in Brazil. This section proposes different ways to foster the open government literacy of public and non-public stakeholders, including through the adoption of an integrated Open Government Toolkit and the creation of a community of practice focusing on open government.

Levels of open government literacy vary widely across the Brazilian public sector and society

Results from the peer-driven OECD fact-finding missions highlight that levels of awareness, knowledge and skills on open government principles, policies and practices are unequally distributed across the Brazilian public sector and across non-public stakeholders and the wider society. While the staff of some institutions and some non-public stakeholders have an advanced degree of open government literacy, others have very little knowledge, awareness and skills. For example, Chapter 7 on Transparency finds that Brazil has skilled people working on access to information in some institutions, whereas those of other institutions are much less skilled. Similarly, levels of understanding and skills are unevenly spread between different open government policies and practices. In general terms, open data and transparency literacy seems to be higher than participation literacy. Moreover, common citizens seem to have little to no knowledge about open government policies and practices (see also the dedicated section on Public Communications in this Chapter).

The results of the OECD Public Institutions Survey (OECD, 2021[12]) confirm the findings of the fact-finding mission: 56% of respondents recognised a lack of human and financial resources and 44% of respondents saw the lack of training and guidance for civil servants among the main challenges for the implementation of their institutions' access to information agendas. Similarly, 56% of respondents identified limited public

awareness of citizens, CSOs, journalists, etc. and 32% saw the lack of training and guidance for the public among their main challenges to implement access to information provisions. The Survey shows similar results for policies and practices relating to both citizen and stakeholder participation and accountability: 38% of respondents identified a "lack of training and guidance for civil servants", 44% saw a "lack of human and financial resources" and 44% of respondents highlighted limited public awareness among their key challenges for participation. As regards accountability, more than 70% of responding institutions identified "limited public awareness" of accountability provisions and 53% feel that there is a "lack of training and guidance for the public".

The federal government recognises the uneven distribution of open government literacy as one of the main obstacles to the harmonious implementation of open government policies and practices. As detailed in the next sections, the CGU (and other federal government institutions) have taken a variety of initiatives – with differing levels of impact – to ensure that public officials and the wider society move towards an open government culture.

The Government of Brazil, spearheaded by the CGU, has taken important steps to promote open government literacy in recent years

The promotion of awareness, knowledge and skills on those open government policies and practices that are under its purview has been a priority of the CGU for many years and some of the initiatives that it introduced, such as the Open Government Game (Box 4.8) and the CGU's Knowledge Base (Box 4.5), can be considered international good practices. All of Brazil's four OGP action plans have included specific commitments targeting the public service's skills relating to open government. For example, the fourth action plan includes a commitment to "develop collaborative actions in order to *disseminate knowledge* and map good governmental practices to promote subnational involvement" and a commitment to "establish, in a collaborative way, a reference model for an Open Data Policy that fosters integration, *training and awareness between society and the three government levels*, starting from a mapping process of social demands".

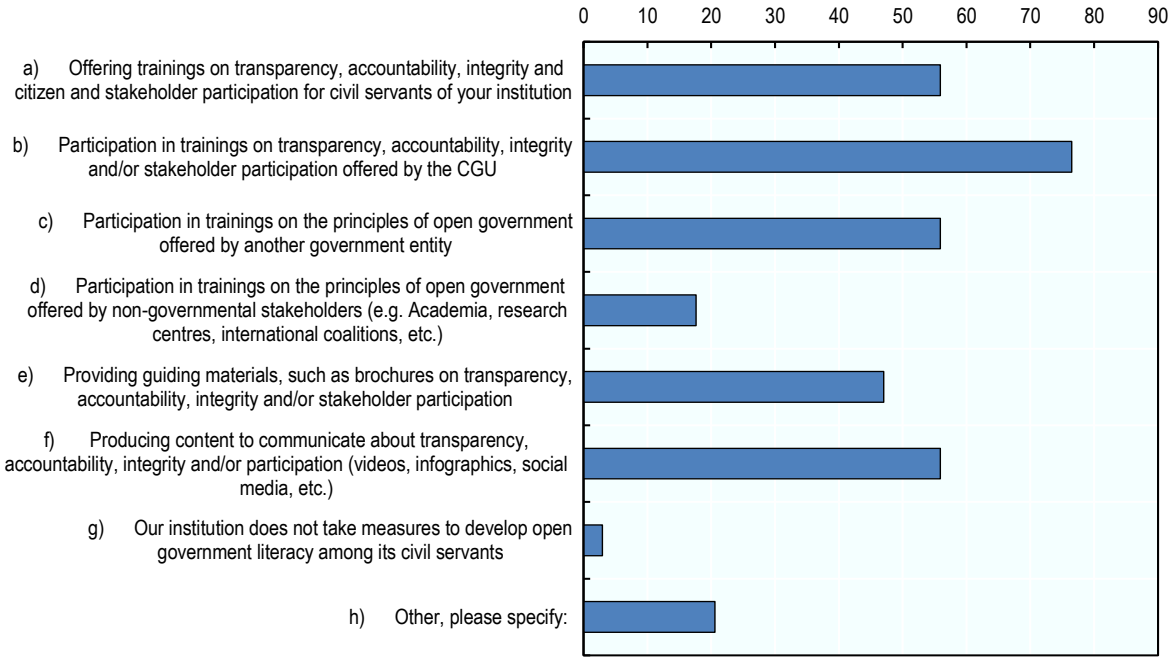
Box 4.5. The Comptroller General of the Union's "CGU Knowledge Base"

The CGU Knowledge Base is a comprehensive repository for knowledge produced or used by the CGU. It is structured around 12 communities (e.g. "the CGU"; "academic publications"; "events"; "manuals"), each of which contains a number of sub-sections. For example, the community focusing on "the CGU" contains the organisational charts and legislation related to the creation, regimental structure and powers of the Comptroller General of the Union. It also contains ample information relating to accountability, such as the Annual Account Audit Reports, as well as documents related to the CGU's programmes and projects. Along similar lines, the community on "manuals" brings together a wide collection of manuals, booklets, guides, step-by-step instructions and document templates prepared by the different areas of the CGU.

Source: Government of Brazil (2021[13]), Background Report prepared for the OECD Open Government Review of Brazil (unpublished working paper).

The CGU and other federal government institutions have further designed a wide range of trainings and adopted manuals and guidelines in many different areas of open government. Results from the OECD Public Institutions Survey show that these efforts have started spreading across the public sector (Figure 4.4). For example, most public institutions now either offer trainings to their staff or allow them to participate in trainings offered by the CGU or other public institutions, and many public institutions provide guidelines and producing relevant content on open government.

Figure 4.4. Measures taken by public institutions to develop open government literacy of their civil servants

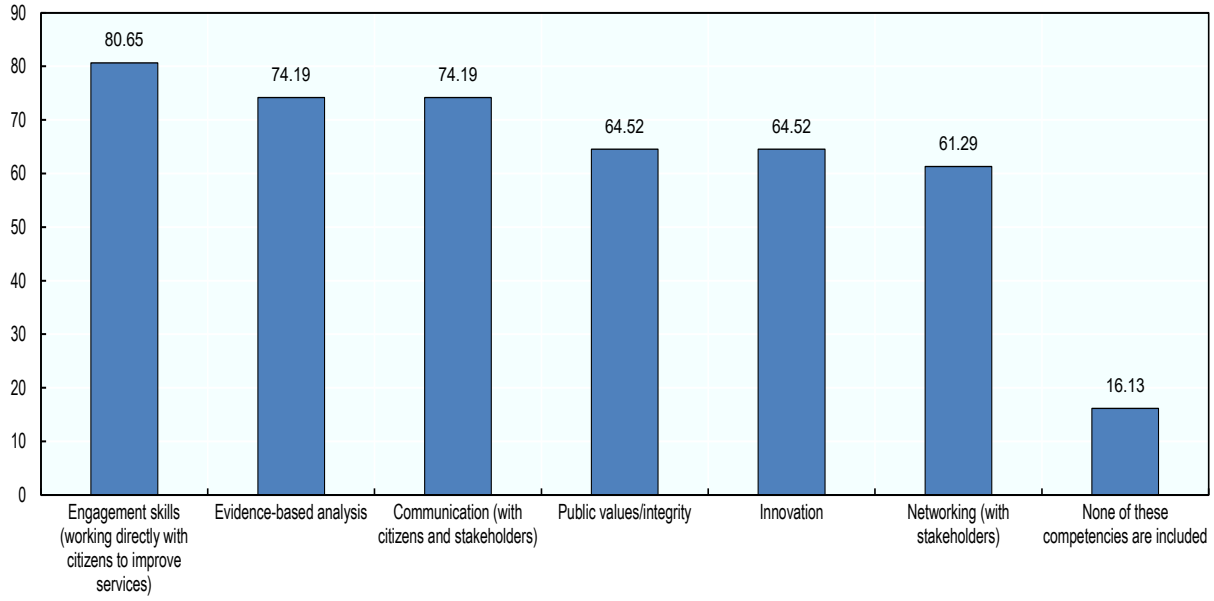


Note: Figures in percent. N=34.
Source: OECD (2021[12]), *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*

Open government-related skills are already included in the competency frameworks of Brazilian public officials

The vast majority of OECD countries include specific skills relating to open government in public officials' competency frameworks. Competency frameworks are essential to ensure that public officials have the skills required to put open government principles into practice. As data from the 2020 OECD Survey on Open Government shows (OECD, 2021[4]), 20 out of the 23 OECD countries (87 %) allude to central themes of open government in these frameworks (Figure 4.5). Public values / integrity is most commonly present (86.96%), followed by communication and engagement skills (respectively 73%). Brazil is in line with OECD practice in this regard.

Figure 4.5. Inclusion of open government related skills in public officials' competency frameworks in OECD Member Countries and Brazil

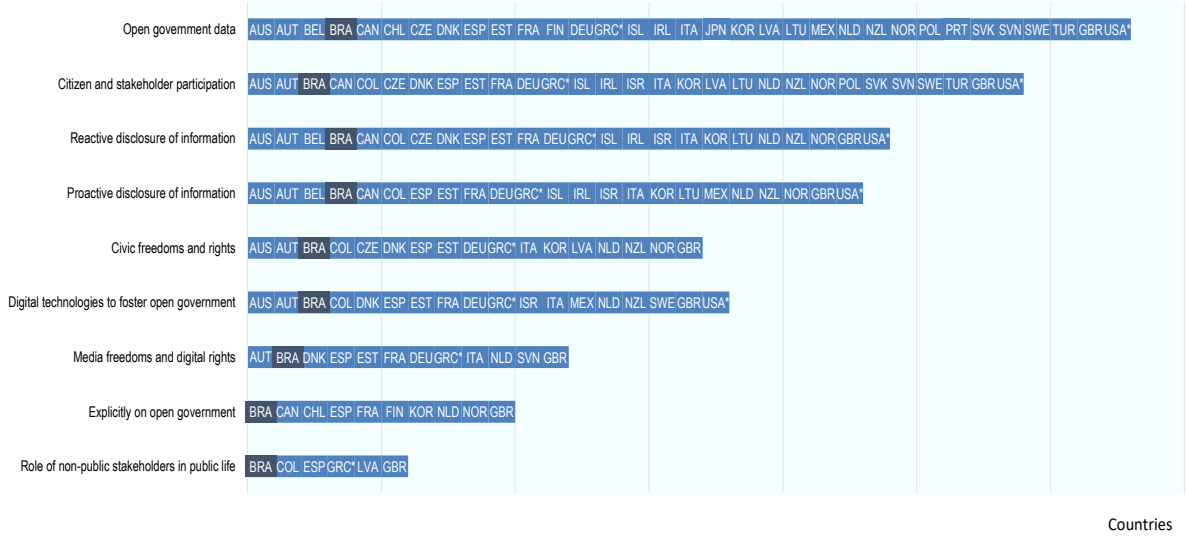


Note: In percent. N=31.
Source: OECD (2021[4]), 2020 OECD Survey on Open Government

Different guidelines, manuals and toolkits on open government policies and strategies are available to public officials and non-public stakeholders

To raise awareness, create buy-in and build their staff's and civil society's open government literacy, most governments across the OECD membership have elaborated guidelines, toolkits and manuals on open government policies and practices (OECD, forthcoming). According to the results of the *2020 OECD Survey on Open Government* (OECD, 2021[4]), 29 out of 31 OECD countries (94%) had guidelines on open government data, and 25 OECD countries (81%) had guidelines on citizen and stakeholder participation. Twenty OECD countries (65%) had guidelines on reactive disclosure of information, and 19 (62%) on proactive disclosure. Only eight OECD countries (26%) had guidelines that explicitly focused on the concept of open government (Figure 4.6).

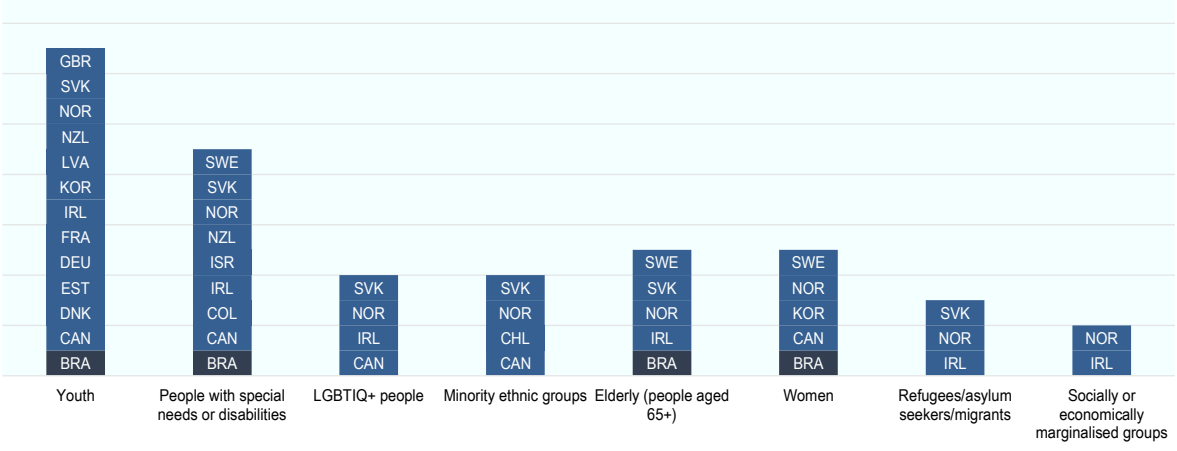
Figure 4.6. Availability of guidelines for civil servants on open government at the central/federal level



Note: Multiple selection possible. N=35. Data for Greece and United States is preliminary.
Source: OECD (2021[4]), 2020 OECD Survey on Open Government

As regards the open government principles of citizen and stakeholder participation, some countries, such as Lithuania and the United Kingdom, have guidelines that raise awareness of the need to target specific groups and stakeholders when relevant (see also Chapter 6 on Participation). Many countries also have guidelines on fostering the participation of specific groups of the population: out of the 28 OECD countries with guidelines on participation, 12 (43%) focus on youth and another 8 (29%) focus on people with disabilities. Respectively four OECD countries (14%) have guidelines focusing on LGBTIQ+ people, minority ethnic groups, elderly people, and women (Figure 4.7).

Figure 4.7. Participation guidelines targeting specific groups among OECD Member Countries and Brazil



Note: Multiple selection possible.
Source: OECD (2021[4]), Survey on Open Government

As visible from Figure 4.6 and Figure 4.7, Brazil is in line with OECD standards when it comes to the availability of written guidance on open government policies and practices. Table 4.2 provides a detailed overview of toolkits, manuals, and guidelines that are available in Brazil.

Table 4.2. Available toolkits, manuals and guidelines on open government policies and practices in Brazil

Name of toolkit / manual / guideline	Relevant open government policy or practice	Target audience	Brief description	Weblink
Guide on procedures to comply with the Law on Access to Information and use of Fala.BR (Guia de procedimentos para atendimento à Lei de Acesso à Informação e utilização do Fala.BR)	Reactive disclosure of information	Public servants of the federal executive power which need to respond to Access to Information requests	The purpose of this guide is to support bodies and entities of the Federal Executive Branch in the procedures to meet requests made based on the Law on Access to Information - LAI (Law No. 12,527, of November 18, 2011). The guidelines aim to ensure a high quality service regarding the treatment ofrequests for information and the correct use of the Integrated Ombudsman and Access to Information Platform (Fala.BR). The objective is to improve the federalaccess to public information service.	https://www.gov.br/acessoainformacao/pt-br/lai-para-sic/guias-e-orientacoes/guia-de-procedimentos-para-atendimento-a-lei-de-acesso-a-informacao-e-utilizacao-do-e-sic#intro
Active Transparency Guide (GTA) for Bodies and Entities of the Federal Executive Branch (Guia de Transparência Ativa (GTA) para Órgãos e Entidades do Poder Executivo Federal)	Proactive disclosure of information	Public servants of the federal executive power which are proactively publishing information on their institutional website	This document guides the bodies and entities of the Federal Executive Branch when proactively publishing information, on their official websites under the Access to Information Law (Law nº 12,527, of November 18, 2011), as well as institutional information, procurement data and other. By standardizing institutional websites with the help of this guide, public bodies facilitate navigation for citizens on all governmental websites, allowing them to quickly localise and retrieve relevant information.	https://repositorio.cgu.gov.br/bitstream/1/46643/1/gta_6_versao_2019.pdf
Guide for Publishing the List of Classified and Disqualified Information and Statistical Reports (Guia para Publicação do Rol de Informações Classificadas e Desclassificadas e de Relatórios Estatísticos)	Proactive disclosure of information	Public servants of the federal executive power with the responsibility of publishing annual meta-data reports	These guidelines provide bodies and entities of the Federal Executive Power with orientation regarding the annual publication of meta-data on classified and declassified information as well as statistical reports in order to comply with with Art. 45 of Decree No. 7,724/2012.	https://repositorio.cgu.gov.br/bitstream/1/46638/1/guia_informacoes_classificadas_versao_3.pdf
Fala.BR Manual - Guide for SICs (Manual do Fala.BR - Guia para SICs)	Digital tools for open government	Employess of federal public institutions	This document serves as a manual for the new Fala.BR system, which replaced the Electronic System of the Citizen Information Service (e-SIC) as main tool to provide citizens with access to information.	https://repositorio.cgu.gov.br/bitstream/1/46648/1/Manual_FalaBr_SIC_versao2.pdf
Fala.BR Manual - User Guide (Manual do Fala.BR - Guia do Usuário)	Digital tools for open government	Citizens and non-public stakeholders	This manual guides citizens and the public who use Fala.BR, a tool that replaced the Electronic System of the Citizen Information Service (e-SIC). Among other, readers can learn how to register requests for access to information, monitor compliance with the response deadline and consult the responses received.	https://repositorio.cgu.gov.br/bitstream/1/46644/1/manual_falabr_guia_usuario.pdf
Access to Information seal use manual (Manual de uso do selo Acesso à Informação)	Public communicati on	Employees of federal public instiutions	This manual details how to brand electronic and print communication materials regarding access to information using a common logo.	https://www.gov.br/acessoainformacao/pt-br/lai-para-sic/guias-e-orientacoes/manual-do-selo-informacao_periodo-

				eleitoral_web.pdf
Application of the Access to Information Law in the Federal Public Administration - 4th Edition (Aplicação da Lei de Acesso à Informação na Administração Pública Federal - 4ª Edição)	Access to Information	Public servants, citizens, non-public stakeholders	This publication illustrates the normative, conceptual and operational bases that the CGU has used in applying the ATI law to its decisions. By elaborating on the understanding behind the ATI law, it aims to raise awareness and to increase knowledge about citizens' right to access information both among public and non-public stakeholders.	https://repositorio.cgu.gov.br/bitstream/1/46641/1/aplicacao_da_lai_2019.pdf
Technical Booklet for Publication of Open Data in Brazil v1.0 (Cartilha Técnica para Publicação de Dados Abertos no Brasil v1.0)	Open Data	Public servants of the federal executive power	This document provides Brazilian government organizations with good practices for publishing data on the Internet and information on how to comply with technical criteria related to the paradigm of open data.	https://dados.gov.br/pagina/cartilha-publicacao-dados-abertos
Data Opening Guide (Guia de Abertura de Dados)	Open Data	Employees of federal public institutions, in particular at managerial level	This document guides institutions that hold public data in the process of making these data available. It covers managerial aspects of the disclosure process and can serve as an instrument to define a set of actions to implement a culture of sustainable open data aligned with the strategic objectives of the organisation. Further, the gudie also provides various technical support and information about essential skills for Open Data	https://www.gov.br/governodigital/pt-br/dados-abertos/Guiaaberturadados.pdf
Referential Technical Architecture of Data Opening (Arquitetura Técnica Referencial de Abertura de Dados)	Open Data	Employees of public institutions	The objective of this document is to serve as a reference for the implementation of solutions to make data available on the Internet following the principles of open data.	https://www.gov.br/inpi/pt-br/acesso-a-informacao/dados-abertos/arquivos/documentos/diversos/ArquiteturaTcnicaReferencialdeAberturadeDados.pdf/@@download/file/arquiteturatcnicareferencialdeaberturadedados.pdf
Manual for the Preparation of Open Data Plans (Manual de Elaboração de Planos de Dados Abertos (PDAs))	Open Data	Employees in federal public instutitions responsible for institutional open data plans	This guide assists public officials in preparing the annual institutional open data plans. The document contains step-by-step guidance on all essential elements to comply with the design and publication of these plans.	https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/transparencia-publica/arquivos/manual-pda.pdf
Open Data Manual - Government (Manual dos Dados Abertos – Governo)	Open Data	Public servants of the executive power	In addition to the basics of open data, this manual serves government officials by indicating ways to use open data to create more value and impact in a variety of areas and giving concrete information on how to open up government data.	https://www.gov.br/inpi/pt-br/acesso-a-informacao/dados-abertos/arquivos/documentos/diversos/ManualdosDadosAbertosGoverno.pdf/@@download/file/manualdosdadosabertosgoverno.pdf
Open Data Manual - Developers (Manual dos Dados Abertos – Desenvolvedores)	Open Data	Public and non-public stakeholders	This manual is designed for software developers who want to work with open data. It discusses why to open data, what open data is, how to publish data in open format and how to create applications reusing government data in open format.	https://www.gov.br/inpi/pt-br/acesso-a-informacao/dados-abertos/arquivos/documentos/diversos/ManualdosDadosAbertosDe

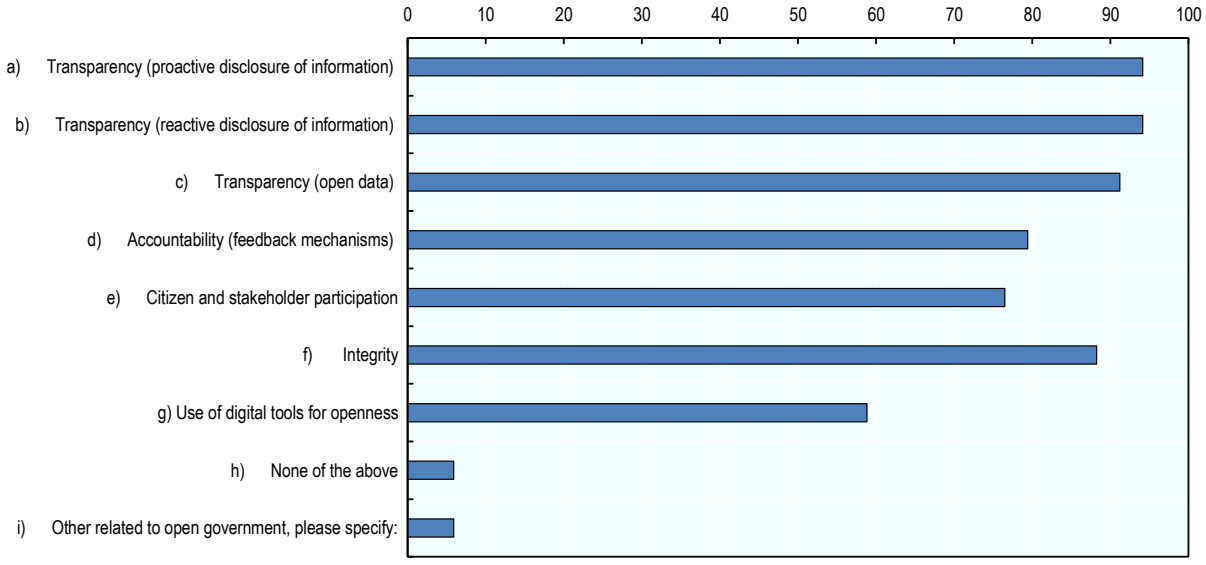
				senvolvedores.pdf/@@download/file/manualdosdadosabertosdesenvolvedores.pdf
Booklet Olho Vivo on Public Money - A guide for citizens to guarantee their rights - Second edition (Cartilha Olho Vivo no Dinheiro Público - Um guia para o cidadão garantir os seus direitos - Segunda edição)	Accountability in public spending	Citizens and non-public stakeholders	Basic information and concepts for citizens to start monitoring the use of public money in their city.	https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/controle-social/arquivos/cartilhaolhovivo_baixa_v2.pdf
eMAG - Accessibility Model in Electronic Government (eMAG - Modelo de Acessibilidade em Governo Eletrônico)	Inclusiveness of government services	Public servants of all government entities	This document guides the development and adaptation of the federal government's digital content, ensuring access for all. eMAG's recommendations allow the implementation of digital accessibility to be conducted in a standardized way, easy to implement, consistent with Brazilian needs and in accordance with international standards.	http://emag.governoeletronico.gov.br/
Guide for Public Service Councillors (Guia do Conselheiro de Serviços Públicos)	Accountability in service delivery	Citizens	This manual has been prepared to explain how Public Service User Councils work and how citizens can participate through the virtual platform.	https://www.gov.br/ouvidorias/pt-br/ouvidorias/conselhos-de-usuarios/ConselhodeUsurioGuiadoUsurioDiagramado.pdf
Methodological guide for evaluating public services (Guia metodológico de avaliação de serviços públicos)	Accountability in service delivery	Employees of the Ombudsman	This is a guide intended to assist ombudsman agents in the process of evaluating public services through the Council of Public Service Users.	https://www.gov.br/ouvidorias/pt-br/ouvidorias/conselhos-de-usuarios/GUIADEAVALIAODESERVIOS.pdf
Practical Handbook on International Human Rights (Manual Prático de Direitos Humanos Internacionais)	Civic freedoms	Stakeholders with interest in human rights (judges, lawyers, NGOs, etc.)	A practical handbook on international human rights which details how human rights advocacy works at the international level, including legal foundations, their application, procedures and other aspects.	https://www.mpma.mp.br/arquivos/CAOPDH/Manual_Pratico_Direitos_Humanos_Internacioais.pdf
Good Practice Guide - General Personal Data Protection Law (LGPD) (Guia de Boas Práticas - Lei Geral de Proteção de Dados Pessoais (LGPD))	Digital rights	Employees of federal public institutions	This guide supports informed decision-making in personal data protection activities by government officials. The document addresses the rights of the holder of personal data, the recommended way of handling data and good practices in information security.	https://www.gov.br/governodigital/pt-br/seguranca-e-protecao-de-dados/guia-boas-praticas-lgpd
TIME Brazil: Programme Manual (TIME Brasil: Manual do Programa)	Open State	Employees of subnational governments	This document provides an overview of the TIME programme. It informs readers about the benefits of participation as well as the process and how to become involved.	https://www.gov.br/cgu/pt-br/assuntos/transparencia-publica/time-brasil/arquivos/manual-time-brasil.pdf
Public Ombudsman Maturity Model (Modelo de Maturidade em Ouvidoria Pública)	Protection of citizens' rights		This Maturitiy Model supports all units within the Ombudsman System of the federal executive branch in the fulfillment of their duties. It provides them with a theoretical framework for assessment as well as tutorials and guidelines for implementation.	https://www.gov.br/ouvidorias/pt-br/ouvidorias/modelo-de-maturidade-em-ouvidoria-publica

Source: Author's own elaboration.

Data from the OECD Public Institutions Survey confirmed that most of the available written guidance materials are also used by public institutions (Figure 4.8). In particular, more than 90% of the surveyed public institutions make use of available guidelines on proactive and reactive disclosure of information and on open data. While this use of available material by public stakeholders is notable, interviews conducted during the fact-finding missions also highlighted that there is a need to streamline and harmonise. Guidelines are not always fully aligned with each other and public officials face difficulties in identifying the most relevant and up-to-date guidance material. Similarly, little is known about the use of guidelines by non-public stakeholders and citizens, as no data is gathered.

In order to address these challenges, based on Table 4.2, the CGU could conduct a thorough review of all available guidelines, toolkits, and manuals in the different fields of open government. Materials that are not up-to-date could either be updated or discarded. In a second step, as part of the recommended creation of a one-stop-shop Open Government Portal (see below), the CGU could create an easily accessible catalogue of all available guidelines for public officials and non-public stakeholders.

Figure 4.8. Use of existing guidelines on open government policies and practices by public institutions



Source: OECD (2021[12]), *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*.

Brazil could consider creating integrated Open Government Toolkits for selected audiences

As part of the move towards a fully integrated open government agenda, the CGU could also consider designing integrated Open Government Toolkits for specific audiences. For example, the CGU, in collaboration with other federal government institutions and non-public stakeholders, could develop a toolkit for public officials that explains the government's understanding and ambitions and provides an overview of concrete initiatives that any public official can take to foster interactions with citizens and increase his or her institution's openness. The Toolkit could also include materials and resources (digital platforms, methodologies, etc.) (Lave and Wenger, 1991[14])(Box 4.6). Similarly, the CGU could lead the development of an online Open Government Toolkit for citizens, explaining their rights and providing an overview of avenues for collaboration and interaction with public institutions'.

The OECD's Toolkit and Case Navigator for Open Government[4] provides an overview of available toolkits, manuals, and guidelines on different open government policies around the world.

Box 4.6. Examples of toolkits on open government across the OECD Membership

Open Policy Making toolkit (United Kingdom)

Developed by the UK Cabinet Office, this toolkit provides tools and techniques for policy makers to develop user-centred policies in four stages: diagnosis, discovery, development and delivery.

OGPtoolbox (OGP)

The OGP Toolbox is a collaborative project which currently contains 263 open government cases and provides information about 1445 tools from 651 organisations. This repository of digital tools allows policy-makers to find the suitable tool for their own context and to learn from the experiences of the whole open government community.

bE-Open toolkit on open government (Council of Europe)

With a focus on Armenia, Georgia, the Republic of Moldova, and Ukraine, this toolkit aims to support democracy through improved local governance. It provides information about international standards, legislation, guidelines and good practices on four themes: public ethics and accountability, prevention of corruption, transparency, and citizen participation.

Implementing Innovation: A User's Manual for Open Government Programs (Reboot)

This manual covers an eight-phase process from concept development to implementation for building an open government programme.

Public Participation Guide by the Environmental Protection Agency (USA)

This guide offers tools for public participation and public outreach for governmental agencies. It covers situation assessment, evaluation of the right degree of participation, participation process design and participation tools. Besides, the guide also contains other topics, such as conflict resolution, as well as self-study modules for effective learning.

Freedom of Information (FOI) Essentials for Australian Government agencies and ministers

Tailored to Australian public officials, which need to take decisions on FOI, related matters, this toolkit covers everything in relation to access to information in Australia from its importance to democracy to the concrete application of the Freedom of Information Act. Each section contains links leading to more extensive information and guidance across governmental websites, such as the 12 tops for good FOI practice.

Canada's Do-it-Yourself Open Data Toolkit

This manual provides a step-by-step guide on how to develop and implement an open data initiative. It brings together training materials, best practices, and tools. It is primarily targeted at municipalities which are inexperienced in open data but it can equally serve every organisation wishing to initiate an open data project.

OGPtoolbox (OGP)

The OGP Toolbox is a collaborative project. Currently, it contains 263 open government cases and provides information about 1445 tools from 651 organisations. This repository of digital tools illustrated by real initiatives allows policy-makers to find the suitable tool for their own context and to learn from

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Implementing Innovation: A User's Manual for Open Government Programs (Reboot)

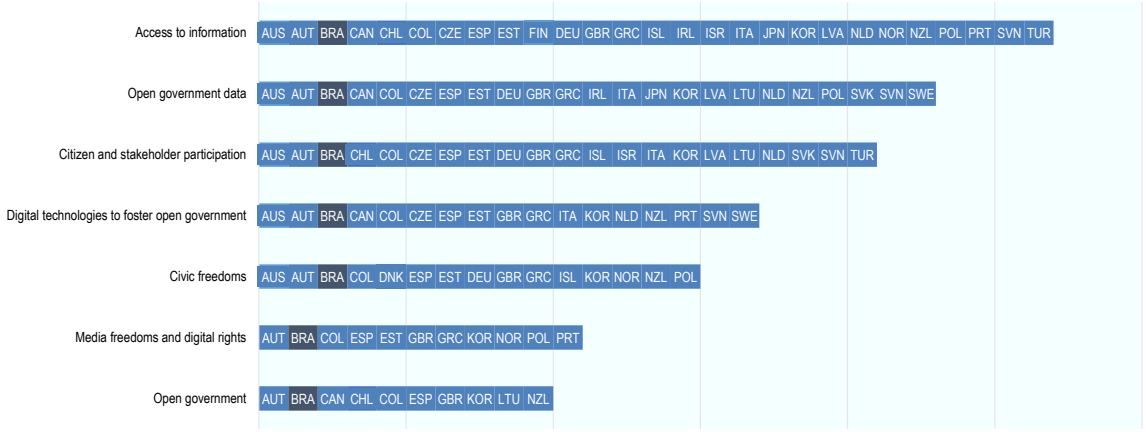
This manual covers an eight-phase process from concept development to implementation for building an open government program. It builds on experiences of an innovation unit within the Office of the Presidency of Mexico to provide actionable advice for public servants.

Source: UK Cabinet Office (2017[15]), Open Policy Making toolkit, https://www.gov.uk/guidance/open-policy-making-toolkit; US Environmental Protection Agency (n.d.[16]), Public Participation Guide, https://www.epa.gov/international-cooperation/public-participation-guide; Office of the Australian Information Commissioner (n.d.[17]), FOI Essentials for Australian Government agencies and ministers, https://www.oaic.gov.au/s/foi-essentials/; Government of Canada (2019[18]), Do-it-Yourself Open Data Toolkit, https://open.canada.ca/en/toolkit/diy; OGP (n.d.[19]), OGPtoolbox, https://ogptoolbox.org/de/; Council of Europe (n.d.[20]), bE-Open: Open Local Government, https://www.beopen-congress.eu/en/; Reboot (n.d.[21]), Implementing Innovation: A User's Manual for Open Government Programs, https://implementinginnovation.org/manual/

The GoB offers a range of trainings on open government policies and practices

The provision of trainings, information sessions and capacity-building events is another way of ensuring that public officials and non-public stakeholders embody open government principles and increase their levels of open government literacy. According to results of the *2020 OECD Survey on Open Government* (OECD, 2021[4]), most governments across the OECD propose specific trainings on different open government policies and practices to their staff. For example, twenty-six out of 34 OECD countries surveyed (81%) provide training on access to information, and 22 (69%) on open government data. Twenty of the OECD countries (63%) have training on citizen and stakeholder participation. Nine OECD countries (28%) have training on open government as an integrated concept (e.g. explaining what open government means)[5]. Brazil is in line with OECD practice, also offering trainings in all of these areas (Figure 4.9)

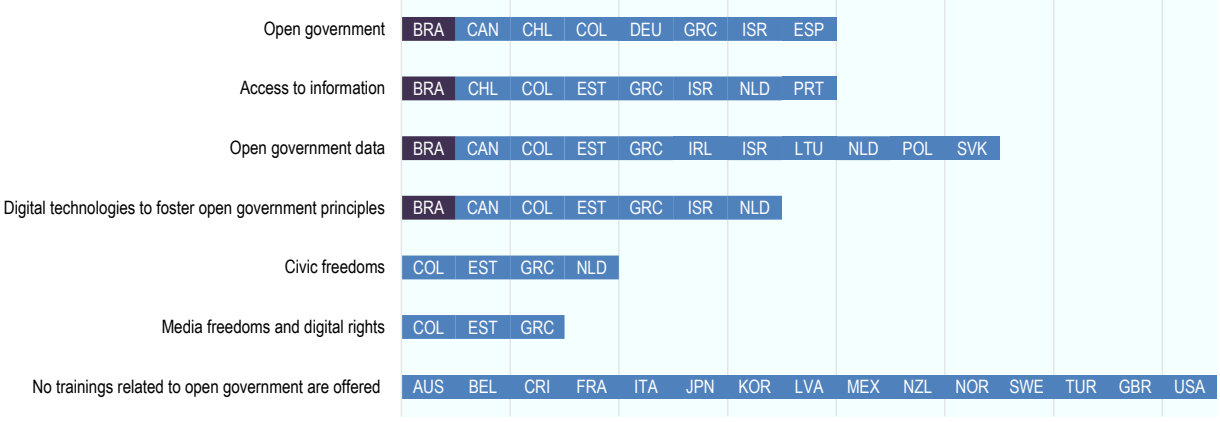
Figure 4.9. Available trainings for civil servants at the central/federal government in OECD member countries and Brazil



Note: Multiple selection possible. N=35.
Source: OECD (2021[4]), 2020 OECD Survey on Open Government

While trainings for public officials are common practice in OECD countries nowadays, preliminary data shows that governments make fewer efforts to foster the open government literacy of non-public stakeholders through trainings (Figure 4.10). Only slightly more than half of OECD countries that responded (17) provide some sort of training related to open government for non-public stakeholders. Most commonly, these trainings cover open government data as well as access to information. The remaining 15 countries did not offer trainings for non-public stakeholders.

Figure 4.10. Available trainings for non-public stakeholders at the central/federal level in OECD Member Countries and Brazil



Note: Multiple selection possible. N=33.
Source: OECD (2021[4]), 2020 OECD Survey on Open Government

The most important available trainings and courses on open government policies and practices in Brazil include (see also Table 4.3 for a detailed overview):

- The Directorate for Transparency and Social Control of the CGU (in partnership with the Federal University of Goiás) has prepared an online training environment on different open government policies and practices. All of the courses are available for free and can be taken by both public officials and non-public stakeholders (most of them are targeting public officials though). In addition to courses focusing on the CGU's core mandate (e.g. access to information), the catalogue includes a 20-hour course that is specifically dedicated to the concept of open government.
- Since 2014, the CGU and the Ministry of Economy jointly organise annual trainings for public officials focused on the implementation of the Access to Information Law. These trainings aim to promote cooperation and exchange of knowledge and experiences among Citizen Information Services (SICs) of the Federal Executive Branch, States, Municipalities and Autonomous Social Services (see also Chapter 7).
- The CGU's "Live Ethics Program" (*Etica viva)* is aimed at CGU's internal public and seeks to encourage the conduct of public officials to be in line with the CGU's own institutional values. The programme consists of events and dissemination activities that aim to ensure that each staff member is aligned with the institution's mission of promoting transparency, improving public management and preventing and combating corruption.
- Brazil's National School for the Public Administration (ENAP) offers a range of courses on relevant subjects, including through a virtual school which includes distance trainings for both public officials and non-public stakeholders. The virtual school contains more than 250 courses, including a course on open government that is offered by the Technological University of Delft and that is certified by ENAP, once completed.
- The *Ouvidoria's Continuing Education Program "Profoco" (Programa de Formação Continuada*) offers different learning opportunities for those interested in ombudsman activities and accountability. While the programme primarily targets *Ouvidorias* and their staff, it is open to any interested stakeholder (see also Chapter 7 on Transparency).

Table 4.3. An overview of the most relevant trainings on open government policies and practices in Brazil

Name of training / course	Institution offering the training / course	Relevant open government policy or practice	Primary target audience(s)	Web link
Access to information (*Acesso à Informação*)	Ombudsman-General of the Union (OGU) / Comptroller General of the Union (CGU)	Access to information	Public officials	Escola Virtual Gov
Access to information and Public Prosecutor's Offices *(Acesso à informação e Ouvidorias do Ministério Público)*	OGU, General Ombudsman of the Union (ONMP), ENAP	Access to Information, Accountability	Public officials of the Ministerio Público	ENAP
Citizen Education - Ethics, Citizenship and the Fight against Corruption *(Educação Cidadã - Ética, Cidadania e o Combate à Corrupção)*	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Integrity Civic space	Non-public stakeholders	Educação Cidadã - Ética, cidadania e o combate à corrupção - AVAMEC
Citizen Service (*Atendimento ao Cidadão*)	National School for the Public Administration	Public services, Data protection, Access to	Public officials	Atendimento ao Cidadão - ENAP

	(ENAP)	Information		
Citizenship and Human Rights (Cidadania e Direitos Humanos)	Ministério da Mulher, da Família e dos Direitos Humanos (MMFDH)	Civic space	Public officials Non-public stakeholders	Escola Virtual Gov
Controls in Public Administration (Controles na Administração Pública)	Federal Court of Accounts (TCU)	Accountability	Public officials	Controles na Administração Pública – EV.G/
Ethics in the Public Administration (*Ética na Administração Pública)*	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Integrity	Public officials	Ética na administração pública - AVAMEC
Human Rights Protection: Prevention and Prohibition of Torture (*Proteção a Direitos Humanos: Prevenção e Proibição da Tortura*)	Ministry of Women, Family and Human Rights (*MMFDH*), National School for the Public Administration (ENAP)	Civic Space	Public officials Non-public stakeholders	ENAP
Institutional and Social Controls of Public Expenditures *(Controles Institucional e Social dos Gastos Públicos)*	National Treasury Secretariat (*Secretaria do Tesouro Nacional*)	Accountability Integrity	Public officials Non-public stakeholders	https://www.escolavirtual.gov.br/curso/12/ Controles Institucional e Social dos Gastos Públicos – EV.G
Instruments of Social Control and Citizenship - How to Exercise Your Rights *(Instrumentos de Controle Social e Cidadania - Como Exercer seus Direitos)*	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Accountability Citizen and stakeholder participation	Public officials Non-public stakeholders	Instrumentos de controle social e cidadania - Como exercer seus direitos? - AVAMEC
Introduction to Archival Practices (*Introdução às Práticas Arquivísticas*)	National School for the Public Administration (ENAP)	Access to Information	Public officials of the federal executive branch	ENAP
Lesgislative Transparency (*Transparência Legislativa*)	Brazilian Legislative Institute - ILB (Instituto Legislativo Brasileiro - ILB)	Transparency	Public officials (of the Senate) Non-public stakeholders	Transparência Legislativa - ILB
Management and Dissemination of Innovations in the Public Sector (Gestão e Difusão de Inovações no Setor Público)	National School for the Public Administration (ENAP)	Public sector innovation	Public officials	Gestão e Difusão de Inovações no Setor Público - ENAP
Ombudsman certification *(Certificação em Ouvidoria)*	Ombudsman-General of the Union (OGU) / Comptroller General of the Union (CGU), National School for the Public Administration (ENAP)	Accountability	Public officials	Certificação em Ouvidoria - ENAP
Ombudsman Management (*Gestão em Ouvidoria*)	Ombudsman-General of the Union (OGU) / Comptroller	Accountability	Public officials	ENAP

	General of the Union (CGU)			
Open data (*curso online sobre dados abertos*)	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Open government data	Public officials	Dados Abertos - AVAMEC
Open government	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Open government (concept and practices)	Public officials Non-public stakeholders	Governo Aberto - AVAMEC
Public Transparency: Regulation of the Law on Access to Information and Transparency Portals (*Transparência Pública: Regulamentação da Lei de Acesso à Informação e Portais de Transparência)*	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Proactive and reactive disclosure of information	Public officials Non-public stakeholders	Transparência Pública: Regulamentação da LAI e Portais de Transparência - AVAMEC
Regulation of the Access to Information Law in Municipalities *(Regulamentação da Lei de Acesso à Informação nos Municípios)*	Comptroller General of the Union (CGU)	Access to information	Municipal public officials	ENAP
Social Control (*Controle Social*)	Comptroller General of the Union (CGU)	Accountability	Public officials Non-public stakeholders	ENAP
Social Control and Citizenship (*Controle Social e Cidadania*)	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Citizen participation Accountability	Non-public stakeholders	Controle Social e CidadaniaDados Abertos - AVAMEC
Social Participation and the Performance of Public Managers (Participação Social e a Atuação dos Gestores Públicos)	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Citizen and stakeholder participation	Public officials	Participação Social e a atuação dos gestores públicos - AVAMEC
Training for Public Policy Advisers (*Capacitação para Conselheiros de Políticas Públicas)*	Comptroller General of the Union (CGU) in partnership with the Federal University of Goiás	Integrity	Public officials Non-public stakeholders	Capacitação para Conselheiros de Políticas Públicas - AVAMECCapacitação para Conselheiros de Políticas Públicas - AVAMEC
Use of Social Media in Institutional Communication *(Uso de Mídias Sociais na Comunicação Institucional)*	National School for the Public Administration (ENAP)	Public communication Citizen and stakeholder participation	Public officials (restricted)	Mídias Sociais na Comunicação Institucional - SUAP

Source: Author's own elaboration.

Brazil could offer a mandatory introductory training on open government and create a single training catalogue

While the offer of trainings and courses on open government policies and practices in Brazil is impressive, interviews conducted for this OGR highlighted that more could be done to increase the trainings' impact and transform public officials into real agents of change. Many public officials are not aware of available courses and trainings and, even if they know that trainings exist, they rarely have time to take them. In order to address these challenges, Brazil could consider including a dedicated course on open government in mandatory training requirements for all newly hired public officials to introduce them to the concept.

Brazil could further consider creating a single training catalogue that lists all trainings on open government policies and practices that are offered by different public institutions and that are available for public officials. This training catalogue could be added to the CGU's online training environment and be included in the recommended one-stop-shop Open Government Portal (see below).

Brazil could consider creating an Open Government Community of Practice

Some countries across the OECD have started creating communities of practice on open government policies to exchange good practices and facilitate the sharing of resources and experiences (Box 4.7). A community of practice can be defined as a group of people that "share a concern or a passion for something they do and learn how to do it better as they interact regularly" (Lave and Wenger, 1991[14]).

In order to move towards the creation of a community of practice on open government, the government of Brazil could consider setting up an Open Government Network, bringing together public officials and non-public stakeholders that are interested in open government topics and / or have participated in trainings on open government policies and practices. The network could be animated by the CGU, in collaboration with the newly created open government offices / contact points (see Chapter 3), through a dedicated online space. In addition to being a platform for dialogue, learning and sharing of good practices, the open government network could provide the CGU with an effective informal co-ordination tool.

In an ideal case, the network would also involve non-public stakeholders such as civil society leaders as well as representatives from academia, the private sector, and trade unions. To foster the move towards an open state approach, Brazil could also consider inviting stakeholders from subnational governments, representatives from the judiciary as well as representatives from the legislature. The communities of practice on open government created by the United Cities and Local Governments (UCLG) and the United States Federal Government provide interesting examples in this regard (Box 4.7).

Box 4.7. Communities of practice on open government policies and practices

US OpenGov Community of Practice

The United States Government established a series of communities of practices across the Federal Government to collaborate and share resources on different policy areas. The Open Government Community of Practice is a digital space and a network where civil servants across government can discuss about open government related initiatives and practices. The Open Government community consists of government employees and civil society members working in the field of Open Government to share best practices to promote transparency, participation, and collaboration, and advocate for opening government information. This type of communities allow for a continuous exchange of information, peer learning, it supports co-ordination and collaboration across government.

UCLG Community of Practice on Transparency and Open Government

The United Cities and Local Governments (UCLG) Community of Practice on Transparency and Open

Government was created with the objectives of supporting peer-to-peer learning, networking, awareness-raising and capacity building on open government and public integrity at local level and promoting the role of local and regional governments in the development and promotion of practices of transparency, participation and accountability for the achievement of sustainable cities and territories. The Community of Practice is constituted by a group of local and regional governments, as well as experts, academics and public institutions and representatives of international city networks interested in discussing and advancing joint solutions, learning opportunities and exchange of public policies on issues of Open Government. It is co-ordinated by the Spanish Federation of Municipalities and Provinces (FEMP) with the support of the Open Government Partnership and the United Nations Human Settlement Program (UN-Habitat).

Hub of communities working on State modernisation in France

The Inter-Ministerial Directorate for Public Transformation has put in place a digital hub to install the communities of practice related to state modernisation, including open government. With more than 50 communities, the hub allows all public officials to discover and join the communities that interest them, according to a topics of interest (participation, digital services, collective intelligence, design thinking etc.) or a geographical area.

Sources: US General Services Administration (2021[22]), *OpenGov Community*, https://digital.gov/communities/open-gov/; United Cities and Local Governments (n.d.[23]), *About the Community*, https://opengov.uclg.org/en/community-practice; Interministerial Directorate of Public Sector Transformation (n.d.[24]), Public sector transformation communities, https://www.modernisation.gouv.fr/boite-outils/communautes-de-la-transformation-publique

The government of Brazil has developed innovative tools such as videos and games to foster open government literacy of non-public stakeholders

The government of Brazil has also developed a range of innovative tools to foster the open government literacy of non-public stakeholders and involve them in the open government agenda. While many of them do not explicitly focus on open government, they touch upon the open government principles in one way or another. Existing good practices in Brazil include:

- The **interactive Open Government Game** (*Jogo de Governo Aberto*) aims to disseminate the concept of open government and its benefits. It allows players to discover how collaboration between government and society can achieve a more open government (Box 4.8).
- **"One for All and All for One"** (*Um por todos e todos por um! Pela ética e cidadania*) is a programme for students that was developed by the CGU in partnership with the *Instituto Maurício de Sousa*. Structured around comic characters, the programme uses comics, videos, books, apps, etc. to inform children about practices relating to ethics, citizenship, transparency and citizen participation. In the space of two years, the programme's videos have reached over 9 million views on YouTube ((Government of Brazil, 2021[13])).
- The **Citizenship's Game** (*Game da Cidadania*) is a virtual game developed by the CGU. It exposes youth between 11 and 17 years to situations in which their ethics and citizenship skills are put to test. It allows users to create their own videos on the subjects discussed and compete for prizes (see also Chapter 6 on Participation).
- The **National Essays and Drawings contest** is a competition that engage students in discussions around open government topics (changing each year). It awards prizes for the three best works in each school year. Around 800,000 students participate in the competition each year (Government of Brazil, 2021[13])

- The **Dialogues on Social Control** (*Diálogos em Controle Social*) are an activity organised by the CGU to convene specialists from civil society and government organisations to discuss topics related to transparency and social control (see Chapter 6 and Chapter 7).
- The CGU produced several **videos on the Access to Information Law** to disseminate information on this right (see Chapter 7 on Transparency). The videos present key aspects of the law, such as: where and how to request information, how to proceed in case of denied access, what can be requested, tips on how to ask and what is the Access to Information Law (Government of Brazil, 2021[13]).

Box 4.8. Brazil's Open Government Game

The Open Government Game, designed by the Office of the Comptroller General of the Union (CGU), Fast Food Politics and the Open Government Institute (IGA), intends to show how the concept of open government can become a reality and materializes into concrete practices,

The Game was built in order to spread the principles, practices and policies associated with open government and. It seeks to demonstrate how important collaboration between government and society is to achieve a more open government. As it is a collaborative game, players need to unite to be able to form tracks composed of fundamental principles: Social Participation, Transparency and Accountability.

The game was designed for different audiences and can be used on different occasions such as trainings and awareness-building campaigns for public officials, citizens, and students. It is an open educational resource allowing any person or institution to use and reuse the game. The Game is available both in a freely downloadable physical and in a digital version (online).

Source: CGU (n.d.[25]), Jogo de Governo Aberto, https://www.gov.br/cgu/pt-br/governo-aberto/central-de-conteudos/jogo-de-governo-aberto.

The CGU could consider creating an Open Government Award

In order to stimulate more ambitious reforms and provide incentives to public officials and non-public stakeholders, the GoB could consider creating an annual Open Government Award (*Prêmio de Governo Aberto,* PREGA). The PREGA could be awarded to employees and non-public stakeholders (e.g. citizens, civil society organisations, academics, etc.) that have significantly enhanced the openness of the state through their actions or that have a proposal for an idea that will enhance openness (e.g. by simplifying an administrative procedure, etc.). The PREGA could be awarded by the CGU and could include recognition of good practices at the subnational level of government and in the other branches of the state. The Open Government Award of San Luis Potosí can provide inspiration to Brazil (Box 4.9).

Box 4.9. The Open Government Award of San Luis Potosí in Mexico

The objective of the Open Government Award of the Government of San Luis Potosí in Mexico is to promote and recognise initiatives of civil society stakeholders and of institutions of the public administration which have allowed for more effective citizen participation, strengthened transparency and / or the government's capacity to be accountable. Participation is open to any institution and citizen with an interest in open government, such as NGOs, Academics, and Public Administration from both State and Municipal level. Participants need to either design and submit an open government initiative or, in the case of government officials, nominate the existing public institution's one. To support the

creation of proposals, participants can rely on guiding material which outlines the requirements in detail. Proposals are collected in a dedicated award portal, before a group of experts evaluates them based on eight pre-defined criteria. The two winning proposals are not only recognised with cash prices and a framed acknowledgement signed by the Governor of State. They also have a real chance of being implemented since they are included in the Open Government Project Data Bank, which collects and promotes high-potential initiatives.

Source: Government of the State of San Luis Potosí, (2020[26]), San Luis Potosí Award for Open Government, https://www.premiosanluisgobiernoabierto.org/convocatoria/

The GoB could make use of TIME Brasil to foster open government literacy at all levels of government

Brazil's federal nature means that the federal executive branch has to rely on soft means to convince subnational governments to adopt ambitious open government reforms. The implementation Chapters of this Review (Chapters 6-8) identify the uneven implementation of different open government policies as one of the main challenges Brazil faces in creating an open government culture across the whole country. For example, Chapter 7 on Transparency finds numerous implementation gaps in terms of both proactive and reactive disclosure of public information and data in states and municipalities.

To counter this challenge, the CGU created the *TIME Brasil* programme in 2019 support states and municipalities in fostering public governance in different areas. The programme contains three axes that focus on some of the most relevant open government policies:

- The **integrity axis** aims to substantially reduce corruption and bribery in all its forms;
- The **transparency axis** aims to develop effective, accountable and transparent institutions at all levels;
- The **participation axis** aims to ensure responsive, inclusive, participatory and representative decision-making at all levels.

Participation in the programme is on a voluntary basis. To adhere, subnational government have to 1) conduct a self-assessment of their level of maturity on each dimension according to a matrix; 2) designate a working group to monitor implementation; and 3) sign a high-level adhesion to the programme (CGU, n.d.[27]).

The implementation Chapters of this Review (Chapters 6-8) identify different opportunities to leverage the full potential of the TIME programme, including by using it to increase the use of the Fala.BR platform (see Chapter 7). In the medium to long term, TIME could become the main entry point for capacity-building relating to all open government principles. In line with the suggested integrated open government approach, Brazil could consider explicitly branding TIME as an open government programme and include additional core open government elements, such as open government data, open budgeting and open contracting among its axes.

Monitoring and evaluation of open government principles, policies and practices

Given their multidimensional and cross-cutting nature, open government policies are inherently difficult to monitor and evaluate (OECD, 2019[28]). Notwithstanding this complexity, the necessity of being able to prove the positive impacts of open government reforms, including a more concrete understanding of their dynamics and effects, has made monitoring and evaluation (M&E) particularly relevant (OECD, 2019[28]). Solid M&E mechanisms can help ensure that policies are achieving their intended goals; contribute to the

identification of policy design and implementation barriers; and orient policy choices by building on past experiences. M&E is also instrumental to initiating changes and communicating policy results in a timely and accessible manner (OECD, 2019[28]). Last but not least, by feeding into further policy design, M&E results can improve policy effectiveness and value for money (OECD, 2016[29]). In its consideration of the overall relevance of M&E, the OECD Recommendation of the Council on Open Government accords substantial importance to the monitoring and evaluation of open government strategies and initiatives (Box 4.10).

The creation of more solid M&E systems for open government is a challenge faced by many OECD Member and Partner countries. Data collected through the *2020 OECD Survey on Open Government* suggests that – for the time being – most countries only monitor the implementation of their OGP action plans and collect limited data and evidence on the broader effects of open government initiatives (OECD, forthcoming[5]). Evaluations are still mostly conducted on an *ad hoc* basis, if at all.

Building upon Provision 5 of the *OECD Recommendation of the Council on Open Government* (OECD, 2017[2]), this section assesses Brazil's efforts to monitor and evaluate open government strategies. It finds that Brazil has developed advanced mechanisms to monitor the implementation of different open government policies and that the monitoring system around the OGP action plan is well established. It further finds that Brazil has a relatively weak evaluation culture in the field of open government and that there is a need to develop a clearer understanding of causal effects relating to open government reforms. The section provides recommendations to assist Brazil in the creation of a monitoring and evaluation system that is suitable to an integrated open government agenda, including by proposing the development of Open Government Maturity Models and a long-term move towards outcome and impact indicators in this field.

Box 4.10. The difference between monitoring and evaluation

Notwithstanding their complementarity, monitoring and evaluation are two different practices, with different dynamics and goals. Policy monitoring refers to a continuous function that uses systematic data collection on specific indicators to provide policy makers and stakeholders with information regarding the progress and achievements of an ongoing public policy initiative and/or the use of allocated funds (OECD, 2018[30]; OECD, 2016[29]). Monitoring contributes to planning and operational decision-making, as it provides evidence to measure performance and can help to raise specific questions in order to identify implementation delays or bottlenecks. It can also strengthen accountability related to the use of resources, the efficiency of internal management processes or the outputs of a given policy initiatives (OECD, 2017[31]).

Policy evaluation refers to the structured and objective assessment of the design, implementation and/or results of a future, ongoing or completed policy initiative. The aim is to determine the relevance and fulfilment of policy objectives, as well as to assess dimensions such as public policies' efficiency, effectiveness, impact or sustainability. As such, policy evaluation refers to the process of determining the worth or significance of a policy (OECD, 2018[30]; OECD, 2016[29]). It serves three main purposes. It fosters learning by helping policy makers to understand why and how a policy was successful or not. Consequently, it contributes to strategic decision-making, by providing insights into how to improve the links between policy decisions and outcomes. Lastly, policy evaluation promotes accountability, as it provides citizens and a broad range of stakeholders – such as journalists and academics – with information on whether efforts carried out by the government, including the financial resources mobilised for them, are producing the expected results (OECD, 2017[31]). Therefore, while policy

monitoring is descriptive and an important (but not exclusive) source of information that can be used within the context of an evaluation, policy evaluation is a different activity that seeks to analyse and understand cause-effect links between a policy intervention and its results.

Source: OECD (2019[28]), Open Government in Argentina, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/1988ccef-en.

The CGU is responsible for monitoring the implementation of different open government policies and practices

As outline by the OECD Recommendation of the Council on Open Government, the institutionalisation of monitoring and evaluation requires the identification of dedicated "institutional actors to be in charge of collecting and disseminating up-to-date and reliable information and data in an open format". In Brazil, the mandate of the Office of the Comptroller General of the Union includes explicit references to the institution's role in monitoring and evaluating key open government policies and practices. In particular:

- Decree 10.160 from 2019 which establishes the National Open Government Policy highlights that the General Comptroller of the Union has the responsibility to "periodically monitor and evaluate the implementation of national action plans on open government, under the guidance of the [Interministerial Open Government] Committee";
- Decree 7.724 from 2012 which regulates the law on access to information (Law 12,527 from 2011) specifies in its article 68 that the CGU is responsible for monitoring the Access to Information Law within the scope of the federal Executive Branch.
- Decree 8.777 from 2016 which institutes the Federal Executive Branch's Open Data Policy establishes, in its article 10, that the CGU is responsible for its monitoring.

The CGU has made use of this mandate to create several monitoring mechanisms for those open government policies that are under its purview.

Brazil gathers ample data and information on the implementation of open government policies and practices

In Brazil, like in most OECD countries, there is currently no integrated system to monitor the openness of the federal government. However, different monitoring tools and mechanisms focusing on specific policies and practices that contribute to openness, such as access to information, open government data and public sector integrity, are available (Table 4.4).

Table 4.4. Overview of the main tools to monitor the implementation of open government principles, policies and practices in Brazil

Name	Institution in charge	Available data	Web link
Access to Information Law Panel (Painel da Lei de Acesso à Informação)	CGU	This tool facilitates monitoring for the public to ensure compliance of federal bodies and entities of the executive branch with the ATI law. The panel provides information on the number of registered requests, compliance with deadlines, applicants' profiles, omissions, proactive disclosure, among other aspects.	Painel Lei de Acesso a Informacao (cgu.gov.br)
Open Data Panel (Painel de Monitoramento da Política de Dados Abertos do Poder	CGU	This panel enables the public to monitor compliance of public institutions with the federal Open Data Policy. This includes the availability of institutional Open Data plans as well as the specific databases that need to be published in the Brazilian Open Data Portal.	Painel de Dados Abertos

Executivo Federal)			
Integrity Panel (Painel Integridade Pùblica)	CGU	The Integrity Panel allows citizens to access and compare information provided by each federal public institutions' Integrity Management Unit. Specifically, users can check on the existence of institutional integrity mechanisms and practices, consult the institutional integrity plans, verify the progress in implementing them.	Painel Integridade Publica (cgu.gov.br)
Transparent Brazil Scale (Escala Brasil Transparente)	CGU	This tool offers information about public institutions' degree of compliance with provisions of the Access to Information Law (LAI). Its three versions – covering states, municipalities, and open data – focus on reactive disclosure and are based on access to information requests specifically made for the purpose of these rankings.	A Escala Brasil Transparente (EBT)
Fala.br	CGU	This is the central system for managing ATI requests. Besides requesting and consulting public information, citizens can also lodge complains, provide feedback and suggest ideas for the improvement of public services.	https://falabr.cgu.gov.br/publico/Manifestacao/SelecionarTipoManifestacao.aspx?ReturnUrl=%2f
Tracking of OGP commitments	CGU	The dashboard contains a graphic illustration of the fulfilment of milestones for every commitment included in the National action plan. Alternatively, users can access the periodic Execution Status Reports for each of the commitment for more details.	https://www.gov.br/cgu/pt-br/governo-aberto/a-ogp/planos-de-acao/4o-plano-de-acao-brasileiro
Participa + Brasil	SEGOV	This platform is the central access point for citizens in regards to participatory practices at national level. Among others, it allows citizens to learn about participatory opportunities, take part in public consultations, provide feedback and suggestions and to stay informed about collegiate bodies' work.	https://www.gov.br/participamaisbrasil/colegiados

Source: Author's own elaboration.

In particular, the existing system to monitor the implementation of the transparency agenda (and the implementation of Brazil's access to information law) is well advanced, as discussed in details in Chapter 6 on Transparency. Most notably, the Access to Information Panel presents an overview of the implementation of the access to information law in the federal executive branch. It includes data and information on the number of requests; compliance with deadlines; applicant profiles; types of responses; user satisfaction with the responses received; number of requests per institutions; etc. The Access to Information Panel also includes data on public institutions' compliance with proactive disclosure measures. The data are extracted from the Fala-BR platform (see below). Furthermore, the CGU created the Transparent Brazil Scale (*Escala Brasil Transparente*, EBT) to monitor the compliance of Brazilian states and municipalities with transparency obligations. Based on the information gathered through these mechanisms, the CGU prepares weekly reports on the Federal Access to Information Law. These reports provide statistics on requests and resources.

Online panels (*paineis)* are also used to monitor the implementation of other open government policies and practices across the federal government. In addition to the Access to Information Panel, the CGU has created an Integrity Panel and an Open Data Panel. The Open Data Panel presents an overview of open data in the federal executive branch and serves to monitor compliance with the Open Data Policy. It also allows stakeholders to check already published databases, publication schedules. Along similar lines, the Public Integrity Panel presents an overview of public ethics in the federal executive branch. The tool, for example, allows stakeholders to access information on the implementation of the mandatory integrity programmes of federal public institutions.

While monitoring is not a primary function of the CGU's fala.br platform, it also provides important information on reactive disclosure of information, as well as citizens' complains, compliments, suggestions, and petitions directed at the federal government. For example, the platform allows citizens to download data on requests for access to information and the profile of applicants.

As further discussed in Chapter 6 on Participation, Brazil does currently not have an integrated system to gather data and information and monitor the implementation of the citizen and stakeholder participation agenda of Brazil. The Participa + Brasil platform only provides information about existing participatory

mechanisms, including National Councils, Committees, Commissions, and Forums but data on types and number of participatory processes and their outcomes is currently not available at federal level.

The federal government could consider creating an integrated Open Government Panel

As part of an effort to create a more integrated open government ecosystem, the GoB could consider creating an Open Government Panel, as a one-stop-shop for all information and data gathered on different open government policies and practices. In addition to integrating the existing panels on access to information, open government data and integrity, the Open Government Panel could also include specific sections on participatory practices and accountability mechanisms (such as the feedback and complaint mechanisms currently available through the fala.BR platform). Ultimately, the Open Government Panel could become a source of information for the M&E efforts relating to the implementation of the Federal Open Government Strategy.

To the extent possible, the Open Government Panel could also include information about policies and practices at the subnational level (e.g. whether or not states have an open data portal; the data included; etc.) and in the other branches of the state. This could enable public institutions across the whole system to measure and compare their own performance.

Brazil has established a solid system to monitor the implementation of the OGP action plan

The monitoring and evaluation of the implementation of countries' OGP action plans usually takes place through the OGP's monitoring mechanisms, consisting of the independent reporting mechanism (IRM) and the self-assessment reports (Box 4.11). While these reports provide useful inputs to the OGP process, they do not (and do not aim to) allow for the monitoring and evaluation of the wider open government agenda. Both the IRM reports and the self-assessment reports only focus on elements relating to the action plan (e.g. How inclusive was the co-creation process? What is the transformative potential of the commitments? Etc.).

Box 4.11. OGP Country self-assessment and independent reporting

Self-assessment report: During the two-year National Action Plan (NAP) cycle, governments will produce yearly self-assessment reports. In order to minimise the administrative burden, the two self-assessment reports will have similar content to one another, differing primarily in terms of the time period covered. The mid-term self-assessment should focus on the development of the NAP, the consultation process, the relevance and ambitiousness of the commitments, and progress to date. The end-of-term self-assessment should focus on the results of the reforms completed in the NAP, consultation during implementation and lessons learned. The development of the self-assessment reports must include a two-week public consultation period, as stipulated in the OGP Guidelines.

Independent reporting mechanism: The Independent Reporting Mechanism (IRM) is a key means by which all stakeholders can track OGP progress in participating countries. The IRM produces annual independent progress reports for each country participating in the Open Government Partnership. The reports assess governments on the development and implementation of OGP Action Plans, track their progress in fulfilling open government principles, and make technical recommendations for improvements. These reports are intended to stimulate dialogue and promote accountability between member governments and citizens.

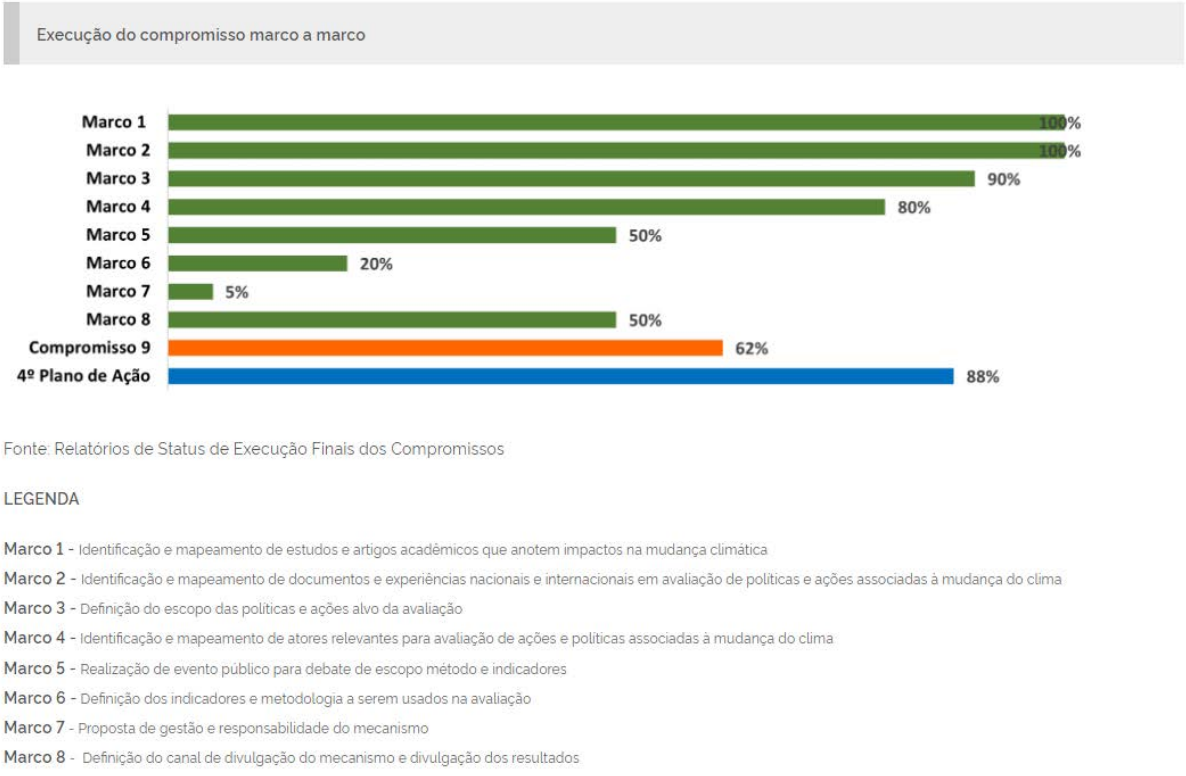
Source: OGP (n.d.[32]), "Self-Assessment Process", www.opengovpartnership.org/how-it-works/self-assessment-process (accessed

January 2019); OGP (n.d.[33]), "IRM Reports" (accessed January 2019).

In addition to the M&E activities conducted through the IRM and the mandatory self-assessment reports, Brazil has created its own system to track the implementation of the commitments included in the action plan. Each commitment coordinator has to prepare an Execution Status Report (CSR) every two months. Every three months, the CGU organises a monitoring meeting for every commitment, as well as a general meeting with all commitments coordinators (every six months). These monitoring meetings may also involve civil society stakeholders through the Civil Society's Advisory Working Group (see above).

The CGU's Open Government Portal serves as the main mechanism to display the information collected through the monitoring meetings and the CSRs. For each commitment, the Portal provides information on associated milestones; the percentage of execution of each milestone; commitment-related information and documents; as well as the minutes of the monitoring meetings of each commitment (see Figure 4.11 for an example).

Figure 4.11. OGP commitment: "Open government and climate"



Source: CGU (2021[34]), Governo Aberto e Clima - Monitoramento e Execução, https://www.gov.br/cgu/pt-br/governo-aberto/a-ogp/planos-de-acao/4o-plano-de-acao-brasileiro/compromisso-9-docs/governo-aberto-e-clima-monitoramento-e-execucao

While this tracking system is instrumental for the CGU to oversee the implementation of the OGP action plan, in most of the cases the information only allows users to ascertain whether or not an activity / process took place (e.g. Was the event organised?). The system does not involve systematic data collection to assess performance (e.g. by tracking the resources used to implement an activity or its results) or outcomes and impacts. Interviews conducted for this OGR confirmed that Brazil's OGP monitoring system is currently mainly used for reporting, rather than as a tool for planning or decision-making. In addition,

Brazil's OGP monitoring system operates in isolation from wider government monitoring systems (e.g. those relating to the implementation of the PPA or the monitoring of the presidential priorities steered by Casa Civil).

Assessing the outcomes and impact of open government policies and practices is a challenge that Brazil shares with many OECD member countries

Assessing the outcomes and impacts of policies related to open government is a relatively new area of interest among policy makers and researchers and a shared challenge across OECD countries (OECD, 2019[28]). For the time being, Brazil has not conduct any holistic assessments to understand the effects that open government reforms have had on citizens' trust in public institutions, fighting corruption, economic growth, political efficacy, etc. Evidence of impact is mostly anecdotal. For example, it is known that data provided in the Transparency Portal has served to reduce spending through government credit cards and make student financing more inclusive and effective (see Chapter 7).

Recognising that the development of robust and relevant output, outcome, and impact indicators for open government policies and practices is a complex endeavour, the government of Brazil could implement specific initiatives to gradually work towards this goal. This section presents a roadmap for Brazil to develop tools for an M&E system that is suitable for an integrated open government agenda and that will ultimately allow the government to be able to assess the impact of open government reforms.

The CGU could lead the development of open government maturity models

A maturity model is a reference instrument for assessing an entity's transition towards a given objective during a given period (OECD, forthcoming[35]). Maturity models are increasingly being developed in different areas of public governance, including in the field of open government, recognising that Open Government Maturity Models can be a useful tool to allow public institutions to assess and monitor core elements of their open government ecosystem. In particular, Open Government Maturity Models can:

- Set a baseline standard of what good practices in the field of open government looks like;
- Allow public institutions to assess their levels of openness at a given point in time and identify where they are situated in relation to national good practice.
- Allow building a coherent and flexible trajectory towards high levels of maturity, adaptable to the situation of each public institution;
- Show the stages of this progression and the necessary achievements that at each stage are useful and consolidate the passage into the subsequent stages
- Allow for comparison between public institutions within a defined framework;

In order to be useful, Open Government Maturity Models need to be based on a shared understanding of what different stages of openness in a public institution look like. This implies finding an answer to the questions *When can a public institution be considered fully open? What does being closed imply?*. In order to be able to answer these questions, Open Government Maturity Models should be based on a clear theory of change and coupled with indicators, targets and benchmarks (see below).

The development of maturity models for open government needs to be a collaborative effort, involving both public institutions and non-public stakeholders and the models should be tested with public institutions prior to its use. In the case of Brazil, the creation of Open Government Maturity Models could go hand-in-hand with the design of the recommended Federal Open Government Strategy (the development of maturity models will be particularly relevant, in case Brazil decides to accept the recommendation to mandate the adoption of Institutional Open Government Plans, see Chapter 3). Once designed, the CGU could consider publishing the maturity results of each public institution on the Open Government Portal

(see below) and the Open Government Panel (see above) in order to foster transparency and generate healthy competition.

Brazil could develop a theory of change to ultimately move towards indicators that measure outcomes and impacts of open government reforms

The creation of an integrated open government ecosystem as discussed in Chapter 3 requires the development of comparable indicators to monitor and evaluate implementation of reforms. Indicators are a key input for analytical work that informs policy recommendations and policy making (OECD, 2011[36]). In the area of public governance, input, process and output indicators usually measure activities that the public sector can control (e.g. the design and implementation of a policy), while outcome and impact indicators measure the short and long-term effects of these activities (e.g. their economic, social and political effects) (Lafortune, Gonzalez and Lonti, 2017[37]).

In Brazil, like in all OECD Member Countries, the implementation of open government reforms is today monitored mainly through the use of process and output indicators that are included in panels or associated with the milestones of OGP action plan commitments. For example, the OGP monitoring system mentioned above only assesses whether a planned meeting took place; whether a specific regulation was issued; or whether a specific platform was created. While these indicators are useful to measure activity progress, they cannot assess whether a policy initiative is delivering the expected results (OECD, 2019[28]). Moreover, these indicators are useful primarily for internal management purposes, but do not offer much added value to external stakeholders, such as citizens (Lafortune, Gonzalez and Lonti, 2017[37]; OECD, 2020[1]; OECD, 2017[38])

In order to be able to assess whether open government reforms ultimately deliver on their objectives, the government of Brazil could consider moving towards the development of dedicated outcome and impact indicators. As a first step, Brazil could consider designing a theory of change for open government initiatives. A theory of change is a "description of the cascade of cause and effect leading from an intervention to its desired effects" (OECD, 2014[39]). A theory of change not only shows the relationship between resources, activities, outputs and outcomes; it also takes into consideration environmental complexity (things that the intervention cannot control), works to highlight the different paths that might lead to change, and describes how and why a change is expected to happen (OECD, 2019[28]).

Once developed, the theory of change could be applied to all new open government initiatives and it could be integrated into the Open Government Maturity Models, discussed above. The practical use of the theory of change approach will allow Brazil to gain a deeper understanding of the effects that open government initiatives are having. Over time, the data and evidence gathered may then enable Brazil to come up with robust outcome and impact indicators. The CGU's recommended Secretariat for Open Government could be in charge of training and assisting the different institutions in using a theory of change approach in the development of their open government initiatives.

The process to design these indicators and the theory of change could take place within the context of the design and implementation of the Federal Open Government Strategy, recommended in Chapter 3. It will require the involvement of all key public and non-public stakeholders, including the Public Policy Monitoring and Evaluation Council (CMAP), the National Statistics Office as well as academics and civil society organisations. Mexico's experience in developing baseline indicators on open government (Box 4.12) provides an interesting example that can inspire Brazil.

Box 4.12. Mexico's baseline indicators on open government

Mexico's Open Government Metrics were developed by the Centre for Economic Research and Teaching (CIDE), and were based on an initiative of the National Institute for Transparency, Access to

Information and Personal Data Protection (INAI). The metrics are designed as a baseline to measure the current state of the National System of Transparency, Access to Information and Protection of Personal Data (SNT) and its open government and transparency policies. Aiming to be an "x-ray of the starting point of the open government policy of the Mexican State" at the national and subnational level, its focus goes beyond measuring the compliance with regulations, and aims to capture performance information on the outcomes of open government and transparency policies from the perspective of both government and citizens.

The metrics start with an operational definition of open government structured around two dimensions: transparency and public participation. Each dimension is approached from two perspectives: government and citizens.

	Transparency dimension	Public participation dimension
Government-perspective	Does the government make public information about its decisions and actions? To what extent is this done? What is the quality of this information?	In what ways can citizens have an impact on public decisions?
Citizen-perspective	How feasible is it for a citizen to obtain timely and relevant information in order to make decisions?	Can citizens activate a mechanism that allows them to influence public decisions?

The CIDE team developed an Open Government Index, consisting of measurements of transparency and participation from the perspective of both government and citizens. The construction of these indexes involved the analysis of existing regulations, a review of government websites, and user simulations, including information requests. The Metrics survey included a sample of 908 governmental bodies at the national and subnational level; 754 portals were reviewed and 3 635 requests for information were sent. The resulting Open Government Index of Mexico was 0.39 (on a scale of 0 to 1). The index showed that the transparency dimension has a much higher value (0.50) than the participation dimension (0.28).

Source: INAI (2017[40]), Resultados Edición 2017, http://eventos.inai.org.mx/metricasga/index.php/descargables (accessed 11 January 2019).

Brazil could include specific provision on M&E in the recommended Federal Open Government Strategy

If Brazil decides to adopt the recommendation to design a Federal Open Government Strategy (see Chapter 3), its implementation needs to be systematically monitored and, eventually, evaluated. Monitoring could, for example, be done through an integrated monitoring system, available on the CGU's Open Government Portal. The system should allow public and non-public stakeholders to track strategy implementation on a day-to-day basis.

The government of Brazil could also consider establishing provisions for systematic monitoring and evaluation in the Federal Open Government Strategy itself, as it is a recurrent practice across OECD countries. The Strategy could, for example, include a specific section dedicated to monitoring, detailing institutional responsibilities, mechanism to be used, frequency of monitoring, and including a template for monitoring reports, etc. Along similar lines, the Strategy could include provisions for undertaking evaluations, including standards, templates, frequency, stakeholder engagement, evaluator profiles, and the budget for evaluations.

Lastly, the strategy could provide a mandate to the CGU to develop a specific annual M&E plan for the Federal Open Government Strategy. The Open Government Council, recommended above, could serve

as an institutional platform to follow up and discuss progress on the strategic goals in a systematic manner. Meanwhile, the Secretariat for Open Government of the CGU could be responsible for ensuring the monitoring of the strategy.

Making strategic use of external and internal communication for open government reforms

Provision 6 of the OECD Recommendation of the Council on Open Government stipulates that countries should "actively communicate on open government strategies and initiatives, as well as on their outputs, outcomes and impacts, in order to ensure that they are well-known within and outside government, to favour their uptake, as well as to stimulate stakeholder buy-in" (OECD, 2017[2]). Public communication is a key lever of government that can be deployed both *internally* (across and within public entities) and *externally* (with the broader public) and serve as a tool of policy implementation and service design and delivery. It implies a two-way relationship that allows understanding, listening and responding to citizens.

Effective public communication remains one of the main challenges that OECD Member and Partner Countries face in implementing successful open government reforms (OECD, forthcoming[41]). Similarly, in Brazil, 38% of respondents to the OECD Public Institutions Survey recognised limited awareness of public officials/government bodies among their main challenges, indicating that the effectiveness of communication on open government policies and practices should be improved.

This section discusses the ways in which the government of Brazil communicates around open government reforms, both within government and with stakeholders. Recognising that public communication is a wide field, the section focuses on the use of portals and websites as communication tools. A more exhaustive analysis of internal and external communication around open government reforms can be found in the Chapter on *Public Communication for better Policies and a more Open Government in Brazil* which is included in the OECD Centre of Government Review of Brazil (OECD, forthcoming[42]). The present section should be read in conjunction with this Chapter.

The GoB has created a variety of websites on open government policies and practices

Websites and portals are among the most common tools used by OECD Member and Partner countries to communicate around open government reforms (OECD, 2021[43]). Most importantly, websites and portals can serve as a means to publicise relevant information and engage with a broad variety of audiences, circumventing possible time or distance constraints. Generally, one can differentiate between government-wide portals and institution or policy-specific websites. Government-wide portals centralise information and interaction channels across government. They have the advantage of facilitating the identification of the relevant websites and thereby reducing searching costs for information or services. On the other hand, institution or policy-specific portals are more easily to adapt to specific circumstances and therefore may have a better fit for the website's objectives.

Over the past years, Brazil has established multiple portals and websites on open government policies and practices. The most important government-wide portals and websites at the level of the federal government include:

- The **Open Government Website**, managed by the CGU, constitutes the main entry point for information about Brazil's participation in the OGP. It displays information on the current and past OGP action plans, and provides an online tracker on commitment implementation (see above). The website also serves as an information hub on open government beyond the OGP. Users can, for example, find information on the main laws and regulations dealing with open government, as well as relevant trainings and the Open Government Game (see above).

- The **Fala.BR portal** is an integrated Ombudsman and Access to Information Platform created by the CGU that allow citizens and stakeholders to engage with the government in multiple ways. As the main management system for reactive disclosure of information, *Fala.BR* allows user to file a request, get information on the treatment of their request and, if necessary, appeal a decision (see also Chapter 7). *Fala.BR* also functions as a tool to channel citizens' views and inputs on government services more broadly. Citizens can for example provide their feedback on services, and lodge a formal complaint if there is alleged wrong-doing by the administration (see also Chapter 8).
- The **Transparency Portal**, managed by the CGU, enables the public to monitor the use of public resources. Integrating 32 government databases, the accessible information includes data on spending, transfers to sub-national levels, revenues, public servants' salaries, travels and per diems, procurement processes and contracts, benefits paid to citizens, government credit card spending, public servants expelled from the government, among others (see also Chapter 7 on Transparency). The portal uses interactive visualisations, support options, and search tools to facilitate accessibility and re-use of data. In case citizens or stakeholders identify a wrongdoing, the portal provides information for citizens to make complaints or claims against any federal body through Fala.BR Since mid-2018, the portal had an average of approx. 1.2 million monthly users.
- The **Open Data Portal** managed by the CGU provides a centralised system for searching, accessing, sharing and using open government data (see also Chapter 7 and 9). It contains a catalogue of all datasets published by federal bodies and entities. Data is made accessible according to a standardised reference model that allow for re-usage and is machine-readable. The portal allows subnational governments and other branches of the state to catalogue their data. In July 2021, it contained 10,723 datasets.
- The **Participa + Brasil Portal** is the main access point for all matters relating to citizen and stakeholder participation at federal level (see also Chapter 6). For example, it allows users to express their views and ideas by answering surveys from public institutions or by commenting on draft legislation in online public consultation processes. The portal also provides information about existing participatory mechanisms, the schedules of public hearings, as well as the work of the collegiate bodies.

Table 4.5 provides a broader overview of existing portals in different areas of open government, including also portals and websites created by the other branches of the state. It is important to note that these websites are further complemented by panels, such as those on Access to Information and Open Data Panel (see Table 4.4 above).

Table 4.5. An overview of the most important portals and websites on open government policies and practices in Brazil

Name	Key functions	Co-ordinating public institution	Weblink
Open Government Website	• Provides information about Brazil's participation in the OGP (e.g. tracker on commitment implementation (• Provides information hub on open government in Brazil (e.g. news and information on a multiplicity of open government activities, as well as the main laws, regulations and other documents dealing with open government	CGU	https://www.gov.br/cgu/pt-br/governo-aberto
Fala.br	• Integrated Ombudsman and Access to Information Platform • Citzens can launch and monitor Access to Information requests, submit complaints and claims against federal bodies, express (dis-)satisfaction with public service, provide suggestions for improving or simplifying public services	CGU	https://falabr.cgu.gov.br/

Transparency Portal	• Allows to monitor public resources • Integrates 32 databases on spending, transfers to sub-national levels, revenues, public servants' salaries, travels and per diems, among others	CGU	http://www.portaltransparencia.gov.br/
Open Data Portal	• Central system for searching, accessing and using open government data • Contains data sets by all federal public bodies and entities	CGU	https://dados.gov.br/
Participa+	• Central access point in regards to participatory practices at federal level • Allows citizens to learn about participatory opportunities, take part in public consultations, provide feedback and suggestions and to stay informed about collegiate bodies' work	SEGOV	https://www.gov.br/participamaisbrasil/
+ Brazil	An integrated and centralized tool aimed at computerizing and operationalizing the transfer of resources from the Federal Tax Budget and Social Security to a state, district, municipal, direct or indirect public administration body or entity	Ministry of Economy	https://portal.plataformamaisbrasil.gov.br/maisbrasil-portal-frontend/
e-Democracy Portal	Provides citizens and stakeholders with the opportunity to participate in the creation of legislation (e.g. follow hearings in Parliament and submit live questions; comment in-text on legislative proposals; etc.)	Chamber of Deputies	https://edemocracia.camara.leg.br/
Transparency Portal of the Chamber of Deputies	Offers information on legislative results, parliamentary income and expenses, public procurement, , parliamentary expenses and human resources. – Also contains an ATI web page	Chamber of Deputies	https://www.camara.leg.br/transparencia/
Open Data Portal of the Chamber of Deputies	Offering not only relevant open datasets, but also a game that allows citizens to better understand the parliamentarians' activities through the use of data	Chamber of Deputies	https://dadosabertos.camara.leg.br/
Transparency portal (Supreme Federal Court)	Gives access to information about all expenses of the court, for example renumeration structures, reimbursement of outsources personnel, or the compensation for transportation	Federal Supreme Court	https://egesp-portal.stf.jus.br/transparencia
Transparency portal (Superior Court of Justice)	Provides access to information about strategic management, budget management, financial statements, management reports, renummeration of personnel, among others.	Superior Court of Justice	https://transparencia.stj.jus.br/
Public Procurment Portal	• Offers information on public procurement by all public bodies • Allows to participate in bidding procedures as provider and bidder	Ministry of Economy	https://www.portaldecompraspublicas.com.br/18/
"Click School"	App that facilitate and encourage the access to the main educational and financial information of schools	Ministry of Education	https://www.gov.br/pt-br/apps/clique-escola
Integrated System of Planning and Budgeting	Departure point for four services in relation to budgeting: • Budget Panel to track government expenses • Digital Citizen Budget on the distribution of financial expenses based on the annual Budget Bill • Share registration on financial data behind federal budget actions • Open budget data in RTF format		https://www.siop.planejamento.gov.br/modulo/login/index.html#/

Source: Author's own elaboration.

The amount of information published on the various government-wide websites and portals and the opportunities they provide for interaction and feedback are remarkable. However, as further discussed in the implementation Chapters of this Review, in some cases portals overlaps, creating confusion and unnecessary burdens in terms of accessibility. Interviews conducted for this OECD Open Government Review confirmed that citizens and stakeholders sometimes face challenges in identifying the most

relevant portal for their particular need and that the complex interplay between the different portals is not always clear.

Brazil could consider creating a one-stop-shop Open Government Portal

In order to simplify the current complex architecture of websites and portals and provide better accessibility, Brazil could creating an integrated Open Government Portal as a one-stop-shop for all open government related websites. Such an initiative would not aim to delete or replace any of the existing portals, which already fulfil many important functions. Instead, it would gather all of them – semantically and structurally – under a coherent open government narrative that is aligned with an integrated open government agenda.

A one-stop-shop Open Government Portal would represent the following advantages:

- Create synergies between the different existing portals in Brazil: Open government principles are deeply intertwined and, accordingly, also the information and services citizens need to access. Integrating open government in one portal provides the complete picture for stakeholders and therefore increases the effectiveness of each of the portals. Consistent structure and design across portals would additionally ease navigation for users. Further, it enables government to coordinate and reduce redundancies of website content, in turn reducing the amount of resources needed to set-up and maintain a website;
- Disseminate, mainstream and communicate the concept of open government: An Open Government Portal integrates the various facets of open government. Therefore, it allows to express the conceptual understanding of open government through the content and structure of the website. This directly impacts how users see and understand open government;
- Provide citizens and stakeholders with the right entry point for all policies, practices and services related to open government: Users do not longer have to search for the correct website. Independent of what they are looking for in relation to open government, they will find it on the Open Government Portal. This facilitated access to open government increases uptake of information and services. Besides, it can reduce the amount of unnecessary and redundant requests for information.

In line with objective 13 of the Digital Government Strategy 2020-2022 (see Chapter 3), the CGU is currently working to integrate the transparency, open data and ombudsman portals into the central government portal (gov.br) (Ministry of Economy[44]). Efforts to create the recommended one-stop-shop Open Government Portals should be fully aligned with these efforts. Ultimately, the Open Government Portal could become an integral part of gov.br. Box 4.13 provides the example of Canada's holistic Open Government Portal.

Box 4.13. Canada's Open Government Portal

The Government of Canada's website on open government provides content about a wide range of open government topics in an easily accessible manner. The start page is divided into three sections. The first section allows users to directly search for data and information that has been disclosed either proactively or as a result of an Access to Information request. Alternatively, resources on how to request information and background material on this topic can be consulted. The second section contains four themes which structure open government content:

- About Open Government: Canada's involvement in the OGP process, open government initiatives across Canada, FAQs on open government, the Open Government Licence, and other background material:

- Open data: Open government data in the open data portal, instructions on their use, helpful tools and inspirational use cases;
- Open information: Information from digital government records in the open information portal, request summaries of access to information requests, grouped information on government expenditure, public procurement, regulatory plans, government service performance and others;
- Open dialogue: Participation in government decision-making, principles and guidelines for engagement, consultation data, space for interaction with other actors from the open government community in the Public Engagement Community of Practice

The third section at the bottom of the page features latest news on everything related to open government.

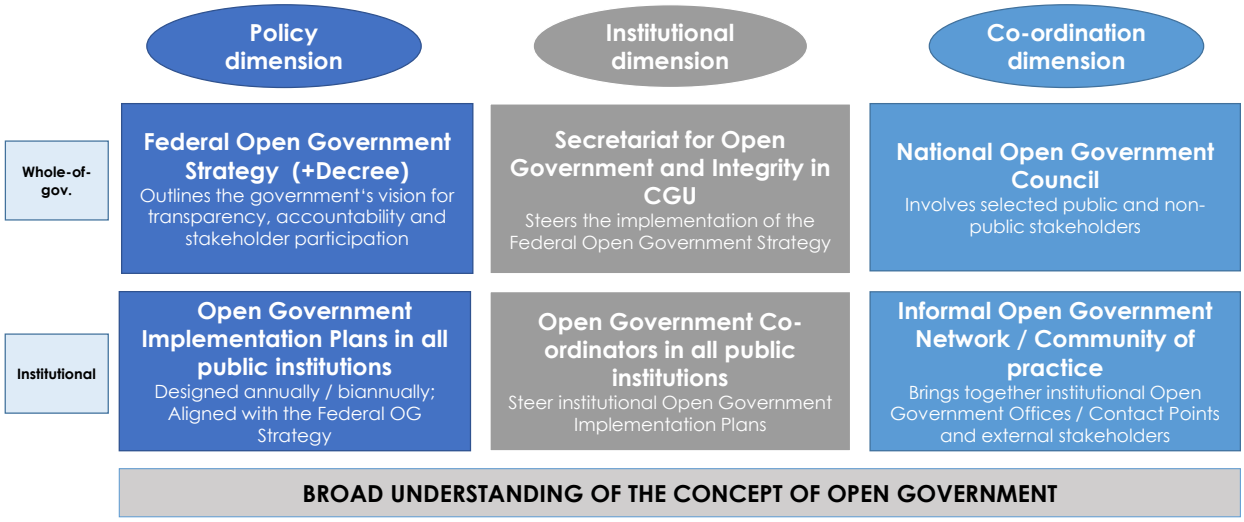
Source: Government of Canada (n.d.[45]), Open Government website, https://open.canada.ca/en

Conclusion – Towards an integrated open government ecosystem in Brazil

Chapters 3 and 4 of this OECD Open Government Review assess Brazil's governance of open government against key provisions of the *2017 OECD Recommendation of the Council on Open Government* (OECD, 2017[2]) and benchmarked the country against the results of the *2020 OECD Survey on Open Government* (OECD, 2021[4]). The Chapters find that Brazil has made great strides in fostering its enabling environment for open government reforms in recent years. Thanks to the adoption of ambitious initiatives such as the creation of the Transparency Portal, Brazil is today widely recognised as a leader in the open government community.

Overall, Brazil's governance of open government is relatively mature. In order to foster institutionalisation and sustainability and ensure that governance inputs and processes actually result in increased levels of openness, the country could now take the next step and move towards a fully integrated open government ecosystem that puts the open government principles of transparency, accountability, integrity and stakeholder participation at the heart of all government actions. The creation of such an integrated ecosystem and of an open government culture in all public institutions and the wider society is an ambitious undertaking. The Chapters therefore provide recommendations that could be implemented by Brazil in the short-, medium- and long term.

Figure 4.12. A proposal for an integrated open government ecosystem in Brazil



Source: Author's own elaboration.

Recommendations

1. **Consider (co-)creating or adopting a single definition of open government** that is accepted by the whole public sector and external stakeholders alike.
   - Consider including civic space and democracy-considerations in the single definition (or in its explanatory note) to explain how the concepts are linked and reinforce each other.
   - Consider using the process to design the next OGP action plan, or the process to design the recommended Federal Open Government Strategy to launch a discussion on a single definition.
2. **Consider adopting an integrated Open Government Strategy for the federal executive branch** (*Estratégia de Governo Aberto do Poder Executivo Federal, EGA*).
   - Include a compelling vision and measurable objectives for Brazil's open government agenda in the Open Government Strategy.
   - Ensure that the Open Government Strategy covers all open government principles and fully integrates a civic space perspective.
   - Mandate the adoption of Institutional Open Government Programmes (*Programas Institucionais de Governo Aberto,* PIGA) by all public institutions and agencies to imlpement the Open Government Strategy.
   - Establish provisions for systematic monitoring and evaluation in the Open Government Strategy and develop a specific annual M&E plan for the Strategy.
3. **Consider transforming the current Secretariat for Transparency and Prevention of Corruption into the Secretariat for Open Government and Integrity** (*Secretaria de Governo Aberto e Integridade*, SGI).
   - Consider transforming he STPC's current Directorate for Transparency and Social Control into the Directorate for Open Government (*Diretoria de Governo Aberto*, DGA).
   - Increase the human and financial resources of the Secretariat for Open Government and Integrity in order for it to be able to become the co-ordinator of the integrated open government

agenda and shift towards becoming a centre of expertise on a wide range of open government issues (rather than a comptroller).

4. **Consider creating dedicated Institutional Open Government Co-ordinators** (*Coordenadores Institucionais de Governo Aberto*) **in all public institutions and agencies**, as a means of fostering co-ordination and translating high-level objectives into institutional realities.
5. **Consider creating a compendium of all laws and regulations that relate to the open government principles** in order to increase legal clarity for both citizens and public officials and identify gaps and overlaps in existing legislation.
6. **Consider updating and widening Decree 10,160 from 2019 establishing the National Open Government Policy** to ensure a harmonised, synergic, and coherent implementation of the provisions on the open government principles that are part of the existing legal and regulatory framework.
   - Include an explicit reference to the Open Government Strategy in the revised decree.
   - Enshrine the creation of the National Open Government Council in the revised decree.
   - Make use of the decree to review and deepen the mandate of the current Secretariat for Transparency and Prevention of Corruption.
7. **Consider creating a National Open Government Council (COGA)** to co-ordinate the implementation of all policies and practices that fall under the realm of the concept of open government, including the recommended Open Government Strategy.
   - Give the role as chair and secretariat of the Council to the recommended Secretariat for Open Government and Integrity of the CGU.
   - Invite senior representatives from the key institutions of the federal open government ecosystem, as well as key civil society representatives, academics, private sector representatives and trade unions to participate in the Council.
   - Create sub-committees of the COGA to focus on specific thematic areas (such as Access to Information; Open Government and Education; etc.) as well as for specific processes (e.g. legal changes such as the elaboration of an Open Government Law).
     - Actively engage the Institutional Open Government Offices Contact Points in the sub-committees providing them with a space for policy exchange and dialogue while working on concrete agendas of relevance to their institutions.
     - Involve non-public stakeholders (e.g. civil society organisations, academia, private sector, unions, etc.), whenever relevant.
8. **Create a dedicated Multi-stakeholder Forum to co-ordinate the OGP process as a sub-committee of the recommended National Open Government Council**.
   - Revise the composition of both the current Interministerial Committee on Open Government (*Comitê Interministerial Governo Aberto*, CIGA) and of the current Civil Society Working Group for Advice on Open to form one integrated committee, comprised of both public institutions and non-public stakeholders.
9. **Build capacity and foster open government literacy.**
   - Consider designing Open Government Toolkits for specific audiences (e.g. public officials; citizens; etc.).
   - Consider including a dedicated course on open government in mandatory training requirements for all newly hired public officials to introduce them to the concept.
   - Consider creating a single training catalogue that lists all trainings on open government policies and practices that are offered by different public institutions and that are available for public

officials. This training catalogue could be added to the CGU's online training environment and be included in the recommended one-stop-shop Open Government Portal.

- Move towards the creation of a community of practice on open government by setting up an Open Government Network, bringing together public officials and non-public stakeholders that are interested in open government topics and / or have participated in trainings on open government policies and practices. The network could be animated by the CGU, in collaboration with the recommended open government offices / contract points.
- Consider creating an annual Open Government Award (Prêmio de Governo Aberto, PREGA) to stimulate more ambitious reforms and provide incentives to public officials and non-public stakeholders.

10. **Enhance monitoring and evaluation of open government principles, policies and practices.**
    - Consider creating an integrated Open Government Panel, as a one-stop-shop for all information and data gathered on different open government polices and practices.
        - Include information about policies and practices at the subnational level (e.g. whether or not states have an open data portal; the data included; etc.) and in the other branches of the state in the Open Government Panel.
    - Develop open government maturity models to allow public institutions and agencies to assess, monitor and compare core elements of their open government agendas.
        - Involve both public institutions and non-public stakeholders and the models should be tested with public institutions prior to its use
    - Develop a theory of change for open government initiatives in order to start moving towards indicators that measure outcomes and impacts of open government reforms.

11. **Consider creating an integrated Open Government Portal (*Paneil de Governo Aberto*),** as a one-stop-shop for all information and data gathered on different open government policies and practices.
12. **Foster the move towards an Open State.**
    - Invite all levels of government and all branches of the state to adhere to the Open Government Strategy.
    - Reinforce co-ordination and collaboration between levels of government and different branches of the State by inviting actors from the legislature, the judiciary, independent public institutions (e.g. Ministerio Público), as well as subnational governments to become members of the recommended National Open Government Council.
    - Consider inviting stakeholders from subnational governments, representatives from the judiciary as well as representatives from the legislature to the recommended community of practice on open government.
    - Brand the TIME-programme as an open government programme and make it the main entry point for capacity-building relating to all open government principles by including additional core open government elements, such as open government data, open budgeting and open contracting among its axes.

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Notes

[1] Provision 4 stipulates that governments should "coordinate, through the necessary institutional mechanisms, open government strategies and initiatives - horizontally and vertically - across all levels of government to ensure that they are aligned with and contribute to all relevant socio-economic objectives."

[2] Integrity policies in Brazil will be analysed in the forthcoming OECD Integrity Review of Brazil.

[3] The OECD Recommendation of the Council on Open Government (OECD, 2017) defines open government literacy as "the combination of awareness, knowledge, and skills that public officials and stakeholders require to engage successfully in open government strategies and initiatives."

[4] The OECD Toolkit and Case Navigator for Open Government can be found here: https://www.oecd.org/gov/open-government-toolkit-navigator.htm

[5] Some countries do not have a centralised training catalogue, with each ministry and institution responsible for designing the training it offers its employees. These trainings would not be captured by these data.

5 Civic space as an enabler of open government in Brazil

This chapter explains the role of civic space as a facilitator of inclusive and effective open government initiatives. It includes a review of the key institutional, legal and policy frameworks governing civic space in Brazil, followed by an analysis of current implementation challenges and opportunities. It also discusses the enabling environment for civil society organisations. The chapter includes concrete and actionable recommendations for the government of Brazil on strengthening the protection and promotion of civic space.

Civic space as a facilitator and enabler of open government initiatives

The OECD has been helping countries around the world strengthen their culture of open government by providing policy advice and recommendations on how to integrate the core principles of transparency, accountability, integrity and stakeholder participation into public sector reforms, as discussed. The OECD's work on civic space – defined as the set of legal, policy, institutional and practical conditions necessary for non-governmental actors to access information and data, express themselves, associate, organise and participate in public life – is a continuation of the same effort and it recognises a healthy civic space as a precondition for and facilitator of open government initiatives. In order to maximise their benefits, and ensure that they achieve their full potential, governments need to guarantee that their civic space is open, protected and promoted through clear policies and legal frameworks that set out the rules of engagement between citizens and the state, framing boundaries, and defending individual freedoms and rights (OECD, 2016[1]).

The OECD approach to civic space

The OECD approach to civic space is anchored in the OECD *Recommendation of the Council on Open Government* (see Box 5.1). Since 2021 following the creation of the OECD Observatory of Civic Space in 2019, all Open Government Reviews include a chapter dedicated to civic space based on the OECD's analytical framework on civic space that is applied to all member and partner countries adhering to the Recommendation.

By fully integrating civic space into its governance work, the OECD thus supports an expansive and holistic understanding of open government that explicitly recognises the importance of the enabling environment (see Table 5.1) (OECD, 2020[2]). For example, when open government data (OGD)[1] are shared by public entities, it is crucial for citizens, journalists and civil society organisations (CSOs) to be able to safely and securely access the data on an equal basis to achieve real transparency and democratise its use and re-use. Similarly, it is critical to have strong legal protections for individual rights, functioning and funded complaints mechanisms, and rule of law to achieve real accountability. Effective participation is only possible when all members of society have an equal chance of being consulted, informed, listened to and of expressing their opinions. OECD countries are raising the bar in terms of creating a more ambitious and impactful context for the next generation of open government initiatives. To support this, they have adopted an all-encompassing analytical framework for civic space that focuses on four core pillars: 1) civic freedoms and rights; 2) the impact of media freedoms and digital rights on civic space; 3) the enabling environment for CSOs; and 4) civic participation (see Table 5.1). This framework places cross-cutting issues such as equality, non-discrimination and inclusion at its core.

Box 5.1. Civic space anchored in the OECD *Recommendation of the Council on Open Government*

The OECD *Recommendation of the Council on Open Government* explicitly recognises the need to create an enabling environment for open government initiatives and reforms. Four of the Recommendation's provisions are particularly relevant to civic space.

Provision 1 recognises the need to take measures "in all branches and at all levels of the government, to develop and implement open government strategies and initiatives in collaboration with stakeholders".

Provision 2 advocates for the need to ensure the "existence and implementation of the necessary open government legal and regulatory framework", in addition to establishing oversight mechanisms.

Provision 7 stresses the importance of proactively making available "clear, complete, timely, reliable and relevant public sector data and information that is free of cost, available in an open and non-proprietary machine-readable format, easy to find, understand, use and reuse, and disseminated through a multi-channel approach, to be prioritised in consultation with stakeholders."

Provision 8 recognises the need to grant people "equal and fair opportunities to be informed and consulted" and for them to be actively engaged in all phases of public sector decision making and service design and delivery". It also advocates for specific efforts to reach out to "the most relevant, vulnerable, under-represented, or marginalised groups in society, while avoiding undue influence and policy capture".

Provision 9 discusses promoting innovative ways "to effectively engage with stakeholders to source ideas and co-create solutions and seize the opportunities provided by digital government tools".

Source: OECD (2017[3]).

Increasingly, this comprehensive and holistic approach to open government is being adopted within the wider open government community. For example, in 2021, the Open Government Partnership (OGP) reported that while almost half of national commitments sought to strengthen public participation, few of them tackled the essential pre-conditions for this, namely the protection of freedom of expression, assembly and association (OGP, 2021[4]). In response, it launched a call for action to push its members to tackle systemic inequalities, protect civic space and enhance citizen participation as part of the "Open Renewal" campaign (OGP, 2021[5]). In light of the above, and as a founding member of the OGP, Brazil has an opportunity to move from the current technical, compliance-driven approach to open government to a more comprehensive understanding that recognises the role of protected civic spaces for all members of society, both on line and offline, and as an enabler of its open government agenda. Such a shift would help improve the design, delivery and outcomes of Brazil's many open government programmes and initiatives with clear benefits for the government and Brazilian society as a whole (OECD, 2017[3]). Furthermore, it would help to realise recent commitments made during the US Summit for Democracy (Brazil, 2021[6]).

Table 5.1. Links between the OECD's open government principles and civic space

Civic space as an enabler of open government reforms			
Transparency	**Accountability**	**Integrity**	**Participation**
Targeted transparency initiatives,[1] proactive disclosure of information and data, and two-way communication to gather feedback and encourage dialogue facilitated by a free and open Internet, a healthy media ecosystem, a safe environment for journalists and bloggers, and an enabling environment for CSO and citizen participation are pre-conditions for government transparency.	Legal protections and functioning oversight mechanisms, as well as rule of law, are essential to ensure equal access to information and relevant policy discussions and decision making for CSOs and citizens, in addition to (hard) accountability[2] for violations of the right to participate and other civic freedoms and rights.	Targeted transparency initiatives,[1] and proactive disclosure of information and data facilitated by a healthy media ecosystem, protection for human rights defenders, activists and whistleblowers, and informed civil society and citizens are pre-conditions for the prevention of policy capture wherein public decision making is directed away from the public interest.	Protected individual rights (e.g. freedom of expression, association, assembly, privacy and personal data protection), non discrimination, an enabling environment for CSOs, security and protection for activists and rights defenders, robust information ecosystems, and inclusive and accessible opportunities are preconditions for effective citizen participation in governance and decision making.

1. Targeted transparency initiatives "have the fundamental characteristic of using information disclosure as a way of achieving a concrete public policy goal, such as improving public service delivery in healthcare, education, and transportation, among other sectors" (Dassen and Cruz Vieyra, 2012[7]).
2. Hard accountability refers to measures that "explicitly name a means of enforcing or brokering compliance". In other words, there are consequences for failure to comply and the means to achieve relevant aims (Foti, 2021[8]).
Sources: Based on OECD (2020[2]; 2021[9]); Dassen and Cruz Vieyra (2012[7]); Foti (2021[8]).

Non-linear progress and challenges

As a young democracy, Brazil has come a long way since 1985 in terms of creating an enabling environment for civil society and effective public participation. Indeed, Brazilian civil society is vibrant and diverse, with expertise on a wide range of issues. It has been partnering with the government of Brazil over the decades, playing an increasingly important role in improving policies, engaging in participatory mechanisms, delivering services and helping to increase transparency. However, this path in support of citizen and stakeholder participation is not linear. This chapter identifies Brazil's progress, as well as challenges and setbacks.

Data and global rankings from leading international think tanks and academics show that fundamental aspects of civic space such as the protection of civic freedoms and rights, press freedom, and the environment for CSOs are under increasing pressure in Brazil. This is taking place alongside challenges to the rule of law[2] and decreasing opportunities for effective civic engagement (see Chapter 6) (World Justice Project, 2020[10]; HRMI, 2021[11]; V-Dem Institute, 2021[12]). Reporters Without Borders places Brazil 111th out of 180 countries in its 2021 World Press Freedom Index (Reporters Without Borders, 2021[13]), for example. Similarly, CIVICUS considers civic space to be "obstructed" in Brazil as of 2021 (CIVICUS, 2020[14]).[3] The V-Dem Institute's Liberal Democracy Index, [4] notes a general democratic decline in its latest report (V-Dem Institute, 2021[12]).[5]

Yet the legal basis for protecting civic space is fairly well established in Brazil, although with recent notable setbacks and exceptions (see Section 0). The Constitution provides far-reaching legal guarantees related to civic space, in addition to regulating the relationship between citizens and the state. It describes its intention to "institute a democratic state destined to ensure the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society". It guarantees all those residing in the country key rights, including access to information; freedom of expression, assembly and association; the right to privacy; press freedom; and equality (Library of Congress, 2020[15]). It also guarantees the defence of indigenous persons' rights and interests (Art. 129); a range of participation rights for individuals, communities, representative groups and CSOs (Art. 10, 58, 79, 82, 194, 198, 204, 216, 227, 231); and environmental rights on the basis of the environment being a "public good for the peoples' use" (Art. 225). Some of these guarantees are further

regulated by federal laws (Library of Congress, 2020[15]). As such, the Constitution forms the bedrock for civic space protections in Brazil and, potentially, for a more ambitious vision for open government.

Brazil also has a National Programme for Human Rights since 1996, which was reviewed in 2002 and 2009, always in consultation with civil society (Government of Brazil, 2009[16]). Its third edition includes as guiding pillars the "democratic interaction between state and civil society", "development and human rights", "universalisation of rights in a context of inequalities", "public security, access to justice and fight against violence", "human rights education and culture", and "the right to memory and truth". A fourth edition of the programme is being considered and a working group composed of government representatives was established in February 2021 to undertake an "ex ante evaluation" of the national human rights policy and provide recommendations for the improvement of its programmes (Ministry of Women, Family and Human Rights, 2021[17]). The ministry considers this as "a moment of reflection, diagnosis and evaluation" where it plans "to discuss problems, causes and solutions" to be discussed with civil society in a following stage.[6]

However, despite this robust foundation, implementation of civic freedoms and rights on an equal basis remains challenging. Some obstacles are long term and particularly complex given Brazil's history, size and administrative organisation, whereas others have become more prominent in recent years. The rest of this chapter discusses the key legal and policy frameworks governing three of the OECD's core pillars of civic space – civic freedoms and rights, media freedoms and digital rights and the enabling environment for civil society (as per Table 5.1) - followed by a detailed review of current implementation challenges and opportunities with accompanying recommendations. The recommendations provide a range of practical measures that Brazil can take to protect its civic spaces, both online and offline. They are aimed at a broad range of state institutions and some will require cross-government discussions and approaches, in which the CGU is well placed to play a leadership and coordination role. The fourth pillar of civic space – public participation – is discussed in detail in Chapter 6.

Legal frameworks governing civic freedoms and rights, media freedoms, and digital rights in Brazil

Similar to the vast majority of OECD countries, Brazil has adopted legislation to reflect and ratify the provisions of several key international and regional treaties and conventions governing civic freedoms and rights.[7] Core rights related to civic space are largely protected in the Constitution and legislation, with some laws even praised internationally (UNIFEM, 2008[18]; IACHR, 2021[19]). Although legislation governing fundamental rights has improved substantially as a result of the 1988 Constitution, there are however concerns about a recent increase in activity by the executive, mainly through the approval of decrees and provisional measures.[8] Organisations consulted as part of this review expressed concerns about the number of new bills in congress that address issues of high relevance for citizens, the speed with which they are being proposed and approved, and the few opportunities for non-governmental stakeholders to engage in relevant debates and decision making. They fear that this side-lines the legislature as an independent body in charge of law making where inclusive debate and collaborative drafting had been gaining ground over the years and that hard-won rights related to civic space, including on the protection of civic freedoms in addition to public security and the rights of indigenous peoples – some of which were won after decades of national struggle and debate – are increasingly under threat.[9]

Freedom of peaceful assembly and association

Freedom of peaceful assembly is protected by the Constitution. Article 5 states that all persons may hold peaceful meetings, without weapons, in places open to the public, without need for authorisation, so long as they do not interfere with another meeting previously called for at the same place, subject only to prior notice to the relevant authority (Item XVI). This is generally in line with legislation found in OECD Member

States, although it is rare for the handling of simultaneous or counter-demonstrations to be set out in constitutions. Although more than 70 bills have been proposed over the years to elaborate this right further, none have become federal law (Article19, n.a.[20]), which may lead to inconsistent and potentially arbitrary handling of assemblies in practice. Some municipalities and states regulate practices related to protests, however, such as a 2019 decree from the state of São Paulo that prohibits the use of masks in protests and requires five days' advance notice from organisers (Legislative Assembly of the State of São Paulo, 2019[21]; Article19, 2020[22]). In 2021, the Supreme Federal Court ruled that meetings and demonstrations are permitted in public places regardless of prior official communication to the authorities (Supreme Federal Court, 2021[23]), which reflects the practice in many OECD countries, and also international human rights standards as stipulated by the UN Special Rapporteur on the rights to freedom of peaceful assembly and association and the Inter-American Commission on Human Rights, whereby the failure to notify an assembly beforehand does not by itself justify an interference with the assembly, especially if it remains peaceful. According to the court ruling, "the constitutional requirement of prior notice is satisfied by the dissemination of information that allows public authorities to ensure that its exercise takes place in a peaceful manner or that it does not frustrate another meeting in the same place", not having to be an official communication.

Article 5 of the Constitution also foresees total freedom of association for lawful purposes, except for paramilitary association (Item XVII). Associations can be created independent of government authorisation, and state interference in their functioning is explicitly forbidden (Item XVIII); this corresponds with law and practice in many OECD countries and is essential to creating an enabling environment for civic space. Associations have legitimacy to represent their members judicially or extra judicially, when expressly authorised[10] (Item XXI). The Civil Code further regulates the establishment and operations of associations, companies and foundations (see Section 0 for a more detailed review of legal frameworks governing associations) (Government of Brazil, 2002[24]).

Ongoing reviews of the Anti-Terrorism Law (Law 13260/2016) and National Security Law (Law 7170/1983) (see Box 5.2) may also have an impact on freedom of assembly and association.

Freedom of expression/speech

Article 5 of the Constitution sets forth several principles related to freedom of expression, including that no one shall be compelled to do or refrain from doing something except by force of law (Item II) and that manifestation of thought is free, but anonymity is forbidden (Item IV). Expression of intellectual, artistic, scientific and communication activity is also free and independent of any censorship or license (Item IX). Article 220 further determines that the expression of thoughts, creation, speech and information, through whatever form, process or vehicle, must not be subject to any restrictions (Library of Congress, 2020[15]), which is similar to provisions found in constitutions and laws of OECD Member States.

Freedom of expression excludes slander, defamation and injury, which are considered crimes against honour and are subject to imprisonment[11] (Government of Brazil, 1940[25]). This is contrary to findings of the Inter-American Court of Human Rights, which has stated that imposing excessively punitive sanctions such as prison sentences in defamation cases is a disproportionate interference with individuals' freedom of expression.[12] The UN Human Rights Committee has also generally urged states to decriminalize defamation[13] (although numerous OECD countries still criminalise it). Freedom of expression also excludes discrimination, with some practices also punishable by imprisonment (Government of Brazil, 1995[26]). Article 208 of the Brazilian Criminal Code considers publicly mocking someone on the grounds of belief or religious function, preventing or disrupting a ceremony or the practice of religious worship, or publicly vilifying an act or object of religious worship to be punishable crimes with between one month and one year of imprisonment or a fine. As stated by different UN bodies, such legislation should not be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith[14]; it follows that this form of interpreting the law would limit civic space and freedom of expression in general.

Legislation regulating freedom of expression of thought and information, Law 5250, dates back to 1967. In 2010, the Supreme Federal Court stated that "Law 5250/1967 does not seem to serve the standard of democracy and press that emerged from the drafting board of the Constituent Assembly of 87/88. However, the total suspension of its effectiveness harms press freedom itself" (Supreme Federal Court, 2010[27]).

Ongoing reviews of the Anti-Terrorism Law (Law 13260/2016) and National Security Law (Law 7170/1983) (see Box 5.2) may also have an impact on freedom of expression.

Press freedom

The 1988 Constitution guarantees press freedom, stating that "the manifestation of thought, creation, expression and information, in any form, process or vehicle shall not be subject to any restriction" (Art. 220). The same article specifies that "no law shall contain any provision that may constitute an obstacle to full freedom of journalistic information in any media vehicle" (§1), that "any and all censorship of a political, ideological and artistic nature shall be forbidden" (§2), and that "the publication of a printed communication vehicle is independent of license from the authority" (§6). Regulations on content, ownership and licences are also included, entrusting the executive with the right to grant and renew concessions, permissions and authorisations for sound and image broadcasting services (Art. 220-223). The 2020 *OECD Telecommunication and Broadcasting Review of Brazil* found that the country had strengthened its legal and regulatory communication framework in recent years, but that important weaknesses remain, including a complex licensing regime that raises barriers to market entry and may lead to regulatory arbitrage (OECD, 2020[28]). Thus, while generally legislation seems to meet the positive obligation to protect media freedoms, guarantee respect for media independence, and promote media diversity that a variety of international human rights bodies have imposed on states, the above obstacles to market entry and thus to media diversity weaken that aspect of civic space.

The Constitution does not mention any exceptions to press freedom, but anonymity is forbidden (Art. 5, Item IV). Slander, defamation and injury are crimes under the Criminal Code (Art. 138-140), as is publicly inciting crime (Art. 286). The only legislation specifically governing press freedom is from 1953, pre-dating the military regime (Government of Brazil, 1953[29]). A second legislation dating from 1967 regulates freedom of expression of thought and information (Government of Brazil, 1967[30]). In a positive step, two bills were introduced in Congress in 2020 to increase protection for journalists and press freedom more generally (Chamber of Deputies, 2020[31]). Bill PL2378 proposes the criminalisation of conduct that prevents the free exercise of journalism, and Bill PL2393 proposes an increase of penalties for physical injuries committed against media professionals in the exercise of their professional duties or because of them. These were being debated by parliament at the time of writing.

Privacy, data protection and cybersecurity

Article 5 of the Constitution affirms everyone's right to privacy (Items X-XI) and the confidentiality of correspondence, data and communications, except for law enforcement and criminal investigation purposes (Item XII), which is largely in line with legislation found in OECD Member States. The Civil Code also guarantees the inviolability of private life (Art. 21) (Government of Brazil, 2002[24]). In a significant development in October 2021, the Senate approved an amendment to the Constitution (PEC 17/2019) which makes the protection of personal data, including in digital media, a fundamental right. The proposal has yet to be approved by the National Congress.

Brazil's Personal Data Protection Law (Law 13709) was passed in 2018 and came into force in 2020. Its purpose is to regulate the use and sharing of personal data, in addition to access, and to protect citizens from any misuse of their personal information. It specifies exceptions for the purpose of public security, national defence, state security, criminal investigation and for data originating from abroad under certain circumstances[15] (Art. 4, Item III). Exceptions also include the treatment of personal data carried out

exclusively for journalistic, artistic or academic purposes (Art. 4, Item II) and for research by public health authorities, with anonymisation or pseudonymisation of the data where possible (Art. 13). This law also reflects data protection legislation in OECD countries, notably in Europe and other Latin American countries, and contains important safeguards to help enhance civic space.

Decree 10222 of 2020 approved the National Cyber Security Strategy for the period 2020-23. It describes the government's strategic objectives regarding cybersecurity and proposes several actions to achieve them, such as establishing minimum cybersecurity requirements in public procurement, encouraging the use of cryptographic resources for communication of sensitive matters and developing regulations on emerging technologies. Law 14155, approved in 2021, provides heavier penalties for cybercrimes, such as device hacking, theft and swindling committed electronically or via the Internet. This refers to breaking into someone's electronic device in order to obtain, alter or destroy data or information without the user's authorisation.

Open Internet

The 2014 Civil Rights Framework for the Internet (Marco Civil da Internet, Law 12965) establishes the principles, guarantees, rights and duties underpinning Internet use in Brazil. It foresees access to the Internet as a right for all and as essential to the exercise of citizenry, and thereby implements standards established by various international actors, which have emphasised states' obligations to promote and facilitate universal Internet access by having relevant regulatory mechanisms, providing support, promoting awareness, and ensuring equitable access.[16] Article 3 of the law states that "the discipline of internet use in Brazil has the following principles: guarantee of freedom of expression, communication and manifestation of thought, protection of privacy, protection of personal data", among others. These principles are an important step towards protecting and maintaining civic space.

Box 5.2. Replacing Brazil's National Security Law and Anti-Terrorism Law

Brazil's **National Security Law** (Law 7170/1983) dates from the end of the military rule and defines crimes against national security and political and social order. A bill revoking the law notes that it is "incompatible with the democratic regime embodied in the 1988 Constitution". Political parties and senators, among others, have voiced their concerns about it violating Brazil's democratic rule of law, in addition to freedoms of expression and thought. It is also deemed problematic due to its vague wording, harsh penalties and for its perception of protesters as a threat. The Inter-American Commission's Special Rapporteur for Freedom of Expression has noted with concern the increase in prosecutions of journalists, using the National Security Law. Projects to revoke it have existed since 1991, culminating in 2021, when the revocation process was finally approved by the Chamber of Deputies and the Senate and sanctioned by the President.

The bill revoking the National Security Law (PL 6764/2002 in the Chamber of Deputies and PL 2108/2021 in the Senate)[1] included in its proposal the addition of a set of crimes to the Penal Code considered as "crimes against the democratic state of law". In a joint letter sent in 2021, 67 civil society organisations (CSOs) asked for different sectors of Brazilian society to be included in the development of the bill and raised concerns about the text, including about the use of imprecise concepts that risked the criminalisation of protests and threatened freedom of expression. Public audiences and meetings were held with CSOs as a result, and the text was revised several times, leading to a better definition of terms and the inclusion of an article stating that "it is not considered a crime to criticise constitutional powers or journalistic activity or claim constitutional rights and guarantees through marches, meetings, strikes, crowds or any other form of political manifestation with social purposes". This was seen as an important achievement by civil society, although some of the other articles in the bill that were drafted with public participation were vetoed. This included articles that classified the promotion of misleading

mass communication and the prevention of the right to demonstrate as crimes, with significant implications for the right to peaceful assembly and the protection of civic space more broadly. In September 2021, the bill was enacted into Law 14197/2021.

The **Anti-Terrorism Law** (Law 13260/2016) defines terrorist organisations and addresses investigative and procedural provisions to counter terrorism. Brazil also recognises that it needs to be revised and Congress is currently discussing more than 20 bills to amend it. However, the Federal Prosecutor's Office for Citizens' Rights has expressed concerns about new measures foreseen in some of these bills, stating that "vague provisions brought in by the proposals may impact fundamental freedoms of expression, demonstration and protest". This and other concerns were included in an appeal by a group of CSOs to the Inter-American Commission on Human Rights in 2019. A letter from United Nations' rapporteurs to the Brazilian government in 2021 shared reservations about the bills, noting that "this change may lead to limitations on the exercise of fundamental freedoms, including those of opinion, expression, and association and remove protection for civil society actors and human rights defenders".

One of these bills (Draft Bill 1595/2019) has been opposed by the National Association of Federal Prosecutors and a wide range of police associations.[2] It is also opposed by civil society groups, in particular because it enlarges the powers of the executive to take actions against "preparatory acts" of terrorism (Art. 1). Civil society is also concerned about a number of the bill's articles related to infiltration, surveillance, monitoring and intelligence gathering measures (Art. 5, 6); scenarios in which agents might not be prosecutable (Art. 13); the absence of safeguards for data sharing among different state actors (Art. 14, 15); the absence of external control by civil society of related actions by the state (Art. 17); and the risk of creating incentives for banks and financial institutions to create obstacles to international funding of CSOs (Art. 23) as part of measures to curb financing of terrorism.[3] Another bill, 272/2016, also broadens the concept of "terrorism", using imprecise language to define terrorist acts (Federal Senate, 2016[32]). CSOs note that some of these bills are being classified as urgent and have not been discussed with civil society representatives.

The introduction of broad and imprecise terminology in security and counterterrorism legislation has been central to the closure of civic space and restrictions on civil society across the globe, leading to the arbitrary application of laws and the criminalisation of otherwise peaceful and legitimate activities. OECD. It is crucial that civil society groups are systematically engaged in developing and revising the above laws and in conducting human rights impact evaluations on them in an inclusive and comprehensive manner to ensure they do not negatively impact civic space.

1. Bills to revoke the National Security Law changed the numbering and other bills were attached to the text over the years.
2. Contributions received on 23 September 2021.
3. Contributions received on 20 and 23 September 2021.

Sources: Government of Brazil (1983[33]; 2016[34]; 2021[35]); Federal Senate (2021[36]); Chamber of Deputies (2020[37]; 2020[38]; 2019[39]); Article19 (2021[40]); Pacto pela Democracia (2021[41]); Conectas (2021[42]); Federal Prosecutor's Office for Citizen's Rights (2020[43]); Article19 et al. (2019[44]); OHCHR (2021[45]; 2021[46]); OECD (2021[47]); (Supreme Federal Court, 2021[48]); (Vilarreal, 2021[49]). Contributions to the OECD public consultation on civic space received on 28 February 2021 and 30 March 2021.

Equality and non-discrimination

As mentioned above, equality and non-discrimination are cross-cutting themes in the OECD's civic space work as essential preconditions for inclusive and responsive public participation. Also, the discussion on the representativeness and inclusiveness of data is increasingly permeating the policy discourse across OECD countries,[17] thus leading to specific actions to ensure that the data generated by the public entities reflects the realities of all population groups (e.g. minorities, indigeneous communities) so that there are no hidden inequalities in the data (see Chapter 9 on Open Government Data).

As such, this chapter includes a review of frameworks related to Afro-Brazilians, women, indigenous and LGBTI (i.e. lesbian, gay, bisexual, transgender and intersex) persons, as groups that are particularly at risk of discrimination and discriminatory violence. Inclusive policymaking and socio-economic development are among the founding principles of the OECD (OECD, 2020[50]). In the context of Open Government Reviews, discriminatory practices are assessed as they affect people's relationship with the state, in addition to their ability and willingness to engage with public institutions if they feel undervalued, excluded, unprotected or threatened by them.

One of the fundamental objectives of Brazil as a country, as stated in its Constitution, is to promote the well-being of all, without prejudice as to origin, race, sex, colour, age or any other form of discrimination. Article 5 sets forth that "all are equal before the law, without distinction of any nature". It further states that men and women have equal rights and duties (Item I) and that no one shall be deprived of any rights because of their religious beliefs or philosophical or political convictions[18] (Item VIII). These general equality and non-discrimination principles are in line with those found in the legislation of OECD Member States. The Criminal Code states that injury referring to race, colour, ethnicity, religion, origin, or the condition of elderly or handicapped persons may be sanctioned by one to three years of imprisonment and a fine (Art. 140 §3) (Government of Brazil, 1940[25]). Non-discrimination of specific groups is further regulated by federal law, examples of which are discussed below. Law 7716 of 1989 defines crimes resulting from discrimination or prejudice based on race and colour[19]. There is no specific mention of sexual orientation in these laws.

Racial equality

The Racial Equality Statute (Estatuto da Igualdade Racial), created by Law 12288 in 2010, was an important step in addressing Brazil's well-documented history of racial discrimination (Government of Brazil, 2010[51]; Ministry of Women, Family and Human Rights, 2018[52]). It was designed to guarantee equal opportunities to people of African descent, protect ethnic rights, and fight discrimination and other forms of ethnic intolerance (Art. 1). According to the law, any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin intending to annul or restrict the equal recognition, enjoyment or exercise of human rights and fundamental freedoms is considered racial or ethnic racial discrimination (Art. 1, Item 1).

Racism is a non-bailable crime with no statute of limitations and implies discriminatory conduct directed at a certain group (National Justice Council, 2015[53]; Government of Brazil, 1989[54]). Law 7716 of 1989 frames racism in terms of specific actions, such as refusing or preventing access to a commercial establishment, preventing access to social entrances in public or residential buildings and lifts, and denying or preventing employment in a private company, among others. Racial injury is a separate crime, usually associated with the use of derogatory words referring to race or colour with the intention of offending a person's honour (National Justice Council, 2015[53]). Different from racism, racial injury is bailable, is subject to a statute of limitations and a conditional suspension of sentence is possible. A bill was proposed in 2020 to classify racial injury as a crime of racism, upgrading its status and making it non-bailable and with no statute of limitations. It was still under consideration at the time of writing (Chamber of Deputies, 2021[55]).

Challenges related to racial inequality have long been recognised in Brazil and quotas aimed at reducing educational disparities among people of different races and social backgrounds have been implemented by various governments since 2000. Since 2016, federal public universities are required by law (Government of Brazil, 2012[56]) to allocate at least half of their slots to students from public schools and these should be filled by Afro-Brazilians, indigenous and disabled people, reflecting at a minimum the proportion of the population that each group represents. Quotas for Afro-descendants in entry exams for the public service are also foreseen by law (Government of Brazil, 2014[57]). In 2020, the Superior Electoral Court also decided on affirmative measures to support racial equality in electoral campaigns starting with

the 2022 elections (Superior Electoral Court, 2020[58]). In a further positive step, in May 2021 Brazil ratified the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

Gender equality and women's rights

The first item of Article 5 of the Constitution states that "men and women are equal in rights and obligations", which reflects the wording of key international instruments ratified by Brazil, as well as the constitutions of many OECD Member States. One of the first legislations affecting gender equality, Law 6515, was introduced in 1977. It instituted the same divorce procedure for men and women (Government of Brazil, 1977[59]). Maternity and paternity paid leave was established in the 1990s with the approval of several laws (Government of Brazil, 1991[60]; 1994[61]; 1999[62]). Affirmative action on women's participation in electoral processes has been foreseen by law for years (Government of Brazil, 1997[63]). Political parties are also obliged to set aside funds to finance electoral campaigns for their female candidates (Government of Brazil, 2015[64]). Even so, the percentage of Women in the Chamber of Deputies remains at 15% (International Institute for Democracy and Electoral Assistance, 2021[65]), well below the average of 32% across OECD countries in 2021[20] (OECD, 2021[66]).

An area in which progress has been made is the legal framework concerning violence against women. The main legal framework is Law 11340 of 2006 (the "Maria da Penha" Law), which was considered a milestone in countering violence against women in Brazil when it was introduced (UNIFEM, 2008[18]). The law criminalised domestic violence, with a penalty of up to three years' imprisonment and no possibility of conversion into fines or public services, which was possible prior to the law. The law also defined other forms of aggression beyond physical violence, such as psychological, sexual, patrimonial[21] and moral[22] aggression. It created measures to prevent such crimes and to protect victims, including the removal of the victim or the aggressor from a specific location and the possibility of preventive arrest of the aggressor.

Several amendments have been made to this law, including on the preferential care of victims by female police officers (Government of Brazil, 2017[67]), the imprisonment of aggressors for non-compliance with protective measures (Government of Brazil, 2018[68]), and the criminalisation of recording of private or sexual content without the consent of all concerned parties (Government of Brazil, 2018[69]). In a positive step, Law 13104 of 2015 also introduced femicide into the Brazilian Penal Code as a particular category of homicide, thereby increasing the sentence in some cases,[23] and making gender-based violence of women more visible. A homicide is now considered femicide when the crime involves domestic and family violence and/or discrimination against a woman because of her sex.

In another positive step, the 2017 Labour Law reform, Law 13467/2017, included an article stating that salaries could not be differentiated on the basis of gender and foreseeing a fine and the payment of the difference in such cases (Art. 461).

Indigenous rights

The Constitution recognises indigenous people's social organisation, customs, languages, beliefs and traditions, as well as their rights over the land they traditionally occupy (Art. 231). This marked a shift from the idea of integration and assimilation of indigenous culture foreseen in the 1973 "Indigenous Statute" (Government of Brazil, 1973[70]) to one of preservation and protection. In the three decades since the 1988 Constitution was introduced, a series of decrees, amendments and laws have also been passed to regulate the constitutional provisions and to protect indigenous people's rights, culture and land (Public Prosecutor's Office, 2019[71]; FUNAI, 2020[72]). Decree 1775 of 1996 regulated the demarcation of indigenous land by the state, with a key role given to the federal agency for indigenous assistance, currently the National Indian Foundation. The 2002 Civil Code (Government of Brazil, 2002[24]) removed a reference to indigenous peoples as being "relatively incapable" which had been included in the 1916 version (Art. 6, Item III) (Government of Brazil, 1916[73]). Decree 5051 of 2004 ratified the International Labour Organization's Indigenous and Tribal Peoples Convention, stating among other things that indigenous and

tribal peoples have the right to be consulted about administrative or legislative decisions affecting their collective rights and ways of life, including over their land.

A key bill introduced in 2007 (PL490/2007) and a package of 13 other associated bills since then have sought to change the legal framework governing the demarcation of indigenous land (Chamber of Deputies, 2007[74]; 2021[75]). These include a proposal to establish 1988 as a "temporal mark" for the definition of protected areas, which means that indigenous people seeking protection of their territories had to have been occupying the land in 1988. It also proposes to shift the responsibility for demarcating land from the National Indian Foundation to the National Congress. Another proposal includes the possibility of "contracts aiming at cooperation between indigenous and non-indigenous for economic activities," including agro-sylvo-pastoral, in indigenous lands, which contradicts a constitutional article that "occupation, ownership and possession" of indigenous lands "or the exploitation of the natural wealth of the soil, rivers and lakes existing therein, are null and void, not producing legal effects, except in the case of relevant public interest of the Federal Government" (Art. 231, § 6) (Government of Brazil, 1988[76]; Instituto Socioambiental, 2021[77]). CSOs have raised a series of concerns about the potential impact of these bills, including that they violate constitutionally guaranteed rights, such as the permanent possession of indigenous lands and the exclusive right to natural resources (Instituto Socioambiental, 2021[78]; APIB, 2021[79]; Indigenous Missionary Council, 2021[80]; de Aguiar, 2021[81]). The package was approved by a commission from the Chamber of Deputies in June 2021 but has not yet been voted on in plenary or by the Senate (Chamber of Deputies, 2021[82]).

LGBTI rights

There is no explicit protective legal framework for LGBTI people in Brazil, although rights for this group have been strengthened over the past two decades. Since 2002, gender reassignment surgery is authorised by the Federal Council of Medicine and is offered by the Brazilian Unified Health System since 2008, for example (National Health Council, 2017[83]). Supreme Federal Court decisions are also notable, including the legal recognition of same-sex unions in 2011 (Supreme Federal Court, 2011[84]; 2011[85]) and the framing in 2019 of homophobia and transphobia practices as a type of racism, covered by Law 7716 of 1989 (Government of Brazil, 1989[54]; Supreme Federal Court, 2019[86]). Government decrees also recognise transvestites' and transsexuals' gender identities and allow them to use a different name in the civil registry, including on identity cards (Government of Brazil, 2016[87]; 2018[88]).

Challenges and recommendations on the implementation of civic freedoms and rights, media freedoms, and digital rights in Brazil

Although civic space has a strong legal foundation in Brazil, Brazilians face considerable barriers in exercising related rights in practice, thereby preventing them from effectively participating in policy making and decision making, and in engaging with government institutions on a full and equal basis. This section discusses crucial challenges and recommends ways to address them.

Protecting freedom of peaceful assembly

While the right to freedom of peaceful assembly is guaranteed in the Constitution (see Section 0), there is no specific legislation detailing what this right includes or how it should be implemented (Peaceful Assembly Worldwide, 2021[89]; Article19, 2014[90]).

In an effort to respond to this gap, in 2017, the Brazilian National Council for Human Rights, the Prosecutor's Office and the Federal Prosecutor's Office for Citizens' Rights participated in drafting Guidelines for Observing Demonstrations and Social Protests, led by the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights, together with other

institutions in the region (Regional Office for South America of the OHCHR, 2017[91]). The document acknowledges protests as a fundamental element of democratic societies and an essential instrument for the protection and promotion of rights, recognising that many rights have been achieved over the years thanks to public expression of collective demands. It presents international norms for demonstrations and social protests, and offers guidelines for citizens monitoring demonstrations. It does not, however, provide practical guidance to organisers nor to public security entities. It is also hardly referenced by civil society or in the media, indicating that it may not be well known, and as a result, may be narrowly used.

The number of protests arising from social discontent has increased in the LAC region since 2014 (OECD, forthcoming[92]). High social inequality and the perception of widespread corruption are some of the drivers of protests across the region. Although the right to peaceful assembly is generally respected in Brazil, law enforcement officials sometimes employ excessive force against demonstrators (Peaceful Assembly Worldwide, 2021[89]). For example, during nationwide public demonstrations against public transport fares in June 2013, documented violations included the excessive and indiscriminate use of lethal and non-lethal weapons, the disproportionate use of force, and arbitrary arrests, in addition to intimidation practices such as recording and photographing of protestors (National Council for Human Rights, 2017[93]; Article19, 2013[94]; 2013[95]). In 2017, protests against labour and pension reforms in Brasilia were met with the use of lethal weapons by the armed forces, which were called upon to contain the demonstrations (Vettorazzo et al., 2017[96]). In the context of the 2018 elections, electoral courts banned protests at several universities, where protests were interrupted by the police and posters and materials removed (Folha de São Paulo, 2018[97]). After several days of unrest, the Supreme Federal Court annulled the decision by the electoral justice and reiterated that “universities are spaces of freedom and of personal and political liberation” (Supreme Federal Court, 2018[98]). In 2021, several anti-government protests in over 100 cities were also met with a violent response from the police (Dielú, 2021[99]; BBC, 2021[100]).

Law enforcement agents are required by law to prioritise less offensive instruments over lethal weapons and to use force following the principles of legality, necessity, reasonableness and proportionality, according to Law 13060 of 22 December 2014 (Government of Brazil, 2014[101]). The use of firearms is prohibited against a person on the run who is unarmed, or who does not present “an immediate risk of death or injury to public security agents or third parties” and training for security agents should include content that enables them to use non-lethal instruments, defined as having a “low probability of causing death or permanent injury, temporarily contain, weaken or disable people” (Articles 2 and 3). Furthermore, when injury occurs, medical assistance must be ensured and there is an obligation to communicate what happened to the person’s family or other indicated person (Article 6). Nonetheless, the use of non-lethal armaments typically used in protests, such as rubber bullets, tear gas grenades and other crowd control weapons, has been disproportionate and reportedly caused severe injury (PHR and INCLO, 2016[102]). The use of rubber bullets has resulted in the loss of eyesight of protestors on various occasions in Brazil (Borges Teixeira, 2020[103]; Tomaz and Araújo, 2018[104]; G1, 2016[105]). CSOs have been calling for a ban on their use based on the fact that they are not accurate and can cause significant injury, including to innocent bystanders (Amnesty International, 2015[106]) (Article19, 2021[107]).

In a positive step, in June 2021, the Supreme Federal Court ruled that it is the state’s duty to compensate media professionals who are injured by police officers during news coverage of demonstrations in which there is conflict between the police and demonstrators (Supreme Federal Court, 2021[108]). This followed an appeal by a photojournalist shot in the left eye by a rubber bullet fired by the military police while he was covering a protest in São Paulo in 2000. The injury resulted in the loss of 90% of his vision.

Lessons may also be learnt from practice in neighbouring Colombia, where the government adopted a notable protocol in 2018 for the co-ordination of actions aimed at ensuring a favourable environment for the exercise of peaceful assembly (Colombian Ministry of Interior, 2018[109]). The protocol lists actions that can be taken by authorities before, during and after protests, to protect the right to peaceful assembly, including on the permitted use of force and in the case of disruptions. It has a section about the role of the police in the context of protests, with information about when and how they should intervene. Civil society

verification commissions are foreseen in the protocol with the objective of monitoring and verifying that the right of peaceful assembly is being guaranteed and protected. An evaluation after each protest is also proposed, taking into account analysis and documents provided by civil society.

Recommendations

- As a cornerstone of democracy, and a key means for citizens to express their views on matters of public importance, it is key for Brazil to consistently protect the right to peaceful assembly. International guidance in this area states that governments have an obligation not just to refrain from violating the rights of those assembling but to actively ensure their rights and to facilitate and enable assemblies. Even when such gatherings turn violent and participants forego the right to peaceful assembly, they still retain other rights, subject to normal limitations, such as those of freedom of expression, association and belief; participation in the conduct of peaceful affairs; bodily integrity; privacy; and an effective remedy for violations of rights (United Nations General Assembly, 2016[110]). The principles of legality, precaution, necessity, proportionality and accountability are central to the right of peaceful assembly, so that force is only used when "strictly unavoidable", that there is a formal approval and deployment process for any weaponry and equipment used, and that when the use of force is unavoidable, that its harmful consequences are minimised (United Nations General Assembly, 2016[110]).
- Consider developing a detailed protocol, in partnership with civil society, on implementation of the right to peaceful assembly in order to ban the use of indiscriminate force and to ensure a consistently favourable environment for the exercise of this right.
  - Rules on the use of non-lethal weapons as a last resort could be included (e.g. areas of the body to be avoided, when *not* to use such weapons, the need to warn people before such weapons are used) in addition to details on actions to be taken in case of violence or conflict without affecting other peaceful demonstrators or hindering their right to protest. It could also include preferred techniques to contain violence, in addition to guidance on methods to be avoided, and a ban on certain types of weapons.
- Sustained, specific and compulsory training for police on the contents of such a protocol, including on crowd facilitation, planning, coordination and dispersal methods, will be key.
- Make practical information available to citizens regarding their rights when organising public meetings and demonstrations, including on: who has the right to organise assemblies; limitations to this right; any prior notification required; regulations regarding interventions, interruptions or relocations by police; legal frameworks regarding apprehensions and the use of force by police; regulations regarding the use of drones; and other frequently asked questions in the Brazilian context. This could be in the form of a web page, for example, which is extensively promoted and outlines Brazil's commitment to protecting the right to peaceful assembly, in addition to the duties and responsibilities of protestors.
- Ensure that any abuse by police or other law enforcement agent is thoroughly investigated and prosecuted in a timely and efficient manner.
- Undertake a thorough review to ensure that relevant subnational legislation is in line with international standards.

Challenges related to the right to association are addressed in Section 0.

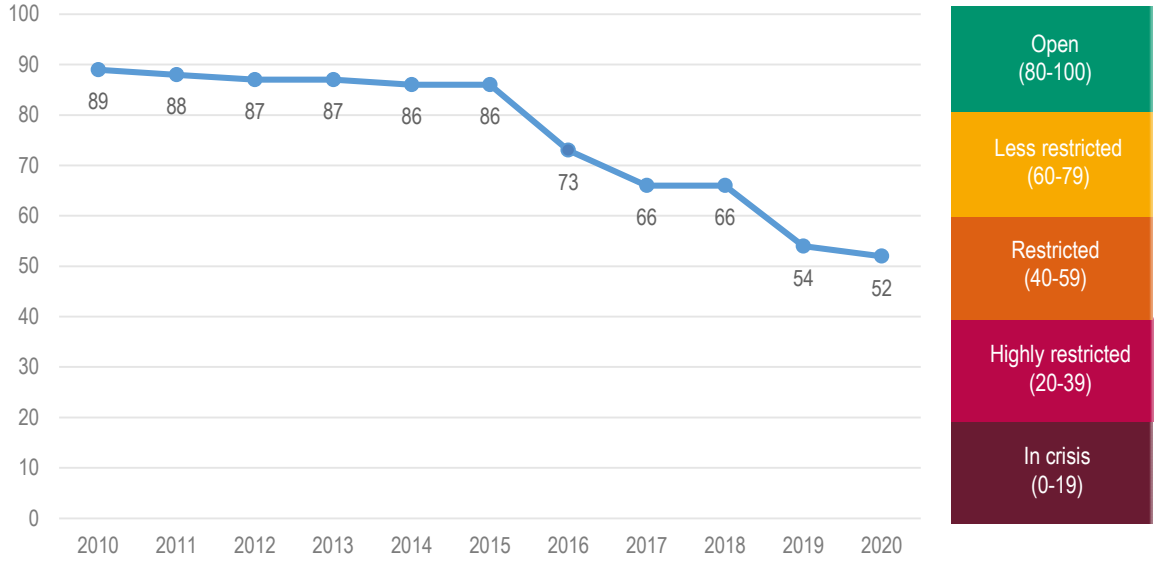
Protecting freedom of expression

Freedom of expression is another cornerstone of civic space. It is guaranteed under the Brazilian Constitution and the government acknowledges its responsibility in the prevention of crimes against persons exercising their right to free speech (Ministry of Women, Family and Human Rights, 2020[111]).

Brazil's Civil Rights Framework for the Internet, approved in 2014, also guarantees the right to freedom of expression as a pre-condition for the full enjoyment of the right to Internet access (Art. 8) (Government of Brazil, 2014[112]).

However, implementation of this fundamental right has suffered in recent years. Article19's *Global Expression Report 2021*, which assesses the state of freedom of expression around the world, indicates that Brazil has fallen from an "open" to a "restricted" environment in the last ten years (Figure 5.1) (Article19, 2021[113]), against a background of the regional score for the Americas also being at its lowest for a decade. Brazil currently ranks 86th out of 161 countries assessed. As a point of reference, the top five countries in the region where freedom of expression is considered "open" are Uruguay, Canada, Costa Rica, Argentina and the Dominical Republic. The bottom 5 where freedom of expression is "in crisis" or "restricted" are Cuba, Nicaragua, Venezuela, Bolivia and Colombia. Brazil experienced the world's biggest drop in score over one, five and ten years, a decline that has accelerated in the last couple of years. The COVID-19 pandemic consolidated this negative trend, which has also been affected by the rise in mis- and disinformation in Brazil (see Section 0).

Figure 5.1. Evolution of freedom of expression in Brazil, 2009-19



Notes: The Global Expression metric tracks freedom of expression across the world, assessing how free each and every person is to post on line, to march, to teach and to access the information to participate in society and hold those with power to account. Twenty-five indicators are used in 161 countries to create a freedom of expression score for every country on a scale of 1 to 100, placing countries into 1 of 5 categories: open, less restricted, restricted, highly restricted, in crisis.
Source: Article19 (2021[113]).

Interviewees consulted as part of this review confirmed deteriorating conditions regarding freedom of expression in Brazil, with a detrimental impact on civic space, public debate, and civic engagement more broadly. A significant body of research from think tanks, the Inter-American Commission on Human Rights and media outlets illustrates that journalists, members of CSOs, members of trade unions, communicators (e.g. bloggers, radio hosts), indigenous leaders, academics, artists, politicians, and public figures are all facing a restricted ability to air critical views[24] (Article19, 2021[114]; Igarapé Institute, 2020[115]; Folha de São Paulo, 2020[116]; IACHR, 2021[19]). Article 19 has noted that 50% of the violations against journalists and communicators that it recorded in 2020 were committed by public agents and 18% were racist, sexist or biased against the LGBTI community (Article19, 2021[113]). Several cases have been reported of people being subjected to investigations and arrest,[25] with allegations of defamation and contempt of authority

(*desacato*) for criticising the government (Special Rapporteur for Freedom of Expression, 2021[117]; Souza, 2021[118]; Igarape Institute, 2021[119]; Malheiro, 2021[120]). Other particularly serious cases that have been documented, 20 in total, involved killings, attempted killings and death threats, according to Article 19 (Article19, 2021[113]).

The environment for students and academics to freely express themselves and teach and learn has also been affected. Staff, teachers and students, especially of universities, have experienced censorship in the context of protests and debates. For example, in 2018, police officers entered public and private universities in several Brazilian states seizing materials and banning meetings and assemblies of a political nature (Fórum Nacional pela Democratização, 2017[121]). The rulings by electoral judges that had led police officers to do so were later suspended by the Supreme Federal Court (Supreme Federal Court, 2018[122]). According to the latest Academic Freedom report on Brazil from the Berlin-based Global Public Policy Institute and Center for the Analysis of Liberty and Authoritarianism, threats to academic expression also include significant budget cuts and freezes, judicial orders censoring political debates on campuses, and false statements about the academic community, among others (Hübner Mendes et al., 2020[123]).

Instances of artistic censorship have been observed, including the closure of artistic spaces and exhibitions (Moura, 2021[124]; Prisco, 2019[125]). Interference by authorities with plays, publications and works of art have also been widely reported in the last five years (Bergamo, 2021[126]; Angelo, 2020[127]; Fórum Nacional pela Democratização, 2017[121]). The main targets are often artists or works that express a political opinion, or those linked to identity or social agendas, such as the protection of women's, LGBTI people's and AfroBrazilian- rights and movements.[26]

Recommendations

As with freedom of peaceful assembly, the exercise of freedom of expression is a fundamental component of every democratic society. Freedom of expression strengthens open government by facilitating transparency, accountability and equal and effective citizen participation.

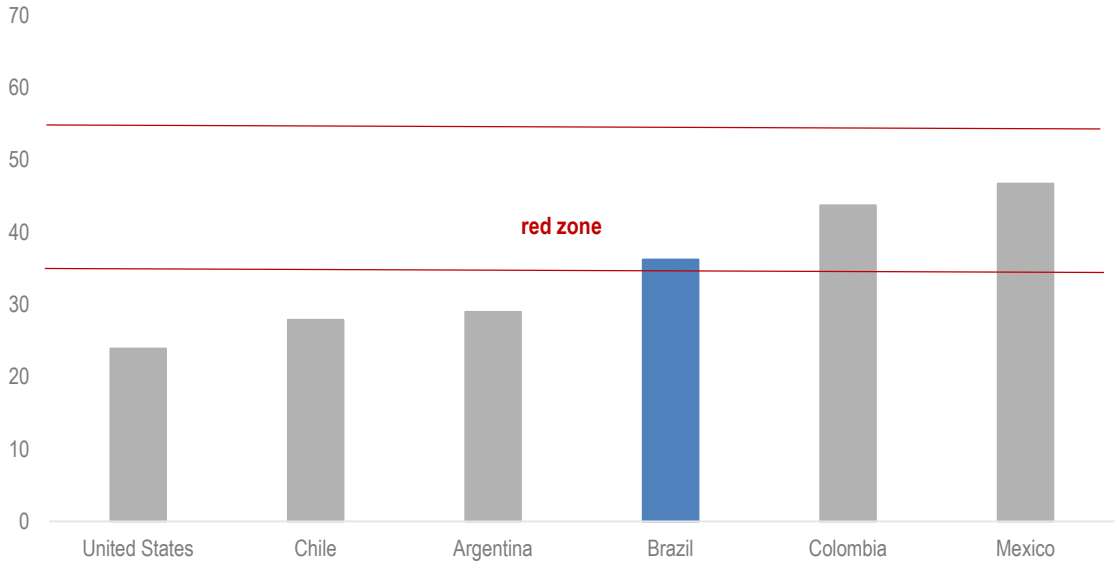
- In line with the Constitution, Brazil is encouraged to commit to reversing negative trends in this area as a means of furthering basic democratic norms by facilitating an environment in which pluralistic public debate and freedom of expression are supported. A first step would be a public acknowledgement of negative trends from the highest levels of government, coupled with a series of commitments to reverse them.
- As already noted by the Inter-American Special Rapporteur on Freedom of Expression, public officials have a duty to ensure that their pronouncements and actions do not cause harm to those who contribute to public debate (Special Rapporteur for Freedom of Expression, 2021[117]). Public officials are strongly encouraged to refrain from any measures that may limit or censor the expression of views, in accordance with the constitution, and should be held to account where violations occur. A code of conduct or manual, coupled with mandatory training, could help in this regard.

Protecting press freedom, journalists and the media

Journalists and communicators are particularly affected by obstacles to freedom of expression in Brazil. Reporters Without Borders' World Press Freedom Index for 2021 shows that that Brazil has entered the so-called "red zone" after four consecutive declines, indicating a deterioration of the press environment in the country (Reporters Without Borders, 2021[13]). It now ranks 111th out of 180 countries and territories assessed. As a comparison, the United States ranks 44th, Chile 54th, Argentina 69th, Colombia 134th and Mexico 143rd. Colombia and Mexico are also in the red zone (Figure 5.2). Brazilian expert respondents to the index's survey reported that journalists practise selfcensorship- for fear of civil lawsuits, criminal prosecution, and professional reprisals or attacks on their reputation. They also view the protection of

journalists' sources as threatened by "political power", "the military", "judges and prosecutors", and "organised crime".[27]

Figure 5.2. World Press Freedom Index for Brazil and selected countries, 2021



Notes: Scores range from 0 to 100, with 0 being the best possible score and 100 the worst. Scores are based on qualitative and quantitative data on pluralism, media independence, media environment and self-censorship, legislative framework, transparency, the quality of the infrastructure that supports the production of news and information, and violence against journalists and media outlets (Reporters Without Borders, n.a.[128]).
Source: Reporters Without Borders (2021[13]).

The government acknowledges its responsibility in protecting journalists at risk because of their profession, and the investigation, prosecution and punishment of those responsible for crimes committed against them and other communicators in its booklet "Aristeu Guida da Silva" (Ministry of Women, Family and Human Rights, 2020[111]). Several initiatives are foreseen in this regard. In a positive development, the Programme for the Protection of Human Rights Defenders (PPDDH) explicitly includes "communicators" since 2018 (now the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists), defined as those performing "regular social communication activities, of professional or personal nature, even if unpaid, to disseminate information aimed at promoting and defending human rights and who, as a result of acting in this objective, are experiencing situations of threat or violence aimed at constraining or inhibiting their performance or work" (Ministry of Human Rights, 2018[129]). There are currently five communicators registered in the programme, located in the states of São Paulo, Rio de Janeiro, Minas Gerais and Ceará.[28]

The government is also undertaking more targeted actions for the promotion and protection of communicators (Ministry of Women, Family and Human Rights, 2019[130]). These include a 2018 campaign to promote the visibility and appreciation of communicators, a training session for PPDDH technicians to act and assist communicators delivered in co-operation with several CSOs, and a workshop to discuss violence against communication professionals and propose actions to reduce it organised in partnership with the National School of Public Administration.

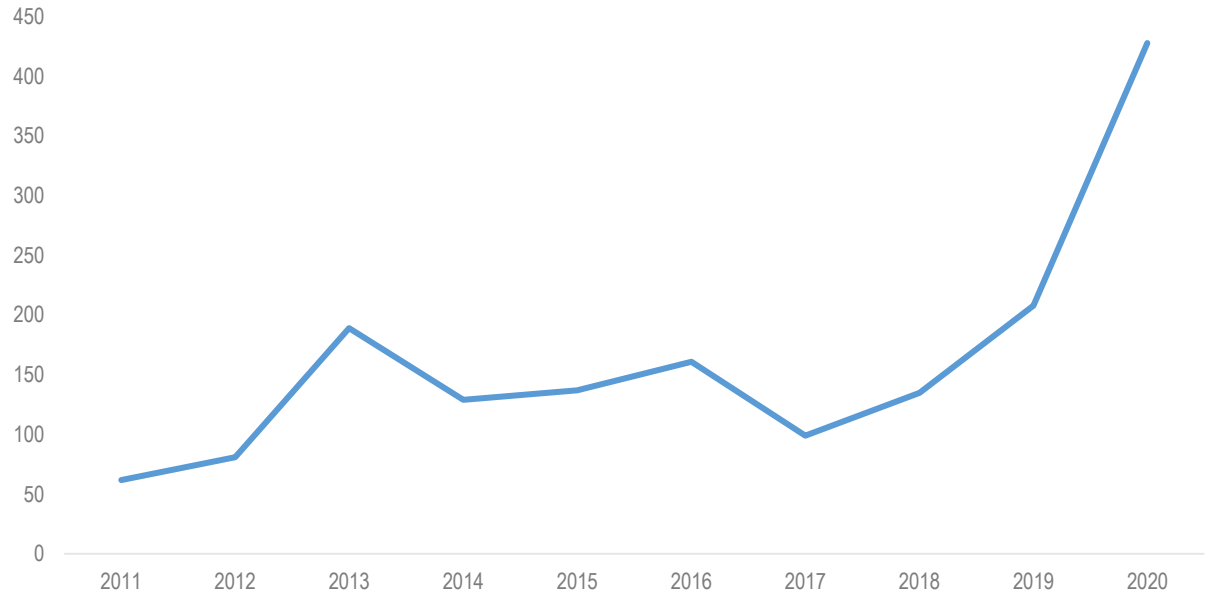
The National Human Rights Council, also linked to the Ministry of Women, Family and Human Rights, has a Permanent Commission on the Right to Communicate and to Freedom of Expression. This commission focuses on communicators such as members of community radios or authors of blogs, including those with

no professional registration, who need protection to exercise their right to freedom of expression (Ministry of Women, Family and Human Rights, 2020[111]). In 2020, the council organised several meetings to discuss challenges such as disinformation, hate speech, political violence on the Internet and attacks on journalists (National Human Rights Council, 2020[131]). It issued several recommendations, including one in 2019 advising public officials to follow international and national standards for freedom of expression, press freedom and the right to information (National Human Rights Council, 2019[132]). The same document reinforced the importance of a public discourse that contributes to the prevention of violence against communicators and to an environment favourable for the free exercise of journalism and freedom of expression. In 2020, the National Human Rights Council published a public note on the high rate of violence against journalists and communicators in Brazil, recognising an increasingly challenging environment for journalism in Brazil due to an increase in hostility (National Human Rights Council, 2020[133]).

Despite these various efforts, violence against journalists is on the rise. The National Federation of Journalists considered 2020 to be the most violent year since the 1990s for Brazilian journalists, with 428 cases of reported violence – covering physical as well as other forms of violence – against media outlets and journalists (compared to 208 cases in 2019) (FENAJ, 2021[134]) (Figure 5.3). These cases included hate speech, intimidation and censorship, as well as physical aggression and homicide, with 2 journalists killed. By June 2021, two more journalists had been killed (Reporters Without Borders, 2021[135]). Article 19 noted in its 2021 Global Expression Report that journalists are being stigmatised and delegitimised (Article19, 2020[136]). An increase in criminal prosecutions of journalists, stigmatising language, targeted verbal aggression, attacks against journalists and their families using social media and instant messaging applications, physical attacks and threats including kidnapping, judicial actions, and censorship and requests for removal of content are all documented in the 2020 report from the Inter-American Special Rapporteur for Freedom of Expression (Special Rapporteur for Freedom of Expression, 2021[117]).

The digital sphere is particularly affected: The Brazilian Association of Radio and Television Stations also recorded 7 945 virtual attacks per day on social media in 2020, or an average of almost 6 per minute, with negative posts and derogatory remarks about journalism, the media, journalists or the press on Twitter, Facebook and public Instagram accounts (ABERT, 2021[137]). In a survey conducted for this review, 21 out of 23 responding CSOs identified attacks against journalists and hate speech to be two of the main threats to civic space in Brazil today.

Figure 5.3. Episodes of violence against journalists in Brazil, 2011-20



Sources: FENAJ (2021[134]; 2021[138]).

Data indicate that such violence is frequently committed against journalists from small media outlets, radio broadcasters and bloggers (Article19, 2018[139]). As is common in many other countries, female journalists are also particularly targeted, and offenses against them often include gender-based hostility, comprising online sexual harassment and threats of sexual violence, insults hurled in the street, and lawsuits seeking moral damages over their reporting (ABRAJI, 2021[140]; Posetti et al., 2021[141]; Article19, 2020[136]; Reporters Without Borders, 2020[142]). In July 2020, a group of CSOs presented a complaint during a session of the United Nations Human Rights Council reporting that female journalists had been victims of hostile public declarations and virtual aggressions by government officials at least 54 times over an 18-month period (Terra de Direitos, 2020[143]; Chade, 2020[144]). An emblematic case was that of Patricia Campos Mello, who was accused of trading sexual favours for information leading to a series of online attacks against her involving disinformation and fake pornographic images, as well as rape threats (Posetti et al., 2021[141]). The cyberharassment- campaign was so violent that she was forced to hire a bodyguard. She sued and won two court cases for moral damage (Reporters Without Borders, 2021[145]; Neder, 2021[146]; Arcoverde, 2021[147]).

Brazil is also among the ten countries in the world with the highest rates of impunity for the killing of media workers, according to the Committee for the Protection of Journalists (CPJ, 2019[148]). This high rate of impunity is recognised by the National Council of the Public Prosecutor's Office, which has collected official information on all homicides committed against journalists, press professionals and communicators in the exercise of their profession since 1995 in Brazil (National Council of the Public Prosecutor's Office, 2019[149]). Of the 64 cases of homicides analysed, 32 were duly resolved, 2 were partially resolved, 7 were not resolved, 16 were still under police investigation and for 7 cases it was not possible to obtain information. The report acknowledges that many of the masterminds behind crimes against journalists and communication professionals are not held accountable in Brazil.

Recommendations

Acknowledging the challenges described above, it is crucial for Brazil to continue to strengthen existing efforts to protect journalists, in line with measures already identified by the government in its "Aristeu Guida

da Silva" (Ministry of Women, Family and Human Rights, 2020[111]), and in consultation with journalists and communicators to address their needs. As part of related efforts, Brazil could:

- More effectively promote the PPDDH among journalists and communicators and offer protective measures to all those at risk during the exercise of their profession.
- Investigate, prosecute and hold to account those responsible for violence against journalists and other communicators in a timely and effective manner.
- Implement other preventive measures such as public communication and information campaigns about the crucial role of journalism in society, and undertake specific and regular training of public officials, and training of police and law enforcement officials. A code of conduct or manual for public officials and sanctions for non-compliance could help in this regard.
- Ensure timely and equal access to information and data, including as open data, for journalists and communicators to facilitate their crucial work as intermediaries between citizens and the state, as watchdogs, and as promoters of transparency and accountability (see Chapters 6 and 9).

Media concentration and the risk of political interference

A free and pluralistic media has a direct impact on civic space – and by extension on transparency, accountability and public participation – as it allows diverse opinions and sources of information to circulate and inform national debates and decision making. Media concentration, on the contrary, can hamper balanced and multifaceted conversations and promote one-sided views, thereby igniting polarisation and societal conflicts. Studies observe an association between free press and democracy (Norris, 2008[150]) and between a greater penetration of newspapers, radio and TV and less corruption (Bandyopadhyay, 2009[151]). Countries where much of the public has access to the free press have also been found to have greater political stability and rule of law (Norris, 2008[150]).

With 96% of Brazilian households owning a television (IBGE, 2019[152]), free-to-air (FTA) broadcasting is the medium that reaches the most people and across the greatest distance in Brazil. According to the *OECD Telecommunication and Broadcasting Review of Brazil* (OECD, 2020[28]), Brazil had 862 nationwide commercial FTA TV channels, 131 nationwide public TV channels (generating own content), 20 874 regional commercial TV channels and 75 regional public TV channels in 2018. Despite the high number of TV channels in the country, audience share is highly concentrated. The three most-watched channels – Globo, SBT and Record – had a 63% audience share in November 2019. The review also notes that public and government broadcasting are not explicitly differentiated in Brazil, neither by law nor in practice. It observes that the seven public FTA channels[29] with significant national coverage in Brazil are all owned by government entities and that the main one is under resourced.

The four major newspapers (Globo, Folha, RBS and Sada) and Internet media (Globo, Folha, Record and IG) also have an audience share above 50%, which indicates a high audience concentration (Reporters Without Borders and Intervozes, 2017[153]). Ownership concentration is also high across different sectors of the media industry: TV, print, audio and other media. Grupo Globo, for example, owns key channels in FTA TV (with Rede Globo as the audience leader), cable TV (with content generated by the subsidiary GloboSat, including GloboNews and other channels), Internet (with the largest Brazilian news portal, Globo.com), radio (with Globo AM/FM and CBN among the ten largest audiences), and recording and publishing markets.

The News Atlas, a mapping of journalistic outlets in Brazil, found that there were no local press vehicles in close to 60% of Brazilian municipalities in 2021, meaning that around 34 million Brazilians do not have access to any journalistic information about the place where they live (Observatório da Imprensa, 2021[154]). The situation is worse in the Northeast and North regions, where 66.3% and 69.8% respectively of municipalities had no registered outlet, creating deserts of news. The News Atlas identified 1 170 new

digital vehicles which have now become the second largest category in Brazil, behind radio. The print media saw the closure of 200 channels in 2020.

According to Reporters Without Borders and Intervozes (2017[153]), Brazil also presents a medium to high risk of political affiliation and control over media networks and distribution. The authors also warn of a lack of transparency towards the audience, journalists and regulators in terms of who has control over each media outlet and what their interests are. Although the state controls less popular channels, there is also potential for political influence on commercial mainstream media due to conflicts of interest. Some media groups have a public official among their shareholders, while others have family members who are elected politicians, for example (Financial Times, 2018[155]; Fonseca Figueiredo, 2011[156]). Political interference is also a risk through the selective or discriminatory allocation of funds for state publicity, something that has been observed in the country by international organisations, CSOs and the media itself (Organization of American States, n.a.[157]; Reporters Without Borders and Intervozes, 2017[153]). Media professionals, lawyers and sociologists consulted by Reporters Without Borders for the World Press Freedom Index consider the extent of official interference in appointments to director of the TV and radio regulatory agency in Brazil to be at a maximum and find that government advertising is not distributed equitably across different media.[30]

Recommendations

Fostering media pluralism and autonomy could have a positive impact on civic space and citizen participation more broadly by creating an environment in which informed public debate can flourish. Some of the recommendations proposed in the *OECD Telecommunication and Broadcasting Review of Brazil* (OECD, 2020[28]) are particularly relevant for civic space, as they promote press freedom, freedom of expression, transparency and citizen's capacity for more effective participation. These include the need to:

- strengthen the national public broadcasting system by ensuring sufficient funding and the editorial independence of public broadcasters.
- foster media pluralism and the diversity of regional and local content, including promoting local and community broadcasters and press vehicles.
- ensure that the media and regulatory agencies can operate freely from political influence and that funding for state publicity is allocated equitably and transparently across media channels.

Protecting privacy, and ensuring data protection and cybersecurity

Privacy and data protection are core components of civic space as they help to create the conditions for citizens to inform and express themselves freely, in addition to debating ideas. Surveillance by governments can be used for legitimate national security and other purposes such as crime prevention. But it can also violate peoples' right to privacy, in addition to acting as an obstacle to their ability to freely express themselves, communicate, organise and associate on an equal basis, if misused or applied in an invasive or arbitrary manner. Privacy and data protection thus support the other fundamental components of protected civic space, including in the digital sphere, such as freedoms of expression, assembly, association, press freedom and autonomy, equal participation in public debate and decision making, and the enabling environment for CSOs (see Section 0).

The recent introduction of the Personal Data Protection Law and the establishment of Brazil's National Authority for Data Protection (ANPD) are important advances for the protection of Brazilians' right to privacy and personal data protection. The ANPD was created in 2020, and is mandated to ensure the implementation of the Personal Data Protection Law, prepare guidelines on the implementation of the National Policy on Personal Data Protection and Privacy, supervise and apply sanctions for noncompliance with legislation, and promote knowledge of relevant regulations and public policies, among other responsibilities- (Government of Brazil, 2018[158]). Decree 10474 of 2020 defines the structure of the ANPD,

the Board of Directors, and the National Council for Personal Data and Privacy Protection. The National Council, which is foreseen as a consultative body, is to be composed of representatives from government agencies, civil society, scientific institutions, trade union confederations and the private sector.

One of the first actions foreseen in the ANPD's 2021-23 Strategic Plan was the implementation of a system for addressing incidents and complaints regarding data breaches (ANPD, 2021[159]). While this was being established, personal data breaches continued to occur, highlighting the importance and urgency of having such a system, so that citizens know who to turn to address them. Recent leaks exposed 220 million[31] social security numbers in Brazil and over 100 million phone bills (Bolzani, 2021[160]; Vasconcellos, 2021[161]; Baptista, 2021[162]; Rohr, 2021[163]), but administrative sanctions entered into force only in August 2021 (ANPD, 2021[164]).

Ransomware attacks have also become increasingly common and sophisticated in Brazil (Nogueira, 2020[165]). In June 2021, JBS, a Brazil-based company and the world's largest meatpacker, had to pay the equivalent of USD 11 million in ransom to end a major cyberattack (BBC News, 2021[166]). The attack had shut down operations across the world in Australia, Canada and the United States. The Brazilian Internet Steering Committee produces guidance material to help users protect themselves from such attacks and to secure their personal information more generally (NIC.BR, 2021[167]; 2021[168]). Information on safety in the digital environment is also made available by the Institutional Security Office of the Presidency, which has a department in charge of "monitoring the national information security activity, including cybersecurity, computer incident management, data protection, security accreditation and treatment of confidential information" (Art. 16-A) (GSI, 2021[169]; Government of Brazil, 2020[170]).

The 2020 decree approving the National Cyber Security Strategy mandates the Institutional Security Office of the Presidency to co-ordinate initiatives across government (Government of Brazil, 2020[171]). The decree notes that Brazil is among the most affected countries by cyberattacks and that its "society is not prepared to use digital tools adequately for cybersecurity". As part of the strategy, the government recognises the importance of digital literacy and foresees cybersecurity education in the form of capacity building for professionals in the field, training in schools and awareness raising for society more generally.

The International Telecommunication Union's Global Cybersecurity Index 2020, which assesses countries' commitment to cybersecurity across the pillars of legal, technical, organisational, capacity development and co-operation measures, ranked Brazil 18th in the world, and 3rd in the Americas (ITU, 2021[172]). The index highlights Brazil's legislation on cybersecurity as an area of relative strength and identifies technical and organisational measures as areas for potential growth. Under technical measures, it notes the importance of setting up response teams to respond to incidents at the national level using a centralised contact point to promote quick and systematic action. Organisational measures that could be improved include ensuring that cybersecurity is sustained at the highest level of the executive and assigning relevant roles and responsibilities to the various national entities involved.

A challenge for Brazil will be to build a national digital security culture that brings together the various relevant government entities, including the ANPD; the Brazilian Internet Steering Committee; the Institutional Security Office of the Presidency; and the Ministry of Science, Technology and Innovation in a co-ordinated and transparent manner. Digital security is important for all parts of society and as such requires multi-sector, multi-stakeholder arrangements that include the private sector and CSOs, and allow for citizen participation, including from those who may be digitally excluded.

Another challenge will be to ensure that personal data protection efforts focus on protecting people and their privacy rights while safeguarding sovereignty and national security. The Board of Directors is the highest governing body of the ANPD and its members are chosen among Brazilians with an undoubted reputation, a high level of education and high expertise in the field (Art. 55-D §2) (Government of Brazil, 2018[158]; ANPD, 2020[173]). It is composed of five directors, three of whom currently have a military background (ANPD, n.a.[174]; Federal Senate, 2020[175]). Among the 20 most developed economies in the world, military personnel are only found in bodies responsible for data protection and the Internet in Brazil,

the People's Republic of China and the Russian Federation, according to Data Privacy Brazil (Associação Data Privacy Brasil de Pesquisa, 2020[176]). This is a concern for civil society actors, who fear that the ANPD could be used for surveillance purposes (Coalizão Direitos na Rede, 2020[177]). The Rights in Network Coalition, a network of over 40 academics and CSOs working on digital rights in Brazil, has urged a clear separation of the two areas, noting that "privacy and protection of personal data cannot be confused with the defence of national security and the protection of strategic information for the country. On the contrary, surveillance activities conducted by national defence and public security agencies can often put at risk the very rights and guarantees that should be protected by the National Data Protection Authority" (Coalizão Direitos na Rede, 2020[177]).

As in other countries, Brazil has seen the emerging use of information technologies for surveillance and intelligence (OECD, 2021[47]). These include initiatives to enable the access to and sharing of personal data among different entities, including between public and private actors, and to collect and use biometric data. One such example was Provisional Measure 954 issued in 2020 requiring telecom providers to share personal data on subscribers (e.g. name, telephone number and address) with the Brazilian Institute of Geography and Statistics (IBGE). The Supreme Federal Court suspended the measure, considering its "material unconstitutionality, on the main argument of violation of the constitutional rules of human dignity, inviolability of privacy, private life, honour and image of persons, of data confidentiality and self-determination of information" (Supreme Federal Court, 2020[178]).

The creation of a national citizen registry database was also proposed in a decree in 2019, to contain personal data on Brazilians including on family and occupations, as well as biometric data (Government of Brazil, 2019[179]). The stated purpose of creating the registry is to unify citizen identification for the provision of public services and facilitate the sharing of citizens' data among the public administration (Art. 16). However, civil society actors have voiced concerns, as facial recognition and remote biometric recognition technologies are also able to identify, follow and single people out. An open letter signed by 175 CSOs has called for a global ban on biometric recognition technologies, stating that their use may undermine rights to privacy and data protection, the right to free assembly and association, freedom of expression, and the rights to equality and non-discrimination (Access Now, 2021[180]). According to these organisations, which are also running a related global campaign, "the potential for abuse is too great, and the consequences too severe" and "no technical or legal safeguards could ever fully eliminate the threat they pose".

A final risk that deserves attention is that of the Personal Data Protection Law being used to reduce the transparency facilitated by the Access to Information Law (Law 12527/2011) (see Chapter 7). These two laws are complementary: one protects what is private and the other ensures transparency for what could be made public, including as open data, within the limits of available regulation on privacy and data protection and in respect of the legitimate interests of individuals. They therefore need to be considered and implemented in sync with one another. The Personal Data Protection Law defined personal data more clearly than before, which could potentially reduce denials of public information on the grounds of secrecy. On the other hand, a CSO specialised in access to information found that 57 requests for information were denied during the first 6 months after the introduction of the law with the justification that they contained personal information (Fiquem Sabendo, 2021[181]). In light of all the efforts to increase transparency over the years, it is important that Brazil ensures that the Personal Data Protection Law is not used as an argument for restricting access to and the publication of information and open data (see Chapter 9) that is in the public interest. As the "custodian" of the Personal Data Protection Law, the ANPD has a crucial role to play in this regard.

Recommendations

- Brazil is encouraged to continue prioritising the establishment and operationalisation of the ANPD and safeguard its full independence. In line with earlier recommendations from the OECD, it should

ensure that "the rules for appointing the ANPD's Board of Directors and the National Council for the Protection of Personal Data are transparent, fair and based on technical expertise" (OECD, 2020[182]).

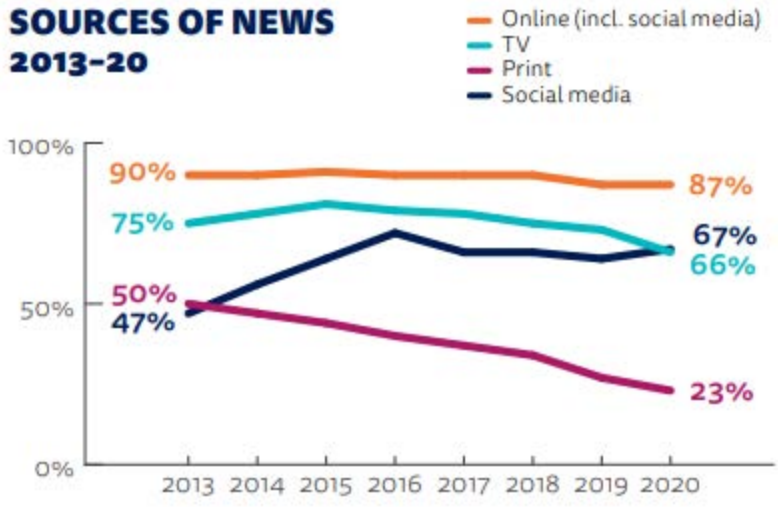
- Continued and strengthened efforts to increase digital literacy and strengthen digital capacity at all levels of government are crucial, including for public servants working with digital security, and for society in general. Preventive programmes could be organised in partnership with universities, the private sector and civil society to educate citizens in effectively protecting themselves from cyber threats. These programmes could be funded with the proceeds from the fines applied by the ANPD, currently allocated to the Fund for the Defence of Diffuse Rights (Government of Brazil, 2018[158]).
- Establish cross-government collaboration so that the various institutions involved in digital security and in personal data protection matters work together, not in parallel, and that their efforts are complementary, co-ordinated and aligned.
- Ensure transparency and create opportunities for the participation of non-governmental stakeholders in building the national agenda on data protection and cybersecurity and related initiatives. Ensure that measures to protect citizens from security threats and to simplify their access to public services through the collection, use and sharing of personal data do not erode fundamental civic freedoms and rights foreseen in the Constitution, thereby eroding civic space.
- The ANPD's Board of Directors would benefit from the inclusion of representatives from civil society with expertise in the field.

Protecting an open Internet: The rise of social media and the threat of mis- and disinformation

As in other countries, Brazilians are increasingly moving their activities onto social media and the Internet and are using these channels as a source of news and information (Figure 5.4), leading to both opportunities and challenges for civic space.

Figure 5.4. The rise of social media as a source of news in Brazil, 2013-20

Media consumption for news in Brazil by type of channel



Notes: Reflects what people identify as their main source of news. Data are from more urban areas, rather than a fully nationally representative sample. These will tend to represent richer and more connected users.
Source: Reuters Institute for the Study of Journalism (2020[183]). © Reuters Institute Digital News Report 2020; polling by YouGov.

Government entities have also been using social media, such as Facebook, to communicate with citizens, share information and promote campaigns.[32] The Secretariat for Social Communication of the Presidency makes use of social media as a primary channel for its communication, focused on videos and visual material for awareness raising and information sharing (OECD, forthcoming[184]). In 2020, the Office of the Comptroller General put 627 posts on Facebook, 1 045 on Twitter, 403 on Instagram and 317 on LinkedIn.[33] Posts typically use language that is easy to understand and include informative content (how to file a complaint), hot content (fresh news) and civic education content. The Chamber of Deputies also uses social networks to facilitate interaction between parliamentarians and society (Chamber of Deputies, 2019[185]; n.a.[186]). Gabinete Digital is a digital platform that allows deputies to use the Chamber's digital content on their social networks and integrates the deputies' posts on the Chamber's portal in real time. In the context of public consultations, a range of government institutions publish information on social media encouraging people to engage.

Along with the opportunities brought by the widespread use of social media comes the threat of its malicious use. Technological advances that allow users to create content easily and without verification, combined with the speed at which this information can be shared with large audiences, create a fertile ground for mis- and dis-information,[34] propaganda and hoaxes (Matasick, Alfonsi and Bellantoni, 2020[187]). This is of particular importance to civic space, as it can create an environment wherein factual information and data is difficult or impossible to obtain, thereby hindering informed debate, transparency and effective public participation, in addition to fomenting divisive public discourse and debate and polarising society.

The National Human Rights Council of Brazil recognises disinformation as an important threat to freedom of expression, access to information and press freedom (National Human Rights Council, 2020[188]). Brazil has undertaken initial efforts to monitor the circulation of false and inaccurate information on social media, WhatsApp, emails and telephones. When incorrect claims gain wide public awareness, some public entities publish clarifying notes on their websites (Government of Brazil, n.a.[189]; Ministry of Citizenship, 2020[190]). In a positive step, the Ministry of Health also launched a WhatsApp number to which citizens can send images or texts they have received on social networks to confirm their accuracy (Ministry of Health, n.a.[191]).

Elections in Brazil have been particularly affected by the spread of false material, including through videos, photos and information about candidates, parties and the electoral system (Article19, 2019[192]; Magenta, Gragnani and Souza, 2018[193]). A programme to combat disinformation during the 2020 municipal elections is noteworthy. For the occasion, the Superior Electoral Court partnered with roughly 50 public and private institutions, social media platforms, and fact-checking groups including Google, Facebook, Twitter and WhatsApp, who committed to discourage the proliferation of false content and to improve the identification of practices disseminating misleading content (Electoral Superior Court, 2020[194]). Another element of the programme was "media and information literacy", which focused on empowering people to identify and check misinformation, and to stimulate understanding about the electoral process (Electoral Superior Court, 2020[195]). The programme was widely acclaimed, including by civil society,[35] and in 2021 it became a permanent programme to combat disinformation within the electoral justice system (Electoral Superior Court, 2021[196]).

The COVID-19 pandemic has also been permeated by the widespread sharing of false data and information in Brazil, as in the rest of the LAC region (OECD, forthcoming[92]). COVID-19 misinformation is visible in the form of audio, video, photos and "*memes*" regarding the disease, the efficacy of treatments, and prevention measures, circulated on social media and messaging groups[36] (Article19, 2021[197]; Dhesca Brasil, 2021[198]; V-Dem Institute, 2021[199]). This is one of the issues addressed by the Parliamentary Inquiry Committee, set up in 2021 by the Senate to investigate the management of the COVID-19 pandemic in Brazil (Federal Senate, 2021[200]; 2021[201]).

CSOs and media outlets play an important role in fact-checking and debunking false claims by regularly following statements of national relevance, collecting information on the subject from reliable sources –

including official databases and through the Access to Information Law – and consulting specialists. Fact-checking agencies and initiatives such as Aos Fatos (Aos Fatos, n.a.[202]), Agência Lupa (Agência Lupa, n.a.[203]), FakeBook (FakeBook, n.a.[204]) – which is focused on environmental disinformation – and Fato ou Fake from the media channel Globo (G1, n.a.[205]), are just a few of the nongovernmental efforts to combat false information.-

One survey found WhatsApp to be the main channel for spreading false information in Brazil[37] (Reuters Institute for the Study of Journalism, 2020[183]). The Brazilian Chamber of Deputies and the Federal Senate conducted a survey of 2 400 Brazilians and found that WhatsApp was used as a source of information "all the time" by 79%, followed by television (50%) and YouTube (40%) (Chamber of Deputies and Federal Senate, 2019[206]). In the same assessment, 83% of respondents said they had already come across false information on social networks and 45% said they had cast their past election vote taking into account information seen on social media.

Bill 2630 of 2020 to combat online disinformation, the so-called "Fake News Bill", was approved by the Senate in 2020 and submitted to the Chamber of Deputies. It seeks to establish rules regarding the transparency of social networks and private messaging services, especially on the responsibility of providers for fighting online disinformation and on transparency regarding sponsored content. It also proposes sanctions for non-compliance. However, CSOs find that the bill presents risks to freedom of expression and privacy by seeking to create a heavily controlled Internet and excessive user identification requirements that may lead to digital exclusion (Coalizão Direitos na Rede, 2020[207]; Article19, 2020[208]; Open Knowledge Brasil, 2020[209]; ABRAJI, 2020[210]). In 2020, an open letter was published by 47 national and international entities (Reporters Without Borders, 2020[211]) claiming poor formulation of the text, little multi-stakeholder participation and a lack of transparency in the bill drafting process. The letter called for the postponement of the bill and the opening of a "multi-stakeholder task force to enable participatory discussion on how to respond to the challenges of disinformation while respecting Brazil's international human rights commitments and existing human rights standards".

The Inter-American Commission on Human Rights and the United Nations sent a subsequent joint letter to the government of Brazil pointing to provisions considered problematic in the bill in respect to the right to freedom of expression (Special Rapporteur for Freedom of Expression, 2021[117]). According to the letter, the law imposes "disproportionate restriction on the circulation of information", lacks clarity and is "fraught with ambiguity". An "imposition of excessive charges for the creation and use of accounts in social networks or messaging services" was also noted, including the "obligation to link an account with an identity document and/or a mobile phone number". Other elements regarding storage of data and content moderation were also raised. The bill was under debate in the Chamber of Deputies at the time of writing.

Recommendations

Tackling the spread of mis- and disinformation is crucial to ensuring that citizens are well informed and can engage in informed and balanced debates on matters of public importance in Brazil. In order to address related challenges, the government could:

- Strengthen existing government initiatives to tackle misinformation and expand them across the government. In addition to responding to disinformation, take a more proactive approach by anticipating challenges before falsehood has taken root and responding to them in a timely, proactive and transparent manner (Matasick, forthcoming[212]).
- Support and promote efforts by non-governmental actors to fact-check information and data sources, including those from the public sector, and strengthen information literacy among citizens. As suggested in the *OECD Public Governance Review of Brazil*, establish multi-stakeholder task forces to design and deploy collaborative responses to mis- and disinformation (OECD, forthcoming[184]).

- Develop and deploy comprehensive awareness raising, education and communication programmes to the public to increase citizens' resilience to disinformation. It is important to equip them with the necessary awareness and tools to engage critically with (social) media content; to identify and protect themselves from falsehoods; to look for trustworthy, fact-based sources; and to develop critical thinking when faced with information.
- In the context of the "Fake News Bill", ensure inclusive and participatory discussions, including with expert civil society actors, on how to respond to disinformation challenges while respecting Brazil's international human rights commitments and existing human rights standards. Ensure greater transparency in the bill drafting process and that the final text of the bill does not restrict freedom of expression and privacy rights.

Countering the digital divide

Brazil has made significant progress in improving Internet access among its population in recent years, comparing well with Latin American, Caribbean and upper middle-income countries (OECD, 2020[28]). In 2019, 74% of the population aged 10 and older used the Internet, compared to 41% in 2010 (CGI.br, 2020[213]). Among the Brazilians who accessed the Internet in 2019, 98.6% did so through a mobile phone. In the same year, 94% of households had a mobile phone and 81% of people aged 10 and up had a mobile phone for personal use (IBGE, 2019[152]). The size and geography of the country present a challenge to further expansion of communication networks and to ensuring digital inclusion, however, particularly in rural and remote areas. Despite recent progress, 20% of people aged 10 and older had never used the Internet in 2019, according to one study (Cetic.br, 2019[214]). In households where there was no Internet use, the reasons for non-use were cited as lack of interest in accessing the Internet (32.9%), the high cost (26.2%) and not knowing how to use it (25.7%) (IBGE, 2019[152]). Among households in rural areas, one of the main reasons cited was the lack of related services (19.2%). A separate survey, *Domicílios* 2019, found that 28% of households had no access to the internet, a figure that rose to 47% in rural areas. Indigenous persons, and Afro-Brazilian descendants, a majority of whom only have access to the internet on mobile phones, are particularly digitally excluded.

WhatsApp is playing an important role in democratising the use of the Internet in Brazil. With 120 million users in the country, it is the most used communication app (Mandl, 2021[215]). Its popularity is partially due to the unlimited free access offered by most telecom providers, meaning that even those unable to pay to place a regular mobile call or send a text message can send and receive WhatsApp messages (CGI.br, 2020[213]). The possibility of sending audio and video messages also makes WhatsApp a preferred tool among illiterate Brazilians and those who feel uncomfortable typing (Agência Brasil, 2020[216]; Educação, 2019[217]). Three in every ten Brazilians have trouble reading, interpreting texts and performing basic mathematical operations, and are therefore considered functionally illiterate (Fajardo, 2018[218]). The Inaf indicator tracks illiteracy levels in Brazil and, according to the latest survey, among those who are considered functionally illiterate, 86% use WhatsApp, 72% Facebook and 31% have an Instagram account (Inaf, 2020[219]). The government is also increasingly using WhatsApp to communicate with citizens (Government of Brazil, 2020[220]; Ministry of Health, n.a.[191]; Ministry of Economy, 2019[221]).

A detailed analysis by the OECD, *Going Digital in Brazil,* shows that people located in rural areas, with a low level of education, lower income and who are older than 45 are most typically excluded from accessing digital government services. Programmes to increase digital literacy and the use of information and communication technologies (ICT) in schools are notable but there is a lack of programmes for improving digital skills among adults, beyond those offered in telecentres[38] (OECD, 2020[182]).

Recommendations

As recommended in a previous OECD review, Brazil should continue its efforts to expand high-quality broadband networks by fostering investment in infrastructure to underserved regions and populations

(OECD, 2020[28]). This is crucial to ensure that as civic spaces move increasingly on line, citizens are able to connect to the Internet to access information and engage with government entities on an equal basis.

- While increasing Internet access is a priority, digital literacy efforts, including media and information literacy for adults, are also essential to enable citizen participation and informed engagement. Brazil should continue its initiatives to educate citizens on the basics of digital security, skills and rights and could expand these efforts among adults (OECD, 2020[182]).
- The multi-stakeholder nature of the Brazilian Internet Steering Committee is of high importance for an open government, as it allows participation by a variety of actors in Internet policy making, an area that is increasingly relevant for Brazilians. It is important that this inclusive and participatory channel is preserved and that it incorporates voices from a range of citizens, including from vulnerable and marginalised groups, in initiatives to overcome the digital divide.

Protecting equality and countering discrimination

Social inequalities experienced within Brazilian society are particularly complex and are addressed as a cross-cutting issue in this chapter. Initiatives to tackle these inequalities are linked to the protection of civic space as a means of ensuring more equal enjoyment of civic freedoms and rights in Brazil, in addition to participation in politics, decision making and social policy making across all sectors of society, regardless of race, socio-economic position or class, gender, sexual orientation or any other differentiating factor.

Racial inequality

Structural racial inequality has deep roots in Brazilian history (IACHR, 2021[19]). For more than three centuries, an estimated 4.9 million Africans were brought as slaves to Brazil, more than to any other country in the world. Brazil was also the last country in the western hemisphere to abolish slavery (in 1888) (Federal Prosecutor's Office, 2017[222]; Telles, 2008[223]; Rossi, 2018[224]; Calegari, 2018[225]).

According to the IBGE (2021[226]), Brazil's population in 2018 was close to 208 million, officially described as 43.1% "white", 46.5% "brown", 9.3% "black", and 1.1% "yellow" and indigenous. Afro-descendants thus constitute a majority in Brazil (55.8% are "brown" or "black"), but socio-economic indicators show that they are worse off in a range of areas, including employment, income distribution, education and political representation (Figure 5.5). Data collected by the IBGE (2021[226]; 2019[227]) show widespread inequality by race. In 2018, only 3.9% of white Brazilians (older than 15) were illiterate and 24% (older than 25) had completed higher education, compared to 9.1% and 10.1%, respectively, for Afro-Brazilians. Afro-Brazilians represented about two-thirds of the unoccupied and underutilised labour force in 2018 and the average income of those who worked was BRL 10.1 (EUR 2.35) per hour against BRL 17 (EUR 3.96) for white Brazilians. The proportion of Afro-Brazilians residing in homes without basic sanitation was higher in all services assessed, including garbage collection, water supply and sewage systems.[39] They had less access to the Internet and mobile phones. Afro-Brazilians were also found to be under-represented in the Chamber of Deputies, state legislatures and city councils, making up only 24.4% of federal deputies and 28.9% of state deputies elected in 2018 (IBGE, 2019[227]). As part of a vicious cycle, discrimination that causes inequality is thus perpetuated as a result of their uneven presence in decision-making positions.

Figure 5.5. Social inequalities by race in Brazil



Note: The terms "whites", "browns" and "blacks" are the official terminology used by the Brazilian Institute of Geography and Statistics.
Source: Translated and reproduced from IBGE (2019[227]).

Brazil has long recognised the need to tackle racial inequality and has introduced a range of measures to combat it, especially over the past two decades. The 2010 Racial Equality Statute (Law 12288/2010) and subsequent race-related legislation (Laws 7716/1989, 12711/2012 and 12990/2014, among others) indicate that legal protection against discrimination is improving, providing a strong basis for a cultural change in Brazil. Successive governments have implemented affirmative action programmes in efforts to reverse widespread inequality in the areas of higher education, public sector employment and electoral processes, with notable progress being made. The Ministry of Women, Family and Human Rights reports that "after over 15 years since affirmative actions for higher education were first established, the percentage of Afro-Brazilians that completed undergraduate courses increased from 2.2% in 2000 to 9.3% in 2017" (Ministry of Women, Family and Human Rights, 2019[130]).

The compulsory teaching of Afro-Brazilian history and culture in schools is foreseen by Law 10639 since 2003 and has been included in the official curriculum, especially in the fields of art education and Brazilian literature and history (Ministry of Women, Family and Human Rights, 2019[130]). Social protection policies on cash transfers, housing and health benefits are other notable efforts made by Brazil to address more immediate inequalities and resulting poverty. These various initiatives are fundamental to increasing the presence of Afro-Brazilians, and the representation of their interests, in all spheres of society and public decision making.

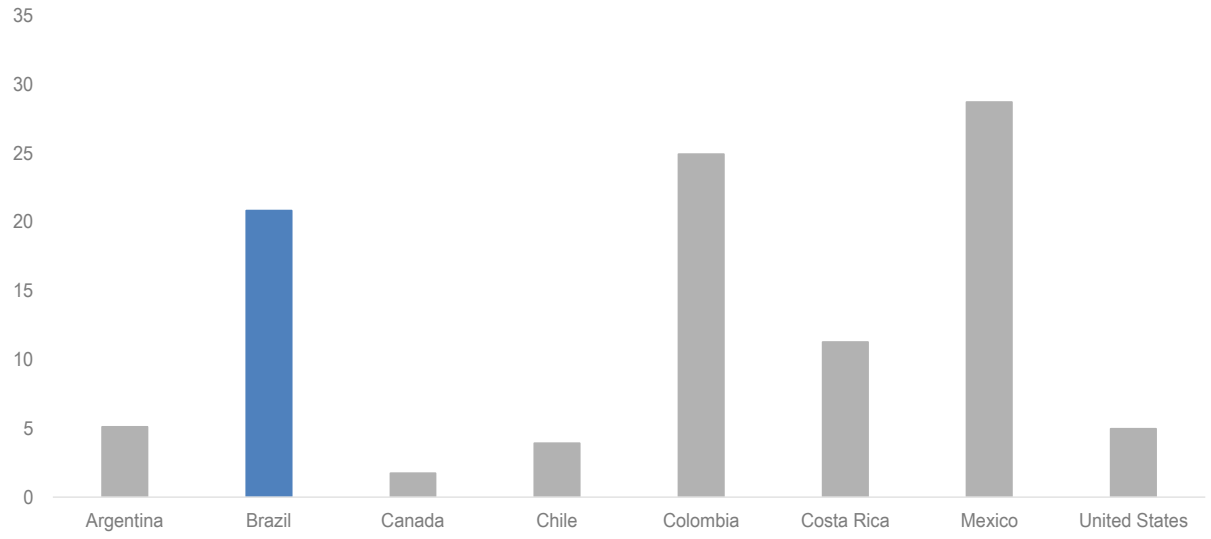
Tackling insecurity and violence

Physical violence, and the threat of it, particularly affects certain groups in Brazil, effectively acting as a barrier to their equal participation in public life. Such violence is often anchored in discriminatory attitudes and can act as a form of oppression and intimidation, particularly when state actors are involved. High levels of impunity (see Box 5.5) contribute to the perpetuation of this issue.

It is crucial to understand Brazil's high rates of violence against the backdrop of Latin America and the Caribbean being the most violent region in the world (OECD, forthcoming[92]). Within this context, among all countries in the LAC region, Brazil has one of the highest rates of homicide, which disproportionately affects males (see Figure 5.5 and Figure 5.6) (UNODC, 2021[228]). Despite a temporary drop of homicide rates in Brazil in 2018 and 2019, figures increased again in 2020, when 50 033 cases of intentional violent deaths were recorded,[40] or 23.6 homicides for every 100 000 inhabitants (Brazilian Forum of Public

Security, 2021[229]). As points of reference, in 2019, the rate in Argentina was 5.12, in Chile 3.93 and in Colombia 24.95. The highest homicide rates in Brazil are found in the capitals and in the states located in the Northeast and North regions. For example, in 2020, the capital cities of Salvador, Fortaleza and Macapá (in the Northeast and North regions) had rates of 54, 48.5 and 48.2 homicides for every 100 000 inhabitants, respectively (Brazilian Forum of Public Security, 2021[229]).

Figure 5.6. Intentional homicide rate per 100 000 inhabitants in selected countries, 2019



Note: The latest available year for Costa Rica was 2018.
Source: UNODC (2021[228]).

Afro-Brazilians are disproportionately affected by such violence. Data show that in 2020, they accounted for 76% of victims of intentional violent deaths and 79% of fatal victims of police interventions in Brazil (Brazilian Forum of Public Security, 2021[229]). They were three times more likely to be a victim of homicide than white Brazilians (Ipea, 2020[230]). Socio-economic and demographic vulnerabilities contribute to this high rate, since these populations often live in areas with worse living conditions, less security and higher crime rates (Cerqueira et al., 2021[231]). The reproduction of racial stereotypes by justice and security agents and the lack of public policies to combat the inequalities experienced by this portion of the population are also seen to be reasons for the disproportionate violence they face (Cerqueira et al., 2021[231]).

A range of national plans, programmes and projects have been launched over the last three decades to reduce such violence and enhance public security, but a lack of continuity hampers progress. For example, since the re-democratisation of Brazil in 1985, a new public security plan or strategy has been adopted by every new president[41] upon taking office. Systematic assessments or evaluations of the results of previous programmes are not undertaken before new ones are designed, and comprehensive data on which to assess the effectiveness of such programmes are unavailable (Turollo Jr., 2018[232]; Brazilian Forum of Public Security, 2020[233]; Ipea, 2020[230]).

The absence of high-quality, comprehensive and disaggregated official data, including as open data, presents a key challenge to addressing high levels of violence (Ipea, 2020[230]). The Ministry of Justice has made efforts to collect data and information on public security since 2001 and these gained momentum with the approval of the 2018 National Public Security Policy and Plan (Ministry of Justice, n.a.[234]; Government of Brazil, 2018[235]). Some data are publicly available from the National Secretariat of Public Safety through the National System of Public Security Information, but they lack detail and are not

disaggregated (Ministry of Justice, n.a.[234]). As part of this review, a number of non-governmental organisations reported difficulties in obtaining data on violence from authorities responsible for public security.[42] Part of the challenge is the different methods and rules used for collecting data in different police departments (civil, military and penitentiary police) at state level,[43] making it difficult to obtain an overview of violence in the country and to undertake comparative analysis (e.g. across states and cities). In the absence of official comprehensive data, CSOs such as the Brazilian Forum for Public Security have been collecting information from relevant authorities in each of Brazil's 26 states and publishing them in highly respected reports on public security. These are considered to be the best source of information on violence in the country (Comunitas, 2020[236]) and are used by government entities[44] (Ministry of Justice and Public Security, 2020[237]).

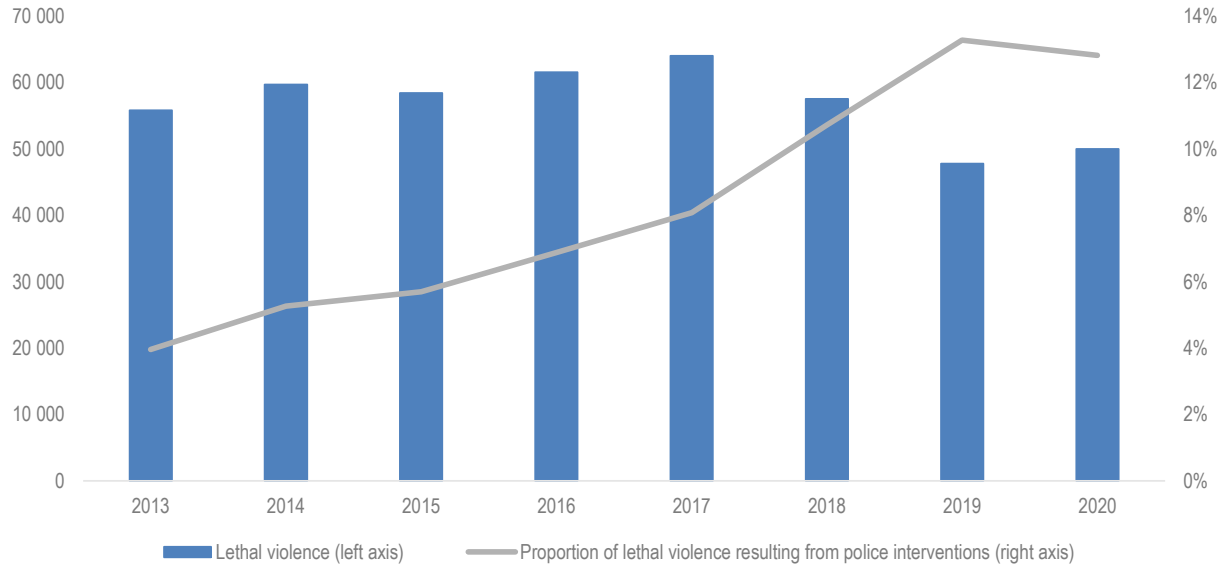
In a positive step, the 2018 National Public Security Plan, approved for a duration of ten years, foresaw a Unified Public Security System (Sistema Único de Segurança Pública, also known as the SUSP) focused on sharing data, integrating operations and increasing collaboration across federal, state and municipal public security structures (Ministry of Public Security, 2018[238]; Ministry of Justice and Public Security, 2021[239]). Reported outcomes of the SUSP until 2020 include an increase in arrests, blockage of criminal assets, the dismantling of criminal organisations, tackling of cybercrimes and crimes of sexual exploitation of children and adolescents, which were possible thanks to cross-government dialogue and co-ordination (Ministry of Justice and Public Security, 2020[240]). Academics and non-governmental organisations report that the SUSP has stagnated, however, and that its main mechanisms for integrated and co-ordinated governance between federal, state and municipal levels have not been implemented.[45] Lack of co-ordination is a challenge. As of February 2021, five states, including Rio de Janeiro, did not have a public security plan, a precondition for receiving resources from the National Public Security Fund foreseen in the SUSP. The other 22 states had plans, but only 5 of them had formalised these with the Ministry of Justice and Public Security, which would entitle them to national resources (Brazilian Forum of Public Security, 2021[229]).

Violence by state actors

Against the background of general violence described above, violence by state actors is a significant, complex and long-standing historical challenge in Brazil.

Among the 50 033 intentional violent deaths in Brazil in 2020, police interventions were responsible for 6 416, the highest number in years, representing a total of 13% of these deaths (Figure 5.7) (Brazilian Forum of Public Security, 2021[229]). As a comparison, 999 people were killed by the police in the United States in 2019, which has a population 1.6 times that of Brazil (The Washington Post, 2020[241]). Among the 50 033 victims of intentional violent deaths in Brazil, 76% were Afro-Brazilians, and among the 6 416 victims of police interventions, 79% were Afro-Brazilians. Afro-Brazilians living in the periphery and shanty towns (favelas), where crime rates are high, are especially vulnerable (Human Rights Measurement Initiative, 2021[242]). Figure 5.7 illustrates that the proportion of lethal violence caused by state agents in Brazil has been rising since 2013, with a slight downturn in 2020.

Figure 5.7. Proportion of intentional violent deaths resulting from police intervention, 2013-20



Source: Brazilian Forum of Public Security (2021[229]).

The Constitution guarantees "Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property" (Art. 5) and frames security as a social right (Art. 6). It places public security under the state's duty and everyone's responsibility, to be carried out by the various public security bodies identified[46] (Art. 144) (Government of Brazil, 1988[76]). Brazil has long recognised the challenges of police violence and has implemented a number of legal and policy measures to address it over the years. Law 13060 of 2004 called on public security agents to prioritise less offensive instruments over lethal weapons (Art. 2), and to use force following the principles of legality, necessity, reasonableness and proportionality (Art. 2, Items I-III), for example. The law states that it is not legitimate to use a firearm against an unarmed fleeing person or a person who does not pose an immediate risk of death or injury to public security agents or to third parties (Art. 2 sole paragraph). It also calls for training courses for public security agents on the use of non-lethal instruments (Art. 3).

Law 13869 of 2019 defined crimes of abuse of authority committed by a public agent, public servant or others, whether in the exercise of their function or not. "Conducts described in the law constitute crime of abuse of authority when practiced by the agent with the specific purpose of harming another person or benefiting himself or a third party, or even for mere whim or personal satisfaction" (Art. 1, §1).

The National Public Security Force, a public security co-operation programme between states and the federal government, has been promoting the professional training of its personnel, including on human rights education, differentiated use of force, prevention of racial discrimination and assistance to women (Ministry of Justice and Public Security, n.a.[243]; Ministry of Women, Family and Human Rights, 2019[130]). More than 20 000 officials have been trained over the last 14 years on topics such as "understanding the application of human rights to police performance, recognizing police officers as agents who promote human rights and citizenship and learning the principles of the differentiated use of force", among others.

Mental stress and pressure faced by police officers due to their profession are widely acknowledged as factors that contribute to the violence. The 2018 law that approved the National Public Security Policy included provisions on a Quality of Life programme to promote and prevent physical and mental health and safety at work for public security professionals and their families (Government of Brazil, 2018[235]). The programme includes actions to promote mental health and combat discrimination and prejudice to be jointly

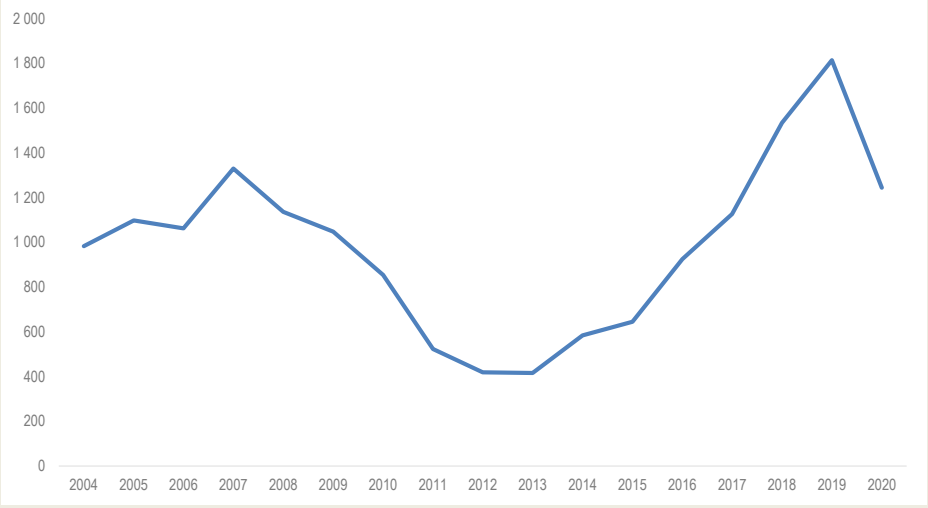
agreed between federal, state and municipal authorities. In addition, the Ministry of Justice and Public Security is carrying out a survey to evaluate the quality of life of public security professionals and inform the planning of public policies in this area (Ministry of Justice and Public Security, 2021[244]).

Initiatives to reduce police violence by other public authorities are also noteworthy. Box 5.3 provides detail on a key intervention by the Supreme Federal Court. The 2020 "Olho Vivo" programme from the government of the state of São Paulo, which foresees the installation of body cameras on its military police officers, was another significant positive step (Government of the State of São Paulo, 2021[245]). The equipment is attached to uniforms to automatically record police activities during work hours, including their locations. Images are transmitted in real-time to dedicated centres and saved so they can be accessed by security and judicial authorities whenever necessary. GPS location facilitates the production of evidence and ensures greater security for officers and transparency in their work. During June 2021, the first month of implementation, cameras were installed in 18 public security groups with a history of high lethality. There were 22 deaths resulting from their interventions, a drop of 54%, compared to the previous month, and the lowest rate since May 2013, when 17 deaths were recorded (Pagnan, 2021[246]).

Box 5.3. Temporary suspension of police operations in Rio de Janeiro's favelas

Police raids are common in Brazilian shanty towns, or favelas, with objectives such as arresting drug dealers, confronting trafficking gangs and deterring fights. As citizens go about their daily life, they are frequently caught in the crossfire of these heavily armed confrontations. The state of Rio de Janeiro has one of the highest rates of lethality caused by the police per 100 000 inhabitants in Brazil (7.2 against a national average of 3 in 2020). The total number of fatal victims of state interventions reached a record high in 2019, at 1 814 (Figure 5.8).

Figure 5.8. Deaths caused by state intervention in the state of Rio de Janeiro, 2004-20



Source: Rio de Janeiro Public Security Institute (2021[247]).

In June 2020, the Supreme Federal Court ordered the suspension of police operations in the state of Rio de Janeiro during the COVID-19 epidemic, "except in absolutely exceptional cases". Exceptions had to be justified and communicated to the State Prosecutor's Office, and extra care taken not to put the population, the provision of health services or humanitarian activities at risk.

According to a study by the Federal Fluminense University, the ruling was initially successful in

preserving lives, as it significantly reduced the number of fatalities from June to October 2020, without an increase in criminal activity. The study found that the suspension of police operations saved at least 288 lives in 2020 and that there were 31% fewer deaths by state intervention in 2020 than in 2019, the lowest level in the last three years.

Despite the Supreme Federal Court ruling, police raids resumed in October 2020, leading to a reversal of the trend, "with an increase in police operations, and, therefore, in lethality caused by the police and crimes against life in general". The number of deaths has continued to rise. In May 2021, the most lethal police action ever recorded in the state of Rio de Janeiro took place in the favela of Jacarezinho, killing 27 civilians and 1 civil police officer.

This short-lived experience of suspending police operations during the pandemic and the resulting drop in fatalities provides valuable lessons and metrics to inform policy making in the future.

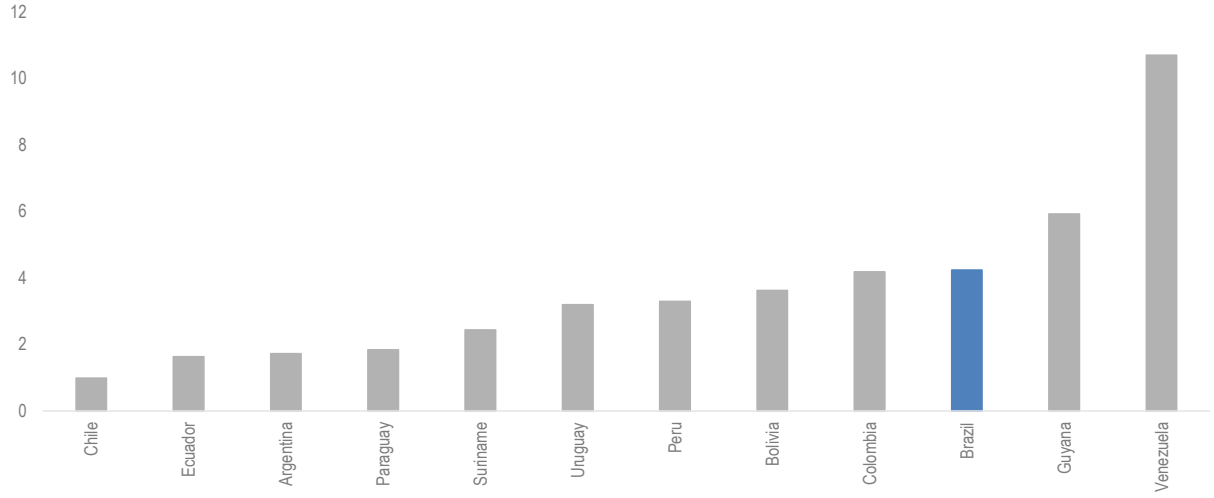
Sources: Brazilian Forum of Public Security (2021[229]); Rio de Janeiro Public Security Institute (2021[247]); Supreme Federal Court (2020[248]; 2020[249]); GENI UFF (2021[250]); Rede de Observatórios da Segurança (2021[251]); Araujo (2021[252]).

Violence against women

Physical violence against women is anchored in discrimination and is a physical barrier to their full enjoyment of fundamental civic rights. Legislation to tackle violence against women and to increase gender equality has improved substantially in the last two decades (see Section 0) but obstacles remain, effectively hindering women from participating in public life, including policy and decision making, on an equal basis.

In 2020, 3 913 women were killed in Brazil, 53 453 reported being victims of rape and 230 160 reported domestic violence (Brazilian Forum of Public Security, 2021[229]). Reported rape cases increased by 50% between 2011 and 2019 (Brazilian Forum of Public Security, 2020[233]). As in other countries, actual cases of rape and gender-based violence are likely much higher than those reported, even more so during the COVID-19 pandemic, when confinement restricted access to police stations to report cases (WHO, 2021[253]). Brazil had one of the highest female homicide rates per 100 000 inhabitants in South America in 2018, at 4.3. This is similar to neighbouring Colombia (4.2), but higher than Argentina (1.7), Chile (1) and several other South American countries (UNODC, 2018[254]) (Figure 5.9).

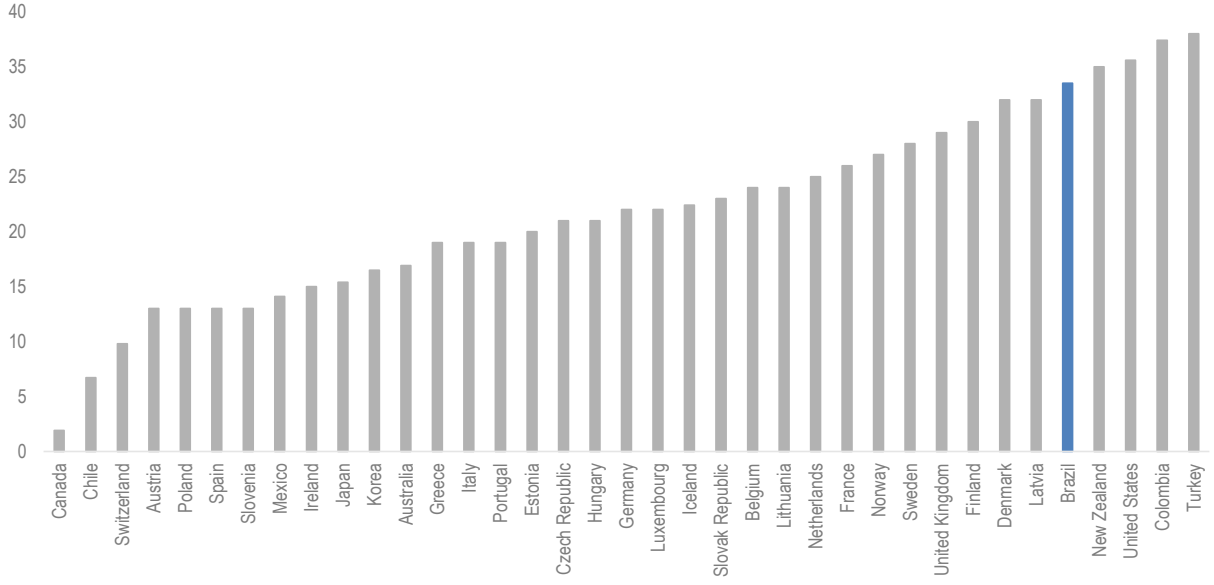
Figure 5.9. Homicide rate of women per 100 000 inhabitants in South American countries, 2018



Source: UNODC (2018[254]).

As discussed in Section 0, Brazil took action to make violence against women more visible and punishable by passing Law 13104 on femicide. In 2020, Decree 10568 established the Intersectoral Committee of the National Plan to Combat Femicide, followed by the launch of a National Plan to Combat Femicide in November 2021. The Plan has five key pillars: the Articulation Axis focusing on knowledge promotion; the Prevention axis focusing on awareness raising; the Combat Axis focusing on public security, justice and accountability; the Guarantee of Rights and Assistance Axis focusing on care for women in situations of violence; and the Data and Information Axis, encouraging research and data, in addition to social control of related policies. In 2020, over one-third of female homicides (1 350 of 3 913) were registered as femicides as a result (Brazilian Forum of Public Security, 2021[229]). The available data on femicides show that in 81.5% of cases, the perpetrator was a partner or former partner of the victim and that 54% of the crimes were committed inside the home. OECD data illustrate that intimate partner violence against women is more prevalent in Brazil than in most OECD countries (Figure 5.10).

Figure 5.10. Percentage of women who have experienced physical and/or sexual violence from an intimate partner at some time in their life, Brazil and OECD countries, 2019



Source: OECD (2021[255])

Afro-Brazilian women, who suffer discrimination as women and as Afro-Brazilians, are particularly affected by such violence. They represent approximately two-thirds of the women killed in Brazil (Ipea, 2020[230]; Brazilian Forum of Public Security, 2020[233]). The homicide rate among this category of women increased from 2008 to 2018, while it decreased for white women over the same period (Ipea, 2020[230]). Box 5.4 illustrates concretely how such violence against Afro-Brazilian women can harm their ability to engage in politics and decision making.

Since the introduction of the “Maria da Penha” Law in 2006, various services to assist and protect female victims of violence have been implemented at federal, state and municipal levels (Ligue 180, 2021[256]; Ministry of Women, Family and Human Rights, 2019[257]). There are currently 104 shelter homes offering confidential temporary housing for women at imminent risk of death; 231 specialised reference centres providing psychological and social assistance, legal advice and guidance to women in situations of violence; and 409 specialised police stations for women or specialised units in regular police stations. There are also seven multi-disciplinary centres offering several specialised services for women beyond

psychosocial support, including a police station, a public defender, a public prosecutor, a courthouse and childcare (Casa da Mulher Brasileira).[47]

A "Safe and Protected Woman Programme" was created in 2013 and modified in 2019 (Ministry of Women, Family and Human Rights, 2021[258]). It foresees the implementation of more multidisciplinary specialised centres for women in situations of violence, as well as actions to improve care for victims, integration of data and awareness campaigns aimed at the prevention of violence against women. The programme is targeted at states and municipalities that are signatories of a co-operation agreement with the ministry and that meet at least two of the following conditions: have a body dedicated to women's policies, are a regional hub or have high rates of violence, and already offer a specialised service (Ministry of Women, Family and Human Rights, 2020[259]). In 2021, the ministry had 36 co-operation agreements in place for this programme[48] and planned to make available 25 new units of the specialised centres providing services for women in general situations of violence by 2022 (Ministry of Women, Family and Human Rights, 2020[260]).

Despite the above progress and the fact that measures to protect women in situations of violence are foreseen by law, implementation and the reach of services could be improved. The 104 shelter homes are located in 86 municipalities, which is only 2% of the 5 570 municipalities of Brazil.[49] Although every state has at least one specialised police station for women, only 8.3% of the municipalities had this service in 2018 (Agência IBGE Notícias, 2019[261]). The IBGE also found that some protection measures for women have decreased over the years. The percentage of municipalities with an executive body dedicated to women's policies fell from 27.5% in 2013 to 19.9% in 2018, down to the level in 2009 (Agência IBGE Notícias, 2019[261]). Limited resources and budget cuts were cited as the main obstacles to providing better and more services (Amâncio, 2020[262]; Muñoz, 2018[263]; Loschi, 2018[264]). A study by the Chamber of Deputies shows that only BRL 5.6 million (less than EUR 1 million) out of the BRL 126.4 million (around EUR 21.5 million) foreseen in the 2020 budget law were actually spent on the implementation of public policies for women, including those related to protecting them from violence (Chamber of Deputies, 2020[265]).

Implementation of policies, programmes and laws on violence against in Brazil would benefit from adherence to the OECD's approach to a whole-of-state governance framework for gender-based violence, which focuses on the need to strengthen public governance systems, centre action around the needs and experiences of survivors/victims, and improve justice and accountability in order to effectively address GBV (OECD, 2021[266]). The following key elements are identified as being key:

- Developing a whole-of-state framework with a clear vision to address GBV
- Establishing a holistic approach to GBV by outlining differentiated actions and objectives within the framework
- Identifying and clearly defining roles for key governmental actors
- Creating clear accountability, monitoring, and reporting mechanisms
- Engaging with key societal and non-governmental actors and stakeholders
- Designing and implementing GBV responses with a survivor/victim-centred approach
- Fostering a culture of information-sharing and cross-sector collaboration to address GBV
- Committing to detecting and preventing GBV
- Ensuring appropriate capacity-building for actors involved in the GBV framework
- Engaging with men and boys on issues of GBV
- Explicitly recognising the legal and social needs of survivors/victims
- Employing clear strategies to facilitate access to justice for survivors/victims of GBV
- Holding perpetrators of GBV to account through multiple justice responses
- Documenting and studying patterns surrounding femicides (OECD, 2021[266]).

Box 5.4. Case study on political participation and representation of Afro-Brazilian women

Afro-Brazilians are generally underrepresented in elected posts. Of the 513 elected to the Chamber of Deputies in 2018 (both men and women), only 125 declared themselves as “black” or “brown”, or 24% of the members of the chamber. Although this is an increase from the previous election in 2014 (20%), it is far from being proportionate to the share of the population they represent. Afro-Brazilian women, who make up 28% of the Brazilian population, are further underrepresented in the chamber, with only 13 seats, or 2.5% of the total. In the Senate, less than 20% of the 81 senators were Afro-Brazilians in 2019 and only 1 was a woman.

They are, however, much better represented at the subnational level. Indeed, there was a record number of Afro-Brazilian candidates for city council in the 2020 elections (51% of all male and 48% of all female candidates). For the first time since the electoral court started collecting information on race in 2014, Afro-Brazilians became the largest group of candidates for elective office in the country. The results of the 2020 elections were also encouraging, with close to one third of the elected mayors and 44% of elected councillors from this group.

This represents significant progress, although Afro-Brazilian female candidates and elected officials are still at risk of becoming victims of targeted violence. In the months following the 2020 elections, several elected councillors and mayors faced discrimination, verbal aggression and intimidation. Ana Lucia Martins and Caroline Dartora, Afro-Brazilian women elected councillors, and Suellem Rosim, an elected mayor, suffered racist targeting on social media and death threats. Erika Hilton and Benny Briolly, both Afro-Brazilian trans women elected councillors, were similarly threatened. Erika Hilton was also stalked inside City Hall and Benny Briolly was forced to leave the country and work from abroad after receiving an email threatening to kill her if she did not resign.

One recent study mapped 327 cases of political violence – the use of violence for political ends, e.g. to delegitimise or disrupt the political participation of certain groups – in Brazil from 2016 to 2020 and found that AfroBrazilian- women politicians are particularly and unequally affected. Such intimidation causes fear and can lead to self-censorship and even resignation from office, severely impacting freedom of expression and inclusive representation. Marielle Franco is one such example; an Afro-Brazilian female councillor in Rio de Janeiro and a human rights activist, she was assassinated in 2018. She had been vocal on women’s and LGBTI rights and an outspoken critic of police brutality. Several suspects have been arrested, but there have been no convictions and the motivation behind the killing remains unclear.

Sources:
(Chamber of Deputies, 2018[267]) (IBGE, 2021[226]) (Boldrini, 2019[268]) (Krüger, 2018[269]) (Freedom House, 2021[270]) (Gênero e Número, 2020[271]) (Baptista, 2020[272]) (Rodrigues, 2020[273]) (Agência IBGE Notícias, 2019[274]) (G1, 2020[275]) (Santiago, 2020[276]) (G1, 2020[277]) (G1, 2021[278]) (Geraldo, 2021[279]) (Terra de Direitos, Justiça Global, 2020[280]) (Toledo, 2020[281]) (Sperb, 2020[282]) (Brodbeck, 2020[283]) (Instituto Marielle Franco, 2020[284])

Violence against indigenous land defenders, human rights defenders and environmental activists

Although a series of laws to protect indigenous people’s rights, culture and land was passed in the three decades following the introduction of the 1988 Constitution, the prevalence of violence targeting them and other human rights defenders in Brazil remains high. Often perpetrated in remote areas, such violence is a challenge, as it seeks to override fundamental rights by intimidating and physically silencing individuals and groups, either by destroying their homelands and culture or by killing them (Articulação dos Povos Indígenas do Brasil, 2020[285]). This violence is particularly prevalent in the environmental sector; during

the interviews and public consultation[50] conducted for this review, the environment was repeatedly cited as an area where civic space is suffering long-term damage affecting transparency, accountability, public participation and fundamental civic rights. This has implications for the vulnerable communities in affected areas, as discussed below, but also for Latin America and the world at large given the Amazon's critical role in regional and global climate regulation (GEF, 2021[286]).

The Ministry of Women, Family and Human Rights considers the elaboration and implementation of policies for traditional peoples and communities as an absolute priority (Ministry of Women, Family and Human Rights, 2019[130]). It is responsible for formulating, co-ordinating and evaluating affirmative public policies for the promotion of ethno-racial equality and the protection of their rights. Other federal government institutions are also engaged in initiatives for indigenous peoples, which are mostly related to healthcare, education, sanitation, water and electricity supply.

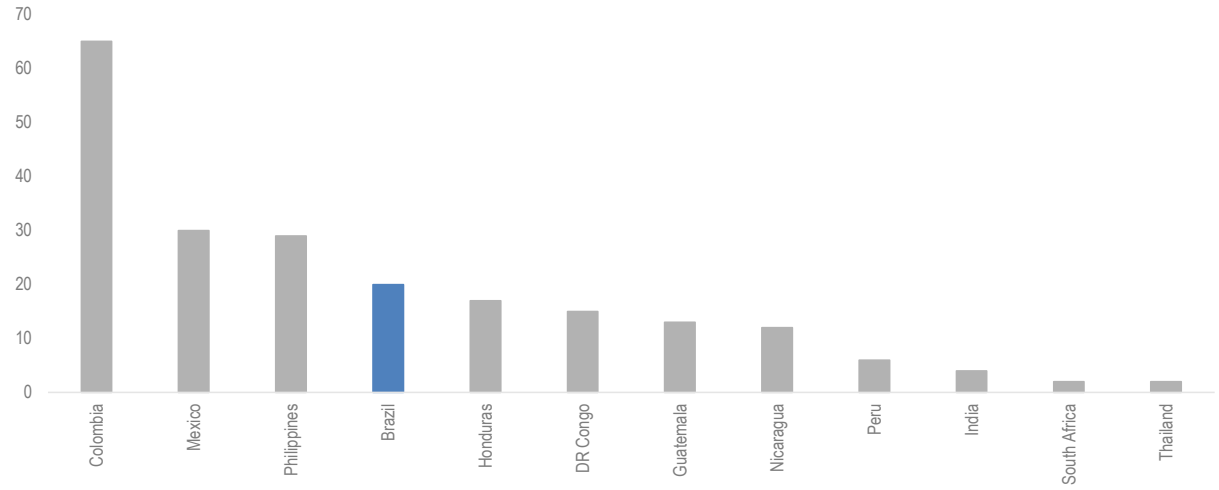
The PPDDH has been implemented since 2004 (Government of Brazil, 2019[287]). It is co-ordinated by the Ministry of Women, Family and Human Rights and had 506 defenders registered at the time of writing.[51] The programme foresees regular visits from state agents to affected locations to assess the threat reported and liaison with bodies involved in resolving them, monitoring investigations and complaints, as well as co-ordinating with state security forces for police protection in cases of serious risk (Ministry of Women, Family and Human Rights, 2021[288]; 2019[130]).

The Ministry of Women, Family and Human Rights also receives reports of human rights violations through the National Human Rights Hearing Office (Ouvidoria Nacional de Direitos Humanos), a channel that citizens can use by dialling "100", using WhatsApp or a mobile application (Ministry of Women, Family and Human Rights, 2021[289]). In 2020, the office received a total of 819 complaints reporting 3 408 violations against indigenous persons (Ministry of Women, Family and Human Rights, 2021[290]). Other than violations reported through the hearing office, there is no centralised monitoring of targeted violence and killings of indigenous persons nor any aggregated government data in this area.

To fill the data gap, a number of national and international CSOs and think tanks have been collecting and publishing data in recent years, by searching and reviewing publicly available information on killings of human rights and land defenders and verifying it with in-country or regional partners. Organisations recognise that their data are likely an underestimate, since many killings are not reported, particularly in rural areas (Global Witness, 2021[291]). According to Global Witness, Brazil is currently one of the deadliest countries in the world for land and environmental defenders, ranking 4th in 2020 with 20 killings, after Colombia, Mexico and the Philippines (Figure 5.11) (Global Witness, 2021[292]). Its ranking has gone down slightly from 3rd in 2019 when 24 activists were killed, 10 of whom were indigenous (Global Witness, 2020[293]). Almost 90% of the killings took place in the Amazon region.

It is important to note that the main aggressors are non-state actors, namely land-grabbers, miners, loggers, gunmen, armed militias and others who take advantage of weak governmental control in remote areas to appropriate land (Articulação dos Povos Indígenas do Brasil, 2020[285]; Amnesty International, 2021[294]; Pastoral Land Commission, 2020[295]). Reports point to a recent weakening of agencies responsible for inspecting and enforcing environmental protection legislation, who have suffered budget cuts, a reduction of activities and discrediting of their work (Federal Prosecutor's Office, 2020[296]; IACHR, 2021[19]; Observatório do Clima, 2021[297]). The situation is aggravated by historical disputes over land and environmental degradation, in addition to deforestation and displacement caused by extractive industries, agribusiness and infrastructure projects (United Nations Department of Economic and Social Affairs, 2021[298]; IACHR, 2021[19]; Abdenur et al., 2020[299]; United Nations General Assembly, 2012[300]).

Figure 5.11. Total number of killings of land and environmental defenders per selected country, 2020



Note: Global Witness defines "land and environmental defenders as people who take a stand and carry out peaceful action against the unjust, discriminatory, corrupt or damaging exploitation of natural resources or the environment" (Global Witness, 2021[291]).
Source: Global Witness (2021[291]).

Conflict over land and resources is a long-standing historical challenge in Brazil, but in the period 2010-19, these conflicts increased, affecting an increasing number of people (Table 5.2) (Pastoral Land Commission, 2020[295]). Mass evictions and invasions persisted throughout 2020, dispersing communities and sending many into hiding. COVID-19 also forced human rights defenders to come up with new ways of working, since many of the standard protection measures were not accessible due to restrictions on movement (Front Line Defenders, 2020[301]). Before the end of 2020, the Pastoral Land Commission had registered at least 178 invasions of territories in the year, which is especially notable when compared to 2019, when only 9 invasions were registered. The invasions affected 55 821 families; 54.5% of the victims were indigenous, 11.8% were *quilombolas*[52] and 11.2% were described as squatters (Pastoral Land Commission, 2020[302]).

Table 5.2. Conflicts over the use of land and resources in Brazil, 2010-19

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Number of conflicts	1 186	1 363	1 364	1 266	1 286	1 217	1 536	1 431	1 489	1 833
Killings	34	29	36	34	36	50	61	71	28	32
People involved	559 401	600 925	648 515	573 118	817 102	816 837	909 843	70 852	960 342	859 023

Notes: Conflicts include evictions, expulsions, threats, destroyed property, gunfire, invasions, occupations, repossessions, camping, slave labour, overexploitation and water-related conflicts.
Source: Pastoral Land Commission (2020[295]), Centro de Documentação Dom Tomás Balduino (2020[295]). Conflitos no Campo Brasil 2019.

The Missionary Council for Indigenous Peoples' 2020 annual report (Missionary Council for Indigenous Peoples, 2020[303]) noted that out of 1 298 indigenous lands in Brazil, 829 (63%) are pending documentation or action from the government to finalise the demarcation process and register as a traditional indigenous territory. The report notes an increase in the invasion of such land and accompanying violence. It also documents 829 cases of omissions and delays in land regularisation and 256 cases of possessory invasions, illegal exploitation of natural resources and property damage. As discussed in

Section 0, there are several bills awaiting approval that risk undermining hard-won rights of indigenous and traditional peoples, currently guaranteed by the Constitution and subsequent legislation.

The PPDDH is a critically important initiative, but CSOs report a number of challenges related to its implementation[53] (Pastoral Land Commission, 2020[295]; Human Rights Watch, 2019[304]; Article19, 2018[305]). A first concern is the absence of a legal framework for the programme. It is currently regulated by an executive decree, which means that it could potentially be suspended following a change in government (Government of Brazil, 2019[287]). Second, it is only operational in seven states and under development in three others (Ministry of Women, Family and Human Rights, 2021[288]). In some of the states where the programme does exist, there have been discontinuities due to gaps in contracts with the federal government or delays in resource transfers (Brazilian Committee for Defenders of Human Rights, 2021[306]). Third, the programme's budget has been cut in the last two years, reaching its lowest level since 2015; in 2020, it only received 10% of what was budgeted (Brazilian Committee for Defenders of Human Rights, 2021[306]; Gomes, 2021[307]).

CSOs have also expressed concerns about inadequate responses from the programme to reported threats. The Brazilian Committee for Defenders of Human Rights has interviewed several people included in the programme (Brazilian Committee for Defenders of Human Rights, 2020[308]). Some of them reported that they were not granted a police escort or patrol despite requests, while others reported that a police escort was discontinued, or they only had one once. They also noted that threats were often not investigated and assailants were not removed from their location. Removing an indigenous leader who is under threat from their location for an extended period of time is also considered risky, as it could allow assailants to more easily access land that is no longer being defended.

Violence against LGBTI people

Despite the important legal advances for the LGBTI community discussed in Section 0, targeted discrimination and violence against them is widespread (Acontece Arte e Política LGBTI+ and Grupo Gay da Bahia, 2021[309]). Between 2011 and 2018, the National Human Rights Hearing Office received 14 162 complaints of violence against LGBTI persons, although this figure likely underestimates the scale of the problem (Ministry of Women, Family and Human Rights, 2019[310]). Reported cases included discrimination against rights on the basis of sexual orientation or gender identity; psychological, physical and institutional violence; and neglect.

The Ministry of Women, Family and Human Rights includes the "development of public policies to combat prejudice and discrimination against LGBT[54] people" as part of its mission (Ministry of Women, Family and Human Rights, n.a.[311]). It has a National Secretariat for Global Protection whose attributions include co-ordinating actions and measures for the promotion and defence of LGBT rights, implementing reference centres, disseminating information, and public awareness campaigns aimed at social inclusion of the LGBT population. The ministry sponsors projects for LGBT inclusion in the labour market and trained 447 people in LGBT rights in 2020 to promote employability of this community (Ministry of Women, Family and Human Rights, n.a.[312]; 2020[260]).

A notable measure was the establishment of the National Council to Combat Discrimination and Promote LGBT Rights (CNC/LGBT) in 2010. The council aimed at combating discrimination of the LGBT population and ensuring the inclusion of their demands in public policies at all levels of government (Ministry of Women, Family and Human Rights, n.a.[313]). A study by the Institute of Applied Economic Research (Ipea) found that the council faced many difficulties in 2017 and 2018, including a lack of resources, but played a fundamental role in monitoring the situation of the LGBT population in Brazil and articulating actions to guarantee their rights (Basso Pompeu and Motter, 2020[314]). In a setback, in 2019, Decree 9 883 modified the council and removed the mention of LGBT from its title and text. The new members of the reformed council took office in March 2021 and the internal regulations were approved in July, but activities have

not fully resumed yet (Ministry of Women, Family and Human Rights, 2021[315]; n.a.[313]; Government of Brazil, 2021[316]).

Data show that overall, protection for the LGBTI community in Brazil is inadequate. According to a report by the oldest LGBTI rights organisation in Latin America (Acontece Arte e Política LGBTI+ and Grupo Gay da Bahia, 2021[309]), 237 LGBTI+[55] people died due to violent attacks in 2020 in Brazil. Despite a decrease in the last two years, there has been an overall increase in lethal violence against this community over the last two decades, up from 130 homicides in 2000. Transgender people, those who present a gender identity different from the one assigned at birth, are particularly targeted by violence. Brazil has the highest absolute number of trans and gender-diverse killings and one of the highest rates among the 28 countries for which data are available. From January to September 2020 alone, 124 trans and gender-diverse people were killed in Brazil, more than twice than in Mexico, which ranks second out of the list of 45. The United States had 24 trans and gender-diverse people killed in the same period, Colombia 16 and Argentina 9 (Transrespect Versus Transphobia, 2020[317]). The National Association of Transvestites and Transsexuals in Brazil notes that the majority of homicides against this group are committed with excessive use of violence and associate more than one method of violence, denouncing elements of hate crime and transphobia (Benevides and Nogueira, 2021[318]).

Box 5.5. Impunity perpetuating high rates of violence

Public authorities acknowledge that impunity is a significant historical challenge and an important contributing factor to the perpetuation of violence in Brazil, including police violence.* Brazil also recognises the government's responsibility and duty "to cease and punish" persons responsible for acts of violence, such as those targeting human rights defenders, for example.

Part of the challenge is the absence of official, comprehensive, disaggregated data on violence, as discussed above. This is compounded by the absence of recent national data on the resolution rate for homicide investigations, which would help to monitor progress. The latest official analysis in this area is a 2012 joint report by the Prosecutor's Office, the Ministry of Justice and the National Council of Justice. The same report estimates the resolution rate for homicides in Brazil to be between 5% and 8%. It also provides comparative rates for France (80%), the United Kingdom (90%) and the United States (65%). A more recent survey by the National Council of Justice indicates that 32% of criminal cases tried by courts between 2015 and 2018 ended without a verdict, after an average of 8.5 years.

The Ministry of Justice has identified several factors that contribute to low prosecution rates for violence in Brazil. The precarious working conditions of the civil police and criminal investigation services, responsible for investigating and solving the homicides, and the low levels of co-ordination between the various institutions of the criminal justice system are cited as the main reasons. Challenges in gathering evidence are also viewed as barriers to resolving cases. According to the ministry, "the violation of crime scenes (intentional or not) by police officers or by the public is today one of the main obstacles to the use of technical and forensic procedures in homicide investigations".

Another challenge raised by researchers and civil society for the investigation of killings resulting from police operations is that these are often registered as "acts of resistance", a classification used for the death of a civilian following a confrontation with the police, with the police reporting the act as self-defence. A 2013 study of 707 lethal victims of "acts of resistance" in Rio de Janeiro between 2005 and 2007, found that 355 police enquiries had been opened (some covering more than one victim), but only 19 of them had made it to a justice court three years after the events. Of these 19, 16 came with a request for filing of charges from the Public Prosecutor's Office and only 3 actually contained charges. The study explores several obstacles to the proper investigation and prosecution of these killings,

including that bodies are removed under the allegation of rendering assistance and that crime locations are claimed as unsafe to perform forensic examinations.

A further obstacle to independent and impartial investigation of killings by the military police, which is in charge of preventive policing and the preservation of public order, is the granting of military jurisdiction for these crimes. Law 13491 of 2017 states that intentional crimes "against life committed by military personnel of the Armed Forces against civilians will fall under the jurisdiction of the Federal Military Justice if committed in the context of: I) performance of attributions established by the President or by the Defence Minister; II) actions involving the security of a military institution or military mission, even if not belligerent (…); or III) military activities, peacekeeping operations, law and order, or subsidiary duties". However, judicial rulings expanding the application of this law beyond the armed forces, thereby granting military jurisdiction over crimes committed by military police, have been reported. The Inter-American Commission on Human Rights has repeatedly stressed that military courts are not competent to investigate, prosecute and punish perpetrators of alleged human rights violations and has recommended countries that still have a military criminal justice system reduce the scope of that jurisdiction to ensure that it is "exceptional, relating only to specifically military legal interests (*bens jurídicos*)". More recently, the United Nations Committee on Enforced Disappearances has noted that jurisdiction is transferred from civilian to military courts in Brazil in cases of intentional crimes against life by military personnel against civilians (Committee on Enforced Disappearances, 2021[319]).

In an effort to redress this historical and complex challenge of impunity, the National Public Security Policy and Plan approved by the government of Brazil in 2018 explicitly identified the need to resolve homicides as a means of reducing violence. An important element is the focus on joint, co-ordinated, systemic and integrated action by public security agencies at the federal, state and municipal levels, in co-ordination with society. To increase transparency, it also foresees studies, statistics and indicators to support the formulation, implementation, execution, monitoring and evaluation of the policy. Recent data on the resolution of homicide investigations would help to assess the effectiveness of the National Public Security Policy and Plan and to further improve its implementation.

1. Interviews with the Public Defenders' Office on 10 June 2021, National Justice Council on 22 June 2021 and Supreme Federal Court on 19 July 2021.
Sources: Ministry of Justice (2014[320]; n.a.[234]); Chamber of Deputies (2019[321]; 2012[322]); National Council of the Public Prosecutor's Office (2012[323]); Ministry of Women, Family and Human Rights (2019[130]); National Justice Council (2019[324]); Federal Senate (2016[325]); Government of Brazil (1940[25]; 2017[326]; 2018[235]); Misse et al. (2013[327]); Conectas Direitos Humanos (2021[328]); IACHR (2021[19]).

Recommendations

Inequality, related violence and the threat of violence are direct barriers to citizens' equal enjoyment of civic space in Brazil. There is a wide range of opportunities for public entities to build on and strengthen existing efforts to stem the violence and protect citizens in support of greater transparency and accountability and to facilitate more inclusive civic participation:

- General violence and violence by public security agents:
  - Step up the implementation of the Unified Public Security System, including cross-governmental co-ordination and the establishment of minimum quality standards for the generation, collection and publication of data and procedures on tackling violence. Official up-to-date, comprehensive, standardised, country-wide data, including as open data, would facilitate the monitoring of violence and impact evaluations of measures to stem it, in addition to enhancing transparency and accountability. Disaggregation and granularity are key, including by sex, age, place of origin, place where the violence took place, racial origin, the date of the violence and details, where relevant, of state involvement. Progress in this area

could be included as part of a new commitment to civic space and data transparency and accountability in Brazil's OGP national action plans.

- Strengthen measures to prevent excessive use of force thorough improved, specific and regular training for public security agents with a focus on human rights, the importance of recognising and avoiding practices based on stereotypes and discriminatory bias, and differentiated and proportionate use of force.
- Ensure all public security institutions have programmes to improve working conditions for public security agents, including clear and transparent criteria for promotion and an organisational structure to evaluate performance.
- Systematically evaluate the impact of public security legislation, policies, programmes and initiatives (from federal and state levels) to understand their impact, identify areas for improvement and assess the potential for their expansion.
- Ensure that acts of violence committed in connection with interventions by public security agents are routinely and thoroughly registered, investigated and prosecuted in an impartial manner, even when there is no formal criminal complaint. Encourage and facilitate the documentation and submission of complaints by civil society and relatives, engage constructively with them as part of joint efforts, and ensure that they are regularly updated about the results of investigations. In line with its constitutional mandate, the Prosecutor's Office could carry out external control of police activity and use of force, and an independent mechanism could be mandated to investigate and prosecute such violence.
- Ensure that justice system institutions have adequate and predictable financial, technical and human resources to effectively investigate, prosecute and punish those responsible for violence in a timely and effective manner. Ensuring that criminal investigations are adequate, impartial, effective and exhaustive and that they start without delay is key.
- As already foreseen by law, improve monitoring and publish regular and transparent data on the status and resolution of homicide cases with a view to increasing transparency and accountability and facilitating oversight. Step up the implementation of accountability initiatives foreseen in the National Public Security Policy and Plan.
- Strengthen and increase the capacity building of police to assist them to adequately isolate crime scenes and understand the importance of preserving them for investigation and resolution of crimes.

- Violence targeting at-risk groups:
  - Systematically monitor violence, particularly against at-risk groups, and publish regular disaggregated data about the situation in Brazil to increase transparency and accountability. Keeping track of violence implies making sure that public entities in charge of generating data on these areas better coordinate to avoid potential data discrepancies and improve standardisation (Article19, 2018[329]), while also protecting personal data. It is also important to ensure that these data are shared in open data formats in a systematic fashion by relevant authorities in the central open data portal (dados.gov.br).
  - Step-up efforts to prevent violence and protect at-risk groups and ensure adequate and predictable funding for protection measures and programmes already foreseen by law.
  - Carry out an extensive and long-term campaign to raise awareness among citizens about their rights, programmes to protect at-risk groups and legislation regulating the use of force by public security agents.
  - Include at-risk groups in discussions about new legislation, programmes and policies on violence and insecurity and in evaluations of these.
  - Ensure systematic and regular evaluations of the impact of protection programmes, using data to assess their effectiveness and improve them over time. As part of such evaluations, engage

non-governmental actors, including CSOs with expertise in the relevant area and individuals from groups targeted by the relevant programme.

- Consider creating a Special Rapporteur position to protect at-risk groups, raise awareness about the risks they face and support fundraising for related protection programmes.

- Violence against women:
  - Invest in the implementation of prevention and protection measures for female victims/survivors of violence as foreseen in legislation, policies and action plans, including by ensuring adequate resources and geographical coverage of services and in line with the OECD's approach to a whole-of-state governance framework for GBV.
  - Carry out an extensive and long-term educational programme to raise awareness about violence against women – for male and female adolescents in addition to adults – and encourage reporting of sexual crimes. Develop the content of related programmes in partnership with civil society.
  - In line with transparency commitments, publish official, regularly updated data on the number, capacity and location of shelters, specialised centres and other protection services foreseen by law.
- Violence against environmental activists, human rights defenders and indigenous land defenders:
  - Strengthen the PPDDH:
    - Establish a legal framework for the programme to ensure its sustainability and expand it to all states in the Amazon region. Ensure the programme's continuity through regular and adequate resource transfers.
    - Strengthen responses to reported threats in consultation with human rights and land defenders, in addition to expert CSOs.
    - Improve co-ordination among entities involved in the programme, including CSOs with expertise in relevant issues and direct access to human rights defenders and their communities.
  - Resume the demarcation and protection of indigenous lands in line with the Constitution and as part of a renewed focus on protecting civic freedoms and rights, civic space for all, and the rule of law more broadly. Increase transparency and effective and inclusive public participation in discussions around new bills that relate to the environment and ensure they do not threaten indigenous rights.
  - Ratification of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazú Agreement,[56] would signal a renewed commitment to individual rights and help address some of the above challenges (ECLAC, 2021[330]; United Nations Economic Commission for Latin America, 2018[331]). Brazil played an important role in the negotiations that resulted in the agreement and signed it in September 2018.
- Violence against LGBTI persons:
  - Consider the development of a legal framework and public policies specific to LGBTI persons to help contain violence targeting this group and to tackle discrimination and inequality.
  - Continue promoting LGBTI rights and ensure the allocation of adequate funding and trained staff to implement LGBTI programmes and policies and to support the National Council to Combat Discrimination.

The enabling environment for civil society organisations

CSOs contribute to society in many ways, including by educating the public, providing basic services, protecting the environment, defending the interests of vulnerable groups, conducting social research and analysis, and acting as a public watchdog. An enabling environment is central for promoting their effectiveness and ability to operate in a free and autonomous manner. A conducive legal and policy environment safeguards freedom of association and impacts CSOs' ability to reach their full potential and maximise their impact (OECD, 2020[332]).

Legal and regulatory frameworks for civil society organisations

Freedom of association, CSO registration and operations

As discussed in Section 0, Article 5 of the Brazilian Constitution guarantees freedom of association for lawful purposes, with the exception of paramilitary associations (Item XVII). The process for creating an association or a foundation is established in the Civil Code (Law 10406/2002, Art. 53-61) and in the Public Registries Law (Law 6015/1973, Art. 114-121). According to these laws, associations must be registered in a notary's office, where they are asked to provide their bylaws, act of constitution and other information, such as the name of the association, purpose and office address. Associations also need to register at the revenue service (*receita federal*) to obtain a tax number (CNPJ), and ensure compliance with tax matters, including bookkeeping and annual tax declarations.

Other types of CSOs are governed by separate legal frameworks, such as trade unions (Government of Brazil, 1939[333]), consumer groups (Government of Brazil, 1990[334]) and charities (Government of Brazil, 2009[335]). There are two additional pieces of relevant legislation for CSOs: 1) a public interest designation (Government of Brazil, 1999[336]), given to certain non-profit non-public entities[57] providing tax deductions for donations made to them; and 2) a certification (Government of Brazil, 2009[335]), exempting the organisation from social contributions on staff salaries and allowing the receipt of public funds as social subsidies.

The Civil Code (Government of Brazil, 2002[24]) also establishes that associations may not have an economic purpose (Art. 53), but does not clearly state whether they can engage in commercial activities to maintain their operations. However, according to the Order of Attorneys of Brazil (OABSP, 2011[337]) and the Brazilian Association of NGOs (ABONG, 2015[338]), it is possible for CSOs to raise money commercially as long as the activity is foreseen in its bylaws as a means of financing its operations.

Regulatory Framework for Civil Society Organisations

The Regulatory Framework for Civil Society Organisations (Marco Regulatório das Organizações da Sociedade Civil), known as the MROSC, was established by law in 2014 (Government of Brazil, 2014[339]) and put into practice in 2016 (Government of Brazil, 2016[340]) to regulate partnerships between the public administration and CSOs. According to the Ministry of Citizenship, the framework aims to improve the relationship between CSOs and the state, to stimulate democratic public management, and to value organisations as partners in the guarantee and realisation of rights (Ministry of Citizenship, 2019[341]). The framework clarifies the concept of CSOs as entities that are non-profit, non-public and that use their proceeds solely for the achievement of the organisation's purposes as defined in its bylaws. It also includes co-operatives and religious organisations that are engaged in activities in the public interest and with a social function. Partnerships covered by the MROSC can be signed at the national, state or municipal level and can include activities and projects. The MROSC explanatory booklet prepared by the Secretariat of Government of the Presidency notes the possibility of three kinds of legal partnership: 1) memorandum of assistance, to support initiatives designed by CSOs themselves and to provide them with greater autonomy; 2) memorandum of collaboration, for execution by CSOs of services conceived by the

government; and 3) co-operation agreement, for partnerships that do not involve the transfer of financial resources, such as the exchange of knowledge (Secretariat of Government of the Presidency, 2016[342]). According to the MROSC, in order to engage in a partnership with the government under the framework, CSOs need to present certificates of legal standing, fiscal regularity, and compliance with social security and tax obligations. Organisations can engage as a network, but the signatory CSO needs to ensure the legal and fiscal regularity of the executing organisations.

The MROSC standardised and simplified the rules for partnerships between public entities and civil society, and brought greater transparency regarding the selection and contracting process, project execution, distribution of funds, reporting of results and termination of partnerships (GIFE, n.a.[343]; International Center for Not-for-Profit Law, 2021[344]; Leichsenring et al., 2020[345]). The process of drafting the law was also considered a good practice, due to high levels of civil society engagement, strong leadership from the executive and support from several parties in the National Congress (EuropeAid, 2015[346]). Following the development of the MROSC framework, the Secretariat of Government and the Ipea undertook an online mapping of CSOs (Ipea, 2020[347]) to increase transparency. The online platform "Mapa das OSC" is continuously updated and integrates official databases and information provided directly by CSOs on areas of operation, regional distribution, projects and funding as part of a notable effort to increase the transparency of information related to CSOs in Brazil (Ipea, 2020[347]). To encourage organisations to fill out their data, the government recently created a quality seal (Ipea, 2021[348]). The seal is symbolic and varies according to the percentage of data completed by a CSO. A bronze seal is given to CSOs that have 50-70% of the information filled out, the silver seal for 71-90%, the gold seal for 91-99% and the diamond seal for CSOs that fill out 100% of the fields available on the platform. The MROSC Law applies to all levels of governments and allows states and municipalities to adapt it to their own context and specificities and to regulate it with their own decrees. Since the law was approved 7 years ago, 19 out of the 27 federative states (Plataforma MROSC, n.a.[349]) and several municipalities (Plataforma MROSC, n.a.[350]) have passed legislation to implement it.

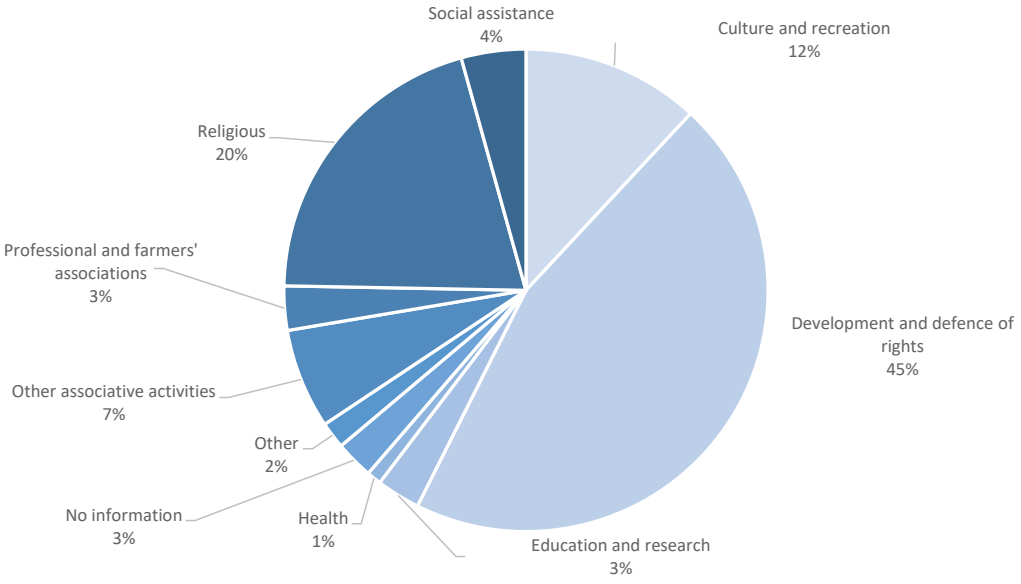
The vital role of Brazilian civil society organisations

Although the term CSO was not used at the time, Brazil already had associative projects in the 1950s, through which civil society organised itself (Mendes, 1997[351]). From 1966 to 1985, Brazil was ruled by the military and a large number of the CSOs that emerged in that period were advocacy organisations focused on the defence of rights (Mello, Pereira and Andrade, 2019[352]). They were often critical of the government and of the few opportunities for dialogue with it at the time. The 1988 Constitution served as the first formal framework for relations between the state and civil society, as it recognised citizens' participation in the design, implementation and "social control" of public policies. "Social control" implies the effective participation of society in overseeing the application of public resources and in formulating and monitoring the implementation of policies (Office of the Comptroller General, n.a.[353]). The Constitution created official spaces for this civic participation, such as the councils that are discussed in Chapter 6.

The 1990s saw a significant increase in the number of CSOs, with 201 389 new organisations registered between 1991 and 2000, against 88 147 in the previous decade (Ipea, 2018[354]). CSOs in the period post-1990 were mostly focused on service delivery, executing projects and acting as strategic partners in government programmes. The Rio-92 conference on the environment, which took place in Brazil, helped popularise the term "non-governmental organisations" in Brazil (Calegare and Silva Junior, 2009[355]). In the 2000s, socio-state relations were strengthened, as participatory structures such as councils, conferences and forums gained ground and expanded (Mello, Pereira and Andrade, 2019[352]). Civil society representatives became more present in government spaces and in policy making. Another 277 452 organisations were created between 2001 and 2010 and about 25 000 have been created every year since (Ipea, 2018[354]). The approval of the MROSC in 2014 formalised CSOs' position as partners of the state in executing activities in the public interest.

According to the CSO mapping platform (Ipea, 2021[356]), 815 676 registered CSOs[58] existed in Brazil at the time of writing. Close to half of them work on development and defence of rights, followed by religious initiatives, and culture and recreation (Figure 5.12).

Figure 5.12. Distribution of civil society organisations by area of work in Brazil, 2020



Source: Ipea (2020[347]). Mapa das Organizações da Sociedade Civil, accessed on 6 September 2021, https://mapaosc.ipea.gov.br/

The latest detailed study of the profile of the CSO sector in Brazil dates back to 2018 (Ipea, 2018[354]). It shows that 83% of Brazilian CSOs have no formal employees and another 7% have up to two formal employees, totalling 90% of CSOs with no more than two formal staff. Nonetheless, the sector's economic importance in the labour market is notable. According to the study, the number of people formally employed by CSOs, excluding volunteers, is equivalent to 26% of the number of people employed in the public sector. The average salary of CSOs' formal staff was BRL 2 869 (or EUR 732.45), or 3.2 times the minimum wage. CSOs with higher numbers of formal staff are mostly focused on health, social assistance and education. The level of education of staff varies per field of operation, with 67% having completed higher education in CSOs focused on education and research, against 15% in those dedicated to sports and recreation. Foreign CSOs are also present in Brazil. Ninety-four were registered in 2021, 23 of which were branch offices and 71 head offices, mostly located in the Southeast and Northeast regions (Ipea, 2021[357]). Foreign CSOs are mainly from Germany, Italy, Spain and the United States and half of them work on the defence of social rights.

Medium- and large-sized organisations are often recognised for their expertise on specific issues, producing research and data that generate public knowledge and empower citizens to engage in public policy in a more informed way (Mendonça, Alves and Nogueira, 2014[358]). Some organisations have professionalised to the point of becoming national references, such as the Brazilian Forum for Public Security on public security, as discussed in Section 5.3.6.1 (Government of the State of Ceará, n.a.[359]). CSOs have also stepped in to help fill gaps, for example in the protection of human rights defenders. They provide resources and services such as installing cameras, building protective walls and hiring legal counsel to protect defenders against threats (Brazilian Committee for Defenders of Human Rights, 2021[306]). Other CSO initiatives have helped the government to reduce spending and identify fraud (Government of Brazil, 2021[360]), highlighting the value of partnerships between the state and civil society. Some of these results were possible thanks to the transparency portal and Open Data and Access to

Information Laws (see Chapter 7), again illustrating the importance of a protected civic space where CSOs can play their various roles in society.

CSOs of all sizes co-ordinate through networks and platforms to optimise their capacity and resources and to increase their impact (APIB, n.a.[361]; Plataforma MROSC, n.a.[362]; CONAQ, n.a.[363]). This allows collaboration between larger, more centralised organisations and grassroots ones, with the grassroots ones providing experience and perspective to their peers in capitals who inform decision-making fora and feed results back to the local level. These networks also support capacity building of members (Fundação Grupo Esquel Brasil, n.a.[364]; Instituto Atuar, n.a.[365]) and are relevant for fundraising, since applying as a network increases the reach and impact of projects.[59]

Brazilians also associate informally as groups of citizens, and within collectives and social movements to advance specific demands. These do not necessarily have a legal personality and often communicate using digital platforms (FASE, 2020[366]). Social movements have always existed in Brazil, but new agendas, actors and tactics are transforming the sphere (Mendonça, Alves and Nogueira, 2014[358]). The rights of women, Afro-Brazilians and LGBTI people are some of the main contemporary themes. These movements are organised in a more horizontal and decentralised manner than formal CSOs and are characterised by virtual activism using social media as a means of communication, articulation and the dissemination of ideas and information (Ferraz, 2019[367]). Informal civil society has also played an important role during the COVID-19 pandemic, collecting and distributing donations, food, hygiene products, Internet credit for virtual classes, and other goods for those most affected by the virus (Pitasse, 2020[368]; da Cruz, 2021[369]).

To conclude, Brazilian civil society has flourished over the years and the CSO landscape today is diverse, vibrant and offers expertise on a variety of issues. CSOs have been partnering with the government at national, state and municipal levels over the decades in many areas, playing an important role in consolidating democracy, improving policies, engaging in participatory mechanisms, delivering services, and helping to increase transparency and inclusive civic participation.

Funding of civil society organisations

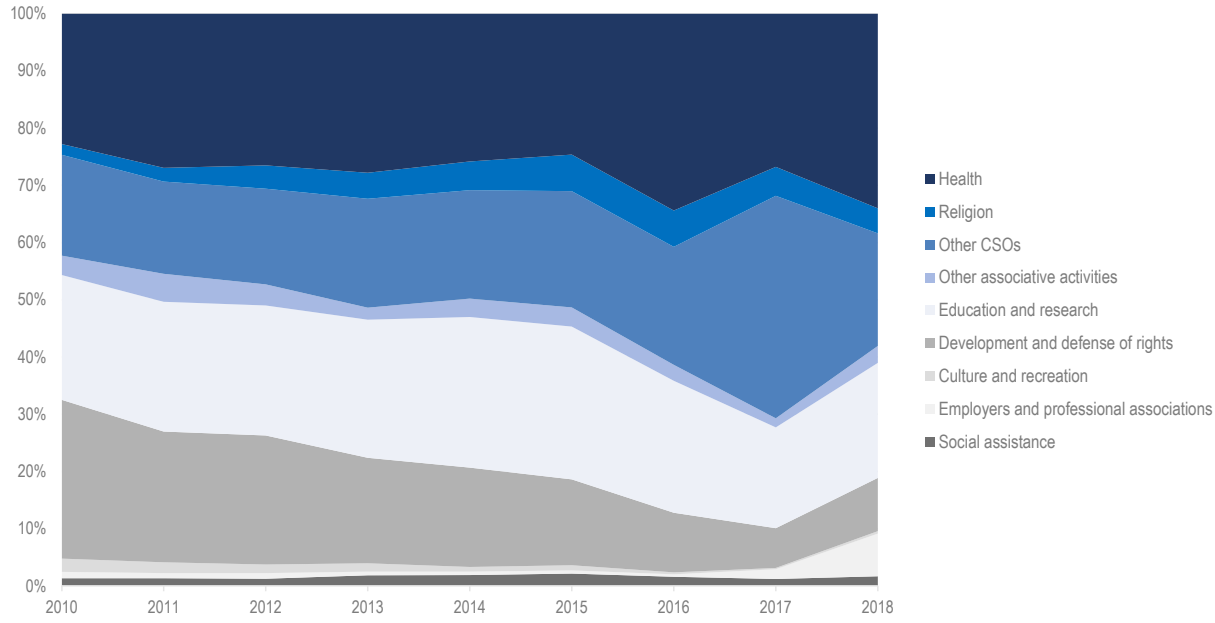
There are no consolidated data available on CSO funding sources in Brazil. It is possible to get a snapshot of public resources transferred to CSOs thanks to the online CSO mapping platform and studies, but financial information on donations to CSOs, international funding and economic activities is incomplete and only available when organisations themselves include it on the platform (Ipea, 2018[354]). Data from the Federal Revenue Service, where some of this information is captured, are not accessible at disaggregated level because of tax secrecy rules (Ipea, 2018[354]). Nonetheless, studies show that the main sources of CSO funding in Brazil are federal, state and municipal governments; private companies and institutions; individuals; international entities; and economic activities (O Mundo que Queremos, 2019[370]; CETIC, 2017[371]; ABONG, 2010[372]; Ipea, 2018[354]; Mello, Pereira and Andrade, 2019[352]).

Public resources

A study by Mello, Pereira and Andrade (2019[352]) shows that 2.7% of CSOs registered in Brazil received federal funding between 2010 and 2018. A total of BRL 118 billion was allocated to these entities over the period, equivalent to 0.5% of Brazil's annual budget. Organisations focusing on health received the largest volume of federal funding (27.6%), followed by education and research (22.6%), and development and defence of rights (16.7%) (Figure 5.13). Development and defence of rights organisations prevailed in the number of transfers and the number of beneficiary CSOs, but experienced a drop in the volume of transfers over the period. Although the title of this category suggests organisations working for the defence of rights of different groups, it goes much beyond this. When the share of 16.7% is broken down into its more than ten sub-categories, it becomes clear that the majority of the funds in this category go to health, social welfare and education associations as well as employer and professional associations. From the

ca. BRL 20 billion committed to this category over the period 2010-18, a negligible 0.07% went to organisations working on defending the rights of groups and minorities.

Figure 5.13. Distribution of federal public funds to civil society organisations in Brazil, by purpose of action, 2010-18



Note: CSO: civil society organisation.
Source: Mello, Pereira and Andrade Ipea (2019[352])

Another Ipea study (2018[354]) found that, while annual amounts transferred from the federal government to non-profit entities directly dropped during the last decade, there has been an increase in CSO funding at the state and, especially municipal, levels over the same period. The study shows that growth in state transfers to CSOs from 2002 to 2016 was 140% and growth in municipal transfers reached 555%. The limited data available from the CSO mapping platform indicate that, in the period 2015-20, organisations working on health, social assistance, culture, the environment and education were the main beneficiaries of funds from partnerships with the state government, while those working on health, culture, social assistance and sports benefited the most at the municipal level.

International funding

CSOs are allowed by law to receive funding from international organisations and from foreign states without restrictions. International funding has been an important resource for Brazilian CSOs over the years. Between 1964 and 1985, Brazilian CSOs were heavily sponsored by development organisations and foundations from Europe and North America (ABONG, 2014[373]). Following the social and economic advances in Brazil during the 2000s, the country was considered an upper middle-income country less in need of foreign aid and, as a result, international funding dropped. The situation worsened with the 2008 global economic crisis, which brought recession to several European countries, directly impacting their support to CSOs in Brazil (Pannunzio et al., 2019[374]). Although less than it once was, international funding remains central, especially for advocacy and watchdog CSOs and those working on the defence of minority rights.

Current foreign funders of Brazilian CSOs include governments, multilateral bodies and international foundations, organisations, and even political parties. Germany, the United States, Italy and Norway were the main donor governments to the CSO sector in Brazil in 2019 (OECD, 2021[375]). Important multilateral funders included the European Union institutions and the Global Environment Facility (OECD, 2021[375]). The Ford Foundation, the Open Society Foundations, and the Bill & Melinda Gates Foundation are some of the largest foundations donating to Brazilian CSOs (Open Society Foundations, n.a.[376]; Craveiro, 2016[377]).

Individual and corporate donations

As indicated above, official data regarding individual donations to CSOs in Brazil are not available because of tax secrecy rules. Tax incentive laws, funds and programmes exist at federal, state and municipal levels, providing fiscal benefits for donations from individuals and corporate entities to CSOs. One of the most well-known is the Fund for the Rights of Children and Adolescents, which is managed at the municipal and state level through councils that deliberate and decide on the beneficiary projects (Presidency of the Republic, 2021[378]). These councils are typically composed of representatives from relevant government and non-governmental entities. Donations to these funds are tax deductible for individuals and legal entities. CSOs working in the relevant sector can apply for resources from the fund. Another example is the Culture Incentive Law (known as the "Rouanet *Law")*. To benefit from this fund, projects first need to be approved and authorised for funding by the Ministry of Culture. Once approved, organisations can then seek resources from companies and individuals, who are able to benefit from tax deductions for a part of their contribution. Similar tax incentive funds exist in a number of areas, including health, sport, the elderly and people with disabilities,[60] each with their own funding procedures and institutional set-ups.

Individuals can also allocate a part of their income tax return to organisations registered under these funds, the details of which vary depending on the particular fund (Nader, 2021[379]; Uol, 2021[380]). Individual donations beyond the limit set under the tax incentive, or to organisations not registered under a fund, do not benefit from a tax benefit and are taxed. One of the greatest disincentives to a donation culture in Brazil is the Tax on Causa Mortis Transmission and Donation (ITCMD), a tax applied for donations and inheritance, irrespective of whether the donation is in the public interest (Pannunzio and Souza, 2018[381]; ABONG, 2014[373]). Since it is a state competence, the ITCMD rate and exemptions vary. In most states, the tax rate is 4% of the donation value and is payable by the receiving party (Pannunzio and Souza, 2018[381]). A survey (Pannunzio and Souza, 2018[381]) widely referenced in the literature about taxation of donations and heritage in 75 countries found that donations are only taxed in 30 countries. However, almost all of these countries – 26 out of the 30 – establish differentiated treatment when it comes to donations directed to CSOs, either in the form of a tax exemption or a reduced tax rate. Brazil is one of the four countries where donating to a CSO is not differentiated from other donations, and actually costs money.

Although the donation culture is not as strong in Brazil as in other countries (Charities Aid Foundation, 2021[382]), this type of funding is critical, as it offers more flexibility to CSOs in terms of managing and reporting than do resources from public contracts. Such donations can also help to cover expenses that may be difficult to finance from other sources but that are indispensable to the functioning of their organisations, such as rent, electricity or salaries of administrative staff.

The Tax Invoice Programme (Programa da Nota Fiscal) is an innovation that helped to popularise citizen contributions to CSOs (ABONG, 2014[373]). This programme, currently carried out by the state of São Paulo, among other states, foresees the allocation to CSOs of a part of the value-added tax collected on consumer purchases. Citizens can choose the organisations they wish to support among those registered and when they make purchases such as toys, shoes, clothes or food, a share of the tax goes to their individualised list of preferred entities (Government of São Paulo, 2018[383]). A study conducted

in 2017 found that, between 2008 and 2016, the São Paulo Tax Invoice Programme distributed BRL 655 million to CSOs (G1, 2017[384]).

Companies can also obtain tax deductions for donations to CSOs registered under the funds and to other non-profit entities that act in the public interest. Corporate donations of up to 2% of company profits can be made, but are only possible for companies taxed on their "real profit"[61] that are up to date with their taxes (Iser, 2018[385]; ABONG, n.a.[386]). These donations take the form of direct institutional funding or project sponsorship. According to the GIFE Census (GIFE, 2019[387]), one of the main surveys on private social investment in Brazil, BRL 3.2 billion were donated by their member companies, institutes and foundations for social purposes in 2018. More than half of the donors supported CSOs based on their own programmes and/or through calls for proposals, while 30% provided institutional funding.

Economic activities

The sale of products such as books or clothes, the organisation of events, rental of space and property, raffles, draws, lotteries, and the provision of lectures and workshops are often used by CSOs as a source of resources, since the revenue can be freely allocated to operational costs and is not linked to specific programmes or projects (ABONG, 2015[338]). This kind of activity is especially common among smaller organisations, which may not have access to the more formal grants that typically require a certain level of bureaucracy to administer and report on.

Challenges and recommendations on strengthening the enabling environment for civil society

Strengthening relations between the state and CSOs

According to the background report submitted to the OECD for this review, a number of public authorities[62] engage and work with CSOs, each with a different role. The main engagement is undertaken by the following bodies:

- The **Special Secretariat for Social Articulation**, part of the **Secretariat of Government** of the Presidency, is the main entity responsible for relations with CSOs. Its mandate includes: 1) articulation of the federal government's relations with different segments of civil society and their representatives; 2) co-ordination of dialogue with CSOs and monitoring of actions and results of the CSO partnership policy; and 3) promotion of social participation within the federal government (Secretariat of Government of the Presidency, 2021[388]).
- The **Secretariat for Transparency and Prevention of Corruption of the Office of the Comptroller General** has been working closely with CSOs for almost a decade. The four Open Government national action plans, which it co-ordinates, were developed with extensive civil society participation in the selection of themes, definition of challenges, design, implementation and monitoring of actions (Government of Brazil, 2021[360]). The secretariat has a "Dialogues" programme to promote engagement with CSOs and encourage social participation, enabling an exchange of experiences and the development of joint projects (Office of the Comptroller General, n.a.[389]).
- **Sectoral ministries** also engage with CSOs by funding projects as part of their institutional programmes (Government of Brazil, 2021[360]).

A provisional measure (Government of Brazil, 2019[390]) passed on 1 January 2019 attributed to the Secretariat of Government the role to "supervise, co-ordinate, monitor and follow up on the activities and actions of international bodies and non-governmental organisations in national territory". The wording of the measure was perceived by CSOs as a threat to their autonomy and caused a fierce reaction.

Organisations ran a campaign to revoke the measure, including by sending an open letter to the minister of the Secretariat of Government to express their views (Conectas Human Rights, 2019[391]; Pacto pela Democracia, n.a.[392]; Transparência Brasil, 2019[393]; Plataforma MROSC, 2019[394]). The Federal Prosecutor's Office for Citizen Rights also intervened, sending a technical note to the National Congress suggesting that the measure was unconstitutional and "an offense to Article 5, Item XVIII of the Constitution, which provides other highly important constitutional principles, such as social participation" (Public Prosecutors' Office, 2019[395]). The law was finally published (Government of Brazil, 2019[396]) with adjusted wording and no reference to supervising CSO activities (Conectas Human Rights, 2019[397]).

Despite this conciliatory closing of the matter, the situation had a negative impact on relations between the government and CSOs, creating tension and a fear of attempts to control CSO activities (Terra de Direitos, 2020[398]). Concerns increased a few months later when a decree (Government of Brazil, 2019[399]) abolished several participatory councils (see Chapter 6) and revoked the National Policy for Social Participation, approved in 2014 (Government of Brazil, 2014[400]). These legal measures were followed by a series of practices that CSOs perceive as threatening rights achieved after decades of struggle, including their freedom to express, associate, assemble, participate, pursue their mandates without interference and obtain funding for their activities (Conectas Direitos Humanos, 2021[401]). An illustrative case was that of the city of "Alter do Chão", where four fire brigades were arbitrarily arrested for allegedly setting fire in the forest and a CSO where one of them worked had its office occupied and material confiscated by the police (Santilli, 2019[402]; The Guardian, 2019[403]).

Out of the 23 CSOs responding to a survey for this review, 18 found that the enabling environment for CSOs has tightened in the last three years, 4 found it has remained the same, 1 did not have an opinion on the subject and none found it had improved. Asked about the main benefits expected from the implementation of open government principles in Brazil, 17 said they expected better co-operation with the government. The 26 non-governmental actors who provided written inputs to a public consultation for this review also reported deteriorating conditions for civil society. This assessment was confirmed in over 30 interviews with CSOs, who described challenging circumstances during the last decade and a decline since 2019.

One of the concerns raised by CSOs relates to negative public statements about their work from public officials (Santilli, 2020[404]; RFI, 2020[405]; Pacto pela Democracia, n.a.[406]). Some remarks refer to CSOs more generally, while others are particularly targeted at organisations working in the environmental sector (Article19, 2020[136]; Romano, 2019[407]; Pacto pela Democracia, 2020[408]). These are perceived as damaging to their work and reputation. CSOs have also expressed concerns about the introduction of bills that, if approved, may further hamper their operating environment (Box 5.2).

Recommendations

While the MROSC regulates partnerships between the government and CSOs, there is no policy or strategy to promote an enabling environment for these organisations in Brazil (Government of Brazil, 2021[360]). This Open Government Review and the OGP process present an opportunity to recognise the importance of empowered and protected CSOs in Brazil with a view to obtaining better outcomes from open government initiatives and to create such an environment. To benefit from this opportunity, the government could:

- Assess the challenges faced by CSOs, especially those working with marginalised groups and as watchdogs, and define concrete steps to improve and protect their operating environment. This could be in the form of a road map on the protection of civic space and civil society and could be included in the Federal Open Government Strategy discussed in Chapter 3. It is crucial that such a road map is developed in extensive consultation with an inclusive range of CSOs.

- Utilise the OGP and other multi-stakeholder processes to make explicit commitments related to the protection of civic space and the enabling environment for CSOs as part of Brazil's forthcoming OGP National Action Plans.
- Consider ways to engage in positive public communications about the importance and contribution of CSOs and other non-governmental actors to policy making and service delivery. Public communications could also be used to give visibility to important initiatives and contributions from CSOs and social movements to society.
- Consistently involve CSOs in the review of legislation and policies that impact their work, ensuring sufficient time, opportunities and feedback loops for them to engage effectively.
- Ensure the protection of CSO rights to operate without interference and ensure that any cases of arbitrary arrest, unwarranted interference or abuse of power are duly prosecuted.
- Include civil society representatives in all stages of the development of the fourth edition of the National Programme for Human Rights. Ensure the programme is drafted in extensive consultation with civil society, ensuring continuous feedback loops.

Expanding access to funding and reducing the administrative burden

Although CSOs are legally entitled to a range of potential public and private funding sources in Brazil, obtaining such funds remains a challenge in practice. A range of obstacles exist, some impacting all organisations, others particularly affecting smaller and more informal ones and those working for the rights of vulnerable people (see Table 5.3 for an overview).

Small CSOs, which are the majority, have limited structures and personnel to ensure compliance with labour, social security and tax legislation at the federal, state and municipal levels, in addition to funding requirements. They find that the complexity, conditions, restrictions and demands they face are disproportionate to their size and to the amount of funds they manage (Fundação Grupo Esquel Brasil, 2019[409]). They also note that the resource itself does not fully finance the necessary training and skills (ABONG, 2014[373]). This is especially problematic for small CSOs that do not have the staff or knowledge necessary to comply with the administrative requirements. Some states also impose conditions that go beyond those foreseen in law. For example, one study of 31 subnational decrees implementing the MROSC Law found provisions for additional documentary requirements for CSOs receiving public funds that the national law did not foresee (Leichsenring et al., 2020[345]). Another challenge is that unregistered organisations are unable to partner with the government, since the MROSC requires legal and fiscal regularity (Government of Brazil, 2014[339]). Similarly, organisations without an office address are unable to formally register themselves, effectively excluding many smaller CSOs.

The decrease in available funding at the national and international levels has undoubtedly affected CSOs' ability to operate. In addition to a decrease in available funding from the federal government, CSOs also report a drop in the number of public calls for proposals in the last two years, the cancelation of funding programmes that were formerly regular and cases of contracts approved but resources not sent[63] (Bergamo, 2021[410]; Igarapé Institute, 2021[411]). Following the 2008 global economic crisis, a decrease in international funding was especially critical for advocacy and watchdog CSOs and those working on the defence of rights. Identifying and reaching foreign funders can be difficult for smaller organisations and for those located in remote areas due to the need to apply for funds virtually and in English. Within this context, CSOs working in these areas could benefit from more public support in line with Provision 8 of the OECD *Recommendation of the Council on Open Government,* which notes that "specific efforts should be dedicated to reaching out to the most relevant, vulnerable, underrepresented, or marginalised groups in society" (OECD, 2017[3]). An initiative from the government of Argentina can provide valuable lessons in this sense. It passed two resolutions in 2020 aimed at facilitating the constitution of CSOs whose main purpose is the promotion of economic, social and cultural rights of vulnerable groups or ethnic communities in conditions of poverty and vulnerability, the promotion of gender issues or organisations supporting

community services (General Inspection of Justice, 2020[412]; 2020[413]). The resolutions present norms that facilitate and reduce the cost of compliance with formalities involved in the establishment of organisations. They foresee a simplified instrument, reducing costs and exemption from certain fees and procedures, subject to the fulfilment of the objectives.

The fiscal incentive laws for donating to CSOs have been a welcome step, although challenges exist for parties to benefit from them. The system is complex and the absence of a centralised information source to guide CSOs through the different funds, their unique procedures and the various entities involved makes it difficult to obtain the necessary information. Existing tax incentive funds and programmes discussed above are also specific to particular areas and exclude CSOs working on issues such as the environment, public security, LGBTI rights and those acting as watchdogs (ABONG, 2015[338]).

The funders themselves also experience challenges. Well-intentioned individuals who wish to support CSOs are often discouraged by the cost of donating and the complexity of the regulations (GIFE, n.a.[414]). For companies, each tax incentive programme has its own rules and to benefit from them, companies must spend money on human resources, structure, technology and communications (Iser, 2018[385]). Although corporate donations can be made under the tax incentive laws if related to an area covered by a fund, the GIFE Census (GIFE, 2019[387]) found that only 14% of the social investments made by its members were made through these laws. Furthermore, as only companies taxed on their real profits are entitled to these incentives, only around 3% of companies in Brazil benefit from them (Iser, 2018[385]; NECCT, 2012[415]).

Potential solutions may be found in other LAC countries, such as neighbouring Colombia, where CSOs face similar challenges but can apply to benefit from a special tax regime for organisations that are non-profit and that use their income for the improvement of their processes or for the achievement of a social purpose (Government of Colombia, 2021[416]). These organisations are typically funded by donations from individuals, corporations or public entities. When entitled to the special tax regime, Colombian CSOs have a 20% income tax rate on net profit or surplus and can be exempt from taxes when their income is destined to programmes with a social purpose or that develop the entity's purpose.

Table 5.3. Overview of obstacles to civil society organisations' financial sustainability in Brazil

Main obstacles for CSOs to access different types of funds and CSOs most affected by these obstacles

Type of funding	Main obstacles to access funding	Most affected civil society organisations (CSOs)
Public funding	• Decrease in availability of funding at the federal level • Focused mostly on health, education and social welfare sectors • Heavy administrative and control requirements • Only registered organisations are eligible	• CSOs focused on the rights of different groups and minorities • Advocacy and watchdog organisations • CSOs engaging at the federal level • CSOs that are critical of government policies • Small organisations • Informal organisations
International funding	• Decrease in availability of funding • More difficult to reach and communicate with	• Small organisations with little capacity to identify and engage with foreign donors
Donations from individuals	• Weak culture of donation • Preference for donations to religious and social assistance CSOs • Tax incentive funds and programmes target particular areas (e.g. funds for children and adolescents, culture, health, sports, the elderly, and people with disabilities) excluding others • Tax disincentives for direct donations to CSOs • Complex legal framework	• Organisations not entitled to existing tax incentive funds, such as those working on the environment, public security, LGBTI rights, advocacy, watchdogs • Small and informal organisations with little capacity to apply for funds
Donations from the private sector	• Only companies taxed on "real profit" are entitled to tax incentives for donations made • Companies prefer to support CSOs based on their own programmes and/or through calls for	• Organisations needing funding to deliver their own programmes • Small organisations with little capacity to engage with donors, apply for funds and report

	proposals • Complex legal framework	back

Recommendations

- Build on existing partnerships with CSOs by expanding public funding opportunities and tax incentives for them, including those working on the rights of marginalised groups, vulnerable people and minorities, and those doing advocacy work, while also protecting their autonomy.
- Seek to reinforce CSO capacity related to applying for and managing public funding, in addition to administrative and tax requirements, through training and communications, particularly for smaller CSOs.
- Train public officials who manage CSO funds to better support applicants with information and to process request for funds more efficiently.
- Facilitate more private donations for CSOs by creating measures that simplify, expand and encourage them, including by:
  - Providing tax exemptions or a tax reduction for donations directed to CSOs or in the public interest.
  - Expanding the Tax Invoice Programme to more states, accompanied by communication reassuring contributors of their privacy in purchases.
  - Adapting or expanding existing tax incentive programmes and funds to other areas (beyond rights of children, health, sport, the elderly and people with disabilities) so that groups operating in other fields become eligible.
  - Simplifying the process and regulations for donations and funds from the perspective of recipient CSOs, donating individuals and companies.
- Consider removing the requirement of an office address for CSOs to register, allowing organisations that do not have a physical location to formalise themselves and apply for public funding.
- Consider ways to recognise the legitimacy of informal CSOs and social movements, and encourage innovative forms of funding that they can benefit from. The government could collaborate with municipalities and the private sector to seek ways to support them on activities that are in the public interest by providing resources, whether financial or material (e.g. meeting spaces).
- Consider adopting a simplified legal regime for CSOs "to support their compliance with labour, social security and tax legislation. A proposal for such a regime has been prepared by Plataforma MROSC, a network with more than 1 300 Brazilian CSOs (Plataforma MROSC, 2021[417]) and presented to the National Congress (Ferrer, Rocha and Mestriner, 2021[418]). It includes provisions on differentiated and preferential treatment for CSOs engaged in actions in the public interest, economic and fiscal incentives, and an exemption from social security contributions, and should be assessed and carried forward in an inclusive consultation with CSOs.

Countering mistrust

The main reasons cited by Brazilians for not donating to CSOs are a lack of resources and mistrust in organisations (IDIS and Charities Aid Foundation, 2016[419]). The perception that resources provided to CSOs could be diverted gained force during a parliamentary inquiry committee that lasted from 2007 to 2010 (National Congress, 2010[420]). The committee was in charge of investigating money transfers from the federal government to non-governmental organisations. Several cases of corruption and misuse of

resources were identified, including related to illicit enrichment, embezzlement, misappropriation and diversion of public money. Ghost organisations, which had been created with the sole purpose of diverting public funds, were brought to the public's knowledge. These scandals made the headlines over the years and may have contributed to a criminalisation of the sector in people's minds (ABONG, 2014[373]).

Another element that may influence citizens' perceptions of CSOs is the existence of organisations that are ambivalent about democratic values. They represent a branch of conservative civil society that explicitly favours authoritarian responses to corruption and the so-called defence of "moral" values (Fowler et al., 2018[421]). They are not new in Brazil, but have become more vocal and influential lately thanks to an effective use of social media and to the formation of coalitions. An example of their growing influence was a 2017 campaign against an art exhibition displaying works of art by Brazilian painters in the city of Porto Alegre, called the "Queermuseu". Campaigners accused the artists and organisers of promoting blasphemy, paedophilia and bestiality, and of attacking Christian values. Following protests at the cultural centre, sponsorship boycotts and an online campaign, the exhibition was cancelled.

The Edelman Trust barometer (Edelman, 2020[422]) shows that trust in non-governmental organisations increased slightly in Brazil in 2019, but is still considered as "neutral", behind countries like Colombia and Mexico, where trust is present. As part of the same research, 51% of Brazilians responded that non-governmental organisations are honest and fair, but as many as 32% said they are corrupt and partial. The fact that most organisations do not have formal employees and operate mainly with volunteers may contribute to the perception that they are not professionalised and capable.

Recommendations

- It is important for the CSO sector to continue to strengthen its professionalism, transparency and accountability with a view to building trust with citizens and government entities alike.
- Parallel to this, citizens' perception of CSOs could be improved via positive public communications from the government that recognises their positive contribution to society, accompanied by the reopening and expansion of opportunities for CSO participation in policy making and service delivery as a means of legitimising them and strengthening trust in them (see also Chapter 6).

Expanding access to data on the CSO sector

The Ipea's online CSO mapping platform was a notable effort to increase the transparency of information related to CSOs in Brazil (Ipea, 2020[347]). In addition to the download of databases, the platform also offers analysis of the data collected in the form of ready-made visualisations of selected indicators. There are currently eight indicators showing the distribution of CSOs per level of employment, area of work, type of service and sub-indicators of these (Ipea, n.a.[423]). These visualisations are extremely useful as they provide an accessible overview of CSOs in Brazil, but could also be expanded further.

The Transparency Portal (Office of the Comptroller General, 2021[424]) is another important tool for CSOs; it provides information on how public money is used, including transfers made to non-profit entities as registered in public budgets. However, the online CSO mapping platform and the Transparency Portal could be better linked. The term used for CSOs in the online CSO mapping platform (civil society organisation, or "OSC" in Portuguese) does not reflect the budget category used in the Transparency Portal for such organisations (nonprofit- entities or "ESFLs" in Portuguese), which goes beyond CSOs. This mismatch makes it difficult for citizens to understand exactly how much public funding the different types of CSOs are receiving, which areas and sub-areas get more or less funding and changes over the years. It is also difficult to know how much funding CSOs receive from federal, state and municipal levels of government and how these rates have changed over the years.

As already noted by the Ipea (2018[354]), fragmentation of information between different public entities is a major limitation for understanding how CSOs operate and fund their activities. Information that is currently

available often lacks detail and does not integrate data from the different public entities concerned. To better understand the relevance of CSOs, Brazil could reorganise relevant data in a way that integrates the local, state and federal levels, in addition to presenting data on private donations, currently managed by the federal revenue service and protected for tax secrecy reasons.

Recommendations

- Expand the ready-made visualisations of selected indicators in the CSO mapping platform to include financial breakdowns, such as public funding per area and sub-area of CSO; sources of funding of CSOs; and the number of partnerships and resource transfers to CSOs from federal, state and municipal public entities, among others. Increase the frequency of new analyses of data.
- Improve linkages between the online CSO mapping platform and the Transparency Portal, ensuring they use the same terminology and simplifying access to information and data on public funding to CSOs.
- Continue to expand the platform by integrating data from different public entities at local, state and federal levels.
- Consider ways to increase access to information on private donations to CSOs. According to the Ipea, selected data from individuals and companies that make donations could be aggregated – to preserve tax secrecy – and made publicly available (Ipea, 2018[354]).

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Notes

[1] For more information see (OECD, n.d.[430]).

[2] The World Justice Project ranks Brazil 67th out of a total of 128 countries in its Rule of Law Index and 16th out of a total of 30 regional countries. The scores and rankings in the index are derived from more than 130 000 household surveys and 4 000 legal practitioner and expert surveys worldwide, making it “the most comprehensive dataset of its kind” (World Justice Project, 2020[10]).

[3] CIVICUS ranks countries according to whether their civic space is open, narrowed, obstructed, repressed or closed. A number of countries in the LAC region, including the Plurinational State of Bolivia, Chile, Ecuador, Paraguay and Peru, were all ranked as “obstructed” in 2020. Argentina and Guyana were ranked as “narrowed”, Suriname and Uruguay as “open”, and Colombia and the Bolivarian Republic of Venezuela as “repressed” (CIVICUS, 2020[14]).

[4] The V-Dem Institute's Liberal Democracy Index is based on 71 indicators, capturing both liberal and electoral aspects of democracy. Many of these are directly relevant to the OECD's pillars of civic space, including: freedom of association (6 indicators under the Electoral Democracy Index); freedom of expression and alternative sources of information (9 indicators under the Electoral Democracy Index); and equality before the law and individual liberty index (20 indicators under the Liberal Component Index) (V-Dem Institute, 2021[12]).

[5]. The top five decliners in the V-Dem Liberal Democracy Index are Poland, Hungary, Turkey, Brazil and Serbia (V-Dem Institute, 2021[12]).

[6] Interview with the Ministry of Women, Family and Human Rights on 8 March 2021.

[7] Brazil has ratified 16 out of 18 international human rights treaties, including the International Covenant on Civil and Political Rights, as well as the Optional Protocol and Second Optional Protocol to the International Covenant, the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Optional Protocol to the Convention (OHCHR, n.a.[426]).

[8] A provisional measure in Brazilian legislation is an instrument with the effect of a law, adopted by the President in cases of relevance and urgency. It has immediate effect but depends on National Congress and Senate approval to become a definitive law (Chamber of Deputies, n.a.[427]).

[9] This section draws from and summarises information provided in a background report prepared by the Library of Congress for the Brazil civic space assessment of the OGR. See Library of Congress (2020[15]).

[10] The type of authorisation required is not specified in the Constitution, but a 2014 Supreme Court ruling indicated that, to ensure representation, the authorisation of members who wish to be represented by an association is indispensable, either individually or through an assembly, recorded in the minutes (Supreme Federal Court, 2014[428]).

[11] According to Article 139 of the Criminal Code, defaming someone by attributing a fact that is offensive to their reputation is punishable by three months' to one year's imprisonment and a fine.

[12] See IACHR, judgment in the case of Ricardo Canese v. Paraguay, 31 August 2004.

[13] See UN Human Rights Committee: General comment No. 34 (2011); Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011.

[14] See UN Human Rights Committee: General comment No. 34 (2011); Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011. See also UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, A/HRC/22/17/Add.4, 11 January 2013, Appendix: Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In the Rabat Plan of Action, blasphemy laws are described as counter-productive, as they may result in a de facto censure of inter- or intra-faith dialogue; for this reason, the recommendation was made to repeal such laws. See also UN Special Rapporteur on freedom of religion or belief, Report, A/HRC/31/18, 23 December 2015.

[15] The Data Protection Law (Law 13709/2018) does not apply to the processing of personal data originating outside the national territory and which are not the object of communication, shared use of data with

Brazilian processing agents or the object of international data transfer with a country other than the country of origin, provided that the country of origin provides a degree of protection of personal data adequate to that provided for in this law (Art. 4).

[16] See the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and the Internet, 1 June 2011.

[17] For more information, see the OECD Good Practice Principles for Data Ethics in the Public Sector (OECD, 2021[431]).

[18] Unless convictions are invoked in order to be exempted from a legal obligation imposed to all or to refuse compliance with an alternative obligation established by law.

[19] Article 3 onwards of Law 7716 of 1989 defines the crimes and corresponding punishments resulting from race- or colour-based discrimination. Article 20 foresees a penalty for practicing, inducing or inciting discrimination or prejudice against race, colour, ethnicity, religion or national origin. Such acts are punishable by one to three years' imprisonment and a fine.

[20] The 32% refers to seats in the lower/single house of parliament in OECD countries.

[21] The Maria da Penha Law defines patrimonial violence as any conduct which constitutes retention, removal, partial or total destruction of objects, work instruments, personal documents, property, values, and rights or economic resources, including those destined to satisfy their needs (Art. IV).

[22] The Maria da Penha Law defines moral violence as any conduct constituting slander, defamation or injury (Art. V).

[23] The penalty for femicide is increased by one-third to one-half if the woman is pregnant or if the crime is committed in the three months following childbirth; against a person under 14 years of age or over 60 years of age; with a disability; or in the presence of a descendant or ascendant of the victim (Government of Brazil, 2015[425]).

[24] Interview with CSOs on 31 May 2021.

[25] Contributions to OECD public consultation on civic space received on 28 February 2021 and 30 March 2021.

[26] Contribution to OECD public consultation on civic space received on 4 February 2021.

[27] Options for answers ranged from 1 (a threat-free environment) to 10 (source protection is under permanent threat). The final result for perceived threats from political power was 8, from the military 8, from judges and prosecutors 8, and from organised crime 9. These unpublished data informed the content of the Press Freedom Index (Reporters Without Borders, n.a.[128]).

[28] Information received from the Ministry of Women, Family and Human rights on 8 September 2021.

[29] Public FTA channels with significant national coverage in Brazil are TV Brasil, owned by EBC which was unified with a government channel in 2019; TV Justiça from the Supreme Federal Court; TV Câmara from the Chamber of Deputies; TV Senado from the Senate; TV Cultura from the State of São Paulo; TV Escola from the Ministry of Education; and Canal Saúde from the Ministry of Health (OECD, 2020[28]).

[30] Options for answers ranged from 1 (no interference whatsoever) to 10 (total interference). The final score for Brazil was 10. These data inform the content of the world-renowned Press Freedom Index (Reporters Without Borders, n.a.[128]). Detailed data were provided to the OECD by Reporters Without Borders on 16 February 2021.

[31] The number is greater than the total number of inhabitants of Brazil as the leak may include information from deceased people and inactive social security numbers (Bolzani, 2021[160]).

[32] Fact-finding mission interviews with health, communication and comptroller authorities on 1-3 March 2021.

[33] Fact-finding mission interview with the Social Communication Office of the Office of the Comptroller General on 9 March 2021.

[34] Misinformation is defined as false information that is shared without the intention of causing harm, whereas disinformation is false information knowingly shared to cause harm (Matasick, Alfonsi and Bellantoni, 2020[187]).

[35] Interview with CSO on 23 July 2021.

[36] Contributions to the OECD public consultation on civic space received on 28 February 2021.

[37] Respondents were asked “Which of the following, if any, are you most concerned about on line? Please select one. False or misleading information from…”. The base sample in Brazil was 2 058 respondents.

[38] Telecentres are public spaces with computers, other IT equipment and broadband Internet connection, offering ICT activities to promote digital and social inclusion (OECD, 2020[182]).

[39] The percentage of Afro-Brazilians residing in homes without garbage collection is 12.5%, compared to 6.0% of the white population; the percentages without water supply are 17.9% and 11.5% respectively; and without sanitary sewers or sewage systems 42.8% and 26.5% respectively (IBGE, 2019[227]).

[40] The categorisation of intentional violent deaths includes murder, bodily injury followed by death, robbery followed by death and deaths resulting from a police intervention.

[41] These plans are: National Public Security Plan (1991); National Public Security Plan, National Public Security Fund (2000); Public Security National Force (2004); National Programme for Security with Citizenship (2007); Safer Brazil, Crack it is Possible to Win and National Public Security Strategy at the Borders, among others (2012); National Plan for Homicide Reduction (2015); National Public Security Plan (2016-17) (Turollo Jr., 2018[232]).

[42] Interviews with CSOs on 4 March 2021, 10 March 2021 and 12 March 2021. Email received from CSO on 28 May 2021.

[43] Email received on 28 May 2021 from a CSO specialised in access to information.

[44] Input received from government source by email on 7 April 2021.

[45] Webinar on 12 August 2021 about the institutional architecture of the Brazilian public security system organised by the Fernando Henrique Cardoso Foundation with academics, CSOs and a police officer (Fernando Henrique Cardoso Foundation, 2021[429]).

[46] In the context of this chapter, and in line with Art. 144 of the Brazilian Constitution, public security bodies refer to the federal police; federal road police; federal railway police; civil police forces; military police forces and firemen bodies; and federal, state and district criminal police forces.

[47] Information received from the Ministry of Women, Family and Human Rights on 8 September 2021.

[48] Information received from the Ministry of Women, Family and Human Rights on 8 September 2021.

[49] Information received from the Ministry of Women, Family and Human Rights on 8 September 2021.

[50] More specifically, written inputs received on 1 February 2021, 4 February 2021, 23 February 2021, 26 February 2021, 28 February 2021 and 1 March 2021.

[51] Information received from the Ministry of Women, Family and Human Rights on 8 September 2021.

[52] *Quilombolas* are residents of *quilombos*, which were settlements established by Afro-Brazilian slaves who escaped.

[53] Interview with CSOs on 12 March 2021 and 31 May 2021. Public consultation inputs received on 4 February 2021.

[54] The term used by the Ministry of Women, Family and Human Rights is LGBT.

[55] The term LGBTI+, which includes lesbian, gay, bisexual, transgender, intersex and other variations, is used by the organisations Acontece Arte e Política LGBTI+ and Grupo Gay da Bahia.

[56] The following 12 countries had ratified the Escazú Agreement at the time of writing: Antigua and Barbuda, Argentina, Bolivia, Ecuador, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia, and Uruguay.

[57] This public interest designation can be given to non-profit, non-public entities that have been in regular operation for at least three years and have a social purpose (Government of Brazil, 1999[336]).

[58] CSOs are considered to be entities that simultaneously meet five criteria: 1) private and not bound to the state; 2) not-for-profit; 3) legally constituted; 4) self-administered and managing their own autonomous activities; 5) constituted voluntarily by individuals, and whose activities are performed voluntarily. This definition, based on the 2002 *Handbook on Non-profit Institutions in the System of National Accounts* produced by the United Nations Statistics Division and John Hopkins University is used by the statistical and research bodies of the federal government, the IBGE and the Ipea.

[59] Roundtable discussion on 15 April 2021.

[60] Tax incentive laws and funds include the Culture Incentive Law and Audiovisual Law, Sports Incentive Law, Children and Adolescents Fund, Elderly National Fund, National Health Care Attention Support Programme (Pronas), National Oncological Care Support Programme (Pronon), and National Culture Support Programme (Pronac).

[61] "Real profit" refers to taxes levied on a company's actual profit and calculated based on monthly or quarterly revenue. As established by law, some business activities must opt for this regime. It also includes companies whose annual gross revenue is more than BRL 78 million.

[62] These include the following: the Secretariat of Government of the Presidency, the Public Prosecutor's Office, the Union Public Defender, the Office of the Comptroller General and the Supreme Federal Court (Government of Brazil, 2021[360]).

[63] Roundtable discussion on 15 April 2021.

6 Citizen participation in Brazil: Involving citizens and stakeholders in policy making and service delivery

This Chapter analyses participatory practices in Brazil. It first analyses the existing legal, policy and institutional frameworks that create the enabling environment for participation in Brazil. It then reviews the implementation of participatory processes at the Federal, looking closely to the widespread use of public consultations and deliberative practices such as the Councils. Finally, the Chapter looks ahead and provides recommendations to increase inclusion and impact of participatory practices in Brazil.

The participation of the governed in the ruling exercise is a fundamental value of modern democratic societies. Even, if for most people, participation in democratic life starts and ends at the ballot box, citizens are increasingly turning to other forms of engagement to express their preferences and engage in public life, including through social media. As democracy has evolved and adapted to contemporary needs and challenges, citizens are being given more central and active roles in the public decision-making process. Non-electoral participation differs from traditional democratic participation, as rather than selecting representatives, stakeholders directly contribute to the policy cycle and in the design and delivery of services. Both types of participation, that is electoral and direct, are nowadays considered essential ingredients of a healthy democracy, for they pursue the same goals: strengthening trust in democratic institutions and improving the decision making processes to allow for better outcomes (i.e. efficient services and policies that answer citizen real needs).

Participatory processes such as consultations, participatory budgets or deliberative assemblies do not replace formal rules and principles of a representative democracy – such as free and fair elections, representative assemblies, accountable executives, a politically neutral public administration, pluralism and respect for human rights (OECD, 2001[1]) because the ultimate responsibility for decisions remains with elected governments, which are accountable to the population. Their role is to renew and deepen the relationship between governments and the public they serve (Sheedy, 2008[2]). Instead of challenging representatives democracies, these newer understandings of the concept of democracy complement existing institutional arrangements to give citizens a more regular opportunity to influence decisions, and for representatives to take better decisions (OECD, 2020[3]). Participation is a wide concept, and it can include participation in public life through non-institutionalised forms such as protest or activism and institutionalised mechanisms such as elections and participatory practices of various kinds. However, this Chapter only looks at the inclusion of citizens and stakeholders in institutional non-electoral mechanisms. In particular, it looks at both the inclusion of citizens (as individuals, regardless of their age, gender, sexual orientation, religious and political affiliations) and of stakeholders (institutions and organisations, whether governmental or non-public, from civil society, academia, the media or the private sector) in public decision-making.

Defining citizen and stakeholder participation in the context of Brazil

Prior to joining the Open Government Partnership (OGP), Brazil started involving citizens and stakeholders in decision making processes at the local and national level. In the two decades following the democratisation process, the use of innovative mechanisms such as participatory budgeting or policy councils[1] placed Brazil as a democratic innovator (Avritzer, 2009[4]; Pogrebinschi, 2021[5]). However, the opportunities for citizens to participate in public decisions have been steadily reduced in recent years, and the relationship between the government and important sectors of civil society has become polarised, which has resulted in hampering traditionally well established participatory practices.

This Chapter analyses citizen and stakeholder participation in Brazil as part of the broader open government agenda. It starts by defining the concept of participation and its understanding in the context of Brazil. It then focuses on the policies and practices that enables it at the Federal level, while integrating selected good practices from the subnational levels. It analyses the legal, institutional and policy frameworks that underpins the environment for participation as well as the resulting culture of participation both in and outside of government. This Chapter looks at specific participatory practices and mechanisms that have emerged in Brazil and identifies emerging trends that could better unleash the potential of citizen participation. Finally, the Chapter provides recommendations for Brazil to strengthen the frameworks and the culture for participation as well as to ensure impactful and inclusive participatory processes that take advantage of democratic innovations.

The OECD considers citizen and stakeholder participation a pillar of an open government

Throughout the years, the understanding of an open government in OECD countries moved from a transparency-focused agenda to include a more interactive relation between citizens and governments, including other elements such as participation and accountability (OECD, 2016[6]). The OECD Recommendation of the Council on Open Government (Hereafter the Recommendation) defines open government as "a culture of governance that promotes the principles of transparency, integrity, accountability and citizen and stakeholder participation in support of democracy and inclusive growth".

The OECD defines participation as "all the ways in which stakeholders can be involved in the policy cycle and in service design and delivery". Participation, hence, refers to the efforts by public institutions to hear (consultation) and integrate (engagement) in public decision making the views, perspectives, and inputs from citizens and stakeholders. Provision 8 and 9 of the Recommendation (2017) invites Adherents to:

> *8. Grant all stakeholders equal and fair opportunities to be informed and consulted and actively engage them in all phases of the policy-cycle […]"; and*
>
> *"9. Promote innovative ways to effectively engage with stakeholders to source ideas and co-create solutions […]" (OECD, 2017[7])*

There is not a one-size-fits-all model for citizen and stakeholder participation

The OECD acknowledges that participation is not a linear concept and has different modalities as well as degrees of involvement and of impact (2021[8]). One way to understand and analyse participation is by looking at the degree of agency and power given to participants to influence and take part in the process and its outcomes. Arnstein (1969[9]) coined an eight level scale to understand participation, from manipulation to citizen control. The IAP2's Spectrum of Public Participation (2018[10]) measures participation in relation to the impact it has on the decisions using five stages. The OECD (2001; 2017) distinguishes between three levels of citizen and stakeholder participation, which differ according to the level of involvement and impact associated:

- **Information**: an initial level of participation characterised by a one-way relationship in which the government produces and delivers information to the public. It covers both on-demand provision of information and "proactive" measures by the government to disseminate information. This level of participation can refer to for example, open data platforms or public communication campaigns. The proactive and reactive provision of public information is covered in detail in Chapter 7 on Transparency and 9 on Open Government Data.
- **Consultation**: a more advanced level of participation that entails a two-way relationship in which the public provide feedback to the government and vice-versa (comments, perceptions, information, advice, experiences and ideas). It is based on the prior definition of the issue for which views are being sought and requires the provision of relevant information, in addition to feedback on the outcomes of the process. In most cases, there is no obligation to take the views of the audience into consideration when amending plans, making decisions or setting directions. In most consultation meetings, decision makers commit only to receiving the testimony of participants and considering their views in their own deliberations (OECD, 2015[11]). This level of participation can refer to for example, public consultations on draft legislation or consultative bodies on technical questions such as health policies.
- **Engagement**: when the public is given the opportunity and the necessary resources (e.g. information, data and digital tools) to collaborate during all phases of the policy-cycle and in the service design and delivery. Engagement is a relationship based on a partnership between citizens

and governments. The public actively engage in defining the process and content of policymaking. Like consultation, engagement is based on a two-way interaction but it acknowledges equal standing for citizens in setting the agenda, proposing policy options and shaping the decisions – although the responsibility for the final decision or policy formulation in many cases remains a prerogative of public authorities. This level of participation can refer to for example, representative deliberative processes or participatory budgets at the local level.

Table 6.1. Participatory mechanisms in Brazil according to the OECD ladder of participation

Participatory mechanism	Description	Citizens / stakeholders	Level of participation
Open Data Platform	Digital platform with public information and data in an open data format.	Citizens and stakeholders	Information
Online platform Participa Mais Brasil	Online digital platform which aim at centralising different participatory mechanisms at the Federal level: public consultations, public hearings and opinion polls.	Citizens	Consultation
Public hearings	Participatory mechanism open to any interested party, aiming at exchanging opinions and ideas between participants with the objective of informing and discussing government decisions.	Citizens and stakeholders	Consultation
Public consultations	Participatory mechanisms where the organizing public authority aims at gathering inputs, opinions, ideas from citizens and stakeholders on a specific question or decision.	Citizens and stakeholders	Consultation
Collegial bodies (National Policy Councils)	Permanent bodies, at the Federal and subnational levels, with both governmental and non-public stakeholders with the mandate to participate in the prioritisation of topics in the policy agenda, as well as in the formulation and evaluation of public policies. The Councils are usually involved in the organisation of the National Conferences and can issue normative texts such as opinions or guidelines.	Stakeholders	Engagement
Collegial bodies (National Conferences)	National participatory process organised periodically, to gather all relevant governmental and non-public stakeholders to evaluate the situation and propose guidelines for policy formulation in the dedicated policy area. Conferences are multi-level processes with stages at the Municipal, State and Federal level and are usually framed around a specific question or policy question.	Stakeholders	Engagement
OGP Process	Participatory process for the OGP Action Plan which includes consultation and co-creation steps, with online and in-person mechanisms.	Citizens and stakeholders	Consultation and engagement
Roundtables	Mechanisms for debate and negotiation with the participation of both governmental and non-public stakeholders in order to prevent mediate and solve social conflicts.	Citizens and stakeholders	Consultation
Participatory budgeting	Mechanisms that allow citizens and stakeholders to influence public decisions through the direct allocation of public resources to priorities or projects. It is organized usually at the subnational level and can include several stages such as deliberative assemblies, digital voting platforms and co-creation workshops.	Citizens and stakeholders	Engagement
InfoLeg	Mobile application with information about the legislative activities of the House of Representatives. It presents detailed information about deputies, sessions in the plenary, committee meetings, proposals and legislation.	Citizens	Information
E-Democracia	Digital participatory platform in the House of Representatives, which allows citizens to follow the legislative process (interactive hearings), co-draft legislations (WikiLegis), and influence the agenda setting (participatory agenda).	Citizens	Consultation and engagement

Source: Author's own elaboration

Citizens and stakeholders, two important but distinct types of participants

The OECD Recommendation of the Council on Open Government (2017[7]) defines the actors that public institutions can involve in their participatory mechanisms:

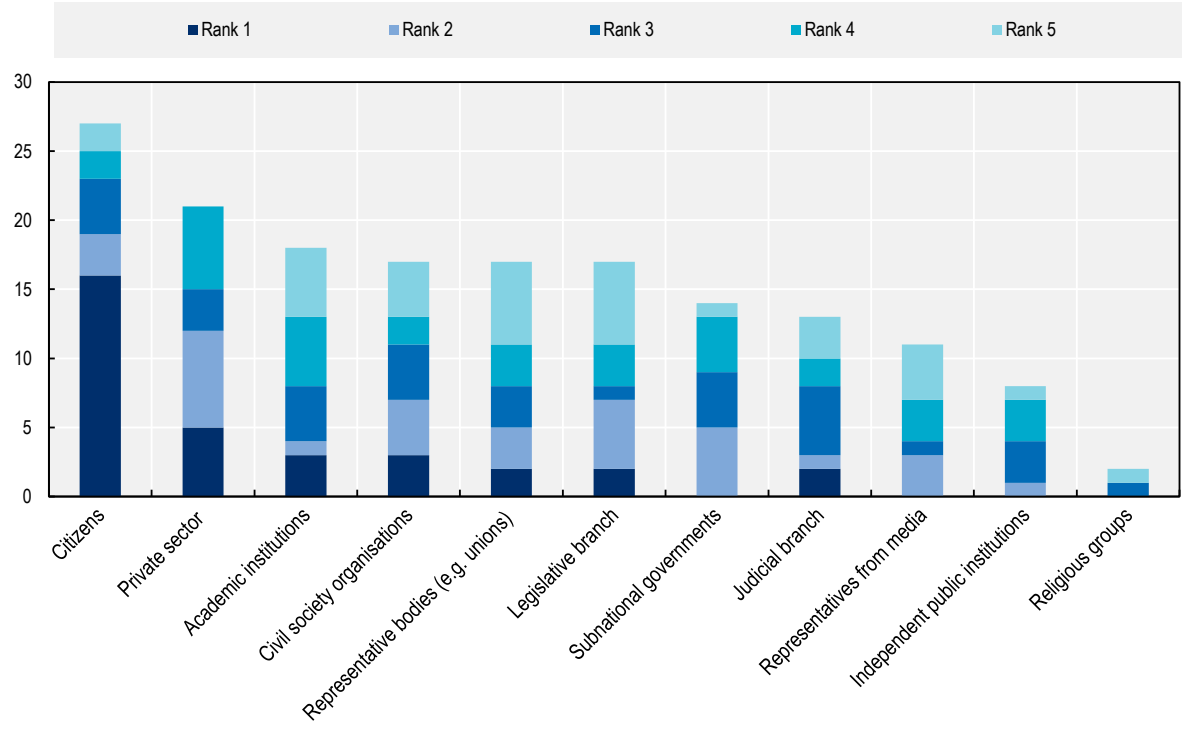
- **Stakeholders**: any interested and/or affected party, including: institutions and organisations, whether governmental or non-public, from civil society, academia, the media or the private sector.
- **Citizens**: individuals, regardless of their age, gender, sexual orientation, religious and political affiliations; and in the larger sense 'an inhabitant of a particular place', which can be in reference to a village, town, city, region, state, or country depending on the context.

The participation of citizens and/or stakeholders are both equally important, however they should not be treated equally. No value or preference is given to citizens or stakeholders in particular, as both publics can enrich the decisions, policies and services of the government. Nevertheless, both types of participants will not require the same conditions to participate and will not produce the same type of inputs. For example, stakeholders can provide expertise and more specific inputs than the broader public, and they can represent specific sectors of society through mechanisms such as advisory bodies or experts' panels. Stakeholders are often driven by specific interests linked to the group they represent, or the values they are supposed to embody. Citizens can provide a general understanding of the needs of the population, support legitimacy and trust in decisions, and enhance representation and inclusion (OECD, 2020[12]).

As per the results of the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* (OECD, 2021[8]) (hereafter *OECD Survey*), public institutions in Brazil interact most regularly with citizens, followed by different types of non-public stakeholders such as private sector representatives and civil society organisations (see Figure 6.1).

Figure 6.1. Frequency of interaction by category of stakeholder

Public institutions where asked to rank a list of stakeholders based on the frequency of their interaction, the figure represents the aggregated answers of the top five responses



Note: N=33
Source: OECD (2020[13]), Survey on Open Government Policies and Practices in Brazilian Public Institutions

Participation can inform decision making, improve public decisions and promote trust

The process of decision making is as important as the outcomes themselves for reasons both of efficacy and of equity. Participation in the process can bring in the views of all stakeholders – from those who will be implementing to the final beneficiaries (OECD, 2011[14]). OECD member countries' experience indicates that participation can improve policy performance and the quality of public services by helping governments to better understand people's needs, tapping on collective intelligence for innovation, creating more cost-efficient policies and enhancing policy implementation (OECD, 2020[12]; OECD, 2009[15]; OECD, 2016[6]). Additionally, participation in the decision making process can promote:

- trust in public decisions and thus support compliance;
- answer concerns of unrepresented publics by addressing inequalities of voice and access and thus fight exclusion and marginalisation; and
- create a sense of belonging and thus foster social cohesion (OECD, 2020[16]).

The benefits of participation can be understood as (OECD, 2016[6]):

- **Intrinsic benefits (i.e. a better and more democratic process):** Refers to the improvement and democratisation of the process, which becomes more transparent, inclusive, legitimate and accountable. A better and qualitative process can contribute to increase legitimacy of public decisions, support policy implementation and evaluation and tap on collective intelligence for innovation and creativity.

- **Instrumental benefits (i.e. better results):** Refers to the idea that participation can improve the quality of policies, laws and services, as they were elaborated, implemented and evaluated based on better evidence and on a more informed choice. Participation can give the "silent majority" a voice in public decision making, addressing inequalities of voice and access, fighting exclusion and marginalisation and thus ensuring democracies deliver to all.

Ultimately, giving citizens and stakeholder a voice in making the decisions that will affect their lives (beyond elections), and ensuring that their voice has an impact on the final decision, can impact trust in government and strengthen democratic institutions (OECD, 2020[17]);

Brazil should consider adopting a common definition of participation to ensure coherent and harmonized practices

The Federal Constitution of 1988 establishes principles and general guidelines to frame the understanding of citizen and stakeholder participation in the Brazilian context. However, in practice, the evidence collected by the OECD, shows that this understanding is not harmonised among public authorities and non-public stakeholders in Brazil.

Social participation is the term regularly used in Brazil to refer to the participation of citizens and stakeholders in policy making and service delivery. This concept is used both in the legislation (i.e. Article 193 of the Federal Constitution) as well as in the day to day communications of public institutions. All the non-electoral mechanisms to involve citizens and stakeholders, such as public consultations or councils are referred to as social participation processes. In addition, social participation is used to contrast with popular participation, which rather refers to democratic participation through elections. This Chapter acknowledges the terminology used in Brazil, but for consistency, it uses the terms coined by the OECD throughout the analysis: citizen and stakeholder participation.

As discussed in Chapter 3, Brazil has multiple definitions of open government in place, which might create confusion and hinder the implementation of a coordinated agenda. Brazil encounters a similar challenge when defining citizen and stakeholder participation as federal public institutions do not have a common definition**.** The Special Secretariat for Social Coordination (SEGOV), the main institution responsible for participation in Brazil, does not provide a definition, neither does the other relevant institutions for this agenda like Casa Civil. Table 6.2 shows the definitions currently used at the Federal level in Brazil, both coined by the CGU.

Table 6.2. Citizen and stakeholder definitions in Brazil

Term used	Definition	Author	Source
Citizen participation	Public authorities seeks to mobilize society to debate, collaborate, and propose contributions that lead to a more effective and responsive government	Comptroller General of the Union	Official website
Social participation	The right for civil society to participate in the design, implementation, monitoring, control and evaluation of public policies.	Comptroller General of the Union	Background report

Source: Author's own elaboration

In addition, evidence collected by the OECD suggests that there is a conceptual confusion among public authorities and non-public stakeholders when referring to participation. In many occasions, stakeholders used social participation and social control as interchangeable concepts. In Brazil, the concept of social control is associated with the inclusion of citizens and stakeholders in the monitoring and evaluation of government actions. Social control refers to vertical mechanisms to implement the principle of accountability, such as Fala.br[2]. Social accountability is part of the open government agenda, and focuses

on ensuring the government is responsible for its actions, and the ability of citizens and stakeholders to question the government and to reward/sanction performance through electoral, institutional, administrative, and social channels such as public meetings (OECD, forthcoming). The confusion is arguably understandable, as both concepts aim at involving citizens and stakeholders in the public action. However, the OECD differentiates these concepts, as they do not pursue the same objective. In the context of Brazil, social participation is about ensuring stakeholders' inputs are taken into account, through consultation or engagement, when designing policies and services, and in general when taking public decisions**.** Social control is about allowing stakeholders to question the government for its actions and performance, and putting mechanisms in place to reward or sanction. The principle of accountability is discussed in detail in Chapter 8, including the different vertical and horizontal mechanisms in place in Brazil.

As recommended in Chapter 2, Brazil could consider adopting a single definition of open government, for public institutions and non-public stakeholders to share a common understanding of what open government entails (and does not), and to work towards a shared vision of openness. This definition could clarify the conceptual differences between social participation and social control, and provide a harmonized vision for participation in Brazil. Finally, a single and coordinated definition of open government that includes participation as a core element, can support the systematic identification of the participatory agenda as part of the broader efforts towards openness.

The enabling environment for citizen and stakeholder participation in Brazil

The enabling environment for citizen and stakeholder participation consists of the set of rules, procedures, and institutions that enable the organization of participatory processes. Chapter 3 provides a detailed review of the enabling environment for open government, including provisions on citizen and stakeholder participation. It finds that provisions relating to open government can be found in numerous legal and regulatory documents creating a fragmentation and hindering the move towards an integrated approach open government approach.

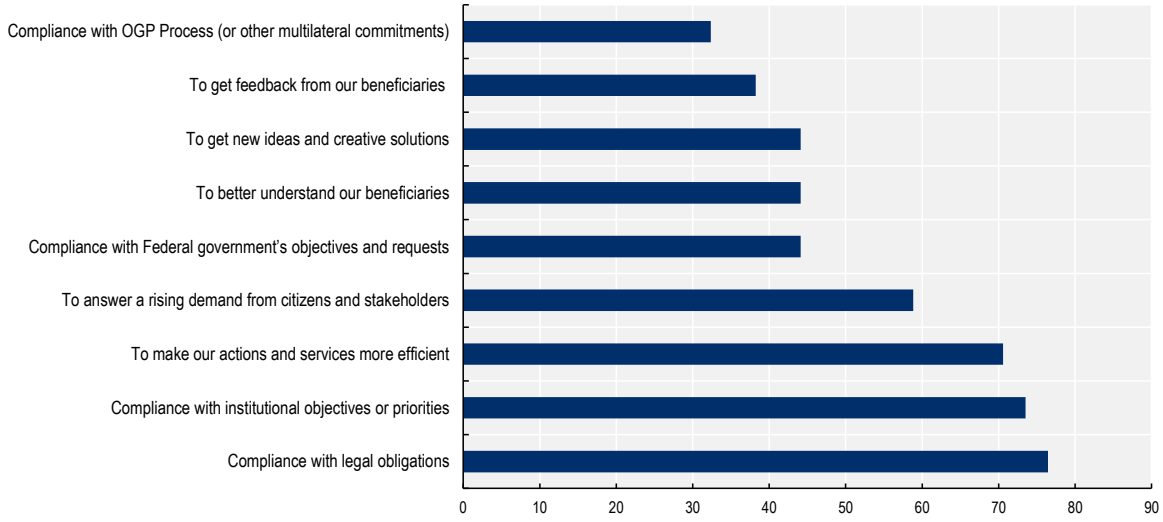
Building on the analysis in Chapter 3, this section looks specifically at the framework for citizen and stakeholder participation in Brazil, including the legislation, the policies and the institutional arrangements than enable participatory practices at the Federal level. It finds that Brazil has a variety of laws and decrees covering many aspects of citizen and stakeholder participation at the Federal and subnational levels as well as in specific policy areas and for targeted groups. This rich framework is comprehensive but scattered and fragmented, and is disconnected from other pillars of the open government agenda. In 2020, Brazil adopted a constitutional amendment to include participation as the responsibility of the State, but has not yet regulated the application of this article (193). In addition, Brazil does not have dedicated policy documents on participation and the main strategic documents in other policy domains do not include elements on participation. The institutional setting and governance mechanisms could be streamlined and strengthened to reinforce the stewardship of this agenda at the Federal level and to improve practices in every public institution. This section suggests that Brazil could consider building an integrated framework for participation and simplify the institutional architecture by mandating two bodies at the Federal level, one for policy coordination at the Centre of Government (SEGOV or Casa Civil) and a technical body (CGU) to support implementation. This section looks in detail at the Decree 9.759 which is modifying the participatory architecture in Brazil, and suggests to review its scope and methodology to ensure an evidence-based review of the collegial bodies.

Legal and policy provisions on citizen and stakeholder participation are important not only to frame the mechanisms to involve citizens and stakeholders, but to provide incentives for public authorities. Data gathered though the OECD Survey shows that compliance with legal obligations (76%) and with

institutional objectives / priorities (73%) are the main drivers for public institutions at the Federal level to involve citizens and stakeholders (Figure 6.2).

Figure 6.2. Motivations for public authorities to involve citizens and stakeholders at the Federal level in Brazil

Respondents were asked to select from a list of options the main motivations of their institution to involve citizens and stakeholders in the decision making process



Note: N=37, as several answers were possible.
Source: OECD Survey on Open Government Policies and Practices in Brazil (2021)

Brazil has a comprehensive but scattered legal framework covering citizen and stakeholder participation

Building on the Constitution, Brazil has adopted numerous laws and decrees to mandate the rights and responsibilities in terms of citizen and stakeholder participation at the Federal and subnational levels of government, as well as addressing specific policy areas and targeted groups in society. This gives participation a high degree of institutionalisation and embeds these practices in the institutional architecture. This section analyses the main clusters of laws and decrees in the area of participation in Brazil to show the diversity of the normative framework. For an overview of the legal and regulatory framework on citizen and stakeholder participation in Brazil, please see Box 6.3.

The Federal Constitution from 1988 is a cornerstone of the Brazilian democratic infrastructure

Brazil's 1988 Constitution builds the foundation for citizen and stakeholder participation in policy making as well as in service delivery. It makes citizen and stakeholder participation a constitutional principle and a pillar of the democratic system. Participatory elements are spread throughout the Constitution, with nine articles referring to the involvement of citizens and stakeholders in public life (Box 6.3).

In 2020, the Congress, led by the opposition, adopted a constitutional amendment which modified Article 193 to include an explicit mention to citizen participation in social policies: "*The State will exercise the function of planning social policies, ensuring, in the terms of the law, the participation of society in the formulation, monitoring, control, and evaluation of these policies*". (Government of Brazil, 1988[18]). As

many provisions included in Constitutions, Article 193 requires subordinated legislation to frame the implementation and the scope of this principle. This represents an opportunity for Brazil to adopt a dedicated legislation (Decree or Law) on citizen and stakeholder participation**.** This legislation could detail the rights of citizens and stakeholders to participate, the responsibilities of the Federal administration in this regard and the mechanisms available to exercise this Constitutional right. It could also be a tool to create synergies between citizen participation and open government in the Brazilian Federal government.

Citizen and stakeholder participation in specific policy areas is regulated by law

Participatory practices differ across policy areas in Brazil. This is due partially to the specific attributions given to Federal and subnational levels, as well as historical evolutions[3]. The Constitution establishes a set of guiding principles for some specific policy areas such as Health, Education and Culture and respective laws regulate and detail the participatory practices associated to each policy area.

For example, Law n° 8.142 from 1990 on participatory mechanisms in the Unified Health System (SUS) details a Constitutional principle (Article 194) and regulates participation in public health. It establishes that the Unified Health System (SUS)[4] includes mechanisms for citizen and stakeholder participation and creates two collegial bodies (see Box 6.1): the Health Conferences and the Health Councils. In particular, this law regulates the National Health Council, a permanent participatory mechanisms with binding powers that created a reference for other collegial bodies at the State and Municipal level as well as in other policy areas such as education (Gurza Lavalle, 2020[19]). Further guidance and explanation on the functioning of these collegial bodies is detailed in Decree n° 5.839 of 2006, as well as in internal regulations (e.g. Resolution n° 407 of 2008 that enacts the internal rules of the Health Council). See Box 6.1 for more information on the Policy Councils and Conferences in Brazil.

Other policy areas have similar jurisdictions regulating how citizens and stakeholders can be involved in the formulation and evaluation of public policies and services, for example:

- **Education**: Law n° 9.131 from 1995 and Law n° 9.394 from 1996 regulate participation in the national education system and provide the mandate for the National Council of Education (CNE)[5] as well as other participatory instances in relation to the Ministry of Education and Sports.
- **Children rights**: Law n° 8.069 of 1990 and Law n° 8.242 of 1991 create both the guidelines for participation in children and teenager policies and establishes the National Council of Children and Teenagers Rights (CONANDA).
- **Environment**: Law n° 6.938 of 1981 and Decree n° 99.274 of 1990 establish the National Policy on Environment and regulate the creation and organisation of the National Council of Environment (CONAMA).

Box 6.1. Policy Conferences and Councils in Brazil

Brazil has a unique set of participatory institutions, the *colegiados* (Hereafter collegial bodies) with representations of government representatives and non-public stakeholders from a specific policy area. Their objective is to allow for the participation of society in the formulation of policies, the design of public services and the monitoring of government action. These bodies differ in their mandate, membership and organisation but they shared common characteristics such as their institutionalisation through a legislation or a decree. **The collegial bodies are non-representative deliberative bodies with a high level of institutionalisation and a binding character.** This Chapter provides a detailed analysis of these participatory bodies.

National Policy Conferences

The Conference is a national participatory process organised periodically, to gather all relevant stakeholders to evaluate the situation and propose guidelines for policy formulation in the dedicated policy area. Conferences are multi-level processes with stages at the Municipal, State and Federal level and are usually framed around a specific question or policy question.

National Policy Councils

The Councils are permanent bodies, at the Federal and subnational levels, with both public authorities and non-public stakeholders with the mandate to participate in the prioritisation of topics in the policy agenda, as well as in the formulation and evaluation of public policies. The Councils are usually involved in the organisation of the National Conferences and can issue normative texts such as opinions or guidelines.

Note: This Review acknowledges that there are other types of collegial bodies that do not fit the above mentioned description, for example, those bodies that do not integrate non-public stakeholders. This Chapter only looks at the Councils and Conferences that are considered participatory bodies, with a legal mandate and representation of non-public stakeholders.
Source: Author's own elaboration based on Government of Brazil (2020), Background Report ; Gurza Lavalle, Adrian (2020[19]), Conselhos gestores de políticas, https://pp.nexojornal.com.br/linha-do-tempo/2020/Conselhos-gestores-de-pol%C3%ADticas ;

The participation of minorities and traditionally excluded groups is protected by law

The participation of specific groups of society is also regulated by dedicated legislation. Involving groups of people beyond the "usual suspects" and empowering minorities and traditionally excluded groups like women, indigenous populations or LGBTI individuals, is key for public decision making to be inclusive and effectively address the needs of all citizens and stakeholders (OECD, 2011[14]). In that sense, Brazil has several laws and decrees that ensures the participation of these groups.

For example, the Law n° 12.852 of 2013 on youth rights and policies, regulates the participation of this specific group in policies and decision making. This law defines youth as all the people between fifteen (15) and twenty-nine (29) years old and establishes the legal framework for policies and programmes addressing this group at the Federal level in Brazil. It includes five articles related to youth participation in public life, policy making and public service delivery (see Box 6.2 for more information on youth participation in Brazil). A similar legal structure is established for the elderly by the Decree n° 9.893 of 2019, which creates the National Council for the Rights of the Elderly.

The participation of underrepresented groups is considered by the OECD as part of a protected civic space, which in turn ensures an inclusive and representative participation. Chapter 5 on Civic space provides a detailed analysis of the civic space in Brazil, and highlights the importance of a protected environment for civil society organisation and underrepresented groups to ensure an inclusive and equal participation. In

the case of Brazil, the participation of certain underrepresented groups is also regulated by legislation. For example, the Decree n° 8.593 of 2015 establishes mechanisms for the participation of indigenous communities in policy making at the Federal level and the creation of the National Council of Indigenous Policies. Other groups are also considered by specific legislation, for example, the Decree n° 7.388 of 2010 creates the National Council to Fight Discrimination against Lesbian, Gay, Bisexual and Transgender individuals, ensuring that they are represented in policy making at the Federal level.

Box 6.2. Youth participation in Brazil

As shown in the OECD report *Governance for Youth, Trust and Intergenerational Justice: Fit for all generations?* enhancing youth participation in public and political life informs policy solutions with a wider range of experiences and skills; it can enhance the trust of young people in public institutions and policy outcomes that are sustainable and responsive to all citizens. The legal framework in Brazil defines as youth as all the individuals between 15 and 29 years of age. It also promotes an active participation of young people in public life as a core principle of all public policies and actions directed to this age group.

Similarly to 14 OECD countries, Brazil has adopted a youth law: **law 12.852 of 2013,** which establishes the rights for young people, as well as the main guidelines for policies and services targeting this group. Article 4 establishes participation in the formulation, execution and evaluation of policies as a right and defines youth participation as:

> *the inclusion of the youth in public and communal spaces based on their conception as active, free, responsible individuals worthy of occupying a central position in political and social processes; the active involvement of the youth in public policies that target and benefit their own communities, cities and regions as well as the country; the individual and collective participation of the youth in actions that contemplate the defence of youth rights or any action that could affect the youth; and the effective inclusion of the youth in public decision-making spaces with right to voice and vote.*

Young people can take part in Brazil's public and political life through electoral and non-electoral mechanisms:

- The minimum age to vote in national and subnational elections in Brazil is sixteen years old, a lower threshold than in most other OECD countries. In the 2018 national elections, 80.5% of young people casted their vote, a higher turnout than the average 68% across OECD countries for which data is available.
- In addition to elections, governments can engage young people through public consultations, by affiliating advisory youth councils to government or specific ministries (as occurs in 53% of OECD countries), or through youth councils at the national (in 78% of OECD countries) and subnational levels (in 88% of OECD countries). In Brazil, young people and youth organisations and associations can participate in the National Youth Council (CONJUVE) and the National Youth Conference (CNJ). The CONJUVE is a youth advisory council established by Law 11.129 of 2005 and Decree 10.069 of 2019 and is composed by one third of government representatives and two thirds of representatives from civil society. The Council's mandate is to formulate and propose guidelines for governmental action and policies targeting young people as well as to articulate and promote exchange between governmental and non-public stakeholders working with and for young people. The Youth Conferences aim at gathering governmental and non-public stakeholders to deliberate and co-produce guidelines for public policies addressing young people in Brazil. The first National Youth Conference was organized in 2008, bringing together more than 400 000 individuals, a number that reached almost 550 000 participants in the second Conference of 2011. Besides allowing young people to influence policy making, the Conferences support the political education and literacy of young people, allowing them to better participate in other formal mechanisms such as elections (Silveira Rocha and Melo Romao, 2016).

Sources: Government of Brazil (2005[20]), *Law 11129 on the National Youth Council and the National System for the Youth,* http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11129.htm; IPEA (2008[21]), *Report on the 1st National Youth Conference* https://www.ipea.gov.br/participacao/images/pdfs/conferencias/Juventude/relatorio_deliberacoes_1_conferencial_juventude.pdf ;

Government of Brazil (2013[22]), *Law 12852 on Youth Participation*; OECD (2020[23]), *Governance for Youth, Trust and Intergenerational Justice: Fit for All Generations?,* OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/c3e5cb8a-en

Participation in public service delivery and evaluation is framed by Law 13.460 from 2017

In contrast with policy making, where citizen and stakeholder participation legislation is fragmented by policy area and by targeted groups, participation in public services is regulated by the Law n° 13.460 from 2017. This law establishes "general rules for the participation, protection and defence of the rights of the user of public services provided directly or indirectly by the public administration" (Government of Brazil, 2017[24]). The law applies to all public service providers in the public administration at the Federal, State and Municipal level and defines user as any individual or entity that benefits or makes use of a public service. It establishes that the user has basic rights such as information and the participation in the delivery and evaluation of the service. The law also creates the Councils of Users, collegial bodies in charge of making this participation effective in collaboration with other bodies like the *ouvidorias* (see Chapter 8 for a detailed analysis of the role of the *ouvidorias* in Brazil). These councils have the following mandate:

1. Participate in the evaluation of the quality and efficiency of the public service delivery.
2. Propose improvements in the provision of public services and contribute to the definition of guidelines for adequate user service.
3. Monitor and assist in the evaluation of the performance of the *ouvidorias*.

This legislation is a positive development as it ensures that governments go beyond the role of simple provider of services towards a greater partnership with all relevant stakeholders, including the private sector, civil society organisations and citizens (OECD, 2016[6])

Box 6.3. Citizen and stakeholder participation elements in Brazil's legal framework

Brazil's Constitution of 1988

The Federal Constitution includes elements on citizen and stakeholder participation in 9 articles.

- **Article 10:** The participation of workers and employers is assured in the collegiate bodies of the public organs in which their professional or social security interests are the object of discussion and deliberation.
- **Article 14:** Popular sovereignty will be exercised through universal suffrage and direct and secret vote[1], through:
  - Plebiscite;
  - Referendum;
  - Popular initiative.
- **Article 37 – XXII:** The law will regulate the forms of direct and indirect participation [of public services users] in public administration […]
- **Article 187:** The agricultural policy will be planned and executed according to the law, with the effective participation of the production sector, involving producers and rural workers, as well as the commercialization, storage and transport sectors […]
- **Article 193:** The State will exercise the function of planning social policies, ensuring, in the terms of the law, the participation of society in the formulation, monitoring, control, and evaluation of these policies.
- **Article 194 – VII:** The government is responsible, under the terms of the law, for organizing social security, based on the following objectives: […] democratic and decentralized administration, through quadripartite management, with the participation of workers, employers, retirees, and the government in the collegiate organs.
- **Article 198 - III:** Public health actions and services are part of a regionalized and hierarchical network and constitute a single system, organized according to the following guidelines: […] participation of the community.
- **Article 204 – II:** The governmental actions in the area of social assistance will be carried out with resources from the social security budget, besides other sources, and organized based on the following guidelines: participation of the population, through representative organizations, in the formulation of policies and control mechanisms at all levels.
- **Article 216A – X:** The National Culture System is based on the national policy and its guidelines, established in the National Plan, and is governed by the following principles: […] democratization of decision-making processes with social participation and control.

Legislation

- Law 8080 of 1990: mandates the participation of users (citizens and stakeholders) in the management of the Unified Health System (SUS).
- **Law 8142 of 1990**: creates participatory instances (Councils and Conferences) for citizen and stakeholder participation in the Unified Health System (SUS).
- **Law 8069 of 1990**: establishes both the guidelines for participation in children and teenager policies and establishes participatory instances.
- **Law 8242 of 1991:** establishes the mandate and provides guidance on the organisation of the National Council of Children and Teenagers Rights (CONANDA).

- **Law 9131 of 1995:** establishes the mandate for the National Council of Education (CNE) and regulates other participatory instances in relation to the Ministry of Education and Sports.
- **Law 9394 of 1996:** makes “democratic governance” a guideline and a principle of the National Education System and complements the mandate of the CNE.
- **Law 9709 of 1998**: Regulates provision I, II and II of article 14 of the federal Constitution. It provides guidance on the use of plebiscites, referenda and popular initiatives.
- **Law 11129 of 2005:** establishes the National Youth Councils (CONJUVE) as the participatory body to articulate youth related public and non-public stakeholders.
- **Law 12852 of 2013:** establishes the rights for the youth, as well as the main guidelines for policies and services regarding this group. It includes youth participation as a right as well as provisions regarding the Youth Councils and Conferences.
- **Law 13460 of 2017:** establishes the rights and mechanisms for users to participate in the delivery and evaluation of public services. It also establishes the creation of councils of users as formal and permanent mechanisms for citizen participation.
- **Law 13844 of 2019:** establishes the organisation and mandates of the Presidency of the Republic and other Federal Ministries, and mandates the Secretaria de Governo da Presidencia da Republica as the Federal entity in charge of citizen and stakeholder participation.
- **Law 13848 of 2019: creates the participatory framework (public consultations and public hearings) for all Agencies in the regulatory system in Brazil.**

Decrees

- **Decree 5839 of 2006:** sets the mandate and provides guidance on the organization and attributions of the National Health Council (CNS).
- **Decree 8243 of 2014:** creates the National Policy and the National System for Social Participation, an attempt to create a harmonized framework for citizen and stakeholder participation (revoked in 2019).
- **Decree 9759 of 2019:** extinguishes collegial bodies of the public administration (colegiados) and establishes rules and limitations for their creation. This decree closes the collegial bodies (colegiados) created by decree, normative act inferior to a decree or act of another collegial body.
- **Decree 10160 of 2019:** establishes citizen participation as a directive of the National Policy on Open Government.
- **Decree 10531 of 2020**: sets Brazil’s Federal Development Strategy for 2020 – 2031, and includes the participation of citizens and stakeholders in key areas such as urban planning and education as guidelines.
- **Decree 10591 of 2020:** establishes the mandate and responsibilities of the Special Secretariat of Social Coordination in terms of citizen and stakeholder participation.

1. It is important to note that in Brazil, the vote is mandatory.

The Decree 9.759 of 2019 is modifying the architecture for citizen participation in Brazil

In 2019, the Brazilian Federal government adopted the Decree n° 9.759 which establishes rules, guidelines and limitations on the collegial bodies of the Federal administration (Box 6.1 defines these bodies). As established in the Decree’s explanatory statement published by the *Casa Civil*, the Decree aims at eliminate "superfluous and unnecessary collegial bodies, with unknown results and overlapping attributions with those of individual authorities or other collegial bodies” (Government of Brazil, 2019[25]). Besides an “unmanageable proliferation”, the government motivates the “massive extinction” of collegial bodies with

other arguments such as the financial burden, the multiplication of normative acts produced by the collegial bodies, and the "use by interest groups of these bodies to counter the decisions made by elected authorities". (Government of Brazil, 2019[25]) (Rosa da Silva, da Silva Pereira and Bezerra Bassani, 2020[26]). According to the government, the decree contributes to overall efforts of the current administration to "rationalise and de-bureaucratise the Federal administration".

Box 6.4. Decree 9759 of 2019

Objective and scope of action

Art. 1: This Decree extinguishes and establishes guidelines, rules and limitations for collegial bodies of the Federal public administration. The application of this Decree encompasses collegial bodies created by :

I – decree

II - a normative act inferior to a decree; and

III - an act of another collegial body.

These provisions shall also apply to collegial bodies instituted by an infra-legal act, where the law in which they are mentioned does not contain provisions on competence or composition.

Art. 2: For the purposes of the provisions of this Decree, the following are included in the concept of collegial bodies:

I - councils

II - committees

III - commissions

IV - groups

V - boards

VI - teams;

VII - roundtables;

VIII - forums;

IX - rooms; and

X - any other denomination given to the collegial body.

Rules for the creation of collegial bodies

Art. 3 The collegial bodies that encompass more than one organ, entities linked to distinct organs or entity and organ to which the entity is not linked will be created by Decree. The creation of collegial bodies by means of an administrative order is permitted in the following cases:

I - when the participation of another organ or entity occurs as an invitee to a specific meeting, without the right to vote; or

II - when the collegial body

a) is temporary and has a duration of up to one year;

b) has up to five members

c) has only public agents of the federal public administration among its members;

d) it does not have decision-making power and is intended for matters within the internal scope of the federal public administration; and

e) the meetings do not involve the displacement of public agents to another federative entity.

Extinction of collegiate bodies

Art. 5 As of June 28, 2019, the collegial bodies referred to in this Decree shall be extinct. The extinction does not apply to collegiate bodies

I - provided for in the internal regulations or in the statute of a federal educational institution; and

II - created or altered by an act published as from January 1st , 2019.

Provision regarding collegial bodies

Art. 6 The proposals for the creation, re-creation, extinction or modification of collegiate bodies must:

I - observe the provisions of articles 36 to 38 of Decree No. 9,191, of November 1, 2017 , even if the act does not fall under the jurisdiction of the President of the Republic;

II - establish that the meetings whose members are in different federal entities shall be held by videoconference;

III - estimate the expenses with per diems and travel expenses of the collegiate members and prove the budgetary and financial availability for the current fiscal year, in the event the impracticability or inconvenience of holding the meeting by videoconference is demonstrated in a substantiated manner

IV - include a brief summary of the meetings of any predecessor collegiate body held in the years 2018 and 2019, with the measures resulting from the meetings;

V - justify the need, convenience, opportunity and rationality of the collegiate body having a number greater than seven members; and

VI - does not provide for the creation of sub-collegiate bodies by act of the main collegiate body, unless:

a) limitado o número máximo de seus membros;

b) established on a temporary basis and for a duration not exceeding one year; and

(c) the maximum number of sub-collegiate members that may operate simultaneously is fixed.

Procedures of proposals to the Casa Civil (Chief of Staff Office)

Art. 7 In the event that the act falls under the competence of the President of the Republic, the proposals for the recreation of collegial, without a break in the continuity of their work, shall be forwarded to the Civil House of the Presidency of the Republic by May 28, 2019, with due regard for the provisions of this Decree and Decree No. 9,191 of 2017.

Existing collegiate bodies

Art. 8 The agencies and entities of the direct, indirect and foundational federal public administration shall forward the list of collegiate bodies that they chair, coordinate or in which they participate to the Civil House of the Presidency of the Republic by May 28, 2019.

I- The list of linked entities shall be forwarded through the organ to which they are linked.

II- The list shall contain the name of the colleges and the normative acts that govern them.

III- The list of collegiate bodies chaired, coordinated or attended by the organ or entity of the federal public administration shall be published on the electronic site of the organ or entity by 30 August 2019.

VI- The list referred to in Paragraph 3 shall be updated monthly.

V- The provisions of this article do not apply to colleges whose members are public agents of the same organ or entity.

Revocation of the rules on extinct collegial bodies

Art. 9 By August 1, 2019, the acts shall be published, or, as the case may be, the proposals for the express repeal of the rules on collegial bodies extinguished as a result of the provisions of this Decree shall be forwarded to the Civil House of the Presidency of the Republic.

Revocation Clause

Art. 10 Decree No. 8,243 of 23 May 2014 is hereby revoked.

Source: Government of Brazil (2019[27]), Decree 9.759, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9759.htm

This Decree (see Box 6.4 for the Decree in detail) applies to all collegial bodies created by decree prior to 2019, by ordinance (*portaria*), by other collegial body, as well as those created by subordinated legislation if the law itself does not contain provisions describing the composition or the mandate of the collegial body[6]. The collegial bodies created by law or introduced in the Constitution are not part of the scope of this Decree. It includes collegial bodies with the participation of non-public stakeholders, such as National Policy Councils, as well as those exclusive to government representatives, such as Committees (see Box 6.15 for more details on the different types of collegial bodies). *Casa Civil* estimated than around 700 instances were in the scope of the Decree, but highlighted in the explanatory statement that it was not able to establish an official list of these instances (Rosa da Silva, da Silva Pereira and Bezerra Bassani, 2020[26]).

The Decree 9.759 extinguishes existing collegial bodies (article 5) and mandates *Casa Civil* to centralise all the information and requests regarding the participation of Federal authorities in collegial bodies (article 7, 8 and 9) (Government of Brazil, 2019[27]). In addition to the extinction of collegial bodies, the Decree sets conditions and rules to maintain existing bodies, to recreate or create new ones (articles 3 and 6), such as: “to justify the need, necessity, opportunity and rationale for the collegiate body to have more than seven members” and organize all sessions in a virtual setting (Government of Brazil, 2019[27]). The Decree suggests to public authorities to rationalise the scope, duration and membership of these bodies, as well as the regularity of meetings and the creation of subordinated bodies.

In application of the Decree, several collegial bodies were extinct or had their mandate and composition modified. In complement of the Decree 9.759, the Government of Brazil published the Decree 9.784 in May 2019 which extinguished 55 collegial bodies, including those with representation of non-public stakeholders such as the Council of Social and Economic Development (*Conselho de Desenvolvimento Econômico e Social)* and the National Council of Rural Sustainable Development (*Conselho Nacional de Desenvolvimento Rural Sustentável*) (Government of Brazil, 2019[28]). In addition to the extinction of certain bodies, the modifications have impacted the representation of non-public stakeholders in the collegial bodies, by reducing the number of seats, limiting their participation to one mandate, changing their selection process, and appointing the presidency to a public authority. Table 6.3 below lists some of these changes.

Table 6.3. Examples of modifications to collegial bodies in response to Decree 9.759

	Status after Decree 9.759	Composition prior to Decree	Composition after Decree	Legal changes
National Council to Fight Discrimination *(Conselho Nacional de Combate à Discriminação)*	Recreated with modifications on mandate and composition. Its mandate has been modified to become only a consultative body and erase all specific mentions of LGBTI communities.	• 15 representatives from the Federal administration • 15 representatives from non-public stakeholders for a 2 years mandate, renewable once. • Presidency alternated between public authorities and non-public stakeholders	• 4 representatives from the Federal administration • 3 representatives from non-public stakeholders) for a 1 year mandate, non-renewable. • Presidency held by a public authority	Decree 7.388 of 2010 revoked by Decree 9.883 of 2019.
National Council for the Rights of the Elderly *(Conselho Nacional dos Direitos do Idoso)*	Recreated with modification on mandate and composition. Its mandate has been reduced, with no mention of fiscal or policy responsibilities in the current version.	• 14 representatives from the Federal administration • 14 representatives from non-public stakeholders (self-selected) for a 2 years mandate, renewable once. • Presidency alternated between public authorities and non-public stakeholders	• 6 representatives from the Federal administration • 6 representatives from non-public stakeholders (appointed by the Ministry) for a 1 year mandate, non-renewable. • Presidency held by a public authority	Decree 5.109 of 2004 revoked by Decree 9.893 of 2019
National Council on the Rights of the Child and Adolescent *(Conselho Nacional de Direitos da Criança e do Adolescente)*	Recreated with modifications on its composition.	• 14 representatives from the Federal administration • 14 representatives from non-public stakeholders (elected by the Council) for a 2 years mandate, renewable once. • Presidency designated by the President of the Republic	• 9 representatives from the Federal administration • 9 representatives from non-public stakeholders (selection process to be determined by the Ministry of Women, Family and Human Rights) for a 2 years mandate, non-renewable. • Presidency designated by the President of the Republic	Decree 9.579 of 2018 revoked by Decree 10.003 of 2019
National Environmental Council (*Conselho Nacional do Meio Ambiente)*	Recreated with modifications on its composition.	• 71 representatives from the Federal administration • 29 representatives from non-public stakeholders (self-selected) for a 2 years mandate, renewable once. • Presidency alternated between public authorities and non-public stakeholders	• 17 representatives from the Federal administration • 6 representatives from non-public stakeholders (selected by lottery) for a 1 year mandate, non-renewable. • Presidency held by a public authority	Decree 99.274 of 1990 modified by Decree 9.806 of 2019

Source: Author's own elaboration based on the Decrees 9.759 of 2019, 7.388 of 2010, 9.883 of 2019, 5.109 of 2004, 9.893 of 2019, 9.579 of 2018, 10.003 of 2019, 99.274 of 1990 and 9.806 of 2019.

As of December 2021, the Government has not been able to provide complete information and data on the scope of the Decree, the approximate real costs or estimated savings, the membership of the collegiate bodies or the results of the Decree[7]. However, a recent study suggests that since 2019, almost 75% of the main National Policy Councils have been closed or seen their civil society membership drastically reduced (Jornal Nacional, 2021[29]). Civil society organisations including IMAFLORA, Article 19 and Instituto Socioambiental (2021[30]) published a report showing that from all the collegial bodies related to environmental policies at the Federal level, 18% were extinct and 41% suffered modifications to their composition resulting in a weaker participation of non-public stakeholders. Gurza Lavalle (2020[19]); (2021[31]) suggests that the modification in selection rules for non-public stakeholders, has created further barriers for traditionally excluded groups or smaller organisations to participate in these instances. Evidence gathered by the OECD during interviews suggest that there is a certain consensus among non-

governmental stakeholders from academia and civil society, that the Decree reduced drastically, in qualitative and quantitative terms, the space for citizen and stakeholder participation in Brazil. The lack of official information and evidence is not allowing to undertake an evidence-based review of the impact of the Decree and jeopardises the confidence and compliance from the broader public.

Besides criticism from non-public stakeholders, the Decree 9.759 has also faced opposition from public institutions. In 2019, the Federal Supreme Tribunal (*Supremo Tribunal Federal - STF*) accepted a request of unconstitutionality and censored articles 1 and 9 of the Decree (Agencia Brasil, 2019[32]). The Judges sanctioned the lack of clarity on the scope of the Decree (i.e. the collegial bodies to be affected) which created legal uncertainty for hundreds of instances. The General Attorney's Office has also raised concerns, stating that "the decree is excessively generic, putting in jeopardy hundreds of collegial bodies that guarantee social participation in the public policy cycle" and that it puts at risk the democratic right for citizens to influence and monitor government action (Agencia Brasil, 2019[32]) (General Attorney's Office, 2019[33]).

The Decree includes provisions that are not related to the collegial bodies, such as article 10 which revokes the Decree 8.243 of 2014 which established the National Policy on Social Participation (*Política Nacional de Participação Social - PNPS*) and a National System of Social Participation (*Sistema Nacional de Participação Social – SNPS)* which created both a framework to harmonize laws, decrees and practices (the "policy"), as well as network of participatory instances and practitioners (the "system") (Government of Brazil, 2014[34]). Both the Policy and the System were partially implemented, as the Decree 8.243 of 2014 faced criticism and opposition from the Congress perceived as an attack to the mandate given to elected representatives (Camara dos Deputados, 2014[35]). However, the Decree 9.759 does not offer an alternative to the National Policy on Social Participation and, as shown above, it rather affected existing instances of participation.

Box 6.5. Brazil's National Policy on Social Participation (2014 – revoked in 2019)

In 2014, Brazil's attempted to create a harmonized framework for citizen and stakeholder participation at the Federal level; the National Policy and System on Social Participation. It included key definitions of both the public involved and the instances and mechanisms that create the policy and the system. It defined non-public stakeholders as civil society including "citizens, associations, institutionalised or non-institutionalised social movements, their networks and organisations". The general guidelines of the National Policy on Social Participation were detailed in the Decree n° 8.243 of 2014 as follows:

- recognition of citizen and stakeholder participation as a citizen right;
- integration of different mechanisms and instances of representative, participatory and direct democracy;
- respect for social diversity in terms of ethnicity, race, culture, age, origin, gender, sexual orientation, religion and social, economic conditions as well as any disability, in order to build citizenship values and foster social inclusion;
- right to information, transparency and social control of public action, using simple language, considering the characteristics and language of the population to which the message is addressed;
- promotion of education for active citizenship;
- autonomy, free functioning and independence of civil society organisations; and
- increase of social control mechanisms (vertical accountability).

In addition, the Decree defined and listed the different mechanisms and instances that composed the National System on Social Participation, including collegial bodies such as the National Policy Conferences and Councils. In practical terms, the Policy mandated public authorities at the Federal level to foster the use of participatory mechanisms for their policies and programmes and publish annual monitoring reports. It also covered the quality and practical elements of certain participatory instances with articles that harmonized the composition and organisation of the collegial bodies (Councils, Committees and Conferences) with the objective of promoting a balanced participation of public authorities and non-public stakeholders.

Source: Government of Brazil (2014[34]), Decree n° 8.243

In conclusion, the evidence collected by the OECD through desk research (Gurza Lavalle and de Paiva Bezerra, 2021[31]; Rosa da Silva, da Silva Pereira and Bezerra Bassani, 2020[26]) and during the fact-finding mission suggest that there is indeed a proliferation of collegial bodies in Brazil and a challenge to map the complexity of the system. In turn, this can lead to overlaps between collegial bodies and other public institutions and it contributes to the impression among public authorities at the Federal level that the collegial bodies are disorganized, expensive, with unclear results and unknown impact (Rosa da Silva, da Silva Pereira and Bezerra Bassani, 2020[26]). However, as detailed in the analysis presented in this section, the Decree 9.759 has affected the opportunities for non-public stakeholders to influence public policies. By closing participatory instances, decreasing the seats for civil society representatives, affecting the selection methodology and revoking the National System for Social Participation, the Decree 9.759 is weakening important and historical spaces for deliberation and participation. This is of particular importance, as data collected by the OECD show that the collegial bodies are the most used participatory mechanism by public authorities at the Federal level (see Figure 6.11).

Finally, the negative narrative put forward by the Government vis-à-vis the collegial bodies in the explanatory statement and other public documents and the absence of prior consultation with the members

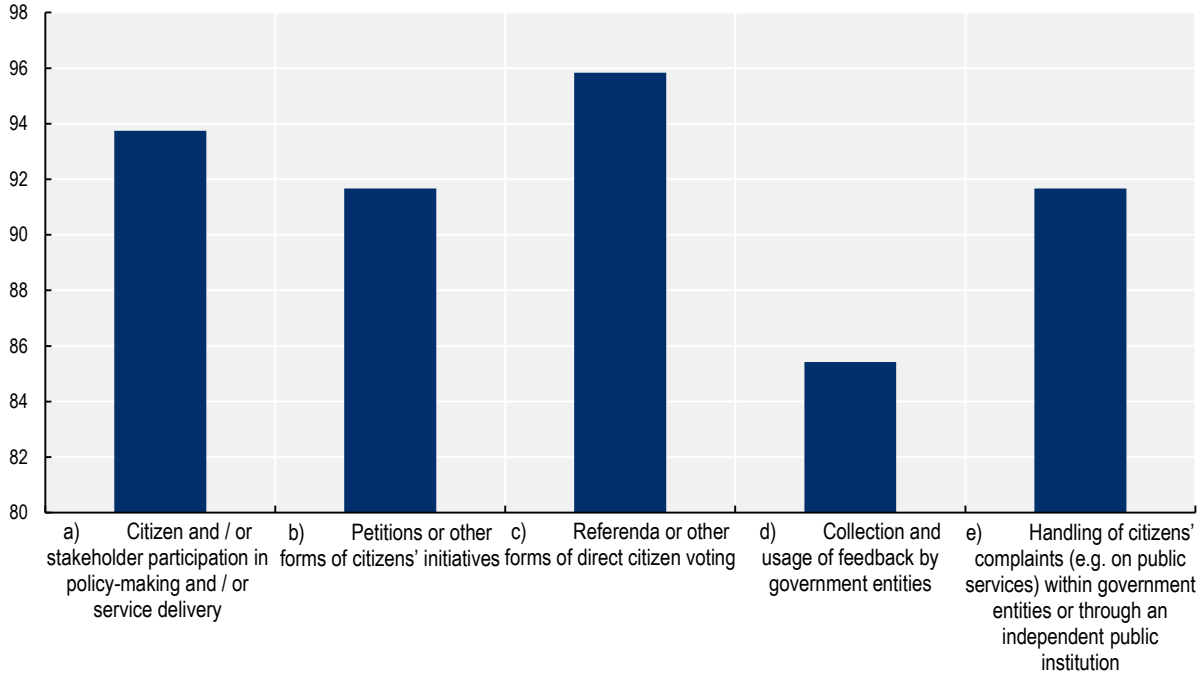
of the collegial bodies and non-public stakeholders has created a polarised environment between civil society and the Federal government on this topic.

In order to undertake a constructive review of the collegial bodies, and properly address the challenges of its participatory system, **Brazil could consider reviewing the Decree n° 9.759, and adopting a new approach involving all relevant governmental and non-public stakeholders to elaborate an evidence based review of the collegial bodies that takes into account the challenges, as well as the opportunities of these participatory institutions.**

Brazil could consider moving towards an integrated legal framework for citizen and stakeholder participation

The legal framework on citizen and stakeholder participation in Brazil is rich and comprehensive, with several laws and decrees at the Federal level contributing to the institutionalisation of participatory practices. With specific legislation addressing participation in each policy area, targeted group and for every collegial body, Brazil has a patchwork of dozens of legal provisions covering citizen participation (see Box 6.3). This is the case in the majority of OECD member countries, as data from the OECD Survey on Open Government (2020[13]) shows that 94% of OECD countries and Brazil have a law covering the participation of citizens and stakeholders in policy making and or service delivery, 92% on petitions or other forms of citizen' initiatives and 85% regulate the collection of feedback by citizens. Brazil has adopted legislations on the four categories presented in Figure 6.3, which highlight its rich legal framework. Other OECD countries such as Colombia have adopted unified legislations to frame citizen participation, showing the path towards an integrated legal framework (see Box 6.6).

Figure 6.3. Availability of legal provisions regarding citizen and stakeholder participation in OECD countries and Brazil



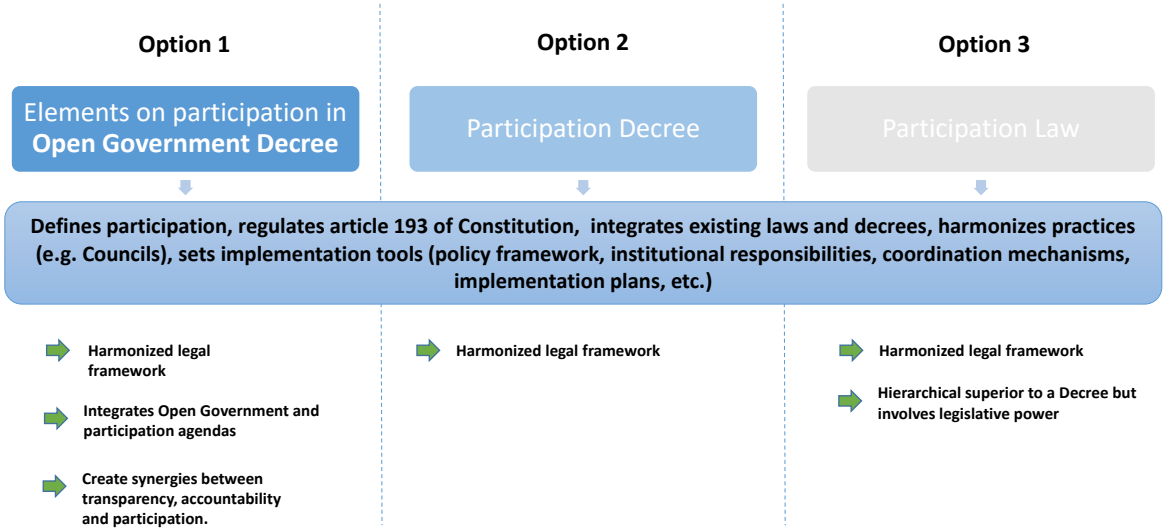
Note: N=30, Figure in percent. Only includes OECD countries that answered the question and Brazil.
Source OECD (2020[13]), 2020 OECD Survey on Open Government

A legal framework, meaning a Decree or a Law that unifies the existing legal provisions, can improve clarity on the existing rights for the public to participate and the obligations for public authorities to involve citizens and stakeholders. On the citizen side, a unified and coherent framework can support awareness of participatory practices, improve levels of engagement and increase trust on their outcomes. On the public institutions' side, it can support compliance and facilitate implementation. On an institutional perspective, a framework can also empower the authority in charge of its implementation, enhancing institutional stewardship in the area of participation and supporting inter-institutional coordination. In addition, it could help spotting overlaps between practices and reduce the administrative (and financial) burden due to a multiplicity of norms. Finally, on a participatory perspective, a framework could establish a common ground to ensure the quality of participation such as an equal participation of public authorities and non-public stakeholders in all collegial bodies. This framework should purse the alignments between the open government and the participation agenda, to create a common narrative and move towards an integrated open government agenda.

As recommended in Chapter 3, **Brazil could include articles or a section on participation in the suggested review of Decree 10.160 from 2019 establishing the National Open Government Policy to detail the application of Article 193 of the Federal Constitution**. Including elements of participation in the Decree 10.160, could support the integration of the open government and participation agendas, and support a common narrative and shared objectives, such as trust in government, stronger democracy and better policies and services. Otherwise, Brazil could also consider adopting a specific Decree on citizen participation, as the Decree n° 8.243 of 2014 which introduced the National Policy on Social Participation. In both scenarios, the Decree could review the Decree 9.759 of 2019, refer to the existing laws and decrees, establish the rights for citizens to participate in policies, services and strategic decisions, as well as the functioning of participatory instances such as the Councils, the Conferences and list the mechanisms for public institutions to involve citizens and stakeholders in public decision making. It could also include the participation of marginalized and underrepresented groups as well as the protection of the civic space as essential guarantors of a representative and inclusive participation. It could follow the example of the Statute of the City, which includes a chapter on Participation.

Alternatively, **Brazil could consider the introduction of a specific law on citizen and stakeholder participation.** Following the example of existing legislation such as the Law on Access to Information (Law n° 12.527 of 2011), a law on citizen and stakeholder participation could develop the Constitutional provisions (i.e. Article 193), provide elements of context (i.e. a definition and link to open government agenda), establish the scope (i.e. public institutions and policies targeted), inform about rights and obligations (i.e. mandatory consultations), list the mechanisms for citizens to exercise their rights to participate (i.e. Councils and Conferences), and build an institutional architecture to govern the participatory agenda (i.e. mandate and inter-institutional coordination).

Figure 6.4. Models to create an integrated legal framework on citizen and stakeholder participation in Brazil



Source: Author's own elaboration

Box 6.6. Legislations on citizen and stakeholder participation in OECD countries

At the national level, **Colombia** has passed two legislations that frame and harmonize participatory practices:

- **Law 134 from 1993 on Citizen Participation Mechanisms in Colombia:**

In 1993, Congress passed the Law 134 on Citizen Participation Mechanisms, regulating popular legislative and regulatory initiatives; referenda; public consultations at national, departmental, district, municipal and local levels; the revocation of mandates; plebiscites and citizens' assemblies. Law 134 of 1993 established the fundamental rules governing the democratic participation of civil organisations.

- **Law 1757 from 2015 on the Promotion and Protection of the Right to Democratic Participation in Colombia:**

The purpose of the Law 1757 of 2015 on the promotion and protection of the right to democratic participation is to promote, protect and guarantee the right to participate in political, administrative, economic, social and cultural life, and also to control political power. Article 2 stipulates that any development plan must include specific measures to involve people in decisions that affect them and to support different ways of organising society. Similarly, the management plans of public institutions should explicitly state how they will facilitate and promote the participation of citizens in their areas of responsibility. Law 1757 of 2015 created the National Council of Citizen Participation, which advises the National Government on the definition, development, design, monitoring and evaluation of public policy on citizen participation in Colombia The composition of the Council ensures the representation of the National Government (Minister of the Interior and the Director of the National Planning Department), the subnational level (Departments and Municipalities) and several representatives from non-public stakeholders.

At the subnational level (Federal State), **Mexico** has passed several laws regulating citizen participation. The most updated and ambitious legislation was passed in Mexico City in :

- **Law on Citizen Participation of 2019 in Mexico City:**

This law establishes the different mechanisms that citizens and stakeholders have to participate in public decisions. The law frames citizen participation and establishes twenty mechanisms and instruments for its implementation organized by type of democracy: six mechanisms of direct democracy, six mechanisms for participatory democracy and eight mechanisms for representative democracy. The instruments established by the law are diverse, among which public consultations, participatory budgeting, citizen assemblies and citizen initiatives. It also establishes the governance and institutional mechanisms to ensure the effective participation of citizens, with an open state approach as it include representatives from the executive, the legislative, the judicial and independent institutions. Lastly, the law regulates the use of digital tools for citizen and stakeholder participation.

Source: OECD (2021[36]), Guía OCDE para diseñar e implementar estrategias territoriales de Gobierno Abierto en Colombia, https://www.oecd.org/colombia/Guia-ocde-para-disenar-e-implementar-estrategias-territoriales-de-gobierno-abierto-en-colombia.pdf; Instituto Electoral de la Ciudad de México (2019), Nueva Ley de Participación Ciudadana, https://www.iecm.mx/wp-content/uploads/2019/09/InfografiaLPCCM.pdf

Participation is scattered across policy documents, without a unified and strategic vision

As further discussed in Chapter 3, policy documents (strategies, roadmaps, plans, etc.) are a key part of the enabling environment for open government as they guide public authorities in the implementation of policy reforms. Brazilian public institutions publish regular policy documents on many topics, including strategic vision, as well as open government related areas: integrity, open data, digital government, etc.

This section provides an in-depth discussion of the use of policy documents to foster the implementation of participatory practices in Brazil. This section finds that Brazil has included elements of citizen and stakeholder participation in a diverse set of policy documents, such as the Open Government Partnership (OGP) action plans and the Multiannual Plans (PPA). However, these elements are scattered and Brazil does not have a dedicated policy document on citizen and stakeholder participation at the Federal level. Brazil attempted to establish a coherent framework with the Policy on Participation of 2014 but it was revoked in 2019.

OGP action plans have advanced key milestones in the citizen and stakeholder participation agenda

As noted in Chapter 3, Brazil's Open Government Partnership (OGP) action plans marked the first attempt to group different initiatives relating to the open government principles under the umbrella of the concept of open government and have been the main driver of Brazil's open government agenda. Evidence collected by the OECD suggests that many Member and Partner countries have used their action plans to reinforce the framework for participation (e.g. as the Citizen Participation Councils and Legislation in Chile), develop trainings on participatory practices for public officials (e.g. Open Government Education in Spain), or create new digital participation platforms (e.g. Participa.br the digital platform for participation in Brazil).

Brazil has implemented four action plans, and is currently (June 2021) in the drafting process of its fifth plan (for more information on Brazil's OGP Process and Action Plans, please refer to Chapter 3). As discussed in Chapter 3, Brazil's OGP action plans have traditionally had a relatively strong focus on transparency and open data, with less emphasis given to commitments targeting citizen and stakeholder participation. However, the percentage of commitments regarding the participation agenda have gradually increased from 14% in the first Action Plan to 45% of commitments in the fourth (see a list of commitments in Box 6.7). Important milestones for participation in Brazil such as the 1st National Conference on Transparency and Social Control (CONSOCIAL) and the online platform for participation (Participa Mais Brasil) are outcomes of OGP Action Plans. **Brazil could continue using the OGP Process to foster an inter-institutional dialogue on participation and use future action plans as an opportunity to improve Brazil's citizen and stakeholder agenda. Brazil could for example consider including commitments to introduce an integrated legal framework on participation (i.e. a Decree on Citizen Participation), strengthen current practices (guidelines on public communications for Councils and Conferences) or pilot innovative approaches (a representative deliberative process).**

Box 6.7. Citizen participation commitments in OGP Action Plans in Brazil

Action Plan 4 (2018 – 2020):

- Increase participation of various social segments on the legislative process law developing through integrated efforts to increase transparency adjust language communication and promote innovation
- Transparency and Public Participation over Mariana´s Reparation Processes and other Municipalities in the Region
- Develop collaborative practices on public management in to promote the implementation of open government actions in states and municipalities.

Action Plan 3 (2016 – 2018):

- Implement open government fostering actions with the engagement of civil society considering the ongoing experiences in states and municipalities
- Integrate online tools on a single platform in order to consolidate strengthen the Social Participation System SPS
- Maximize social participation on the Pluriannual Plan through the Intercouncil Forum

Action Plan 2 (2013 – 2016):

- Build Brazil's Digital Portal for Social Participation
- Electronic System for Public Consultations
- Development of a methodology for Social Participation on the monitoring of the Pluriannual Plan PPA and on the formulation of the Federal Public Budget
- Improvement of Mechanisms for Social Participation in the formulation of Public Policies

Action Plan 1 (2011 – 2013):

- Organization of the 1st National Conference on Transparency and Social Control (CONSOCIAL)

Source: Author's own elaboration based on OGP Explorer (2020[37]), https://www.opengovpartnership.org/explorer

National strategic policy documents can give participation a transversal perspective, high-level visibility and a strong institutional anchor in the long-term

At the national level, the Government of Brazil publishes two main national strategic policy documents, the Multi-annual Plan of the Union (*Plano Plurianual da Uniao* – PPA)[8] and the National Strategy for Economic and Social Development for 2020-2031 (*Estratégia Nacional de Desenvolvimento Econômico e Social 2020-2031,* ENDE) which mandate the general objectives of the Federal Government. Since 2008, the consecutive Multi-annual Plans of the Union (PPA) have been designed in a participatory manner, including citizen consultations and deliberative spaces such as the Council and inter-councils, and included citizen participation as a transversal policy objective (Government of Brazil, 2020[38]). For the 2008 – 2011 period, one of the Plan's main objective was to "strengthen democracy, with gender, racial and ethnical equality, transparency, social participation and human rights" (Government of Brazil, 2008[39]). The 2012 – 2015 version included as an element of the "Vision of the Future" for Brazil (Government of Brazil, 2011[40]). In 2016, the PPA included the following strategic axis: "Strengthening Public Institutions, with citizen participation and control, transparency and qualitative public management" with concrete

commitments to foster participation in policy making (Government of Brazil, 2015[41]). In contrast, the 2020 - 2023 PPA participatory design was reduced to an online consultation, without the inclusion of collegial bodies, or other representative instances and in terms of content, the current PPA does not mention citizen and stakeholders participation (Government of Brazil, 2019[42]). Practices from other OECD Member Countries could support Brazil's integration of open government principles in high level policy documents. For example, Colombia included the notion of an open state and a cross-cutting on citizen participation in the 2018-2022 National Development Plan, with specific commitments to encourage openness and participatory practices at the institutional level (OECD, 2021[36]). In addition, every public institution (Ministries, Agencies, etc.) has to develop its own strategic plan to ensure their action is aligned with global government actions put forward by the above mentioned documents. The OECD found that a great number of public institutions have included elements that are related to the inclusion of citizens and stakeholders in their strategic plans (see Box 6.8).

The inclusion of elements in national strategic documents such as the PPA, or institutional documents, give the agenda a cross-policy perspective, high-level visibility, it anchors it in the long-term and connects it with other objectives of the government. It is an effective tool to put the open government principles, including participation, at the forefront of government action and create a culture of participation across government. **Brazil could consider including clear milestones to increase participatory opportunities as part of its current National Strategy for Economic and Social Development for 2020-2031 (*Estratégia Nacional de Desenvolvimento Econômico e Social 2020-2031,* ENDE) or the upcoming 2023 – 2026 multi-annual planning plan (*Plano Plurianual da Uniao* – PPA).**

Box 6.8. Examples of Institutional Strategic Plans including participatory elements

- The **Comptroller General of the Union (CGU)** includes participation as part of the vision, the mission and the results expected for 2020-2023:
  - **Vision**: Be recognized by citizens as the promoter of a participatory, transparent, efficient and effective Public Administration.
  - **Mission**: Increase State credibility through social participation, internal control and the fight against corruption in defence of society.
  - **Results**: Strengthen transparency and social participation in defence of the public interest.
- The **Secretary of Government (SEGOV),** the office in charge of participation at the Federal level, also includes some elements in their 2019-2022 mapping:
  - **Results**: align the needs of society with the policies and actions of government to contribute with the development of local and subnational entities.
- Besides these ministries, some agencies at the Federal level have included participation in their strategic planning, such as:
  - The **National Agency for Telecommunications (ANATEL)** defines citizen and stakeholder participation as a guiding principle as well as a value to take into account for every decision. Concretely, the Agency recognizes the increasing request from citizens (and users) to be involved in the regulations, and establishes objective 8.7 to improve transparency and throughout the regulatory cycle.
  - The **National Agency for Maritime Transportation (ANTAQ)** includes as an expected result "to improve institutional communication, transparency and citizen participation". To achieve this objective, the Agency sets some concrete milestones such as "elaborate a methodology to measure the efficiency of citizen participation as well to adopt a normative framework to support hybrid participation (virtual and in-person).

Source: Author's own elaboration

Brazil could consider developing an overarching policy on citizen and stakeholder participation

As discussed in detail in Chapter 3, policy documents (such as strategies, national policies, institutional plans, memos, action plans, etc.) give direction to a country's policy agenda, outline objectives, detail initiatives to achieve them and facilitate monitoring and evaluation of reforms. Policy documents can further be a tool to harmonise practices across government, facilitate communication with internal and external stakeholder, and support accountability of public action. For the broader open government agenda, Chapter 3 finds that, while a number of policy documents are related and contribute to the open government principles such as the National Open Data Policy, but Brazil currently lacks an integrated whole-of-government policy framework for open government. Chapter 3 recommends that Brazil could consider designing a Federal Open Government Strategy to enable an integrated open government approach.

Brazil does not have policy documents on citizen and stakeholder participation to steer the vision and set objectives and milestones on this agenda at the federal and at the institution level. An attempt to create a Federal policy was introduced in 2014 with the National Policy on Social Participation (Decree n° Decree n° 8.243) but was revoked in 2019. In contrast, other open government related areas have dedicated policies such as the Digital Government for 2020-2022 (*Estratégia de Governo Digital para o período de*

2020 a 2022) or the Open Data Policy of the Federal Executive Branch (*Política de Dados Abertos do Poder Executivo federal*). At the institution level, the OECD found that many public institutions have included relevant elements on citizen and stakeholder participation in their implementation plans such as their Integrity Programmes, Open Data Plans and Digital Transformation Plans as shown in Table 6.4:

Table 6.4. Citizen and stakeholder participation in institutional policy documents

Public Institution	Policy document	Action or objective in relation to participation
Presidency of the Republic (Federal Government).	2019 – 2022 Digital Transformation Plan	Citizen participation in policy making (and an open government) as an objective of the use of ICT.
Ministry of Economy (ME)	Open Government Data Plan 2021 - 2022	Foster a collaborative public management by supporting the use of public data by civil society organisations.
Water National Agency (ANA)	Open Government Data Plan 2020 - 2022	Promote and foster citizen participation and innovation as an objective of the release of open data.
Office of the Comptroller General of the Union (CGU)	Public Integrity Plan 2018 – 2020	Foster and strengthen citizen participation is part of the mission, vision and values of the Integrity Plan.

Source: Author's own elaboration.

In line with the recommendations in previous sections and in Chapter 3, Brazil could complement the suggested harmonized legal framework with an overarching policy on citizen and stakeholder participation. **Brazil could consider including a dedicated section on citizen and stakeholder participation in the recommended Federal Open Government Strategy (see Chapter 3).** This section could include:

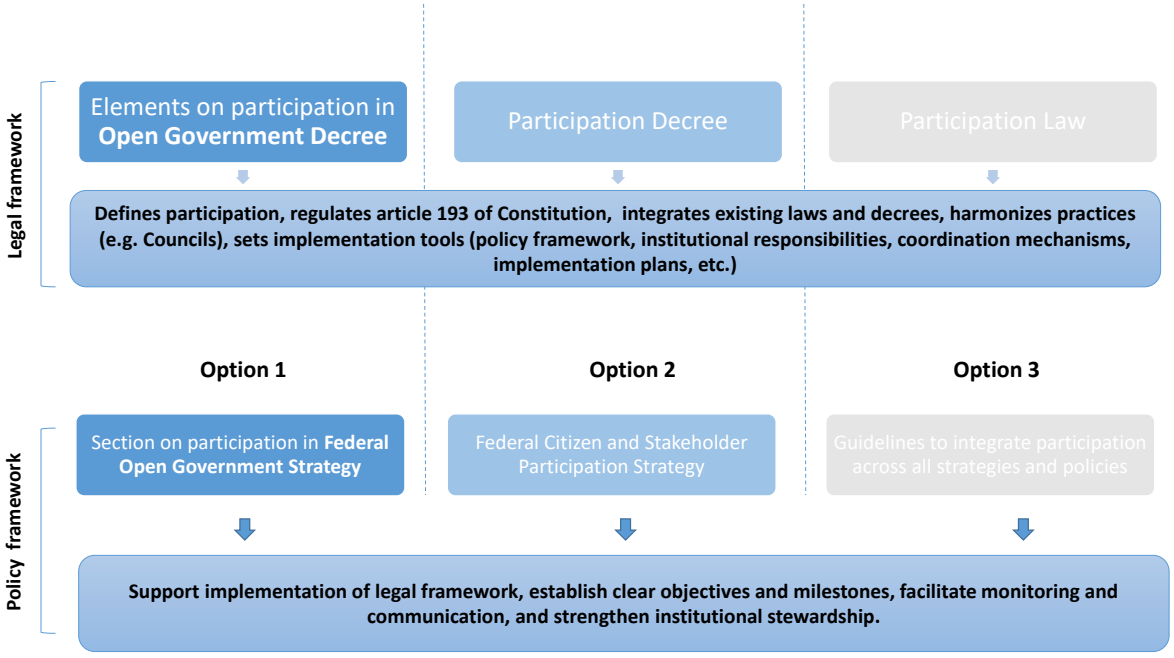
- A common definition and vision for citizen and stakeholder participation in Brazil, creating an integrated narrative with other open government principles such as transparency (open data, access to information), accountability (*ouvidorias*, social control) and civic space (protection of rights and freedoms).
- Guidance for public institutions to include participation in their Institutional Open Government Programmes (such as the templates provided for the Open Data Plans).
- Concrete actions and commitments to involve citizens and stakeholders in policy making and service delivery in Brazil.
- Mechanisms and tools to support the implementation of participatory practices and their impact (i.e. guidelines on public communications, toolkits for participatory practices, etc.)
- Clear milestones and objectives (i.e. amount of public consultations, increase in number and diversity of participants, etc.)
- Set standards for the monitoring and evaluation of participatory practices, allowing for a more evidence-based evaluation and support an informed reform of the participatory system in Brazil.

Alternatively, Brazil could consider developing an independent Federal Social Participation Strategy *(Estrategia Federal de Participacao Social*), such as the Digital Government Strategy. In this case, the Strategy should include obligations for public institutions to implement action plans or roadmaps to ensure its implementation with short and medium term milestones (such as the examples in Table 6.4.

In both scenarios, the policy framework should include tangible and measurable objectives, and clear institutional responsibilities to ensure leadership, stewardship and coordination among public institutions. The main coordinators of the participation agenda should be included in the design of the policy framework: the Comptroller General of the Union (*Controladoria Geral du União*, CGU), the Secretariat of Government of the Presidency of the Republic (*Secretaria de Governo da Presidência da República*, SEGOV) and the Casa Civil. The policy framework should include clear and defined roles and responsibilities among those institutions.

In case Brazil decides not to introduce an overarching policy framework for citizen and stakeholder participation, or as an implementation-oriented support to it, the country consider developing guidelines on how to integrate participation across all existing strategies and policies. The objective of these guidelines should be to ensure mainstreaming of participation across government, as well as support a coherent understanding and harmonisation pf practices in all public institutions.

Figure 6.5. Suggested models to create an overarching policy and legal framework for citizen and stakeholder participation in Brazil



Source: Author's own elaboration

The institutional responsibilities for participation could be clarified at the Federal level and strengthened in every public institution

The institutional setting for citizen and stakeholder participation differs across OECD Member and Partner Countries, as it strongly depends on the administrative and institutional architecture and the historical development of the agenda. In the majority of countries, the responsibilities are decentralized, with several offices sharing the mandate. (See Box 6.9 for examples of different institutional settings for citizen participation in OECD countries.) Evidence from the *2020 OECD Survey on Open Government* (OECD, 2020[13]), shows that the 30 OECD countries surveyed have mandated an office(s) or an institution(s) with responsibilities regarding citizen and stakeholder participation. All OECD countries surveyed provide support to public institutions on how to consult and engage with citizens and stakeholders, 27 countries (90%) have an office in charge of strengthening relationships between government and civil society, and 25 countries (83%) provide technical support to public institutions on the use of digital technologies.

Chapter 3 analyses in detail the institutional framework for open government, and other chapters those related to transparency (Chapter 7), accountability (Chapter 8), open data (Chapter 9) and the protection of civic space (Chapter 5). This section looks at the institutional setting for citizen and stakeholder participation in terms of formal responsibilities and co-ordination mechanisms in place at the Federal level, and in every public institution to ensure that there is a coherent and effective implementation of the legal

and policy framework. It finds that the institutional architecture for participation at the Federal level (formed by the CGU, the SEGOV and the Casa Civil) could be better defined to avoid blind spots and overlaps and to strengthen the integration with the wider open government agenda. At the level of individual public institutions, this section finds that in most institutions there is a lack of defined structure to lead and coordinate participatory practices.

Box 6.9. Institutional settings for citizen participation in OECD countries

Colombia

In Colombia, the citizen participation agenda is coordinated at the national level by the Department in charge of public management (Department of Public Service). This Department oversees the implementation of the National Citizen Participation Policy and has the mandate to promote participatory approaches to public service and public management. Line ministries (e.g. Health or Education) have the responsibility to implement an institutional citizen participation roadmap and coordinate with the Department of Public Service to ensure coherence and harmonisation.

France

The citizen participation agenda has a political lead, an administrative coordination and an independent evaluation. The agenda is led by a dedicated Minister (Minister of Relations with Parliament and Citizen Participation), coordinated by the Inter-Ministerial Direction for Public Transformation (DITP) and oversee by an independent body (National Commission for Public Debate – CNDP). The DITP is also in charge of the open government agenda and the OGP Process in France and works as a centre of expertise providing technical support on citizen participation to all public institutions.

Mexico

Mexico has two offices coordinating and leading the implementation of the participation agenda, one located in the Centre of Government in charge of the articulation between Government and non-public stakeholders (Under-Secretary for Democratic Development, Social Participation and Religious Matters) and the other office is the open government lead in charge of guidance and support to other Federal entities (Secretary for Public Management).

Spain

In Spain, citizen participation is a core element of the open government agenda and it's coordinated and led by the General Directorate for Public Governance in the Ministry of Territorial Policy and Public Management. This office is also in charge of the open government agenda.

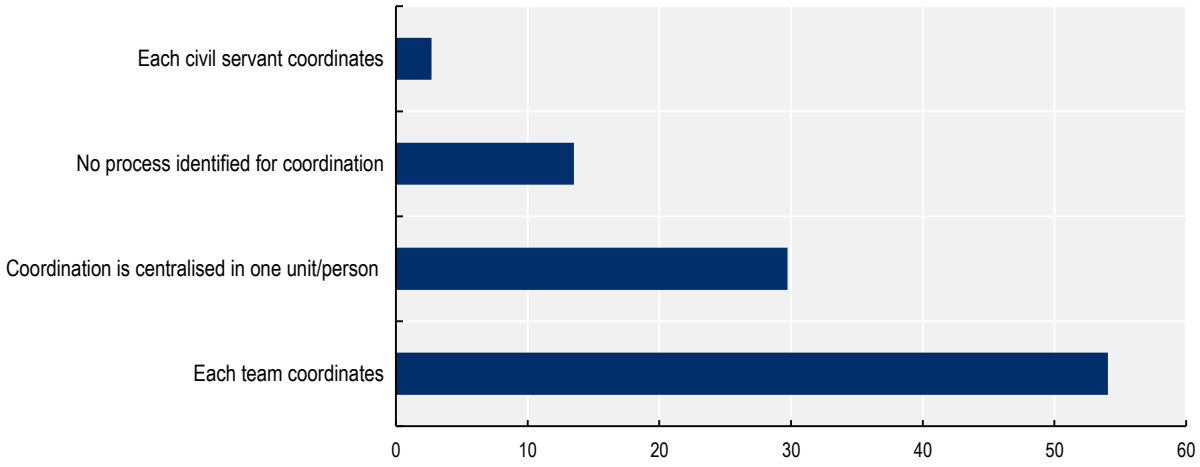
Source: Author's own elaboration based on OECD (2020[13]), Survey on Open Government

Institutional responsibilities could be strengthened in every public institution

Evidence gathered through the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* (2021), show that 70% of public institutions at the Federal level do not have a central unit or person in charge of the participation agenda. In 53% of public institutions, participatory processes are coordinated and implemented by individual teams, in 13% there was no coordination or process identified and in 4% the coordination is responsibility of each public servant (see Figure 6.6). The National Policy on Social Participation (Decree 8.243 revoked in 2019) attempted to address this challenge with a coordinated approach with focal points and a network of practitioners called the National System of Social Participation (see Box 6.5).

Figure 6.6. Coordination of participatory practices in Brazilian federal public authorities

Respondents were asked the following question: How are processes of citizen and stakeholder participation coordinated/organized in your institution?



Note: N=37, as several answers were possible
Source: OECD Survey on Open Government Policies and Practices in Brazil (2021)

In addition of addressing the governance structure to coordinate participation at the Federal level, Brazil could consider establishing a decentralized mandate in every public institution, in an office or a person. This unit or person could be responsible of ensuring the implementation of the legal and policy framework, of harmonising practices in its institution, and provide support across the organisation. Brazil could consider including the mandate of coordination of participatory practices within the recommended **Institutional Open Government Co-ordinators (*Coordenadores Institucionais de Governo Aberto*)** (see Chapter 3).

To foster implementation and harmonized practices in all public institutions, the CGU could take the role of a Centre of Expertise and provide guidance and practical support to all public institutions (detailed in the section below). This could take the form of manuals or handbooks to guide public officials in the implementation of the legal and policy framework, or as technical tools to facilitate the organisation of participatory processes, as well as its monitoring and evaluation. A similar approach is observed in the Digital Transformation Strategy of Brazil, where a one-stop-portal provides resources and tools to implement the objectives of the Federal Strategy. Box 6.10 details the example of the Centre of Citizen Participation in France, an inter-ministerial centre of expertise that provides technical support as well a platform for participation and a community of practice to share good practices among public servants.

Box 6.10. Centre of Citizen Participation in France

The Inter-Ministerial Directorate for Public Transformation (DITP) is the public institution in charge of the open government and participation agendas in France. In 2019, it created the Centre of Citizen Participation (*Centre de la Participation Citoyenne*) as a Centre of Expertise, a physical space and a community of practice for all public servants.

- **A Centre of Expertise:** The DITP provides public officials and civil society technical support and guidance to implement participatory processes. Public officials have access to knowledge resources, examples and templates to organize a participatory mechanisms as well as ready-to-use digital tools. As part of this Centre, the DITP has dedicated teams to support the organisation of participatory processes by other public institutions as well as to train public officials and interested stakeholders.
- **A digital platform for participation:** The DITP has established a centralised platform for participatory opportunities at the national level. The platform allows citizens to easily find opportunities and monitor the impact of their participation. It also allows public authorities to provide feedback and communicate about their participatory opportunities in a simple and harmonized platform.
- **A physical space:** The Centre of Citizen Participation is a physical space open to public institutions, civil society and citizens. Public authorities can use this space to organize meetings or any other activity with citizens and stakeholders.
- **A community of practice**: the DITP has put in place a digital hub to group the communities of practice related to open government and State modernisation. With more than 50 communities, the hub allows all public officials to discover and join the communities that interest them, according to a topics of interest (participation, digital services, collective intelligence, design thinking etc.) or a geographical area.

Source: Author's own elaboration based on interviews with the Inter-Ministerial Directorate for Public Transformation (DITP).

Brazil could consider establishing a clearer and streamlined institutional architecture at the Federal level to ensure stewardship and implementation of the participation agenda

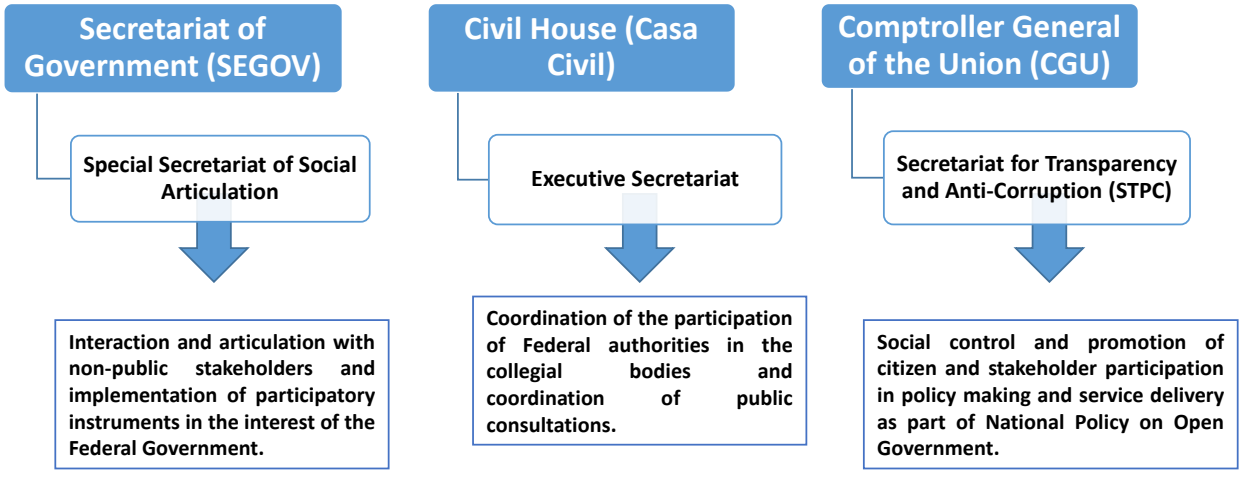
Historically, the participation agenda has been closely linked to the Presidency of the Republic, as since 2005, this agenda was overseen by the General Secretariat of the Presidency (*Secretaria Geral da Presidência da República)* (Government of Brazil, 2005[43]). The 2014 National Policy on Social Participation placed this office at the centre of the architecture of participation and provided with clear mandate to oversee the policy, monitor its implementation and articulate with all relevant actors and practices (Government of Brazil, 2014[44]). In 2015, the Secretariat of Government of the Presidency of the Republic (*Secretaria de Governo da Presidência da República* - SEGOV) was created as a separate entity, and inherited the participation agenda. Today, the Special Secretariat of Social Coordination **(***Secretaria Especial de Articulação Social*) in SEGOV is mandated by Law 13.844 from 2019 and by the Decree 10.591 of 2020 to promote citizen participation at the Federal level and coordinate the relationship between the Federal Government and civil society organisations. The responsibilities of the Special Secretariat of Social Coordination are:

- The interaction and articulation with non-public stakeholders including international organizations and civil society organizations;

- Promote social participation (i.e. citizen and stakeholder) and implement participatory instruments in the interest of the Federal Government (Government of Brazil, 2020[45])
- Articulate, support and systematize public consultations and social participation in public policies at the Federal level (Government of Brazil, 2020[45]);
- Promote the use of the Participa Mais Brasil Platform (centralised digital platform for online consultations) (Government of Brazil, 2021[46])

SEGOV shares responsibilities in relation to citizen and stakeholder participation with two other public institutions: the *Casa Civil* and the Federal Comptroller General of the Union (*Controladoria Geral du União* - CGU). As part of its mandate to coordinate the open government agenda, CGU is responsible of the promotion of citizen and stakeholder participation in policy making and service delivery (see Chapter 3). In addition, the CGU is responsible for public participation in accountability mechanisms (social control), such as the Fala.br platform or the User Councils (Controladoria-Geral da União, 2020[47]). The *Casa Civil* is the third entity with a mandate related to participation. Decree N° 9759 from 2019 mandates *Casa Civil* to coordinate the participation of Federal public institutions in the collegial bodies (Councils and Conferences) and Decree N° 9191 from 2017 states that Casa Civil is the entity responsible of approving and coordinating public consultations organized by Federal public institutions. Evidence gathered during the interviews conducted by the OECD Secretariat, as part of the fact-finding mission, shows that a majority of stakeholders refer to SEGOV and CGU as the main actors in charge of the participation agenda in Brazil. The role played by Casa Civil in the participation agenda is rather recent (2017) which translates in a low level of awareness among key stakeholders such as public authorities, civil society organisations and members of collegial bodies interviewed by the OECD.

Figure 6.7. Institutional responsibilities for citizen and stakeholder participation at the Federal level in Brazil



Source: Author's own elaboration

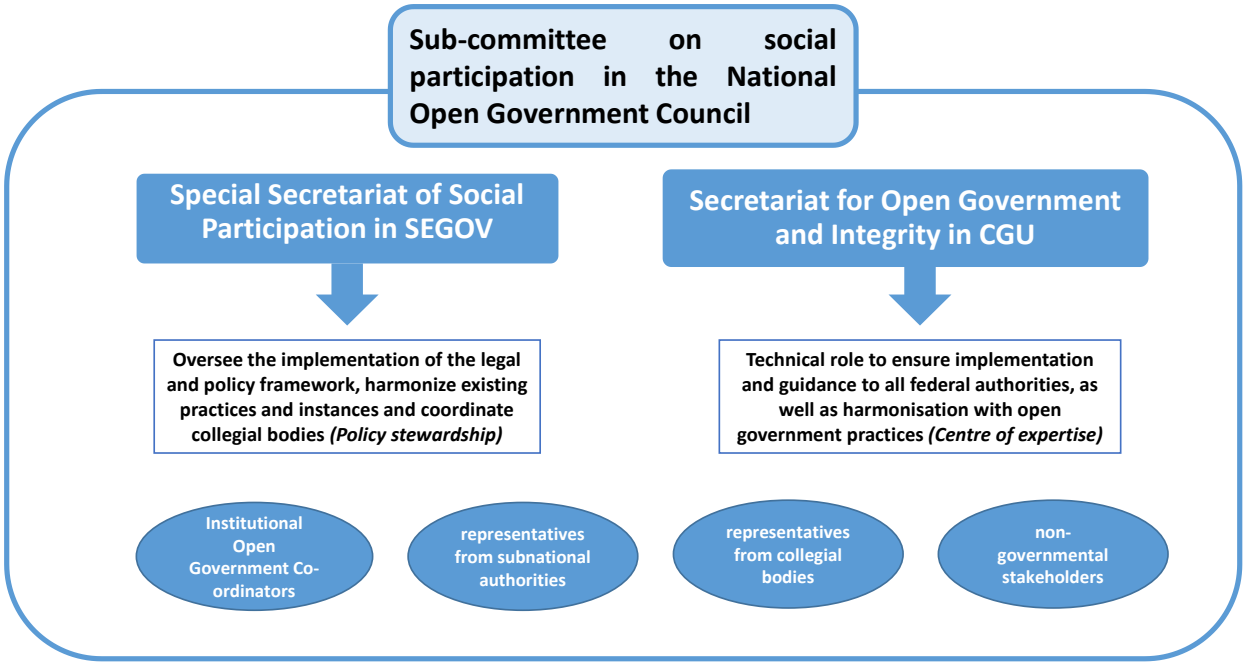
Brazil's institutional setting for citizen and stakeholder participation as described above, has benefits and challenges. A positive point is that the participatory agenda is located within public authorities in the Centre of Government with Ministerial rank and with an inter-ministerial perspective, giving high-level visibility and a transversal vision to the agenda. However, different public authorities and non-public stakeholders interviewed for this review raised the concern of the lack of clarity and consistency on the institution leading the participation agenda.

The creation of an integrated legal framework and an overarching policy for citizen and stakeholder participation (see Figure 6.5) could represent an opportunity to redefine and clarify the intuitional mandates and responsibilities. At the Federal level, **Brazil could consider reducing the public authorities with a mandate on participation to improve clarity, simplify coordination and coherence. The institutional setting could be divided in two levels: a policy stewardship (for coordination) and a centre of expertise (for support).** For example, SEGOV could become the policy steward and have the responsibility to oversee the implementation of the legal and policy framework, as well as harmonize existing practices and instances. Building on the existing Special Secretariat of Social Coordination (*Secretaria Especial de Articulação Social*), **Brazil could consider transforming it into a Special Secretariat for Social Participation (*Secretaria Especial de Participacao Social*).** This entity could have the mandate to coordinate the collegial bodies (today under Casa Civil), as well as other practices at the Federal such as public consultations and ensure the implementation of the overarching policy described in previous section. **The CGU could complement the SEGOV with a technical role, as a centre of expertise, ensuring implementation and guidance to all federal authorities, as well as harmonisation with open government practices.**

Coordination among the different entities overseeing the same agenda is important to ensure coherence and support the move towards a common objective. The 2014 National Policy on Social Participation (see Box 6.5) introduced the Government Committee on Social Participation (*Comitê Governamental de Participação Socia*l) in charge of supporting SEGOV in the coordination of the participation agenda. This coordination body aimed at ensuring that all the public authorities with responsibility in the area of participation could have a space to share challenges, ensure coherence and coordinate joint actions (Government of Brazil, 2014[48]). However, this space was revoked in 2019 and currently, the only coordination mechanism where SEGOV, Casa Civil and CGU coordinate policies and practices related to participation is the Interministerial Committee on Open Government *(Comitê Interministerial Governo Aberto, CIGA)* in charge of coordinating the OGP Process in Brazil. As explained in Chapter 3, CIGA's role remains largely limited to the co-ordination of the design and implementation of the OGP Action Plan and that its meetings have become less frequent and less productive over the past years. Interviewed stakeholders and data gathered by the OECD Survey (see Figure 6.6) point out to a lack of coordination as one of the main challenges to implement participatory practices in Brazil's Federal Government.

Brazil could consider creating a dedicated institutional mechanism to ensure all the relevant public institutions are coordinated and working towards a shared objective. This governance structure should include SEGOV, CGU (and Casa Civil in the case Brazil does not purse a change in its institutional architecture as suggested), the Institutional Open Government Co-ordinators (*Coordenadores Institucionais de Governo Aberto*) as well all the relevant public institutions and selected representatives from the collegial bodies. Brazil could consider the inclusion of non-public stakeholders, as well as representatives from subnational authorities and from other branches of power, to ensure citizen and stakeholder participation practices are harmonized across the State in Brazil. **This governance body could be part of the recommended Open Government Council (*Conselho de Governo Aberto,* COGA) as a subcommittee on participation (see Chapter 3).**

Figure 6.8. Suggested institutional setting for citizen and stakeholder participation in Brazil



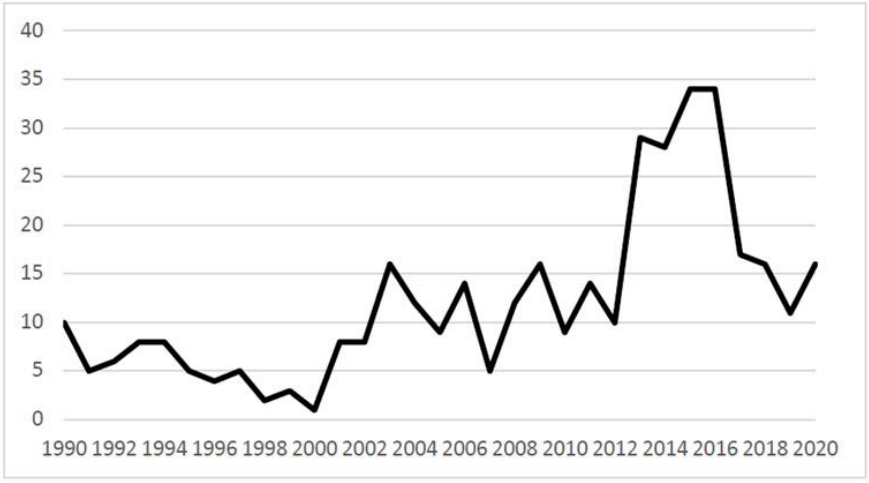
Source: Author's own elaboration

Participation in practice – an overview of the main mechanisms to consult citizens and stakeholder in Brazil

Citizen and stakeholder participation is a well-established phenomenon in Brazil, with different mechanisms in place across all public institutions in the Federal and subnational levels of government, as well as in other branches of the State. Besides the use of traditional mechanisms such as public hearings and consultations, Brazil is considered as a democratic innovator, and the birthplace of internationally applauded innovations such as the participatory budget. In a recent study, the LATINNO project placed Brazil as the country with the largest number of democratic innovations in Latin America, gathering almost 112 million participants in the participatory processes organized from 1990 to 2020. Democratic innovations are defined by Pogrebinschi (2021[5]) as institutions, processes, and mechanisms whose end it is to enhance democracy by means of citizen participation in at least one stage of the policy cycle. (Pogrebinschi, 2021[5]).

Figure 6.9. Evolutions of democratic innovations in Brazil (1990 – 2020)

This figure shows the evolution of democratic innovations in Brazil from 1990 to 2020. Each point corresponds to the innovations created per year.



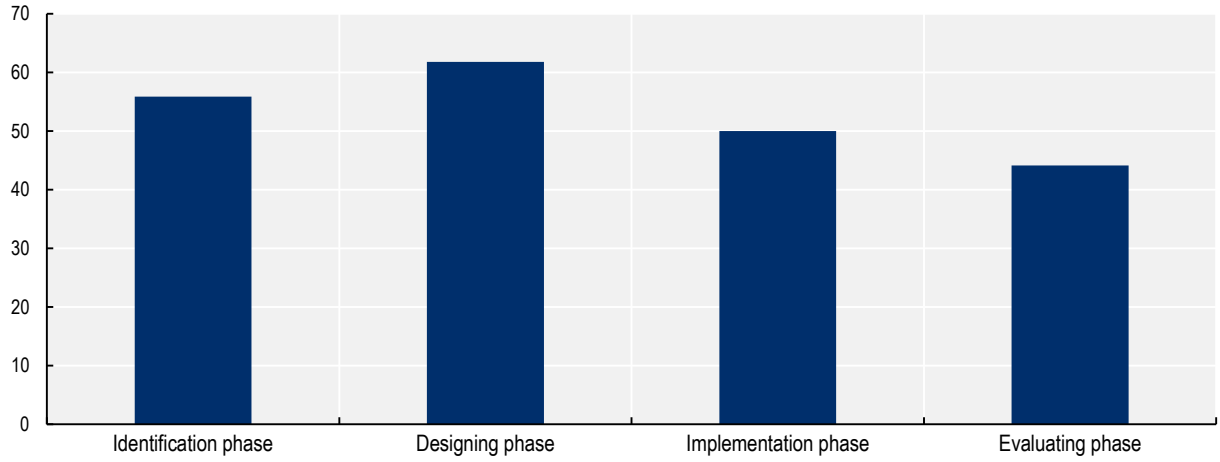
Source: Pogrebinschi, Thamy (2021). Thirty Years of Democratic Innovations in Latin America. Berlin: WZB Berlin Social Science Center. http://hdl.handle.net/10419/235143

Citizen and stakeholder participation in Brazil can be characterised by four waves of development (Pogrebinschi, 2021[5]). The first one shortly after the democratisation process, with 56 innovations created due to the introduction of participatory budgets at the Municipal level and the creation of Policy Councils. The second wave from 2000 to 2011 with 127 innovations created, is defined by the multiplication of the Councils and Conferences both at the national and subnational level. A third wave from 2012 to 2016 with 138 processes, follows the creation of the National System of Social Participation and the rise of digital processes. Data gathered by Pogrebinschi and evidence collected during the OECD fact finding mission, suggest that starting in 2016, Brazil has adopted a rationalisation approach vis-a-vis participatory processes, which reflects on the decrease of new innovations (62 for that period). As for many OECD countries, the COVID19 outbreak in March 2020 contributed to the decline of participatory opportunities in Brazil.

Brazilian public institutions consult citizens and stakeholders regularly, but could increase the opportunities and their impact

At the Federal level, almost all public institutions involve citizens and stakeholders at some point in their decision making process, whether in the design and delivery of public services or in drafting or implementation of a policy. According to data from the OECD Survey, in the past three years, 62% of surveyed public institutions have involved citizens and stakeholders at some point in their policy cycle, 59% in the design of public services and 50% in the delivery of those services. This participation is embedded in different moments of the policy cycle[9], with 62% of public institutions involving citizens in the drafting stage and 56% at the identification stage. This number slightly decreases for the latest stages of the policy cycle, with 50% in the implementation stage and 44% during the evaluation of policies (see Figure 6.10).

Figure 6.10. Citizen and stakeholder participation at different stages of the policy cycle at the Federal level in Brazil

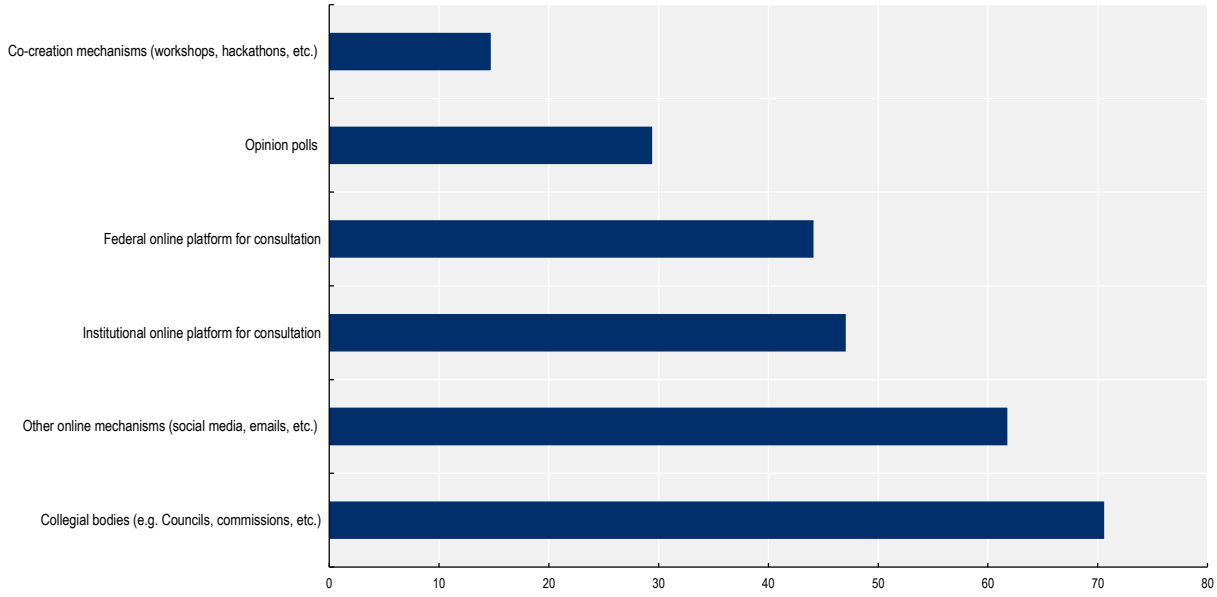


Note: N=34
Source: OECD Survey on Open Government Policies and Practices in Brazil (2021)

In terms of practical implementation of participatory practices, Brazilian public institutions at the Federal level use diverse set of tools and mechanisms to involve citizens and stakeholders. Evidence collected through the *OECD Survey* shows that the most recurrent mechanism are collegial bodies such as Councils and Conferences, with 70% of public institutions having used this type of practice. Online tools for communication and consultation are also commonly used, whether social media channels (61%), institutional websites (47%) or the Federal platform Participa Mais Brasil (44%). More engaging methodologies like co-creation workshops or hackathons are less used with only 14.7% of public institutions having used such mechanisms (see Figure 6.11).

Figure 6.11. Mechanisms used by public authorities to involve citizens and stakeholders

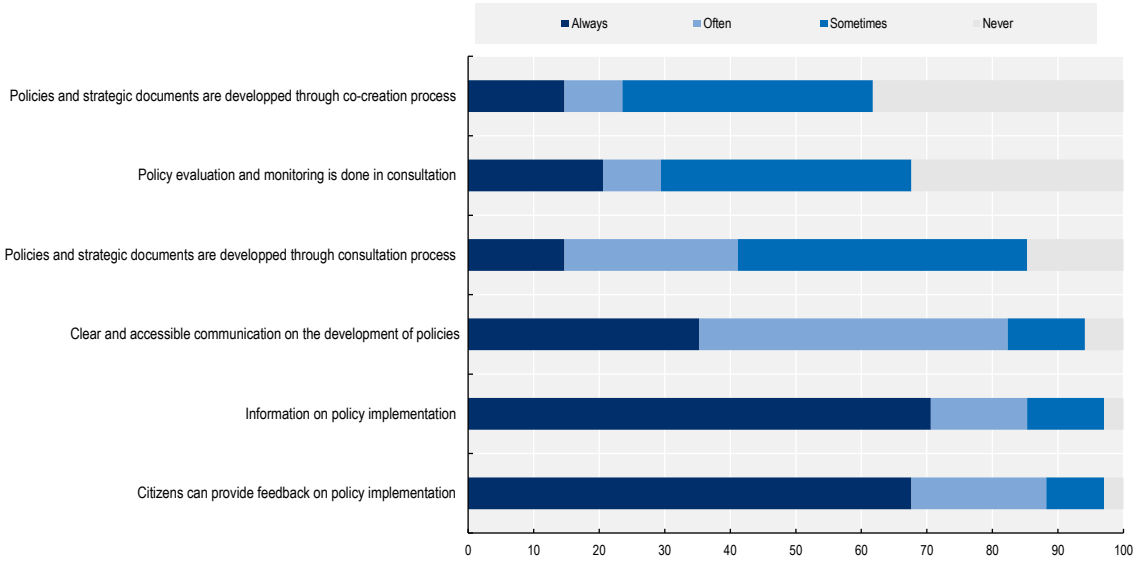
Respondents were asked the following question: In the past three years, how has your institution engaged citizens and stakeholders in policy- and decision-making processes?



Note: N=34
Source: OECD (2021) Survey on Open Government Policies and Practices in Brazilian Public Institutions

When looking at the frequency of the above mentioned participatory practices, the OECD Survey shows that providing information is the most recurrent activity, with 85% of public institutions providing information on policy development and implementation on a regular basis (among which 70% as a systematic practice). This first stage of citizen participation (information) is important to ensure an informed participation in more advanced stages such as consultation or engagement. Concretely, this refers to the publication of news, briefings and data on policies and the agenda for decision making in institutional websites, as well as social media or direct messaging (e-mail, WhatsApp, etc.). The regularity decreases in the next stages of the policy cycle (evaluation) as well as in more advanced types of participation (consultation and co-creation) as shown in Figure 6.10.

Figure 6.12. Regularity of citizen and stakeholder participation mechanisms in public institutions at the Federal level



Note: N=34
Source: OECD Survey on Open Government Policies and Practices in Brazil (2021)

The data collected by the OECD highlight some trends: the provision of information is done on a regular basis, participatory opportunities are more important and regular in early stages of the policy cycle but decrease in later stages (evaluation) and the most used participatory mechanism are the collegial bodies (Councils and Conferences) and the use of digital tools for participation is important across Brazilian public institutions, for information but also for public consultations.

To increase the impact of citizen and stakeholder participation, Brazilian public institutions could increase the opportunities for participation in later stages of the policy cycle, especially during the implementation and the evaluation stages, and move beyond information and consultation to more engaging practices such as co-creation or deliberation.

Public consultations, a widely used mechanism for participation in Brazil that could benefit from harmonisation

Public consultations are part of the democratic landscape in Brazil and are widely used to gather opinions and inputs from citizens and stakeholders on a specific topic or normative text (legislation, regulation, policy, plan, etc.). The Government of Brazil defines public consultation as :

> *"a social participation mechanism, of a consultative nature, carried out within a defined period of time and open to any interested party, with the objective of receiving contributions on a given subject. It encourages the participation of society in decision-making regarding the formulation and definition of public policies." (Government of Brazil, 2021[46])*

Public consultations are institutionalised by Decree 9191 of 2017 which contains a chapter providing guidelines for their organisation and mandating the Casa Civil as entity responsible at the Federal level. Public consultations are used by the executive branches at the Federal and subnational levels, as well as by other branches such as the legislative. Some consultations are purely informative, while others are binding or have a direct impact in the decision making process.

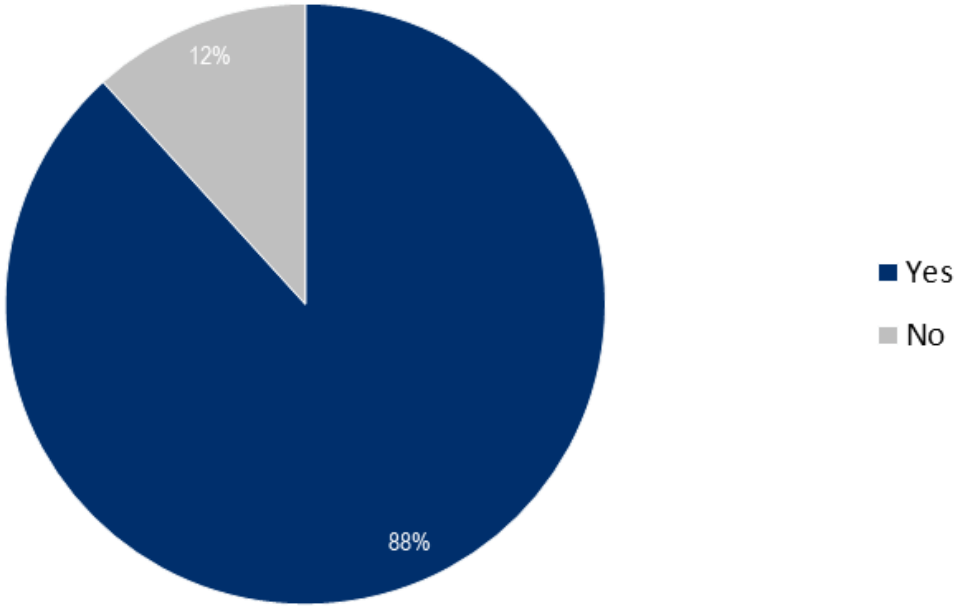
Many of the consultations organized by Brazilian public institutions relate to the development of regulations. Law 13,848 of 2019 on Federal Regulatory Agencies establishes the conditions and requirements for Agencies to consult citizens and stakeholders (Government of Brazil, 2019[49]):

> *Article 9: Drafts and proposals aiming to modify any normative act of general interest to economic agents, consumers or users of the services provided shall be the object of public consultation, prior to a decision by the executive board or the collegiate board of directors.*
>
> *§ 1 Public consultation is the instrument in support of the decision making through which society is previously consulted, with inputs that can take the form of critics, suggestions and contributions by any interested parties, about the proposal of regulatory norm applicable to the sector of activity of the regulatory agency.*

In 2019, the OECD published the Indicators of Regulatory Policy and Governance for Latin America, taking into account the adoption of good practices to engage with interested parties when developing new regulations, including different methods and openness of consultations as well as transparency and response to comments received (OECD, 2019[50]). The OECD found that Brazil has strengthened the requirements for citizen and stakeholder participation, although the consultations were not always conducted or were not given any follow up. To address the challenges, the OECD (2019) suggested that **Brazil could consider expanding the legal requirements and practices to all regulators, involve stakeholders in late-stages of the decision making process and experiment with more innovative and impactful mechanisms for citizens and stakeholders to influence regulation beyond consultations** (OECD, 2019[50]).

Public institutions at the Federal level use consultations to involve citizens and stakeholders in other areas beyond regulation, such as their strategic documents, in design and delivery of public services and in the drafting of policies. Evidence gathered by the OECD during the fact-finding mission and the OECD Survey suggest certain good practices as well as areas of improvement for public consultations at the Federal level. On a positive note, as shown in Figure 6.13, 88% of public authorities collect metrics or quantitative data on their consultations, which can support a better evaluation of the process. In addition, Brazil has good practices such as the public consultation for the Marco Civil da Internet detailed in Box 6.11

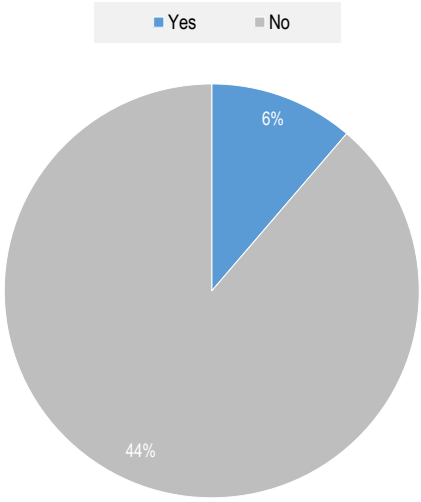
Figure 6.13. Collection of metrics on public consultations by public institutions at the Federal level



Note: N=37
Source: OECD Survey on Open Government Policies and Practices in Brazil (2021)

In terms of opportunities to improve public consultations in Brazil, the majority of non-public stakeholders interviewed during the OECD fact-finding mission pointed out that public authorities do not systematically provide feedback to participants or communicate the results of the process. This is also true when looking at the public consultations published in the Participa Mais Brasil platform, where public authorities have a specific feature to provide feedback to participants. However, this feature was only used for % of the consultations available in the platform[10].

Figure 6.14. Provision of feedback for online public consultations at the Federal level in Brazil



Note: N=142. This graph corresponds to the public consultations available in the Participa Mais Brasil platform as of December 2021.
Source: Author's own elaboration based on Participa Mais Brasil

In that sense, Brazil could consider issuing guidelines for all public institutions with practical support to organize consultations, and ensure they provide feedback to participants and communicate the results of the process. These guidelines could be part of the resources provided by the CGU and its suggested approach as a Centre of expertise and included in the recommended Open Government Toolkit (Chapter 3).

Box 6.11. The consultation for the Brazilian Internet Bill of Rights (Marco Civil da Internet)

In 2014, the Brazilian Government enacted the Law 12.965 on the Brazilian Internet Bill of Rights (*Marco Civil da Internet*), the legislation that established the rights for internet users in Brazil and that protects the civic space online on issues such as privacy, freedom of expression and universal access to the Internet. This legislation was co-constructed with citizens and stakeholders through an ambitious public consultation that started in 2009. The draft legislation sent to the Congress in 2011 included inputs and comments made by citizens and stakeholders from civil society, gathered through an online platform.

In 2008, more than 150 000 signed an online petition citizens to protest against the original proposal called the Azeredo Bill. This online mobilisation led parliamentarians to further involve citizens and stakeholders in the debates to enact an Internet Bill of Rights. The public consultation was divided in two stages, one for proposals and a second one to comment directly on the draft bill and was open to individual users, academics, civil society organisations and representatives from the private sector. During the first stage, the consultation received over 800 proposals and over 1200 comments during the second stage. An important element for the success of this consultations was the attention given to provide feedback to users, and to explain the use of inputs coming from the consultation. The Government made an effort to publicize and communicate regularly about the impact of the consultation in the final text proposed to the Congress. Lastly, this public consultation favour a public debate on the need to regulate the Internet and support awareness on the rights and freedoms that should be protected online.

This was the first consultation on a draft legislation in Brazil, and the first digital consultation of this scale led by the government. The experience was replicated to co-construct the decree that regulates the Bill and for the Data Protection Legislation. Public authorities drawn learnings form this first experience, and used them to improve future consultations. For example, the features used in this consultation helped build the Federal platform for consultation Participa.br (today Participa Mais Brasil) and gave momentum for the creation of a worldwide recognize innovation in the Brazilian Chamber of Deputies, the WikiLegis platform and the HackerLab.

Source: C. Affonso Souza et al (2017), *Notes on the creation and impacts of Brazil's Internet Bill of Rights*, http://dx.doi.org/10.1080/20508840.2016.1264677 ; N. Tusikov and B. Haggart (2018), *Implementing a National Data Strategy: The Need for Innovative Public Consultations*, Policy Brief 142, Centre for International Governance Innovation, https://www.cigionline.org/static/documents/documents/Policy%20Brief%20No.142web.pdf

Participa Mais Brasil, a government-wide participatory portal that supports harmonisation of consultation practices but its implementation could be improved

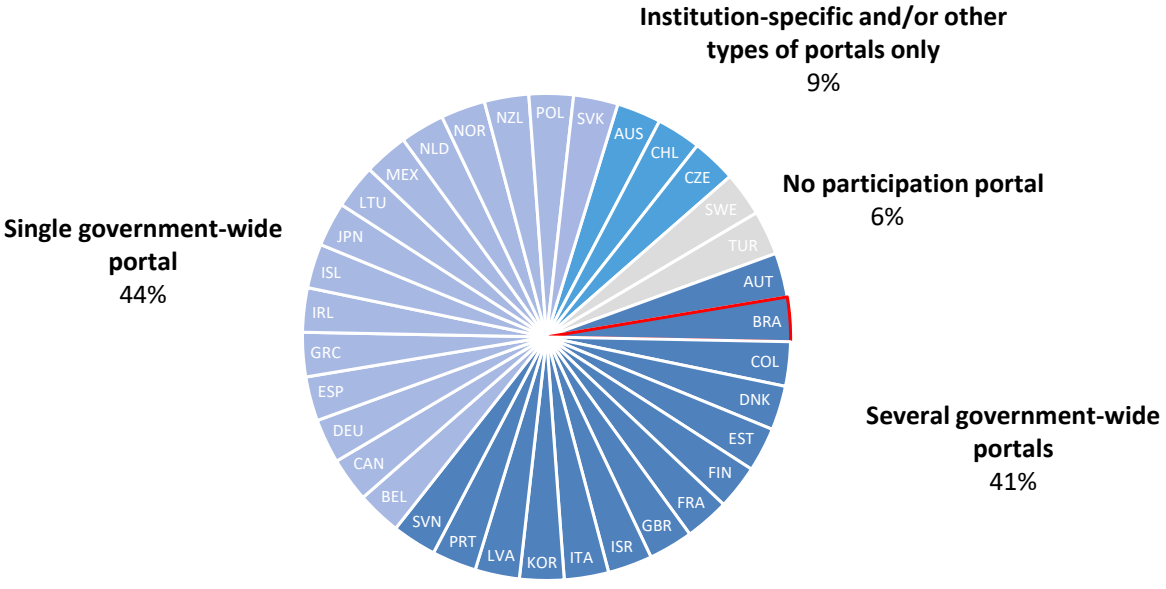
The creation of centralised participation platforms, where public institutions publish consultations and engagement opportunities is a widespread practice among OECD Member and partner countries. These centralised participatory portals have the advantage of providing a "one-stop-shop" portal for citizens and stakeholders to learn about past, current and future opportunities for participation. In 2020, 27 out of 32 OECD countries (85%) had government-wide participation portals used by all ministries at the central/federal level to publish consultation and engagement opportunities. Brazil is part of this trend, and has both a centralised government-wide portal (Participa Mais Brasil) as well as institution-specific portals (Figure 6.15).

An initial version of this centralised portal for participation was published in 2014 (Participa.br) which gathered 371 communities and 31 756 users registered. In 2020, this platform evolved into the Participa Mais Brasil portal, a one-stop-shop portal for all public institutions at the Federal Government, as well as

subnational governments (States and Municipalities) under the responsibility of the Special Secretariat for Social Coordination in the Secretary of Government (*Secretaria de Governo – SEGOV*) (Government of Brazil, 2021[46]). The platform allows the public to directly provide inputs to online participatory processes (consultations and polls), and get information from other in-person opportunities (public hearings and Councils). Since its creation, public institutions (Ministries and Agencies) have published 172 consultations and 44 opinion polls gathering 34 063 contributions from 25 154 users registered[11] (Government of Brazil, 2021[46]). An interesting good practice integrated in Participa Mais Brasil portal is the possibility for public authorities to provide feedback for each consultation published in the platform. Once the consultation is closed, the platform allows public authorities to answer each contribution, and publicly approve or reject the input received. However, as detailed above, public authorities provided feedback only for 8 consultations out of the 142 closed processes in the platform. In addition, the platform provides data and information on participants (type of stakeholder, geographical area, age group, etc.), which is useful information to monitor and evaluate the quality of the participatory process and enhance representation in future processes.

In addition to the Participa Mais Brasil, all public institutions have a "social participation" section in their institutional website, where they publish opportunities for citizens and stakeholders to participate. In some cases, the institutional website redirects to the centralised portal (Participa Mais Brasil), but this is not always the case. In fact, data from the OECD Survey shows that 44% of public institutions at the Federal level use the centralised platform to consult citizens and stakeholders and 47% use their institutional website.

Figure 6.15. Availability of web portals to facilitate citizen and stakeholder participation in OECD countries and Brazil



Source: OECD (2021), Survey on Open Government

Government-wide participatory portals, such as Participa Mais Brasil, are a good practice among OECD countries. In this sense, Brazil is going in a right direction, as the existing platform can support the

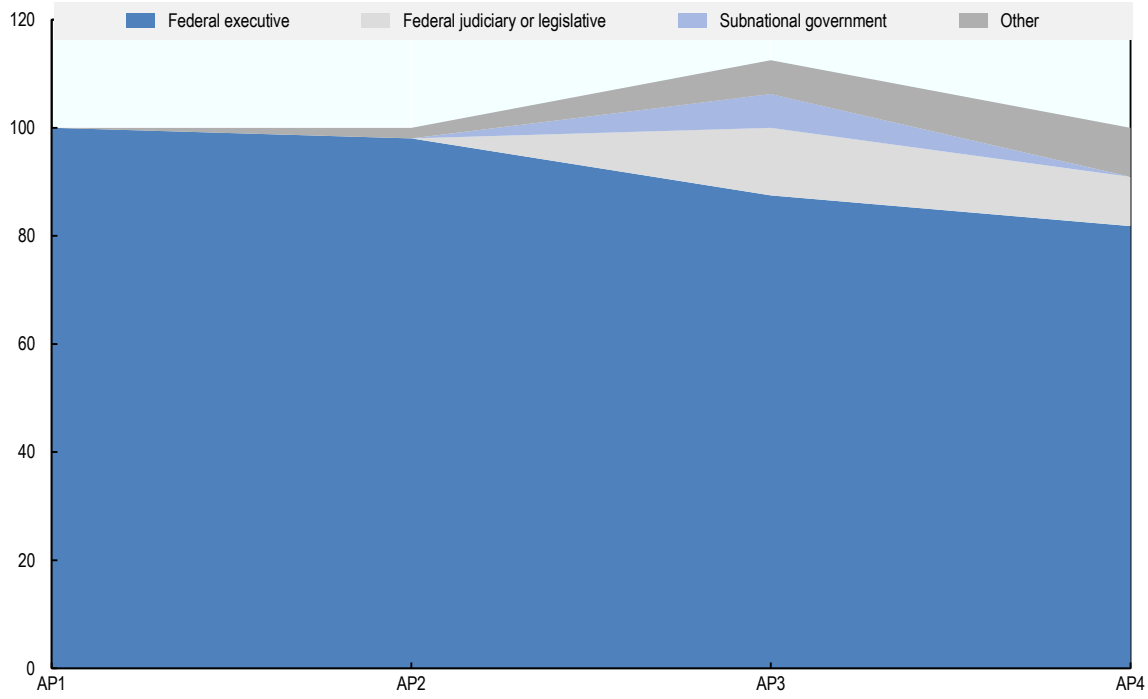
harmonisation of practices among public institutions, facilitate the interaction with citizens and stakeholders, and simplify the access to participatory opportunities. In addition, this platform enhances the provision of feedback to participants after their participation, and support transparency and accountability on how public authorities use the inputs received. However, the use of this platform is not yet generalized across the Federal Government, with almost half of surveyed institutions still using their institutional website to interact with the public. This in turn creates overlaps between the two platforms and hinders the benefits of having a centralised participatory portal. **To ensure the Participa Mais Brasil platform is used across the Federal government, Brazil should pursue the dissemination of the platform, and provide support to both clusters of users: organisers (public institutions) and participants (citizens and stakeholders).**

Brazil's OGP process is considered as a stable participatory forum mixing consultation and engagement practices which could be improved and expanded

In many countries, the OGP action plan process served as a starting point to create an open government agenda and involve an increasing number of institutions in it. While most countries' first OGP action plans often focused on the commitments that were related to the competences of the co-ordinating institution, they usually involve more and more public institutions from across government, as well as non-public stakeholders. This also applies to Brazil. An analysis of the institutions involved in Brazil's four OGP Action Plans so far indicates that institutional participation has widened significantly over the years.

While there were barely any other than the lead institutions from the federal executive power involved during the first two actions plans, the involvement of other types of stakeholders skyrocketed during action plans 3 and 4. When looking at the supporting institutions, there is an important number of non-public stakeholders, such as CSOs, think tanks and associations. Further, organisations from other branches of power, subnational government, academia and others start to become involved in action plans 3 and 4 (Figure 6.16). The trend of increased participation beyond the federal executive branch becomes equally clear when counting the number of unique institutions. Brazil' first OGP action plan involved no more than five federal government agencies and most of the commitments were in fact implemented by the CGU. The second action plan already engaged 19 federal government institutions. The third action plan saw the participation of 48 government agencies from all levels of government (i.e. federal, state and municipal levels) and the current fourth action plan involves 39 institutions from the federal public administration and 10 institutions from the state and municipal levels, as well as the legislature and the judiciary.

Figure 6.16. Public institutions involved in designing and implementing Brazil's OGP Action Plans



Note: Figures in percent. Denotes an institution type's share as 'lead institution' among commitments per Action Plan. 'Other' includes: Mixed bodies public/non-public, public research institutes linked to agencies/ministries, international organisations, public prosecutor's office, non-public associations of public stakeholders, public enterprises, central bank, independent monitoring bodies (including audit institutions).
Source: OGP (2021), Commitment Database, https://www.opengovpartnership.org/open-data/, author's categorisation and illustration.

The participatory process for the OGP Action Plans includes consultation and co-creation steps and is recognized both by public authorities and non-public stakeholders as a constructive space for dialogue and interaction. The Process has evolved since the first action plan in 2011, improving the mechanisms for stakeholders to engage along with government representatives. Drawing from interviews of non-public stakeholders during the fact-finding mission as well as data presented in the OGP Action Plans (Government of Brazil, 2021[51]) and recommendations given by the Independent Report Mechanism evaluations (Steibel, 2020[52]), **Brazil could consider the following areas of improvement for the OGP participatory methodology:**

- Increase the diversity of the actors, especially in terms of territorial representation and policy areas beyond transparency and open data;
- Include non-public stakeholders in the final stage of the process, where the decision is taken;
- Organize in-person mechanisms for the first stage of the process, to increase participation and inclusion,
- Increase the opportunities for citizens (without affiliation) to influence the process, and
- Learn and share good practices with subnational OGP process, such as Sao Paulo's OGP Local Process.

The Government of Brazil, through the CGU, could implement this methodology of participation, combining online consultations and in –person co-creation activities, in other policy areas or other strategic documents at the Federal level, such as the recommended Federal Open Government Strategy.

Brazil has implemented good practices of citizen engagement both at the Federal and subnational levels

As discussed earlier in this Chapter, the OECD understands participation as a continuum of practices going from low-impact to high-impact mechanisms. The impact is understood as the possibility for citizens and stakeholders to shape the process itself and to influence the final decision. Data and evidence collected as part of the OECD Survey, as well as desk research and throughout the interviews, suggest that most of the participatory practices at the Federal level correspond to the provision of information and consultation of citizens and stakeholders. Participants are rarely involved in shaping the issues to be addressed by their participation, and their inputs are not always linked to a final decision. Nonetheless, the OECD has collected some good practices of more engaging opportunities for citizens and stakeholders to influence policies and services through mechanisms such as co-creation platforms, hackathons and deliberative bodies.

Open innovation practices as a way to co-construct public policy with citizens and stakeholders

Open innovation practices, such as crowdsourcing, hackathons or public challenges, are a way for public authorities to tap into the collective intelligence to co-create solutions to specific public challenges (GovLab, 2019[53]). These practices are usually used to convene expertise from citizens and stakeholders to find ideas or inspiration, prototype and test solutions or to improve services or methods. The use of public challenges to solve policy problems is starting to pave its way as a co-construction mechanism in other OECD member and partner countries. For example, similar approaches exist in the United States (Challenge.gov) or in Argentina (Desafios Publicos).

In Brazil, the National School for Public Administration (*Escola Nacional de Administração Pública – ENAP*) implemented the open innovation platform Challenges (Desafios) as a way to involve citizens and stakeholder in solving pressing public issues such as the COVID crisis (see Box 6.12). A similar approach exists in the the Federal Chamber of Deputies as an open space for technical communities to co-develop tools to foster legislative transparency and participation (for more information on the HackerLab, please see Box 6.20).

Box 6.12. Desafios, a co-creation mechanism in Brazil

Desafios is an open innovation platform that allows for public institutions to share identified challenges or problems, and for citizens and stakeholders to propose solutions. The platform provides background information on the challenges to solve, as well as relevant documentation on the associated policy area or topic. Once the process is finished, public authorities can share the results, with a detailed explanation on the selection criteria, the evaluation of the proposals, and the list of selected projects. In some occasions, the process is followed with in-person activities such as hackathons or workshops. The challenges published in the platform cover diverse policy areas from technology, health to environment. Selected participants are rewarded with an economic prize, which can vary from R$10.000 (1600€) to R$100.00 (16.000€).

This platform was used to co-create digital solutions in order to support the Brazilian Government's action during the COVID19 pandemic. Five challenges were posted with to implement the selected projects:

- **Technology**: How to make use of technological solutions to better monitor and manage the pandemic?
- **Economy**: How to reduce the economic impact and create opportunities for businesses in the context of COVID19?
- **Health**: How to improve the efficiency of the health system?
- **Social**: How to mitigate the socio-economic consequences of the COVID19 pandemic?

Source: ENAP (2020), *Edital de Chamamento Público N°26/2020,* https://repositorio.enap.gov.br/bitstream/1/4890/1/SEI_ENAP%20-%200372301%20-%20Edital%2026-2020%20-%20Desafios%20Covid19.pdf ; ENAP (2021), *Desafios*, https://desafios.enap.gov.br/

To move towards to more engaging practices at the Federal government, **Brazil could encourage all federal institutions, including Ministries and Agencies, to use the *Desafios* platform, to organize hackathons, or establish open spaces (such as innovation labs) to foster co-construction practices. Brazil could also consider merging or including the *Desafios* section in the centralised participation platform (Participa Mais Brasil) to support coherence and harmonisation of online digital participation.**

Participatory budgets in Brazil, a democratic innovation with tangible impact at the local level

Participatory budgeting (PB) is a democratic way for people to have a direct say on how public money is spent. It began in 1989 in Porto Alegre in southern Brazil (population 1.4 million) and has expanded to more than 436 municipalities across the country. The spread of participatory budgeting practices in Brazil spread rapidly from 1996, and is now in place in more than 200 Municipalities (IADB, 2005[54]). This democratic innovation has been exported to all continents, and today there are more than 11,000 participatory budgeting experiences around the world (Dias, Sasil and Simone, 2019[55]).

A participatory budget (PB) refers to mechanisms that allow citizens and stakeholders to influence public decisions through the direct allocation of public resources to priorities or projects. Those resources are usually pre-defined by the public authorities, meaning that a dedicated budget is decided prior to the process. The majority of PB processes are organized by subnational governments (Municipalities), however it's important to take into consideration those experiences organized by other levels of government such as regional, state and national. For example, in Portugal, a national participatory budget is in place as of April 2021.

Box 6.13. Participatory budgeting in Brazil

Participatory budgeting (PB) gained momentum in the 1990's and early 2000's at the subnational level in Brazil. From 53 initiatives in 1997, Brazil counted more than 170 initiatives in 2004. Nevertheless, the Participatory Bugdet Atlas noted that the quality and quantity of PBs decreased gradually. In 2019, Brazil counted 36 processes that follow the characteristics of a participatory budgeting.

PB is entrenched in the democratic culture, and is safeguarded by the Constitution and the Law N° 10 257 which establishes that it is mandatory to involve citizens and stakeholders in the preparation of the multiannual plans, fiscal guidelines and budget proposals at the local level. Article 44 mandates that the fiscal management has to be participatory and include public debates, hearings and consultations. PB is organized in several stages, with public hearings, open meetings and negotiation phases with the Municipal authorities. Usually, a first stage is dedicated to the Annual Report on the Budget, where public authorities have to report on the use of public funds, provide an overview of the expected revenues and expenses, and communicate the criteria for the upcoming PB process. In the second stage, citizens and stakeholders (NGOs, local community-based organizations, etc.) meet and discuss with public officials (in assemblies and forums) and determine the allocation of resources. In some cases, citizens can participate through online platforms, such as in the State of Maranhão. The results are then integrated in the annual budgetary law send for approval at the Municipal level.

Source: IADB (2005[54]), *Assessment of Participatory Budgeting in Brazil* ; Emmanuele, Alice (2016[56]), *Orçamento participativo: como funciona e como participar*, https://www.politize.com.br/orcamento-participativo-como-funciona/#:~:text=O%20or%C3%A7amento%20participativo%20ocorre%20por,enviada%20para%20a%20c%C3%A2mara%20municipal; Dias et al (2021), *Participatory Budgeting World Atlas 2020 – 2021*, https://www.oficina.org.pt/participatory-budgeting-world-atlas-2020.html

In Brazil, PB is used to allow citizens to overview and influence the decisions on public budgets and spending, as well as shape local planning at the municipal level. PB has an impact on many policy areas, but most commonly PB results are directed to infrastructure, basic public services and sanitation measures. These processes have proven to be an effective tool to involve citizens and stakeholders in public decisions, with concrete and tangible impacts on inclusion, democratic quality and social wellbeing. There is evidence that the adoption of participatory budgeting (PB) in subnational entities (mainly Municipalities) in Brazil is associated with an increase in health public spending, stronger civil society organisations and a decrease in infant mortality (Touchton and Wampler, 2014[57]). This trend is accentuated when PB mechanisms are institutionalised and implemented over a longer period of time. In addition, PB supports social inclusion and increases diversity in public decisions, as data shows that traditionally excluded groups such as lower-income segments of society and women have higher participation in PB processes than in other democratic processes. This in turn impacts the allocation of resources into the real needs of the communities, and increases redistribution and the social dimension of public spending. For example, data collected by the Inter-American Development Bank (2005[54]) shows that in Municipalities with PB, recurrent themes selected for investment are housing, education, street paving and basic sanitation, and in general, the proportion of public spending in lower income areas is higher. Finally, the opportunity to shape budget decisions and interact with public authorities in the negotiation phases, strengthens the civic responsibilities of the population, supports the legitimacy of public action and fosters a relationship based on trust.

This Review does not aim at providing a detailed analysis of the subnational open government agenda in Brazil, but it acknowledges that participatory mechanisms at the subnational level are very rich, with high impact in citizens' lives. The OECD suggests to conduct further analysis and research with the subnational

level of government to provide recommendations that aim at increasing citizen participation at the local level.

Box 6.14. Participatory practices at the subnational level in Brazil

As a Federation, Brazil's subnational governments (States and Municipalities) have their own prerogatives on major policy areas such as health and education. Subnational levels have legislative powers to enact laws and decrees. The Federal Constitution (Articles 182 and 183) establishes provisions for the administrative and institutional arrangements at the subnational level. The Statute of the City (*Estatuto da Cidade)* established by the Law n°10.257 of 2001, mandates that all urban policies in Brazil should ensure a "democratic management through the participation of citizens and associations representing diverse segments of the community, in the formulation, implementation and monitoring of plans, programmes and projects". This law includes a chapter on the "democratic governance of the city", with provisions establishing the mechanisms for citizens and stakeholders to influence and monitor urban policies and management, including participatory budgeting, collegial bodies, public consultations and mechanisms of direct democracy. This is a good example of a harmonized legal framework, with principles and guidelines that can guide subnational public institutions in the implementation of their participatory practices.

Brazil's subnational level is very rich in participatory practices, with interesting practices such as:

Agents of Open Government – São Paulo Municipality

As part of the city's open government agenda, the Municipality put in place a program for citizens and public agents to collaborate through courses and workshops. Agents of Open Government (Agentes de Governo Aberto) aims to provide a platform for peer-to-peer learning, where citizens with useful skills are given support to develop courses for government employees, civil society groups and communities in all corners of São Paulo.

Nidus: Innovation laboratory – State of Santa Catarina

This innovation laboratory aims at connecting different stakeholders such as public officials, private sector representatives, start-ups, civil society organisations, and citizens to find innovative solutions to public problems.

Multi-channel participation in budget and urban decisions – Curitiba Municipality

The city of Curitiba has established diverse mechanisms for citizens and stakeholders to participate in the planning cycle (through the Plurennial Plan, the Budget Orientations and the Budget Law). Fala Curitiba aims to expand citizen participation in municipal decision making through public consultation taking place through channels: prioritization meetings in the different neighbourhoods, a digital platform, and physical forms made available in different locations around the city.

Source: OECD (2017), Embracing Innovation in Government, Global Trends, OECD Publishing, https://www.oecd.org/governance/embracing-innovation-in-government-global-trends.htm ; Nidus (2021), Sobre o nidus, https://nidus.sea.sc.gov.br/sobre-o-nidus/#onidus ; Fala Curitiba (2022), Conheca o Programa, http://imap.curitiba.pr.gov.br/consultas-publicas/consultaspublicas.html

The Councils and Conferences are innovative participatory institutions for stakeholders to influence public decisions

The *Colegiados* (collegial bodies is the term that will be used throughout the Chapter) are participatory instances institutionalised by a normative text (Constitution, law, decree, regulation, etc.) to involve stakeholders in specific policy areas, government functions or topics. The role of a collegial body can vary from binding opinion, regulation, and advice to co-ordination among stakeholders. These instances are

collegial and deliberative by nature, with the objective of reaching consensus among their members. Many collegial bodies have a national and a subnational representation, as per Brazil's federative nature. A normative act usually details the temporality (which can be permanent, or ad-hoc), the composition, the rules and the role played by the collegial body. As shown in Figure 6.11 collegial bodies are the method used most regularly to involve stakeholders in policy making in Brazil.

Box 6.15. Types of collegial bodies (*colegiados*) in Brazil

The Collegial bodies (colegiados) can include several forms and methodologies to involve non-public stakeholders in policy making and service delivery.

- **Public Policy Councils:** Permanent thematic collegial bodies, created by a normative act, to foster dialogue between non-public stakeholders and the government and promote participation in the decision making process and in the policy cycle.
- **Public Policy Commissions:** Ad-hoc thematic collegial bodies created by a normative act to create a space for dialogue between non-public stakeholders and public authorities around a specific objective, whose existence is linked to the accomplishment of its purpose.
- **National Conferences:** Periodic instance of debate, formulation and evaluation on specific themes of public interest, with the participation of government and non-public stakeholders. A conference can include stages at the State, District, Municipal or Regional level, to propose guidelines and actions on a specific topic.
- **Roundtables:** Mechanisms for debate and negotiation with the participation of non-public stakeholders and government in order to prevent mediate and solve social conflicts.
- **Inter-councils forums:** Mechanisms for dialogue between representatives of public policy councils and commissions, with the purpose of monitoring public policies and government programmes, formulating recommendations to improve their intersectionality and transversally.

Source: Government of Brazil (2014), National Policy on Social Participation (*Política Nacional de Participacao Social),* https://www.museus.gov.br/wp-content/uploads/2014/10/CartilhaPNPS1.pdf

Research shows the important diversity of collegial bodies in Brazil, which in 2019 amounted to close to 1 300 active instances (Rosa da Silva, da Silva Pereira and Bezerra Bassani, 2020[26]). The analysis presented here focuses on the two most common types of collegial bodies that have been implemented at the National and subnational levels, on multiple policy areas and that have produced concrete and tangible results: the National Councils and the National Policy Conferences.

The Councils and Conferences are the backbone of the participatory system in Brazil, as a space for non-public stakeholders to inform policy making and provide recommendations to policy makers**.** They allow for participation of government representatives (public officials, elected members, etc.) and non-public stakeholders (civil society organisations, union representatives, etc.) rather than individual citizens. However, in recent years, the Councils and Conferences have become a space of confrontation rather than of constructive deliberation. Civil society has perceived some of the government actions towards the Councils and Conferences as attacks to these participatory institutions, especially the decrees (including Decree 9.759) affecting the election of its members (Tanscheit and Pogrebinschi, 2017[58]).

The Councils and Conferences, two similar but distinct mechanisms with proven impact

The Councils and Conferences share some similarities such as the high degree of institutionalisation (e.g. the Constitution and / or subsequent legislation) or their deliberative nature. However, both mechanisms have different objectives, scopes and methodologies.

Table 6.5. Main differences between Conferences and Councils

	National Policy Conferences	National Public Policy Councils
Number of participants	Each Conference can reach hundreds of thousands of people from across the country.	A Council has a set amount of participants with an average of 20 participants per Council.
Type of participants	Participants are divided between delegates (elected with right to vote), observers (appointed without vote) and guests (without vote).	Participants (governmental and non-public) are councillors for a set amount of time, they elect a President and a Secretariat.
Geographical scope	The Conferences are multi-level participatory processes, with initial stages at the subnational level (Municipal and State) and a final stage at the national level. One key characteristic is the interconnection and the synergies between the different stages, to allow for territorial representation in the national stage (and thus in the final proposals).	The Councils can have national and subnational representations, but are uni-level participatory processes, meaning that compared to the Conferences, there is no formal interaction between the subnational and national processes.
Regularity	Conferences are ad-hoc process (meaning not permanent), organized in average once a year or every two years.	Councils are permanent processes, meeting regularly (some meet on a monthly basis).
Organisers	Conferences are jointly organised by the executive branch (Ministries or Agencies) with other collegial bodies (Councils) and non-public stakeholders. The Conferences need an administrative or normative act (e.g. decree) whether from government or another collegial body, to convoke and set the details of each stage.	Council have their own internal rules that vary from body to body. The correspondent Ministry/Agency can support its organisation but normally, Councils are autonomous and independent. Councils are part of the organisation of their correspondent Conference.

Source: Author's own elaboration.

Public Policy Councils (hereafter Councils) have been a central piece of the democratic infrastructure in Brazil since the 1988 Constitution, and even before as the Health Council was created in 1944. IPEA (2013) defines the Councils as:

> *Public spaces linked to the Executive Branch, with the purpose of enabling the participation of society in the definition of priorities, as well as in the formulation, monitoring and evaluation of public policies.*

The Councils are permanent mechanisms for stakeholders to participate in policy making and service delivery by informing and advising the decision making and by monitoring the implementation as well as the use of public money (Teixeira, de Paiva Bezerra and Kunrath Silva, 2019[59]). The Councils cover almost all policy areas and have usually a body at the national as well as subnational - State and Municipal-level. This is due to the prerogatives that the subnational level has as per Brazil federative nature.

Box 6.16. Characteristics of Brazil's Public Policy Councils

All Councils are mandated by a normative act (law, decree, regulation, etc.) and even if there is a large diversity in terms of mandate and functions, the main characteristics bear some resemblance:

- Participation of government representatives and non-public stakeholders from organised civil society.
- Embedded in decision making process and policy systems.
- Policy and control functions in their respective policy area.
- Allocation or control of public funds.
- High degree of institutionalisation.
- Vast territorial coverage due to the multi-layer dimension of the Councils, with subnational and federal representations for one policy area.

The methodology of participation in the Councils is not unified and depends on each body. Generally, the Councils can be:

- **Consultative: the results of the process is taken into consideration by public authorities, but merely as an opinion or an informal input.**
- **Participatory:** the Councils has a stronger involvement in the decisions taken by the authorities as well as in the control of their actions.
- **Deliberative:** the Councils co-create proposals with public authorities and participates actively in the policy process.

Source: Gurza Lavalle, Voigt and Serafim (2016), *O que Fazem os Conselhos e Quando o Fazem? Padrões Decisórios e o Debate dos Efeitos das Instituições Participativas*, https://doi.org/10.1590/00115258201687; Centro de Liderança Publica (2019), *Participação Social: Por que ela é importante para a gestão pública?*

Table 6.6. National Councils in different policy areas at the Federal level in Brazil

Name of Council	Mandate	Government representatives	Non-public stakeholders	Selection of councellors	Legal basis
National Health Council	Permanent and deliberative body, composed of representatives of the government, service providers, health professionals, and users, whose decisions (resolutions), are ratified by the Minister of Health. ✓ Evaluation and monitoring of National Health Plan ✓ Issue guidelines for formulation of health policies ✓ Organize National Conferences and Forums ✓ Approval of budget ✓ Monitor financial resources and cash transfers ✓ Establish criteria for remuneration of services	10	24 (users) 12 (unions and scientific community) 2 (private sector)	Vote among members with certain seats allocated to specific stakeholders	Law 8142 of 1990 Decree 5839 of 2006

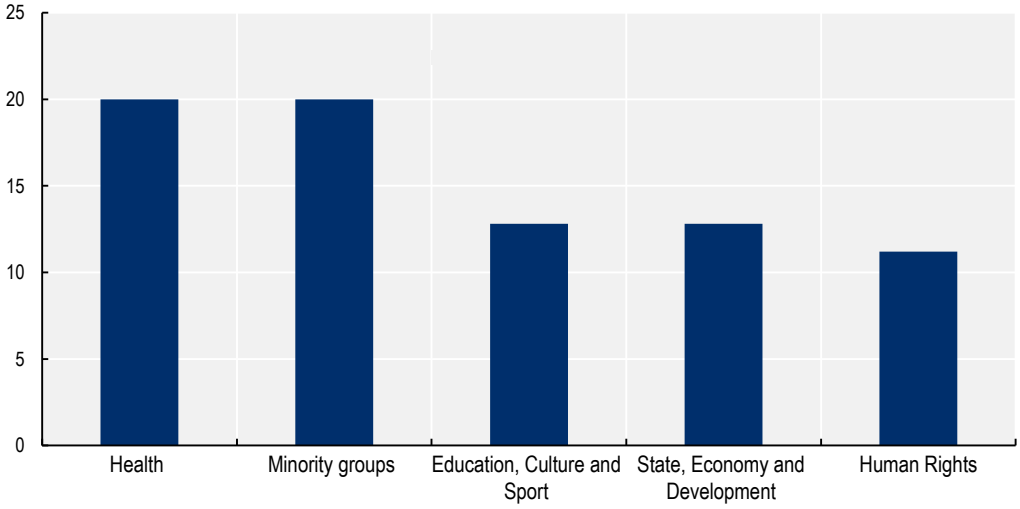
	and the parameters for coverage ✓ Monitor private sector participation ✓ Awareness and research ✓ Issue opinion and ethical consideration on normative texts and scientifically developments				
National Education Council	Ensure the participation of society in the development, improvement and consolidation of a qualitative national education. ✓ Responsible for formulating and evaluating the national educational policy ✓ Advice the Minister in the diagnosis of challenges, and measures to improve the education system ✓ Articulation of education ecosystem across the country ✓ Oversee quality of education system ✓ Ensure compliance with legal obligations ✓ Ensure participation of society in the improvement of Brazilian education. ✓ Issue guidelines for formulation of education policies			Appointed by Minister with a balance between primary and secondary education	Law 9.131 of 1995
National Human Rights Council	Responsible for ensuring effective respect for human rights by public authorities, as well as non-public stakeholders. . ✓ Evaluation and monitoring ✓ Issue guidelines for implementation ✓ Issue binding recommendations and sanctions ✓ Issue opinions on normative texts ✓ Awareness and research ✓ Receive complaints ✓ Articulation with public and non-public stakeholders	11	11		Law 12986 of 2014
National Youth Council	✓ Issue guidelines for evaluation and monitoring ✓ Issue policy recommendations ✓ Articulation with public authorities and non-public stakeholders ✓ Coordination with other councils ✓ Awareness and research	10	20		Law 11129 of 2005 Law 12852 of 2013 Decree 10069 of 2019
Councils of Users	Responsible of ensuring the effective participation of users	0	No limit		

	in the evaluation of public service delivery and user experience.		Self-registration in an online platform		Law 13460 of 2017 Decree 9492 of 2018

Source: Author's own elaboration

The National Public Policy Conferences (hereafter Conferences) are nation-wide participatory processes that aim to enable dialogue and deliberation between governmental stakeholders and society to facilitate the public's contribution to policy making (Instituto de Pesquisa Econômica Aplicada - IPEA, 2013[60]). The Conferences are a widespread participatory practice in Brazil, with 97 Conferences organized between 1988 and 2011 in almost all policy areas, with health and social policies being the most regular topics (see Figure 6.11) (Instituto de Pesquisa Econômica Aplicada - IPEA, 2013[60]) (Pogrebinschi, 2014[61]). Conferences have a multi-level approach to allow for representation in all levels of government and across the territory (see Figure 6.18).

Figure 6.17. National Public Policy Conferences by policy area (1988 – 2009)



Note: This graph represents the distribution of the eighty (80) NPPC organized from 1988 to 2009 per policy area.
Source: Pogrebinschi (2014), Turning Participation into Representation, Innovative Policy Making for Minority Groups in Brazil

Box 6.17. Characteristics of Brazil's National Policy Conferences

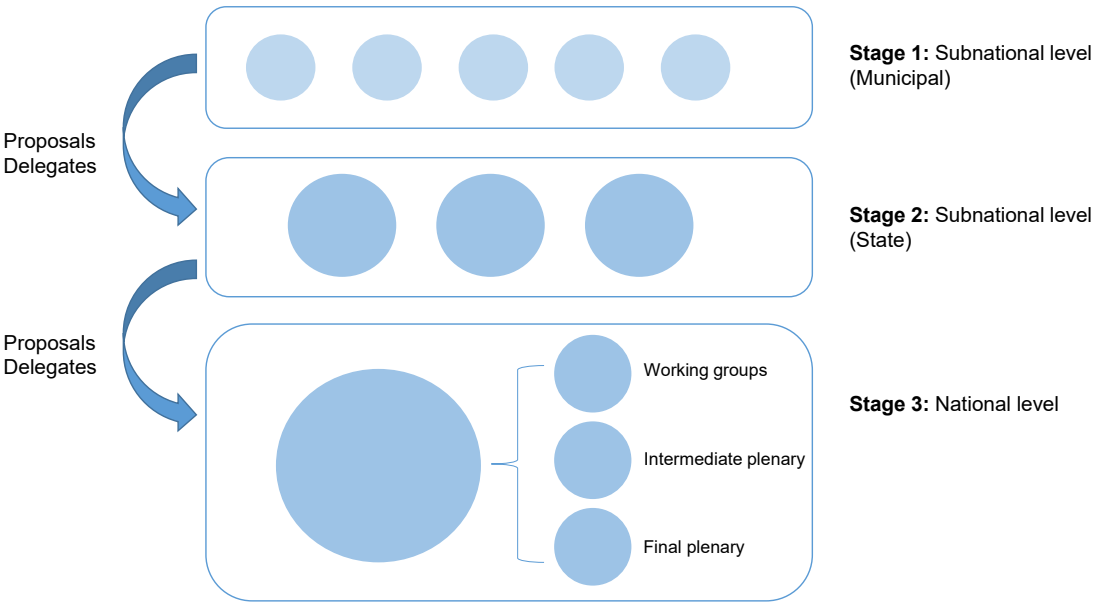
These processes originated in 1940 as co-ordination mechanisms among federative entities and non-public stakeholders. With the democratisation process and the subsequent Constitution (1988), the Conferences became a participatory tool and a key element in Brazil's policy making process. While there is no consensus in the literature on the definition of Conferences, they all share certain common characteristics (Instituto de Pesquisa Econômica Aplicada - IPEA, 2013[60]) (Gurza Lavalle, 2011[62]) (Pogrebinschi, 2014[61])

Key stages: The Conference starts at the municipal level, with meetings held in several cities simultaneously. This initial stage is open to everyone interested to participate and has as outcome the delivery of a report with proposals to be discussed at later stages and the election of delegates to represent the municipality in the State Conference. In comparison with this initial stage, the State and National stages are only open for elected delegates. During the State Conference, the process repeats, with deliberation, proposals and election of delegates. Finally, in the National Conference, the State delegates deliberate and vote the final report with the proposals and/or decisions taken by the Conference. See Figure 6.18 for a graphic representation of the multi-level setting of the Conferences.

- **Type of outcome:** Conference are expected to formulate proposals directed to public authorities to influence policies or legislations at the Federal level. The goal is to ensure that the Federal policies and services reflect the needs of all the Federation. In some cases, the Conferences have an impact in the budget allocation for a certain policy area, and others have a policy monitoring role. The amount of proposals made by Conference varies, with the highest number of 1.053 proposals during the 1st Conference on the Promotion of Racial Equality and the lowest number being 18 proposals during the 7th Conference on the Right of Children and Youth (Instituto de Pesquisa Econômica Aplicada - IPEA, 2013[60]).
- **Methodology of participation:** Discussion, deliberation and collective decision making through consensus. Each Conference has a specific topic, question or policy problem to discuss. Participants are provided with background information, and in some cases, they can participate in roundtables or keynotes on the relevant topic.

Sources: Gurza Lavalle (2011), *Após a participação: nota introdutória,* https://doi.org/10.1590/S0102-64452011000300002*;* IPEA (2013), *Ampliação da Participação na Gestão Pública: um estudo sobre conferências nacionais realizadas entre 2003 e 2011*; Pogrebinschi (2014), *Turning Participation into Representation, Innovative Policy Making for Minority Groups in Brazil* ;

Figure 6.18. Multi-level approach of the National Public Policy Conferences



Note: This representation is the most common organisation of a Conference. The author acknowledges that, for example, there are other cases where the stages are not geographical but rather sectoral focusing on specific topics.
Source: Author's own elaboration

The Councils and Conferences have demonstrated concrete and tangible impact in policy making and service delivery. A recent study on municipal health management in Brazil shows that the Health Councils had a positive impact on the reduction of corrupted practices at the local level. The analysis concludes that the municipalities that integrated a Council in their governance structure witnessed a 21% decrease in corruption practices over 10 years (Avelino, Barbeira and Biderman, 2014[63]). The impact on the reduction in corruption is proportional to the time of existence, meaning that for each additional year of existence of the Council, the percentage of federal health grants to municipalities that were subject to corrupt practices fell by 2.1% (Avelino, Barbeira and Biderman, 2014[63]). The Conferences have delivered concrete results, with for example the creation of the Universal Health System (SUS) by the Health Conference.

The impact of the Councils can also be measured by its ability to influence and shape public decisions. In this sense, 74% of Council members' interviewed by (IPEA, 2013[64]) have the impression that the Council influences the decisions taken by the Ministry or Agency of the respective policy area, but 52.6% think that it fails in having an impact on the legislative power and 53% on public opinion. This suggests a disconnection between the deliberations in the Councils, other public institutions and the broader public. In quantitative terms, (Pogrebinschi and Santos, 2014[65]) found that about 26% of all proposals coming from the Conferences were incorporated into some sort of policy proposal[12]. Besides their normative impact, Pogrebinschi (2018[66]) also notes that the Conferences are an important source of information for the legislative power. Between 2003 and 2010, Congress proposed 1477 bills, enacted 125 laws and six constitutional amendments on the same policy issues recommended by the Conferences. However, the impact of these processes is hindered by several factors.

Councils and Conferences are a widespread practice, but they are usually disconnected from broader society and other participatory processes

Information and data about the Councils and Conferences is key for transparency and accountability of these bodies, as well as to ensure that the public is able to understand their workings, and support their deliberations. As of today, Brazil does not have a centralised platform or database with all the existing Councils and Conferences, their members, their normative act, their agendas, deliberation and decisions. The platform *Participa Mais Brasil* is a positive step towards achieving this goal, however, it currently

includes data on a limited amount of bodies and the information is still fragmented across institutional websites (as of July 2021). A good example is the Panel of Collegial Bodies published by the Ministry of Environment, which includes information about all the Councils where the Ministry is represented. The Panel provides information about each body, as well as aggregated information such as the share of bodies with non-public representation (36.7%). **Brazil could improve the publication of centralised information and data on all collegial bodies, in a federal one-stop-shop portal**[13], **to allow for better monitoring and evaluation of these practices, and support a stronger connection with the broader public.**

The OECD collected good practices of the use of public communications that could be expanded or generalized. This is the case of certain Conferences, such as the Cities or the Health Conferences or certain Councils, such as the Environmental National Council which have a dedicated website with accessible information on the process, the members, the agenda and the outcomes. These collegial bodies also make use of social media to communicate with a broader audience. However, there is a lack of harmonisation about the way collegial bodies communicate, the regularity and the mechanisms used. Public communications campaigns could increase the involvement of citizens and the public in general in the workings of these stakeholder engagement practices, and enhance the impact of its results. **To support collegial bodies, Brazil could consider issuing public communication guidelines, or providing practical support to strengthen the connection between the Councils and Conferences and the public.**

Finally, **the Councils and Conferences could take a system approach and include other non-deliberative or non-collegial mechanisms such as public consultations, or digital voting platforms to increase the scope of participants and reach out to a broader audience.** These mechanisms could be integrated at the beginning to establish priorities (agenda setting through petitions), throughout the collegial deliberations to inform or collect inputs (streaming or public consultations), or in the final stage to prioritise the proposals (public vote via a digital platform).

Councils and Conferences ensure a strong representation of non-public stakeholders but could strengthen the diversity and inclusiveness of its participants

Councils and Conferences have an impact on the diversity of actors involved in policy making and service delivery. These participatory spaces allow for the inclusion of a diverse range of voices and views to enrich the policy discussion, enhancing the quality of policies and services and ensuring a geographical and social adaptation (Avritzer, 2012[67]). The Councils can give voice to underrepresented or marginalised groups with dedicated bodies such as the National Council to fight Discrimination against the Lesbian, Gay, Bisexual and Transsexual communities, which is responsible to support, analyse and present recommendations for policies and actions directed to the LGBTI community in Brazil (Feitosa Pereira and Silva Santos, 2017[68]). The Conferences allow for large-scale dialogue and interaction between government representatives and non-public stakeholders. Even if the exact number depends on each Conference, (IPEA, 2013[64]) calculates that on average 117.128 people participate in one Conference (including all stages)[14]. The number varies among Conferences, with the lowest number of participants being 4.763 and the highest 524.461. In the majority of Conferences, participants are predominantly non-public stakeholders with 63% of participants compared to 37% representing governmental stakeholders (Instituto de Pesquisa Econômica Aplicada - IPEA, 2013[60]). In addition, certain Conferences have put in place quotas to ensure that certain groups usually underrepresented in the public debate can have a voice in these processes, this is the case for example of women, youth or indigenous populations.

Nevertheless, in a research published in 2013, IPEA found that the diversity of the Councils' members could be strengthen to better represent the Brazilian society. The research covered more than 700 counsellors in 21 Councils, and showed than in average, 63% of members are men, the majority self identifies as white (66%) and 58% have between 40 and 60 years old. IPEA found other gaps in the

diversity of the members such as education levels and socio-economic status. This challenge has been exacerbated by the Decree 1959, as civil society organisations and members of the academia interviewed by the OECD pointed out that the Decree closed too many participatory spaces, affected the diversity of voices in the Councils, becoming a threat to representation and participation in Brazil (Gurza Lavalle and de Paiva Bezerra, 2021[31]). For example, the National Environment Council (CONAMA), saw a drop from 22 seats for civil society to four, with none for indigenous and traditional peoples, and a new method for selecting representatives – from election to a draw (Chamber of Deputies, 2019[69]). Another example is the National Commission for Biodiversity (CONABIO) which membership was reduced to 2 seats instead of 8 for civil society. These bodies provided valued opportunities, some for more than ten years, for civil society actors to exchange with government, bring their expertise and views to the table, claim collective rights and contribute to decisions affecting their lives and communities (United Nations Human Rights Office of High Commissioner, 2020[70]).

When it comes to the Conferences, the OECD found that there is a lack of evidence of who participates at the initial stage (municipal level), where participation is open and not exclusive to elected delegates as for the State and National levels (see Figure 6.18). As noted by Samuels and Pogrebinschi (2014), it is strongly possible than the participants at the municipal level are the "usual suspects" or the already heavily involved in community organising or civil society organisations. In addition, the self-selection process to participate at the municipal level, narrows the diversity of the pool of potential candidates to become delegates in the subsequent stages (Samuels and Pogrebinschi, 2014[71]). This limits the diversity of delegates and thus of voices in the State and National stages, and channels the views of a certain category of already politicised and informed population.

To increase diversity and inclusion**, Brazil could consider reviewing the recruitment criteria and methodology for both Councils and Conferences. Councils could consider establishing minimum thresholds for non-public representation (equal basis) and Conferences should collect reliable data on who participates to improve the representation beyond the "usual suspects", especially in initial stages at the Municipal level.**

Councils and Conferences could also increase the participation of citizens (without affiliation) by experimenting with innovative approaches to recruit participants, such as random selection and stratification. Known as civic lottery, these methodologies can ensure representation beyond a geographical scope, with other variants such as political views, gender, age and socio-economic status. This type of recruitment methodology is widely used in representative deliberative processes and has proven to be effective to increase diversity and inclusion (OECD; 2020). These newer approached could be accompanied by financial support to encourage an equal participation, especially from traditionally excluded members of society (childcare for women, transport costs for rural population, translation for indigenous populations, etc.).

To increase the impact of the Councils and Conferences, Brazil should improve coordination and harmonisation

OECD research and evidence collected during the fact-finding mission suggest that the impact of both Councils and Conferences is hindered by a lack of coordination, harmonisation and coherence. Every Council and every Conference has a specific set of rules in terms of agenda, organisation, participants, type of outcomes, as well as the scope and scale of the process. This is not to say that all processes should follow a standardised model, as the OECD understands the specificities of each policy area and the historical background of each Council and each Conference. However, a certain harmonisation or coherence of these practices could be positive to facilitate coordination, support evaluation, and increase understanding and acculturation from public authorities and non-public stakeholders. This harmonisation effort could also support the collection of comparable data to monitor and better evaluate the impact of these processes.

This challenge is also raised by Council members, when interviewed by IPEA (2013[64]) the majority mentioned concerns about the complexity of the system, the lack of coordination with other Councils and Conferences, as well as the articulation with the subnational entities. Drawing from these interviews, IPEA (2013[64])recommended that to increase the articulation and collaboration between Councils and Conferences, especially with the subnational level. This articulation between collegial bodies could also be supported by a stronger collaboration with public authorities at all levels of government. Teixeira also identified certain overlaps in topics and issues covered by both Council and Conferences, with an existing challenge to create synergies between different participatory bodies by improving dialogue and joint actions between different collegial bodies.

The Government of Brazil attempted to create a harmonized framework for all participatory bodies, including the Councils, with the National Policy on Social Participation, which was never properly implemented and revoked in 2019 by the Decree 9.759. **Brazil could consider establishing coordination mechanisms or communities of practices for Councils and Conferences members, as a way to incite dialogue and build bridges between participatory instances.** This coordination between Councils / Conferences and broader participatory instances and public authorities could be part of the missions of the suggested Conselho de Governo Aberto. These efforts could also be supported at the institutional level, by giving the mandate of overseeing the collegial bodies to SEGOV, already in charge of other participatory practices and the articulation with civil society. To support harmonisation and a constant quality among all the collegial bodies, **Brazil could consider issuing good practice principles or guidelines to support organizers and establish a common ground in terms of participants (scope, recruitment methodology, share among public and non-public), the participation methodology (informative sessions, deliberation, vote, etc.) and the regularity of these processes.** In this sense, the OECD developed the Good Practice Principles for Deliberative Processes that can be of inspiration for Brazilian National Conferences and Policy Councils.

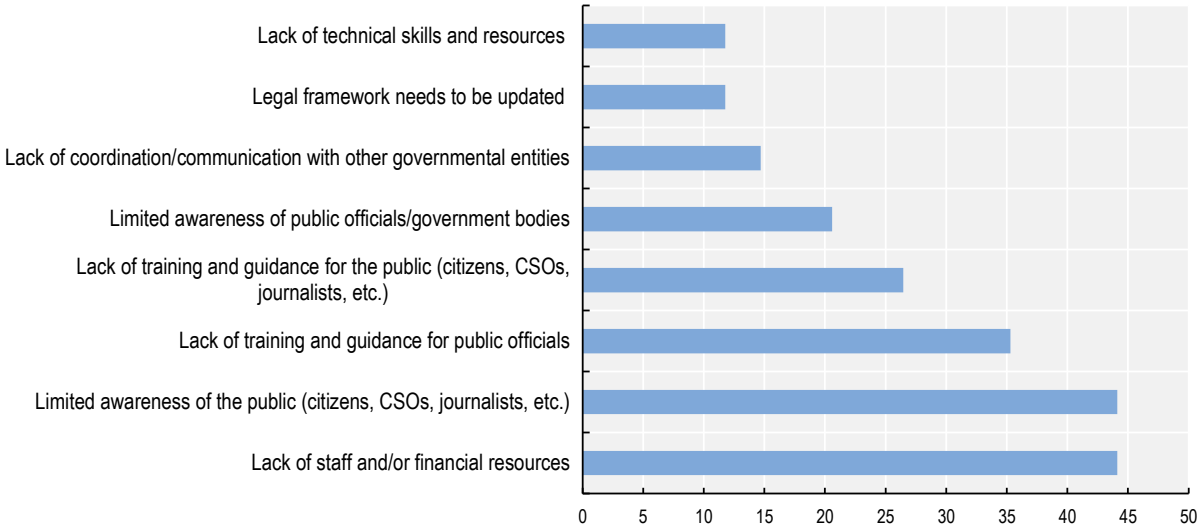
Existing challenges and opportunities to improve participatory practices at the Federal level in Brazil

When asked about the main challenges for citizen and stakeholder participation at the Federal level in Brazil, 44% of respondents reported that the main blockages are both the lack of resources and staff and the lack of awareness of the public. The second category of challenges is related to the training and guidance, both for public officials (mentioned by 35% of respondents) and for citizens and stakeholders (mentioned by 26% of respondents) (OECD; 2021).

In addition to the above mentioned challenges, Brazil's civic space is shrinking and increasingly polarised. As discussed in detail in Chapter 5, a healthy and protected civic space is key for an impactful participation and is a precondition for an open government. In recent years, Brazil has seen its civic space challenged by rising violence, attacks on minorities and journalists and an increasing polarisation in society.

Figure 6.19. Main challenges to citizen and stakeholder participation as perceived by public authorities at the Federal level

In your institution, which are the main challenges in the area of citizen and stakeholder participation?



Note: N=34
Source: OECD Survey on Open Government Policies and Practices in Brazil (2021)

Brazil should provide sufficient resources and increase the use of public communications

Every participatory process requires dedicated resources to be successfully implemented and result in useful outputs for decision makers. The necessary resources vary depending on the design and implementation of the process. The resources can be human, financial, and/or technical.

- **Human resources:** Participatory processes (even when completely virtual), require sufficient staff to organise the process, recruit participants, develop information resources, facilitate interactions, answer requests, communicate, analyse and synthesise the inputs, etc.
- **Financial resources:** As with every democratic process, participatory processes need dedicated financial resources to cover the cost of human resources, meeting venues and catering, digital platform licenses, public communication, honorarium payments to participants, costs of participants' childcare/transport, etc.
- **Technical resources:** More and more processes are using digital tools for communication, receiving participants' inputs, and/or processing/analysing the inputs received. Technical resources can encompass development of digital tools, software licenses, computers, tablets, cloud services, etc.

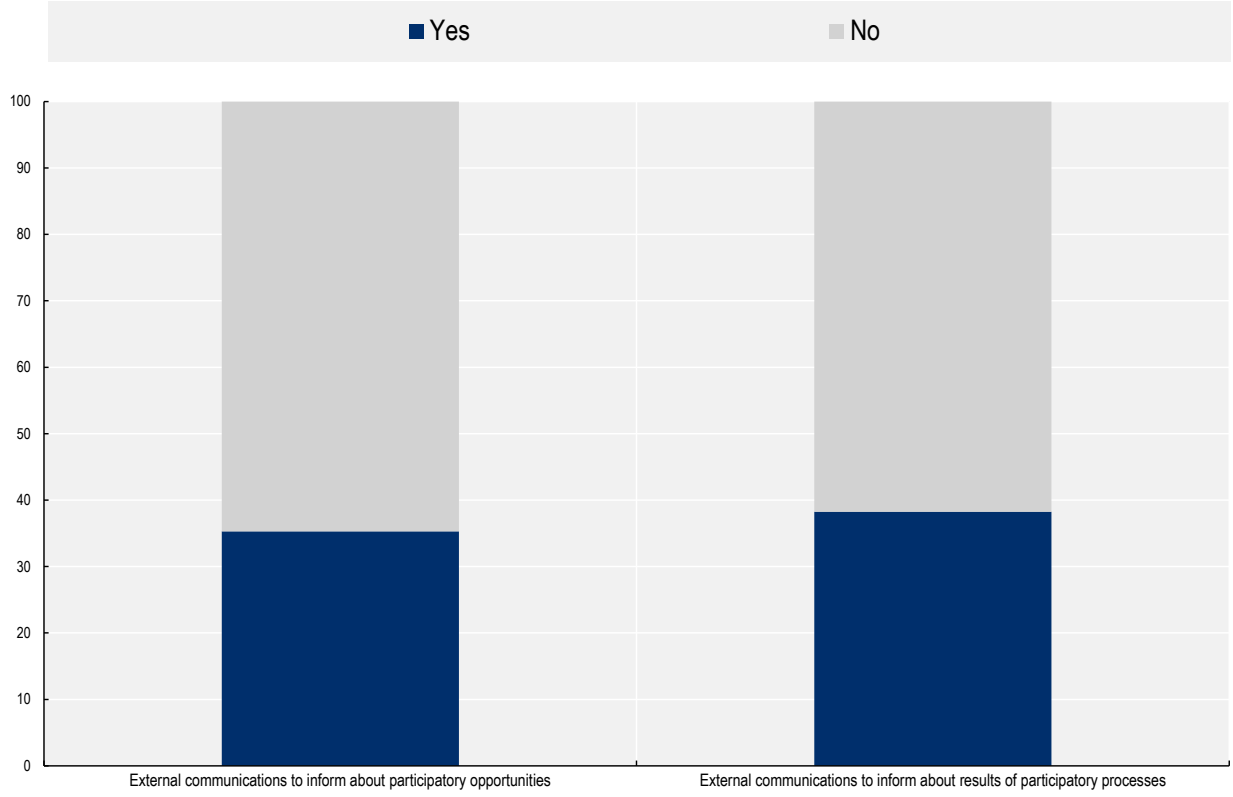
Evidence gathered by the OECD reveals that in the majority of Federal public institutions, there is not a dedicated unit, team or person in charge of citizen and stakeholder participation**.** This responsibility is added to the existing duties of public officials. In addition, the Ministries co-responsible for the participation agenda in Brazil (SEGOV, CGU and Casa Civil) do not have a dedicated team or staff in charge of supporting other federal institutions in implementing participatory practices. **Chapter 4 suggests that an Open Government Co-ordinator in every public institution could have as part of their responsibilities, the implementation of participatory practices. This Chapter also suggests that the**

CGU could have a technical role, like a centre of expertise, to support other public institutions in the implementation of participatory processes.

In addition to a lack of human resources, non-public and public authorities interviewed as part of the OECD fact finding mission pointed out a decrease of financial resources available for participatory processes recent years. This decline echoes the decrease of support from public authorities to initiate participatory mechanisms. Pogrebinschi (2021) shows that from 2015 to 2020, there is a strong decline in participatory processes organized by public authorities. The suggested Policy on Participation could be a driver to increase public support for participatory practices in Brazil.

As highlighted by the (OECD, 2021[72]), the use of public communications to inform the public about participatory opportunities and their results, can increase the number of participants, strengthen the legitimacy of the results and widen the audience of these practices. Data collected by the OECD shows that the use of public communication for participation is a limited practice in federal institutions in Brazil. As Figure 6.20 shows, 35% of public authorities at the Federal level use external communications to inform about opportunities for citizens and stakeholder to participate and 38% use them to inform about the results of such processes.

Figure 6.20. Use of external public communications for citizen and stakeholder participation at the Federal level



Note: N=34
Source: OECD Survey on Open Government Policies and Practices in Brazil (2021)

To further develop the use of public communications for participation, **Brazil could consider issuing guidelines for public institutions and collegial bodies on how to communicate externally with the public. These guidelines could also be accompanied by technical support, or regular communication campaigns across the Federal governmen**t. To increase awareness of the public, and as discussed in Chapter 4, the CGU could strengthen its civic education programs, directed today only to elementary students, opening up to a broader public. Public authorities could partner with civil society organizations such as Politize[15], an organization supporting civic education through interactive and accessible content directed to young audiences.

There is a need to reconnect citizen participation to a vibrant and protected civic space

Brazilian civil society is very diverse and vibrant, has expertise on a variety of sectors (environment, health, etc.) and has proven to be a good ally partnering with public authorities to increase the impact of participatory processes. NGOs, businesses representatives, trade unions, etc. have been active in the collegial bodies and other participatory instances such as the consultation for the Marco Civil da Internet and participatory processes at the local level. Civil society has also been an active player in promoting participation in Brazil, with 117 democratic innovations[16] initiated by civil society in Brazil from 1990 to 2020 (Pogrebinschi, 2021[5]). However, as Chapter 5 on the protection of the civic space highlights, there has been a steady deterioration in the environment for civil society to operate and an increasing polarized atmosphere in the country.

Civil society stakeholders interviewed for this Review expressed their concern for the decrease of participatory opportunities and the quality of the processes in recent years. It is evident that the COVID 19 crisis affected the organization of many in-person processes, but this concern dates to some years ago. The steady decrease of support to participatory spaces, the revocation of the National Policy on Social Participation and the Decree 9759 which closed many collegial bodies, have been perceived as “attacks” against the participatory culture and the civic space in Brazil. Finally, the attacks against minorities, the media, activists and civil society organisations from high level members of the current administration have raised concerns in Brazil and at the international level. These actions have contributed to a polarized atmosphere in the country, which hinders the quality of the interactions between non-public stakeholders and public authorities. The closing of the civic space can have a direct impact on the level of inclusion of participation. As pointed out in Chapter 5, Brazil should protect its vibrant civic space in order to allow for equal, informed, secure and inclusive participation. Civil society can become an important ally in reinforcing the open government agenda in Brazil, as their expertise in organizing participatory processes suggest.

As mentioned in the introduction, information is considered by the OECD as the first level of participation. The rising spread of dis- and misinformation online and the manipulation of public opinion are putting this first step towards an informed participation at risk. Chapter 5 provides evidence of the current situation in Brazil as well as a set of recommendations to support the Government in building a resilient digital information ecosystem.

Brazil could experiment with emerging innovative practices to regain its position as a democratic innovator

Public deliberation and civic lottery, an opportunity for participation in Brazil

The increasing complexity of policy making and the failure to find solutions to some of the most pressing policy problems have prompted politicians, policy makers, civil society organisations, and citizens to reflect on how collective public decisions should be taken in the twenty-first century. The evidence from more than 300 cases gathered in OECD’s *Catching the Deliberative Wave: Innovative Citizen Participation and New Democratic Institutions Report* (2020[12]) shows that the use of representative deliberative processes can support policy makers in complex policy problems such as values-driven dilemmas (e.g. ethical

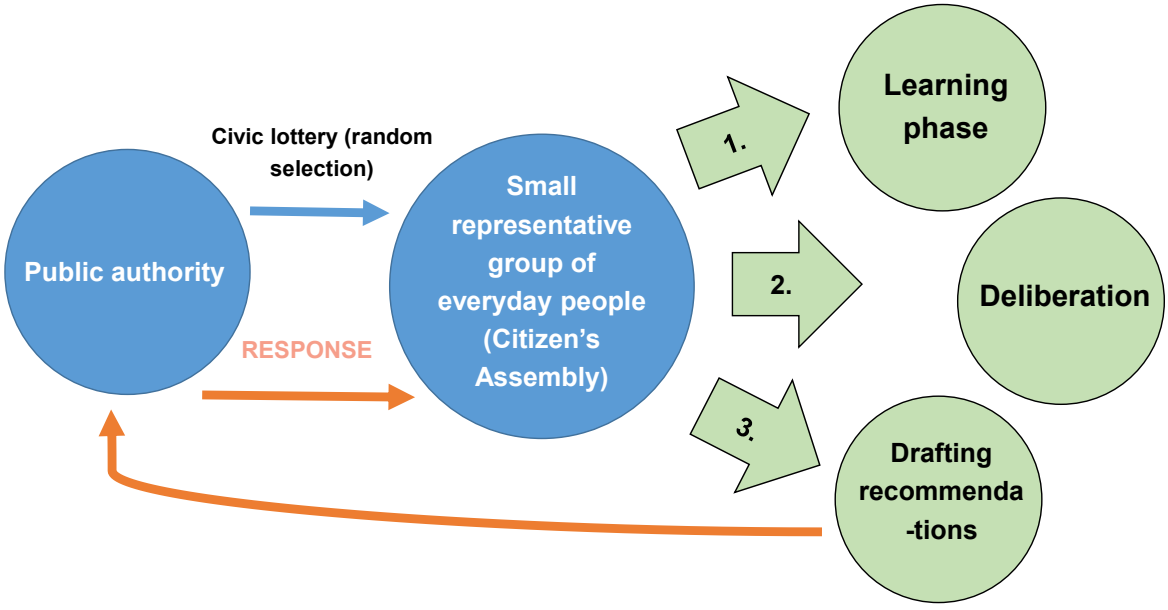
questions) and long-term issues that go beyond one electoral cycle (e.g. climate change). In addition, the use of public deliberation can strengthen integrity and prevent corruption by ensuring that groups and individuals with money and power cannot have undue influence on a public decision and can help counteract polarisation and disinformation (OECD, 2020[12]).

The OECD (2020[3]) defines a representative deliberative process as:

> *When randomly selected citizens, making up a microcosm of a community, spend significant time learning and collaborating through facilitated deliberation to develop informed collective recommendations for public authorities.*

Figure 6.21. Main stages of a representative deliberative process

This figure represents the main stages of a representative deliberative process. The OECD has identified 12 models of representative deliberative processes which have distinct properties and characteristics.



Source: Author's own elaboration based on OECD's Catching the Deliberative Wave: Innovative Citizen Participation and New Democratic Institutions Report (2020), https://doi.org/10.1787/339306da-en

Public authorities at all levels of government in countries such as Canada, the United States, Spain, Poland and Japan have been using Citizens' Assemblies, Juries, Panels, and other representative deliberative processes (see Box 6.18 for more examples).

Box 6.18. Representative deliberative processes: case studies from across the OECD

The OECD's Catching the Deliberative Wave: Innovative Citizen Participation and New Democratic Institutions Report (2020) includes more than 300 cases of the use of representative deliberative processes in public decision making. In addition, the OECD has put together a database with more examples that did not fit the criteria to be included in the report.

The Irish Citizens' Assembly (2016-2018)

The Irish Citizens' Assembly involved 100 randomly selected citizen members who considered five important legal & policy issues: the 8th amendment of the constitution on abortion; ageing populations; referendum processes; fixed-term parliaments & climate change. The Assembly's recommendations were submitted to parliament for further debate. Based on its recommendations, the government called a referendum on amending the 8th amendment and declared a climate emergency.

The Ostbelgien Model (Belgium): a permanent deliberative institution (2019)

On February 25th 2019, in Ostbelgien, the German-Speaking Community of Belgium, the parliament unanimously voted in favour of a piece of legislation that establishes a permanent Citizens' Council. It is comprised of 24 randomly selected citizens, who have a mandate to represent fellow citizens for one and a half years. One third of the members rotate every six months. Its mandate is twofold. First, it has an agenda-setting role. It initiates up to three ad hoc Citizens' Panels during its term and decides the issues the Panels should address. Second, the Council has an oversight role, ensuring that the recommendations from the Citizens' Panels are presented and debated in the parliament and receive a response from the relevant parliamentary committee and minister. The Citizens' Council met for the first time on 16 September 2019. Building on the experience from Ostbelgien, the Paris City Council announced in October 2021 the creation of the first permanent representative deliberative process (Paris Citizen Council) which will gather 100 randomly selected citizens.

Bogota (Colombia) Itinerant Citizen Assembly (2021)

Bogotá City Council (Colombia) is currently (in June 2021) implementing the second chapter of its citizen assembly. Through its DemoLab innovation laboratory, the Bogotá Council launched in 2020 an Assembly with 100 citizens randomly selected, which will meet online for two days to deliberate and give recommendations to the city council on urban planning.

Deliberative Committees in the Francophone Brussels Parliament (Belgium)

Deliberative Committees are the first mixed committees, comprised of 45 randomly selected citizens and 15 elected members of Parliament (MP) - from the relevant Parliamentary Committee to the topic to be discussed. A Committee can be called in two ways: either MPs decide that a citizen contribution to a certain public issue could be valuable, or the initiative comes from citizens, as a citizen suggestion through a digital platform. The recommendations of the Deliberative Committees are then voted both by the citizens and the MPs and the accepted ones have to be discussed in the Plenary of the Parliament with the rest of the elected members.

Source: OECD (2020), Database of Representative Deliberative Processes and Institutions https://airtable.com/shrRYPpTSs9NskHbv/tblfOHuQuKuOpPnHh; OECD (2020[12]), *Catching the Deliberative Wave: Innovative Citizen Participation and New Democratic Institutions Report*, https://doi.org/10.1787/339306da-en; La Asamblea Itinerante del Consejo de Bogotá (2021[73]), http://concejodeBogotá.gov.co/la-transversal/cBogotá/2020-12-21/142357.php; Cesnulaityte (2021[74]), *Deliberative Committees: When parliament and citizens work together,* https://medium.com/participo/deliberative-committees-when-parliament-and-citizens-work-together-f3e3e2444a6b

Deliberation[17] is a core component in many institutionalised participatory bodies and practices in Brazil. Examples of these include the collegial bodies (Councils and Conferences) as well as the assemblies and forums of the participatory budgets (OECD, 2020[12]). The LATINNO database, which documents democratic innovations in Latin America, has over 200 democratic innovations registered in Brazil, out of which 92% are deliberative (Pogrebinschi, 2021[5]). However, this deliberation is not always facilitated or evaluated and participants are not selected via civic lottery (random selection).

Brazilian civil society, with the support of the United Nations Democracy Fund, has been experimenting with public deliberation and civic lottery for policy making since 2012. The non-profit organisation Delibera Brasil has implemented six pilots of deliberative mini-publics at the Municipal level with tangible impact and good results (see Box 6.19). Building on these experiences, and the evidence gathered by the OECD (2020[12]), **Brazil could support the use of representative deliberative processes for public decision making.** Different scenarios are possible for the inclusion of public deliberation and civic lottery in public decision making in Brazil:

- **The collegial bodies (Conferences and Councils) could become a laboratory to experiment with these methodologies making Brazil a pioneer in large scale institutionalised deliberative processes.** Random selection of citizens with stratification methods and facilitated deliberation could improve inclusion and representation in both the Councils and the Conferences and bring citizens (as individuals) into these processes. Representative deliberative processes (e.g. mini-publics) could, for example, complement the working groups, and provide informed recommendations to be discussed by the delegates in the Plenary. This approach could be part of the Municipal, State and National stages.
- **The use of these methodologies could improve the deliberative stages of municipal participatory budget or broader participatory mechanisms at the local level**, as piloted by Delibera in the municipalities of Fortaleza and Sao Paulo (Romão Netto and Cervellini, 2021[75]). Evidence gathered by the OECD (2020) shows that the use of representative deliberative processes could improve budget decisions as they help to justify action and spending on long-term issues that go beyond the short-term incentives of electoral cycles issues, as they are designed in a way that removes the motivated interests of political parties and elections, incentivising participants to act in the interests of the public good (OECD, 2020[12]).
- **For any scenario, it is important to note that the goal is not to replace or compete with elected representatives** (such as elected delegates in the Councils and Conferences, or *vereadores* at the local assemblies), but rather complement and enrich the work of elected assemblies. This is the case of the deliberative commissions in the Brussels' Region Parliament or the Citizen Council in Paris for example (see Box 6.18)

Box 6.19. Delibera Brasil, a pioneer in representative deliberative processes in Brazil.

Delibera Brasil is a civil society organisation created in 2017 with the objective of promoting public deliberation and civic lottery in public decision making in Brazil. With the financial support of the NewDemocracy Foundation, Delibera implemented the first pilot of the United Nations Democracy Fund's program "Democracy Beyond Elections".

Delibera has implemented several pilots of mini-publics, one of the models of representative deliberative processes identified by the OECD in the *Catching the Deliberative Wave: Innovative Citizen Participation and New Democratic Institutions Report*. These mini-publics have been implemented across Brazil, covering a wide range of policy areas.

Citizen Council in Fortaleza on waste management

In 2019, the Municipality of Fortaleza (*Prefeitura de Fortaleza*) and Fortaleza's Observatory (*Observatório de Fortaleza*) organized a representative deliberative process on waste management with the support of Delibera Brasil. Citizens from all geographical sectors of Fortaleza received an invitation signed by the Mayor to participate in the civic lottery to select the 40 members of the Citizen Council. The Council received information from a diversity of sources to learn about the context and challenges of waste management at the Municipal level. The members of the Council deliberated during five in-person sessions and produced 19 recommendations which were presented to the local authorities in December 2019.

Public deliberation for budget allocation in the Municipality of Sao Paulo

Delibera in partnership with Tide Setubal Foundation and Our Sao Paulo Network (*Rede Nossa Sao Paulo*), piloted two virtual deliberative processes in São Miguel Paulista and Jaraguá-Pirituba (Municipality of Sao Paulo). In both pilots, 30 randomly selected citizens, broadly representative of their communities in terms of gender, age, education and occupation, formed a mini-public to make recommendations to the local authorities on priorities for public spending for the period 2021 - 2024. Both deliberative processes produced a series of proposals integrated in the Municipality's digital participatory platform. The impact of these pilots is considerable as 2 proposals have been selected as priorities for the 2022 Budget, but also in terms of civic education on the budget process. These positive results have sparkle interest from the Municipality to apply this methodology to the budget allocation process in the 32 sub-entities of the Municipality, and is considering broadening the use of deliberative processes for other planning instruments as well as the creation of a Municipal deliberative process.

Sources: Delibera (2019[76]), *Fortaleza Citizen Council Executive Summary (Sumário Executivo Conselho Cidadao de Fortaleza),* https://www.newdemocracy.com.au/wp-content/uploads/2018/10/Suma%CC%81rio-ExecutivoConselho-Cidada%CC%83o-de-Fortaleza.pdf ; Netto; Cervellini, Lavalle (2021[75]), *Action Plans of the sub municipalities and virtual mini-publics: the cases of São Miguel Paulista and Jaraguá-Pirituba (Planos de ação das subprefeituras e minipúblicos virtuais: os casos São Miguel Paulista e Pirituba-Jaraguá),* https://centrodametropole.fflch.usp.br/sites/centrodametropole.fflch.usp.br/files/cem_na_midia_anexos/12-nota_tecnica_minipublicos01.pdf

The use of digital tools for participation in Brazil

The use digital tools for citizen and stakeholder participation is a widespread practice at all levels of government around the world. Brazil is no exception, with several good practices of digitally enabled participation at all levels of government as well as in other branches such as the Legislative. Brazilians are able to vote (in legislative, subnational and federal elections), follow and influence the law making process and provide comments to policies and services through digital tools. These technologies also played an

important role to support civil society and amplify social movements, such as the 2014 protests prior to the World Cup in Brazil. For Pogrebinschi and Chaves (2021[77]), digital technologies in Brazil have the potential of broadening the spaces of participation to traditionally excluded publics, by facilitating access to electoral means, diversifying the public debate and by supporting the creation of non-geographical communities.

However, when implementing digital participatory processes, public authorities have to take into consideration the existing "digital divides**"** (i.e. the fact that societies can be divided into people who do and people who do not have access to - and the capability to use - digital technologies) and avoid the emergence of new forms of "digital exclusion" (i.e. not being able to take advantage of digital services and opportunities). Men, urban residents and young people are more likely to be online than women, rural populations and older persons (International Telecommunication Union, 2021[78]). The digital divide in Brazil is defined by geographical, infrastructural, demographic, economic, gender and cultural aspects. In 2019, 26% of the population in Brazil did not have access to the internet, and among internet users, the inequalities between urban, rural and gender are very important (International Telecommunication Union, 2020[79]). A way to tackle the digital divide, public authorities should always propose a non-digital alternative to ensure the inclusion of digitally excluded populations. Participatory processes, as well as public services, should aim at equality of access and participation. Non-digital alternatives can be for example: physical vote, consultations via phone or any other in-person mechanisms (workshops, kiosks, paper mail, etc.). For example, when Mexico City launched a participatory process to co-create its new Constitution, citizens and stakeholders could participate through a digital platform but also via a network of digital kiosks in public spaces and through paper surveys in flea markets, subway stations, and other places that did not have internet coverage (GovLab, 2018[80]).

To ensure digital technologies are an opportunity for participation, **Brazil could consider issuing guidelines for public authorities to ensure universal access and inclusion when using digital tools. In addition, Brazil could partner with researchers and technical communities to establish good practices on the ethical use of technology and ensure its compatibility with democratic values**. Lastly, public authorities could invest in building common public digital infrastructures that are collaborative, transparent and accountable (such as the Wikilegis open source platform in the Congress).

Box 6.20. Digital participation in Brazil – the case of the Chamber of Deputies

The Brazilian Chamber of Representatives has an interesting approach to the use of digital tools for transparency, accountability and participation. Developed through a collaborative approach (in the Hacker Lab -a permanent hackathon where tech communities and public officials can collaborate and create digital solutions for legislative problems), the Parliament has built a digital platform to foster citizen participation. Similar approaches can be found in Argentina and Chile.

The E-Democracia platform is an integrated digital ecosystem that allows citizens to interact with parliamentarians through different mechanisms:

- The Interactive Hearings (*Audiências interativas)* allows the public to follow in real-time the sessions held in Parliament, whether the plenary or the committees and to submit questions to the parliamentarians.
- The WikiLegis tool allows parliamentarians to consult and co-write the legislation with citizens and stakeholder in real-time.
- The Participatory Agenda (*Pauta Participativa*) enables citizens to suggest topics to discuss and prioritize elements in the Chamber's agenda.

Source: Brazilian Chamber of Deputies (2021[81]), E-democracia platform (website accessed on December 19, 2021), https://edemocracia.camara.leg.br/

Recommendations

Building a coherent and clear framework and more efficient institutional architecture for participation

- Consider establishing a coherent and harmonized definition of citizen and stakeholder participation common to all public institutions at the Federal level in Brazil. This definition could be part of the open government definition included in the recommended Federal Open Government Strategy.
  - This definition should aim enlarging the narrow vision and understanding of participation that focuses on control and consultation and differentiate citizen participation (participacao social) from electoral participation (participacao popular) and social accountability (control social).
- Consider creating an integrated legal framework on citizen and stakeholder participation that compiles the existing provisions to facilitate implementation and ensure coherence. This legal framework could be an opportunity to detail the application of Article 193 of the Federal Constitution. It could take a variety of forms:
  - Articles or a section on participation in the suggested review of Decree 10.160 from 2019 establishing the National Open Government Policy (see Chapter 3).
  - A dedicated decree or legislation on citizen and stakeholder participation.
- Consider creating an overarching policy (or strategic document) for citizen and stakeholder participation to streamline the vision across government, enforce stewardship and support implementation. This policy document should have an integrated vision, concrete action and measurable objectives. This policy framework could take a variety of forms, with different degrees of impact:

  - *High impact:* a dedicated section on citizen and stakeholder participation in the recommended Federal Open Government Strategy and guidance to incorporate participation elements in the Institutional Open Government Programmes (see Chapter 3).
  - *Medium impact*: A dedicated policy or strategy on citizen and stakeholder participation.
  - *Low impact:* Guidelines to integrate participation across all existing strategies and policies, including the OGP Action Plan.
- Consider using the OGP Process to foster an inter-institutional dialogue on participation and use future action plans as an opportunity to improve Brazil's citizen and stakeholder agenda. Brazil could for example consider including commitments to introduce an integrated legal framework on participation (i.e. a Decree on Citizen Participation), strengthen current practices (guidelines on public communications for Councils and Conferences) or pilot innovative approaches (a representative deliberative process).
- Establish clear institutional responsibilities for participation and strengthen its link with the open government coordinator (CGU) to ensure stewardship and coordination among federal public institutions and coherence among both agendas. Brazil could consider reducing the public authorities with a mandate on participation to simplify coordination to two levels:
  - Policy stewardship and coordination: a Special Secretariat for Secretariat for Social Participation (in SEGOV)
  - A centre of expertise for technical support and coherence with open government (CGU)
- Consider the creation of an inter-institutional coordination mechanism to oversee the implementation of citizen and stakeholder participation across the federal government. Brazil could consider including this mechanism as a subcommittee on citizen participation in the recommended National Open Government Council (see Chapter 3).
- Consider including the coordination of participatory practices as part of the mandate of the recommended Open Government Office or contact point in all Federal institutions.

Strengthening existing participatory processes, and moving beyond consultations

- Encourage public institutions to increase the opportunities for participation in later stages of the policy cycle, especially during the implementation and the evaluation stages.
- Establish guidelines at the Federal level to harmonize consultations, and ensure public institutions provide feedback to participants and communicate the results of the process.
- Pursue the dissemination of the Participa Mais Brasil platform, and provide support and guidance to all relevant stakeholders, to ensure all federal public institutions make use of the centralised participation platform.
- Make use of the established methodology for participation in the OGP Process, which combines online consultations and in –person co-creation activities, in other policy areas or other strategic documents at the Federal level, such as the recommended Federal Open Government Strategy. Take into consideration the following elements to improve the methodology:
  - Increase the diversity of the actors, especially in terms of territorial representation and policy areas beyond transparency and open data;
  - Include non-public stakeholders in the final stage of the process, where the decision is taken;
  - Organize in-person mechanisms for the first stage of the process, to increase participation and inclusion,
  - Increase the opportunities for citizens (without affiliation) to influence the process, and
  - Learn and share good practices with subnational OGP process, such as Sao Paulo's OGP Local Process.

- Support the move beyond information and consultation to more engaging practices such as co-creation. Encourage all federal institutions, including Ministries and Agencies, to use the Desafios platform, organize hackathons, or other practices such as participatory budgeting. The Desafios platform could be merged within the Participa Mais Brasil platform to support coherence and harmonisation.

Strengthening the Councils and Conferences, and increasing their impact

- Consider reviewing Decree 9.759 of 2019 to ensure the Councils are efficient, representative and inclusive. A reform of the Councils should include the following considerations:
  - Undertake a mapping exercise of all existing Councils, including their membership, mandate, outcomes, costs, etc. This data should be public to enhance transparency and generate opportunities for collaboration.
  - Consult all relevant stakeholders such as Council members, experts, public officials, and civil society representatives throughout the process.
  - Aim at making the Councils useful for both governmental stakeholders as well as citizens and non- governmental stakeholders by providing more clarity and creating stronger links between the deliberations, public bodies and society in general.
  - Explore the use of digital tools for Council deliberations as an alternative to in-person meetings in order to reduce costs.
- Consider a certain harmonisation or coherence of the Conferences to facilitate coordination, support evaluation, and increase understanding and acculturation from public authorities and non-governmental stakeholders. Consider issuing a set of guidelines for the organization of Councils and Conferences, including:
  - participants (scope, recruitment methodology, share among public and non-public);
  - participation methodology (informative sessions, deliberation, vote, etc.);
  - regularity of organisation;
  - impact of recommendations.
- Establish equal representation of non-public stakeholders and government representatives as a minimum requirement for all Councils and Conferences.
- Support the diversity of participants, especially at the initial stages in the Municipal level to include actors beyond the “usual suspects”. Conferences could experiment with innovative approaches to recruit participants, such as civic lottery and stratification.
- Consider including other non-deliberative or non-collegial mechanisms such as public consultations, or digital voting platforms as part of the Councils and Conferences to increase the scope of participants and reach out to a broader audience. These mechanisms could be integrated at the beginning to establish the priorities of the Conferences (agenda setting through a public consultation), throughout the process to provide inputs to delegates (public hearings or consultations) or in the final stage to prioritise the proposals (public vote via a digital platform).
- Consider issuing public communication guidelines, or providing practical support to strengthen the connection between the Councils and the public.
- Strengthen the synergies between these Councils and formal structures of decision (Ministries, Agencies, States, Municipalities, legislative power, etc.)
- Consider issuing good practice principles or other resources to support organizers and ensure a constant quality across Councils and Conferences. In this sense, the OECD developed the Good Practice Principles for Deliberative Processes that can be of inspiration for the Brazilian Government.

Increase the impact of citizen and stakeholder participation

- Ensure that dedicated resources are available and secure at the Federal level to support the implementation of participatory processes.
- Support the participation of under-represented groups by generalizing reaching out campaigns and providing tailored support such as digital training or cover transport costs.
- Improve the use of public communications for citizen and stakeholder participation by issuing guidelines for public institutions and collegial bodies on how to communicate externally with the public. These guidelines could also be accompanied by technical support, or regular communication campaigns across the Federal government.
- Systematize the collection of metrics and the evaluation of participatory processes.
- Consider enlarging the civic education programs of the CGU to a broader public beyond elementary students.
- Include the protection of the civic space as a core element of the participation agenda, in order to allow for equal, informed, secure and inclusive participation.

Experimenting with emerging practices to strengthen Brazil's position as a democratic innovator

- Consider the use of representative deliberative processes for public decision making.
  - The collegial bodies (Conferences and Councils) could become a laboratory to experiment with these methodologies making Brazil a pioneer in large scale institutionalised deliberative processes**.** Random selection of citizens with stratification methods and facilitated deliberation could improve inclusion and representation in both the Councils and the Conferences and bring citizens (as individuals) into these processes. Representative deliberative processes (e.g. mini-publics) could, for example, complement the working groups, and provide informed recommendations to be discussed by the delegates in the Plenary. This approach could be part of the Municipal, State and National stages.
  - The use of these methodologies could improve the deliberative stages of municipal participatory budget or broader participatory mechanisms at the local level, as piloted by Delibera in the municipalities of Fortaleza and Sao Paulo.
  - For any scenario, it is important to note that the goal is not to replace or compete with elected representatives (such as elected delegates in the Councils and Conferences, or *vereadores* at the local assemblies), but rather complement and enrich the work of elected assemblies. This is the case of the deliberative commissions in the Brussels' Region Parliament or the Citizen Council in Paris for example.
- Support accessibility and inclusion in all digitally enabled participatory processes by ensuring public authorities are using non-digital alternatives.
- Consider issuing guidelines or provide practical support to help public authorities promote an ethical use of technology and the development of tools that are compatible with democratic values.

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Notes

[1] Brazil has a unique set of participatory institutions, the colegiados, which include policy councils and policy conferences aiming at providing a space for stakeholder representation. Their objective is to allow for the participation of society in the formulation of policies, the design of public services and the monitoring of government action. See Table 6.1 for more information.

[2] Fala.br is an online platform created and managed by the CGU to replace what was formerly known as the e-SIC. It is an innovative platform that allows citizens to not only request information, but also to make complaints or claims against any federal body, express satisfaction or dissatisfaction for a service or programme, and provide suggestions for improving or simplifying public services. For more information, please see Chapter 7 on Transparency.

[3] This is the case for example of health policies, as participatory practices emerged prior to the 1988 Constitution.

[4] It is important to note that the first National Health Council was created in 1937 but was not autonomous and its members were designated by the Minister.

[5] Brazil's first Council on Education was created in 1911, but was not autonomous from the Ministry.

[6] This provision was sanctioned by the Federal Supreme Tribunal as a Decree can not revoke provisions from a higher norm in this case a legislation.

[7] Casa Civil answer to a request to access public information on this matter: http://www.consultaesic.cgu.gov.br/busca/dados/Lists/Pedido/Attachments/1339447/RESPOSTA_PEDIDO_RESP%20NUP%2000077_001694_2019_27_13_06_2019%20-%20CC.pdf

[8] The PPA 2020 – 2023 is available online: https://www.gov.br/economia/pt-br/assuntos/planejamento-e-orcamento/plano-plurianual-ppa/arquivos/Lein13.971de27dedezembrode2019.pdf

[9] The OECD understands the policy cycle as the following stages: definition, drafting, implementation, monitoring and evaluation.

[10] As of September 2021.

[11] As of December 2021.

[12] From a sample of three types of Conferences on Public Policies for Women, Food and Nutritional Security and Social Assistance organized from 1990 and 2010.

[13] The Casa Civil mentioned in an answer to a request of public information that a centralised platform to access information on all the collegial bodies would be published in late 2020. This portal was not mentioned in any interview or questionnaires addressed to the Casa Civil, and has not yet being published (in July 2021). http://www.consultaesic.cgu.gov.br/busca/dados/Lists/Pedido/Attachments/1385237/RESPOSTA_PEDIDO_RESP%20NUP%2000077_000731_2020_13_25_03_2020%20-%20CC%20-%20(2)%20NI%20LAI%20n%20053%20-%2000077.000731_2020-13.pdf

[14] From a sample of 37 Conferences organized between 2003 and 2011 and that provided detailed documentation

[15] https://www.politize.com.br

[16] Democratic innovations are defined by Pogrebinschi (2021) as institutions, processes, and mechanisms whose end it is to enhance democracy by means of citizen participation in at least one stage of the policy cycle.

[17] The OECD (2020[12]) understands deliberation as public deliberation (in opposition to internal deliberation) and to group deliberation (in opposition to individual deliberation), which emphasises the need to find common ground. The fundamental distinction between deliberation and debate is in relation to the objective, whether it is consensus-seeking as in the former, or zero-sum as in the latter. For this reason, dialogue is an essential element of deliberation (Yankelovitch, 2001). Successful deliberation requires skilful facilitation – "just enough to allow the group to make its own decisions and find its own way when the going gets rough but to keep the group working well" (Carson, 2017). For more information and research on deliberation, please refer to OECD's Report Catching the Deliberative Wave: Innovative Citizen Participation and New Democratic Institutions (2020[12]).

7 Transparency for Open Government in Brazil

This chapter examines opportunities and challenges in the implementation of the open government principle of transparency in Brazil. It analyses the country's legal framework for access to information (ATI), including the mechanisms and tools for proactive and reactive disclosure and provides an assessment of the institutional framework for ATI. Finally, it assesses the role of the broader transparency agenda to enable stakeholder participation in policy design and decision-making. Throughout, the chapter provides recommendations and reflects on good practices from OECD and key partner countries to help the government of Brazil reinforce a culture of transparency.

Introduction

Transparency often represents both the underlying motivation for - and the intended outcome of - open government reforms, strategies, and initiatives. For the purpose of this chapter, government transparency refers to stakeholder access to, and use of, public information and data concerning the entire public decision-making process, including policies, initiatives, salaries, meeting agendas and minutes, budget allocations and spending, etc. Information and data disclosed should serve a purpose and respond to citizen's needs (OECD, 2021[1]). Concretely, promoting transparency enables citizens to exercise their voice and contribute to setting priorities, monitoring government actions and having an informed dialogue about – and participating in – decisions that affect their lives. In addition, transparency is crucial for good governance and contributes to the fight against corruption, clientelism and policy capture, all of which are imperative for restoring citizens' trust in government.

Transparency is underpinned by the right to access to information (ATI), which is understood as the ability for an individual to seek, receive, impart, and use information effectively (UNESCO[2]). This right is materialized through ATI laws, which are considered the first-generation of transparency policies. More recently, governments have shifted from solely publishing information and data, towards a more targeted disclosure that is more useful and impactful for stakeholders. In doing so, governments enable a two-way relationship with stakeholders providing information, as well as gathering their feedback to move towards increased accountability and better citizen and stakeholder participation.

Overall, Brazil is highly committed to the principle of transparency. For many years, transparency initiatives have largely dominated Brazil's open government agenda, most notably with the development of the legal and institutional framework for ATI. These efforts have resulted in a significant volume of information becoming available alongside a simplified process to request it at the federal level. However, further efforts to consolidate the ATI framework across other branches and levels of government are still needed. Moreover, the existing transparency mechanisms could benefit from a more strategic use to monitor government action and to enable wider engagement with stakeholders to reinforce a culture of transparency.

This Chapter examines the opportunities and challenges that Brazil faces in implementing the open government principle of transparency. Based on Provisions 2 and 7 of the OECD Recommendation of the Council on Open Government (hereafter "OECD Recommendation") (Box 7.1), it provides an in-depth assessment of the legal, institutional and implementation frameworks for access to information, the mechanisms and tools for proactive and reactive disclosure, as well as the role of transparency policies to enable stakeholder participation in policy design and decision-making. While the assessment focuses on the application of transparency policies at the federal government, it also integrates the perspective of other levels and branches of government.

Box 7.1. Provisions 2 and 7 of the OECD Recommendation of the Council on Open Government

Provision 2

Ensure the existence and implementation of the necessary open government legal and regulatory framework, including through the provision of supporting documents such as guidelines and manuals, while establishing adequate oversight mechanisms to ensure compliance;

Provision 7

Proactively make available clear, complete, timely, reliable and relevant public sector data and information that is free of cost, available in an open and non-proprietary machine-readable format, easy to find, understand, use and reuse, and disseminated through a multi-channel approach, to be prioritised in consultation with stakeholders;

Source: OECD (2017[3]), Recommendation of the Council on Open Government, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0438

The legal, policy and institutional frameworks for transparency in Brazil

The legal framework for transparency could benefit from more coherence

Transparency has been a high-level federal priority. For many years, transparency initiatives have dominated the open government agenda. For instance, this principle has been included as an objective in the open government policy and the digital government strategy. Moreover, the four Open Government Partnership (OGP) action plans have all had transparency-related commitments (see Box 7.2 and Chapter 3) (OGP[4]). They have contributed to advance the transparency agenda in several fronts, from supporting subnational governments with ATI provisions to developing a federal open data policy, to fostering active transparency in environmental and health issues. In fact, this focus has resulted in an overlap of the conceptual understanding of transparency with open government, meaning that the two terms are used as synonyms. As argued in Chapter 3, this was confirmed during the fact-finding mission where stakeholders would interchangeably refer to both concepts in the same way.

According to the responses to the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*, the approach of the government of Brazil to transparency is trifold: publishing information proactively, guaranteeing citizens' right to information, and providing open government data. According to the Office of the Comptroller General (*Controladoria-Geral da União* - CGU), who is in charge of the transparency agenda, this approach allows stakeholders to use information and data for engaging and monitoring government action (CGU[5]).

Box 7.2. Transparency commitments in Brazil's OGP actions plans

Action Plan 5 (2021 – 2023):

- Improve the quality and availability of environmental databases by promoting standardization, unification and integration of information from different public bodies and entities.

- Make new information on federal public properties available online, improve the quality of information already made available - including on the current use of federal properties - and disclose data in formats enabling reusability by civil society.
- Implement standards and guidelines for the integration of systems and data of the various National Health Surveillance System bodies in order to enable interoperability and enhanced usability, with a view to improving communication with the citizen.

Action Plan 4 (2018 – 2020):

- Implement instruments and transparency actions, access to information and the development of capacities to expand and qualify the participation and public oversight over the repair processes
- Develop a National Electronic System for information requests (e-Sic) in order to implement the Access to Information Law in states and municipalities
- Establish, in a collaborative way, a reference model for an Open Data Policy that foster integration, training and awareness between society and the three government levels, starting from a mapping process of social demands

Action Plan 3 (2016 – 2018):

- Enhance mechanisms in order to assure more promptness and answer effectiveness to information requests, and the proper disclosure of the classified document list
- Ensure requester's personal information safeguard, whenever necessary, by means of adjustments in procedures and information access channels
- Make room for dialogue between government and society, aiming at generating and implementing actions related to transparency in environment issues
- Formulate a strategic matrix of transparency actions, with broad citizen participation, in order to promote better governance and to ensure access and effective use of data and public resource information

Action Plan 2 (2013 – 2016):

- Restructuring the Transparency Portal
- Development of the "Access to Information Library"
- "Brazil Transparent" Programme
- Development of Monitoring Reports on the Electronic Citizen Information System (e-SIC)
- Development of an Indicators Model for Transparency of Brazilian Municipalities

Action Plan 1 (2011 – 2013):

- Restructuring the Transparency Portal
- Guide for Public Officials on Access to Information
- Capacity Building Programmes for Public Officials
- Diagnostic Study on the Transparency Values of Executive Branch

Note: This list is not exhaustive.
Source: Authors own elaboration based on OGP (n.d.[4]), Brazil, https://www.opengovpartnership.org/members/brazil/.

Brazil has developed a comprehensive regulatory framework through several laws, decrees and policies with varying scopes of application that regulate several transparency provisions. These provisions are

either interlinked or complementary to access to information, such as open data, protection of personal data and archives (see Table 7.1).

Table 7.1. Brazil's transparency legislative and regulatory frameworks

Law, decree, policy	Scope of application	Description
The national ATI law, The Law n° 12,527, of November 18, 2011	National	The national ATI law outlines the general procedures for proactive and reactive disclosure for all levels and branches of government.
The open data policy, Decree N° 8,777 of May 11, 2016	Federal	The policy aims to promote the publication of open data in a sustainable, planned and structured way. The policy provides for almost every federal body to have a biannual Open Data Plan (PDA) containing an inventory of every dataset owned by the government body.
Decree N° 9,903 of July 8, 2019	Federal	Amends Decree 8,777 to provide for the management and rights of use of open data.
The General Law on Protection of Personal Data, N° 13,709, of August 14, 2018	National	Provides for the processing of personal data, including in digital media, by a natural person or a legal person under public or private law, with the objective of protecting the fundamental rights of freedom and privacy and the free development of the personality of the natural person.
The national policy of public and private archives, Law 8, 159, 1991	National	Aims to document and protect archival documents as an instrument to support administration, culture, scientific development and as evidence and information.
The fiscal responsibility law, N° 101, 2000	National	This law establishes obligations on fiscal responsibility and the penalties for governments that do not comply. The provisions include mandatory transparency of spending and revenues and the need for public hearings in the development of budgets.
Complementary law N° 131 of May 27, 2009	National	Complementing the fiscal responsibility law, it establishes public finance standards for responsible fiscal management in order to determine the budgetary and financial spending. It makes mandatory the publishing of online data on spending and revenues.
Law N° 14,129 of March 29, 2021	National	Provides for principles, rules and instruments for Digital Government and for increasing public efficiency.
Law N° 14,063 of September 23, 2020, use of electronic signatures	National	The law provides for the use of electronic signatures in interactions with public entities, in acts of legal entities, in health matters and on software licenses developed by public entities. It determines that the information and communication systems are governed by an open source license.
Digital government strategy (DES) for 2020-2022, Decree N° 10,332/2020	Federal	The strategy contains concrete commitments to improve transparency and participation as part of its plan to improve public service delivery.
National Open Government Policy, Decree Nº 10,160/2019	Federal	The national open government policy contains concrete objectives linked to fostering transparency and ATI.
Decree N° 5,482, of June 30, 2005	Federal	The Decree provides for the disclosure of data and information by the agencies and entities of the federal public administration, through the Internet. In practice, it defines the rules for the implementation of the transparency portal.
Law N° 13,898, of November 11, 2019	Federal	The law provides guidelines for the preparation and execution of the Budget Law of 2020 and other measures. While this law changes every year with the new approved budget, it systematically includes transparency provisions.
Decree N° 8,945 of December 27, 2016	Federal	The Decree outlines the transparency obligations for state owned companies.

Note: The list if not exhaustive.
Source: Author's own elaboration based on (Casa Civil, 2011[6]); (Presidency of the Republic, 2016[7]); (Presidency of the Republic, 2019[8]); (Presidency of the Republic of Brazil, 2018[9]); (Presidency of the Republic, 1991[10]); (Presidency of the Republic, 2000[11]); (Presidency of the Republic, 2009[12]); (Presidency of the Republic, 2020[13]); (Presidency of the Republic, 2020[14]); (Presidency of the Republic, 2019[15]); (Presidency of the Republic, 2005[16]); (Official Diary of the Union, 2021[17]); (Presidency of the Republic, 2019[18]); (Presidency of the Republic, 2016[19]).

In addition to the framework listed in Table 7.1, other laws and decrees also create transparency obligations on sectoral areas (environment, budget, etc.) while others provide protection for specific

information (fiscal, personal, etc.). These obligations contribute to develop a more transparent culture in the public administration and provide concrete tools for citizens to monitor government actions. For instance, through the mandatory publication of public revenues and expenditures, citizens and stakeholders can conduct oversight on government spending. However, interviews conducted during the fact-finding mission revealed that the complex net and interaction of regulations and processes can represent confusing obligations, burdensome reporting lines and bureaucratic procedures, particularly for subnational governments. While this challenge is not exclusive to transparency obligations, more clarity and coherence in regard to the primacy and complementarities across the laws, decrees and policies could help improve the overall understanding and implementation. Aware of this challenge, Brazil is considering integrating access to information, open data and other transparency related-elements into a single decree called the Transparency Policy. While it would only apply to the federal government, the Policy could provide the needed coherence among regulations and obligations to federal government institutions. In order to fully integrate the transparency agenda into the wider open government agenda, this Transparency Policy could become part of the Open Government Strategy, recommended in Chapter 3.

Moving from transparency as an element of control to a new culture of governance

At the institutional level, the transparency agenda is co-ordinated by the Directorate of Transparency and Social Control (DTC), in the Secretariat for Transparency and Prevention of Corruption (*Secretaria de Transparência e Prevenção da Corrupção* - STPC) within the CGU (see Chapters 6 and 8 on how social control is understood as accountability and participation in Brazil). According to interviews during the fact-finding mission, this mandate is recognised by all stakeholders across the government and civil society. In practice, the CGU's ministerial status provides high visibility and authority to its actions. However, given its historic mandate for internal control, the approach to transparency is often perceived by federal bodies as a control issue rather than an attempt to change the administrative culture, limiting the potential that this agenda has in inclusive policy and decision making as well as in stakeholder participation, accountability and restoring trust in government. Therefore, the CGU could carry out awareness raising campaigns for public officials to move from a control approach into transparency as a new culture of governance that both enables and encourages citizen's participation in policy-making and service-design and delivery, engages stakeholders in effective monitoring of government actions and prioritizes access to reliable information to identifying counter-measures and promoting open decision-making contributing to regaining citizens' trust government.

The involvement of stakeholders in the elaboration, implementation and monitoring of transparency agenda increases awareness and buy-in

Another relevant body in regard to transparency is the Council for Public Transparency and Fight against Corruption (*Conselho de Transparência Pública e Combate à Corrupção* - CTPCC). Created by Decree 9,468 from 2018, the CTPCC acts as an advisory body within the CGU and is composed of fourteen members, seven representatives of the Federal Executive Branch and seven from organized civil society (Presidency of the Republic, 2018[20]). The Council aims to debate and suggest measures for the improvement and promotion of federal policies and strategies on several topics including transparency and access to public information. For instance, the CTPCC is involved in preparing and discussing the content of the Transparency Policy (Official Diary of the Union, 2020[21]). The work of the CTPCC related to anti-corruption and public integrity will be reviewed in detail in the OECD Integrity Review of Brazil (OECD, Forthcoming[22]). Other branches and levels of government have also developed similar advisory bodies that include external stakeholders, such as the Transparency and Social Control Council within the Federal Senate (Federal Senate[23]).

The involvement of civil society organisations in policy elaboration and implementation across levels and branches of government is crucial to increase awareness and uptake and to ensure consistency across

thematic areas within the transparency agenda. The CGU could leverage the use of the CTPCC by ensuring a wider representativeness of stakeholders in the elaboration, implementation and monitoring of its transparency agenda to go beyond the usual suspects. In the medium term, as part of the recommended transition towards a fully integrated open government agenda (see Chapters 3 and 4), the Council for Public Transparency and Fight against Corruption could become part of the wider Open Government Council, as discussed in Chapter 4. This integration would strengthen the links between both agendas and ensure coherence and alignment.

The Brazilian legal framework for access to public information

The right to information is recognised at the highest level in Brazil

In public administration, ATI is defined as the existence of a robust system through which government information and data is made available to individuals and organisations (UNESCO, 2015[24]). In 1946, freedom of information was recognised as a "fundamental right and the touchstone of all freedoms" by Resolution 59 of the United Nations General Assembly (UNGA, 1946[25]). As a consequence, the right to ATI has been enshrined in several countries' constitutions, including in 70% of OECD Countries, such as Belgium, Colombia, Greece and Portugal (Box 7.3). In Brazil, the right to information is recognised in the 1988 Constitution of the Federative Republic of Brazil, as discussed in Chapter 3:

- **Article 5 XIV and XXXIII:** "*Access to information is guaranteed to everyone and the confidentiality of the source is protected, when necessary for professional practice;* (…) a*ll persons have the right to receive, from the public agencies, information of private interest to such persons, or of collective or general interest, which shall be provided within the period established by law, subject to liability, except for the information whose secrecy is essential to the security of society and of the State*".
- **Item II of § 3 of article 37:** "*The law will regulate the forms of user participation in direct and indirect public administration, specifically regulating (…) access by users to administrative records and information on government acts*".
- **§ 2 of article 216:** "*It is incumbent upon the public administration, in accordance with the law, to manage governmental documentation and take steps to facilitate its consultation to those who need it*" (Casa Civil, 1988[26]).

Box 7.3. Constitutions recognising the right to access information

Belgian Constitution

Article 32: "*Everyone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by the laws, federate laws or rules referred to in Article 134*".

Colombian Constitution

Article 20: "*Every individual is guaranteed the freedom to express and diffuse his/her thoughts and opinions, to transmit and receive information that is true and impartial, and to establish mass communications media*.

Article 74: "*Every person has a right to access to public documents except in cases established by law*

Greek Constitution

Article 5(A): "*1. All persons have the right to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of*

national security, of combating crime or of protecting rights and interests of third parties. 2. All persons have the right to participate in the Information Society. Facilitation of access to electronically transmitted information, as well as of the production, exchange and diffusion thereof, constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19".

Portuguese Constitution

Article 268: "*1. Citizens have the right to be informed by the Administration, whenever they so request, as to the progress of the procedures and cases in which they are directly interested, together with the right to be made aware of the definitive decisions that are taken in relation to them. 2. Without prejudice to the law governing matters concerning internal and external security, criminal investigation and personal privacy, citizens also have the right of access to administrative files and records".*

Source: Constitution of Belgium (1994[27]), https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf; Constitution of Colombia (1991[28]), https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125; Constitution of Greece (1975[29]), https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf; Constitution of Portugal (1976[30]), https://www.wipo.int/edocs/lexdocs/laws/en/pt/pt045en.pdf.

Having the right enshrined at the highest level creates the necessary legitimacy and mandate for developing a legal and institutional framework for access to information at all levels and across branches of government. However, having solely the right recognised is insufficient if it is not well operationalised with adequate support and effective implementation.

As further discussed in Chapter 2, at the supranational level, Brazil has adhered to a number of international treaties and conventions that recognise the right to information (Table 7.2). These treaties and conventions lay out the general principles for the right to information. Countries that have ratified these instruments, such as Brazil, commit to protect and preserve the rights stated therein by taking administrative, judicial and legislative measures for effectively enforcing them.

Table 7.2. International treaties and conventions recognising the right to information adhered by Brazil

International instruments	Relevant provisions
Universal Declaration of Human Rights (UDHR) (1948)	Article 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".
International Covenant on Civil and Political Rights (ICCPR) (1976)	Article 19: "The exercise of the rights (…) carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: a) For respect of the rights or reputations of others; b) For the protection of national security or of public order (*ordre public*), or of public health or morals."
United Nations Convention against Corruption (adopted in 2003 entered into force in 2005)	Article 10: "take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes, where appropriate". Article 13: "(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes; (b) Ensuring that the public has effective access to information"
Inter-American Convention on Human Rights (adopted in 1968, entered into force in 1978)	Article 13: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice".
American Declaration of Principles on Freedom of Expression (2000)	Item 4: "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

Note: This non-exhaustive list includes the most relevant treaties and conventions recognising the right to information, to which Brazil has adhered.
Source: Elaborated by author, based on (UN, 1948[31]); (OHCHR, 1976[32]); (UN, 2004[33]); (OAS, 1978[34]); (OAS, 2000[35]).

However, despite having signed the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean in 2018 (also known as the *Escazú* Agreement) Brazil has, so far, not ratified it. To do so would require the Executive to send the Agreement to Congress for ratification. The Agreement is an important regional instrument that aims to guarantee "the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters" (ECLAC, 2018[36]). This legally binding Agreement, which entered into force in April 2021, has 26 articles that outline provisions to ensure that the rights for information, participation, and justice on matters relating to the environment are respected. In terms of ATI, it includes obligations for generating, disseminating and providing access to information pertaining to environmental matters. Ratifying this Agreement would not only signal high-level political commitment and leadership to this policy area but would also allow Brazil to strengthen its existing environmental framework. Box 7.4 outlines the main findings and recommendations of Brazil's OECD Environmental Performance Review.

Box 7.4. Environmental information and transparency in Brazil

In 2021, the OECD evaluated the alignment of Brazil's environmental legislation, policies and practices with 23 selected OECD legal instruments on the environment. In terms of transparency, the evaluation found that environmental information remains fragmented+. Several institutions collect, consolidate and publish environment-related data. Brazil does not publish periodic state of the environment reports despite having to do so by national law and in contrast to the provisions of the OECD Recommendation of the Council on Reporting on the State of the Environment.

In 2017, the Ministry of the Environment published a set of key environmental indicators (the National Panel of Environmental Indicators) to track progress in implementing environmental and sustainable development policies. This is in line with the requirements of Recommendation of the Council on Environmental Indicators and Information. However, data sources, definitions and calculation methodologies for these indicators need to be clarified and updated.

The national access to information law regulates broad access to public information, as promoted by the OECD Recommendation of the Council on Environmental Information. As found by this Chapter, the law is followed well at the federal level, but its implementation at the state and municipal levels varies.

The recommendation of the 2015 OECD Environmental Performance Review (EPR) of Brazil to develop a uniform system for the collection and management of environmental data, including on environmental law implementation and economic aspects of environmental policies, remains valid.

To facilitate its alignment with the OECD Recommendations on environmental information, the report recommended the government of Brazil to:

- Regularly publish state of the environment reports, both at the federal and state levels.
- Continue efforts to develop indicators on the implementation of environmental and sustainable development policies and ensure that these are regularly updated and supported by appropriate

data sources, definitions and calculation methodologies; enhance consistency between regional and national data.

- Provide public access to information about environmental performance of enterprises, including the register of their pollution releases and compliance records.

Source: OECD (2021[37]), Evaluating Brazil's progress in implementing Environmental Performance Review recommendations and promoting its alignment with OECD core acquis on the environment, https://www.oecd.org/environment/country-reviews/Brazils-progress-in-implementing-Environmental-Performance-Review-recommendations-and-alignment-with-OECD-environment-acquis.pdf

The National ATI Law in Brazil

At a country level, OECD data shows that the operationalisation of the right to information can take different forms depending on the national context and each country's own particularities. The legal guarantees are mostly made operational through ATI laws that can be enacted at the national and at the local level. According to the Global Right to Information Rating (RTI), ATI laws are present in 134 countries (RTI Rating[38]), including 37 OECD members[1]. The ATI legal framework can also take the form of specific decrees, as it is the case for Costa Rica, or of directives or laws giving access to certain sectorial information (i.e. environmental, health).

At the national level, Law 12.527 from 2011 (hereafter "national ATI law") establishes the provisions to enforce the right to access information as provided by the Constitution (Casa Civil, 2011[6]). It represented an important milestone not only for the transparency agenda but more generally for the national open government agenda, as it was developed and adopted in the framework of Brazil's adherence to the OGP in 2011 (see Box 7.2).

According to the RTI, Brazil's ATI law is ranked as the 29th strongest in the world, in terms of the quality of its legal provisions. With a total of 108 points out of 150 possible, it ranks significantly higher than the OECD average of 81 and above the average of Latin American countries of 93 (RTI Rating[39])[2]. The Rating, however, only examines the quality of the legal provisions for reactive disclosure and does not account for their implementation nor for proactive disclosure provisions.

The national ATI law has a wide scope of application but its uptake remains weak at the subnational level

The breadth of application of ATI laws indicates whether the provisions in place apply to all branches of government, to all levels of governments, to independent institutions of the state and / or to the entities carrying out public functions or managing public funds. Unlike most OECD countries, the national ATI law in Brazil has a wide scope of application covering all branches and levels of government, as well as private entities managing public funds, state-owned enterprises, independent institutions and other entities performing public functions (Articles 1-2). Among OECD members, ATI laws include small administrative regions (i.e. towns, cities) in 81% of OECD countries (e.g. Austria, Belgium, and Mexico), 53% cover the legislative and 59% the judicial branches (e.g. Chile, Estonia, and Slovenia), 84% of OECD countries comprise their independent state institutions (e.g. Finland, Japan, and Norway). These numbers vary for other bodies such as state-owned enterprises (78%) or private entities managing public funds (63%).

Similar to other countries with a federal structure, each level of government and each branch of government in Brazil is supposed to define specific rules in their own legislations for implementing the general provisions stressed in the national ATI law. While most public bodies have adopted regulations to comply with the minimum requirements of the national ATI law, a few have gone beyond. Such is the case of the federal government, which adopted Decree 7.724 in 2012 (hereafter "federal ATI decree"), to specify the procedure to provide access to information in 300 federal bodies (Casa Civil, 2012[40]). Importantly, the

federal ATI decree assigned oversight responsibility of the ATI obligations to the CGU. The other branches of government have also adopted legal provisions to comply with the national ATI law. In particular, the Federal Senate (the Upper House) enacted the Executive Committee Act N° 9 in 2012 (Federal Senate, 2012[41]) to regulate access to data, information and documents. The Chamber of Deputies (the Lower House) enacted Act N° 45 in 2012 (Chamber of Deputies, 2012[42]), specifying the provisions for the application of the ATI national law. Through the Resolution N° 215 from 2015, the judicial branch also regulated the application of the national ATI law (National Council of Justice, 2015[43]). Some independent institutions, such as the Court of Accounts (TCU) and the Federal Public Prosecutor (*Ministério Público Federal* - MPF), have also established their own procedures for granting ATI within their institutions in accordance to the national ATI provisions.

However, at the municipal level, the adoption of their own ATI legislation remains weak. All 26 states and the federal district have developed their respective ATI provisions, however, there is limited data showing the exact number of municipalities that have done so. Article 45 of the national ATI law states that "it is up to the States, the Federal District and the Municipalities, in their own legislation, in compliance with the general rules established in this Law, to define specific rules". Unlike other federal systems, Brazilian municipalities have financial, administrative and political autonomy, as further discussed in Chapter 2. This implies that each of the 5,570 municipalities have to, either adopt minimum regulations to comply with the national ATI law, or develop their own ATI law going beyond. This level of independence that is afforded to municipalities in Brazil influences the enforcement of several national laws at this level, including ATI.

In addition, in a country with important regional disparities such as Brazil (see Chapter 2), municipal capacities also play an important role in the adoption and implementation of the national ATI law as it requires adequate human and financial resources. Strong co-ordination and oversight mechanisms, as well as adequate incentives and effective sanctions, are also needed to ensure effective implementation.

To counter the weak compliance by Brazilian municipalities, the CGU developed the Brazil Transparency Programme (*Programa Brasil Transparente* - PBT) initiative. The PBT aims to motivate states and municipalities to adopt and implement the national ATI law. Established in 2013, the PBT is a voluntary programme that encourages subnational governments in committing to regulate the national ATI law, by providing implementation support through capacity building activities, technical materials, among other measures. As of November 2019, 1,542 out of the existing 5,570 (28%) municipalities had adhered to the PBT, as well as other subnational entities (such as judicial and legislative branches at both the state and municipal level) (CGU[44]). While the PBT has contributed to an increase of municipalities regulating the national ATI law, a study from the Getulio Vargas Foundation (*Fundação Getulio Vargas* – FGV), found that adhering to the PBT has not always lead to the actual implementation of ATI provisions (Michener, Contreras and Niskier, 2018[45]).

Further efforts are needed to promote the adoption of ATI obligations from the national ATI law across levels and branches of government. On the short term, the CGU could continue to foster compliance with the national law through initiatives such as the PBT that not only facilitate the adoption of the needed ATI regulatory framework, but also provide implementation support to increase capacities across subnational entities. In addition, as other sections of this Chapter will argue, to address the lack of effective oversight and enforcement of ATI obligations across all levels, stronger institutional mechanisms are needed. In the longer term, if the law is reformed, the government of Brazil could provide further clarity and details to the legal ATI obligations for other levels and branches of government.

Proactive disclosure of information and data In Brazil

Proactive disclosure refers to the act of regularly releasing information before it is requested by stakeholders, which is deemed to be essential as it shows a fully integrated and institutionalised culture of transparency by governments. It also reduces administrative burden for public officials involved in handling and answering individual ATI requests, which can often be lengthy and costly. Favouring proactive

disclosure “encourages better information management, improves a public authority’s internal information flows, and thereby contributes to increased efficiency” (Darbishire, 2010[46]). Finally, it ensures timely access to public information for citizens as information is published as it becomes available and not upon request (OECD, 2016[47]). In fact, the proactive disclosure provisions from ATI laws in 21 OECD Member countries have set the legal mandate for open government data requirements and/or responsibilities. Other countries have developed separate open data regulations (OECD, 2018[48]).

The legal obligations for proactive disclosure at the federal level are in line with OECD good practices

Most ATI laws require the proactive disclosure of a minimum set of public information and data to be published by each institution. As in the majority of OECD Member countries, Article 8 of Brazil’s national ATI law requires all public bodies to proactively disclose the organigram and functions of the institution, budget documents, annual ministry reports, opportunities for and results of public consultations, as well as public calls for tenders (public procurement). In addition, Article 7 of the federal ATI decree adds more requirements for proactive disclosure by federal bodies, such as remunerations and subsidies received by public officials, as done by 42% of OECD Member countries. It is important to note, that in practice, more information is published proactively at the federal level, than what is required in both the national ATI law and the federal ATI decree, thanks to other legal frameworks. For instance, Ordinance 262 from 2005 requires all federal bodies to publish their management reports, annual activity reports and audit certificates. Overall, federal practice exceeds national requirements as well as OECD good practices.

The CGU has led efforts to implement proactive disclosure obligations at the federal level

An important element of any ATI law is where and how information is published. In addition to the type of information disclosed, Provision 7 of the OECD Recommendation specifies that data and information disclosed should be “clear, complete, timely, reliable relevant, free of cost and made available in an open and non-proprietary machine-readable format, easy to find, understand, use and reuse, and disseminated through a multi-channel approach, to be prioritised in consultation with stakeholders” (OECD, 2017[3]). In OECD countries, proactively disclosed information is mostly published either in a single location, such as a central portal, on each ministry’s or institution’s website, or in a combination both. In Brazil, public bodies subject to the national ATI law are obliged to disclose the required information through their official websites. These websites have a series of requirements specified by the national ATI law, such as providing a content search tool allowing ATI in an objective, transparent, clear and easy-to-understand language and enabling the recording of reports in various electronic formats, including open and non-proprietary, such as spreadsheets and text, in order to facilitate the analysis of information. All bodies are required to adopt the necessary measures to ensure accessibility of content for people with disabilities. Only municipalities that have less than 10,000 inhabitants are exempted from the mandatory disclosure on websites, but are still obliged to disclose budgetary and financial information. The federal ATI decree provides more in-depth information of how information should be published. Moreover, in addition to the mandatory website for proactive disclosure, some federal bodies have gone beyond the legal requirements to develop tools that facilitate the access and the use of public information and data, such as the “Platform + Brazil” and the “Purchasing Panel” developed by the Ministry of Economy. As the below section on targeted transparency describes in more detail, some of these tools enable a two-way relationship between public institutions and stakeholders.

Efforts have also been made by the CGU to develop platforms that compile available information and data from federal bodies in order to facilitate access and monitoring by stakeholders, notably with the Transparency Portal and the Open Data Portal (see Chapter 4 for a description of all relevant portals in the area of open government). Created in 2004, the Transparency Portal (www.portaltransparencia.gov.br) represents a major landmark for Brazil’s transparency and open government agendas and has helped paved the way for several of the current ATI and open data initiatives (CGU[49]). The portal centralises

information from 32 government databases and provides users with different ways to explore and use the information and data with graphic resources, an integrated search engine and the possibility to freely download all available information and data in an open format. The portal mainly contains information on federal expenditure, including federal transfers to states, municipalities and the federal district. The overarching aim of the portal is to serve as an anti-corruption and control tool to monitor the use of public resources. For instance, stakeholders can track and verify whether federal transfers to municipalities have been used to provide the public services they were intended to. Importantly, in case any wrongdoing is identified, the portal provides the necessary information for citizens to make complaints or claims against any federal body through Fala.BR (see section below for more information). Within the portal, the CGU created a web page called the Transparency Network, which provides access to projects and actions relevant to social control. It includes links to some of the tools for social control developed by federal bodies in sectoral areas, such as education (e.g. scholarships paid to individuals), social benefits (e.g. continuous cash benefits), urban development (e.g. National System for Survey of Civil Construction Costs and Indexes (SINAPI), among others. However, the network is not an exhaustive list of all existing platforms nor the portal contains all available public information (CGU[50]).

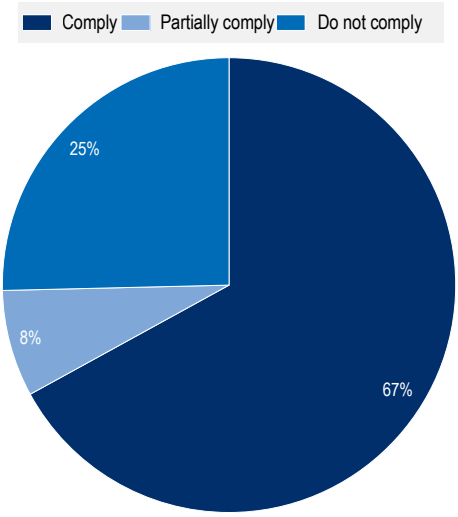
In practice, the Transparency Portal benefits from wide popularity among citizens and stakeholders with over 27 million visits and 156 million Application Programming Interface (API) requisitions in 2020 (CGU[51]). Its use by civil society has led to concrete changes in government actions. For instance, in 2008, journalists analysed spending of the government's corporate credit cards and found several abuses (Prado, Ribeiro and Diniz, 2012[52]). As a consequence, the federal government adopted the Decree 6.370 in 2008 to prevent the use of these cards for personal expenses which led to a 25% decrease of government credit card spending between 2007 and 2008 (Folha de S.Paulo, 2008[53]). That same year, the CGU launched a manual to guide federal public officials on how to use this form of payment (CGU, 2008[54]). Another study published in 2015 by a national newspaper analysed data extracted from the Transparency Portal and from the Higher Education Census showing that the Student Financing Programme (FIES) was financing private colleges for high income students instead of low income ones (Estadão, 2015[55]). The study resulted in a regulatory changes for the programme through the normative ordinances 21 and 23 to ensure that credits provided are merit-based (Exame, 2017[56]). These impact stories are testimony to the impact of the use of the Transparency Portal.

As highlighted in Chapter 9 on Open Government Data, another relevant effort is Brazil's Open Data Portal (https://wiki.dados.gov.br/). The portal provides a central access point for researching, accessing, sharing and using public data. Open government data has also been used by stakeholders for monitoring government actions. For instance, the oncologic observatory (*Observatório de Oncologia*) uses government open data from the Ministry of Health (DataSUS), the National Cancer Institute (INCA) and the Brazilian Institute of Geography and Statistics (IBGE) to analyse cancer trends in Brazil (Oncology Observatory, n.d.[57]).

The implementation of proactive obligations varies across federal bodies

The creation of these portals has resulted in a significant volume of information and data becoming available to the population. However, interviews conducted during the fact-finding mission revealed a series of challenges in this regard. While some federal bodies have indeed developed good practices beyond the legal requirements, the implementation of basic proactive measures varies across institutions. An ATI Panel created by the CGU provides up-to-date statistics on compliance of proactive and reactive disclosure obligations. It reveals that between 1 January 2012 and 28 February 2022, 67% of federal bodies comply with their proactive obligations, 8% partially, and 25% do not (CGU[58]) (see Figure 7.1). The disaggregated data by shows that the highest compliance score is on information related to tools and technological aspects of websites from federal bodies (92%) and the lowest score is on information related to revenue and expenditures (57%).

Figure 7.1. Compliance with proactive transparency obligations by federal bodies



Note: The data covers the period from1 January 2012 to 28 February 2022.
Source: Authors own elaboration based on data from the ATI Panel (CGU, n.d.[58]) on 28 February, 2022. http://paineis.cgu.gov.br/lai/index.htm

The relatively low compliance rate may be partially explained by the different technical capacities across the over 300 federal bodies. According to interviews, other factors such as the lack of sanctions for non-compliance to the national ATI law, the persistence of a culture of secrecy in certain sectors and a lack of awareness of the benefits of proactive disclosure also influence the levels of compliance. To counter these challenges, the CTPCC proposed the creation of an active Transparency Observatory to expand the monitoring capacity for the proactive publication or withdrawal of information as well as for disseminating new information. The following set of actions were defined for its implementation: 1) a tool to report publication or withdrawal of information; 2) designing a dissemination and action process for information withdrawn; 3) elaborating a monitoring process; and 4) developing a dissemination tool for the information of the observatory (Official Diary of the Union, 2020[59]). As coordinator of this initiative, the CGU is working to implement these actions. Brazil could continue working towards the creation and implementation of the Transparency Observatory as it could help to address challenges related to the unequal implementation of proactive disclosure provisions across federal public institutions. Additional training and awareness raising activities for federal public institutions laying out the importance and impact of proactive disclosure could also help increase compliance. For instance, Brazil could collect and disseminate impact cases, such as the decrease in government credit card spending and the reform on the FIES, to increase buy-in from public officials. When facing a similar challenge of compliance with proactive provisions, the ATI oversight agency of Argentina co-created an Active Transparency Index with public officials and non-governmental stakeholders (Box 7.5).

Box 7.5. Active Transparency Index of Argentina

Argentina adopted its access to information (law 27,275) in 2016. In the framework of the law, the Agency for Access to Public Information (AAIP) was designated responsible for the implementation oversight identified challenges in the implementation of proactive provisions in its Article 32. In response, the AAIP created an Active Transparency Index designed collaboratively with relevant public officials and civil society in the framework of the fourth National Action Plan of the Open Government

Partnership. The overarching aim of the Index is to measure the level of compliance of proactive transparency obligations stated in the Law 27,275 as well as to reduce the burden of ATI requests. The Index covers over 26 centralized and 94 decentralized institutions of the National Public Administration, 55 public companies, and 66 universities. These institutions are measured according to the following variables: the procedure to request the access of information, authorities and staff, salary scale, tax declarations, budgeting, audits, subsidies, and other transfers/operations.

Source: Government of Argentina (n.d.[60]), Proactive transparency (Transparencia activa), https://www.argentina.gob.ar/aaip/accesoalainformacion/ta

As further discussed in Chapter 4, the multiplicity of platforms and panels created by the federal government use different structures, terminologies and formats. For citizens and stakeholders, navigating these can be confusing and difficult, resulting in a struggle to find the information they need. For the government, it raises questions in terms of efficacy, reach and coordination. The current efforts on proactive disclosure could thus benefit from more standardization and simplification for users. Building on the example of the Transparency Network web page, the CGU could create a centralised and unique web page mapping all of the existing portals and panels where proactive information is disclosed. This web page could include guiding instructions for users to find the information they need. In an ideal case, this mapping page could be hosted within the Open Government Portal recommended in Chapter 4. Alternatively, should Brazil decide not to create the recommended Open Government Portal, the mapping page could become part of the Transparency Portal. Ultimately, making a more robust system for proactive disclosure that is easier to access and use can also ease the administrative and processing costs of access to information requests faced by federal public institutions, as will be explained below.

Other branches and levels of government have made efforts to proactively disclose information and data

According to the responses of *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*, the other branches of government duly comply with their proactive transparency provisions and have developed their own tools and mechanisms to promote the access and use of their published information and data by stakeholders. For instance, the Federal Senate has its own transparency portal. The portal allows stakeholders to track legislative activity, file ATI requests, access open data, participate in debates and provide opinions on projects and proposals, among other actions (Federal Senate[61]). Similarly, the transparency portal of the Chamber of Deputies has relevant information on legislative results, parliamentary income and expenses, as well an ATI web page (Chamber of Deputies[62]). The Chamber of Deputies also has an Open Data Portal, offering not only relevant open datasets, but also a game that allows citizens to better understand the parliamentarians' activities through the use of data (Chamber of Deputies[63]). The highest bodies of the judicial branch also have transparency portals that include the publication of proactive information (i.e. the Supreme Federal Court, *Supremo Tribunal Federal* – STF and the Superior Court of Justice, *Superior Tribunal de Justiça* – STJ) (STF[64]) (STJ[65]). These portals not only publish additional information beyond what is required by law, but also seek to provide it in a user-friendly way using infographics and simple language.

At the subnational level, however, the implementation of proactive measures varies, according to data from the 360 Transparent Brazil Scale (*Escala Brasil 360° Transparente* – EBT 360). Created by the CGU, the EBT 360 measures the performance of subnational governments with the national ATI law's proactive provisions. In terms of proactive disclosure, it verifies whether an official website for publication exists, and which information is made available, such as the organigram and functions of the institution, budget documents, and public procurement processes, among others. It covers all states and 665 municipalities with more than 50,000 inhabitants (CGU[66]). An analysis of the EBT 360 data conducted for this study shows that proactive transparency measures have a significant higher performance with a score of 4.6/5

for states and 4.2/5 for municipalities, than reactive ones with 4.2/5 and 2.7/5 respectively. The results for proactive measures do not show any significant difference between population size and performance of municipalities. The overall higher performance, even in smaller municipalities, implies a stronger uptake and adherence by subnational governments in complying with proactive obligations. This was also reflected in the responses from states and municipalities participating in the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions,* all of which publish information proactively on a regular basis and have a transparency portal available. According to interviews from the fact-finding mission, some of the challenges that municipalities face in this regard, in particular smaller ones, relate to the lack of human and financial resources for the acquisition and maintenance of information dissemination tools and portals.

Reactive disclosure of information and data in Brazil

ATI laws typically include provisions for reactive disclosure. Reactive disclosure refers to the right to request information that is not made publicly available. Usually, these provisions describe the procedure for making the request, including who can file the request, the possibility for anonymity, the means to file a request, the existence of fees, and the delay for response to the request.

Protecting the identity of stakeholders requesting information is important

While the Brazilian national ATI law does not mandate applicants to indicate the motivation or reason for the request, it requires the provision of an identification. At the federal level, some of the valid documents for a natural person include the Identity Card (ID), Passport, Voter Registration Card, National Driver's License (CNH), National Registry of Foreigners (RNE), the individual taxpayer registry identification for legal persons (*Cadastro de Pessoas Físicas* - CPF) and the national registry for legal entities (*Cadastro Nacional da Pessoa Jurídica* - CNPJ) (CGU[67]). Identifying a requester could discourage stakeholders to request information as they may fear reprisals. For this reason, OECD countries are increasingly allowing for anonymous requests either *de jure*, with legislation explicitly protecting the integrity and privacy of individuals and parties that file a request for information, such as Mexico, Australia and Finland, or *de facto*, where countries do not require proof of identity and only ask for an email or contact address to send the requested information, as in Chile or the Netherlands.

Following concerns from civil society groups such as Article 19 and Transparency International Brazil, the federal government implemented a measure to provide identity neutrality to requesters as part of an OGP commitment included in Brazil's third action plan. While requesters are still required to provide their identity details when filing a request online, the CGU – as oversight body- limits the personal information to a small number of trained public servants and forwards the request to the relevant ministry or body without personal data, protecting de facto their identity. However, this measure only applies to the federal government and could be extended to the subnational levels.

Protecting the identity of requesters is important to avoid the risk of profiling citizens and acting on biases by governments. The CGU could encourage this practice implemented at the federal level to subnational governments. To do so, the CGU could provide the necessary training and awareness-raising for public officials via the PBT to implement it through their respective online platforms. In the longer term, if the law is reformed, the government of Brazil could include a clause of anonymity to ensure the protection of requesters at all levels and branches of government.

The process to file a request for information is well-established at the federal level

The ease to file requests is a critical aspect to measure the quality and usability of an ATI law. In Brazil, requests can be made "by any legitimate means" according to the national ATI law. The federal ATI decree provides more clarity of what these means are, specifying that public bodies should allow requests to be

filed online (e.g. dedicated portal), by written communication (e.g. post), or in-person. These standards are also followed in practice by the Chamber of Deputies, the Federal Senate, and the Judiciary. According to the federal ATI decree, each federal body may provide additional means, such as email or telephone. This is also the case in most OECD countries, where requests can be made by email (77% of OECD countries), online (on each ministry's website or a dedicated portal) (55%), in-person (68%), written communication i.e. by post (94%) or by telephone (45%) to the responsible public official or body. Nevertheless, while the federal ATI decree is specific in terms of means for filing a request, the lack of clarity in the national ATI law amplifies the risk of different interpretations in other levels and branches of government, and thus, of contradictory implementation.

The national ATI law requires all public institutions to create a Citizen Information Service (*Serviço de Informação ao Cidadão* - SIC). The SIC is an office or person that assists and guides the public in regard to access to information, and that helps citizens and stakeholders to report on the processing of documents in their respective units and to file documents and requests for ATI (Article 9). The Brazilian SIC is the equivalent of what the OECD defines as an ATI office or officer who is typically appointed to guarantee both proactive and reactive disclosure of information (see section below on institutional arrangements). According to the national ATI law, states, the federal district and the municipalities should elaborate rules in their respective legislations to create a SIC (Article 45). For federal government institutions, the federal ATI decree specifies that the SIC should be "installed in an identified physical unit, easily accessible and open to the public". It mandates federal government institutions to disclose the telephone and electronic mail for the SIC on their websites.

To ease the process of requesting information, the CGU created in 2020 an online platform called Fala.BR (hereafter "*Fala*") to replace what was formerly known as the e-SIC. *Fala* is an innovative platform that combines the federal *ouvidorias*[3] and the SIC obligations. It allows citizens to not only request information, but also to make complaints or claims against any federal body, express satisfaction or dissatisfaction for a service or programme, and provide suggestions for improving or simplifying public services (CGU[68]). Importantly, users can also follow the progress of their request and file an internal appeal in case of non-conformity with the response. In addition, as further explained below, *Fala* allows the CGU to provide up-to-date statistics on requests. Overall, by centralising ATI requests into a single system, the *Fala* platform has significantly simplified the process for citizens, stakeholders and federal government institutions when making or processing an ATI request.

For subnational governments, however, the development and maintenance of such a platform represents an important administrative burden, especially for municipalities with limited resources and a lack of necessary IT skills and/or connectivity. This creates a bigger gap between the federal government and the subnational level and other branches of government when implementing ATI obligations. To counter the gap, through the PBT, the CGU offers the software of *Fala* to any interested government body along with a manual detailing the necessary specifications for implementation (operational environment, configurations, minimum equipment requirements, etc.). The CGU also offers technical trainings for public officials who will manage it. However, as aforementioned, only 28% of municipalities have adhered to the PBT. Some subnational governments have chosen not to use *Fala,* as they had already developed comprehensive ATI online systems of their own. This is the case, for instance, of the city of Porto Alegre and the federal district of Brasilia. Both of them are capital cities representing bigger populations and having greater resources than the average. This is also the case in other branches of government, where only the Federal Senate adopted the *Fala* system, whereas the Chamber of Deputies and the Judiciary use their own portals[4].

For citizens, the process to file a request for information implies the need to first, differentiate between information pertaining to local, state and federal authorities, and second, searching for the applicable means to file a request. To further increase uptake at the subnational level, stronger incentives should be put in place for adopting the *Fala* system. This could for example be done by further portraying its benefits, such as the easing of administrative costs. The government may also consider creating interactive

guidelines or manuals for citizens and stakeholders on how and where to request government information depending on the type of information. These guidelines or manuals could direct stakeholders towards the relevant branch or level of government responsible for the information.

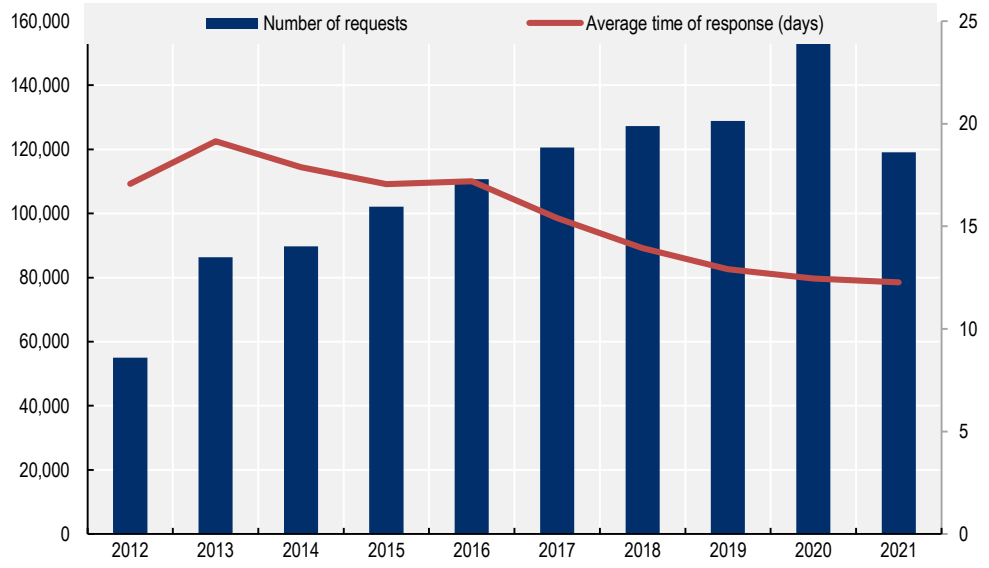
Reasonable and clearly defined fees encourage stakeholders to request information

While filing a request for information in 85% of OECD countries is free of cost, 82% of countries charge fees related to the reproduction of the information, for example, depending on the number of pages to be reproduced. When a variable fee is charged, a cap on the amount of the fee is applied only in a limited number of countries, such as Austria, Finland and France. Most governments distinguish between the charging of fees related to documents that are already available, for example, on a central government portal, and those requests that require searching, retrieval, reproduction and mailing of the information. This is also the case in Brazil. Article 12 of the national ATI law states that "information search and provision services are free of charge, unless the public body or entity is otherwise demanded to deliver document copies, situation in which only the costs of such services and materials will be charged". The applicable fees are the responsibility of each public body and are regulated by law 14.129 from 2021, which provides principles, rules and instruments for digital government (Presidency of the Republic, 2021[69]). The national ATI law includes a waiver of fees when the economic situation of the requester does not allow him/her to do so without prejudice to self- or family support. Following the Organization for American States (OAS) Model Law 2.0 on Access to Public Information (OAS, 2020[70]), Brazil could consider advocating to include the possibility of providing the information free of charge if it is deemed in the public interest, or in setting a minimum threshold of pages that can be delivered free of charge in the national ATI law if it is reformed.

Federal bodies have a high response rate to ATI requests

Once a request is filed, ATI laws specify the delay for response. The average delay is 21 working days in OECD countries (OECD, 2016[47]). This is also the case in Brazil, where public authorities are required to confirm the receipt of request immediately and have a 20-day maximum deadline for responding with additional 10 days for extensions. These extensions require informing the applicant. Since the federal ATI decree came into effect in 2012, the average time for response by federal bodies is of 15 days, below the maximum deadline. As Figure 7.2 shows, even with an increase of number of requests over time, the average time of response has decreased. This suggests that the ATI system, at the federal level, has improved in efficiency.

Figure 7.2. Number of ATI requests and average time of response by federal bodies (2012-2021)

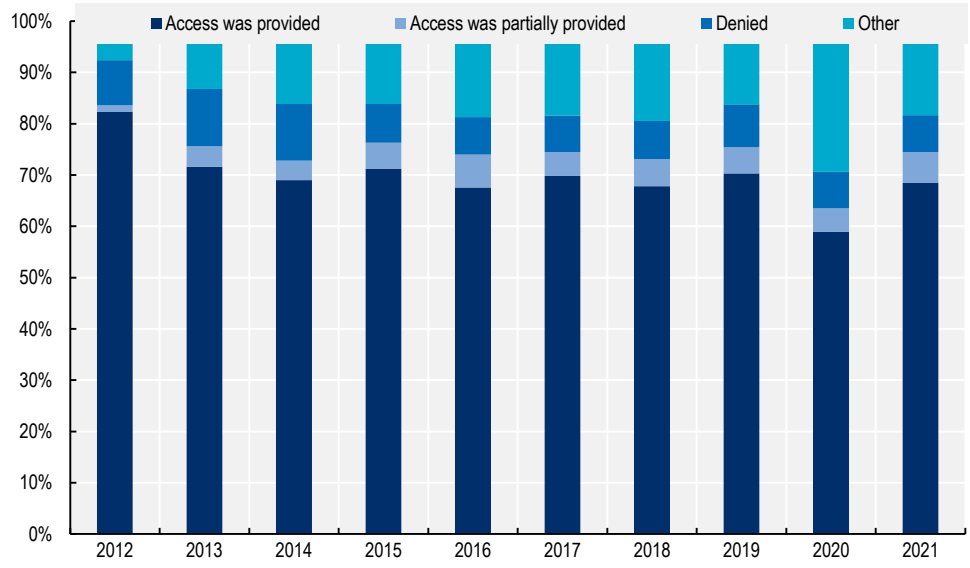


Source: Authors own elaboration based on data from the ATI Panel (CGU, n.d.[58]) on 28 February, 2022. http://paineis.cgu.gov.br/lai/index.htm

In other countries, such as Spain, laws provide for negative administrative silence. This means that in the absence of a response within the period specified, the applicant can consider his/her request denied. Although countries can have legitimate reasons for denying a request (see section below on exemptions), the absence of a proper justification to the requester may imply arbitrary responses and legal insecurity, ultimately affecting trust in the law, in the government and in public officials. On paper, Brazil's national ATI law guarantees that all denials should indicate the reasons for the refusal, communicate in case the public body does not have the information or indicate if the information is already publicly available (Article 11). In case of a denial, requesters should also be informed of the possibility for appeal including the deadlines, conditions and competent authorities to do so (see section below on appeals).

According to the ATI Panel created by the CGU, which is an online platform based on *Fala* data and which provides up-to-date statistics on ATI requests, federal bodies have a response rate of 99.5% for the more than 1.1 million requests received between 2012 and February 2022. The disaggregated data indicates that in 69% of those cases access to information was provided, 5% partially, while only 8% were denied. For the remaining 18%, information either pertained to other bodies, did not exist, the request was repeated, or was not a request for information (i.e. stakeholders asking the Ministry of Citizens why they have not received their social aid) (CGU[58]). As Figure 7.3 shows, the amount of cases where access was provided has been relatively stable over time even with an increase of cases per year, except for a slight decrease in 2020 that can correspond to the COVID-19 pandemic (see Box 7.6 for more information). An independent study conducted by FGV analysing 3,550 requests for information confirmed the high response rate for federal bodies with 91%, compared to 53% for states and 44% for municipalities (Michener, Contreras and Niskier, 2018[45]).

Figure 7.3. Type of responses to ATI requests by federal bodies (2012-2021)

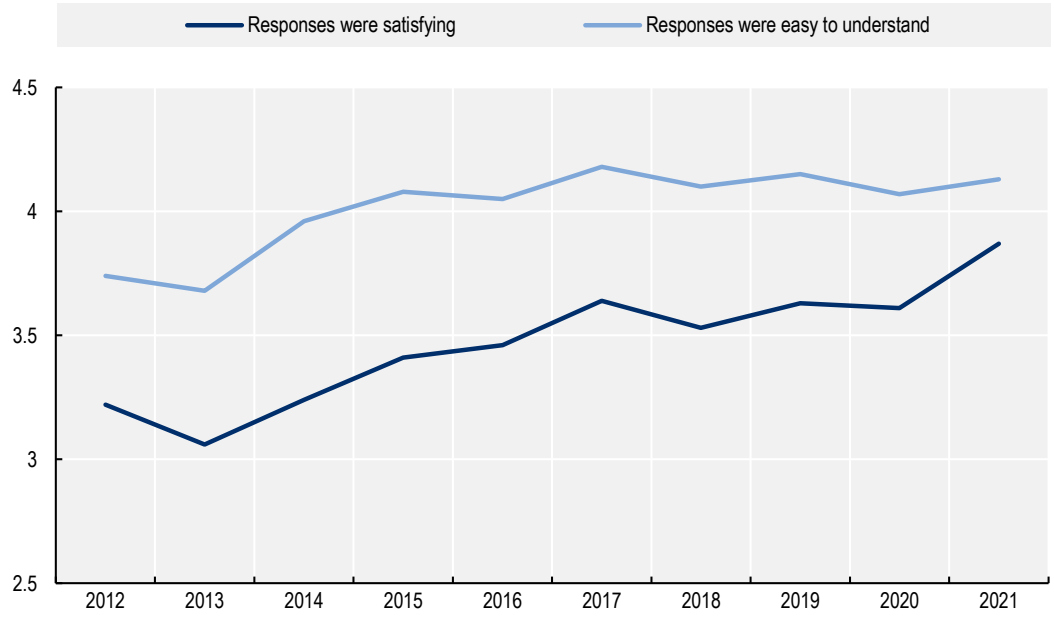


Note: The 'other' category comprises information pertaining to other bodies, did not exist, the request was repeated, or was not a request for information.
Source: Authors own elaboration based on data from the ATI Panel (CGU, n.d.[58]), on 28 February, 2022. http://paineis.cgu.gov.br/lai/index.htm

The current efforts to improve the quality of information provided should be continued

According to data from the ATI Panel, user satisfaction with requests for information have increased over time both in terms of quality, that is responses are satisfying, and clarity, that is responses are easy to understand (see Figure 7.4). While this progress reflects the important efforts made by the CGU to improve ATI efficacy and efficacy, the data only reflects the perception of 15% of users that made a request for information and who responded to the user satisfaction survey. In fact, during the interviews of the fact-finding mission, civil society groups raised concerns about the quality of the information provided by certain public bodies.

Figure 7.4. User satisfaction with ATI requests from federal bodies (2012-2021)



Note: The scale is 0 to 5, where 5 represents the most satisfying or most easy to understand.
Source: Authors own elaboration based on data from the ATI Panel on 28 February, 2022. http://paineis.cgu.gov.br/lai/index.htm

These concerns, although not reflected in the aggregated data from the ATI Panel, could be explained by several factors. First, the *Fala* system is relatively recent (mid-2020) and while it has simplified the process for public bodies, it also requires a period of adaptation for the teams of over 300 federal bodies in charge of dealing with ATI requests. Second, COVID-19 impacted the government's capacity to respond to ATI requests in terms of onsite staff, access to internet connectivity and availability of resources (see Box 7.6). Third, as it will be explained below, the inefficiency of certain appeals process, the lack of sanctions for non-compliance and, in a few cases, of political pressure in specific policy areas, may also influence the quality of responses from certain federal bodies. Lastly, the indicators used in the ATI Panel by the CGU do not differentiate, for example a full vs partial response. One measure that the CGU has conducted to respond to the concerns of the quality of the information is the development of a searchable database in which all the requests made since July 2015 (date in which the e-SIC came into effect) and their answers are available for consultation by all stakeholders (Federal Government of Brazil[71]). While this is an important measure that helps increase transparency of the process and of the information provided, several stakeholders, during the fact-finding mission, raised that the website is difficult to navigate.

The CGU should continue carrying out efforts to improve the quality and transparency of information provided. In terms of the metrics used in the ATI Panel, the CGU could consider providing more transparency as to how indicators are calculated. In addition, as the below section will argue, a more efficient appeals process and stronger sanctions could stir federal government institutions to systematically provide information that is of higher quality. The government could also aim to improve the usage of the searchable database of requests and answers through a consultation with end-users. In addition, Brazil could follow the example of Mexico City in elaborating a framework or protocol to ensure ATI is provided during a crisis context (Box 7.6).

Box 7.6. Impact of the COVID-19 Pandemic on access to information in Brazil

In Brazil, the Provisional Measure No. 928 (*medida provisória*) suspended deadlines to answer ATI requests for public authorities who were subject to telework or quarantine, or if the public official or sector was primarily involved in the COVID-19 response. However, following a strong mobilisation from civil society and a ruling by the Supreme Court, the provisional measure was suspended. To analyse compliance during this period, the CGU published a report comparing data of requests between 2019 and 2020 for the period corresponding to the introduction of the state of health emergency in the country with Decree No. 6/2020 (March 20 to December 31, 2020). Data shows that average requests for information stayed relatively stable in both years and that the time of response decreased (14 days in 2019 to 13 days in 2020). Moreover, while access was provided in 50% of the cases in 2020, only 6% were denied. Surprisingly, the satisfaction level of users receiving a response remained almost the same during the pandemic from 3.9/5 to 4/5.

This data implies, on the one hand, while government capacity was indeed limited in terms of onsite staff, access to online connectivity and availability of resources, strong efforts were made to comply with ATI obligations. The few cases were requests and appeals were not responded or were outside the legal response period corresponded mostly to the ministry of health, which was overburdened with the health emergency. On the other, the government performance suggests that the *Fala* system, which was introduced during the pandemic, helped ministries cope with the administrative burden of requests. However, the provisional measure in itself reveals the lack of legal framework for ensuring ATI during a crisis context.

The Mexico City Protocol for access to information in times of crisis

Following an earthquake in 2019 and the COVID-19 Pandemic in 2020, the government of Mexico City decided to create a protocol for access to information and transparency in times of crisis. In sum, it outlines the minimum actions for transparency in emergency situations, by bodies subject to the ATI law, by oversight bodies, and by people and communities in each of the stages of a risk situation: prevention, reaction and recovery. These actions can include the digitization of documents, identifying which information should be published and disseminated during the emergency situation and how to monitor and evaluate emergency ATI actions.

To create the Protocol, the government conducted an open and participative process. First, it carried out 6 co-creation tables with multi-stakeholders to co-design a preliminary draft of ideas, proposals and definitions to be included in the Protocol. Second, in collaboration with the National Centre of Disaster Prevention and external specialists on risks management, the content for the Protocol was elaborated. For this stage, 3 co-creation tables with multiple stakeholders were made to revise the content in a collaborative way and agree on a final document. Third, once the Protocol was launched, a toolkit was co-elaborated with stakeholders to help different actors implement the Protocol. It is written in plain language and reflects different needs of all sectors of society. It is also adaptable to any crisis context and provides recommendations to avoid the circulation of fake news during a crisis.

Sources: (Regional Alliance for Freedom of expression and information, 2020[72]) http://www.alianzaregional.net/wp-content/uploads/2020/09/Saber-M%C3%A1s-XI-2020-3.pdf; (Federal Government of Brazil, 2021[73]) https://www.gov.br/acessoainformacao/pt-br/lai-para-sic/politica-monitoramento/informe-lai-covid-19; (InfoCDMX, 2021[74]) https://infocdmx.org.mx/micrositios/2021/protocolo-apertura-y-transparencia/assets/files/inicio/Protocolo_Apertura_Transparencia_Riesgo.pdf.

Further efforts are needed to consolidate reactive disclosure in other branches and levels of government

In other branches of government, the implementation of reactive disclosure measures varies. In terms of quantity of requests, the Chamber of Deputies received the largest amount of requests with 36,634 in 2019 and 20,041 in 2020 and responded to most requests below the 20-day limit (99% in both years) (Chamber of Deputies[75]). In comparison, the Federal Senate received 1,090 requests in 2019 and 537 in 2020 and responded on time in 94% of cases in both years (Federal Senate[76]). A study by the FGV analysing ATI responses in Brazil found that the judiciary had the lowest response rate (78%), compared to other federal branches, including the legislative (95%), the executive (93%) and autonomous bodies (89%) (Michener, Contreras and Niskier, 2018[45]). These findings were reflected during the fact-finding mission, were some stakeholders mentioned an increased perception of lack of quality of responses by the Judiciary. While the federal judiciary bodies do have room for improvement in terms of implementing ATI, the main challenges in terms of compliance seem to be situated at the state judiciary level. In fact, the FGV study found that state judiciary has a lower response rate than the executive (74% compared to 93%) (Michener, Contreras and Niskier, 2018[45]).

Similarly, at the executive level in subnational governments, the EBT 360 shows that while important progress has been made in terms of compliance with the national ATI law since 2015, challenges remain. To measure compliance with reactive disclosure provisions at this level, the methodology of the EBT 360 consists of filing real requests for information and publishing the performance results as a ranking per state and per municipality. An analysis of the latest EBT 360 data made for this report show an average score of 4.2/5 for states and 2.7/5 for municipalities. In practice, municipalities did provide a response to a request for information in 52% of the cases and in an additional 8% the response did not answer to the request. In sum, only 3 out 8 requests were responded correctly and in due time (CGU[66]). This data is similar to the findings from the FGV study, which found a 43% response rate in municipalities (Michener, Contreras and Niskier, 2018[45]). Further, EBT 360 data show that there seems to be a correlation between the population size of municipalities and their ATI responses. Larger municipalities tend to have higher compliance rates. This highlights the impact that territorial disparities, such as limited technical capacities and access to Internet, can have on ATI compliance. However, there are large disparities across the results, showing that small municipalities can achieve a high compliance score, and bigger ones can do poorly. This implies that, in addition to territorial disparities, incentives and/or leadership can also influence municipal compliance on ATI requests.

Improving the process for classifying information

Countries can have legitimate reasons to exempt some information from being disclosed. Public interest tests and harm tests are two common ways to exempt information to ensure that these are proportionate and necessary. Under harm tests, refusals are only made when disclosure poses a risk of actual harm to a protected interest, whether it is for a person, national defence, economic interests, or other. The public interest test is known as the balancing act, whereby public officials “weigh the harm that disclosure would cause to the protected interest against the public interest served by disclosure of the information” (Right2Info[77]). A mandatory public interest override, which can force disclosure of information that is in the public interest, such as information on human rights abuses, corruption, or crimes against humanity, is also an important standard in ATI laws.

In Brazil, public institutions in all branches and levels of government may deny access to information that fall under a list of exceptions, including national security, international relations, personal data, public health and safety, among others (Article 23). While the list follows international best practices, it lacks clear public interest and harms tests that could help guide public officials in applying exceptions. In addition, the national ATI law states that information or documents regarding conducts that violate human rights practiced by public agents or by order of public authorities cannot be object of restricting its access (Article

21) and forbids the destruction of documents related to human rights violations (Article 32). This mandatory public interest override is in line with international best practices, included for instance in Article 27 of the ATI model law 2.0 of the OAS. Furthermore, the federal ATI decree establishes additional conditions for denying a request, particularly, for those considered "disproportionate or unreasonable" or requiring "additional work" (Article 13). An analysis by the CSO Article 19 found that these federal exceptions can be used by bodies to justify a denial, which would force requesters to file appeals to justify their request for information (Regional Alliance for Freedom of expression and information, 2019[78]).

The national ATI law also provides that information held by public bodies and entities may be classified as top-secret (25 years), secret (15 years) or reserved (5 years). Only a limited number of government officials who have been accredited and trained on security and treatment of classified information in accordance with a federal regulation can impose top-secret information. These include the president, vice-president, ministers, commanders of military forces, and heads of diplomatic and consular missions (Casa Civil, 2012[79]). The classification of any information must be formalised with a decision clearly indicating the subject, basis and period. Decisions pertaining to information at the federal level are then reviewed by the Mixed Information Reassessment Commission (*Comissão Mista de Reavaliação de Informações* - CMRI). The CMRI is a collegiate body that is composed of nine key ministries, including the CGU, the Ministry of Justice and Public Security, and the Civil House of the Presidency of the Republic, which presides over it. In addition to its oversight role on information classification, the Commission also acts as the last administrative appeal body (see section below on appeals) (Federal Government[80]).

During the fact-finding mission, civil society organisations expressed concerns about the process for classification of information. One example is Decree 9,690 from 2019, which expanded significantly the number of public officials who could impose a top-secret and secret classification (Article 19, 2019[81]). While the federal government revoked the decree following strong pushback from civil society organisations, the action points to the risk of using presidential decrees for restricting transparency and to the persistence of a culture of secrecy. The political profile of accredited officials may reflect partisan interests when classifying key information. This can undermine the impartiality of the process, eroding citizen trust in government as a reliable source of information.

Brazil could consider following the article 38 of the ATI model law 2.0 of the OAS, which advises that the rules and procedures to govern classification must be, first, subject to the process of an open consultation, and second, be broadly disseminated (OAS, 2020[82]). Conducting such a process could help counter the sentiment of opacity around the classification decision-making and increase awareness of public officials whilst protecting the process from political changes. As the below section will show, the CGU could consider changing the composition of the CMRI beyond the executive branch to include stakeholders from other state institutions including autonomous bodies. In addition, if the national ATI law is amended, Brazil could consider adding clear public interest and harms tests to help guide public officials in applying exceptions. In the short term, a manual focusing on simple language as well as trainings for public officials working on the SIC could help guide the application of exemptions.

More transparency in the appeals process can improve the application of the right to access information

ATI laws commonly provide requesters with the possibility to file appeals of the decision. The grounds vary across countries, but most often include a denied request (100% of OECD countries), negative administrative silence (94%), breaches of timelines (84%), or excessive fees (53%). As with requests, the procedure of filing appeals should be simple, free of charge, and completed within clear timelines. The most common mechanisms for recourse can be: 1) internal (79% of OECD countries), wherein requesters appeal to the same institution or body which denied their original request for information, 2) external (85% of OECD countries), to an independent institution that can conduct its mandate without interference from other state/public institutions (e.g. an information commission, Ombudsperson) or to the institution within

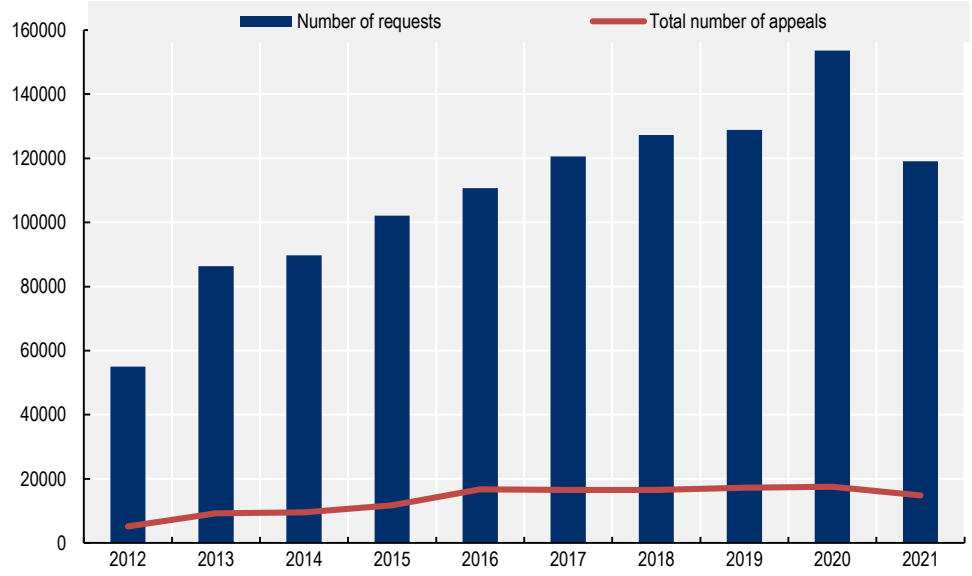
the executive that is charge of this role and 3) judicial (97% of OECD countries), to an administrative court. Some countries require that requesters first lodge an internal or external appeal (OECD, 2016[47]).

In Brazil, requesters have the right to appeal in case of a denial of information or a failure to provide the justification for denial within 10 days according to the national ATI law. According to Brazil's responses to the *2020 OECD Survey on Open Government*, while not specified in the federal decree ATI, appeals and/or complaints may also be made for breaches of timeline, excessive fees and when responses are considered incomplete or differ from the original request. For information pertaining to federal bodies, there are several levels of appeals:

- **Internal appeals:** requesters can first, file an appeal to the hierarchical authority in the public institution to which he/she requested the information and, second, to the highest authority of the same institution. Requesters can file both appeals online through *Fala* or in-person in the institution's *Ouvidoria* and/or the SIC office, as defined by each public institution.
- **External appeals:** a third appeal can be made to the Federal *Ouvidoria*'s Office (OGU) within the CGU, and a fourth to the CMRI.
- **Judicial appeal:** A judicial appeal can be filed at any stage, without the need of exhausting internal or external appeals. A Federal Court will receive the process and the results may receive appeal to higher courts from both parts.

All the appeals process, except for judicial ones, are outlined in the national ATI law and further specified in the federal ATI decree for the Executive branch. According to data from the ATI Panel, since 2012, only 12% of the more than 1.1 million requests to federal bodies have been appealed. As shown in Figure 7.5, with the exception of 2021, the number of appeals has increased over time in parallel with requests for information.

Figure 7.5. Number of ATI requests and appeals by federal bodies (2012-2021)

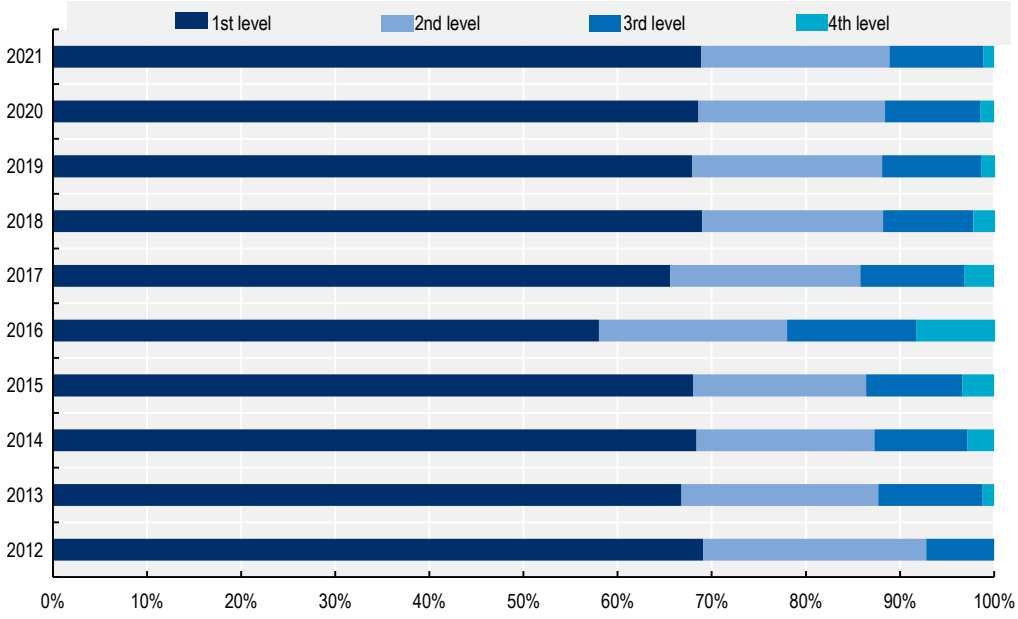


Source: Authors own elaboration based on data from the ATI Panel on 28 February, 2022. http://paineis.cgu.gov.br/lai/index.htm

From the appeals that are filed, on average 67% get solved in the first level, 20% in the second, 10% in the external appeal to the CGU, and only 3% reach the CMRI. As Figure 7.6 shows, since the federal ATI decree came into effect in 2012, the appeals solved in the first and second level have consistently represented more than 80% of the total. In terms of time to respond, both internal appeals take, on average,

28 days, the third, 52 days and the fourth, an average of 255 days. Data show that response time has also decreased in recent years. For instance, the average from 2018 to 2021 is of 12 days for internal appeals, 31 for the third and 123 for the fourth level. However, the overall lengthy process for the third and fourth level may undermine the requesters' effective application to the right to access information.

Figure 7.6. ATI appeals to federal bodies solved by level (2012-2021)



Source: Authors own elaboration based on data from the ATI Panel on 28 February, 2022. http://paineis.cgu.gov.br/lai/index.htm

To increase transparency of appeals, the government created the "ATI Decisions Search", where the decisions of both external appeals instances, the CGU and the CMRI, are published online (Federal Government[83]). However, during the fact-finding mission, civil society organisations raised concerns about the independence of the appeals decision-making process. An independent analysis conducted by the FGV analysed favourable decisions to requesters made by the CGU at the third level of appeals and found that in most cases (62%) federal bodies do not provide a response and ignore the first and second level of appeals. Once these bodies are contacted by the CGU, they respond to the request. For the rest, bodies either violated precedent established by the CGU (20%) or did an illegitimate use of exemptions (13%) (Michener, Forthcoming[84]). Another study analysing the cases reaching the CMRI (the fourth level) found that most decisions are the same as those taken by the CGU in the third level of appeals (Camargo and Filho, 2019[85]). While the ATI Decisions Search provides insights into behaviour of federal government institutions, limited information that exists regarding the internal appeals (i.e. first and second level) can lead to mistrust of the overall appeals decision-making process.

More transparency in regards to the internal appeals is needed. The government could continue making efforts to limit the response time at all levels of the appeals process. Moreover, the Brazilian government could provide more time for requesters to file appeals. The OEA ATI model law 2.0 suggests a limit of 60 business days for internal and external appeals to ensure that stakeholders have enough time to file it. As mentioned in the above section, the CGU could consider changing the composition of the CMRI beyond the executive branch to include stakeholders from other state institutions including autonomous bodies. Finally, the government could provide the DTC with the authority to issue binding decisions when information should be disclosed by a public body following an appeal.

There is room for improving the process for appeals in other branches and levels of government

The national ATI law calls on every State, Federal District and Municipality to elaborate their specific rules for appeals (Article 45). As provided by the National School of Public Administration (*Escola Nacional de Administração Pública* - ENAP) course on ATI regulation in municipalities, each should establish at least one level of appeal (ENAP, 2015[86]). However, few subnational governments have in practice elaborated such rules. The data from the EBT 360, which reflects the results of the requests for information filed anonymously by the CGU, indicates that only 44% of municipalities and 86% of states mentioned the possibility of filing an appeal to stakeholders when responding to a request (CGU[66]). This goes against the national ATI law, which provides that requesters should be informed of the possibility for appeal including the deadlines, conditions and competent authorities to do so. The low uptake and lack of information regarding the appeals process in municipalities is confirmed in an independent study from the FGV, which found that only 4 capital cities, among the total of 26, provide information on how to file appeals (Schwaitzer and Michener, 2020[87]).

Despite the lack of specific rules in this regard, there are competent bodies with which requesters can file external or judicial appeals at all levels and branches of government. At the subnational level, this pertains to the state prosecutor and the local legislature. In fact, several stakeholders during the fact-finding mission mentioned that due to the lack of effective internal appeals at this level, they go directly to the judiciary to file an appeal. The responsibility for appeals also varies in the other branches of government. For instance, for the judiciary it is the National Council of Justice (CNJ), for prosecutors, it is the National Prosecutor Council, and for the Legislative Branch, it falls either on the State or the Federal Court of Auditors (Federal Government[88]). In the judiciary for example, the CNJ provides stakeholders the possibility to file two levels of internal appeals, both within 10 days. In case of a denial, the bodies of the judiciary are mandated to notify the CNJ *Ouvidoria* (National Council of Justice, 2015[43]).

The institutional framework for access to information in Brazil

Strengthening ATI oversight capacities for a more effective implementation

An important factor for the effective implementation of ATI laws is the existence of robust institutional arrangements to ensure their application. The entitlements and responsibilities of these bodies vary widely among OECD Member and Partner countries, but can be grouped into: 1) enforcement, 2) monitoring and 3) the promotion of the law.

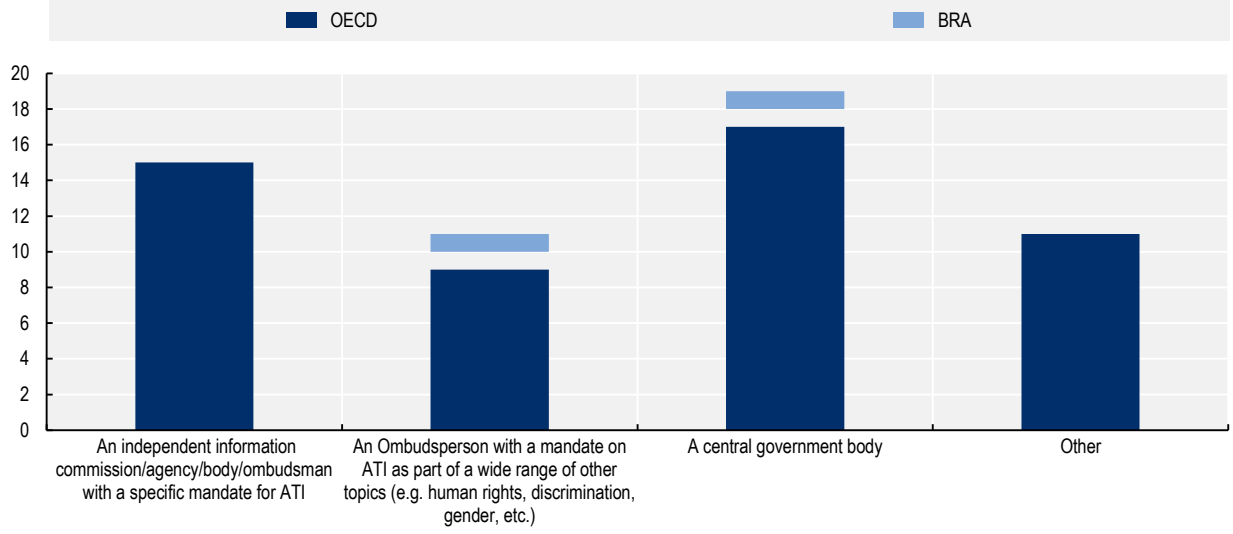
1. In relation to enforcement, bodies can be in charge of managing the ATI panel, of consolidating the proactively disclosed information from other government institutions, of reporting to Parliament on its implementation on a regular basis (e.g. yearly), and of redistributing misallocated or non-allocated requests among government institutions. It is also related to appeals and/or revisions processes, such as handling complaints on breaches to the law, initiating investigations on potential breaches, issuing opinions/witness in litigations on the law and sanctioning public officials/institutions for non-compliance.
2. The responsibilities to monitor can be related to the compliance of the law itself, the internal appeals process and/or the awareness of the law among the population.
3. Finally, bodies responsible for the promotion of the law can be in charge of advising public institutions on its application and providing trainings and/or awareness-raising campaigns to civil servants and/or civil society.

Evidence collected by the OECD suggests that there are common elements supporting the effective functioning of ATI oversight bodies. First, the establishment of a clear and well-disseminated mandate, that sets clear roles and responsibilities, is an important factor ensuring the body's legitimacy. Second, the

institutional autonomy and the independence of public officials within the organisation are key to ensure impartiality of the decisions and the operations. Last, the enforcement capacity, both in terms of competence to issue sanctions and of having adequate human and financial resources, is crucial to effectively conduct its mandate (OECD, 2019[89]).

As shown in Figure 7.7, ATI oversight bodies can take the form of an independent information commission (or agency or other body) which a mandate purely to oversee the implementation of ATI laws (15 OECD countries) or also it can be a body, like an ombudsperson or other independent institution with an ATI mandate as part of a wider remit (e.g. human rights, discrimination or gender) (9 OECD countries). The ATI oversight mandate can also be assigned to a central government body, which is not independent from the executive branch (17 OECD countries). Some countries have systems in which two or more public bodies oversee the implementation of access to information laws. For example, Chile has a Council for Transparency and a Transparency Commission within the Ministry General Secretariat of the Presidency. Further, 11 countries have no body specified in the law, or have a body that does not fall under any of the aforementioned categories.

Figure 7.7. Bodies responsible for the enforcement, monitoring and/or promotion of the ATI law, 2020



Note: The other category comprises countries that either have no body specified in the law, or have a body that does not fall under any of the aforementioned categories.
Source: OECD 2020 Survey on Open Government.

Brazil's national ATI law mandates that the federal executive branch designates oversight responsibility to a specific body over federal bodies (Article 41). This responsibility was assigned to the CGU by the federal ATI decree. As part of its attributions, the CGU is responsible for increasing awareness, providing training, promoting a culture of transparency, and submitting an annual report to the National congress. In practice, these responsibilities are divided into three bodies within the CGU. First, as aforementioned, the OGU acts as external appeals body (3rd level) for ATI requests made at the federal level. Second, the Directorate of Transparency and Social Control (DTC) within the STPC leads the oversight and monitoring of the implementation of the ATI obligations at the federal level, in particular with compliance with deadlines and procedures. The DTC also conducts capacity building and awareness raising activities related to ATI and the broader transparency agenda (see Chapter 3 for a discussion of the responsibilities of the DTC). Although it is not legally required, the DTC also fosters the implementation of the national ATI law through programmes such as the EBT and the PBT in other levels and branches of government, while respecting

their independence and autonomy. And third, the Federal Internal Affairs Office (CRG) is in charge of enforcement and sanctioning, for instance, with cases raised by the DTC.

According to Article 33 of the national ATI law, individual public officials or private entities subject to the law that fail to comply with the provisions can lead to the following sanctions: warning; fine; termination of the relationship with the government; temporary suspension from participating in bidding and impediment to contract with the public administration for a period not exceeding 2 years; and declaration of unfitness to bid or contract with the public administration, until rehabilitation is promoted before the authority that applied the penalty. As mentioned, the CRG has the competence to issue sanctions for public officials but not for federal bodies. Therefore, the CGU privileges the use of soft measures, such as rankings for federal bodies to encourage competition and increase compliance. These rankings are mostly published in the ATI Panel. Another measure is the monitoring procedure for omissions to the ATI law by federal bodies, which was put in place by the DTC (Federal Government, 2018[90]). According to the level of omissions of each federal body, the DTC applies a series of measures described in Table 7.3 before recurring to sanctions to the public official.

Table 7.3. ATI Omission Monitoring Procedure

Category	Description	Measures
Serious cases	Federal bodies that have between 100 and 50 omissions.	1. Send an official letter to the agency's monitoring authority. 2. Hold a meeting with the body authorities to establish commitments. 3. Send an official letter to the highest authority of the agency. 4. Forward the case to the Federal Internal Affairs Office (located within CGU)
Intermediate cases	Federal bodies that have between 10 and 49 omissions.	1. Send an email to the body's SIC. 2. Contact the SIC by telephone. 3. If the omission is not solved, follow the same procedure as a serious case.
Initial cases	Federal bodies that have less than 10 omissions.	1. Send an email to the body's SIC. 2. If the omission is not solved, follow the same procedure as an intermediate case.

Source: Authors own elaboration based on (Federal Government, 2018[90])
https://www.gov.br/acessoainformacao/pt-br/lai-para-sic/politica-monitoramento/fluxo-de-monitoramento-de-omissoes

On 28 February, the ATI Panel provided as snapshot that only 112 omissions[5] were pending, that is, requests that expired and were not answered. Most of them correspond to requests for information (80%) and the rest to first and second level of appeals (15% and 5% respectively) (CGU[58]). During the fact finding mission, it was raised that administrative sanctions are rarely applied to public officials by the CRG. However, the lack of sanctions can lead to an increase of violations and a discretionary use of exemptions, creating a perverse incentive for non-compliance from public officials. As explained by the CGU, the DTC and the CRG have limited human and financial resources to carry out the investigation related to the breaches of all the ATI responsibilities by public officials. According to the *OECD 2020 Survey on Open Government*, the DTC has only 6 full-time public officials dedicated to the implementation of the federal ATI decree across 300 federal bodies, including the monitoring procedure described in Table 7.3. Similarly, the CRG has a team of 20 public officials working on the enforcement and sanctioning. In addition, CGU's overall budget has decreased by half since 2018 as a percentage of government spending putting pressure on the CGU's capacity to deliver on its mandate.

Measures that apply soft pressure, such as rankings, have helped increase overall compliance among federal government institutions. However, the challenge of non-compliance is even more important at the subnational level, where the regulations elaborated by some local governments omit sanctions for public officials that violate the ATI obligations (Michener, Contreras and Niskier, 2018[45]). Thus, to ensure the correct implementation of ATI obligations, the use of more efficient mechanisms for sanctioning non-compliance are necessary. This could be addressed by strengthening the capacities of the CGU, first, by increasing the human and financial resources of both the DTC and the CRG to effectively conduct their

mandate. Second, requiring federal government institutions to commit checking pre-defined standards before denying a request, for example in through the *Fala* platform, could help nudge them towards increased compliance.

Institutional autonomy and a clear and well-disseminated mandate are important elements for ATI oversight institutions

During the fact-finding mission, concerns were raised regarding the level of independence of the CGU to act as the oversight body for the ATI law at the federal level. Some stakeholders expressed their preference to file a judicial appeal rather than the administrative process (internal and external appeals).The DTC, in addition to the ATI implementation obligations, is also responsible for the broader transparency agenda, as aforementioned. On a larger scale, the STPC –which includes the DTC- has the attributions for social control, ethical conduct, integrity in public and private institutions, as well the open data policy. Having this broad mandate in a single institution can help connect the larger transparency agenda with the federal ATI obligations and amplify the impact of some of the ATI initiatives conducted in the framework of the national ATI law, such as the trainings and capacity building activities. However, as raised by certain stakeholders during the fact finding mission, there is a potential conflict of interest given the duality between the CGU's role both in making the transparency policy as well as in being in charge of the implementation and oversight of the ATI provisions at the federal level.

Increasingly, bodies responsible for ATI take a joint role for ATI and personal data protection. This is the case for instance, in Mexico, Argentina, and Belgium. Although both topics are treated as separate legal frameworks in most countries and require different technical capacities and training, their proximity and complementarities have often pushed governments to centralising the role into a single institution. An example of this proximity is when a request for information pertains the personal data of a third person. In Brazil, the National Data Protection Authority (*Autoridade Nacional de Proteção de Dados* - ANPD) was created in 2020 (Presidency of the Republic of Brazil, 2020[91]) in the framework of the General Law for the Protection of Personal Data (LGPD) (Presidency of the Republic of Brazil, 2018[9]). The ANPD is part of the Presidency of the Republic and benefits from technical and decision-making autonomy (Presidency of the Republic of Brazil, 2020[92]). There is thus a potential fragmentation in the effective implementation of both agendas, in particular for ATI requests related to personal data.

To address this complexity, Brazil could ensure, in the long term that the institution with the oversight mandate of the national ATI law has the necessary institutional autonomy and the independence of public officials within the organisation to ensure impartiality of the decisions and the operations. The National Institute of Transparency, Access to Information, and Protection of Personal Data (INAI) in Mexico is a prominent example of a constitutional autonomous and is independent from state authorities (Box 7.7). In the shorter term, as aforementioned, the government of Brazil could strengthen the capacities of both the DTC and the CRG by increasing their human and financial resources.

Box 7.7. The National Institute of Transparency, Access to Information, and Protection of Personal Data (INAI) of Mexico

Following the adoption of the Mexican ATI law in 2002, the INAI was first established as a decentralized body of the Ministry of the Interior. Due to its lack of autonomy, many stakeholders, including citizens and politicians across the political spectrum, demanded the creation of an autonomous body, which was then created through a constitutional reform in 2014. Given that the INAI is a constitutional body, it is independent from other state authorities, and therefore free from the influence of the executive, legislative, or judiciary branches of government.

The INAI is composed of seven commissioners who are designated by the Congress of the Mexican Federal Union to guarantee their independence. The law establishes that profiles of stakeholders who have relevant experience in ATI and protection of personal data should be chosen.

Currently, the main role of the INAI is to guarantee that 865 federal public entities grant access to public information in line with the law. It also responds to appeals, coordinates the National Transparency System and promotes transparency and ATI more broadly. Since 2003 until the end of 2020, more than 2 million requests for ATI have been made. In that same period, requesters made more than 100,000 appeals.

The INAI has represented one of the most important democratic advances in Mexico and has been key to expose several high profile cases unveiling corruption and human rights abuses through the use of ATI.

Source: INAI (n.d.[93]) What is the INAI ? https://home.inai.org.mx/?page_id=1626

Increased capacities and further co-ordination are needed to improve ATI oversight across branches and levels of government

For other levels and branches of government, the national ATI law does not stipulate any obligation for bodies subject to the law to designate their own oversight authorities. Following good practice from the federal level, the Senate established the Transparency Secretariat which has the competence, among others, to guarantee access to data, information and documents of collective or general interest which are produced or in its custody. Similarly, the Transparency Secretariat of the Chamber of Deputies is responsible for supervising compliance with the national ATI law; foster a culture of transparency and evaluate the application of legislation on transparency. In the Judicial branch, this role is assigned to the respective *Ouvidoria* office.

In contrast, few states and municipalities have designated an oversight authority. A study from the FGV found that 16 states and 10 capital cities (from a total of 26 plus the federal district) assign ATI oversight responsibility to a defined body (Michener, Contreras and Niskier, 2018[45]). In addition to the designation of individual oversight authorities in each body subject to the law, the Federal Attorney for Citizens' Rights (PFDC) within the Federal Public Prosecutor (*Ministério Público Federal* - MPF) is charged with protecting and defending constitutional rights, including access to information (MPF[94]). As a constitutional autonomous body, the PFDC within the MPF can issue recommendations to public agencies or service providers, so that they respect human rights and the legal and constitutional norms that protect citizens. However, during the interviews it was raised that its limited human and financial resources and its heavy workload, hinder its enforcement capacities in terms of ATI at the subnational level.

Brazil could create a special task force between the CGU and the Federal Public Prosecutor in order to increase compliance and enforce oversight of the ATI law at all levels of government and in all branches of the state. Increasing communication and co-ordination among both institutions through a joint task force could increase enforcement by linking the sanctioning power of the Federal Prosecutor with the CGU's monitoring mechanisms and established leadership. Brazil should also consider strengthening the enforcement capacities of the Federal Public Prosecutor by ensuring it has access to the necessary human and financial resources to effectively deliver on their mandate. When facing a similar challenge, Argentina established a Federal Council for Transparency (*Consejo Federal para la Transparencia*) to promote technical co-operation and consultation on transparency and access to information policies across all levels of government. The Mexican National Transparency System also provides an example of an ATI coordination body in a federal country (Box 7.8).

Box 7.8. The Federal Council for Transparency in Argentina

Most provinces within Argentina's federal structure have adopted their own ATI laws or incorporated access to information provisions into their constitutions. Accordingly, article 29 of Argentina's national ATI law created a Federal Council for Transparency (*Consejo Federal para la Transparencia*). The Federal Council is composed of high-level representatives of all provinces and the City of Buenos Aires.

Established as a permanent interjurisdictional body, the Council aims to promote technical co-operation and consultation on transparency and access to information policies across all levels of government, in order to promote agreement on policies and criteria for access to public information. The Council is supported administratively and technically by the Agency for Access to Public Information of the executive branch, whose director also presides over biannual meetings, which also aim to assess the degree of progress in terms of active transparency and access to information in each of the jurisdictions.

The Mexican National Transparency System

The Mexican National System of Transparency, Access to Public Information and Protection of Personal Data (*Sistema Nacional de Transparencia* - SNT), is a coordination and deliberation body, whose objective is the cooperation, collaboration, promotion and dissemination of efforts related to transparency, access to information and protection of personal data, in accordance with the provisions of the General Law of Transparency and Access to Public Information and other applicable regulations.

The SNT is composed of: 1) The National Institute of Transparency, Access to Information and Protection of Personal Data, which acts as a coordinator; 2) The Enforcement Bodies of the Federative Entities; 3) The Superior Audit of the Federation; 4) The General Archive of the Nation; and 5) The National Institute of Statistics and Geography.

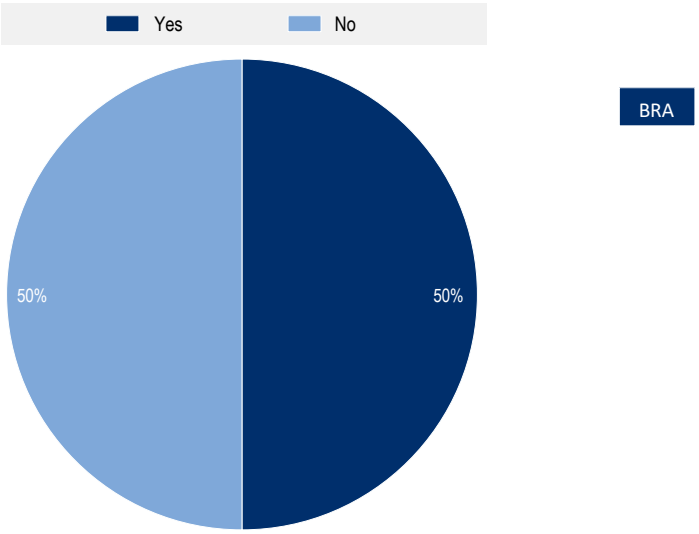
The comprehensive coordination efforts of the SNT contribute to generate quality information and improve information management; to facilitate the knowledge and evaluation of public governance; to the promotion of the right of access to information and the dissemination of a culture of transparency and its accessibility; as well as to a more robust government accountability.

Source: Mexican National Transparency System (n.d.[95]), http://www.snt.org.mx/; OECD (2019[96]), Open Government Review of Argentina, https://dx.doi.org/10.1787/1988ccef-en.

The establishment of an information office or officer in each public body can improve implementation

Several ATI laws across the OECD require the establishment of an information office or officer responsible for ensuring compliance with the law. These officers are usually appointed to guarantee both proactive and reactive disclosure of information. Currently, ATI laws stipulate such a role in 50% OECD countries (see Figure 7.8). However, countries without this legal provision can still create a similar position in practice. The absence of these officials, either because the legislation does not provide for them or because the positions are not created or filled, has proven to be a significant obstacle to its implementation (OECD, 2019[89]). Providing ATI officers or units in all public institutions with adequate resources for implementation, including sufficient human and financial resources, is essential to effectively implement an access to information law.

Figure 7.8. Requirement for an access to information office or officer stipulated by law, 2020



Source: OECD 2020 Survey on Open Government.

In Brazil, the role of the ATI office in public institutions is designated to the SIC in all bodies subject to the national ATI law. For federal government institutions, the federal ATI decree also mandates the designation of an authority to ensure compliance, to monitor the implementation and to submit periodic reports to the CGU. In practice, all 300 bodies subject to the federal ATI decree have established a SIC and a monitoring authority, however, their internal arrangements can take different forms. In most cases (70%) according to the CGU, both roles are designated to a person or unit inside the body's *Ouvidoria*'s office. Ordonnance 581 from 2021 establishes that the SIC can be part of the *Ouviduria*, meaning receiving the requests for information or internal appeals through *Fala* (Official Diary of the Union, 2021[97]). Once received, the person or unit: 1) forwards the request to the responsible team in charge of the information, and 2) ensures that the response is clear, correct and up-to-date. As it is not mandatory, some ministries have created technical units, outside the *Ouvidoria* offices, to cluster the proactive disclosure and open data responsibilities. Even though the internal arrangements are not uniform, data shows that compliance has increased (see Figure 7.2 for ATI compliance data and Chapter 8 for a wider discussion on the roles of the *Ouvidorias*).

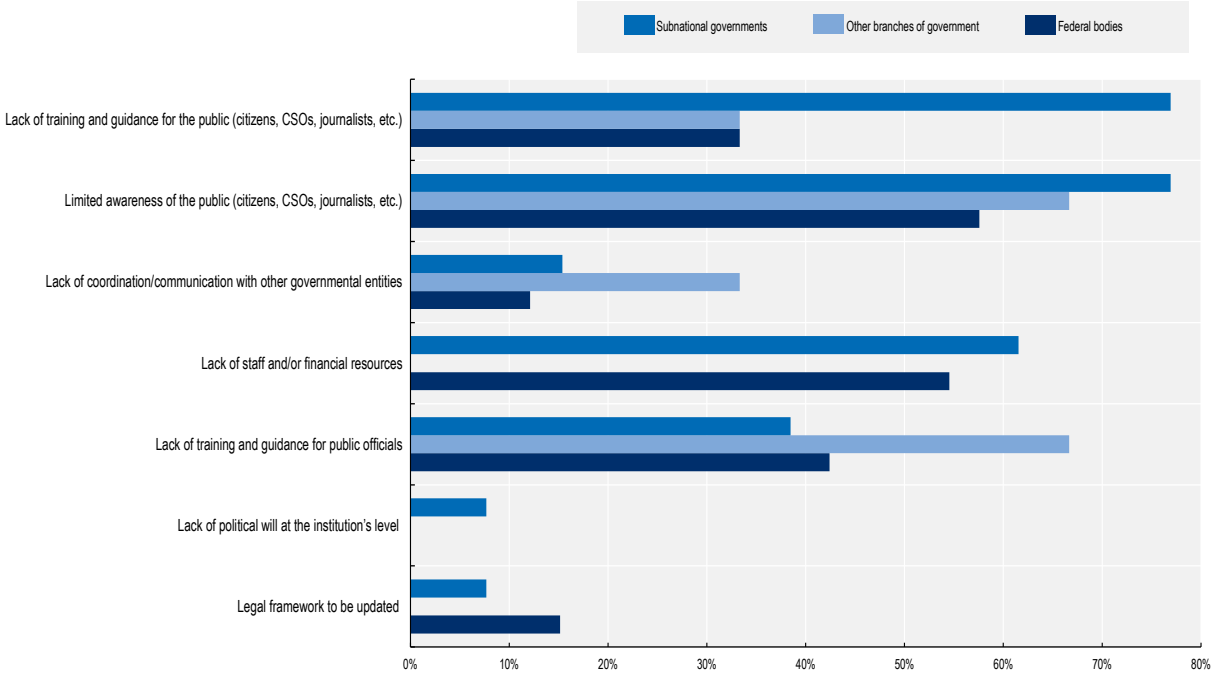
Both legislative bodies at the federal level have effectively designated the SIC to a specific person or unit (Chamber of Deputies[98]) (Federal Senate[99]), whereas some of the judicial bodies, such as the STJ and the Superior Electoral Court (*Tribunal Superior Eleitoral* - TSE) have merged this role with their respective *Ouvidoria* office (STJ[65]) (TSE[100]). Some branches of the state have also developed their own training materials. This is the case for the Federal Senate which provides courses on legislative transparency (Federal Senate[101]).

However, few subnational governments have currently designated a physical SIC. According to data from the EBT 360, 73% of surveyed subnational entities provide the following information on their official website: address, telephone and office hours. While this does necessarily translate to the existence of a physical SIC, these elements imply that at least a person is in charge of the ATI obligations. The lack of a designated person or unit at the subnational level is often related to a lack of enforcement, of incentives and/or of awareness for doing so. In general, complying with ATI obligations can be perceived as an administrative burden, which can lead to slower response times or weaker quality. This is particularly the case for municipal governments in Brazil, who often have limited resources in general and even more to

implement their ATI obligations. For instance, not all of the physical SICs have adopted the *Fala* platform, as mentioned above. Moreover, while 92% of subnational entities responding to the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* declared having a dedicated form online for making requests, not all municipalities have developed their own electronic system to facilitate online requests. An analysis from the FGV found that municipalities were more responsive to ATI requests when they had designated an ATI unit (Michener, Contreras and Niskier, 2018[45]).

According to the responses to the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*, 55% of federal government institutions and 62% of subnational governments reported the lack of staff and/or financial resources as one of the main challenges to implement ATI provisions (Figure 7.9). This finding was confirmed during the fact-finding mission, where several bodies recognised facing difficulties in terms of resources and capacities. Institutions usually do not receive additional resources to implement the ATI law and thus face the financial burden of training and building internal capacities to comply with their ATI and open data obligations. As each body has the flexibility of assigning the person(s) in charge, the profiles vary across bodies and, in many cases, people do not have the necessary skills or training. In fact, 42% of federal government institutions as well as the Chamber of Deputies and the Senate, also mentioned the lack of training and guidance for public officials as a relevant challenge. As also mentioned in Chapter 3 on the broader open government agenda, this points to the need to professionalise the role of ATI officers with the necessary skills and training for both proactive and reactive disclosure (for example, on information management or on data privacy regulations). In terms of staff and financial resources, the government could aim to increase the number of officials solely in charge of ATI. In addition, skills need to reinforced, to do so the government could include key competencies and knowledge for proactive and reactive disclosure of information and data in a dedicated competency framework, a code of conduct. Alternatively, the government could consider creating a specific job profile for the SIC position. This could professionalise the career of public officials working on ATI.

Figure 7.9. Main challenges in implementing the access to information law at different levels and branches of government



Note: Responses were provided by 33 federal bodies, 3 representatives of other branches of government at the federal level (Chamber of Deputies, Senate and Judiciary), and 13 subnational governments (9 states, 4 municipalities).
Source: *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*

Increasing capacities by expanding ATI training for public officials at all levels of government

The CGU facilitates several capacity-building activities and materials on open government, including ATI, to federal government institutions, as discussed in Chapter 4. For instance, it has published a series of guides, manuals and guidelines related to the ATI Law to help federal public officials working in SICs. These materials are updated frequently and cover several key topics, such as using the *Fala* platform and disclosing proactive information (Federal Government of Brazil[102]). Through the ENAP, the CGU indirectly provides courses on ATI and related transparency topics (ENAP[103]). Another relevant example is an annual training organised for public officials called the SIC Network (*RedeSIC*) for all levels and branches of government, including members of the media, academic experts and civil society organisations. Created by the CGU in collaboration with the Ministry of the Economy in 2014, the Network aims to promote cooperation and exchange of information knowledge and experience among the SICs and foster mutual assistance (Federal Government of Brazil[104]). According to the fact-finding mission, these trainings have contributed to increase capacities at the subnational level. The CGU could consider expanding the existing SIC Network to propose more frequent thematic and regional workshops to build capacities and exchange good practices. Additionally, the SIC Network could become a formalised body under the umbrella of the Open Government Network recommended in Chapter 3 to allow a permanent exchange of ideas and experiences among ATI officials. The Network could also be used to build internal awareness to sensitise public officials on the importance of transparency in policymaking, while disseminating the existing guidelines and manuals to incentivise the uptake of the national ATI law.

In response to the capacity challenges at the subnational level, the CGU created the TIME Brazil programme that is discussed in Chapter 4 and that includes a transparency dimension. To adhere, subnational government have to 1) conduct a self-assessment of their level of maturity on each dimension according to a matrix; 2) designate a working group to monitor implementation; and 3) sign a high-level adhesion to the programme (CGU[105]). In terms of transparency, the matrix measures how governments regulate and implement proactive and reactive provisions of the national ATI law. Once a subnational government has adhered, the CGU provides guidance and technical assistance. On transparency, for instance, the CGU helps in terms of regulating and implementing the national ATI law as well as with guidance to comply with the obligations (CGU[106]). Further efforts should be made to encourage the appointment of a person or unit in charge of the ATI law within subnational governments. Through the PBT and the TIME programmes, the CGU could provide additional training and capacity building to increase compliance and implementation of the national ATI law at this level. The CGU could leverage good practice cases of municipalities from the TIME programme to motivate others to adhere to this initiative. When facing a similar challenge for ATI and open government implementation at the subnational level, the government of Colombia conducted a territorial transparency strategy to build capacities and expand the knowledge-base of existing mechanisms and tools (Box 7.9).

Box 7.9. The Territorial Transparency Strategy of Colombia to increase ATI and open government capacities

The Territorial Strategy is an initiative led by the Secretariat of Transparency of the Presidency of the Republic of Colombia that seeks to provide technical assistance to public entities at the territorial level, to strengthen their capacities on issues related to the promotion of transparency and the effective fight

against corruption. The Strategy is aimed at public officials of 18 departmental governments and 11 prioritized municipal mayors. This Strategy was created to:

- Improve the institutional capacities of territorial entities in matters of transparency and the fight against corruption, recognizing the challenges of their contexts
- Strengthen knowledge on existing mechanisms and tools that seek to mitigate corruption and promote a culture of transparency.

The Territorial Strategy provides technical assistance in the form of training, awareness-raising and technical tables on topics related to: Open Government, the Law of Transparency and Access to Public Information, Anticorruption and Citizen Service Plan, Social control, among others.

Source: (Government of Colombia, 2020[107])

Adequate monitoring and evaluation mechanisms are needed to measure the relevance of ATI provisions

Developing adequate mechanisms for monitoring and evaluating the implementation of any policy and practice relating to open government initiatives and practices is crucial, as further discussed in Chapter 4. For transparency, and access to information in particular, robust data and statistics on the number of requests, the topics requested, the average time of response, the reasons for denial/refusal, among others, allows countries to identify challenges, bottlenecks and specific needs for information. For instance, 40% of OECD countries, like Australia and Portugal, require public institutions to proactively publish information that has been recurrently requested. This measure can help ease the administrative burden of ATI requests, saving time and resources to the public administration in the future. Evaluation in particular makes it possible to predict the law's impact upstream (*ex ante*), to adjust its provisions as they are implemented (*in itinere*) and to determine whether they should be continued, abandoned or corrected (*ex post*). Ultimately, monitoring and evaluation helps to improve the quality of public debate and to restore the legitimacy of public action by basing discussions and choices on facts and analysis (Conseil d'État, 2020[108]).

In Brazil, the national ATI law calls all bodies subject to the law to submit periodic reports on compliance. It also requires the designated body at the federal level, the CGU, to submit an annual report to the National Congress on the implementation of the law at the level of the federal government. The CGU monitors the application of the national ATI law in federal bodies through a series of measures (see also Chapter 4 for the CGU's role in monitoring and evaluating the wider open government agenda). First, it centralises ATI statistics based on data extracted from *Fala*. This data is then published in the ATI Panel. As aforementioned, it allows for a comparison of compliance between public institutions and provides up-to-date data in an easy and interactive way. The available data covers not only the total number of requests, but also the topics requested, the profile of the requesters, appeals, and compliance to proactive transparency obligations. Second, the CGU conducts a compliance assessment of proactive and reactive provisions as well as open data obligations of all federal ministries (*QualiLAI*) (Federal Government of Brazil[109]). Third, the CGU monitors the total number of omissions to the ATI obligations by federal bodies (Federal Government of Brazil[110]). As noted in Chapter 4, monitoring of open government policies and practices in Brazil is quite advanced, and this is also the case in the field of access to information. Monitoring efforts have been crucial in measuring ATI compliance and progress over time. As also noted for the wider open government agenda, further efforts are needed to increase the use of evaluations to better understand the underlying causal mechanisms leading to success or failure of the ATI law.

Furthermore, in general terms, the branches of the state do collect relevant data to monitor compliance. The Chamber of Deputies publishes yearly reports with relevant ATI statistics (Chamber of Deputies[75])

and also monitors the use of proactive disclosure by measuring the most accessed pages and used Application Programming Interfaces (API). Some judicial bodies collect ATI data on compliance and publish yearly reports with statistics, such as the TSE (TSE[100]). The Senate also collects data and publishes relevant yearly and monthly statistical reports on ATI requests as well as a yearly analysis of ATI implementation and the challenges faced (Federal Senate[76]). Certain autonomous bodies, such as the MPF, publish yearly reports of their *Ouvidoria* activities, including ATI requests (MPF[111]).

However, since there is no national standard for ATI reports, the statistics on the use of ATI found in certain branches and at the subnational level vary. A study from the FGV found important gaps in the provision of such data. Some years are not reported or data is limited (for instance, only provide the number of requests received) (Schwaitzer and Michener, 2020[87]). The EBT initiative from the CGU helps counter the gap of official statistics in states and municipalities. While it does not measure the number of requests nor does it cover all subnational governments, it does provides a representative picture of compliance at the subnational level. The analysis of this data can help policy-makers further understand the drivers for implementation and identify challenges and incentives that may help increase compliance in the future.

The elaboration of a unique template for periodic reports that could be integrated into the *Fala* platform to subnational governments could be provided by the CGU. This could facilitate the reporting obligations from subnational governments, while also facilitating standardized data across levels of government that could be analysed in the future. In parallel, to improve monitoring capacities in subnational governments, the CGU could continue its efforts to increase the use of *Fala* through the TIME Brazil Programme. Using *Fala* can enable the collection and publication of ATI monitoring data by states and municipalities. The CGU could also dedicate further efforts to the evaluate the current available data to find trends, good practices and challenges to better understand the underlying causal mechanisms influencing success or failure of the ATI law. The publication of such an evaluation could be a powerful communication tool portraying government commitment and progress on implementation. For instance, Italy conducted an evaluation to measure progress and implementation effectiveness to the ATI law using monitoring data and surveys (Box 7.10).

Box 7.10. Evaluation of Italy's access to information law

The Italian Department of Civil Service conducted an evaluation to measure progress to the ATI law for the 2017-2020 period. Using yearly monitoring data and on-line surveys for relevant public officials, the reported analysed ATI requests received by Ministries and the Presidency of the Council of Ministers. It measured several aspects of the law, including number of requests per ministry, the timeliness of responses and the appeals process. Ultimately, the evaluation led to a better understanding of the implementation effectiveness of the ATI law.

Source: Italian Department of Civil Service (2020[112]), Monitoring on the implementation of the FOIA 2017-2019, https://foia.gov.it/osservatorio/monitoraggio/articolo/monitoraggio-sullattuazione-del-foia-2017-2019

There is a need to raise awareness on the importance and the benefits of the ATI law

The awareness of citizens and stakeholders to uphold their ATI right is essential. They need to know about the existence of the law, the process to file a request, the possibility to appeal, etc. For example, some citizens do not know to which public institution they should ask for information. In several countries and subnational governments, an 'information culture' is not fully established as citizens still retain, rightly or wrongly, an image of the administration shrouded in a culture of secrecy. In those cases, governments often struggle to put in place the necessary measures to increase awareness and encourage the use of ATI by citizens. In order to counter the lack of awareness, some countries provide guidelines and/or

trainings, such as Colombia and Ireland. Others conduct public communication campaigns on ATI, such as Australia, Estonia and Mexico.

Brazil has made efforts to raise non-public stakeholders' awareness on the importance and existence of the national ATI law. For instance, at the level of the federal government, the CGU disseminated videos presenting, in simple language, aspects of the law, such as where and how to request information, how to proceed in the event of denial of access (CGU[113]), as well videos on how to use the *Fala* Portal (CGU[114]). *Fala* also includes a dedicated section aimed at stakeholders. This section includes step-by-step infographics for requesting information (Federal Government of Brazil[115]) and a manual for guiding citizens to register requests, monitor compliance with the response deadline, consult the responses received, file appeals, present complaints, among other actions (CGU, 2020[116]). Other actions have included the use of social networks on the right to ATI published by the CGU and relevant ministries (CGU[117]) as well as in-person trainings on proactive and reactive disclosure with media and civil society. In addition to the activities of the SIC Network aforementioned, the CGU conducted a workshop on transparency tools (*Fala*, transparency portal, ATI law, open data portal, etc.) in the last editions of the International Congress of Investigative Journalism of the Brazilian Association of Investigative Journalism (Abraji) (CGU, 2017[118]). During the COVID-19 pandemic, the CGU participated in a webinar event led by Abraji to discuss "8 years of the ATI law: transparency in quarantine", with representatives of civil society organizations (Abraji, 2020[119]).

While these are important measures that should be continued and expanded, they are targeted only to information pertaining to federal government institutions and to a certain population profile. In a country of continental proportions like Brazil, where only 70% of the population have access to the Internet (World Bank[120]), ATI may be limited for under-represented and marginalised groups, such as indigenous populations. The inexistence or little publicity of the use of physical channels to make a request, in particular in SICs at subnational governments, also represent an obstacle for certain groups of society (Regional Alliance for Freedom of expression and information, 2019[78]).

In fact, responses to the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* showed the lack of awareness of the public (58% of federal bodies, the Chamber of Deputies and the Judiciary and 77% of subnational governments) and the lack of training and guidance for citizens (33%, and the Judiciary and also 77% of subnational governments) as important challenges in the implementation of their ATI obligations. Several factors can help explain these challenges. First, trust in government is low in Brazil (17% compared to 34% in LAC and 45% in OECD countries (OECD, 2020[121])) affecting the perception of the information received by stakeholders either proactively disclosed or upon request. In fact, during the fact finding mission, stakeholders pointed out they are not fully confident that they can obtain trustworthy information or are suspicious of its veracity, timeliness and relevance. Second, a culture of secrecy persists in some public bodies, as confirmed by several public institutions during the interviews. Third, the media who typically play an important role in using the ATI law in other countries, do not make as much use of the national ATI law in Brazil. According to *Fala*, only 1% of requests at the federal level were made by media organisations (CGU[68]). This may be due to an unfavourable climate towards journalists, as the World Press Freedom Index ranks Brazil 111 from 180 countries[6] in 2021 (RSF[122]). Last, the existing awareness-raising campaigns, described above, call on the need to better communicate with a wider variety of stakeholders beyond the "usual suspects" through multichannel mechanisms.

Building on existing efforts, the federal government could host seminars and discussion groups for all age groups in society to raise awareness on the importance and the potential impact of the ATI law. In light of the moderate internet penetration rate and uneven digital literacy levels across the country, multichannel mechanisms should also be considered to counter the existing digital divide. Efforts should be made to raise awareness of ways to file a request and on existing instruments and tools to file complaints in case the information found shows government malpractice. These seminars and communication strategies could be organised through the SIC Network and conducted by each SIC representative in order to reach

a wider audience. In regards to the media, the government could consider conducting consultations with diverse news outlets beyond the most prominent media organisations to facilitate understanding of what information would be of value and in what form. Building strong relationships with a diverse range of journalists, civil society organisations and academics can help all actors be aware of the types of information available and explore ways to publish it in a relevant and accessible manner. For instance, the Council for Transparency in Chile conducts several seminars, guides and consultations for a wide range of stakeholders and Article 19 in Mexico City created a board game to teach citizens about their right to access information (Box 7.11).

Box 7.11. Awareness-raising campaigns on the right to access information in Chile

The Council for Transparency (CPLT) is an autonomous body with legal personality and its own assets, created by the Law on Transparency of the Public Function and Access to Information of the State Administration in Chile. As part of its mandate, it conducts several initiatives for a wide range of stakeholders to raise-awareness on the access to information law. It conducts regular seminars on diverse topics related to ATI, including a week of transparency held yearly, as well as workshops on transparency during the COVID-19 crisis and on the importance of the protection of personal data, among others. The CPLT also holds discussion groups and consultations with civil society on diverse transparency topics and publishes infographics, videos and manuals on how to use the ATI law.

Using board games to teach citizens in Mexico City about their right to access information

Article 19 in Mexico City created a board game called “Your right to know”, with the aim to help civil society, journalists and activists learn how to use ATI laws to guarantee their rights, acquire knowledge and challenge governments and institutions on key issues. It has been highly successful in Mexico city and is widely disseminated by the Mexican National Institute for Transparency, Access to Information and Personal Data Protection (INAI). The game covers practical modules on how to create and submit a request, relevant institutions involved in the process, the types of public information that exist and the processes for appeals.

Source: (CPLT, n.d.[123]); (OECD, 2020[124]); (Article 19, n.d.[125]).

Reinforcing a culture of transparency in Brazil

Beyond information disclosure, transparency mechanisms can also include policies that enable a two-way relationship with stakeholders encouraging more accountability and participation by opening the decision-making process and the actions taken by public officials at every stage of the policy cycle (Cucciniello et al., 2014[126]). This broader approach to transparency builds upon the first generation of policies focused on information disclosure, towards more mature transparency initiatives that place citizens and stakeholders at the centre and enable the analysis of government policy-making as it happens (Janssen et al., 2017[127]). This second generation of transparency policies use its instrumental value to achieve other policy objectives (i.e. transparency in budgeting to decrease corruption) and to contribute to value co-creation with stakeholders.

In practice, using transparency as an enabling mechanism for opening the policy process requires creating a two-way relationship with stakeholders. This involves both one-way forms of communication, such as communicating key reforms and policies and their expected outcomes and impacts including the proactive disclosure of government information and data, as well as transactional communication, which focuses on gathering feedback on policies, consultations, and public hearings and encouraging dialogue throughout

the process of designing and delivering public services and policies. This requires governments to foster more active transparency by facilitating the analysis of government policy-making as it happens.

This is even more relevant given the rise of new technologies, as stakeholders become both users and providers of information through online platforms and consultations. In addition, new channels of communication provide innovative ways for stakeholders to participate and be engaged in public life. In that context, the rise of platform technologies has the potential to complement, expand and improve transparency mechanisms in the public decision-making process. Not only can they reduce administrative costs and procedures, but they can also help reach other segments of society and build new channels of continued communication with stakeholders.

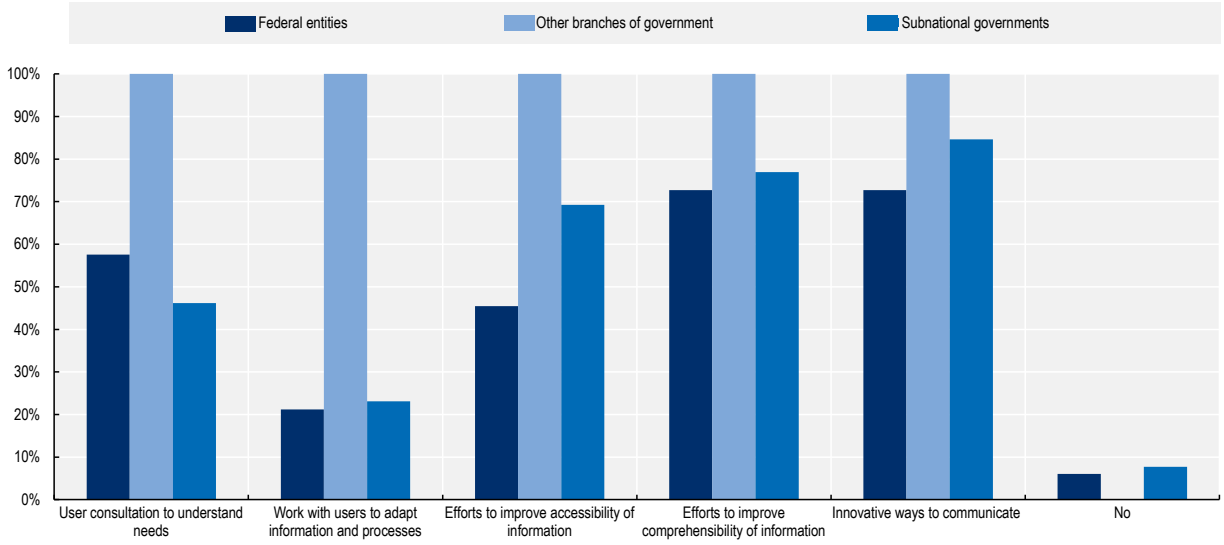
Using targeted transparency measures to further engage with stakeholders

Targeted transparency is defined as "the use of publicly required disclosure of specific information in a standardized format to achieve a clear public policy purpose" (Weil, Graham and Fung, 2013[128]). This transparency mechanism uses disclosure as a means to attain or improve other policy objectives, for example, for decreasing violence among youth or preventing overweight. Moreover, it is conceived to achieve a specific result that is accompanied with a behaviour change from the target population, for example, improving a specific public service, reducing the risk of health issues, or improving the performance of schools. It therefore implies the need to translate the purpose of a public policy into the realities of the specific target population by taking into account their needs and expectations (Dassen et al., 2012[129]).

In Brazil, there are increasing initiatives from public institutions to make information and data useful for citizens. As shown in Figure 7.10, 73% of federal bodies that responded to the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* made efforts to improve the comprehensibility of information. For instance, some have added simple language requirements to the information published on their websites (e.g. the Ministries of Infrastructure and of Women, Family and Human Rights), or have published glossaries or dictionaries on technical terminologies, as done by the Federal Highway Police (Federal Highway Police[130]) and the Ministry of Science, Technology and Innovation. The TSE, from the federal judiciary, created a website for electoral justice that also uses simple language (TSE[131]).

Moreover, 58% of federal bodies and 46% of subnational governments conduct user consultations to understand needs. For instance, the *Casa Civil* and the Ministry of Justice and Public Security consulted stakeholders on open data needs (Open Data Portal, 2019[132]) (Participate + Brazil, 2020[133]). The Chamber of Deputies also integrated feedback from stakeholders to improve the usability of its portal created in 2019 (Chamber of Deputies, 2019[134]). Another 45% of federal bodies and 69% of subnational governments make efforts to improve accessibility of information. Some examples include the classification of information by thematic areas, as done by the National Supplementary Health Agency and by the National Telecommunications Agency (Anatel).

Figure 7.10. Initiatives taken at different levels and branches of government to ensure that the information and data is relevant and used by stakeholders



Note: Responses were provided by 33 federal bodies, 3 representatives of other branches of government at the federal level (Chamber of Deputies, Senate and Judiciary), and 13 subnational governments (9 states, 4 municipalities).
Source: *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions*.

As Figure 7.10 shows, most federal bodies (73%) and subnational governments (85%) undertake innovative ways to communicate in order to ensure that the information proactively published is relevant and used by citizens. Some examples of such initiatives include the Regulatory Agenda of Anatel. The Regulatory Agenda is an online tool that seeks to provide greater publicity, predictability, transparency and efficiency to the regulatory process and allows stakeholders to monitor the commitments pre-established by the regulatory body (ANATEL, 2021[135]). The dynamic panels elaborated by the National Agency for Petroleum, Natural Gas and Biofuels (ANP) use a business intelligence tool that allows stakeholders to view updated data on the main activities regulated by the ANP (ANP, 2020[136]).

Other levels of government and branches of the state also have relevant examples in this regard. For instance, the Chamber of Deputies has developed infographics to explain the legislative process (Chamber of Deputies[137]) and the TSE, from the federal judiciary, conducted a communication campaign regarding fake news in the electoral process (TSE[138]) and developed a WhatsApp automated *chatbot* to allow stakeholders to ask questions related to the elections (TSE[139]). Another example of the public services portal elaborated by the State of Santa Catarina, which provides a single entry point for citizens with information regarding the purpose of the service, the documents or requirements necessary to obtain it, the steps to follow, the length for a request, the service's website, the nearest providing units location, as well as the legislation governing it (Government of the State of Santa Catarina, n.d.[140]). These represent important efforts in harnessing the use of transparency in policy-making to achieve greater awareness and engagement in public policies. However, these initiatives are mostly made on an ad hoc basis and are not usually aligned to achieve specific policy objectives. For instance, efforts to improve comprehensibility of information are limited to a specific initiative, rather than adopting a simple language approach for all policies and strategies.

The existing transparency mechanisms in sectoral policies contribute to build a more robust open government

Brazil also implements transparency mechanisms in sectoral policies such as budgeting, procurement, health, education, among others. As mentioned in the section on proactive disclosure, most of these initiatives are in place to comply with the legal or regulatory obligations (including the national ATI law). Some public bodies have gone beyond to develop additional tools that not only facilitate the access and the use of public information and data, but also provide avenues for stakeholders to monitor government actions, to provide feedback, to file complaints and to engage in policy processes. Ultimately, by encouraging more accountability and engagement, transparency mechanisms enable a two-way relationship with stakeholders in sectoral policies. In doing so, they contribute to consolidate transparency as a means to attain other policy objectives and build a more robust open government ecosystem.

A noteworthy example is Brazil's transparency mechanisms in budgeting The Ministry of Economy developed the "Platform + Brazil", which is an integrated and centralized tool aimed at computerizing and operationalizing the transfer of resources from the Federal Tax Budget and Social Security to a state, district, municipal, direct or indirect public administration body or entity (Government of Brazil[141]). These efforts have earned Brazil the score of 81/100 in the Open Budget Survey conducted by the International Budget Partnership (IBP). This score is significantly higher than the global average (45) and reflects the country's efforts to disclose budget information in line with international best practices in terms of availability, timeliness, and comprehensiveness (IBP[142]).

The Ministry of Economy also developed a "Purchasing Panel" (http://paineldecompras.economia.gov.br/), which allows citizens to access and monitor information and data related to the entire cycle of the public procurement process at the federal level (Ministry of the Economy[143]). Similarly, the Ministry of Health developed a dashboard to monitor the resources allocated to health issues, both in terms of income and expenditures within the scope of the Union, States, Federal District and Municipalities, named "SIOPS" (Ministry of Health[144]), as well as a dashboard that provides data on health indicators and other related health issues called "Tabnet" (Ministry of Health[145]). A final example worth noting is the application "Click School" developed by the Ministry of Education to facilitate and encourage the access to the main educational and financial information of schools (Government of Brazil, 2020[146]). To illustrate how tools, such as Click School, can be used by stakeholders for creating public value it is worth mentioning the QEdu platform. Created by non-government stakeholders, the QEdu platform uses open data from the Ministry of Education to show the performance of students by state-municipality-school in a user-friendly way (QEdu[147]). According to interviews during the fact-finding mission, the platform is widely used by both public and private stakeholders interested in education policies.

Building on all the ongoing initiatives and the parallel efforts to develop a Transparency Policy at the federal level (see above), the CGU could integrate the perspective that transparency policies, including access to information, proactive disclosure and open data, should be demand-driven. This would require establishing a comprehensive approach towards targeted transparency with mechanisms that, on the one hand, provide and communicate information and data in a way that is relevant and can be used by stakeholders. Conducting consultations with stakeholders to ensure that these mechanisms are user-friendly is key to ensure their usability. On the other hand, these mechanisms should also allow stakeholders to monitor government action in a systematic way with avenues to file complaints, gather their feedback, and engage throughout the whole policy cycle. Encouraging more accountability and engagement can enable a two-way relationship with stakeholders in sectoral policies. A relevant example in infrastructure and procurement processes is the platform to monitor public tenders and works in Buenos Aires, Argentina (Box 7.12).

Box 7.12. The Buenos Aires Obras initiatives for transparency and monitoring of public services

As part of the Open Government Ecosystem of the City of Buenos Aires, the Buenos Aires Obras (BA Obras) is an online platform in open format that provides geo-referenced and visualized information on the public tenders and works carried out by the City Government. For each public work, the platform offers a technical sheet with 30 indicators that are updated every four months. The indicators measure different aspects of the work, including the location, budget, the company in charge, the number of workers it employs, the expected execution period, photos of the work, progress on implementation, and direct access to the contract specifications. The information is updated every four months.

The platform includes different communication channels to increase awareness and usability by stakeholders. These channels include meetings organised by commune to show the largest public works in the area as well as the existence of the portal for monitoring their progress. There are also communication initiatives in specific communities using flyers, banners and other materials to raise awareness as well as a *chatbox* that can solve citizens queries related to city procedures, complaints and requests for information.

BA Obras seeks to increase transparency in the administration through real-time monitoring of public works carried out by the government, with updated and structured data in accordance with international transparency standards, integrated reporting, and with a clear and organised updated frequency. Finally, BA Obras is an "open source" initiative in that its software can be used for free to create new platforms. Currently, several cities in Argentina and in Latin America have created their own portal based on the BA Obras open code.

Source: (Government of the City of Buenos Aires, n.d.[148]) "BA Obras", http://www.buenosaires.gob.ar/baobras; (Government of the City of Buenos Aires, n.d.[149]) Community of open works (Comunidad de obras abiertas), https://www.buenosaires.gob.ar/agendadetransparencia/gobierno-abierto/ba-obras/comunidad-de-obras-abiertas.

Recommendations

1. **Strengthen the existing legal, policy and institutional frameworks for transparency.**
   - Continue with the creation of the Transparency Policy by integrating access to information, open data and other transparency related-elements into a single decree to provide the needed coherence among regulations and obligations to federal government institutions.
     - Consider integrating the Transparency Policy into the Open Government Strategy, recommended in Chapter 3, to fully integrate the transparency agenda into the wider open government agenda.
   - Carry out awareness raising campaigns for public officials to move from a control approach into transparency as a new culture of governance that both enables and encourages citizen's participation in policy-making and service-design and delivery, engages stakeholders in effective monitoring of government actions and prioritizes access to reliable information to identifying counter-measures and promoting open decision-making.
   - Leverage the use of the Council for Public Transparency and Fight against Corruption by ensuring a wider representativeness of stakeholders in the elaboration, implementation and monitoring of its transparency agenda to go beyond the usual suspects.

- In the medium term, as part of the recommended transition towards a fully integrated open government agenda (see Chapters 3 and 4), the Council for Public Transparency and Fight against Corruption could become part of the wider Open Government Council.

2. **Ensure the wide scope of application of the national access to information is effectively implemented at all levels and branches of government.**
   - On the short term, continue to foster compliance with the national law through initiatives such as the Brazil Transparency Programme that not only facilitate the adoption of the needed ATI regulatory framework, but also provide implementation support to increase capacities across subnational entities.
   - In the long term, if the law is reformed, provide further clarity and details to the legal ATI obligations for other levels and branches of government.
3. **Improve the proactive disclosure of information.**
   - Continue working towards the creation and implementation of the Transparency Observatory as it could help to address challenges related to the unequal implementation of proactive disclosure provisions across federal public institutions.
   - Provide additional training and awareness raising activities for federal public institutions laying out the importance and impact of proactive disclosure to increase compliance.
   - Create a centralised and unique web page mapping all of the existing portals and panels where proactive information is disclosed. This web page could include guiding instructions for users to find the information they need.
4. **Strengthen the implementation of reactive disclosure of information and data.**
   - Encourage the practice of protecting the identity of requesters implemented at the federal level to subnational governments by providing the necessary training and awareness-raising for public officials via the PBT to implement it through their respective online platforms.
     - In the longer term, if the law is reformed, include a clause of anonymity to ensure the protection of requesters at all levels and branches of government.
   - Increase uptake at the subnational level by providing stronger incentives for adopting the *Fala* system.
   - Create interactive guidelines or manuals for citizens and stakeholders on how and where to request government information depending on the type of information. These guidelines or manuals could direct stakeholders towards the relevant branch or level of government responsible for the information.
   - Advocate to include the possibility of providing the information free of charge if it is deemed in the public interest, or in setting a minimum threshold of pages that can be delivered free of charge in the national ATI law if it is reformed.
   - Continue efforts to improve the quality and transparency of information provided.
     - Consider providing more transparency as to how indicators are calculated in terms of the metrics used in the ATI Panel.
     - Aim to improve the usage of the searchable database of requests and answers through a consultation with end-users.
     - Elaborate a framework or protocol to ensure ATI is provided during a crisis context.
   - Consider changing the rules and procedures that govern classification of information so that these are, first, subject to the process of an open consultation, and second, broadly disseminated.
     - In the long term, consider adding clear public interest and harms tests to help guide public officials in applying exceptions.

  - In the short term, a manual focusing on simple language as well as trainings for public officials working on the SIC could help guide the application of exemptions.
- Continue making efforts to limit the response time at all levels of the appeals process.
  - Provide more time for requesters to file appeals, ideally, 60 business days for internal and external appeals to ensure that stakeholders have enough time to file it.
  - Consider changing the composition of the CMRI beyond the executive branch to include stakeholders from other state institutions including autonomous bodies.
  - Provide the DTC with the authority to issue binding decisions when information should be disclosed by a public body following an appeal.

5. Strengthen access to information oversight capacities for a more effective implementation.

- Increase the human and financial resources of both the DTC and the CRG to effectively conduct their mandate.
- Require federal government institutions to commit checking pre-defined standards before denying a request, for example in through the *Fala* platform, to help nudge them towards increased compliance.
  - In the long term, ensure that the institution with the oversight mandate of the national ATI law has the necessary institutional autonomy and the independence of public officials within the organisation to ensure impartiality of the decisions and the operations.
  - In the short term, strengthen the capacities of both the DTC and the CRG by increasing their human and financial resources.
- Create a special task force between the CGU and the Federal Public Prosecutor in order to increase compliance and enforce oversight of the ATI law at all levels of government and in all branches of the state.
  - Increase communication and co-ordination among both institutions through a joint task force could increase enforcement by linking the sanctioning power of the Federal Prosecutor with the CGU's monitoring mechanisms and established leadership.
  - Strengthen the enforcement capacities of the Federal Public Prosecutor by ensuring it has access to the necessary human and financial resources to effectively deliver on their mandate.

6. Reinforce the information office or officer in each public body to improve implementation.

- Increase the number of officials solely in charge of ATI.
- Include key competencies and knowledge for proactive and reactive disclosure of information and data in a dedicated competency framework, a code of conduct.
- Consider creating a specific job profile for the SIC position. This could professionalise the career of public officials working on ATI.
- Consider expanding the existing SIC Network to propose more frequent thematic and regional workshops to build capacities and exchange good practices.
- Encourage the appointment of a person or unit in charge of the ATI law within subnational governments.
  - Provide additional training and capacity building through the PBT and the TIME programmes to increase compliance and implementation of the national ATI law at this level.
  - Leverage good practice cases of municipalities from the TIME programme to motivate others to adhere to this initiative.

7. **Improve monitoring and evaluation mechanisms to measure the relevance of ATI provision.**
    - Elaborate a unique template for periodic reports that could be integrated into the *Fala* platform to subnational governments.
    - Improve monitoring capacities in subnational governments by increasing the use of *Fala* through the TIME Brazil Programme.
    - Dedicate further efforts to the evaluate the current available data to find trends, good practices and challenges to better understand the underlying causal mechanisms influencing success or failure of the ATI law.
8. **Raise awareness on the importance and the benefits of the ATI law.**
    - Host seminars and discussion groups for all age groups in society to raise awareness on the importance and the potential impact of the ATI law.
        - Consider multichannel mechanisms to counter the existing digital divide.
        - Raise awareness of ways to file a request and on existing instruments and tools to file complaints in case the information found shows government malpractice.
    - Consider conducting consultations with diverse news outlets beyond the most prominent media organisations to facilitate understanding of what information would be of value and in what form.
9. **Use targeted transparency measures to further engage with stakeholders.**
    - Integrate the perspective that transparency policies, including access to information, proactive disclosure and open data, should be demand-driven.
        - Establish a comprehensive approach towards targeted transparency with mechanisms that, on the one hand, provide and communicate information and data in a way that is relevant and can be used by stakeholders.
        - Conduct consultations with stakeholders to ensure that these mechanisms are user-friendly to ensure their usability.
        - Allow stakeholders to monitor government action in a systematic way with avenues to file complaints, gather their feedback, and engage throughout the whole policy cycle.

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Notes

[1] Costa Rica does not have an ATI law, but provides this right in practice through a presidential decree.

[2] Analysis based on the RTI country ranking, consulted on 22, June, 2021 https://www.rti-rating.org/country-data/.

[3] The *ouvidorias* represent a complex network of offices at both the national and sub-national levels that handle citizens' requests and demands. *Ouvidorias* have wide-ranging responsibilities and competences including, but not limited to, "defending the rights of public service users' before the state, promoting their participation in the processes of formulation and execution of public policies, exercising supervision of the provision of services and receiving complaints and protecting complainants". See also Chapter 5 on Civic Space, Chapter 6 on Participation, and Chapter 8 on Accountability.

[4] As per the responses to the *OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions.* .

[5] As of the 3rd of August, 2021.

[6] The World Press Freedom Index ranks 180 countries and regions (from an ascending order) according to the level of freedom available to journalists. It is a snapshot of the media freedom situation based on an evaluation of pluralism, independence of the media, quality of legislative framework and safety of journalists in each country and region. https://rsf.org/en/world-press-freedom-index

8 Towards a more accountable and responsive government in Brazil

This Chapter focuses on the current status of social accountability in Brazil and seeks to identify ways to improve its implementation within a broader integrated open government agenda. The Chapter outlines the legal, policy and regulatory frameworks in place which underpin the existing institutional arrangement for this type of accountability. It then elucidates the main web of public bodies with a relevant mandate and suggests recommendations to safeguard their autonomy and ensure they can fulfil their assigned responsibilities. Lastly, the Chapter highlights some of the existing initiatives and mechanisms for greater vertical and horizontal accountability and offers ways to take a more forward-looking approach to their implementation, coupled with high-level commitment for improved responsiveness across the public administration.

Introduction

The aim of increasing accountability in the public sector has been an underlying objective of many open government policies and initiatives. The *2016 OECD Report on Open Government: The Global Context and the Way Forward* found that improving accountability is one of the most common objectives of open government strategies, second only to enhancing transparency (OECD, 2016[1]). Furthermore, as the dimensions of what constitutes open government have expanded over recent decades, so too has the concept of accountability, which has become a key element of good governance discourse (Bovens, Schillemans and Goodin, 2014[2]) given its ability to improve government processes and performance and restore citizens' trust in governments. For this reason, the *2017 Recommendation of the OECD Council on Open Government* (hereafter "OECD Recommendation") identifies accountability as a core principle of open government in support of democracy (OECD, 2017[3]).

This Chapter will focus primarily on defining the parameters for vertical accountability in Brazil in addition to a focus on elements of horizontal accountability. In this context, horizontal accountability refers to how the different branches of the state, namely the executive, the legislative, the judiciary, as well as independent institutions, hold each other to account on behalf of citizens. This also consists of formal relationships within the state itself, whereby state actors have the formal authority to either restrain or demand explanations of one another (Lührmann, Marquardt and Mechkova, 2017[4]). This form of accountability is also emphasised in the *2017 OECD Recommendation on Public Integrity*, which highlights the need for effective oversight alongside risk management, enforcement and sanctions, and stakeholder participation (OECD, 2017[5]). Furthermore, the *2012 OECD Recommendation on Regulatory Policy and Governance* also notes vertical and horizontal gaps that can occur in administrative accountability and stresses the need for transparent frameworks for accountability for effective regulatory reforms (OECD, 2012[6]).

In contrast, vertical accountability signifies the direct relationship between the government and stakeholders and the ways in which the public can play a role in holding the public administration to account. Citizens can vote out elected officials, engage in demonstrations and protests, communicate with public bodies through online portals, provide feedback on policies and services, submit complaints, lobby public officials, and take an active role in monitoring and evaluating the public decision-making process. In these ways, stakeholders can apply different forms and levels of pressure to state actors (Harris and Schwartz, 2014[7]) through broader participatory processes in both their institutional and non-institutional forms (see Chapter 5 for further discussion). Stakeholder engagement seeks to improve the government-citizen relationship while leaving ultimate responsibility – and thus accountability – in the hands of officials who answer to the public.

Overall, the legal, policy, and institutional frameworks for different types of accountability are well-established in Brazil, and while accountability has been historically perceived through the lens of internal control and social control[1], several public bodies have made progress in moving beyond this interpretation in their own practices and initiatives. In general, the necessary structures for accountability exist in Brazil but oversight bodies need to be safeguarded, both through the protection of their independence and an allocation of adequate human and financial resources – before they can be fortified to the extent needed to fulfil and – in some cases – expand their remit. Furthermore, while there are many opportunities for citizens to engage with their government, Brazil – as is the case for many countries – does not yet have a coherent vision for, and high-level commitment to, an overarching approach to accountability that is proactive rather than reactive. Efforts to improve accountability and responsiveness – similarly to those undertaken under the framework of their broader open government agenda – can also be fragmented and prone to overlap and could benefit from more clearly defined responsibilities for each public body involved.

The Chapter will thus provide recommendations to support Brazil in taking a more holistic approach to accountability within an integrated agenda for open government reforms efforts. In particular, it emphasises the need to strengthen social accountability, meaning the direct involvement of citizens and other

stakeholders in contributing to ensuring accountability across the public administration, given its links to the other open government principles of transparency, integrity, and stakeholder participation. In this regard, the Chapter focuses on how Brazil could empower an existing public body with the mandate of a traditional Ombudsman institution to improve oversight and while also upgrading the existing platforms and processes for stakeholder engagement and feedback on public policies and services.

Taking a forward-looking approach to accountability

Governments must move beyond bookkeeping origins towards stronger democratic accountability

Representative democracies are underpinned by accountability by default, as they rely on the will of the public in choosing the elected officials that they wish to represent them. Today, citizens and stakeholders are calling for more accountability than ever in public decision-making, following decades of economic, financial, and social crises, as well as in the response and recovery to the COVID-19 crisis (Southern Voice, 2021[8]). In this context, accountability creates an environment that promotes learning, generates incentives and enables desirable risk-taking and innovation while contributing to a more resilient system of checks and balances. Moreover, engaging stakeholders in oversight processes can lead to greater citizen buy-in with policies and reforms, and this reciprocal relationship can give the government the legitimacy needed to make difficult decisions. Furthermore, prioritising accountability can contribute to reinforcing democratic systems as they tackle growing public discontent, which has been exacerbated by rising socio-economic inequality, political polarisation, general perceptions of corruption and inefficiency, and low trust in government (Pew Research Center, 2019[9]).

The concept of accountability has its historical origins in bookkeeping and the need for individuals and organisations to provide an account of their financial activities and their use of public funds, originally intended as a way to track government spending and demonstrate evidence against wrongdoing (Bovens, Schillemans and Goodin, 2014[2]). The modern movement for accountability has grown to encompass a much wider range of possibilities than the sole responsibility and duty of a public official or public body to citizens, to now consider a complete reconfiguration of government structures and the fundamental ways in which public bodies operate, with citizens and stakeholders at the centre (Hood, 2010[10]). In this way, the term no longer carries a rigid accountancy image related to audits or financial administration but can now relate to all forms of policy-making while carrying a promise of justice, integrity, and fairness (Khotami, 2017[11]). In fact, the World Bank states that there are several accountability relationships within a public administration (Stapenhurst and O'Brien, n.d.[12]) and for this reason, an all-encompassing approach to accountability through a sound system for feedback and oversight on a continuous basis is necessary.

In the context of this review, the OECD defines accountability as a relationship referring to the duty of government, public entities, public officials, and decision-makers to provide information on – and be responsible for – their actions, activities and performance. It also includes the right and responsibility of citizens and stakeholders to have access to this information and have the ability to question the government as well as to reward or sanction performance through electoral, institutional, administrative, and social channels. Lastly, it also involves governments using internal institutional and administrative mechanisms to reward and sanction government institutions, civil servants, and frontline providers in their delivery of government policies and services.

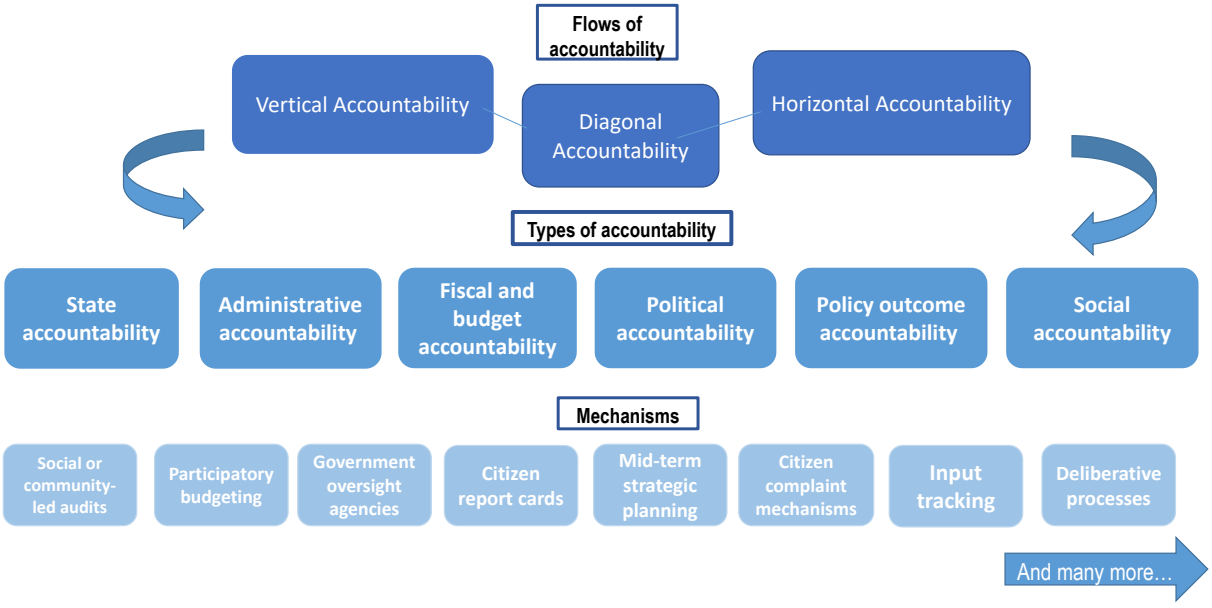
Accountability often involves two distinct stages: 1) answerability, which is the obligation of the government to provide information and justification for its activities, which may or may not lead to enforcement or sanctions (Schedler, Diamond and Plattner, 1999[13]) and; 2) enforcement, which is the power of the public and the institution responsible for accountability to sanction (Fox, 2007[14]). While backward-looking accountability focuses on identifying fault and allocating appropriate sanctions, governments should move

towards a more forward-looking approach on ensuring accountability throughout the decision-making process, identifying potential challenges, and communicating to and involving stakeholders at each stage, as well as reporting on eventual outcomes.

Outlining the flows, forms, and mechanisms for a holistic overview of accountability

Governance frameworks as we know them are being constantly reshaped – whether due to progress in information and communication technology, increased digitalisation and innovation in the public sector, adapting systems to address global challenges and crises, or merely through responding to increased demands from civil society and citizens for opportunities to engage with their public officials. These transformations also modify accountability lines as they develop. Despite this evolution, there are broadly three main directional flows of accountability: vertical, horizontal, and diagonal (Figure 8.1) as well as various forms and mechanisms for accountability (Table 8.1) that can be identified.

Figure 8.1. Mapping different types of accountability



Note: This is an inclusive but not exhaustive list of all types of and mechanisms for accountability.
Source: Author's own elaboration.

- Horizontal accountability is not the sole responsibility of one organ or public entity, but of many institutions and public officials who must ensure that government activities and decisions respond to citizens' needs and demands. As aforementioned, it refers to the different branches of the state, namely the executive, the legislative, the judiciary, as well as independent institutions (e.g. ombudsman, supreme audit institutions, and special commissions) holding each other to account on behalf of citizens through a system of checks and balances and oversight. This could include internal sanctions when these responsibilities are not met as well as potential penalties or consequences for failing to answer claims. There are often opportunities for the public to seek redress through these formal mechanisms (e.g. complaints and appeals to Ombudsman, information commissioners, and public prosecutors) (Transparency and Accountability Initiative, 2017[15]).
- Vertical accountability involves the direct relationship between citizens and the public administration and is generally used to refer to the ability of the public to hold its government

accountable through elections and political parties. It can also include more informal methods of participation – citizens can protest, lobby, devote monetary resources, publicise government failures and engage in conscientious objection, amongst others, to apply pressure to public bodies (Harris and Schwartz, 2014[7]).

- Diagonal accountability is a much-debated term with varying definitions. The prevailing view being that it is a hybrid form of accountability, which operates between the dimensions of vertical and horizontal accountability by engaging citizens and CSOs directly in the workings of public entities designed to increase accountability (Open Government Partnership, 2019[16]). This form of accountability emphasises the ability of civil society and a free and independent media to constrain the exercise of state power as well as the importance of citizen participation in civic organisations and informal movements to promote social capital, which in turn contributes to good governance (Walsh, 2020[17]).

Table 8.1. Selected forms of accountability

Selected forms of accountability	
State accountability	State accountability refers to the need to ensure that public entities hold each other to account through checks and balances. Consequently, this form of accountability is closely linked to horizontal accountability. Examples of state accountability include the structures and mechanisms in place to ensure separation of the executive, legislative and judicial branches, as well as the role of independent institutions such as the ombudsman, information commissions, Supreme Audit Institutions, or supranational entities for oversight.
Administrative accountability	Administrative accountability refers to a robust system of internal control measures that ensure that institutions and public servants are carrying out tasks according to agreed performance criteria, and using mechanisms that reduce abuse, improve adherence to standards, and foster learning for improved performance (McGarvey, 2016[18]). Internal control systems are preventative and incorporate risk management to detect inefficiencies that can affect the effectiveness of public entities. This form of accountability can be vertical and horizontal but rarely diagonal as it tends to underpin the distinct lines of responsibility between different departments and units in their respective duties.
Fiscal and budget accountability	Ensuring transparency and accountability throughout the budget cycle and fiscal proceedings can contribute to more efficient and effective service design and delivery (OECD, 2015[19]). These processes can also be enhanced with commitments to citizen engagement throughout the budget cycle, for example, through initiatives such as participatory budgeting (Harrison and Sigit Sayogo, 2014[20]). Fiscal and budget accountability is also horizontal as public administrations can evaluate the transparency of use of public funds and ensure that there are clear impact assessments of how financial resources are used and whether they are meeting their intended objectives. It can also be diagonal as there are ways for citizens to directly participate in monitoring the budgetary process, for example, by having a role in community procurement oversight and contracting and input tracking.
Political accountability	Political accountability can be defined as "a formalised relationship of oversight and sanctions of public officials by other actors", which is decided through free and fair democratic elections (Bovens, 2007[21]). Political accountability refers to the constraints created by a wider system regarding the behaviour of public officials which allows citizens to remove individuals from public office. It can also refer to the wider hierarchy within government, such as the answerability of a minister to their parliament. As political accountability increases, the cost to public officials of taking decisions that benefit their private interests also grows, disincentivising corrupt practices.
Policy outcome accountability	Policy outcome accountability can ensure that policy-makers account for their performance by monitoring and evaluating policy outcomes and making relevant performance information on their achievements available in a timely manner (Bovens, Schillemans and Goodin, 2014[2]). The purpose of this process is threefold: policy makers are held accountable, there is an opportunity to learn from the past and most significantly, evidence-informed policy-making is fostered. Some of the mechanisms include creating a regulatory framework for policy monitoring and evaluation; establishing a clear mandate with dedicated resources for key actors to collect, analyse, and use performance information and data for more effective service design and delivery; increasing the availability and quality of performance information; and integrating a greater degree of evidence-informed decision-making in the policy-making process (Bovens, Schillemans and Goodin, 2014[2]). As an innovative new way of looking at the outcomes of government policies, strategies and programmes and undertaking more impact assessment, this form of accountability can be vertical, horizontal, and diagonal depending on the mechanisms employed.
Social accountability	Social accountability plays a key role in ensuring that the voices of the public are heard (Malena, Forster and Singh, 2004[22]). The term social accountability is frequently used to describe the direct involvement of citizens, CSOs, and the media in ensuring accountability in state institutions (Lührmann, Marquardt and Mechkova, 2017[4]). Strong mechanisms for stakeholder engagement, feedback, and consultation also contribute to a more responsive government that centres citizens in public decision-making and quality control of policies and services. The role of civil society and media in their capacity as watchdogs and whistle-blowers to highlight any false information shared

	by governments is also crucial for social accountability. Moreover, public entities can partner with civil society to ensure accountability. This could, for example, include oversight institutions with a specific mandate for stakeholder engagement with watchdog organisations, a central government monitoring local governments or agencies use of funds with the support of local CSOs, or a regulatory agency partnering with media to investigate the roll-out of services of a public body (World Bank, 2013[23]).

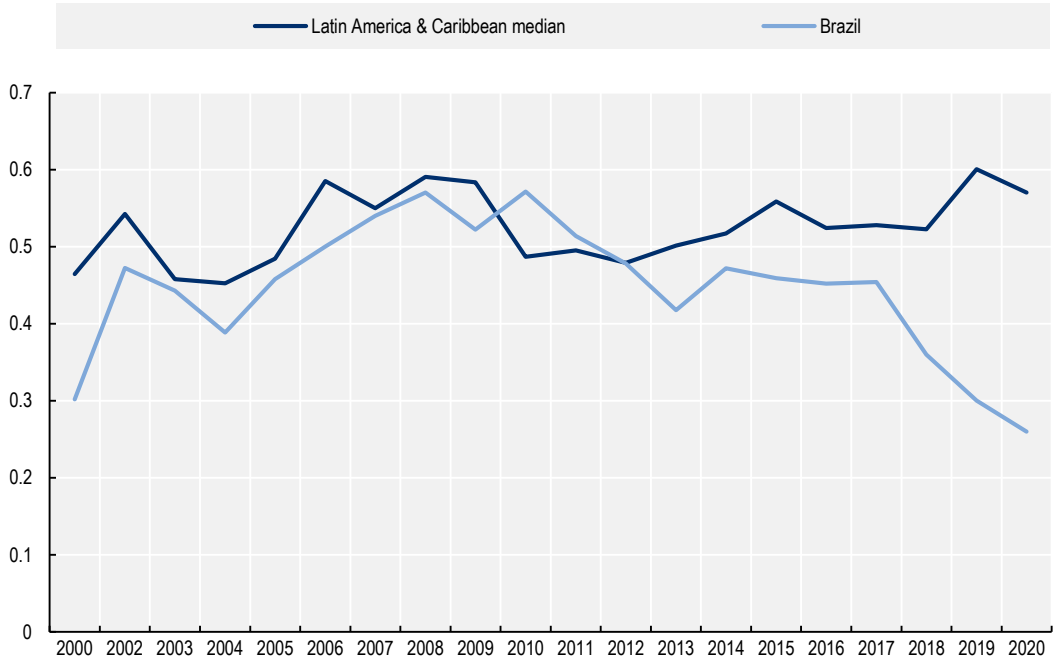
Source: Author's own elaboration.

The Brazilian context for accountability

Alongside the notable benefits of greater accountability for good governance, it also has a critical role in the functioning of a modern economy and for wider societal well-being (International Monetary Fund, 2005[24]) as it supports the domestic private sector and contributes to more secure public-private investments. Many of the advantages of accountability – including the avoidance of policy capture and corruption – are imperative for domestic business growth. Strong mechanisms for accountability thus implicitly demonstrate more effective and efficient governance, making a country a more reliable and attractive trade partner for foreign direct investment (FDI). In fact, the 2017-2018 edition of the World Economic Forum Global Competitiveness Index found that some of the most problematic factors for doing business in Brazil were perceptions of corruption, inefficient government bureaucracy, policy and government instability, and an insufficient capacity to innovate (World Economic Forum, 2018[25]).

The setting for accountability in Brazil benefits from the existence of a broad network of institutions with a mandate for internal control and oversight to ensure that checks and balances are maintained. However, over recent years – as in other countries around the world – Brazil's institutions have not been immune to weakening and are suffering from lower levels of citizen trust. Trust levels across OECD countries stood at 45% even before the pandemic (OECD, 2019[26]), with Brazil falling far below the OECD average at 17% in 2018 (OECD, 2020[27]). As data from the 2018 Latinobarómetro shows, this is also coupled with low levels of support for democracy more generally, at 34% in Brazil at the time (International IDEA, 2018[28]) (Latinobarómetro, n.d.[29]). Furthermore, Brazil ranks at 96th place out of 180 in Transparency International's 2021 Corruption Perception Index (CPI) (Transparency International, 2021[30]) and their 2019 Global Corruption Barometer found that 54% of citizens believed that corruption had increased in the previous 12 months (Transparency International, 2019[31]). Moreover, their score in the 2020 World Bank Voice and Accountability Index (World Bank, 2020[32]) decreased from its highest in 2010 (0.57) to its now lowest in over two decades (0.34) (see Figure 8.2).

Figure 8.2. Brazil in the World Bank Voice and Accountability Index, 2020



Note: Data for 2001 is not available.
Source: (World Bank, 2020[32])

Legal, policy and regulatory frameworks for accountability in Brazil

The Brazilian Constitution and other relevant national frameworks provide safeguards for accountability

The Background Report submitted for the *OECD Open Government Review of Brazil* outlined a number of comprehensive legal frameworks for accountability in the country. Firstly, the Constitution of Brazil references the principle of accountability in Article 70, Sole Paragraph:

> *Accounts shall be rendered by any individual or legal entity, public or private, that uses, collects, keeps, manages or administers public funds, property and securities or those for which the Union is responsible, or that assumes obligations of pecuniary nature in the name of the Union (Government of Brazil, 1988, with amendments through 2017[33]).*

Furthermore, the separation of the legislative, the executive and the judicial powers are declared to be "independent and harmonious among themselves" (Government of Brazil, 1988, with amendments through 2017[33]), an essential element of horizontal accountability. Title III, Chapter VI of the Constitution also states that the Federal Union should not intervene in the activities of the states, except to ensure compliance with constitutional principles, one of which includes "the rendering of accounts of the direct and indirect public administration (Government of Brazil, 1988, with amendments through 2017[33]). The Constitution also grants opportunities for decentralised internal control at the subnational level, with Article 34 noting that the Union will not intervene in the States or Federal District except to ensure compliance with the constitutional principle of "rendering of accounts of direct and indirect public administration" (Government of Brazil, 1988, with amendments through 2017[33]).

In addition to the Constitution, there is a wide range of legislation relevant to horizontal accountability, including laws and decrees on administrative improbity, public integrity, lobbying, fiscal responsibility and

whistleblowing, among others, with the aim of guiding public officials on their duties and responsibilities to the public (see Chapter 2 on the Enabling Environment). For example, the Fiscal Responsibility Law (Law 101 from 2000) establishes guidelines for budgetary and financial affairs and delineates clear penalties for the non-compliance of any public body (Presidency of the Republic of Brazil, 2000[34]). In addition, Decree 10.153 from 2019 provides means to protect whistle-blowers who denounce misconduct in public bodies (Presidency of the Republic of Brazil, 2019[35]). Lastly, the Law on Administrative Improbity (Law 8.429 from 1992) provides for the punishment and sanctions applicable to public officials in case of unlawful behaviour in the exercise of their role (Presidency of the Republic of Brazil, 1992[36]). However, amendments made in October 2021 (Presidency of the Republic of Brazil, 2021[37]) "loosened some of the provisions" of this law and altered 23 of its 25 articles (Tauil & Chequer Advogados, 2021[38]). Some of the changes included, for example, the need for acts of administrative improbity that violate the principles of the public administration to result in "significant damages" if they are to be subject to sanction (Tauil & Chequer Advogados, 2021[38]). The *Ministério Público* also now has the exclusive right to file improbity lawsuits (Tauil & Chequer Advogados, 2021[38]). While there are divergent opinions on the implications of these changes, CSOs interviewed during the OECD fact-finding mission raised concerns that these amendments could create potential for increased impunity, for example, because specific intent is required to deem an act as misconduct and the statute of limitations has been reduced.

Significant steps have been taken to improve accountability in Brazil through an overarching cross-government approach for both the centre of government and line ministries. In 2017, the President of Brazil committed to improving public governance through alignment with "the principles of trust, responsiveness, integrity, regulatory improvement, accountability and transparency" through the introduction of the National Policy for Public Governance Decree (Decree 9.203 from 2017) (OECD, 2017[39]). This Decree was key in setting a standard for all public bodies regarding the implementation of monitoring and control mechanisms for risk management alongside its obligation for all public bodies to approve an integrity plan (see Chapter 3 for an overview of the main laws and decrees guiding open government reforms in Brazil). The decree also mandated that each public organisation develops its own public integrity programme and integrity management unit to address and mitigate its risks in the institution (Vieira and Araújo, 2020[40]). In this regard, the CGU has also created a public integrity panel that presents a panoramic view of public ethics in the Federal Executive branch, as discussed in Chapter 3 on Governance Processes and Mechanisms. Lastly, it also led to the establishment of an internal control unit and a control advisor in each ministry to ensure adherence and compliance to good practices (Aranha, 2018[41]). In 2018, the OECD found that the full implementation of this decree could help to advance a culture not only of correction but of prevention (OECD, 2017[39]). Furthermore, the National Open Government Policy (Decree 10.160 from 2019) includes the improvement of policy-making through better spending, more effective prioritisation, and reduced corruption among its core objectives (Presidency of the Republic of Brazil, 2019[42]). Moreover, one of the most significant laws for accountability in regards to public-private interactions is the Brazilian Anti-Corruption Act (Law 12.846 from 2013), which targets corrupt business practices in Brazil and defines administrative and civil penalties for any individuals involved (Presidency of the Republic of Brazil, 2013[43]). Lastly, the Law on Conflicts of Interest (Law 12.813 from 2013) prohibits any public officials from engaging in activities that may involve the disclosure of information that benefits either themselves or a third party (Presidency of the Republic of Brazil, 2013[44]).

Several legal frameworks also promote vertical accountability and responsiveness to stakeholders and citizens. Regarding stakeholder participation, the legal framework is comprehensive but scattered, with elements in federal and local legislation as well as in dedicated policy areas (see Chapter 5 on Citizen Participation). That said, several laws and policies do encourage feedback and engagement with stakeholders and citizens through vertical accountability mechanisms, for example, the legislative frameworks, ordinances and decrees underpinning the *ouvidorias* (see Box 8.3 for legal frameworks that strengthened the *ouvidorias*). The Brazilian Constitution, while not directly creating these offices, provides the first legal grounding for the establishment of the *ouvidorias* (Government of Brazil, 1988, with amendments through 2017[33]). Article 37, paragraph 3 states that the law will regulate types of participation

for users in governmental bodies in regards to the provision and quality of public services, the access of users to administrative information, and lastly, the regulation of complaints "against negligence or abuse in the exercise of an office, position or function in government services" (Government of Brazil, 1988, with amendments through 2017[33]). This original wording provided the basis for the development of the current network of offices. The Constitution also explicitly called for the establishment of Justice *ouvidoria* offices as well as for the Public Prosecutor's Office, with powers to receive complaints and accusations from any interested party against members or bodies of the Judicial Branch and the Public Prosecutor's Office (Government of Brazil, 1988, with amendments through 2017[33]). A number of additional legislative frameworks, ordinances and decrees solidified and consolidated the importance of stakeholder participation for vertical accountability over the last decade, demonstrating Brazil's commitment to improving responsiveness and receiving feedback from citizens.

Brazil could upgrade its approach to social accountability through its Open Government Partnership National Action Plan and an open government strategy

As is the case in many OECD countries, Brazil's definition of and approach to accountability is not clearly defined in any policy document. However, the Law of Introduction to the Norms of Brazilian Law provides a broad overview of how public decision-making should function in the administrative, judicial and internal control spheres (Presidency of the Republic of Brazil, 1942, with amendments through 2018[45]). Furthermore, Brazil's most recent Open Government Partnership (OGP) 4th and 5th National Action Plans provide some insight into the country's conceptualisation of accountability and its role within the open government agenda (Office of the Comptroller-General of Brazil, 2018[46]) (Office of the Comptroller-General of Brazil, 2021[47]). As discussed in detail in Chapter 2 on the Enabling Environment, Brazil is currently implementing 12 commitments from their 2021-2023 action plan (Office of the Comptroller-General of Brazil, 2021[47]). It is significant to note that accountability is an underlying objective of many of Brazil's OGP commitments. For example, many of their previous commitments (see also Chapter 2) contribute to fostering accountability, such as the opening of budget data and government procurement as well as the institutionalisation of civil society participation and the consolidation of social participation initiatives. Furthermore, their 5th Action Plan includes commitments that contribute to greater diagonal accountability by involving civil society actors in a collaborative laboratory "to promote understanding, build standards and share experiences related to laws, practices, processes, methods, data and other important resources for fighting against corruption" (Office of the Comptroller-General of Brazil, 2021[47]). Horizontal accountability is also prioritised in their commitment to create a national computerised system to "build a database on human rights violations that allows integration with other systems used by subnational entities" (Office of the Comptroller-General of Brazil, 2021[47]).

However, while the government is highly committed to transparency (see Chapter 6), their plans include fewer concrete initiatives for enhancing accountability and responsiveness. The 4th Action Plan noted that "an accountable and responsive government establishes rules, norms and mechanisms which oblige governmental agents to justify actions, act according with received criticisms or demands and take on the responsibility of complying with their duties" (Office of the Comptroller-General of Brazil, 2018[46]). Notably, while this statement does not include a concrete definition of accountability itself, it does resonate with several important elements of a forward-looking approach, including the importance of responsiveness and the need to act upon feedback received from stakeholders and citizens. The plan also outlined three distinct stages of accountability:

1. Government renders accounts;
2. Government addresses doubts and justifies its actions;
3. Government is accountable. (Office of the Comptroller-General of Brazil, 2018[46])

This approach highlights an ex-post view of accountability as an "after the fact" process. Furthermore, there are no concrete commitments outlined in the plan that aim at improving how the government

"addresses doubts and justifies its actions" (Office of the Comptroller-General of Brazil, 2018[46]). During the OECD fact-finding mission it was confirmed that Brazil's view of accountability emphasises sharing documentation, offering an account of decisions made, and showing how funds have been used, as accountability tends to be related mostly to internal control. In addition, stakeholder or citizen participation in particular is seen through the lens of social control or social accountability (see Upgrading social accountability through improved engagement and feedback). As discussed in Chapter 5, there is significant overlap in the accountability and participation agendas, as they are seen as being intertwined under the broad concept of social control. However, as previously mentioned, while broader participatory processes do indirectly contribute to accountability, the aims and objectives of participatory initiatives in comparison with accountability initiatives do differ as while participation prioritises collaboration and inclusive decision-making, social accountability prioritises answerability, responsiveness, offering feedback, and addressing complaints.

The introduction of an Open Government Strategy (see Chapter 2 on the Enabling Environment) could be used as a tool to further a more concrete interpretation of accountability. Within this strategy, Brazil could articulate a clear definition of accountability within the framework of its broader open government objectives. This definition could also serve to communicate and mainstream this concept across the public administration and support more harmonious co-ordination based on mutual understanding. One example in this regard is Colombia, which defines accountability (Law 1757 from 2015) (Government of Colombia, 2015[48]) as a process made up of a set of norms, procedures, methodologies, structures, practices and results through which the public administration entities at the national and territorial level and public servants report and explain the results of their management to citizens, civil society, and other public entities and control bodies, based on the promotion of dialogue. It also references accountability as an expression of social control that includes requests for information and explanations alongside a broader evaluation of management (Government of Colombia, 2015[48]). Following on from this, Brazil could also include measurable targets on accountability in its 6th OGP action plan that emphasise both improving existing mechanisms for horizontal and vertical accountability (as discussed in further detail below) as well as enhancing feedback and responsiveness to stakeholders.

Towards a more responsive public administration in Brazil

Need to empower a body with the traditional mandate of an Ombudsman institution

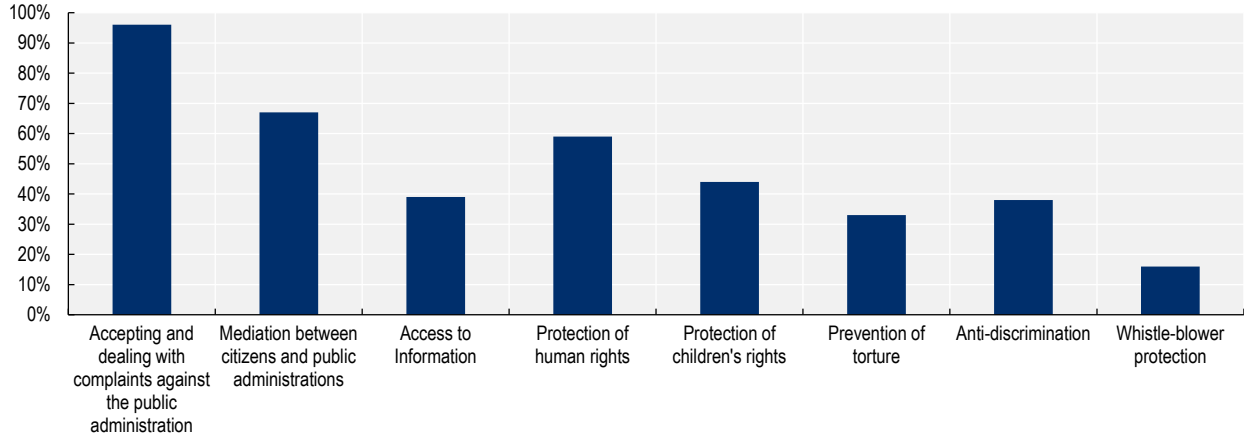
As the 2017 OECD report *The Role of Ombudsman Institutions in Open Government* notes, Ombudsman institutions play an important role in advancing a wider open government culture across the public administration (OECD, 2018[49]). Ombudsman institutions are independent offices that ensure that citizens are protected from violations of their civic rights as well as any negligent or deliberate errors or unsatisfactory decisions made by public officials (Batalli, 2015[50]). Ombudsman institutions regularly make important contributions and recommendations on public administration reforms, based on their expertise and insights about service delivery at national and sectoral level (OECD, 2018[49]). They also monitor and exercise control over the activities of state authorities, address administrative irregularities, and consider citizens' complaints against public bodies or officials who breach civic rights and freedoms (see Figure 8.3 for common areas of activity). In this regard, they can submit proposals to amend legislation or revise unlawful practices of the bodies of state authorities, to prevent a recurrence of such instances (OECD, 2018[49]).

According to the International Ombudsman Institute, a number of key features ensure their independence and credibility. In general, the role of these offices is enshrined in the constitution, with the strongest legal frameworks preventing political choices for the appointment of its head (Gottehrer, 2009[51]). In addition, these offices usually operate separately from the executive branch of government to guarantee impartiality and have the right to initiate investigations even if a complaint has not been formally submitted by a citizen

(Gottehrer, 2009[51]). This imbues the Ombudsman office with an ability to identify and combat corruption and make proposals for greater accountability.

Due to their position as an institution that is close to citizens and stakeholders and interacts with them regularly, they have a unique ability to advance the open government principles of transparency, accountability, and stakeholder participation in their own functions (OECD, 2018[49]). Some countries have Ombudsman offices at both the national and sub-national levels of government such as Australia and Mexico, while other nations have Ombudsman offices only at the sub-national level, as in Canada and Italy (OECD, 2021[52]). In both arrangements, embedding citizen and stakeholder participation in their work can lead to more accurate and effective recommendations from this body to the rest of the public administration due to a greater range of inputs and expertise. In this sense, the Ombudsman can demonstrate the value of openness concretely. Moreover, these bodies can also promote open government by developing guidelines and codes of conduct for public officials that prioritise open government practices and processes (OECD, 2018[49]).

Figure 8.3. Ombudsman institutions areas of activity according to their mandate



Note: 94 Ombudsman institutions participated in the survey. OIs' mandates can involve a wide variety of areas of activity.
Source: Responses to the 2017 OECD Survey on the Role of Ombudsman Institutions in Open Government (OECD, 2018[49])

Contrary to neighbouring countries in the region, Brazil does not have a traditional and independent Ombudsman institution that has a mandate for all steps of an accountability cycle, that is to say: to monitor, investigate and sanction. Furthermore, no institution is currently fully in line with the Paris Principles and accredited by the Global Alliance for National Human Rights Institutions (GANHRI, n.d.[53]) which stipulates specific criteria as outlined below (Box 8.1).

Box 8.1. Ombudsman institutions for accountability

United Nations Paris Principles

The Paris Principles represent the first set of standards for National Human Rights Institutions (NHRIs) and were endorsed by the UN General Assembly in 1993 (Resolution A/RES/48/134) (ENNHRI, n.d.[54]). The Principles set out the main criteria that NHRIs are required to meet:

- They must be established under primary law or the Constitution;
- They should have a broad mandate to promote and protect human rights;
- They must have formal and functional independence;
- They must commit to pluralism and representation of all aspects of society;
- They must benefit from adequate resources and financial autonomy;
- They should have freedom to address any human rights issue that arises;
- They must issue annual reports on the national human rights situation;
- They should cooperate with national and international actors, including civil society (ENNHRI, n.d.[54]).

An overview of Ombudsman models

Linda Reif identifies two different Ombudsman models (Reif, 2004[55]). The classical model consists of those developed in the image of the Swedish institution, which often had non-coercive powers and existed as accountability mechanisms to advise and oversee the activities of public officials (Reif, 2004[55]). In contrast, the hybrid model adopted by Latin American countries in the late 20th century often had a particular focus on not only accountability in the public sector, but also the broader protection of human rights. In Latin American and Caribbean countries, the Ombudsman is often considered "an independent investigator authorised to respond to the demands of citizens who "need a mechanism to control the abuses of the authorities and private individuals" (González Volio, 2003[56]).

Democracies in the region were preceded by "governments generally characterised by the lack of accountability and responsiveness on one hand and the pervasiveness of graft and state abuse of citizens' rights on the other hand" (Uggla, 2004[57]). The period of democratisation in Latin America during the 1980s and 1990s led to a number of institutional reforms, which intended to enhance and strengthen the rule of law, accountability and other values associated with good governance (Uggla, 2004[57]). The Latin American model thus often gives explicit priority to the protection of human rights. These offices also often have promotional and educational functions and can transfer cases to the Public Ministry so that the latter can initiate a criminal prosecution when necessary (González Volio, 2003[56]).

Source: (ENNHRI, n.d.[54]); (Reif, 2004[55]); (González Volio, 2003[56]) (Uggla, 2004[57]).

Both the Public Prosecutor's office (*Ministério Público)* and the Public Defender's office (*Defensoria Pública)* play an important role in regard to oversight, and the *Defensoria* in particular shows potential to fulfil the traditional responsibilities of an Ombudsman institution. Both bodies are essential to core democratic functioning of the Brazilian state but differ in their responsibilities and jurisdiction. Broadly, the Federal Public Ministry has the mission of overseeing compliance with the law at each level of government in Brazil while the Public Defender's Office ensures access to justice and acts as the pro-bono defence of those who cannot afford a lawyer (Gazeta Do Povo, 2015[58]). In Brazil, a number of bodies collaborate at the national and subnational levels to ensure accountability for human rights abuses and to protect civil

liberties in particular. The below table provides an inclusive but not exhaustive list of these bodies and their key attributions (Table 8.2), including the *Ministério Público and the Defensoria Pública.*

Table 8.2. Oversight institutions for civic freedoms and rights in Brazil and their key attributions

Name	Level of government	Key attributions regarding civic space
Public prosecutor's offices (*Ministério Público)*, in particular the units in charge of citizens' rights	Federal and state	Oversee state actions and ensure accountability for violations of constitutional rights. External oversight over police activity.
Public defenders' office (*defensorias públicas*)	Federal and state	Advise citizens and defend their interests and rights.
Federal Supreme Court (*Supremo Tribunal Federal*)	Federal	Judges legislation at federal and state level and breaches of principles regarding civic rights and freedoms foreseen in the Constitution. Highest court of law in Brazil.
National Human Rights Hearing Office	Federal	Receives and deals with complaints denouncing human rights violations.
Councils (*conselhos*)	Federal, state, municipal	Discuss violations and recommend actions to prevent and protect rights.
Secretariats (Justice, Citizens, Human Resources, etc.)	State, municipal	Co-ordinate and implement public policy actions for the promotion and protection of civic rights.
Ouvidorias in ministries and public entities	Federal, state, municipal	Receive and deal with complaints and suggestions from citizens on public services.
Inspector General offices *(Corregedorias)*	Federal, state, municipal	The national *corregedoria* exercises external oversight of police activity and combats intentional violent crimes.
Special courts (*juizados especiais*) for small cases	Federal, state, municipal	Moderate, judge and execute cases of lesser complexity.

Note: According to the National Council of Public Prosecutors' latest annual report, the "National corregedoria has given a new focus to correctional activity, implementing the thematic corrections in public security, with greater emphasis on ministerial action in the areas of penal execution, external control of police activity and combating intentional violent crimes" (National Council of Public Prosecutors, 2021[59]).
Source: Author's own elaboration.

Support the Defensoria Pública in taking a more strategic role as a traditional Ombudsman

The *Defensoria Pública* (Public Defender's Office) is responsible for defending human rights and providing legal advice and guidance to citizens, especially those who are not able to afford such costs (UNHCR Brazil, n.d.[60]). The offices at the federal and state levels provide services free of charge to citizens, especially the most disadvantaged and vulnerable members of society. They are guaranteed by the Constitution (Government of Brazil, 1988[61]). Their latest report (CNCG, CONGEDE and DPU, 2021[62]) shows that public defenders are present in all federal public bodies of Brazil. However, public defenders' offices currently cover only 44.5% of judicial districts (*comarcas*). These judicial districts are comprised of one or two municipalities, meaning that there are just 3 defenders available for every 100 000 inhabitants. Other districts are partially supported due to working groups and itinerant programmes, which include buses, vans, and boats that travel to remote areas transporting teams of judges, prosecutors, public defenders, conciliators and, in some cases, professionals from other areas, such as doctors and psychologists (Ipea, 2015[63]). In 2019, public defenders' offices provided a record high number of legal assistance consultations (19 522 126) and generated 2 630 157 judicial processes (CNCG, CONGEDE and DPU, 2021[62]). Specialised advisory services for defending vulnerable groups and rights is available in 71% of federal units.

The *Defensoria* legally protects individual and collective rights in both a judicial and extrajudicial capacity. In this sense, its areas of focus correlate quite closely with the work of a traditional independent ombudsman institution. In addition, the *Defensoria* can, in fact, file class-action lawsuits on behalf of citizens and urge the government to act. For example, one such recent case involved the *Defensoria* filing

a lawsuit at the Supreme Court to demand that the government issues a plan to ensure that states and municipalities receive adequate oxygen supplies in hospitals during the COVID-19 crisis (The Brazilian Report, 2021[64]). Significantly, a 2004 constitutional amendment grants administrative, functional and financial autonomy to public defenders' offices, guaranteeing their independence from the executive (Government of Brazil, 2004[65]). Some Brazilian jurists have argued that the constitutional mission as well as its institutional characteristics would allow for the classification of the Office as an Ombudsman: "The performance of the Ombudsman's role by the *Defensoria* is delimited by the scope of its institutional purposes, which are especially linked to the defence of low-income and vulnerable individuals and groups" (National Association of Public Defenders (ANADEP), 2015[66]).

Despite the importance of the *Defensoria* in holding the government to account on issues of civil liberties among others, their role is not currently being optimised. Interviewees stressed that the offices are increasingly suffering from a lack of human resources and qualified and interested personnel, a challenge which can hinder them from effectively defending citizens and which they expect to become a more prominent issue in years ahead. In particular, skills and capacity shortages can prove detrimental to the ability of government organs and public officials to reach their full potential, and at worst, can lead to negligence. Furthermore, financial autonomy remains a challenge, as these offices rely on the National Treasury and successive budget cuts have compromised the expansion of the state *Defensoria* offices, which had been foreseen in a 2014 constitutional amendment (Federal Senate, 2021[67]; Government of Brazil, 2014[68]; Ipea, 2013[69]). A comparative analysis between the institutions that make up the Brazilian justice system reveals that the budget allocated to the *Defensoria* in 2021 was 313% lower than that of the Public Prosecutor's Office, and 1 575% lower than that of the judiciary (CNCG, CONGEDE and DPU, 2021[62]). This contrasts with the number of staff per institution. The number of public defenders is 88% less than the number of public prosecutors and 162% less than the number of judges, magistrates and ministers of the judiciary. Brazil could demonstrate their understanding of the importance of this strategic body by channelling the appropriate financial resources and protect them in the future through for example, earmarking their allocation.

The presence of *Defensoria* offices across the country, as foreseen in the constitutional amendment, is an important instrument of access to justice for the most vulnerable and disadvantaged members of society. In general, Brazil could seek to address the challenges that they face by affording them the resources needed to match their responsibilities. This could include predictable and adequate funding, independent of the political cycle, which is essential to the *Defensoria*'s independence and fundamental in ensuring their ability to respond to the growing demand for their services and in fulfilling their core mandate.

The *Defensoria* currently advocates on behalf of citizens and operates independently of the federal government, meaning that it is a suitable candidate for further development and expansion of its remit regarding monitoring and oversight of civic freedoms in Brazil. Moreover, given the Public Ministry's independence from the other three branches of government alongside its safeguarded budget, in theory it could also be a well-placed body to undertake this role. However, recent issues surrounding its appointment process and accusations of politicisation means that the independence of the Public Ministry would need to be sufficiently strengthened, before it would have the capacity to perform as an effective independent oversight institution for civil liberties. In light of this context, Brazil could thus take a long-term view to considering the development of the *Defensoria* into a traditional Ombudsman institution in line with the Paris Principles (see Box 8.1), through the creation of a specific working group that would assess this proposal and produce concrete recommendations on the changes required. This Ombudsman institution could also have a clear mandate for promoting the values of open government, similarly to the Ombudsman in Argentina, which has strategic oversight of the open government agenda (Office of the Ombudsman of Argentina, n.d.[70]).

Empower the Ministério Público for oversight of civic freedoms and rights and addressing constraints

As aforementioned, the Public Prosecutor's Office (*Ministério Público Federal*) is mandated by the Constitution to "oversee the effective respect by public powers and services of the rights secured in the Constitution, promoting the necessary measures to guarantee them", including "to exercise external control over police activity" (Art. 129 Item VII) (Government of Brazil, 1988, with amendments through 2017[33]).The Brazilian Constitution grants its public prosecutors with three substantial responsibilities – to defend individual rights, to maintain legal order, and to uphold the democratic regime (Federal Public Ministry, n.d.[71]). This fourth branch is comprised of four divisions that operate at the national and local level. These include: 1) The Federal Public Ministry (MPF); 2) The Public Ministry of Labor (MPT); 3) The Military Public Ministry (MPM); 4) The Public Ministry of the Federal District and Territories (MPDFT) (Federal Public Ministry, n.d.[71]). Public prosecutors investigate potential crimes and irregularities identified at their own initiative or reported by public agencies or citizens. Based on the results of their investigations, they can submit a case to the judicial system. It was noted in the fact-finding mission that public prosecutors also have the power to administer penalties and sanctions to public officials and bodies. The Public Prosecutor's Office is currently the source of most of the major civil cases for the defence of rights that are brought before the judiciary (Néri de Oliveira, 2021[72]). Prosecutors can also act preventively and extrajudicially, through recommendations, public hearings and agreements (Public Prosecutor's Office, n.a.[73]).

The Public Ministry releases annual report on its activity and management through its own online portal. The latest 2020 report on the results of the performance of the MPF notes that the website had 7 242 972 visitors that year, with many millions more engaging with their Facebook, Instagram, and Twitter accounts (Federal Public Ministry, 2020[74]). The report provides a detailed breakdown of the petitions received from citizens and stakeholder and whether they amount to criticism, suggestions, or specific complaints. The Public Ministry responded to 94.2% of these submissions in a timely manner. The report also outlines how many were completed versus how many were forwarded to an external body, but does not provide any further detail on their status at the time of writing. An earlier "Studies and Statistical Surveys of Performance" report available on the website (Federal Public Ministry, n.d.[71]) for 2015-17 found that there were 332 897 judicial processes and 16 104 extrajudicial procedures during that time period in the area of citizens' rights. However, this report does not provide a breakdown per right nor by the status of those that were filed as judicial actions (Federal Public Ministry, 2017[75]). The Public Ministry could begin to more widely disseminate this data on the status of judicial processes and share it with citizens through their portals and social media accounts, this would also enable the MPF and relevant external stakeholders to gain an accurate overview of its performance and identify potential trends.

As mentioned above, according to the Constitution, the Public Prosecutor's office is formally independent and the procedure is set out by article 128, paragraph 1 (Government of Brazil, 1988, with amendments through 2017[33]). Once nominated for a role, prosecutors are broadly immoveable and cannot, an aspect for which Brazil has been historically lauded as a model in the region. In addition, the prosecutors (career members of Public Ministry) themselves are autonomous and are not submitted to the head of Public Ministry for approval of their duty (Presidency of the Republic of Brazil, 1993[76]). However, during the fact finding mission, concerns regarding emerging weaknesses in its autonomy were raised. Several public officials and civil society interviewees stressed the need to strengthen the role of the Public Ministry and highlighted some recent limitations on their autonomy. For example, while the procedure for appointing the head of the Ministry is outlined in the Constitution, a non-tacit process known as a "Triple list" approach has become an informal norm whereby the President chooses from a list composed of the three most qualified candidates voted by public prosecutors involved in the process. This practice is not provided for by law, but rather has become a tradition (National Association of Attorneys of the Republic, 2019[77]). Notably, however, this protocol was not followed during the two most recent appointments in 2019 and 2021 (National Association of Attorneys of the Republic, 2019[77]). A triple list approach to the nomination

of the Chief Public Prosecutor is a democratic practice that generates legitimacy as it is sourced by the broader Public Ministry, and as such, it could be further protected. In order to do so, a triple list could be legally installed and guidelines on the process could be created to advise the public officials involved.

In addition, civil society interviewees in the fact-finding mission noted that public prosecutors often have a huge volume of work. This can affect their capacity to thoroughly investigate to the extent required related to a broader challenge of inadequate human and financial resources for the workload, which can be detrimental to the quality of investigations as well as the quantity that prosecutors can afford to effectively pursue. It is important to note that this is despite the fact that the Federal Police also have competences in undertaking such investigations. The main function of the Federal Police is to uncover criminal offenses that act against the interests of the federal government, its autonomous bodies, and public enterprises, as well as "other offenses with interstate or international repercussions" as provided by law (Inter-American Commission on Human Rights, n.d.[78]). While the Federal Police undertake investigations, they cannot prosecute crimes as only the Public Ministry can present complaints to the judiciary, which then initiates proceedings which are either civil or criminal (Aranha, 2018[41]). In this regard, Brazil could commit to reinforcing the role of the Ministry by evaluating whether their workload burden affects prosecutors' abilities to fulfil their role.

Mainstreaming Brazil's approach to accountability across the public administration through high level commitment and coordination

A number of bodies in Brazil are well-placed to promote a forward-looking approach to accountability and to encourage greater coordination across the public administration. Where the CGU focuses more specifically on policy-making, coordination, and implementation of internal and social control across the public administration, the OECD interviews revealed that both the Government Secretariat of the Presidency of the Republic (SEGOV) and *Casa Civil* could promote political articulation for accountability in Brazil. During the OECD fact-finding mission, it was mentioned that *Casa Civil* has a key role in core pillars of accountability and takes a traditional reporting approach to the concept as a "rendering of accounts for each body". For example, *Casa Civil* contributes to the "evaluation and monitoring of government action and the management of agencies and entities of the federal public administration" as well as "coordinating and monitoring the activities of the Ministries and the formulation of projects and public policies" (Presidency of the Republic of Brazil, 2019[79]). They also directly assist the President in formulating his annual message (*Mensagem ao Congresso Nacional*) to Congress upon the opening of the legislative session each year (Government of Brazil, 1988, with amendments through 2017[33]) (Center for Research Library, n.d.[80]), as required by Article 84 of the Constitution. This address accounts for any decisions made and offers a statement justifying the activities undertaken and planned during the President's tenure. Moreover, the primary function of SEGOV is to "guarantee the uniformity of the communication for the Federal Executive Branch" (OECD, 2020[81]) and thus this body could commit to high-level articulation of a pioneering approach to accountability. *Casa Civil* and SEGOV could learn from other international good practices from centre-of-government offices in exploring a more advanced view of accountability and supporting collaboration and coordination with the other bodies in charge of administrative accountability and budget and fiscal accountability.

Due to the complex institutional arrangement for accountability in Brazil, most public bodies with a mandate for accountability must collaborate and coordinate "to develop joint actions, match priorities, work together in special operations, and exchange information" (Aranha, 2018[41]). In fact, several have existing cooperation agreements to this effect and the number of such agreements has been expanding in Brazil (Aranha, 2018[41]). Given that the CGU's position as a Comptroller offers an overview of the public administration – it could commit to creating a holistic overview of how public bodies currently work together regarding internal control and the ways in which collaboration could be further encouraged to identify potential misconduct. The CGU could also take a systems thinking approach to change, by focusing on how current governance frameworks, processes and methods can better work in tandem while reducing

silos and improving operations overall (Observatory of Public Sector Innovation (OPSI), n.d.[82]). Regarding coordination of bodies with a mandate for accountability, Brazil could also draw inspiration from Colombia's new National System of Accountability (*Sistema Nacional de Rendición de Cuentas – SNRdC*) which is currently being implemented in compliance with Decree 230 from 2021 (Government of Colombia, 2021[83]). This system articulates the set of public bodies, principles, norms, strategies, policies, programmes, and mechanisms involved in coordinating and enhancing the activities carried out within the framework of the accountability and also aims to facilitate citizen monitoring and evaluation of the planning and management commitments of state entities at the national and subnational levels (Government of Colombia, 2021[83]).

Because of the close connection between the SEGOV and *Casa Civil* on political articulation of accountability as well as their interaction with the CGU, which coordinates the concrete implementation activities related to internal control, all three bodies could endeavour to communicate a move away from a traditional control and compliance based perspective. Both the SEGOV and *Casa Civil* could utilise the suggested legal harmonisation of the open government agenda and the development of an Open Government Strategy as recommended in Chapter 2, to articulate and promote a more pioneering definition of and approach to accountability. In this regard, they could collaborate on high-level messaging to increase support across the public administration. One notable example is Finland, which currently ranks 3rd in SGI indicators on executive accountability (Sustainable Governance Indicators (SGI), 2019[84]), and which promotes its vision for open government and accountability through a specific Open Government Strategy (OECD, 2021[85]).

Streamlining and increasing collaboration between public bodies with mandates for administrative accountability, policy outcome accountability, and fiscal and budget accountability

The CGU, *Casa Civil* and SEGOV could work closely with other bodies in Brazil that are currently in charge of other forms of accountability to map their current initiatives in this regard and integrate these existing practices with more forward-looking practices for horizontal accountability, including mid-term planning, strategic foresight and risk analysis. Currently, Brazil has a wide range of mechanisms for vertical and horizontal accountability that span different forms of accountability, including administrative, fiscal and budget, and policy outcome accountability, many of which are led by the CGU with involvement from different public bodies (see Table 8.3).

Table 8.3. Selected vertical and horizontal mechanisms for accountability in Brazil

Mechanism	Objectives
TIME Brasil programme	This programme was created in 2019 by the CGU to assist states and municipalities in improving public management, creating more accountable institutions, and strengthening anti-corruption efforts (Office of the Comptroller General, n.d.[86]).
The Diretoria de Transparência e Controle Social (DTC) civil society training	The DTC within the CGU provides training for civil society on monitoring and evaluation of government activities (see Chapter 3) and promotes opportunities for stakeholder involvement in oversight.
Observatório da Despesa Pública (ODP)	This unit of the CGU applies scientific methodology and technology with a view to making more strategic decisions by monitoring public. The objective of the ODP is to contribute to the improvement of internal control and to function as a support tool for public management. The results generated by the unit serve as input for the audits and inspections conducted by CGU (Office of the Comptroller General, n.d.[87]).
Inspections from Public Lotteries	The CGU's lottery programme randomly targets the federal funds transferred to Brazilian municipalities with less than 500 000 inhabitants (Aranha, 2018[41]). Under this framework, the CGU sends approximately 10 auditors to 60 randomly-selected municipalities each year to ensure funds are effectively channelled to the agreed-upon policy areas (Aranha, 2018[41]).

Plano Mais Brasil programme	The programme began in 2019 (Ministry of Economy, n.d.[88]) with the objective of improving the operating environment and creating conditions that protect public accounts from any fraudulent activity or misappropriation. The overall aim is then to "offer fiscal stability to the Union and subnational entities" (Ministry of Economy, n.d.[88]).
Portal de Compras Públicas	This portal opens up public procurement processes for interested stakeholders and citizens (Government of Brazil, 2020[89])
Anti-corruption taskforces	The Lava Jato anti-corruption taskforce is an example of one of the most notable mechanisms for accountability. It used innovative tools, including plea-bargaining and the exchange of financial information with foreign authorities to retrieve almost USD 800 million to be returned to the state (Le Monde, 2021[90]). It resulted in almost 280 convictions, including many political leaders and lawmakers (Council on Foreign Relations, 2021[91]).

Note: The Anti-Corruption Task Force was dismantled by Brazilian prosecutors in February 2021 (The Economist, 2021[92]). Reasons for its dissolution included both leaked accusations of misconduct and sidelining of appropriate procedures as well as the President's statement that "there isn't any corruption" left to be investigated in the government (Organised Crime and Corruption Reporting Project (OCCRP), 2021[93]).
Source: (Office of the Comptroller General, n.d.[86]), (Office of the Comptroller General, n.d.[87]), (Aranha, 2018[41]), (Ministry of Economy, n.d.[88]), (Government of Brazil, 2020[89]), (Le Monde, 2021[90]), (Council on Foreign Relations, 2021[91]).

Given the role of the CGU for administrative accountability as the "internal control body of the Brazilian government responsible for defending public assets and for increasing transparency, through audit, internal affairs, *ouvidorias*, and corruption prevention and fighting" (Office of the Comptroller General, n.d.[94]) (see the *OECD Report on Strengthening Public Integrity in Brazil* (2021) (OECD, 2021[95]) for more information), this office has an overview of which public bodies can advance this new vision for accountability. As the CGU is also in charge of promoting the principles of open government across the government, the office operates as an important liaison between public bodies at both the federal and local levels and can collaborate with and encourage other bodies to fulfil their potential regarding accountability.

In this regard, another key actor in Brazil's accountability web is the Federal Court of Accounts (*Tribunal de Contas da União - TCU*), which is crucial for fiscal and budget accountability while also having opportunities to promote social accountability. The TCU is the main external control institution of the federal government and functions as its Supreme Audit Institution (SAI) (Federal Court of Accounts (TCU), n.d.[96]). The TCU guides public officials by promoting "a more effective, ethical, responsive and responsible Public Administration" (Federal Court of Accounts (TCU), n.d.[96]) and their responsibilities broadly cover traditional budget and fiscal accountability processes such as accounting, contracting, and procurement, undertakes performance audits, and investigates financial fraud or a misappropriation of funds in public bodies (Federal Court of Accounts (TCU), n.d.[96]). The OECD report *Supreme Audit Institutions and Good Governance* stresses the importance of SAIs as key democratic institutions (OECD, 2016[97]), and as such, the TCU is "a critical inducer of change in the Brazilian government towards better governance" (OECD, 2017[39]). Historically, SAIs have had limited interaction with citizens but increasingly, there are opportunities for greater civic engagement in monitoring and scrutinising governments' use of public funds. There are several examples of partnerships in which civil society organizations and SAIs have worked together toward shared goals through social audits, cooperation with journalists and academics, citizen focus groups and others in the United States, Mexico, India, and more (Global Integrity, 2018[98]) (United Nations, 2013[99]). In fact, maintaining public dialogue and encouraging engagement through participatory monitoring and evaluation and audit processes can improve the efficiency and effectiveness of the use of public resources by involving more actors in identifying suboptimal use of funds or risks of corruption (Governance and Social Development Resource Centre, 2006[100]).

Several actors including the CGU, SEGOV, *Casa Civil* and the TCU also have a role to play in policy outcome accountability. This form of accountability places the emphasis less on the process and more on the results of particular policies and so it is usually dependent on setting standards, benchmarks and key criteria in accordance with outlined objectives. Different initiatives that aim to encourage an outcome-oriented approach are for example, internal policy implementation analysis, which anticipates challenges that may arise and lead to failed targets, excessive costs, and even political backlash. Similarly, strategic mid-term planning also exposes the steps behind what may appear to be a successful process which could include uncover corruption, bribery, or a simple mismanagement of funds (OECD, n.d.[101]). The TCU already prioritises policy outcome accountability in many regards and already works to provide insight and foresight, by anticipating the vulnerabilities, challenges and opportunities for the Brazilian government to address integrity risks and systemic vulnerabilities (OECD, 2017[39]) for better outcomes. The CGU, *Casa Civil*, SEGOV and the TCU could further promote their role regarding these forms of accountability, for example in the President's Annual Accountability report sent to National Congress and commit to improving "strategic planning and policy making by improving the links between policy interventions and their outcomes & impact" (OECD, n.d.[102]) across the public administration.

Encouraging innovations in accountability at the subnational level

The *OECD Questionnaire for Subnational Governments for the Open Government Review of Brazil* yielded several good practices from the state and municipal level. For example, the City Hall of Belo Horizonte has a transparency portal with links to the annual balance sheet of government spending, remuneration of public officials, summary records on budget execution, reports of government activities, information on public-private contracts and instructions on accessing information (City Hall of Belo Horizonte, n.d.[103]). The State Government of Rio de Janeiro also shares contracts, bids, and meeting records on its website for public consumption as well as public calls for tenders (State Government of Rio de Janeiro, n.d.[104]). The State Government of Paraíba has a Citizenship Portal with information on government activities relating to health, public security, and environment as well as a direct link to the State *Ouvidoria* (State Government of Paraíba, n.d.[105]). Similarly, the City Hall of São Paulo provides detailed guidance in simple language on how and when citizens should file a complaint to the *Ouvidoria* of their municipality (City Hall of São Paulo, n.d.[106]). The City Hall also has a webpage for Public Accountability, where it posts annual balance sheets, and in particular, data on public funding channelled to civil society organisations (City Hall of São Paulo, n.d.[107]).

While the COVID-19 crisis exacerbated many challenges for Brazil, it did also raise some opportunities for innovations in accountability at the national and subnational level (see Box 8.2) that could be emulated both by other states, municipalities, and cities as well as in other public bodies at the federal level. Brazil could work to sustain this momentum and continue the trend of finding new and improved ways of improving oversight processes. One potential platform for sharing experiences and lessons learned in this regard could be through an Open Government Council or an informal open government network, as recommended in Chapter 4 on Governance Mechanisms and Processes.

Box 8.2. COVID-19 in Brazil and innovations in accountability

In combatting the global health, social, and economic crisis presented by the COVID-19 pandemic, many countries have taken unprecedented and wide-ranging measures aimed at curtailing the spread of the virus, often without due legislative process (United Nations Development Programme (UNDP), 2020[108]). In contrast, the pandemic has unveiled "deep-seated inequalities" with many of the most vulnerable population groups being the most disproportionately affected (United Nations Development Programme (UNDP), 2020[108]). Brazil's response in particular has generated controversy with Médecins Sans Frontières deeming it to be "the worst in the world" (The Guardian, 2021[109]) and the Lowy Institute's Covid Performance Index giving Brazil the lowest country ranking as of 9 January 2021 (Lowy Institute, 2021[110])[1]. Increased calls for accountability led to an ongoing Senate probe and investigation (in PT: Comissão Parlamentar de Inquérito - CPI) into President Bolsonaro's handling of the pandemic in April 2021 (Reuters, 2021[111]). However, Brazil turned the tide with its vaccination programme and has administered a total of 369,527,744 vaccine doses as of 25 February 2022 (World Health Organisation, 2022[112]).

Despite the response of the executive branch, a 2021 study identified a number of promising initiatives on internal control that arose during the pandemic at both the state and federal level (Vinicius de Azevedo Braga, Caldeira and Sabença, 2020[113]). These accountability initiatives linked to the ouvidorias were characterised by "innovation aimed at improving existing structures or practices" while horizontal accountability initiatives "were anticipatory and mission-oriented" (Vinicius de Azevedo Braga, Caldeira and Sabença, 2020[113]). The OECD defines anticipatory innovation governance (AIG) as the "broad-based capacity to actively explore options as part of broader anticipatory governance, with a particular aim of spurring on innovations (novel to the context, implemented and value shifting products, services and processes) connected to uncertain futures in the hopes of shaping the former through the innovative practice" (OECD, 2019[114]). Some interesting examples and good practices at the state level outlined in the aforementioned study illustrate this concept and demonstrate a concrete commitment to enhancing accountability through innovative processes.

For example, the "Antifake CE" initiative in the State of Ceará was established to find and denounce fake news relating to COVID-19 while "Plantão Coronavirus (Coronavirus On Call)", a channel on the social media of the Secretariat of Health, redirected requests for accurate information to public officials (Vinicius de Azevedo Braga, Caldeira and Sabença, 2020[113]). Furthermore, the General Comptroller's Office of the State of Mato Grosso remodelled their "Ask the State General Comptroller" channel and issued bulletins about the status of coronavirus in their area. 11 states also dynamically adapted their internal auditing procedures to the crisis, for example through setting additional alert and risk analysis mechanisms to the creation of specific commissions to this effect. In other states, monitoring and evaluation was also improved through the intensive use of intelligence tools, the simplification of auditing reports, and the creation of specific functionalities in existing portals for demands relating to COVID-19 in particular (Vinicius de Azevedo Braga, Caldeira and Sabença, 2020[113]). São Paulo also had a number of good practices, including Cidade Solidária, which was a partnership between São Paulo City Hall and civil society organisation "to coordinate donations and volunteers to tackle pandemic social and economic effects" (Open Government Partnership, n.d.[115]).

There have also been innovations in the COVID-19 approach at the federal level by ministries and other public bodies. The CGU created an exclusive channel to receive citizens' feedback on the performance of public officials and services during the pandemic and the open government website broadcast live information about the situation to the public (Open Government Partnership, n.d.[115]). The National School of Public Administration also developed the "Challenges Platform" which asked stakeholders to

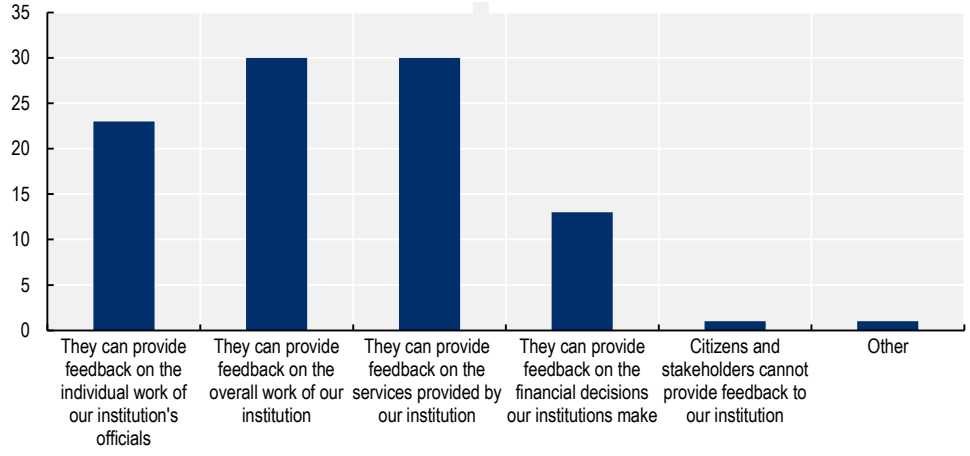
co-source and co-create solutions to the various societal issues exacerbated by the COVID-19 crisis (Open Government Partnership, n.d.[115]).

1. Brazil was not included in the most recent Lowy Institute ranking (as of 13 March 2021) due to the incomplete data being available for more than a third of the period under examination.
Source: (United Nations Development Programme (UNDP), 2020[108]); (Vinicius de Azevedo Braga, Caldeira and Sabença, 2020[113]) (Lowy Institute, 2021[110]); (Open Government Partnership, n.d.[115]).

Upgrading social accountability through improved engagement and feedback processes

Social accountability relies on citizen engagement and interaction with the government to hold public bodies to account (Spink and Teixeira, 2009[116]). Social accountability mechanisms include a wide range of methods and strategies to assist stakeholders, including civil society, the media, and academia to track public policy making and the use of public funds (see Chapter 6 on Citizen Participation for the ways in which stakeholders' views and inputs are taken into account throughout the policy-making cycle). Social accountability is important to complement internal mechanisms for accountability, as ensuring adequate systems of checks and balances do not suffice alone (González Volio, 2003[56]) – cultural norms of openness must also be fostered. Government responsiveness and the interaction between citizens and the state is a crucial factor influencing the level of trust in government (OECD, n.d.[117]). As such, providing feedback to citizens and their concerns is a central value in a representative democracy (Grimes and Esaiasson, 2014[118]). One of the key benefits of open government policies and practices is that, by being transparent and responsive, governments "build a reservoir of goodwill, which they can use to survive more difficult periods" (Linde and Peters, 2018[119]). The *2021 OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions* demonstrates that the country prioritises government answerability by responding to citizen inquiries, inputs, and requests through their numerous portals, with most public institutions offering opportunities to give feedback on different elements of their decision making (Figure 8.4).

Figure 8.4. Can citizens and stakeholders provide feedback on your institution's activities and decisions?



Note: The data comprises responses from 35 federal bodies.
Source: Responses to the 2021 OECD Survey on Open Government Policies and Practices in Brazilian Public Institutions.

When it comes to engaging with citizens and allowing them to provide feedback across the public administration, the *ouvidorias* are the main interface for this government-stakeholder relationship and represent a complex network of offices that handle citizens' requests and demands (see also Chapter 3 on Governance Inputs and Chapter 6 on Citizen Participation)[2]. These *ouvidorias*, which exist at both the national and sub-national levels have wide-ranging responsibilities and competences including, but not limited to, "defending the rights of public service users' before the state, promoting their participation in the processes of formulation and execution of public policies, exercising supervision of the provision of services and receiving complaints and protecting complainants" (Eurosocial, 2021[120]). The intention behind this expansive network of *ouvidorias* is to represent a more bottom-up approach to accountability and enable more direct interaction with citizens (Accountability Research Center, 2021[121]). Significant legal developments in relation to the functions of the *ouvidorias* have been introduced in recent years (Box 8.3).

Box 8.3. Legal frameworks underpinning the *ouvidorias*

The following highlight the most relevant frameworks regarding the *ouvidorias* without providing an exhaustive list, which can be found on their dedicated website (Ouvidorias Brazil, n.d.[122]).

- **Ordinance N°. 1567 (2013):** This ordinance outlines the appointment of the *Ouvidoria-Geral da União* with the role of examining and deciding on the appeals directed to the General Comptroller of the Union (CGU) (Office of the Comptroller General, 2013[123]).
- **Decree N°. 8.243 (2014):** With this decree, the government introduced a National Policy of Social Participation and a National System of Social Participation. These initiatives were intended "to strengthen and promote public participation, including by respecting diversity, valuing civic education and promoting social control as a core part of the operation of government" (OECD, 2019[124]). Its introduction elevated the standing of *ouvidorias* and their mandate as tools of public engagement and social control. In fact, the heightened expectations for the offices following the introduction of this decree led to the expansion of their responsibilities and duties (Institute for Research on Internet and Society, 2017[125]). However, it was poorly received by the Chamber of Deputies given the power it provided to the Secretary-General of the Presidency in defining the forms of social participation and deciding the members of the participatory bodies (Brazilian Chamber of Deputies, 2014[126]). Consequently, they approved a proposal to suspend its effects and the decree was revoked in 2019. It has not yet been replaced by a legal framework with similar objectives.
- **Ordinance N°. 50.252 (2015):** This ordinance vastly enhanced the ability of *ouvidorias* to increase the responsiveness of the wider government in creating measures for greater feedback and civic participation for the improvement of public policies and services (Office of the Comptroller General, 2015[127]). It establishes e-Ouv, the Computerised Ombudsman System of the Federal Executive Branch. This system allows citizens to submit requests, complaints, suggestions and compliments to public bodies. For greater accessibility, all of the above can also be received by other means (e.g. verbal, written) but must be registered in e-Ouv. This system allows for integrated and streamlined communication between various *ouvidorias*. This ordinance also created the Ombudsman Monitoring Room, which oversees the treatment of all requests received by the public to ensure timely and conclusive responses (Office of the Comptroller General, 2015[127]). All bodies and entities of the federal branch may join the eOuv, but adherence is voluntary. It is important to note that member agencies and entities are not excluded from using their own respective systems for tracking such communication with citizens (Office of the Comptroller General, 2015[127]), which could lead to a less efficient use of resources as well as duplication, in opposition with the intended aims of the programme.
- **Ordinance N°. 50.253 (2015):** This document establishes the *Ouvidoria* Strengthening Program (PROFORT), which aims to support the creation and development of the *ouvidorias* at the federal and municipal level. The main objectives of PROFORT are to promote the improvement of processes and management, foster the use of new technology and innovative solutions for handling citizen requests, and encourage an exchange of information and experiences between the *ouvidorias* (Office of the Comptroller General, 2015[128]).
- **Law N°. 13.460 (2017):** This Law is the first piece of legislation that explicitly regulates the *ouvidorias* and establishes "basic norms for participation, protection and defense of the rights of users of public services provided directly or indirectly by the public administration" (Presidency of the Republic of Brazil, 2017[129]). Significantly, it notes that citizens have a basic right to participate in the monitoring of the provision and evaluation of services. *Ouvidorias* are required to receive, analyse and forward user feedback to the competent authorities, along with

the conclusion that they have derived from the statement (Presidency of the Republic of Brazil, 2017[129]). Furthermore, it outlines that the *ouvidorias* must propose improvements, assist in the prevention of any wrongdoings or misconduct, and promote mediation and conciliation between the user and the public body or entity involved (Presidency of the Republic of Brazil, 2017[129]).

- **Ordinance N°. 581 (2021):** The most recent ordinance establishes clear guidelines for the exercise of the powers of the units of the *Ouvidoria* System of the federal Executive Branch, known as "SisOuv". They include a number of additional responsibilities that increase the accountability of the units themselves. For example, all SisOuv units must prepare management reports at least annually, which include data on the number of "manifestations" received as well as an analysis of recurring problems and their own failures and potential means of improvement (Office of the Comptroller General, 2021[130]). The document also highlights the introduction of anonymity measures that safeguard the identity of complainants and whistleblowers (Office of the Comptroller General, 2021[130]).

Source: (Ouvidorias Brazil, n.d.[122])

Brazil could take a more proactive approach in establishing feedback loops

While the *Defensoría Pública* advises citizens and defends their rights and interests, the *ouvidorias* are intended to serve as mediation between the government and its citizens and have significant potential in this regard (Torres Quintão, 2016[131]). However, these offices currently function more as channels for transparency and broader public participation than as mechanisms for social accountability. The *ouvidorias* also tend to operate reactively rather than proactively (Aranha, 2018[41]). Furthermore, their role as mediator between citizen and the state is also undermined by their lack of a broader policy or strategy for communication and engagement with citizens (Institute for Research on Internet and Society, 2017[125]). As mentioned during the fact-finding mission, there is a perception that while the *ouvidorias* are useful, they function mainly as inert channels that are responsible only for receiving, forwarding and responding to complaints. In addition, there is a need for greater commitment to feedback loops, in which citizens can directly see the ways in which their inputs have translated into changes across the public administration. This would allow the offices to generate and collect information and inputs to be used systematically to improve future performance (Center For Global Development, 2019[132]). Without this, a lack of responsiveness, coupled with a lack of clear indication as to how inputs were fed into the decision making process, can discourage stakeholders from engaging with their public officials again in the future. In this regard, entities' *ouvidorias* could take a stronger role in advocating for the importance of social accountability and encouraging citizens to interact with the government through their offices with a system based on feedback loops. They could engage in awareness-building and dissemination activities, for example information-sharing sessions, both with other public officials to ensure that there is understanding across the public body on their duties as well as with stakeholders to educate them on the various ways in which they can hold the government to account and to concretely illustrate the impact of their feedback.

Improve promotion and capacity-building through the National Network of Ouvidorias for a comprehensive standard

The *ouvidorias* bodies are connected through a dedicated National Network of *Ouvidorias* which provides a platform for the improvement of the system and individual offices at all branches and levels of government. Decree 9.492 from 2018 (Presidency of the Republic, 2018[133]) provided for its establishment and its objective is to bring about better integration of the *ouvidorias* of the federal, state, and municipal levels (Ouvidorias Brazil, n.d.[134]). It is thus a forum that seeks to consolidate a national agenda of public ombudsman and social participation, and to guarantee the rights of users of public services. The Network

is coordinated by the General *Ouvidoria* of the Union in the CGU. 2,142 *ouvidorias* are currently members of the Network. The benefits of joining the Network include using the FalaBR Platform free of charge, having access to training for public officials in relation to ensuring access to information as well as on ways to simplify the *ouvidoria* systems and services, among others.

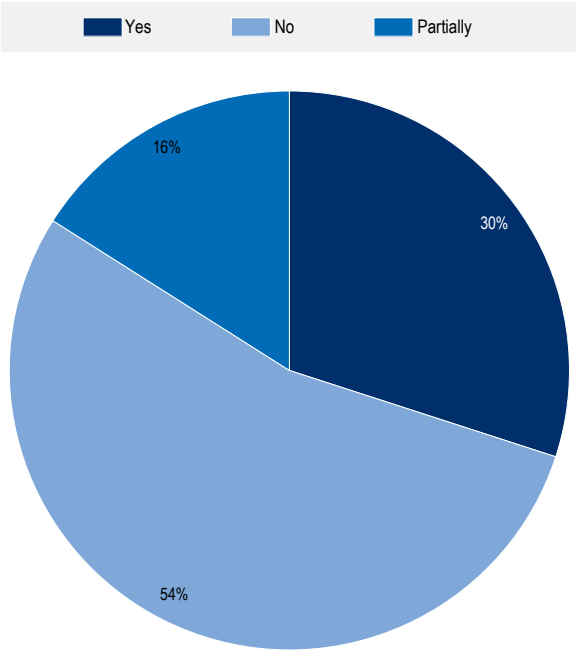
One of the greatest challenges outlined during the OECD fact-finding mission was the need for a national comprehensive standard for the ways in which the *ouvidorias* work across the federal, state, and municipal levels and their level of development. The move towards a culture of open government was marked by the establishment of these *ouvidoria* offices but they advanced at varying levels in the country. It was noted in the OECD interviews that today, the offices have vastly differing levels of maturity. A significant achievement in regards to addressing this issue was the creation of the *Ouvidoria Pública* Maturity Model (MMOuP) project, which is led by *Ouvidoria-General de la Unión* (OGU) (Eurosocial, 2021[120]). The model aims for institutional improvement and evaluates *ouvidorias* according to the MMOuP matrix. From 2021, these efforts will be supplemented by the elaboration of *ouvidoria* unit action plans, "which set goals that are accompanied by the control bodies in biennial cycles" that begin in 2021 (Eurosocial, 2021[120]).

The Network presents further opportunities for cooperation between these offices and it provides a platform for the exchange of good practices and lessons learned. For example, the Network has a knowledge base that all offices can take advantage of and also hosts best practice contests to encourage innovative approaches among *ouvidorias* (Ouvidorias Brazil, n.d.[134]). This Network could be further used to communicate and collaborate, engage in cross-learning, identify common challenges and co-source solutions to common issues, for example, through online spaces and forums and meetings between *ouvidorias* that face similar barriers. Furthermore, given the immense size of the public administration in Brazil and the challenges that this can pose, this Network could take a more central role in increasing the visibility of the role of *ouvidoria* offices, and could encourage more training and capacity-building not only within but also outside of the Network. It could also offer more technical advice and assistance to both members and non-member *ouvidorias*, for the betterment of the entire system for both the public administration and stakeholders. The Network could also play a key role in fostering open government literacy, as further discussed in Chapters 3 and 4 on Governance Processes and Mechanisms.

Elucidating the pathways, systems and processes for requests and complaints

While public bodies are receptive to feedback and offer a range of opportunities for citizens to offer inputs (see Figure 8.4), the quality of these responses and the level of satisfaction among citizens, which is available on the *Painel Resolveu,* could be analysed more closely (Office of the Comptroller General, n.d.[135]). In 2021, 54% of citizens answered "no" when asked by the CGU if their demand was sufficiently resolved by public bodies (see Figure 8.5). These low levels of satisfaction are not necessarily new. In responding to whether they are satisfied with the *ouvidorias* service over all, 49% citizens in January 2018 responded positively, 59% in 2019, and 68% in 2020. This figure dropped to 54% in 2021, as the service was presumably affected by COVID-19 (Office of the Comptroller General, n.d.[135]). Aside from existing surveys, there is a need to gather more information on why citizens have low levels of satisfaction with government responses and seek opportunities for improvement. This could involve dedicated workshops, focus groups or citizens' panels involving a wide demographic range of citizens that had used these portals to understand the underlying factors for this dissatisfaction, and whether the issues are logistical (e.g. the digital platform was not easy to use) or an administrative issue (e.g. no amends were made following a complaint). As suggested in Chapter 3 on Governance Inputs, the establishment of a National Open Government Council and a more informal open government network to convene government and non-government contact points (see also Chapter 4) could serve as platforms for this endeavour and could be charged with identifying ways to improve feedback and responsiveness across the public administration through the *ouvidorias*.

Figure 8.5. Level of satisfaction with responses to requests at the federal level, 2020-2021

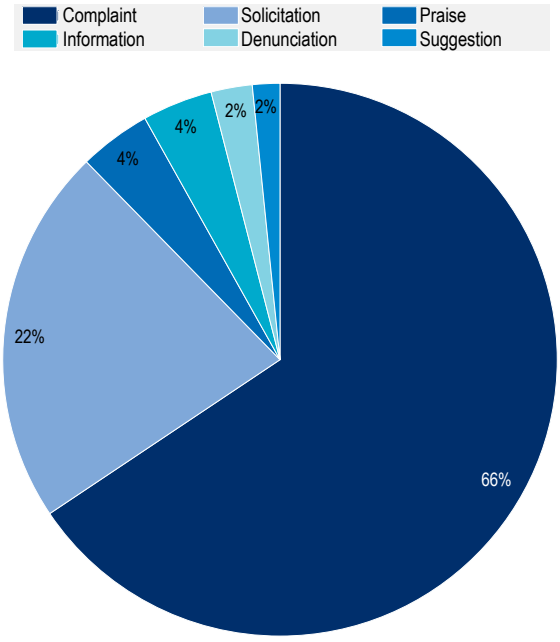


Note: The question asked was: "Was your demand resolved?" The total number of responses was 77 048. This graph represents the data from the 31 December 2020 to 31 December 2021 period.
Source: (Office of the Comptroller General, n.d.[135])

During the OECD fact-finding mission, public officials stressed that the engagement between citizens and the federal government has greatly evolved and improved since the introduction of the FALA.br portal (Government of Brazil, n.d.[136]), which centralises these requests (see Chapter 6 on Citizen Participation). Through this portal, the CGU also monitors the most frequent demands and undertakes satisfaction surveys and questionnaires on improving the system. However, both government and civil society interviewees noted that challenges include a lack of awareness among the public in relation to submitting complaints as well as a fear of retaliation among some citizens and stakeholders. It was noted that, in an attempt to assuage these concerns, the Ministry of Women, Family and Human Rights created and shared a video, which saw the Minister encouraging citizens to exercise their civic duty and make complaints, something that could be undertaken by other public bodies. As highlighted in Chapter 7 on Transparency, the existing practice on the anonymity of requests made through FALA.br is also important for protecting the identity of requesters and could be maintained and expanded at the subnational levels.

Notably, the statistics on requests, suggestions and complaints are readily available on the *Painel Ouvidoria* website (see Figure 8.6) (Ouvidorias Brazil, n.d.[137]). As is visible from the data, complaints are the most common form of request received, with the 66% of submissions representing 192 561 complaints. While these statistics are useful in measuring engagement with *ouvidorias* year-on-year, the data does not offer a complete picture as it is currently not disaggregated nor is enough detail available on the substance of the requests. For example, information on what each of these requests most often relates to, and whether any proposed changes have been made once they were processed, is more opaque and less readily available to the public. These offices could make efforts to offer more disaggregated data and information on requests as well as additional detail on the outcomes of, for example, complaints, and what has since been changed as a result, to enhance trust in the process and encourage further engagement in the future.

Figure 8.6. Submissions to *ouvidorias* by category, 2020-2021



Note: The total number of submissions was 293 521. This graph represents the data from the 31 December 2020 to 31 December 2021 period.
Source: (Office of the Comptroller General, n.d.[135])

During the OECD fact finding mission, public officials from selected *ouvidorias* noted that citizens can also find it difficult to decipher where to direct their request given the complexity of the Brazilian system. For example, citizens can be unsure whether to use the FALA.BR platform or whether to complain directly to the *ouvidoria* in their municipality, or one at the federal level. Furthermore, public officials themselves can sometimes find it challenging to articulate the cycle of a complaint within the federal government. There is thus a need for public bodies at the federal and municipal level to elucidate the process for citizen and stakeholders' complaints, and clearly advertise these opportunities via all relevant communication channels. In 2021, the CGU found that on average, it takes public bodies around 23,03 days to respond to request (Office of the Comptroller General, n.d.[135]). While the average timeframe is not excessively long, interviewees stated that it can sometimes take two months for them to receive a response – these delays can cause citizens to lose confidence in the efficacy of the system, and question whether they sent their request to the most appropriate body. The CGU in collaboration with the *ouvidorias* could take a more active role in investigating why these delays of up to a number of months can occur. In addition, the CGU and the National Network of *Ouvidorias* could consider producing guidelines on good practices for responding to requests and encourage a step-by-step process to be undertaken by *ouvidorias* to communicate the stages of the process transparently to citizens, for example, 1) informing citizens that request has been received, 2) notifying them if a request must be forwarded elsewhere and 3) communicating estimated timelines of when the request will be handled.

Lastly, some concerns have been raised about the accountability of the *ouvidoria* system itself, for example, by the Institute for Research on Internet & Society (IRIS) (Institute for Research on Internet and Society, 2017[125]). *Ouvidorias* are by nature housed within each public body or entity, and as such are not immune to interference from either public officials in the same body or across the federal government. On this matter, it is important to understand the role of ouvidoria, as described in the "2013 Orientation Guide for the Management of the *Ouvidoria* Offices": its position is not to oppose the public organ or entity in the defence of the citizen, but to guarantee that the citizen has their demand effectively considered and

handled with their civic rights taken into account (Alpino Bigonha Salgado, 2013[138]). During the OECD fact-finding mission it was raised that this particular perspective had sometimes led to cases being co-opted or influenced by public officials outside of the *ouvidoria* to protect themselves from allegations of misconduct or negligence rather than adherence to due process.

There are frameworks, however, in place that attempt to ensure the independence of *ouvidorias* in terms of the appointment of the head of the office and in relation to their budget. The OECD interviews found that not only does the legislation set out the guidelines and requirements for hiring and dismissal of public officials in these positions, but the ministries also cannot fire those in this role without justification. The appointment or dismissal of the *ouvidorias* at the federal level must submitted by the agency or entity for the approval of the CGU (Government of Brazil, 2021[139]). Furthermore, the terms last three years with the possibility of renewal for another three, and for *ouvidorias* at the federal level, the budget is largely earmarked (Veja, 2020[140]), which allows for a degree of protection for the fulfilment of their mandate as well as the possibility of future planning for their activities. Specific efforts could be made to ensure that *ouvidoria* offices are as well shielded from political interference as is possible given their positioning within each respective body and their budget should remain earmarked and appointments protected. In addition, further efforts could be dedicated to the professionalisation of these offices. For example, a merit-based approach could be implemented in relation to appointments which "set predetermined, appropriate qualification and performance criteria for all positions, along with objective and transparent personnel management processes" (OECD, 2020[141]).

Recommendations

Legal, policy and regulatory frameworks for accountability

Brazil could upgrade its approach to accountability through its Open Government Partnership National Action Plan and an open government strategy

- Brazil could use the proposed Open Government strategy as a tool to articulate a more concrete understanding of accountability within the framework of its broader open government objectives.
  - Within this strategy, Brazil could communicate and mainstream a forward-looking approach to this concept across the public administration and support more harmonious co-ordination based on mutual understanding.
- Following on from this, Brazil could also include measurable targets on accountability in its 6th OGP action plan that emphasise both improving existing mechanisms for horizontal and vertical accountability as well as enhancing feedback and responsiveness to stakeholders.

Towards a more responsive public administration in Brazil

Need to empower a body with the traditional mandate of an Ombudsman institution

- Brazil does not have a traditional and independent Ombudsman institution that has a mandate for all steps of an accountability cycle, that is to say: to monitor, investigate and sanction.
- Brazil could seek to address the challenges that the *Defensoria* faces and afford them a more strategic and central role to match their responsibilities. This could involve taking a long-term view to considering its development into a traditional Ombudsman institution, with entitlements similar to other countries in the Latin American region, through the creation of a specific working group that would assess this proposal and produce concrete recommendations on the changes required.
  - In the interim, Brazil could also demonstrate their understanding of the importance of the *Defensoria* as a strategic body for the protection of human rights by channelling the appropriate

financial resources and protect them in the future through for example, earmarking their allocation.

  - Predictable and adequate funding, independent of the political cycle, is essential to the *Defensoria*'s independence and fundamental to ensure their ability to respond to the growing demand for their services and to fulfil their core mandate.

- This Ombudsman institution could also have a clear mandate for promoting the values of open government, similarly to the Ombudsman in Argentina, which has strategic oversight of the open government agenda.
- Regarding the *Ministério Público*, this ministry could begin to more widely disseminate the data it collects on complaints and on the status of judicial processes and share it with citizens through their portals and social media accounts, which would enable the MPF and relevant external stakeholders to gain an accurate overview of its performance and identify potential trends.
- A triple list approach to the nomination of the Chief Public Prosecutor is a democratic practice that generates legitimacy as it is sourced by the broader Public Ministry, and as such, it could be further protected. In order to do so, a triple list could be legally installed and guidelines on the process could be created to advise the public officials involved.
- Brazil could commit to reinforcing the role of the Public Ministry by evaluating whether their workload burden affects prosecutors' abilities to fulfil their role.

Mainstreaming Brazil's approach to accountability across the public administration through high level commitment and coordination

- *Casa Civil* and SEGOV could learn from other international good practices from centre-of-government offices in exploring a more advanced view of accountability and supporting collaboration and coordination with the other bodies in charge of administrative accountability and budget and fiscal accountability.
- Given that the CGU's position as a Comptroller offers an overview of the public administration – it could commit to creating a holistic overview of how public bodies currently work together regarding internal control and the ways in which collaboration could be further encouraged to identify potential misconduct.
  - The CGU could also take a systems thinking approach to change, by focusing on how current governance frameworks, processes and methods can better work in tandem while reducing silos and improving operations overall and could draw inspiration from Colombia's new National System of Accountability.
- Because of the close connection between the SEGOV and the Casa Civil on political articulation of accountability as well as their interaction with the CGU, which coordinates the concrete implementation activities related to internal control, all three bodies could endeavour to move away from a traditional control and compliance based perspective.
  - Both the SEGOV and Casa Civil could utilise the suggested legal harmonisation of the open government agenda and the development of an Open Government Strategy as recommended in Chapter 3, to articulate and promote a more pioneering definition of and approach to accountability
  - They could also collaborate on high-level messaging to support implementation by the CGU and to increase support across the public administration.
- The CGU, *Casa Civil*, SEGOV and the TCU could further promote their role regarding various innovative forms of accountability (e.g. policy outcome accountability), for example in the President's Annual Accountability report sent to National Congress and commit to improving "strategic planning and policy making by improving the links between policy interventions and their outcomes & impact" (OECD, n.d.[102]) across the public administration.

- Brazil could work to sustain the momentum of good practices and innovation taking place at the local level and continue the trend of finding new and improved ways of improving oversight processes. One potential platform for sharing experiences and lessons learned in this regard could be through an Open Government Council or an informal open government network.

Upgrading social accountability through improved engagement and feedback processes

Taking a more proactive approach and establishing feedback loops

- The *ouvidorias* could take a stronger role in advocating for the importance of social accountability and encouraging citizens to interact with the government through their offices with a system based on feedback loops.
    - They could engage in awareness-building and dissemination activities, for example through information-sharing sessions, both with other public officials to ensure that there is understanding across the public body on their duties as well as with stakeholders to educate them on the various ways in which they can hold the government to account and to concretely illustrate the impact of their feedback.

Improving promotion and capacity-building through the National Network of Ouvidorias for a comprehensive standard

- This Network could be further used to communicate and collaborate, engage in cross-learning, identify common challenges and co-source solutions to common issues, for example, through online spaces and forums and meetings between *ouvidorias*.
    - Furthermore, given the immense size of the public administration in Brazil and the challenges that this can pose, this Network could take a more central role in increasing the visibility of their work, and could encourage more training and capacity-building not only within but also outside of the Network, and offer more technical advice and assistance to both members and non-member *ouvidorias*, for the betterment of the entire system for both the public administration and stakeholders.
    - The Network could also play a key role in fostering open government literacy.

Elucidating the pathways, systems and processes for requests and complaints

- Aside from existing surveys, there is a need to gather more information on why citizens have low levels of satisfactions government responses, and seek opportunities for improvement. This could involve dedicated workshops, focus groups or citizens' panels involving a wide demographic range of citizens that had used these portals to understand the underlying factors for this dissatisfaction, and whether the issues are logistical (e.g. the digital platform was not easy to use) or an administrative issue (e.g. no amends were made following a complaint).
- The establishment of a National Open Government Council and a more informal open government network to convene government and non-government contact points could serve as platforms for this endeavour and could be charged with identifying ways to improve feedback and responsiveness across the public administration through the *ouvidorias.*
- In an attempt to assuage concerns of retaliation, the Ministry of Women, Family and Human Rights created and shared a video, which saw their Minister encouraging citizens to exercise their civic duty and make complaints, something that could be undertaken by other public bodies.
    - The existing practice on the anonymity of requests made through FALA.br is important for protecting the identity of requesters and could be maintained and expanded at the subnational levels.

- The CGU in collaboration with the *ouvidorias* could take a more active role in investigating why delays of up to a number of months can occur regarding requests.
    - In addition, the CGU and the National Network of *Ouvidorias* could consider producing guidelines on good practices for responding to requests and encourage a step-by-step process to be undertaken by *ouvidorias* to communicate the stages of the process transparently to citizens, for example, 1) informing citizens that request has been received, 2) notifying them if a request must be forwarded elsewhere and 3) communicating estimated timelines of when the request will be handled.
- Offices could make efforts to offer more disaggregated data and information on requests as well as additional detail on the outcomes of, for example, complaints, and what has since been changed as a result, to enhance trust in the process and encourage further engagement in the future.
- There is a need for public bodies at the federal and municipal level to elucidate the process for citizen and stakeholders' complaints, and clearly advertise these opportunities via all relevant communication channels.
- Specific efforts could be made to ensure that *ouvidoria* offices are as well shielded from political interference as is possible given their positioning within each respective body and their budget should remain earmarked and appointments protected. In addition, further efforts could be dedicated to the professionalisation of these offices.
    - For example, a merit-based approach could be implemented in relation to appointments which "set predetermined, appropriate qualification and performance criteria for all positions, along with objective and transparent personnel management processes".

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Notes

[1] Internal control aims to ensure that operations are "efficient, effective and in line with laws and policy objectives" (OECD, n.d.[143]), and as the OECD Report Internal Control and Internal Audit: Ensuring Public Sector Integrity and Accountability (2011) notes, internal control procedures are first and foremost a means of enforcing laws, regulations and policies (OECD, 2011[142]). In contrast, the concept of social control relates to the ability of citizens and stakeholders to be involved in monitoring and oversight of the government (see Chapter 6).

[2] While the term "ouvidorias" most directly translates to 'ombudsman', they are not to be confused with the traditional notion of an Ombudsman institution, meaning an independent public oversight body.

9 Open Government Data in Brazil

This chapter presents an overview of the current state of open government data in Brazil. The document provides an assessment of the availability, accessibility and government support for data re-use in Brazil, based on the OECD analytical and measurement instruments for digital government and open government data. The chapter also highlights the current challenges and the next steps Brazil could take to advance its open government data agenda.

Introduction

Open government data is a tool to unlock collaboration within and across governments and with external actors from civil society, academia and the private sector. It not only enhances public sector transparency and accountability of decision-makers, but also empowers citizens and stakeholders to monitor public sector performance, audit government's decisions and monitor policy developments, as observed in the context of the COVID-19 pandemic.

Open government data enables government as a platform and contributes to a data-driven public sector. By grasping the potential of public participation and engagement, open data supports co-creation of public services to respond to societal needs, thus having important implications on levels of trust in government and on people's well-being.

Brazil has a longstanding commitment to the open government data movement. The country counts with a sound legal framework and key strategic plans to structure its OGD agenda (see Sub-pillar 1.1: Content of the open by default policy). Likewise, Brazil has specific governance mechanisms and initiatives that help leverage and monitor the implementation of open government data in the country (see Sub-pillar 1.3: Implementation and Sub-pillar 2.3: Implementation). As one of the eight founder countries of the Open Government Partnership, Brazil's open government data agenda has been closely connected to transparency. These efforts reflect Brazil's performance above the OECD and LAC averages, and among the top three leading countries in the LAC region, according to the OECD Open, Useful and Re-usable data (OURdata) Index (see The OECD Open, Useful Re-usable Government Data (OURdata) Index).

Yet, challenges remain to fully reap the value of open government data as a driver for user and data-driven services, well-informed population, trustworthy and fair society, innovation inside and outside the public sector, and economic growth (see Looking Ahead: Next Steps of the Open Data Agenda in Brazil).

Milestones of Open Government Data in Brazil

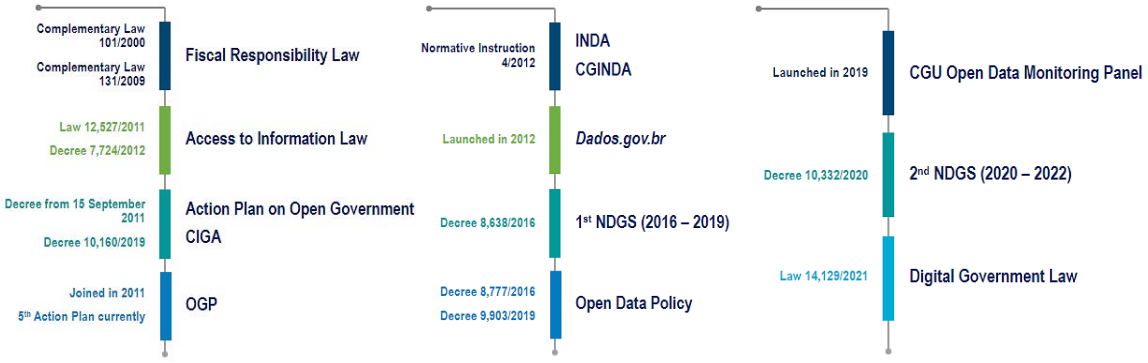
> *The country's strong engagement in improving public sector transparency, social control, ethical conduct and integrity in the public sector has driven Brazil's open government data agenda since the early 2000s.*

As shown in Figure 9.1, Brazil's commitment to public sector transparency, social participation, accountability and the prevention and fight against corruption dates back to the Fiscal Responsibility and Transparency Laws (Complementary Laws 101/2000 and 131/2009). These laws mandate all levels of government to publish essential budget documents in digital format, in a timely and standardised fashion (Government of Brazil, 2000[1]) (Government of Brazil, 2009[2]).

Later on, the 2010 decade saw Brazil entering a consolidation stage both in terms of public transparency and open government data. The Access to Information Law (Law 12,527/2011 and Decree 7,724/2012) was an important step in enabling citizens to exert their constitutional right of access to information and complying with international treaties and conventions (see Table 5.2 "International Treaties and Conventions Recognising the Right to Information Adhered by Brazil in Chapter 5). Besides specifying rules and procedures to ensure information requests are properly registered, processed and treated (qualified as "passive transparency" by the Decree 7,724/2012), the aforementioned instruments also set new duties to all public bodies and entities to proactively disclose information and data of general interest ("active transparency" or "proactive disclosure") (Government of Brazil, 2011[3]) (Government of Brazil, 2012[4]). These provisions support public transparency as they define timely access to public information as a right, thus helping citizens to avoid cumbersome administrative procedures, cut down costs associated with handling and answering individual ATI requests, increase public sector efficiency, and ultimately, encourage better information management and data flows within and across public sector organisations.

When presenting the concept of active transparency, the ATI Law (2011) introduced the concept of open data for the first time in the Brazilian legal framework. Despite significant synergies between the access to information and open government data movements in increasing transparency, the open government data movement also considers the access, use and re-use of datasets as important enablers for more democratic, collaborative and innovative societies and economies.

Figure 9.1. Milestones of Open Government Data Policy in Brazil (2000 – 2022)



Source: Author's elaboration.

In the same year of the ATI Law, Brazil published its first National Action Plan on Open Government (Decree from 15 September 2011, superseded by Decree 10,160/2019), foreseeing principles of transparency and access to information (Government of Brazil, 2011[5]) (Government of Brazil, 2019[6]). The first National Action Plan on Open Government also created the Inter-ministerial Committee on Open Government (CIGA), in charge of guiding the development, implementation, monitoring and evaluation of Brazil National Action Plans on Open Government.

> *Since 2011, open data-related commitments have been systematically included in Brazil's OGP Action Plans, showing Brazil's endeavour to advance its open government data agenda. These efforts have translated into specific actions and initiatives at the national level.*

In 2011, Brazil joined the Open Government Partnership (OGP) as one of the eight founder countries of this international initiative. While open government data commitments in OGP Action Plans are not legally binding, Brazil's adherence to the OGP has helped shape its open government data agenda, both at national and subnational levels (OGP, 2016[7]). For example, Brazil's first OGP Action Plan emphasised open government data as a strong driver for transparency, integrity, social participation and citizen engagement (commitments 1.2 and 1.3) (OGP, 2012[8]).

To materialise the commitments of the first and second OGP Action Plans (2011 - 2013 and 2013 - 2016), the Brazilian government created the National Infrastructure on Open Data (INDA), setting up objectives, infrastructure, standards, procedures and mechanisms for dissemination and sharing of government data and information according to open data standards (Normative Instruction 4/2012) (OGP, 2015[9]) (Government of Brazil, 2012[10]). Successive OGP Action Plans have supported the sharing of open government data at a more sectorial level, as in the case of the Transparency and Ministry of Justice portals (OGP, 2015[9]). In its current OGP Action Plan, Brazil has committed to advance towards expanding the availability of environmental, agricultural and electoral data in open, re-usable and machine-readable formats (OGP, 2022[11]).

INDA defines standards, technologies and guidelines for dissemination and sharing of government data and information in open format at federal executive branch. This set of specifications are approved by the National Open Data Infrastructure Steering Committee (CGINDA). The Committee is a multistakeholder body, formed by twelve representatives from government entities, civil society and academia (Government of Brazil, 2021[12]).

Another example of initiative resulting from the first OGP Plan is the Brazilian Open Data Portal (*dados.gov.br*), launched in 2012. The portal provides a central access point to open government data. By January 2022, the Open Data Portal had a total of 10 940 datasets and 52 979 data resources. The launch of the portal has had an important role as a platform that promotes an open by default culture and engagement from all actors of society, fostering innovative, collaborative and knowledge sharing practices centred on easy access to and sharing of data. The Open Data Portal is also relevant to allow stakeholders to monitor government actions, improve government accountability and capacity to react to citizens' demands.

Brazil's commitments in the first and second OGP Plans to foster social participation and civic engagement led the government to put in place several initiatives to upskill public servants at national and subnational levels, students, and the civil society in opening, using and re-using government data. Examples of products from these commitments are INDA's capacity building plan, training for institutional open data plans offered by the National School of Public Administration (ENAP) and the Information and Communication Technologies Secretariat (SETIC), and several national conferences on open data (OGP, 2012[8]) (OGP, 2015[9]).

As part of Brazil's second commitment in its 4th OGP Plan (2018 – 2021) to foster the publication of data on the basis of societal demand and interests (OGP, 2018[13]), the country produced an Open Data Reference Model, a collaborative work aimed at promoting integration, training and awareness among civil society and the three branches of government based on the mapping of societal demands (OGP, 2021[14]). The document contains standards and best practices for enhancing consistency of open data disclosed on the web, considering the perspectives of both publishers and consumers.

The country counts with a national open data policy (Decree 8,777/2016) setting transparency and social control among the guiding principles of open government data at the federal Executive level (Government of Brazil, 2016[15]). In addition to the OGP and national open data policy, every two years the federal Executive publishes a comprehensive medium-term action plan on open government data ("Plano de Ação de Infraestrutura Nacional de Dados Abertos" - INDA), setting clear actions and objectives, concrete steps and deadlines for implementation. Those plans are approved by the INDA Steering Committee – CGINDA - and include broader actions to enhance the overall structure for open data in the federal Executive branch (CGU, 2021[16]).

> *Brazil's National Digital Government Strategies (2016 – 2019 and 2020 – 2022), the 2016 Open Data Policy, and the 2021 Digital Government Law have further promoted open government data at the national level. These instruments have also contributed to connecting the OGD to Brazil's digital government and digital economy agendas.*

Within digital government strategic documents, open government data is a key asset to promote transparency and openness in government, allowing proactiveness in the sharing of data and information, and enabling the monitoring and participation of society in the various stages of the design and delivery of policies and services.

The release, use and re-use of government data were among the ten principles and nine strategic objectives of Brazil's first National Digital Government Strategy - NDGS (2016 – 2019). The NDGS set transparency, integrity, innovation and scientific research as the main drivers for Brazil's open government data policy at the federal level (Government of Brazil, 2015[17]). Objective OE.01 of the NDGS also acknowledged the availability of open government data as a driver for a data-driven public sector.

According to the evaluation report of the Strategy, Brazil surpassed by 12.89% the expected objective of attaining 2 800 databases published in open format in the Brazilian Open Data Portal (Government of Brazil, 2019[18]).

To complement the National Digital Government Strategy (Government of Brazil, 2022[19]), the Open Data Policy (Decree 8,777/2016) defined objectives and reinforced the governance architecture of open government data in Brazil. The Open Data Policy has had an important role as a normative instrument to leverage the opening of databases of all public institutions at the federal Executive level. The document obliges every two years all public institutions at the federal level to run an inventory of their databases and develop action plans to progressively publish them in open format. Those are the so-called PDAs – "Planos de Dados Abertos" (Open Data Plans).

The Federal Comptroller General (CGU) is responsible for implementing the Federal Open Data Policy together with the CGINDA (Decree 8,777/2016). In 2017, the CGU launched the Open Data Monitoring Panel to help enforce the duties from the Open Data Policy of opening government database (Decree 8,777/2016, Article 8) in more than two hundred public institutions at federal level (CGU, 2022[20]). The tool allows monitoring federal public institutions' progress in disclosing their databases following open standards.

> *Brazil's National Digital Government Strategy (2020 – 2022) and 2021 Digital Government Law broaden the understanding of open government data beyond the transparency agenda. These policy instruments reaffirmed the importance of the OGD agenda in the context of digital transformation in the public sector.*

More recently, the Brazilian National Digital Government Strategy for 2020 – 2022 (Decree 10,332/2020) defined "Open and Transparent Government" as one of its six pillars (Government of Brazil, 2022[19]). Beyond transparency and integrity, as emphasised in the previous NDGS, the new strategy highlights open data as an important driver for government proactiveness and participation of society in the design and delivery of policies and services. Objectives 13.2 and 13.3 set as goals to expand the number of open databases to increase data availability and improve their quality.

The strategic approaches of open government data and digital government are also well articulated through Brazil's Digital Government Law (14,129/2021). The Law is a milestone in setting directions for all levels of government and branches of power towards innovation, digital transformation and citizen participation (Government of Brazil, 2021[21]). Opening government data is among the guiding principles and has a crucial role in enabling government as a platform approach, the delivery of services and citizen participation, following the same approach of the 2020 - 2022 NDGS.

> *With the shift on the management and oversight of the open data policy at the federal Executive level from the Ministry of Economy to the Comptroller General of the Union (CGU) in 2019, the Decree 9,903/2019 supported enhanced participation in the Open Data Policy and in the drafting of Open Data Plans.*

Since 2019 CGU has been the leading entity, through INDA, in charge of Open Data Policy at the federal level, while the Ministry of Economy became competent to set standards and conduct INDA's technological angle. These new competencies of CGU are in line with its mandate of engaging civil society and coordinating the implementation of the Open Government Partnership in Brazil.

Despite all the efforts and achievements to date, Brazil still faces some challenges that need to be addressed in the years to come to advance and deliver value from its open government data agenda. These challenges and opportunities are explored in the following sections.

The OECD Digital Government Policy Framework and the OECD Digital Government Index

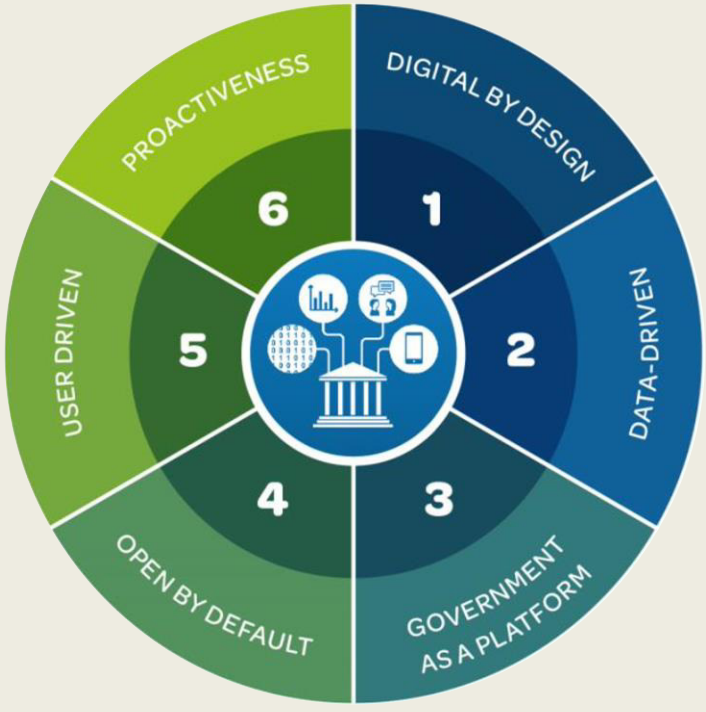
The OECD Digital Government Policy Framework (DGPF) is a policy instrument developed to help governments identify key determinants for effective design and implementation of strategic approaches to transition towards higher levels of digital maturity of their public sectors. This analytical work builds on the provisions of the OECD Recommendation of the Council on Digital Government Strategies (OECD, 2014[22]) and supports the qualitative and quantitative assessment of the Secretariat across countries and individual projects. The DGPF embeds open government data within the Open by Default dimension (see Box 9.1), one out of the six dimensions that integrate the Framework (OECD, 2020[23]) (see Figure 9.2).

Box 9.1. The Six Dimensions of the OECD Digital Government Policy Framework

The OECD Digital Government Policy Framework is a policy instrument developed to help governments identify key determinants for effective design and implementation of strategic approaches to transition towards higher levels of digital maturity of their public sectors. This analytical work builds on the provisions of the OECD Recommendation of the Council on Digital Government Strategies and supports the qualitative and quantitative assessment of the Secretariat across countries and individual projects. The Framework is composed by six dimensions:

- Digital by Design – refers to the capacity to govern and leverage digital technologies to rethink and re-engineer public processes, simplify procedures, and create new channels of communication and engagement with public stakeholders.
- Data-Driven Public Sector – refers to the capacity to values data as a strategic asset and establish the governance, access, sharing and re-use mechanisms for improved decision-making and service delivery.
- Government as a Platform – refers to the capacity to deploy a wide range of platforms, standards and services to help teams focus on user needs in public service design and delivery.
- Open by Default – refers to the capacity to make government data and policy-making processes (including algorithms) available to the public, within the limits of existing legislation and in balance with national and public interest.
- User-Driven – refers to the capacity to accord a central role to people's needs and convenience in the shaping of processes, services and policies and to adopt inclusive mechanisms that enable this to happen.
- Proactiveness – refers to the capacity to anticipate people's needs and respond to them rapidly, avoiding cumbersome data and service delivery processes.

Figure 9.2. The OECD Digital Government Policy Framework

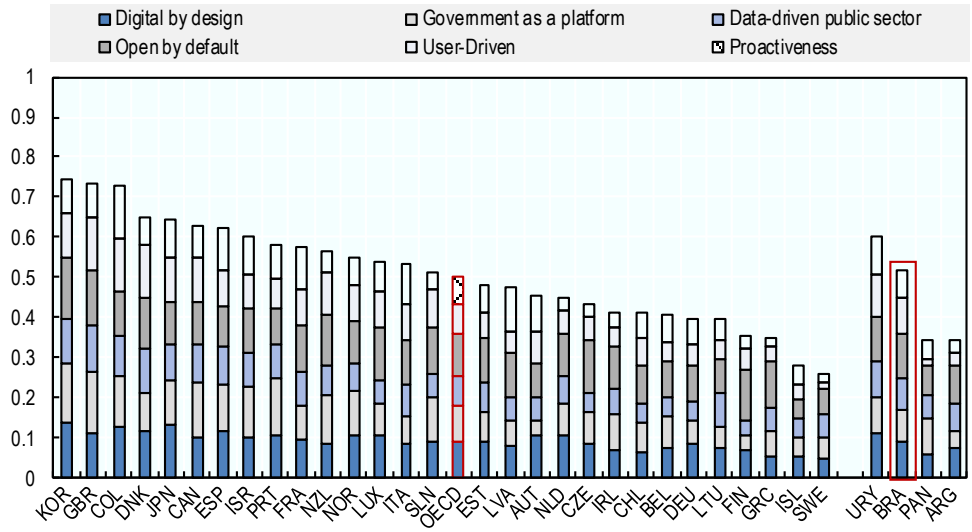


Source: OECD (2020[23]), "The OECD Digital Government Policy Framework: Six dimensions of a Digital Government", https://dx.doi.org/10.1787/f64fed2a-en.

To monitor and support the implementation of the 2014 OECD Recommendation of the Council on Digital Government Strategies (OECD, 2014[22]), the OECD developed the Digital Government Index (DGI) based on the six dimensions of the DGPF – Digital by Design, Data-Driven Public Sector, Government as a Platform, Open by Default, User-Driven and Proactiveness. The DGI helps countries understand their advances in the path towards digital government by assessing governments' adoption of strategic approaches in the use of digital technologies and data as an integrated part of their modernisation strategies, to produce public value.

Brazil's overall composite score in the DGI (0.51) places the country in top 3 among the other 5 LAC countries included in the Index (Argentina, Chile, Colombia, Panama, Uruguay). However, the country ranks 15th among 29 OECD countries (see Figure 9.3).

Figure 9.3. The OECD Digital Government Index 2019: Composite Results



Note: Data are not available for Australia, Hungary, Mexico, Poland, Slovakia, Switzerland, Turkey and the United States of America.
Source: OECD (2020[24]), *Digital Government Index*, https://doi.org/10.1787/4de9f5bb-en.

Among the six dimensions measured by the DGI, *Open by Default* assesses the extent to which data, information, systems and processes are open unless there is a compelling reason – national and/or public interest – for them not to be. From this perspective, this dimension relies on pre-existent government proactive transparency and openness arrangements that, when applied to the digital government and data sphere, lay the foundations for opening up government data, source code and algorithms. The availability of government-wide guidelines on the digital release of government data, policy design and decisions in a timely and comprehensible manner, medium-term action plan on open government data, and formal requirements whereby government data should be "open by default" are among the specific topics covered in this dimension.

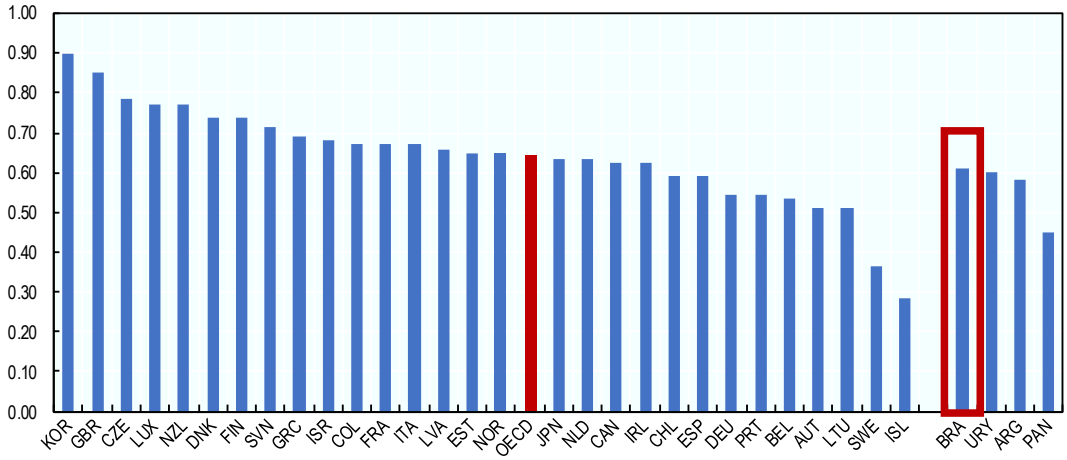
Results of the DGI 2019 show that Brazil's highest scores are attained in *Open by Default*. In this dimension, the country performed slightly below the OECD average (0.64) with a score of 0.61, ranking 13th among 29 OECD countries and 3rd compared to other Latin American countries (as shown in Figure 9.4, further detailed in Table 9.1). These results reflect how Brazil's policies and formal requirements to promote open government data – such as Brazil's Digital Government Strategy and Open Data Policy – have laid the foundation to build an open by default culture in the public sector.

Table 9.1. OECD Digital Government Index 2019 – Snapshot of results from Brazil

	Digital by Design	Data-Driven Public Sector	Government as a Platform	Open by Default	User-Driven	Proactiveness	Composite Score
Brazil's scores	0.54	0.47	0.48	0.61	0.54	0.42	0.51
Ranking against OECD countries	16th	13th	16th	13th	12th	16th	15th
Ranking against LAC countries	3rd	3rd	3rd	3rd	3rd	2nd	3rd

Note: Data are not available for Australia, Costa Rica, Hungary, Mexico, Poland, Slovakia, Switzerland, Turkey and the United States. A total of 29 OECD countries and 6 Latin American countries participated in the OECD 2019 Digital Government Index.
Source: OECD (2019), *Digital Government Index*, https://doi.org/10.1787/4de9f5bb-en.

Figure 9.4. The OECD Digital Government Index 2019: Open by Default Dimension



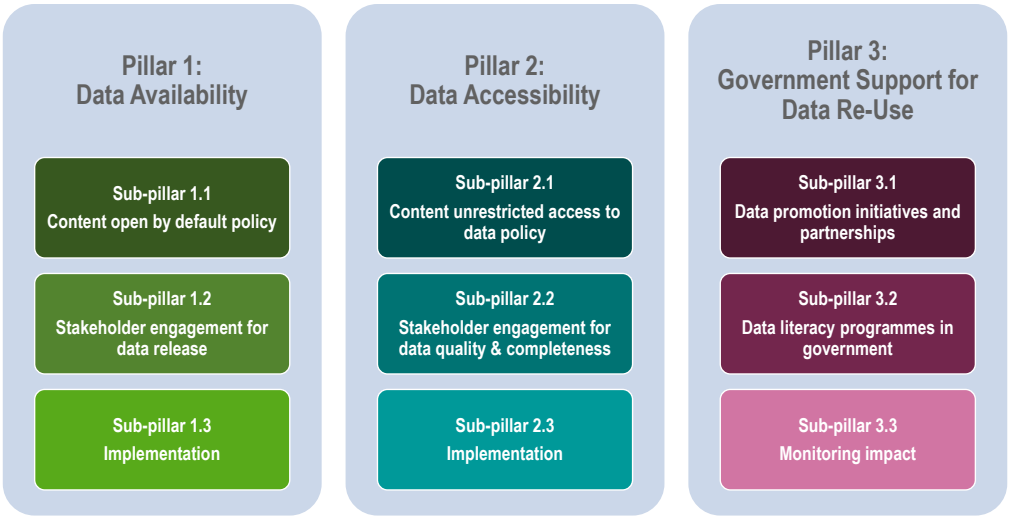
Note: Data are not available for Australia, Costa Rica, Hungary, Mexico, Poland, Slovakia, Switzerland, Turkey and the United States.
Source: OECD (2019), *Digital Government Index*, https://doi.org/10.1787/4de9f5bb-en.

The OECD Open, Useful Re-usable Government Data (OURdata) Index

The OECD Secretariat developed the Open, Useful Re-usable Government Data (OURdata) Index to continuously monitor the availability, accessibility and support for data re-use. The analytical framework of the OURdata Index (Figure 9.5) promotes proactive, timely, meaningful release, use and re-use of government data, and ensures stakeholder engagement to seize opportunities from digital tools and open government data for value creation. It is structured in three pillars and nine sub-pillars, as shown in Figure 9.5:

- **Pillar 1 "Data availability"** measures the extent to which governments have adopted and implemented formal requirements to promote open government data at the central/federal level. This pillar also assesses how users are involved early on in the policy process as means to inform data publication and identify policy needs. Pillar 1 also explores the scope of datasets available on central open data portals.
- **Pillar 2 "Data accessibility"** measures the availability of formal requirements aiming at promoting the unrestricted access to understandable data (e.g. open license, metadata), the role of the ecosystem and the portal in ensuring data quality (e.g. feedback mechanisms), and the actual implementation of data accessibility requirements once these data are published.
- **Pillar 3 "Government support for data re-use"** measures the extent to which governments play a proactive role in promoting the re-use of government data inside and outside government. This includes defining and implementing value co-creation initiatives and partnerships, capacity building exercises, and governments' efforts to monitor and evaluate policy impact.

Figure 9.5. Analytical framework of the Open, Useful and Re-usable data (OURdata) Index



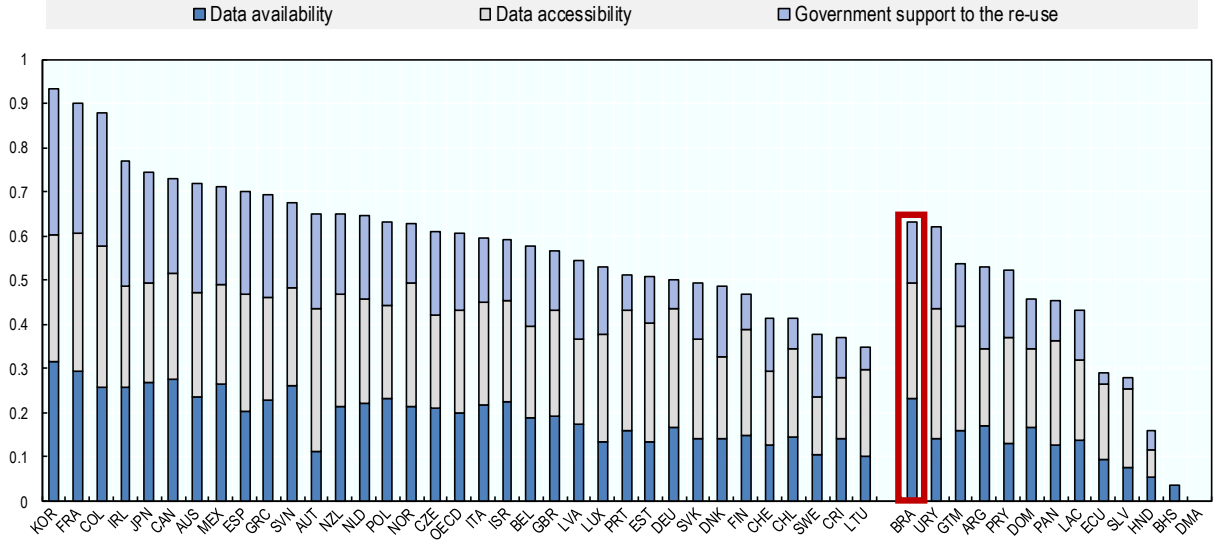
Source: Lafortune, G. and B. Ubaldi (2018), "OECD 2017 OURdata Index: Methodology and results", https://dx.doi.org/10.1787/2807d3c8-en.

> *Compared to LAC countries, Brazil's overall results illustrate the country's commitment to the open data agenda in the past years, and results from the availability of sound institutional, policy, legal and regulatory frameworks supporting strong governance for open government data in the country.*

The Open, Useful and Re-usable data (OURdata) Index benchmarks the design and implementation of open government data policies at the national level across OECD member and partner countries. It ranges from 0 to 1, 0 being the lowest score and 1 the highest. As shown in

Figure 9.6, the OURdata Index is structured around three pillars (Data availability, Data accessibility, and Government support to the re-use), all with an equal weight of 0.33 (Lafortune and Ubaldi, 2018[25]).

Figure 9.6. Open, Useful and Re-usable data (OURdata) Index, 2019



Note: For OECD countries, data is not available for Hungary, Iceland, Turkey and the United States. Countries of which data are part of the LAC average: Argentina, Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay and Uruguay.
Source: For OECD countries, except Costa Rica, data was collected through the OECD Open Government Data Survey 2018. Data for Costa Rica and the 12 non-OECD LAC countries was collected from the IDB-OECD Open Government Data Survey 2018; OECD (2020), "Open, Useful and Re-usable data (OURdata) Index: 2019", https://dx.doi.org/10.1787/45f6de2d-en; OECD (2020[26]), *Government at a Glance: Latin America and the Caribbean 2020*, https://dx.doi.org/10.1787/13130fbb-en.

Brazil's composite score (0.63) in the OURdata Index is above the OECD (0.60) and LAC (0.43) averages, and among the top three leading countries in the LAC region (Table 9.2). At a more granular level, across the three pillars from the analytical framework of the OURdata Index, Brazil shows significant results in Pillar 1 on *Data Availability* (0.23) and Pillar 2 on *Data Accessibility* (0.26), notably by engaging with stakeholders for data release (Sub-pillar 1.2), and by developing formal requirements that contribute to the increase of production and sharing of high-quality data (Sub-pillar 2.1).

Despite positive performance in Pillars 1 and 2, results below OECD average for Pillar 3 show Brazil can further improve in *Government Support for Data Re-Use* (0.14) by promoting greater data re-use and communicating with the data ecosystem (Sub-pillar 3.1), raising awareness and promoting greater data re-use (Sub-pillar 3.2). The next sub-sections present a detailed analysis of Brazil's results for each of these pillars.

Table 9.2. OECD Open, Useful and Re-usable data (OURdata) Index 2019 – Snapshot of Results from Brazil

	OURdata Index (Composite)		Pillar 1. Data Availability		Pillar 2. Data Accessibility		Pillar 3. Government Support for Data Re-use	
	Score	**Ranking Brazil**	Score	Ranking Brazil	Score	Ranking Brazil	Score	Ranking Brazil
Brazil	**0.63**	**-**	**0.23**	-	**0.26**	-	**0.14**	-
OECD average	**0.60**	**16th**	0.20	11th	0.23	10th	0.17	23rd
LAC average	**0.43**	**3rd**	0.14	3rd	0.18	3rd	0.11	7th

Note: For OECD countries, data is not available for Hungary, Iceland, Turkey and the United States. Countries of which data are part of the LAC average: Argentina, Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay and Uruguay.
Source: For OECD countries, except Costa Rica, data was collected through the OECD Open Government Data Survey 2018. Data for Costa Rica and the 12 non-OECD LAC countries was collected from the IDB-OECD Open Government Data Survey 2018; OECD (2020), "Open, Useful and Re-usable data (OURdata) Index: 2019", https://dx.doi.org/10.1787/45f6de2d-en; OECD (2020), *Government at a Glance: Latin America and the Caribbean 2020*, https://dx.doi.org/10.1787/13130fbb-en.

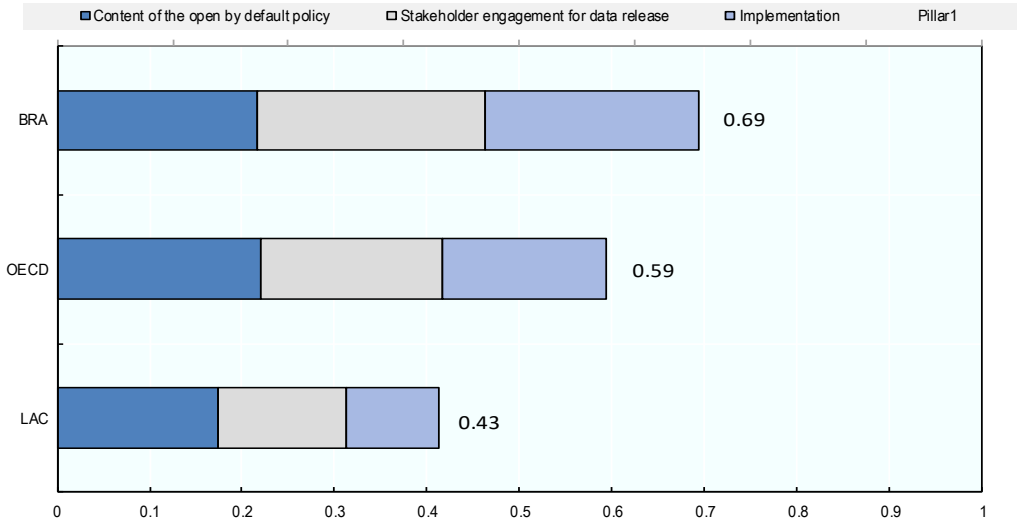
Pillar 1: Data Availability

> *Overall results of Pillar 1 from the OECD 2019 OURdata Index show Brazil's higher performance in Sub-pillars 1.2 and 1.3 compared to the average of OECD and LAC countries, except for Sub-pillar 1.1, which Brazil scores slightly below the OECD average (0.22).*

Data Availability (Pillar 1) measures the adoption and implementation of formal requirements to promote open government data at the central/federal level (Sub-pillar 1.1), stakeholder engagement as means to inform data publication and identify policy needs (Sub-pillar 1.2), and the scope of datasets available on central open data portals (Sub-pillar 1.3) (

Figure 9.7).

Figure 9.7. Pillar 1: Data Availability, 2019



Note: For OECD countries, data is not available for Hungary, Iceland, Turkey and the United States. Countries of which data are part of the LAC average: Argentina, Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay and Uruguay.
Source: For OECD countries, except Costa Rica, data was collected through the OECD Open Government Data Survey 2018. Data for Costa Rica and the 12 non-OECD LAC countries was collected from the IDB-OECD Open Government Data Survey 2018; OECD (2020), "Open, Useful and Re-usable data (OURdata) Index: 2019", https://dx.doi.org/10.1787/45f6de2d-en; OECD (2020), *Government at a Glance: Latin America and the Caribbean 2020*, https://dx.doi.org/10.1787/13130fbb-en.

Sub-pillar 1.1: Content of the open by default policy

In terms of Sub-pillar 1.1 – *Content of the open by default policy* –, Brazil has overarching requirements applied to all public sector organisations for government data to be "open by default", unless a legitimate justification is provided (ATI Law and Decree 7,724/2012). Likewise, Law 14,129/2021 (art. 29) explicitly states that data for active transparency shall be published in open formats. Yet, while acknowledging the open by default principle in formal instruments is an important step towards data availability, formal requirements do not necessarily result in actual implementation.

Evidence suggests that Brazil can further advance in implementing open data requirements (e.g. the provision of timely and machine-readable data) as part of performance indicators for all public sector organisations.

Key (open) performance indicators (KPIs) on open data practices might help expedite the transition from policy promises into practice, increasing public sector organisations' compliance with formal requirements. Whereas efforts such as CGU's Open Data Monitoring Panel (launched in 2017) can help monitor policy progress, linking open data efforts to KPIs in the public sector enables formal accountability mechanisms in the public sector to advance the availability of open data. Such an approach would benefit, in particular, the publication of open data by those public sector organisations that hold high-value data for society and economy but are not necessarily identified as key actors for open data publication in the context of Brazil's ATI and OGD legal and policy instruments. This can also complement the monitoring of actions defined in the medium-term action plan on open government data ("Plano de Ação de Infraestrutura Nacional de Dados Abertos" - INDA) (CGU, 2021[16]).

Results for Sub-pillar 1.1 suggest that main challenges remain in having mechanisms in place to ensure that open government data initiatives comply with formal requirements on security, privacy and confidentiality to maximise benefits of open data while managing risks.

Acknowledging the challenges and social pressure for implementing trustworthy data governance and safeguarding the legitimate interests of individuals and businesses, Sub-pillar 1.1 of the OURdata Index gives a special focus on formal requirements and compliance with privacy, security and confidentiality regulations. Particularly in the case of open government data, risk-averse behaviour towards data openness may jeopardise open data policies and decrease the number of good practices to advance in the implementation of open data agenda. Securing the right balance between openness by default and the implementation of measures aiming to ensure and assess the alignment of open data policies with relevant regulation is crucial to maintaining public trust.

Results for Sub-pillar 1.1. and evidence collected throughout this review suggest that building trust around privacy, security, confidentiality and intellectual property could be a priority as part of the Brazilian open government data agenda (see Supporting an Ethical Open Government Data Agenda). For example, despite frequent incidents of personal data breaches, since 2015, no assessment has been undertaken for the whole federal government to ensure that government data publicly available respect national privacy legislation/standards on security, privacy, and confidentiality. Likewise, there has not been any assessment at the federal level to evaluate the implementation of relevant legislation on open government data regarding these matters. Without monitoring and/or evaluation mechanisms in place, such requirements might not result in actual implementation, entailing risks on privacy and trust. Efforts such as the actions included in the INDA's Action Plan can be further tapped for this purpose. Box 9.2 provides an example of a mechanism to protect privacy and personal data when opening up government data.

Recent advancements in personal data protection in Brazil, such as the Constitutional Amendment PEC 17/2019 and Personal Data Protection Law 13,709/2018, should be complementary to the open government data agenda so that the adoption of new legal frameworks on privacy and data protection are not an excuse to restrict access to open data and information of public interest (Government of Brazil, 2018[27]) (Government of Brazil, 2019[28]). Providing training to public officials in charge of opening up government data in the areas of privacy and data protection would also contribute to increasing synergies and managing risks.

Box 9.2. Austria: Internal privacy assessments for open data

Where there is a risk that people might have their privacy impacted, as the case of opening up government data, assessment helps to ensure people are protected and any potential impacts are addressed. In Austria, for example, each publishing federal authority conducts an internal assessment to ensure that data published as open data do not damage privacy, security, confidentiality or intellectual property (OECD, 2020[29]). Despite the implementation of these assessments, they are not available online or shared with the public.

Austria is among the few OECD countries that conduct assessments to evaluate if public sector organisations are only publishing data that do not damage privacy rights. Despite all OECD countries having formal requirements that prevent the publication of sensitive and private data, in line with the provisions of instruments such as national data protection laws and FOI acts, there still remains a challenge in ensuring that open data initiatives in practice always do comply with these rules.

Source: OECD (2020), "Open, Useful and Re-usable data (OURdata) Index: 2019", https://dx.doi.org/10.1787/45f6de2d-en.

Sub-pillar 1.2: Stakeholder engagement for data release

The overall nature of the data published reflects, or should reflect, the value it aims to achieve. The engagement of stakeholders is strategic to inform data release, prioritising the publication of data based on users' needs, and with a specific purpose. The "publish with a purpose" approach challenges the conception of data publication as the outcome, underpinned by reactive transparency (OECD, 2020[29]). Early engagement of stakeholders helps inform and prioritise data publication, later reverberating in the increase of re-use and value co-creation, explored in Pillar 3 of the Analytical Framework of the Open-Useful Re-usable Government Data.

Brazil's score above OECD average (0.25) on *Stakeholder Engagement for Data Release* (Sub-pillar 1.2) results from its efforts to bring the data ecosystem at the core of the data release process. Among Brazil's efforts, the country counts with the Resolution 3/2017 (article 1, §1) enacted by CGINDA, obliging all federal public sector organisations to regularly conduct consultations with users to identify databases of upmost interest and consider them as part of the priorities for their open data plans (PDAs - "Plano de Dados Abertos") (Government of Brazil, 2017[30]).

Evidence collected through the IDB-OECD Open Government Data Survey 2018 shows that since 2017 the data ecosystem – including private sector organisations, citizens, civil society, journalists, academia and civil servants – has been often[1] consulted to inform PDAs. For instance, CGU's 2021 – 2023 Open Data Plan was informed by the results of a public consultation conducted with civil society organisations in 2020 (Government of Brazil, 2020[31]). The consultation helped the CGU identify civil society needs and prioritise the release of new databases in *dados.gov.br* (CGU, 2020[32]). More recently, the inclusion of specific actions in the 2021 - 2022 INDA's Action Plan aiming at identifying data demand among external actors ("Action 1: Promote the opening of high-value databases" and "Action 4: Conduct research on the opening and re-use of government data") shows Brazil's efforts in following a demand-driven approach to data publication.

As part of the commitment to Actions 1 and 4 of 2021 - 2022 INDA's Action Plan, the CGU has recently organised a consultation to help identifying private sector's needs on open government data (Government of Brazil, 2021[33]). Beyond discussing the release of high value datasets, the consultation also focused in identifying challenges for data re-use, quality standards and the impact of open government data for private actors. Other two consultations are expected to take place with civil society and public officials by October 2022 according to the 2021 - 2022 INDA's Action Plan (CGU, 2021[16]).

Yet, despite ongoing efforts by the CGU to follow a demand-driven data publication, challenges remain to ensure that public bodies – as data owners – follow practices and implement these efforts.

To support effective consultations and make the most of stakeholder engagement in the process of data release across the public sector, Brazil counts with guidelines on how to conduct consultations with data users applied to all public sector organisations at the federal level. Likewise, formal requirements obliging public sector organisations to maintain data catalogues and provide certain documents when conducting consultations (Decree 8,777/2016 article 5, §2) favour informed feedback from stakeholders on open data plans. For instance, lists of data holdings/data inventories have allowed stakeholders to better understand what type of government data resources exists, what data are already open and, therefore, to contribute with meaningful and valuable feedback on data availability (OECD, 2020[29]).

Despite formal requirements obliging all public sector organisations to systematically publish online the results of consultations (Resolution 3/2017, article 4, IV, issued by CGINDA), evidence shows that Brazil could advance at the implementation level to ensure these results are released online.

With governments worldwide encountering timid levels of trust (OECD, 2021[34]), stakeholder engagement to inform open data policies and reporting back on the results of the consultations should be perceived as

an opportunity to have informed discussions on openness by default, increase legitimacy and public ownership over the open data agenda, and foster public sector accountability in terms of commitments for data publication.

Sub-pillar 1.3: Implementation

At implementation level of data availability, Sub-pillar 1.3 underlines the availability of high-value datasets on the central open data portal. Brazil scores higher (0.23) compared to OECD (0.18) and LAC (0.10) averages on Sub-pillar 1.3. This results from technical tools that enable the availability of open data from different platforms and sources, and a range of high-value datasets published at the federal open government data portal.

Dados.gov.br works as a federated catalogue that facilitates the discoverability, access to and use of open data published by public sector organisations. By November 2021, the portal counted with a total of 10,624 datasets from 206 public sector organisations at different levels and across the Executive, Legislative and Judiciary branches. Following a data federation approach, the portal helps to standardise government data across different levels, reduce data siloes, and secure a certain level of quality in line with central standards.

Despite formal requirements obliging all public sector organisations at the federal Executive level to develop and publish online their PDAs every two years (Law 12,527/2011 and Resolution 3/2017), the CGU's Open Data Monitoring Panel shows that over half of these entities (approximately 58%) do not have a PDA (CGU, 2022[20]). Since these plans are guiding documents to promote the opening of data for each public sector organisation, the absence of PDAs for the majority of entities undermines the implementation of the open government data agenda in Brazil, such as the increase in the availability of high-value datasets at *dados.gov.br*.

In this respect, the Brazilian government could consider equipping the leading entity in charge of Open Data Policy at the federal level – CGU – with enforcement mechanisms and financial levers (e.g. budget allocation) to help public sector organisations advance in adopting and publishing their PDAs.

The portal *dados.gov.br* contains high-value open datasets that can be beneficial for both the economy and society. This list comprises postcodes, geospatial data (e.g. national and local maps), earth observation and environment (e.g. satellite images, meteorological data), mobility data, and business registers (company registers, company ownership), among other types of data. In terms of good governance, the availability of certain datasets on the central portal (e.g. public servants' salaries, declaration of interest and call for tender) is a first step to tackle corruption, clientelism and policy capture in government. The availability of such datasets as open data improves public transparency and integrity, allows social control over public expenses and holds decision makers accountable (see Box 9.3).

Efforts to improve data availability on *dados.gov.br* are key to increasing the critical mass of data, but those should not be disconnected from mechanisms that help ensure data quality and accessibility. Likewise, to fully realise the benefits of open data policies, the Brazilian government could expand its efforts on stakeholder engagement for data re-use, as explored in Pillars 2 and 3.

Box 9.3. Reaping the Benefits of Data Availability in Brazil

Using Open Data to Transform Education

QEdu is a portal developed in partnership with Lemann Foundation and Meritt that provides data visualisation on the quality of education in Brazilian public and private schools (QEdu, 2022[35]). The portal shows, for example, the performance and profile of students on math and Portuguese, enrollment for each school stage, dropout and failure rates, school infrastructure, age distortions in relation to grades. Users can search and compare data across schools, cities or states. The portal also allows anyone to filter and download data in open format, and visualisation is generated from the Brazilian open government databases, such as data from the National Secondary Education Examination (Enem) and the National Institute of Studies and Research (INEP).

The portal is a showcase that demonstrates the importance of availability of open data and the benefits of third sector, government and academia working together to produce products that help improve and inform the design and monitoring of sectoral policies.

Tackling Corruption in Brazilian Senate and Federal Chamber of Deputies

The project "Serenata de Amor" uses technologies based on artificial intelligence to analyse and identify suspicions expenses from federal deputies and senators reimbursed by the Quota for the Exercise of Parliamentary Activity ("Cota para o Exercício da Atividade Parlamentar" - CEAP). The project uses open data available in the Brazilian central portal *data.gov.br* (Serenata de Amor, 2021[36]).

Besides helping identify suspicions expenses, *serenata.ai* displays information following user-friendly approach. This encourages the population to get informed, monitor and question their representatives on the use of public money. Serenata de Amor illustrates the importance of the availability of certain datasets (e.g. public servants salaries, declaration of interest, call for tenders, lobbying registers, assets declaration, charity registers) as a first step in helping tackling corruption and policy capture in government, improving transparency and holding decision makers accountable.

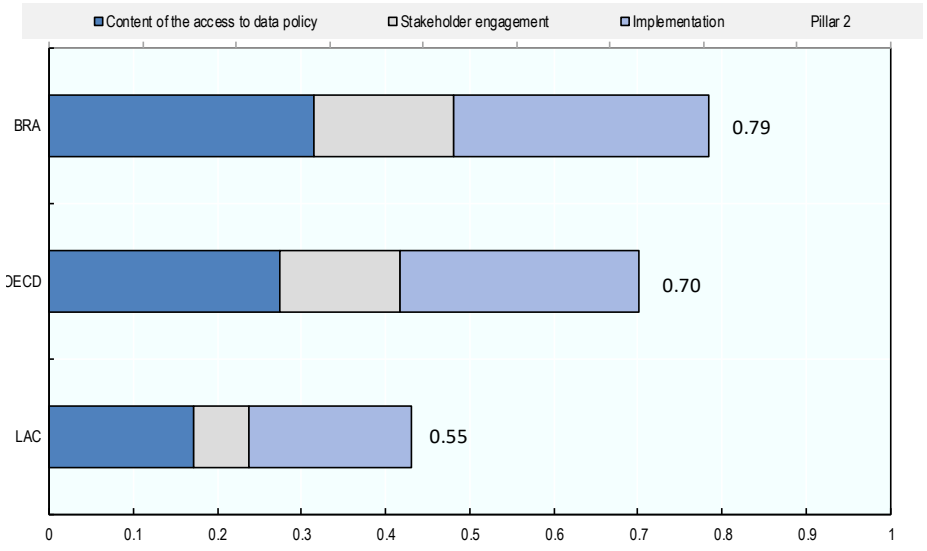
Source: QEdu (2022), *QEdu: Home Page*, https://novo.qedu.org.br/; Serenata de Amor (2021), *Operação Serenata de Amor: Home Page*, https://serenata.ai/.

Pillar 2: Data Accessibility

> *Overall results of Pillar 2 from the OECD 2019 OURdata Index show Brazil's higher performance in Sub-pillars 2.1 and 2.3 compared to the average of OECD and LAC countries. While Brazil's results in Pillar 2 remain above average, Brazil's performance in Sub-pillar 2.2 shows a significant drop in stakeholder engagement (0.17).*

Pillar 2 on *Data Accessibility* measures the availability of formal requirements aiming at promoting unrestricted access to understandable data (Sub-pillar 2.1), the role of the data ecosystem and data portals in ensuring data quality (Sub-pillar 2.2), as well as the implementation of accessibility and quality requirements once data are published (Sub-pillar 2.3) (Figure 9.8).

Figure 9.8. Pillar 2: Data Accessibility, 2019



Note: For OECD countries, data is not available for Hungary, Iceland, Turkey and the United States. Countries of which data are part of the LAC average: Argentina, Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay and Uruguay.
Source: For OECD countries, except Costa Rica, data was collected through the OECD Open Government Data Survey 2018. Data for Costa Rica and the 12 non-OECD LAC countries was collected from the IDB-OECD Open Government Data Survey 2018; OECD (2020), "Open, Useful and Re-usable data (OURdata) Index: 2019", https://dx.doi.org/10.1787/45f6de2d-en; OECD (2020), *Government at a Glance: Latin America and the Caribbean 2020*, https://dx.doi.org/10.1787/13130fbb-en.

Sub-Pillar 2.1: Content of the access to data policy

> *Evidence shows Brazil has robust policy tools and mechanisms to promote unrestricted access to quality data (Sub-pillar 2.1).*

Brazil's Open Data Policy (Decree 8,777/2016) sets transparency, social control and free use of data among the guiding principles of open government data at the federal Executive level. These overarching principles underpin formal requirements applied to all public sector organisations to provide government data with open license and free of charge (Resolution 2/2017 issued by CGINDA) (Government of Brazil, 2017[37]).

Likewise, evidence shows that the Brazilian legal framework is well-equipped with formal requirements obliging all public sector organisations to provide open data in re-usable and machine-readable formats, with associated metadata, and in a timely and disaggregated manner when government data is published and shared (Access to Information Law and Open Data Policy).

Having such requirements in place help to ensure data remain up to date and relevant for users, in formats that allow re-use and extract value to the fullest extent, contributing to the maturity of the open data agenda in Brazil.

Sub-pillar 2.2: Stakeholder engagement

> *In Brazil, the level of stakeholder engagement for greater data quality and completeness (Sub-pillar 2.2) is still uneven.*

Despite some progress towards making *dados.gov.br* more user-driven, the level of stakeholder engagement for data quality, completeness and integrity remains low relative to the level of policy content

and implementation for data accessibility. Engaging with key actors from the ecosystem such as watchdogs and fact-checkers is crucial to increasing trust in government and data itself.

Likewise, despite some available core functions that allow users to communicate with the government on the central OGD portal *dados.gov.br* (e.g. feedback and user request sections), the portal lacks dynamic spaces (such as forums for discussion) where users can connect and share ideas among themselves (see Box 9.4). Such aspects respond not only to unidirectional communication, but also contribute to building a community of practice around open government data.

In the process of redesigning *dados.gov.br* (Government of Brazil, 2021[38]), ***Brazil could sustain its efforts to transform its open government data portal into a thriving tool for data communities, collaboration and data crowd-sourcing***.

Box 9.4. Enabling Access and Engagement in Open Data

France: The Central Open Data Portal *data.gouv.fr*

Being an early adopter of OGD policies, France has one of the most developed central open data portals among OECD countries – the *data.gouv.fr*. The French portal is one of the most relevant examples of a portal that, managed by the central government, stands as a platform for user collaboration, community building and data crowdsourcing.

Instead of limiting itself to an open government data portal, *data.gouv.fr* follows a comprehensive approach by enabling data producers to register as data providers and upload their own datasets in open, accessible and re-usable formats, contributing to data re-use cases (OECD, 2018[39]). The French portal also allows users to add datasets categorised as being of "public interest" with virtual stamps that separate these data from "certified" datasets published by public sector entities (Government of France, 2022[40]).

To better engage users, increase collaboration and promote greater public value creation, *data.gouv.fr* offers to the data community the possibility to have discussions, follow other users, receive notifications and allow several users to publish datasets within a single organisation account. The success of the French central open data portal is reflected in its score for *Data Accessibility* in the OURdata Index (

Figure 9.6) and has inspired other countries to follow a similar approach, such as Portugal (*dados.gov.pt*) (OECD, 2020[29]).

Finland: Using Data as a Platform – Ecosystem Engagement and Collaboration

Avoindata.fi is Finland's national portal for open data, developed by the Digital and Population Data Services Agency. The portal is developed in close cooperation with users using agile software development methods when implementing new features or improvements (Government of Finland, 2022[41]).

Anyone can upload open data datasets to *avoindata.fi*. Most of these datasets are published by different government agencies, municipalities, and other public administration organisations. Companies, associations, and private individuals can also publish open data on *avoindata.fi*. Publishers are responsible for their datasets, making sure their data is up to date and correct. Service administrators are responsible for removing inappropriate content, updating the user guide and developing the service. The portal allows users to provide feedback through a contact form. Users can browse and download datasets as well as subscribe to dataset updates from *avoindata.fi*. Registration is only required for users who want to add or manage datasets to the portal, and become a member of an organisation.

Source: OECD (2018), *Open Government Data Report: Enhancing Policy Maturity for Sustainable Impact*, https://dx.doi.org/10.1787/9789264305847-en; France (2022), *Data.gouv.fr: Home Page*, https://www.data.gouv.fr/fr/; OECD (2020), "Open, Useful and Re-usable data (OURdata) Index: 2019", https://dx.doi.org/10.1787/45f6de2d-en; Finland (2022), *Avoindata.fi*, https://www.avoindata.fi/.

Sub-pillar 2.3: Implementation

> *At the implementation level, evidence suggests that Brazil has taken steps to reduce barriers to access good quality open government data. Score attained in Sub-pillar 2.3 (0.28) reflects these efforts.*

The availability of the central open data portal – *dados.gov.br* – since 2012, and the continuous efforts invested by the CGU to keep the portal functional across different levels of government and branches of power help users have access to, keep track of progress and deliver value from open government data. These long-term efforts sustained across political terms should not be taken for granted. They have been key to support sound implementation and the realisation of open government data. In this respect, evidence from the 2019 edition of the OURdata Index shows that the change of policy priorities and political support can have a negative impact on the open government data agenda of a country. A comparison of results from the 2017 and 2019 editions of the OURdata Index shows a significant drop both in terms of scoring and ranking of former Open Government Data leading countries. These results stress the importance of solid governance frameworks and ensuring that changes in political administration, institutional governance and political support do not put open data initiatives at risk (OECD, 2020[29]).

Also, securing access to open government data shared in open and non-proprietary formats, free of charge and without required registration is foundational to a sound open data policy and to democratise the value of open data by removing access barriers.

Evidence collected through the IDB-OECD Open Government Data Survey 2018 suggests that ***there is room for increasing the proportion of disaggregated data and data available in machine-readable and non-proprietary formats (e.g. CSV and JSON) in the portal.***

Formal requirements in policy documents are important but not sufficient to ensure data accessibility so that datasets are actually useful and re-usable. Open government data is not solely about disclosing government information for transparency purposes, but to proactively share government data in formats that are easy and open to re-use by both humans and machines towards greater re-use, value and integration.

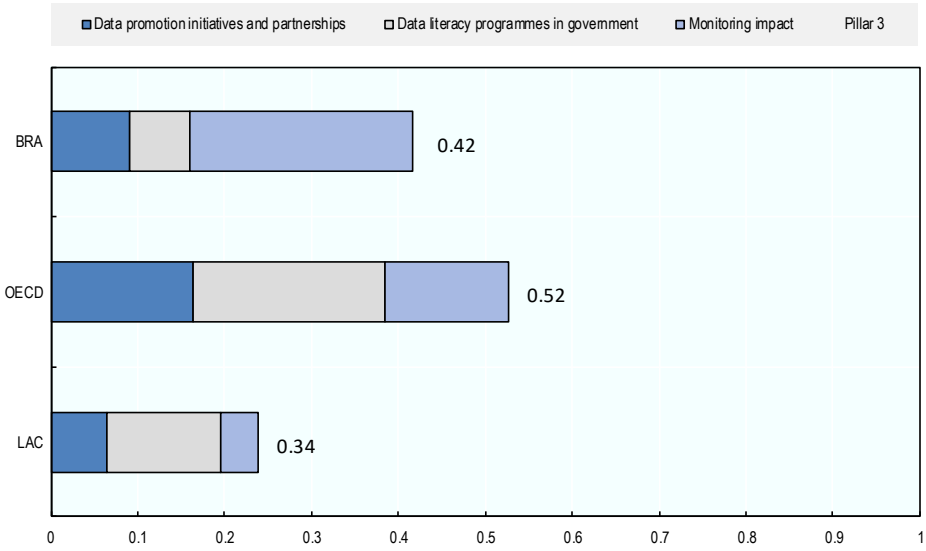
Although the overall level of implementation in terms of accessibility is encouraging and greatly due to the enhancement of data available on Brazil's one-stop shop portal *dados.gov.br*, improving the quality of datasets can help in the analysis of data, identification of bias, and allow its re-use by humans and machines to value creation, such as informing the design and delivery of policies and services (see Supporting an Ethical Open Government Data Agenda and Enabling User and Data-Driven Services).

Pillar 3: Government Support for Data Re-Use

> *Overall results of Pillar 3 from the OECD 2019 OURdata Index show Brazil scores below the OECD average. Despite Brazil's outstanding performance in Sub-pillar 3.3 compared to the average of OECD and LAC countries, low scores in Sub-pillars 3.1 (0.09) and 3.2 (0.07) suggest the urgent need to foster data promotion initiatives and data literacy programmes in government.*

Government Support for Data Re-Use (Pillar 3) measures governments' proactivity in promoting the re-use of government data inside and outside the public sector. This includes implementing co-creation initiatives and partnerships, capacity building, and governments' efforts to monitor and evaluate policy impact (Lafortune and Ubaldi, 2018[25]) (Figure 9.9).

Figure 9.9. Pillar 3: Government Support for Data Re-Use, 2019



Note: For OECD countries, data is not available for Hungary, Iceland, Turkey and the United States. Countries of which data are part of the LAC average: Argentina, Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay and Uruguay.
Source: For OECD countries, except Costa Rica, data was collected through the OECD Open Government Data Survey 2018. Data for Costa Rica and the 12 non-OECD LAC countries was collected from the IDB-OECD Open Government Data Survey 2018; OECD (2020), "Open, Useful and Re-usable data (OURdata) Index: 2019", https://dx.doi.org/10.1787/45f6de2d-en; OECD (2020), *Government at a Glance: Latin America and the Caribbean 2020*, https://dx.doi.org/10.1787/13130fbb-en.

Sub-pillar 3.1: Data promotion initiatives and partnerships

Brazil's score in Sub-pillar 3.1 (0.09) suggests there is large room for improving the promotion of open government data re-use among external users.

Despite the existence of formal requirements applied to all public sector organisations to raise awareness among civil society and businesses, Brazil could further advance in promoting initiatives to expand the re-use of open government data outside the public sector.

The government could further support initiatives from civil society and businesses (e.g. govtech start-ups) to identify and co-develop solutions to public policy challenges, and establish partnerships with businesses and the civil society to support data re-use.

Brazil could continue drawing on recent initiatives, such as ENAP "challenges" to tackle the pandemic (Government of Brazil, 2022[42]) and CGU datathons on public education system (CGU, 2019[43]), to further advance on open government data re-use among external users. The Open Data for Development Awards, financed by the Brazilian Development Bank (BNDES), or the Hackaton Rede+ promoted by an Information Technology Federal Company, SERPRO, are other showcase examples to foster collaboration, research and innovation between civil society and the public sector (Government of Brazil, 2021[44]).

While there has been an increase since 2018 in participation from representatives of the federal government on specific events to inspire and support data re-use among businesses and the civil society (e.g. to understand users' needs, to promote re-use and co-creation, to present opportunities/benefits of open government datasets to civil society), the challenge remains in ensuring that collaboration with the open data ecosystem becomes the rule, not the exception.

Sub-pillar 3.2: Data literacy programmes in government

Despite the relevance of capacity building and skills programmes for open data within the public administration, data literacy initiatives were scarce according to data from the IDB-OECD Open Government Data Survey 2018. Improvements in recent years show Brazil is moving in the right direction.

The absence of formal and practical mechanisms (e.g. information sessions, focus groups, mailing) to raise awareness and support data-re-use by public officials, and the lack of training until 2018 explain Brazil's lowest score (0.07) in Sub-pillar 3.2, below OECD (0.22) and LAC (0.13) averages in the 2019 edition of the OECD OURdata Index. Since then, however, data literacy programmes targeted to public officials have been increasingly prioritised for Brazil's open data agenda as an essential mechanism to help the public sector reap the benefits of open government data. For instance, the CGU and the National School of Public Administration ("Escola Nacional de Administração Pública" – ENAP) have been mobilising resources to offer a couple of free online courses on data governance (ENAP, 2022[45]), development of PDAs (ENAP, 2022[46]) and open data for social control (Government of Brazil, 2021[47]).

Despite these efforts, the majority of trainings rely on one-off virtual meetings and webinars, for example, on awareness of open government data (CGU, 2019[48]), development of PDAs (Government of Brazil, 2021[49]), and good practices for data accessibility and re-use (Government of Brazil, 2021[50]). Training programmes for open data should not only focus on securing a good understanding of open government data, but also on improving public servants' awareness of how open data – including those provided by actors outside the public sector – can be used to improve daily operations, inform the design of policies and the delivery of services.

Besides formal training programmes, other mechanisms such as performance incentives, data skills catalogues and guidelines, laboratories for innovation and an open culture within public sector organisations allowing sharing of expertise and exchange public servants are examples of effective tools that can help accelerate the use of open data, and data in general, inside the public sector, to create public value. In this respect, the recent publication of Guidelines for the Release of Open Data ("Modelo de Referência para Publicação de Dados Abertos") is a showcase of a reference document to promote awareness and standardisation of practices for the release of open data by civil society and the public sector (FGV, 2020[51]). The Guidelines is a result of Brazil's effort to implement Commitment 2 of its 4th OGP Plan (OGP, 2018[13]).

Sub-pillar 3.3: Monitoring impact

> *In contrast to scores in Sub-pillars 3.1 and 3.2, results from the OECD 2019 OURdata Index show Brazil's significant efforts to monitor and evaluate the impact of open government data (Sub-pillar 3.3).*

Brazil has made efforts to display the re-use of data through academic papers, press and blog articles. Varying online initiatives is important to show that re-use of open data is not limited to people that are skilled in programming or advanced data analysis. Displaying a variety of examples can help inspire a wider range of potential users to re-use government data, including journalists, students, researchers and social media influencers (OECD, 2020[29]).

Brazil has also been taking steps to measure the impact of open government data on public sector performance through CGU's Open Data Monitoring Panel ("Painel de Monitoramento de Dados Abertos") (CGU, 2022[20]). Monitoring mechanisms provide tangible evidence of the positive impacts of data re-use on the public sector (e.g. increased efficiency, reduced costs, improved overall levels of transparency and accountability), and incentivises greater re-use and engagement in improving open data initiatives. In the long-term, measuring the impact of open government data on public sector performance can contribute to building a data-driven public sector and strengthening the overall management and governance of data.

However, data from the IDB-OECD Open Government Data Survey 2018 also shows that further support is needed to promote research on the social and economic impact of open data. Quantifying their social and economic benefits can help assess efficiency gains and saving costs in several areas (e.g. environment, healthcare, public safety, public transport) and further leverage the open government data agenda (see Box 9.5).

Box 9.5. Spain: Yearly "infomediary" reports published by the National Observatory of Telecommunications and Information Society (ONTSI)

In Spain, the National Observatory of Telecommunications and Information Society ("Observatorio Nacional de Tecnología y Sociedad" – ONTSI) has the purpose of producing reports, indicators and setting advisory recommendations to inform the public sector, businnesses and society on technology development and its impact on economy, employment, public services and well-being.

The ONTSI publishes a yearly assessment of the "infomediary" sector of the economy, understood as businesses that exist because of data. Besides providing up-to-date information on the characteristics of the sector (e.g. volume, activities, services and products), the report also assesses present opportunities and barriers on the use of data, and the impact of this sector to the economy and society. The annual report from 2020 identified that the business volume from information and data reuse activities reached 718 million euros in 2018, 11,1% more than in 2017. The study also points to the evolution on the number of clients, suggesting an increase in the "infomediary" sector (ONTSI, 2020[52]).

As mentioned earlier above, financial value is often the easiest way of defining the value of a tangible asset. In the case of data, the financial benefit of open data has often been cited as an important stimulus to economic growth by creating new industries and business models, thus, helping to make the case to move forward with the open government data agenda.

Source: ONTSI (2020), *Del sector infomediario a la economía del dato: caracterización del sector infomediario*, http://dx.doi.org/10.30923/SecInfEcoDat-2020.

Looking Ahead: Next Steps of the Open Data Agenda in Brazil

Despite all the advancements in open government data in Brazil, the country needs to consider additional steps to achieve higher levels of government transparency and trustworthiness, better design and delivery of policies and services, collaboration with actors outside the public sector and innovation. As part of the main priorities, the Brazilian government is encouraged to give a special focus in five areas: data ethics, misinformation and dis-information, service design and delivery, application programming interfaces (APIs), and data donorship.

Supporting an Ethical Open Government Data Agenda

Democracy, legitimacy, fairness, inclusion, transparency and openness are cross-cutting values for the ethical use of data. Government's decisions and actions that derive from the access to, and sharing and use of data should limit to a maximum harms to individuals, collectivities and society. In this light, open data use should not lead to or perpetuate discrimination. Instead, it should promote inclusion, respect for diversity, and ensure that individuals and collectivities are equally treated and benefit from the outcomes that open data aims to deliver.

To achieve this, ***the Brazilian government could engage in efforts towards the ethical management of data throughout the data value cycle from its generation to its publication***. Connecting open government data initiatives to broader data governance and data management efforts in the public sector would help to ensure that open data aligns to efforts aiming at the mitigation of biases affecting the generation or collection of data by public sector organisations (see Sub-pillar 1.1: Content of the open by default policy).

Publishing disaggregated data may help uncover bias and monitor social injustices and policy challenges hidden in data (OECD, 2020[29]).

Exploring soft policy instruments (e.g. ethical frameworks, good practice principles, guidelines, public communication campaigns) can complement formal legal and regulatory arrangements as means to influence behaviour, promote self-regulation, and build a value-based culture that favours openness and respect to citizens' rights.

The OECD Good Practice Principles for Data Ethics in the Public Sector (OECD, 2021[53]) is an example of a soft policy instrument containing principles and values-based common actions that aims to support the ethical and trustworthy use of data in digital government projects, products, and services (see Enabling User and Data-Driven Services). In this respect, when making available open government data, the Good Practice Principles advocates for practices towards open, disaggregated and granular data following applicable privacy, security and ownership requirements. As part of additional efforts to advance in data ethics, the Brazilian government could take two initial steps in line with the Good Practice Principles for Data Ethics in the Public Sector.

Firstly, ***engaging in social dialogue with key actors inside and outside the public sector (e.g. autochthonous communities, women, LGBTQIA+ groups) to identify gaps in representation and inclusiveness of datasets***. These measures aim to encompass actors who might feel data do not represent their respective communities or are currently pushing for further representation and governmental actions for inclusion. From this perspective, it is also important to assess (e.g. through retroactive data audits) if current data generation practices reflect the realities of all communities' realities (see Box 9.6).

At the same time, the granularity and disaggregation of open data in itself is needed to shed further light in often hidden social disparities and inequalities (e.g. the impact of COVID-19 pandemic on autochthonous groups, or domestic violence against African descendant women). Implementing these efforts can also positively impact understanding different groups across society and help governments design policies and services that address their needs. Coordination between the CGU and relevant bodies within the public sector will play a key role in this regard.

Secondly, ***informing and training data subjects and their representatives, in particular those from vulnerable, underrepresented, or marginalised groups about their rights and the ethical implications of data access and sharing***. Traditionally, capacity building exercises with external actors usually target communities of practice and focus on building technical skills for data re-use. While these efforts are important to fostering digital transformation and public value (see Pillar 3: Government Support for Data Re-Use), the Brazilian government could also consider mobilising resources to improve non-expert audiences' capacity to contest certain uses of data and exert their rights. This could be implemented by allocating resources for the organisation of conferences, seminars, workshops and inclusive public communication campaigns to raise general population's awareness of their rights and the ethical implications of data. Another window of opportunity is to bring the topic of data ethics as part of schools and universities curricula.

Box 9.6. Ethical open data practices: Publishing open, disaggregated and granular data

Mexico: Opening Disaggregated Geographical and Statistical Information

The Mexican National System of Statistical and Geographical Information ("Sistema Nacional de Información Estadística y Geográfica") collects and discloses statistics and geographical data on territory, resources, population and economy with a great thematic diversity within these topics. The data can be consulted and downloaded in re-usable, machine-readable and non-proprietary formats, free of charge, and available in different levels of disaggregation.

For example, the 2020 Census of Population and Housing discloses information on gender, religion, migration, disabilities, dialects and ethnicity, among other information of the Mexican population (INEGI, 2020[54]). Geographical disaggregation enables the identification of population groups and their needs (e.g. in terms of housing, education, health, potable water, electricity, drainage services), helping policy makers design effective policies and closely monitor their results. Disaggregated data on Afro-descendants and autochthonous people brought important societal advancements in Mexico. For example, it offered interesting data on the movement for the recognition of Afro-descendants as autochthonous people and has helped define more concrete public policies (Mexican Daily Post, 2021[55]).

The Mexican National Institute of Statistics and Geography ("Instituto Nacional de Estadística y Geografía" - INEGI) is the autonomous public body responsible for the National System of Statistical and Geographical Information (INEGI, 2022[56]). In addition to publishing open disaggregated and granular data, INEGI holds conferences, seminars and workshops for different types of audiences with varying fields of expertise to promote the understanding and use of statistical and geographical information in society. The Institute carries out numerous public consultations to know users' current information requirements and counts with a microdata laboratory, offering users, particularly academic and the public sector, more granular information, while ensuring confidentiality and data privacy.

Canada: Gender, Diversity and Inclusion Statistics

COVID-19 had unprecedented impacts on citizens, and particularly on the most vulnerable populations. To understand these impacts, Statistics Canada has enhanced crowdsourcing survey instruments to collect disaggregated data on vulnerable populations – including immigrants, autochthonous people, elderly, people with disabilities, and visible minority groups – when there are sufficient responses from Canadians to do so (Statistics Canada, 2021[57]). These data have been used to inform key insights and new findings targeted at different population groups.

Before the COVID-19 pandemic, existing sources with disaggregated data have been used in new and innovative ways to explore gender equality. These include, for example, an analysis of diversity on boards of directors and of business ownership by gender in Canada (Statistics Canada, 2017[58]). Statistics Canada website also contains a number of articles and infographics, including four products highlighting new disaggregated data on Black communities in Canada, published to address key policy needs, and to raise awareness about issues related to gender, diversity and inclusion (Statistics Canada, 2020[59]).

Source: INEGI (2020), *2020 Census of Population and Housing*, https://en.www.inegi.org.mx/programas/ccpv/2020/#Microdata; Mexican Daily Post (2021), "More than 190,000 Oaxacans are recognized as Afro-Mexicans, reports Inegi", https://mexicodailypost.com/2021/02/21/more-than-190000-oaxacans-are-recognized-as-afro-mexicans-reports-inegi/; INEGI (2022), *National Institute of Statistics and Geography*, https://en.www.inegi.org.mx/; Statistics Canada (2021), *Gender, Diversity and Inclusion Statistics*, https://www.statcan.gc.ca/en/topics-start/gender_diversity_and_inclusion; Statistics Canada (2017), *The Daily — Representation of Women on Boards of Directors*, https://www150.statcan.gc.ca/n1/daily-quotidien/200128/dq200128b-eng.htm; Statistics Canada (2020), *The Daily — A Socioeconomic Portrait of Canada's Black Population*, https://www150.statcan.gc.ca/n1/daily-quotidien/200225/dq200225b-eng.htm.

Opening Up Data to Tackle Dis- and Misinformation

The access to and sharing of trusted data sources is crucial to help individuals navigate information overload (Lima, de Medeiros Lopes and Brito, 2020[60]), and channel them to reliable sources of information and facts. In Brazil, public opinion is increasingly shaped online. The country is a major social media power. Approximately 140 million of the country's 212 million citizens are regular social media users. Nearly two-thirds of the population is on Facebook and around one-third of Brazilians use Instagram. Brazil is also among the top five countries by user count on Twitter and Youtube (openDemocracy, 2020[61]). Election campaigns have been increasingly relying on social media and most political candidates are active users across multiple platforms.

The spread of misinformation powered by user profiling and mass communication channels, and the absence of mechanisms to counter dis- and misinformation threatens citizens' capacity to engage in informed and balanced debates on matters of public interest (see Chapter 5 on Civic Space), such as in the context of elections (The Guardian, 2018[62]) or the COVID-19 pandemic (Financial Times, 2020[63]). This can undermine citizens' capacity to make well-informed decisions, contribute to social fracture, and jeopardise democracy.

Open government data can be a tool to counter dis- and misinformation. Opening up data helps governments to fill in data vacuums, contributes to informed discussions and decisions, and allow fact checking (Matasick, Alfonsi and Bellantoni, 2020[64]). However, merely increasing data availability does not solve dis- and misinformation in society (see Sub-pillar 1.3: Implementation).

As part of the measures to encounter dis- and misinformation, ***the Brazilian government could connect the publication of open government data to public communication efforts – targeted, cluster-based and through different platforms***. This would contribute to reliable information reaching the overall population through targeted approaches and channels of communication. Box 9.7 provides two examples that illustrate how Ireland and Colombia have benefited from open data to counter dis- and misinformation in early stages of the COVID-19 pandemic.

The quality of data plays a key role in determining trust in government. Previous OECD studies in the area of digital government have shown that challenges related to the integrity and trustworthiness of data published by public authorities can undermine confidence in government and drive citizens to look for alternative sources of information (OECD, 2022[65]). To avoid similar issues, ***the Brazilian government could also consider increasing the number of partnerships with journalists, civil society organisations and academics test open data and information released by the public sector***. Supporting capacity building exercises and co-creation initiatives can leverage stakeholders' capability to identify gaps of open data and create mechanisms to assess data trustworthiness and accuracy.

Box 9.7. Developing Responses to Dis- and Misinformation

Ireland: The COVID-19 Health Surveillance Monitor Dashboard

The earlier stages of the COVID-19 pandemic were marked by a rapid spread of dis- and mis-information. On top of a health crisis, governments were challenged by a massive wave of false and misleading information. To encounter this issue, the Irish Government paired up with all-Island Research Observatory and Maynooth University to release a user-friendly platform with maps, graphs and a dashboard presenting relevant figures and evidence to monitor and communicate the spread of the COVID-19 virus across the country, based on number of cases and georeferenced data. Users could also find official statistics on confirmed cases per county, the age profile of confirmed cases as well as how many people have been hospitalised (Government of Ireland, 2020[66]). Having a centralised platform where people could easily access official data and understand complex information helped Ireland reduce risks of people casting evidence and facts into doubt.

The Irish COVID-19 Health Surveillance Monitor dashboard was retired on the 4th March 2022 and no longer accessible. National statistics, information and data relating to COVID-19 were transferred to the Covid-19 Data Hub (*covid-19.geohive.ie/*). Statistics profiles and results are now updated in a daily-fashion from Monday to Friday, based on new confirmed COVID-19 cases from PCR exams and registered positive antigen results. Data on total notified COVID-19 related deaths and deaths newly notified in the previous week are updated once a week (Government of Ireland, 2020[67]).

Colombia: *Datos.gov.co*

Another example of initiative in place to tackle dis- and mis-information is the use of open data platforms as hubs to serve society with official data and inform citizens. Colombia's main open data platform – *Datos.gov.co* – provides several tools (e.g. guidelines, tutorials, news feed) to encourage access and re-use of official data. In the context of the COVID-19 pandemic, for example, Colombia used *Datos.gov.co* not only to share data but also health related news.

Guidelines, tutorials and trainings help users navigate through the portal and make a better use of open data (Government of Colombia, 2022[68]). These tools also enhance data literacy and empower people to have a better understanding and accountability over the data they access and share. The centralisation of data and information, and the availability of certain tools, as the ones mentioned above, help promote a cultural change towards a more well-informed population and minimises the risk of infodemics in the long-run.

Source: Ireland (2020), *COVID-19 Health Surveillance Monitor*, https://geohive.maps.arcgis.com/apps/dashboards/29dc1fec79164c179d18d8e53df82e96; Ireland (2020), *Ireland's COVID-19 Data Hub*, https://covid-19.geohive.ie/; Colombia (2022), *Datos.gov.co*, https://www.datos.gov.co/stories/s/smn2-7atz#curso-virtual-de-datos-abiertos.

Enabling User and Data-Driven Services

Brazil has an untapped opportunity to advance in the re-use of open government data to design user-driven services. While much of the efforts on open government data to date have focused on making large quantities of government data available (e.g. increasing the number of datasets in *dados.gov.br)*, challenges remain to translate open government data into a strategic asset for improved service delivery and addressing people's needs in their daily lives.

Brazil, however, is not an exception. Evidence from the OECD/GovLab report on the use of open data shows that governments' efforts during the initial stages of the COVID-19 pandemic largely focused on

publishing open data of general public interest (e.g. emergency expenditure, number of cases). Little was done to make use of open data as a tool to develop services to tackle the pandemic at health, social and economic levels (GOV LAB and OECD, 2021[69]). In the case of Latin American countries, such a trend could be a natural outcome of open government data movement largely propelled by transparency and anti-corruption agendas at early stages (OECD, 2014[70]) (OECD, 2018[39]). Box 9.8 provides the example of Korea, who managed to make the most of open data, to address emergency needs of their population, as part of their early responses to COVID-19 pandemic.

As the OURdata Index suggests (see Pillar 3: Government Support for Data Re-Use), ***there is a large room for Brazil to advance in promoting data literacy programmes within the public sector and supporting data initiatives and partnerships with stakeholders***. These activities can particularly focus on open data and the development of data-driven public services. They can also greatly benefit from the coordination between the open data and digital government agendas, in line with the 2020 – 2022 National Digital Government Strategy – user-centred, data-driven and open government, among other pillars – (Government of Brazil, 2022[19]), and the Digital Government Law (Government of Brazil, 2021[21]). Box 9.8shows the strategic approach the US government has been undertaking to maximise the use of open government data to foster a data-driven public sector.

Training programs for open data should not only focus on securing public servants' good understanding of what open government data is about and how to publish it for the purpose of public transparency, but also on improving awareness of how data can be re-used to improve the delivery of services. Likewise, by engaging in partnerships and supporting an active participation of actors such as the Govtech ecosystem in the process of designing services, the government not only contributes to further re-use of open data but also unlocks a culture of value creation, innovation and economic growth.

Box 9.8. Open Data Re-Use to Foster Service-Oriented Efforts

Korea: Addressing Mask Shortage in the Early Stages of the COVID-19 Pandemic

The case of Korea shows the importance of collaboration between the public and private sectors, academia and civil society to help address people's most pressing needs through the release and re-use of open data. In the outbreak of the COVID-19 pandemic, the Korean government released on a daily basis mask inventory data in the open data portal *Data.go.kr* (Government of Korea, 2022[71]). Developers were encouraged to re-use these data to design mobile applications and web services informing pharmacies and number of masks available to purchase.

Korea's answer to address mask shortage is a showcase of how governments can contribute to the further re-use of open data and help unlock a culture of value creation. In this particular example, the availability of open data and collaboration across different sectors contributed to addressing people's needs in a timely-manner, and to increase levels of satisfaction with mask inventory services (Kim, 2020[72]).

United States: Maximising the Use of Open Government Data in the Public Sector

In the United States, the Open, Public Electronic and Necessary Government Data Act of 2018 ("OPEN Government Data Act" - 760/H.R. 1770) makes the chief data officers of all federal agencies responsible for ensuring that the use of data is maximised within their organisation (Government of United States, 2017[73]). Also, the United States' 2021 Federal Data Strategy Action Plan foresees the analysis of gaps on data skills in the public sector, training and mentoring programs to upskill public officials with capacities on data-driven and evidence-building activities. According to the Acton Plan, by the end of 2022, agencies should have a solid foundation throughout their workforce, including a minimum level

of data literacy among all staff and a sufficient accumulation of data skills to allow effective performance of all aspects of the data lifecycle (Government of United States, 2021[74]).

The combination of these two instruments, along with enhanced incentives and guidelines, are good examples of effective tools that can accelerate the use of open data, and data in general, in the public sector, to create public value.

Source: Korea (2022), *Data.go.kr: Face Mask*, https://www.data.go.kr/index.do; Kim, H. (2020), "Lesson Learned from the Power of Open Data: Resolving the Mask Shortage Problem Caused by COVID-19 in South Korea", http://dx.doi.org/10.3390/su13010278; United States (2017), H.R.1770 - *OPEN Government Data Act*, https://www.congress.gov/; United States (2021), *Federal Data Strategy: 2021 Action Plan*, https://strategy.data.gov/2021/action-plan/.

Fostering Open Data Integration: Application Programming Interfaces (APIs)

APIs are important to allow real-time integration into the data value chain of key actors. They contribute to market competition (e.g. by decreasing information asymmetries), increased benefits to consumers (e.g. by enabling informed decisions), enable services and businesses innovation, and foster ecosystem development and co-creation (European Commission, 2021[75]).

Real-time access to datasets through APIs enables the re-use of open government data outside the public sector and are essential to support the business case for the long-term continuity of open data policies. Yet, setting up infrastructure, processing and updating data, and other operational activities are among the expected costs of having in place functioning APIs. For example, recent studies indicate that, on average, an API set up can cost up to 50,000 euros, based on data from European countries (European Commission, 2018[76]).

In light of these costs, some countries might face challenges to ensure that open government data is released with the needed APIs thus leading them to explore alternatives, such as fee-based or premium business models. Under these alternative approaches, open government data is usually free for accessing and downloading, but more advanced tools for data integration are charged. These alternative models restrict data use to resourced companies and individuals, hinder the democratic nature of the open government data movement, and prevent some groups from realising the benefits of open government data.

Despite the set up and maintenance that APIs require, a recent study suggests that API-related costs are substantially lower than the potential economic value of data reuse (European Commission, 2018[76]). In addition, when assessing certain datasets, the study concluded that making datasets available through APIs and for free can increase the number of data-set re-use over a hundred times. Box 9.9 provides some examples that illustrate the impacts of APIs on data re-use and its potential economic value.

Finding the right balance to accommodate infrastructure and operational costs of APIs without compromising advancements in recent years of the open data agenda can be challenging.

Economic benefits of real-time access to datasets through APIs often accrue in different departments from where costs are born, and government budgeting is often not set up to reconcile them (Open Ownership, 2021[77]). Therefore, before imposing charges for API services, ***the Brazilian government may want to consider reconcile API costs against revenues through, for example, internal budget processes and clear interdepartmental agreements***. These agreements should be long-term and transcend annual budgeting.

Box 9.9. Enabling the Re-Use of Open Government Data through Application Programming Interfaces

Denmark: Accessing Addresses, Road Names, and Zip Code Data through "Danmarks Adressers" Web API

"Danmarks Adressers" Web API (DAWA) displays data and functionality regarding Denmark's addresses. A wide range of relevant data points are included, such as location in the form of coordinates, connection to the municipality, parish, court and police district. DAWA enables address functionalities, such as address entry, search and local address database (DAWA, 2022[78]). The target audience is developers seeking to integrate address functionalities in their systems. The API is available in open source.

The Danish government "basic data policy" program ("Grunddataprogrammet") helped fund the project, and is among the main reasons for AWA's success. To maintain the API lifecycle management and ensure its quality, annual budget is secured to the project. An API study funded by the European Commission suggests that annual budget dedicated to the maintenance of the API is secured by the economic benefits the application brings (European Commission, 2018[79]). For example, the study points that business case savings are EUR 33.5 million per year and that DAWA stimulates new uses of address data and functionality. Initial development cost was EUR 270 000 and operational cost of EUR 135 000 per year, including costs with AWS suite. Analysis of the benefits indicates that DAWA enables a sizable return on investment (European Commission, 2018[79]). Benefits comprise significant efficiency savings in public service delivery, and help citizens and businesses to remain informed, saving their time and money.

Sweden: Partnering for Real-Time and Free of Charge Public Transport Data

In Sweden, since 2011 a joint public open data initiative, Trafiklab, offers a wide range of APIs and real-time data, for example, on ticket prices, timetables and system status. The initiative is formed by public transportation companies (Samtrafiken, Stockholm Public Transit, Östgötatrafiken), public transport administration (Trafikverket) and research bodies (RISE Viktoria). Several other collaborations take place through Trafiklab with various actors both within and outside the public transport sector (Trafiklab, 2022[80]).

The initiative aims to foster open data-based innovation and entrepreneurship in the transportation sector. Public transportation data is free of charge and provided via an open API. The creation of the national data-sets costs approximately one million euro per year. The Trafiklab itself has an annual costs of around EUR 400 000. Thanks to this platform important projects in the transportation field were created, such as Citymapper, a top list popular navigation app; STHLM Traveling, a trip planner for walking, biking and public transport in for Stockholm, Skånetrafiken and Västrafik; and Skjutsgruppen, an application that offers travellers seats in private buses, boats, cars, air balloons and public transport in Sweden.

Source: DAWA (2022), *Danmark Adressers Web API*, https://dawadocs.dataforsyningen.dk/; European Commission (2018), *Digital Government Benchmark API study*, https://joinup.ec.europa.eu/sites/default/files/document/2018-10/330046042jrc_digitalgovernmentbenchmark_finalreport_api_7.0.pdf; Trafiklab (2022), *Trafiklab: About Us*, https://www.trafiklab.se/.

Creating Value for the Public Good: Data Partnership and Donorship

Data partnership and donorship are a key enablers of innovation and growth for the public and private sectors. The non-rivalrous nature of data, combined with technological innovations such as the availability

of big data analysis and artificial intelligence applications maximise the value of data. Usually data sourced from academia, NGOs and, notably, the private sector can only be shared under special conditions (e.g. due to privacy, personal data, intellectual property and other confidentiality reasons). Successful and sustainable data sharing partnerships must be legally compliant, technically feasible, socially acceptable, financially and commercially viable, and mitigate risk effectively. Initiatives from major technology companies such as Facebook Data for Good (Meta, 2022[81]), Uber Movement (Uber, 2019[82]), and Google Dataset Search (Google, 2022[83]) show the growing role of the private sector in enabling data access, sharing and discoverability. The COVID-19 pandemic also underpinned the importance of timely and free (open) data flows from different sources to help governments and societies to tackle global emergencies. To become more cost-efficient, promote collaborative insight generation and provide services effectively (see Enabling User and Data-Driven Services), the Brazilian public sector can benefit greatly from partnering with other sectors.

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Drawing upon the experience of the COVID-19 pandemic, ***the Brazilian government could engage stakeholders to identify strategic datasets of public interest and explore partnerships***. In light of the urgent need to address "infodemic"[2] (WHO, 2020[84]), encompassing data donorship and partnership as part of the open data agenda can help not only expand the volume of datasets available for public good but also contribute to better policymaking and delivery of services in contexts that require resilience, rapid responses from government, and streamlined data access and sharing.

Brazil could also consider creating sandboxes for pilot collaborations to help assess the potential value of projects, test partnerships for specific societal needs, and improve the practicalities for data sharing between public, private and civil society organisations. In addition to that, ***it is recommended that the Brazilian government conduct research to obtain further empirical evidence on the benefits of data partnership and donorship for the public interest***. Box 9.10 provides some examples of such initiatives.

Together with private and civil society organisations, the Brazilian government could also support a network of data stewards as the guardians of data and as a community of practice. Involving the public in the debate of data held by private actors (e.g. through data literacy programmes and public communication campaigns) would also help create a societal demand for further partnerships. Other mechanisms that can help data partnership and donorship gain traction with actors outside the public sector are ***creating incentives for these partnerships to happen (e.g. through public recognition of private companies and civil society organisations) and promoting awareness of their societal benefits***.

Trust is a major precondition for data partnership and donorship (Richter Peter Slowinski et al., 2019[85]). In light of frequent data breaches (Reference here 4.3.4 Protecting privacy and ensuring data protection and cybersecurity), ***it might be of Brazilian government's interest to enhance security and invest in privacy-preserving technologies to ensure that citizens and private actors do not have their personal and property rights threatened***.

Box 9.10. Enabling Innovation and Growth through Data Partnership

Netherlands: Partnering with the Private Sector to Improve National Statistics Services

The Centre for Big Data Statistics (CBS), a Dutch statistics organisation, uses big data from a variety of organisations in their projects. CBS combines a large repository of government data on communities and individuals with data from several private companies (CBS, 2022[86]). The aim is to spark opportunities for synergies between the public and private sectors, observe, measure and describe developments in society, creating high-quality visualisations and community data for people (CBS, 2016[87]).

The availability of data to the national statistics agencies increases the quality and scope of their official statistics, reduce the cost of producing them, and make situation-analysis and citizen behaviour analysis more insightful. This enables public officials to better understand people's needs and design services that better fit for their demands.

United States: Unlocking Solutions for Chronic Respiratory Diseases through Data Partnership

Propeller Health, a private company that develops solutions for chronic respiratory diseases, and the US Centre for Disease Control and Prevention (CDC) partnered to share data on chronic respiratory diseases and environmental conditions.

The company developed a smart asthma management with "environmental intelligence". The solution is a GPS-enabled tracker that monitors inhaler usage by asthmatics. The information is ported to a central database and used to identify trends for individuals, groups, and the overall population. By merging usage data with CDC information about environmental triggers of asthma (e.g. pollen count in the Northeast of the US or volcanic fog in Hawaii), Propeller Health helps physicians develop personalised treatment plans and spot prevention opportunities. This reflects in less emergency visits and better health conditions to people suffering from chronic respiratory diseases. The data partnership also benefited the public sector. Data shared by Propeller Health supported CDC to identify trends for environmental triggers of asthma (CDC, 2022[88]).

Source: CBS (2022), *About Us: CBS*, https://www.cbs.nl/en-gb/about-us/organisation; CBS (2016), *CBS, Google and Dataprovider develop new method to measure internet economy*, https://www.cbs.nl/en-gb/about-us/innovation/nieuwsberichten/recente-berichten/cbs-google-and-dataprovider-develop-new-method-to-measure-internet-economy; CDC (2022), *National Center for Health Statistics: FastStats - Asthma*, https://www.cdc.gov/nchs/fastats/asthma.htm.

Key Recommendations

- Connect open government data efforts to formal performance monitoring and indicators in the public sector, considering milestones, goals and timeframes defined in the INDA and the Open Data Monitoring Panel.
- Run assessments and training exercises to support the publication of open government data while respecting the legitimate interests of stakeholders in line with available legislation, rules and guidelines on privacy, data protection, business confidentiality and intellectual property.
- Sustain efforts to ensure that public bodies follow practices and implement initiatives towards a demand-driven data publication. Publishing the results of open data consultations in the central open data portal would also contribute to increase accountability in terms of commitments for data publication.
- Explore the use of enforcement mechanisms and financial levers such as budget allocation processes to promote the publication of PDAs.
- Sustain efforts to transform *dados.gov.br* into a thriving tool for data communities, collaboration and data crowd-sourcing.
- Strengthen stakeholder engagement for enhanced data quality and completeness, by collecting feedback from current data users on the quality and relevance of the data shared in the portal. This would also imply sustaining efforts to ensure that data shared in *dados.gov.br* meet open data requirements in terms of machine-readability, licensing, and value for stakeholders.
- Define and/or support partnerships for the access to and sharing of open data by private sector actors (data donorship), and crowdsourcing open data from other actors in *dados.gov.br*.
- Run assessments and consultations to understand the main barriers to the re-use of open government data among civil society organisations and businesses, and support research on the social and economic impacts of open government data.
- Sustain co-creation with businesses and civil society organisations to support data re-use and promote the co-creation of public services, including with actors from the Govtech ecosystem. The close collaboration between the CGU and other actors, such as the Secretariat of Digital Government at the Ministry of Economy, will be key to further connect the open government and digital government agendas in the Country.
- Advance and sustain sound initiatives (e.g. formal training programmes, performance incentives, catalogues, guidelines, laboratory for innovation) to foster public servants' expertise and data re-use within the public sector.
- Publish disaggregated and granular open data, specifically in relation to vulnerable, marginalised and population groups at risk. This would also require connecting OGD initiatives to broader data governance and management efforts in the public sector to mitigate biases affecting the generation or collection of representative and inclusive data by public sector organisations.
- Engage in social dialogue with key actors inside and outside the public sector (e.g. autochthonous communities, women, LGBTQIA+ groups) to identify gaps in representation and inclusiveness of datasets.
- Connect the publication of open government data to public communication efforts in order to channel information recipients to trusted data sources, including the open data portal, and consider increasing the number of partnerships with journalists, civil society organisations and academics to test the trustworthiness of open data and information released by the public sector.
- As feasible, provide tools such as APIs to promote real-time integration of open government data in value chains, including those from private sector actors.

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Notes

[1] More than 5 times between 2017 and 2018.

[2] Overabundance of both accurate and false information that makes it difficult to identify trustworthy sources.

Glossary of key terms

Term	Definition
Civic space	The set of legal, policy, institutional and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organise and participate in public life.
Levels of government	Central and subnational levels of government.
Non-public stakeholders	Any interested and/or affected party – including individuals, institutions and organisations – which is not from the government or any of its related public entities. Examples are CSOs, journalists, citizens, bloggers, members of political parties, members of the private sector or business associations, trade unionists, academics, human rights defenders, activists.
Open government institutional architecture	Set of institutions, policies and co-ordination mechanisms to enable a integrated open government approach.
Open government initiatives	Actions undertaken by the government, or by a single public institution, to achieve specific objectives in the area of open government, ranging from the drafting of laws to the implementation of specific activities such as online consultations.
Open government literacy	The combination of awareness, knowledge and skills that public officials and stakeholders require to engage successfully in open government strategies and initiatives.
Open government strategy	A document that defines the open government agenda of the central government and/or any of its subnational levels, as well as that of a single public institution or thematic area, and that includes key open government initiatives together with short, medium and long-term goals and indicators.
Open government	A culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth.
Open state	A process whereby the executive, legislature, judiciary, independent public institutions and all levels of government – recognising their respective roles, prerogatives and overall independence, according to their existing legal and institutional frameworks – collaborate, exploit synergies, and share good practices and lessons learned among themselves and with other stakeholders to promote transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth.
Policy cycle	A process that includes identifying policy priorities, drafting the actual policy document, policy implementation, and monitoring implementation and evaluation of the policy's impacts. Stakeholders: any interested and/or affected party including: individuals, regardless of their age, gender, sexual orientation, religious and political affiliations; and institutions and organisations, whether governmental or non-governmental, from civil society, academia, the media or the private sector.
Public stakeholders	Any interested and/or affected party – including individuals, institutions and organisations – from the government or any of its related public entities.
Citizen and stakeholder participation	Consists of all the ways in which stakeholders can be involved in the policy cycle and in service design and delivery. These include: • *Information:* an initial level of participation characterised by a one-way relationship in which the government produces and delivers information to stakeholders. It covers both on-demand provision of information and "proactive" measures by the government to disseminate information • *Consultation:* a more advanced level of participation that entails a two-way relationship in which stakeholders provide feedback to the government and vice versa. It is based on the prior definition of the issue for which views are being sought and requires the provision of relevant information, in addition to feedback on the outcomes of the process. • *Engagement:* a process whereby stakeholders are given the opportunity and the necessary resources (e.g. information, data and digital tools) to collaborate during all phases of the policy cycle and in service design and delivery.

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