



FREE
EXPRESSION
MATTERS



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INTERNATIONAL
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PROGRAM

PEN International, PEN Canada and the International Human Rights Program at the University of Toronto Faculty of Law

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Submission on Brazil

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I. INTRODUCTION

1. PEN International, PEN Canada, and the International Human Rights Program (IHRP) at the University of Toronto's Faculty of Law welcome the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the climate for free expression – a right protected under domestic¹ and international law² – and the situation of writers and journalists in the Federal Republic of Brazil since the last Universal Periodic Review (UPR) on 25 May 2012.

II. EXECUTIVE SUMMARY

2. Since the last UPR, Brazil has come under significant domestic and international scrutiny as the host of the 2014 FIFA³ World Cup and the 2016 Olympics. Government corruption scandals and political crises, serious economic recession, wide socioeconomic discrepancies within the population, and the billions of dollars spent on the two sporting events sparked social and political unrest, leading to numerous large-scale protests and demonstrations. Both 2013 and 2014 saw significant violence against journalists due to the police's abusive response to the protests, among other causes. Violence against journalists, including killings, continued in 2015 and 2016.
3. In the 2012 UPR, Brazil accepted the recommendation to 'take all necessary measures to ensure the physical integrity of journalists and human rights defenders'⁴ (see para. 7 below) and combat impunity (see para. 17 below). Brazil also accepted several recommendations on ensuring the protection of its human rights defenders, especially through better implementation of its national programme for the protection of this group, which includes journalists (see para. 11 below).⁵ In addition, Brazil agreed to 'consider

freedom of expression concerns when drafting cybercrime legislation’⁶ (see para. 27 below).

4. PEN and IHRP welcome several positive developments since the last UPR, including an unprecedented number of convictions for the murder of journalists, Brazil’s eventual backing for the UN Plan of Action for Security of Journalists and the Issue of Impunity in June 2012, and the October 2012 establishment of a Working Group to investigate attacks on the press and provide recommendations to the government. In May 2012, the federal Access to Information Law came into force. In April 2014, Brazil emerged as a global champion of digital rights with the passing of the highly progressive Marco Civil da Internet, which safeguards user privacy and protects freedom of online expression. In 2015, the Brazilian Supreme Court unanimously overturned a ban on the publication of unauthorized biographies.
5. However, numerous concerns remain. Violence against journalists and bloggers, including fatal violence, remains worrying commonplace, as does impunity in these cases. Brazil’s National Programme for the Protection of Human Rights Defenders lacks the regulatory framework, technical capacity or resources to adequately protect at-risk human rights defenders, including journalists. Since 2015, Brazil has made significant legislative attempts to roll back digital rights. There is continued judicial censorship of online content perceived to defame or violate individuals’ privacy through court gag orders, criminal defamation laws and restrictive election laws. Despite the introduction of the Access to Information law, this right is undermined by a lack of compliance by local authorities, and may be further restricted by changes to the federal oversight system in 2016 (para. 47).
6. This submission examines the following key freedom of expression issues:
 - (a) Violence against journalists, bloggers and writers (para. 7)
 - (b) Protection mechanisms for journalists and human rights defenders (para. 11)
 - (c) Impunity for violence against journalists and bloggers (para. 17)
 - (d) Digital freedom (para. 26)
 - (e) Judicial censorship (para. 33)
 - i. Criminal defamation (para. 34)
 - ii. Unauthorized biographies (para. 36)
 - iii. Court gag orders (para. 39)
 - iv. Elections law (para. 43)
 - (f) Freedom of information (para. 45)

Recommendations are listed at the end (para. 49).

III. RELEVANT ISSUES

(a) Violence Against Journalists, Bloggers and Writers

7. Despite the Brazilian state's acceptance of the recommendation to take all necessary measures to ensure the physical integrity of journalists and human rights defenders at the 2012 UPR (R.119.89 – France⁷), many journalists in Brazil still face constant threats, intimidation and physical attacks, including killings. A total of 321 journalists were attacked between 2009 and 2014, according to a March 2014 report by a Working Group of civil society organizations, government officials and media professionals⁸ set up by former President Rousseff in 2012 to investigate attacks on the press.⁹ The report noted the frequent involvement of local authorities in these attacks and identified impunity as a key factor in their recurrence. (The report's recommendations are discussed below).
8. Fatal violence has remained a constant in the period under review. According to PEN International's research, 14 print and internet journalist and bloggers were killed between January 2012 and August 2016 (2012 - 4; 2013 - 2; 2014 - 2; 2015 - 3; January to August 2016 - 3). Over half of them (eight, or 57 per cent) ran a news website or newspaper (editor/ owner/ director) and over a third were bloggers (five, or 36 per cent), while one was a reporter who was also writing a book. The vast majority (13, or 93 per cent) are reported to have written on – and in some cases to have been involved in (as activists or staffers of local government or political parties) politics, often criticizing local officials and corruption. Other topics covered by the deceased journalists and bloggers included police corruption and wrongdoing, organized crime and shady business dealings. At least seven of them (50 per cent) had reportedly received threats or death threats prior to their deaths.
9. PEN International also recorded 49 non-fatal attacks on print and internet journalist and bloggers in Brazil between January 2012 and August 2016. The most common form of attack was assault (14), harassment (14), prosecution (6), threats (5) and death threats (4). 2013 and 2014 saw a noticeable rise in attacks.
10. The rise in attacks in 2013-14 was due in part to official repression of journalists covering mass anti-government demonstrations against the increasing cost of public transport, the rise in corruption, and the use of public funds to host the 2014 World Cup. During these protests, law enforcement personnel detained, harassed and attacked dozens of journalists and even more protestors. In general, the police and security service response to the demonstrations was violent, indiscriminate and disproportionate, and included an intense use of tear gas and rubber bullets that injured journalists as well as civilians.¹⁰ In 2014, the Brazilian National Federation of Journalists (FENAJ) documented a total of 129 incidents of aggression against journalists, 77 of which took place while they were covering protests. More than 60 per cent of the attacks were

carried out by law enforcement officials.¹¹ Human Rights Watch reported that Brazilian security forces injured or detained 178 journalists who covered demonstrations around the country from mid-2013 to mid-2014.¹²

(b) Protection Mechanisms for Journalists and Human Rights Defenders

11. In March 2012, Brazilian officials, together with officials from other countries with high rates of impunity, such as Pakistan and India, objected to the UN Plan of Action for the Safety of Journalists and the Issue of Impunity¹³ intended to strengthen international efforts to prevent journalists' murders and impunity. However, due to pressure from human rights advocates, the government backtracked in June 2012 and the UN plan was adopted.¹⁴
12. At the 2012 UPR, Brazil accepted several recommendations to ensure protection of human rights defenders (R.119.82 – Switzerland; R.119.83 – Timor-Leste; R.119.84 – United Kingdom; R.119.85 – Australia; R.119.87 – Poland; R.119.88 – Czech Republic¹⁵) and journalists (R.119.89 - France¹⁶), and to better implement the national programme for the protection of human rights defenders (R.119.80 – Norway; R.119.81 – Spain; R.119.86 – Belgium¹⁷).
13. Brazil formally created the National Programme for the Protection of Human Rights Defenders¹⁸ (PPDDH) in 2004 though it reportedly did not become functional until 2005 and the decree establishing it was not approved until 2007.¹⁹ Overseen by the federal Human Rights Secretariat (SDH)²⁰, which is part of the Ministry of Justice, PPDDH is responsible for the protection of human rights defenders²¹, including journalists. It relocates and provides police protection to individuals who are at-risk, threatened, or under attack because of their work.²² Journalists are not explicitly named as a protected group but the government has adopted a broad definition of human rights defenders to include various at-risk groups, including journalists and media groups.²³
14. At the federal level, PPDDH is implemented by the General Coordination Committee which is affiliated with the SDH and is made up of civil society representatives and representatives of all three branches of the government. State Coordination Committees implement PPDDH in states that have signed agreements to participate in the protection programme.²⁴ According to the SDH, seven states (out of 26 states and the Federal District) are currently implementing PPDDH²⁵, with the Federal Technical Team of the SDH responsible for the rest of the states. A total of 133 at-risk human rights defenders in Brazil are under federal PPDDH protection while 209 are under the protection of state programmes.²⁶ However, other sources²⁷ suggest that the numbers may be lower, with PPDDH active in only five states²⁸ as of June 2015, at which point three states²⁹ had

reportedly suspended or largely deactivated their state-level programs. This places human rights defenders, including journalists, in these states at a significant risk.³⁰

15. The PPDDH has been criticized on several other accounts. Rights groups have commented that it lacks the financial resources and the technical capacity to provide effective and sustainable protection to human rights defenders.³¹ The programme is focused on police protection and fails to address the systemic reasons behind the violence and threats.³² The PPDDH still lacks a legal and regulatory framework and is only based on Presidential Decree No. 6.044³³ (2007) which outlines the National Human Rights Defender Protection Policy.³⁴ Since 2009, the Brazilian National Congress has been considering a bill³⁵ that establishes a regulatory framework for PPDDH. Despite being approved by the internal committees of the Brazilian House of Representatives in 2011³⁶, as of August 2016 the bill had not been put up for vote in the Chamber of Deputies.

16. The Working Group on attacks on the press set up by former President Rousseff in 2012 (see above) provided several recommendations to the federal government to strengthen protection mechanisms for journalists in its final report in March 2014. These included expanding the PPDDH to explicitly include journalists and other communicators who are threatened or attacked because of their work.³⁷ The Working Group also recommended that the Brazilian Congress, through its Human Rights Committee, should oversee and encourage the implementation of these recommendations.³⁸ Further, it suggested that the National Council of Public Prosecutors (CNMP) should oversee the implementation of the protection mechanisms by public officials.³⁹ The Working Group's 2014 report did not propose a clear timeline for the implementation of its recommendations.⁴⁰ As of June 2015, the government had not taken any specific steps to put them in action.⁴¹

(c) Impunity for Violence against Journalists and Bloggers

17. As noted above (paragraph 11), after initial opposition, Brazil eventually backed the UN Plan of Action for Security of Journalists and the Issue of Impunity in June 2012.

18. In the 2012 UPR, Brazil accepted a general recommendation on combating impunity (R.119.31 – Cape Verde) as well as several more specific associated recommendations. The latter included: to establish measures for greater accountability to prevent loss of life (R.119.59 – Namibia), to institute a federal investigation and prosecution in all cases involving violence against human rights defenders (R.119.79 – Netherlands), and to ensure thorough and impartial investigations into human rights violations and abuses including killings, in particular where law enforcement agents are implicated (R.119.120 – Slovakia; R.119.122 – Czech Republic), among others.⁴²

19. The Brazilian justice system is characterized by high levels of impunity, and murder cases of journalists are often left unsolved. According to PEN International's research, of the 25 print and internet journalists and bloggers killed between January 2004 and August 2016, 21 cases (84 per cent) remain unpunished, with none of the perpetrators having been convicted.
20. Between 2013 and 2015, Brazil took a significant step in challenging impunity after its courts reached convictions in five different cases of murdered journalists.⁴³ However, in only two⁴⁴ of the five cases has a 'mastermind' (individual who ordered the killing) been brought to justice, despite the fact that at least one mastermind has been identified in all five cases. In the other three cases, the courts convicted only the individual(s) who physically carried out the crime.
21. Crimes against freedom of expression in Brazil generally do not fall under federal criminal jurisdiction, but rather are the responsibility of state investigative agencies. Homicides, including of journalists, are usually investigated by the state civil police, unless the case is suspected to involve cross-border crime (such as drug trafficking) or crimes of national interest (e.g. money laundering or contraband) or if the perpetrator is a federal official.
22. In 2004, Article 109 of the Brazilian Constitution was amended (Constitutional Amendment 45/2004⁴⁵), granting the Attorney General's Office the power to transfer cases to federal jurisdiction when grave violations of human rights, including freedom of expression, are suspected.⁴⁶ However, 10 years later, as of March 2014, only one such case had been transferred.⁴⁷ (It is not clear how many cases have been transferred since 2014, although the case of one journalist who was assaulted and threatened with death in December 2015 was reportedly transferred in early 2016⁴⁸).
23. In March 2014, the Working Group on attacks on the press (see above) recommended federalizing the investigation of crimes against free expression to increase efficiency and reduce local bias.⁴⁹ In May 2014, former President Dilma Rousseff pledged to pursue 'zero impunity' and support legislative efforts to federalize such crimes.⁵⁰ Yet a 2011 bill proposing that the federal police would take over any investigation of human rights violations, including freedom of expression, when local authorities fail to solve a case within 90 days⁵¹ (Bill No. 1078/2011, seeking to amend Law No. 10.446/2002⁵²) had not become law as of August 2015 and appears to have stalled.⁵³
24. The Working Group on attacks on the press also recommended in 2014 that the Brazilian Ministry of Justice should work with UN bodies to establish an Observatory on Violence Against Journalists to record attacks and track the formal resolution status of these

cases.⁵⁴ However, this has apparently yet to be set up, despite support from journalists' and press freedom groups in the country.⁵⁵

25. A further obstacle to combatting impunity is the continued use of the Amnesty Law (Law No.6.683/79⁵⁶) to avoid criminal prosecution for serious human rights violations committed during the military dictatorship. On 22 April 2016, the Inter-American Commission on Human Rights (IACHR) referred the case of journalist Vladimir Herzog and others to the Inter-American Court of Human Rights (Case 12.879) after Brazil failed to comply with the IACHR's recommendation to investigate and prosecute Herzog's arbitrary detention, torture and killing by state agents at an army facility on 25 October 1975.⁵⁷

(d) Digital Freedom

26. Improved internet access and the growing popularity of social media platforms and blogs have allowed many Brazilians to seek and share information and express themselves online with ease. Brazil is one of the largest internet markets in the world, with 58 per cent of its population, or over 120 million people, having access to the internet. Forty-nine per cent of the population, or 103 million people, are active social media users.⁵⁸
27. PEN and IHRP welcome Brazil's support for international initiatives in relation to digital freedom made since the 2012 UPR, in line with the recommendation it accepted to 'consider freedom of expression concerns when drafting cybercrime legislation' (R.119.130 - Estonia). In 2013, Brazil co-sponsored a draft UN resolution on the 'right to privacy in the digital age'⁵⁹, which created international dialogue on privacy in the context of national and extraterritorial surveillance and mass collection of personal data.⁶⁰ The state went on to sign a follow-up resolution⁶¹ creating the mandate of a Special Rapporteur on the Right to Privacy to monitor, promote, and protect the right to privacy around the world.⁶² Adopted by the Human Rights Council on 26 March 2015, the resolution requires states to cooperate fully with Special Rapporteur and respect their international human rights obligations regarding the right to privacy when intercepting digital communications or collecting personal data.⁶³
28. In April 2014, Brazil passed the Marco Civil da Internet ('Civil Rights Framework for the Internet'⁶⁴) into law.⁶⁵ The Marco Civil, touted as the 'internet bill of rights', is a ground-breaking piece of legislation that safeguards user privacy and protects freedom of online expression. First conceived in 2007, the Marco Civil went through a robust and collaborative consultation process that involved multiple stakeholders, including civil society, government agencies, internet companies, the technology sector, academics, and internet users.⁶⁶

29. While PEN and IHRP welcome the Marco Civil, they note that the law has certain shortcomings. First, it requires user data retention by Internet Service Providers (ISPs) for one year⁶⁷ and by application providers, including social media and video-hosting websites, for six months.⁶⁸ However, a court order is required to access this information.⁶⁹ Second, it does not protect online content and internet users from judicial censorship.⁷⁰ As a result, public figures and government officials have taken advantage of Brazil's broad privacy and anti-defamation laws to remove content, silence detractors, and seek damages (see Section (e) below – para. 33).
30. PEN and IHRP also note with concern multiple legislative attempts to curb digital rights in Brazil since the Marco Civil was passed.⁷¹ As of June 2016, the Brazilian Senate was due to consider a raft of legislation proposed in 2015 – collectively nicknamed the 'spy bill' by critics – that would roll back key provisions of the Marco Civil.⁷² If passed into law, this legislation⁷³ would allow the police and other authorities to access internet user metadata and private digital communications without the need for a court order. Comments or content about other citizens, including political figures, which are deemed to be defamatory would also be criminalized.⁷⁴
31. The judiciary has also played a key role in rolling back digital freedoms. The Marco Civil limits liability for internet intermediaries, such as ISPs, search engines, and companies that host third-party web content.⁷⁵ However, in March 2015, the Superior Court of Justice held that news providers can still be held accountable for third party comments on their websites and they have a duty to ensure that their platforms are not used to spread content that defames someone or violates their privacy.⁷⁶
32. The Brazilian judiciary has also clashed with large technology companies, such as Google and Facebook, when the companies failed or refused to cooperate with requests for information. As of August 2016, the instant messaging application WhatsApp, which is extremely popular in Brazil where it has over 100 million users⁷⁷, had been shut down by court order for up to 72 hours at least three times in 20 months: in December 2015⁷⁸, May 2016⁷⁹ and July 2016⁸⁰. Each time the suspension was justified on the ground that the company had allegedly failed to provide information related to criminal investigations. Such disruption can particularly affect journalists who often use WhatsApp to share information and communicate with sources.⁸¹ Although on all three occasions the bans were overturned in 24 hours or less, such blanket blockings have a chilling effect on freedom of expression and access to information.

(e) Judicial Censorship

33. Despite the constitutional guarantee of freedom of the press⁸², politicians, government officials, businessmen, and celebrities have successfully used strict privacy and anti-defamation laws to silence critical or unflattering stories about them. Judicial censorship

of authors, journalists, media outlets, bloggers, and internet companies has become a significant barrier to freedom of expression in Brazil.

(i) Criminal defamation

34. Defamation is still criminalized under the Brazilian Penal Code and can be prosecuted as ‘defamation’, ‘calumny’, or ‘injury offending the dignity of another person’⁸³, punishable by a prison sentence and/or a fine. Calumny (falsely accusing someone of a crime) may lead to imprisonment of between six months and two years, and a fine (Article 138). Defamation of character is punishable by between three months and one year’s imprisonment and a fine (Article 139). Finally, those found guilty of ‘offending the dignity of another person’ may face between one and six months in prison, or a fine (Article 140). The penalties for these crimes may increase by up to a third if committed against Brazil’s President, the head of state of other countries, or public officials (Article 141).
35. Such criminalization of defamation can have a severe impact on individual writers’ ability to express themselves critically and to share information freely in Brazil, and is likely to have a chilling impact on others. For example:
 - (a) In December 2012, a high court judge in Sergipe brought civil and criminal proceedings against journalist and blogger **José Cristian Góes** for libel and defamation following the publication of a short, fictional story on his blog in May that year. Góes was convicted of criminal defamation on 4 July 2013 and was sentenced to seven months and 16 days in prison, although the sentence was later commuted to community service. Góes was also ordered to pay R\$ 30,000 (US\$ 8,566) in damages and costs. On 27 October 2013, an Appeals Court in Sergipe upheld the lower court decision; as of April 2016, a further appeal was pending before the Federal Supreme Court.
 - (b) On 6 July 2015, blogger **Paulo Cezar de Andrade Prado** (Blog do Paulinho) was arrested after he published a story claiming that the president of a local football club was hiring a coach for the club. The club president accused Prado of breaching his privacy and divulging personal information; Prado says he received this information after he joined a WhatsApp group that both men were part of. During police questioning, Prado was told that in October 2014, he had been found guilty of criminal defamation based on 2011 posts of his criticizing a prominent lawyer, and sentenced to five months and 10 days in prison. He had not been notified of the sentence. Prado was jailed immediately and released on 13 November 2015 after serving around four months of his sentence.

(ii) Unauthorized biographies

36. Brazil also has strict civil privacy and anti-defamation laws, particularly under Articles 17, 18, 20, and 21 of the 2002 Civil Code. Article 17 broadly stipulates that one's name 'cannot be used by others in publications... that expose the person to public scorn, even when there is no defamatory intent.'⁸⁴ Article 20 stipulates that 'unless authorized or necessary to the administration of justice or the maintenance of public order, the dissemination of words or writings or the display or use of a person's image may be prohibited at his or her request regardless of any applicable damages which may ensue, if it harms the honor, good reputation or respectability of the individual, or if intended for commercial purposes.' Under Article 21 of the Civil Code, judges, upon request, are allowed to take 'necessary measures to prevent or terminate any acts' that are seen to violate an individual's private life.⁸⁵
37. Prominent public figures have taken advantage of these provisions to block the publication of unauthorized biographies, including books, documentaries, plays, and films. The controversy came to a head in 2007 when Brazilian singer Roberto Carlos succeeded in forcing a publisher to remove an unauthorized biography of him from stores, arguing it violated his right to privacy under the Civil Code.⁸⁶ Subsequently, many other well-known musicians and public figures used this law to delay or block the publication of unauthorized biographies of their lives. Brazilian authors, journalists, publishers, and other free speech advocates criticized the ban as effectively amounting to unlawful censorship.⁸⁷
38. On 10 July 2015, the Brazilian Supreme Court unanimously ruled that it was unconstitutional to require biographers to obtain prior authorization from the subject of their biographies or their families. The Court ruled in favour of the National Association of Book Publishers (ANEL), finding that the need for authorization constituted a private form of censorship and that limiting access to information restricts the right to freedom of expression. However, the Court also noted that freedom of expression is not an absolute right and biographers may still be held liable for damages if the biography offends or harms the subject or their family.⁸⁸

(iii) Court gag orders

39. Court orders are often sought to bar journalists from publishing or to remove published material. Journalists that fail to comply with such orders do so may be subject to penalties, such as fines, injunctions, arrest and prison sentences, often on the basis of privacy and defamation legislation⁸⁹ (discussed in Section (e) (i) above) and electoral laws (see Section (e) (iii) below).

40. Internet companies such as Google are frequently ordered to remove online content, including blogs and videos, deemed offensive to public figures. According to the bi-annual Google Transparency Report, Brazil is consistently among the countries that make the highest number of content removal requests, court orders obliging the company to take down hundreds of blog posts and links each year. From January to June 2015, half of these requests (50 per cent) cited defamation as the reason, followed by privacy and security (31 per cent).⁹⁰ A striking number of the examples of take-down requests made between 2012 and 2015 appear to have been made to protect judges, local authorities and officials and the police.⁹¹
41. These lawsuits and the financial costs associated with them are often used as a way to intimidate reporters and news outlets, and to stop them from criticizing prominent public figures.⁹² Many news organizations are unable to afford the legal costs of defending themselves in courts and face exorbitant fines if found guilty. While many of the lower court decisions are eventually overturned on appeal, the appeal process is costly and may take months or even years.⁹³ This may lead to self-censorship as some media choose to stay away from controversial topics, such as government corruption, in order to avoid legal persecution and gag orders.⁹⁴ In addition to muzzling political criticism, such a climate of censorship and self-censorship also hinders free reporting on sensitive issues of local and national interest, such as business dealings and the administration of public funds.
42. Bloggers and independent journalists are particularly disadvantaged because they often lack the financial resources or institutional backing to successfully fight such litigations, and make for easy targets.⁹⁵

(iv) Elections law

43. Brazil has particularly restrictive limits on the publication and dissemination of content relating to elections under federal Elections Law no. 9.504.⁹⁶ While the law does not permit instant censorship or any form of prior censorship during free (i.e. publicly funded) electoral publicity⁹⁷, it prohibits publicity that ‘may degrade or ridicule candidates’⁹⁸ or that is ‘offensive to the honour of the candidate or to morals and good customs’⁹⁹ in the three months before an election. Online content that violates these laws is subject to content removal requests, and journalists, bloggers, editors and the owners of publications found to be in violation of this law may potentially face fines or even prison sentences of up to four years.¹⁰⁰
44. This has led to noticeable spikes in cases and content removal requests during the lead-up to elections in 2012 and 2014¹⁰¹. In the second half of 2012, a municipal election year, Google received a total of 697 content takedown requests from Brazil; of these,

235 court orders and three executive requests were related to election law violations.¹⁰² During the October 2014 general elections, the electoral law was used to launch almost 200 lawsuits and to justify multiple content removal requests. In addition to issuing fines and prison sentences, courts have also blocked media outlets from publishing names and images when discussing allegations of fraud or corruption, and in at least one case, blocked a newspaper from releasing the results of a voter poll.¹⁰³

(g) Freedom of Information

45. The November 2011 federal Access to Information Law¹⁰⁴ – the result of years of advocacy by journalists, NGOs and members of Congress and government – came into force in May 2012.¹⁰⁵ The law ensures public access to information from the government's legislative, executive, and judicial branches at the federal, state and municipal levels (Article 1). The law also offers access to information related to private bodies that receive public funding (Article 2), as well as information about human rights violations (Article 21).
46. The ‘Brazil Transparency Scale’¹⁰⁶ (zero to ten) was designed by the Comptroller General of the Union (CGU¹⁰⁷), the federal government’s transparency and anti-corruption body, to assess compliance with the Access to Information.¹⁰⁸ A review of the CGU’s most recent report and two other studies on the implementation of the law (all covering data from 2014) concluded that, although the law represents an important step towards transparency by the federal government, much remains to be done in terms of translating this right into a reality, particularly at municipal level. According to the CGU data, 63 per cent of municipalities scored zero and 22.3 per cent a grade of one, while over 85 per cent of the cities scored zero or one. Only six states (out of 27) and seven cities scored nine or more.¹⁰⁹
47. In May 2016 – hours after the Senate vote for the suspension of former President Rousseff – the CGU was shut down by the interim government, which replaced it with the newly created Ministry of Transparency, Oversight and Control^{110, 111}. There are serious concerns that this move may weaken the oversight system for compliance with the Access to Information Law and more generally the fight against corruption in the country.¹¹² The new Ministry will reportedly lack CGU’s status as a ‘Super Ministry’, and therefore its autonomy and institutional capacity to control the activities of other ministries and its direct link to the Presidency.¹¹³ The new Transparency Minister, Fabiano Silveira, was forced to resign weeks after his appointment in May 2016 due to allegations that he had been implicated in an attempt to undermine the investigation into the Lava Jato national corruption scandal.¹¹⁴ This did little to allay fears that the CGU’s downgrading was a political decision aimed at reducing rather than improving transparency.

48. There has been significant pressure both nationally and internationally to reinstate the CGU.¹¹⁵ As of May 2016, some constitutional amendments proposing to strengthen the Ministry and redefine it as a permanent state body were reportedly pending before the Brazilian Congress.¹¹⁶

IV. RECOMMENDATIONS

49. **In light of these concerns, the coalition makes the following recommendations to the Brazilian government:**

1. Violence Against Journalists, Bloggers and Writers:

Prevent violence against journalists, bloggers and writers, including killings, physical assaults, harassment, threats and intimidation, by:

- publicly condemning such attacks at all levels of the state;
- ensuring that public demonstrations are policed in such a way that allows this group to carry out their work freely;
- providing journalists, bloggers and writers at risk with effective protection.

2. Protection Mechanisms for Journalists and Human Rights Defenders:

Strengthen the National Programme for the Protection of Human Rights (PPDDH) country-wide by:

- establishing a legal and regulatory framework for the PPDDH;
- expanding the PPDDH to explicitly include journalists and ensuring wide dissemination among this group;
- ensuring adequate and sustainable funding and technical capacity for the PPDDH, particularly at state level;
- fostering improved coordination between the federal and state governments in implementing the PPDDH.

3. Impunity for Violence against Journalists, Bloggers and Writers:

Combat impunity for violence against this group by:

- passing legislation to ensure that crimes against this group and freedom of expression are ‘federalised’, so that they are investigated by federal police officials and prosecutors;
- ensuring that prompt, thorough and impartial investigations are carried out into all attacks on this group that take full account of their writing and/ or profession as a possible motive, prioritising those cases where the involvement of state or law enforcement officials is alleged;

- ensuring that all police officials and prosecutors responsible for investigating crimes against this group receive adequate training in order to do so, for example in human rights;
- ensuring that victims and their families have access to appropriate remedies;
- considering establishing an Observatory on Violence Against Journalists to record attacks and track the formal resolution status of these cases, led by the Ministry of Justice in conjunction with UN bodies.

4. Digital Freedom:

Ensure that Brazilians can seek and share information and express themselves online freely by:

- repealing the mandatory data retention requirements under the Marco Civil;
- ensuring that the digital rights and freedoms enshrined in the Marco Civil are upheld and appropriately interpreted by the judiciary, and are not undermined by newer, more restrictive legislation.

5. Judicial Censorship:

Combat the phenomenon of judicial censorship by:

- decriminalizing defamation and making it a civil offence;
- ensuring effective implementation of the July 2015 Supreme Court ruling that it is unconstitutional to require biographers to obtain prior authorization from the subject of their biographies or their families;
- limiting the use of court gag orders to bar the publication of content on matters of public interest, in particular when take-down requests directly benefit judges, local officials and law enforcement agents;
- amending the elections law to allow for free reporting on political content during the election period, and removing criminal sanctions.

6. Freedom of Information:

- improve compliance with the 2011 Access to Information Law, in particular at municipal level;
- ensure that the federal oversight system for compliance with the law and more generally the fight against corruption is not weakened by the closure of the Comptroller General of the Union (CGU) and its replacement by the new Ministry of Transparency, Oversight and Control.

¹ The Brazilian Constitution offers strong constitutional guarantees of freedom of expression under Article 5, including free expression of thought (IV) and of intellectual, scientific, artistic and other communications activities, independently of censorship or license (IX). Biblioteca Digital da Câmara dos Deputados, ‘Constitution of the Federative Republic of Brazil’ (2010), available at: <<http://english.tse.jus.br/arquivos/federal-constitution>> (English translation).

² Brazil is bound by international obligations regarding the right to freedom of expression. Under Article 19 of the Universal Declaration on Human Rights, which is non-binding but widely accepted as customary international law, everyone has the right to freedom of expression and to seek and impart information and ideas through media (available at <<http://www.un.org/en/universal-declaration-human-rights/>>). Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Brazil in 1992, also guarantees this right (available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>). Brazil is also a signatory of the American Convention on Human Rights, Article 13 of which safeguards the right to freedom of thought and expression as well as prohibiting the government from indirectly restricting this right by impeding the circulation of ideas and opinions (available at: <https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm>).

³ Fédération Internationale de Football Association

⁴ **R.119.89:** ‘Take all necessary measures to ensure the physical integrity of journalists and human rights defenders (France)’ (available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-11_en.pdf>).

⁵ The UN Plan of Action for Security of Journalists and the Issue of Impunity states that ‘Efforts to end impunity with respect to crimes against journalists must be associated with the defence and protection of human rights defenders, more generally’ (paragraph 1.5). UN, CI-12/CONF.202/6, available at: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/official_documents/UN-Plan-on-Safety-Journalists_EN_UN-Logo.pdf>.

⁶ **R.119.130:** ‘Consider freedom of expression concerns when drafting cybercrime legislation (Estonia)’ (available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-11_en.pdf>).

⁷ **R.119.89:** ‘Take all necessary measures to ensure the physical integrity of journalists and human rights defenders (France)’ (available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-11_en.pdf>).

⁸ Presidency of the Republic, Department of Human Rights, Defense Council of Human Rights of Person, ‘Working Group ‘Human Rights Professionals of Communication in Brazil’ created by Resolution No. 07/2012’, at 9-10, available at: <<http://www.sdh.gov.br/sobre/participacao-social/cddph/relatorios/relatorio-gt-comunicadores-ingles-final>>; <http://www.sdh.gov.br/sobre/participacao-social/cddph/relatorios/relatorio_gt_resumido>.

⁹ Presidency of the Republic, Department of Human Rights, Defense Council of Human Rights of Person, ‘Working Group ‘Human Rights Professionals of Communication in Brazil’ created by Resolution No. 07/2012’, available at: <<http://www.sdh.gov.br/sobre/participacao-social/cddph/relatorios/relatorio-gt-comunicadores-ingles-final>>.

¹⁰ UN General Assembly, Human Rights Council, ‘Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya’, A/HRC/25/55/Add.3 (3 March 2014), para. 76, available at:

<<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>>; Amnesty International, ‘Brazil: Dangerous brew of police abuses and impunity threatens to mar World Cup’ (5 June 2014), available at: <<https://www.amnesty.org/en/latest/news/2014/06/brazil-dangerous-brew-police-abuses-and-impunity-threatens-mar-world-cup/>>; CPJ, ‘Halftime for the Brazilian press: Will justice prevail over censorship and violence?’ (6 May 2014), p.5, available at: <<https://cpj.org/reports/brazil2014-english.pdf>>; Amnesty International, ‘Amnesty International report 2014/15: the state of the world's human rights’ (25 February 2015), pp. 82-83, available at: <<https://www.amnesty.org/en/documents/po110/0001/2015/en/>>.

¹¹ Freedom House, ‘Freedom of the Press 2015 – Brazil’, available at: <<https://freedomhouse.org/report/freedom-press/2015/brazil>>.

¹² Human Rights Watch, ‘World Report 2015: Brazil – Events of 2014’, available at: <<https://www.hrw.org/world-report/2015/country-chapters/brazil>>

¹³ UN, CI-12/CONF.202/6, ‘The UN Plan of Action for Security of Journalists and the Issue of Impunity’, available at: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/official_documents/UN-Plan-on-Safety-Journalists_EN_UN-Logo.pdf>.

¹⁴ CPJ, ‘Halftime for the Brazilian press: Will justice prevail over censorship and violence?’ (6 May 2014), p. 10, available at: <<https://cpj.org/reports/brazil2014-english.pdf>>.

¹⁵ **R.119.82:** ‘Ensure the protection of human rights defenders, notably the leaders of indigenous communities fighting for their rights (Switzerland)’; **R.119.83:** ‘Consider the development of a comprehensive policy to address

the problem of human rights violations against its defenders founded on strategies for strengthening the independence of the judiciary and increasing the awareness of the population and public authorities as to the important role of these defenders (Timor-Leste)'; **R.119.84**: 'Ensure adequate safeguards are in place to ensure protection of human rights defenders, including those working within indigenous communities (United Kingdom)'; **R.119.85**: 'Increase funding to provide human rights advocates with adequate protection (Australia)'; **R.119.87**: 'Respect the rights of Human Rights Defenders and protect them in their everyday struggle (Poland)'; **R.119.88**: 'Intensify efforts for the security of human rights defenders and reinforce cooperation with all stakeholders, in particular, the states and military police (Czech Republic)' (available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-11_en.pdf).

¹⁶ **R.119.89**: 'Take all necessary measures to ensure the physical integrity of journalists and human rights defenders (France)' (available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-11_en.pdf).

¹⁷ **R.119.80**: 'Pass legislation, without undue delay, to confirm the official status of the National Programme for the Protection of Human Rights Defenders, and give priority to its wide implementation (Norway)'; **R.119.81**: 'Ensure that the National Programme for the Protection of Human Rights Defenders be implemented in all states of the nation (Spain)'; **R.119.86**: 'Adopt a law to confirm the official status of the national programme for the protection of human rights defenders (Belgium)' (available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-11_en.pdf).

¹⁸ Programa Nacional de Proteção a Defensores de Direitos Humanos

¹⁹ Protection International, 'Focus 2014 – Public Policies for the Protection of HRDs: Latest Trends' (2014), p.15, available at: <http://protectioninternational.org/wp-content/uploads/2015/01/focus-2014-ingles-interactiva.pdf>; Decree No. 6,044 established the National Policy for the Protection of Human Rights Defenders. Decreto Nº 6.044, de 12 de fevereiro de 2007, Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos, available at http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm.

²⁰ Secretaria Especial de Direitos Humanos, Ministério da Justiça e Cidadania (<http://www.sdh.gov.br/>).

²¹ Protection International, 'Focus 2014 – Public Policies for the Protection of HRDs: Latest Trends' (2014), p.15, available at: <http://protectioninternational.org/wp-content/uploads/2015/01/focus-2014-ingles-interactiva.pdf>.

²² See SDH website, available at: <http://www.sdh.gov.br/assuntos/combates-as-violacoes/programas/defensores-dos-direitos-humanos-1>.

²³ In a letter to the Inter American Commission on Human Rights (IACHR) dated 29 March 2013, the Brazilian State reiterated that it 'is willing to discuss and adopt broader measures to protect journalists [...] threatened for reasons associated with the free exercise of their activities.' IACHR, 'Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators' (31 December 2013), para. 139, available at:

http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf.

²⁴ IACHR, 'Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators' (31 December 2013), para. 132, available at:

http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf.

²⁵ Bahia, Ceará, Espírito Santo, Minas Gerais, Pernambuco, Rio de Janeiro and Rio Grande do Sul.

²⁶ According to the SDH website; it is not clear when this was last updated. Available at:

<http://www.sdh.gov.br/assuntos/combates-as-violacoes/programas/defensores-dos-direitos-humanos-1>.

²⁷ U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, '2014 Human Rights Reports: Brazil' (25 June 2015), available at: <http://www.state.gov/j/drl/rls/hrrpt/2014/wha/236670.htm>; Terra de Direitos, 'Challenges of the Human Rights Programme for the Protection of Human Rights Defenders' (18 June 2015), available at: <http://terradedireitos.org.br/en/2015/06/18/terra-de-direitos-entrega-documento-sobre-situacao-dos-direitos-humanos-nos-brasil-para-relator-especial-da-onu/>.

²⁸ Bahia, Espírito Santo, Minas Gerais, Pernambuco and Rio Grande do Sul.

²⁹ Ceará, Pará and Rio de Janeiro.

³⁰ Terra de Direitos, 'Challenges of the Human Rights Programme for the Protection of Human Rights Defenders' (18 June 2015), available at: <http://terradedireitos.org.br/en/2015/06/18/terra-de-direitos-entrega-documento-sobre-situacao-dos-direitos-humanos-nos-brasil-para-relator-especial-da-onu/>.

³¹ International Service for Human Rights (ISHR), 'Brazil: Protect human rights defenders working on corporate accountability' (12 June 2015), available at: <http://www.ishr.ch/news/brazil-protect-human-rights-defenders-working-corporate-accountability>; Protection International, 'Focus 2014 – Public Policies for the Protection of HRDs: Latest Trends' (2014), available at: <http://protectioninternational.org/wp-content/uploads/2015/01/focus->

[2014-ingles-interactiva.pdf](#)>; UN General Assembly, Human Rights Council, ‘Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled ‘Human Rights Council’’, A/HRC/4/37/Add.2 (19 December 2006); Amnesty International, ‘Brazil 2015/2016’, available at:

<<https://www.amnesty.org/en/countries/americas/brazil/report-brazil/>>.

³² Protection International, ‘Focus 2014 – Public Policies for the Protection of HRDs: Latest Trends’ (2014), available at: <<http://protectioninternational.org/wp-content/uploads/2015/01/focus-2014-ingles-interactiva.pdf>>.

³³ Presidência da República, Casa Civil, Decreto N° 6.044, de 12 de Fevereiro de 2007, available at: <http://www.planalto.gov.br/ccivil_03/ Ato2007-2010/2007/Decreto/D6044.htm> (in Portuguese).

³⁴ IACHR, ‘Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators’ (31 December 2013), available at:

<http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf>; Amnesty International, ‘Brazil 2015/2016’, available at: <<https://www.amnesty.org/en/countries/americas/brazil/report-brazil/>>; Terra de Direitos, ‘Challenges of the Human Rights Programme for the Protection of Human Rights Defenders’ (18 June 2015), available at: <<http://terradedireitos.org.br/en/2015/06/18/terra-de-direitos-entrega-documento-sobre-situacao-dos-direitos-humanos-nos-brasil-para-relator-especial-da-onu/>>.

³⁵ National Bill no. 4575/2009; Câmara Dos Deputados, ‘Req 3682/2011 -> PL 4575/2009’, available at: <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=526337>> (in Portuguese); Terra de Direitos, ‘Human Rights Defenders in Brazil’ (June 2015), available at: <<http://terradedireitos.org.br/wp-content/uploads/2015/10/Untitled-1.pdf>>.

³⁶ Terra de Direitos, ‘Human Rights Defenders in Brazil’ (June 2015), available at: <<http://terradedireitos.org.br/wp-content/uploads/2015/10/Untitled-1.pdf>>; IACHR, ‘Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators’ (31 December 2013), available at: <http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf>; SMDH, Article 19 et al, Official Letter No. JG/31/2016, ‘Ref: Worsening of human rights defenders (HRDs) situation in Brazil and crisis in the country’s protection policy of HRDs’ (8 March 2016), available at: <<https://smdhvida.files.wordpress.com/2016/04/informe-situacao-defensores-2016-onu-defensores-ing-1-1.pdf>>.

³⁷ Presidency of the Republic, Department of Human Rights, Defense Council of Human Rights of Person, ‘Working Group ‘Human Rights Professionals of Communication in Brazil’ created by Resolution No. 07/2012’, page 39, available at: <<http://www.sdh.gov.br/sobre/participacao-social/cddph/relatorios/relatorio-gt-comunicadores-ingles-final>>.

³⁸ Ibid., page 42

³⁹ Ibid., page 44.

⁴⁰ CPJ, ‘Halftime for the Brazilian press: Will justice prevail over censorship and violence?’ (6 May 2014), p. 7, available at: <<https://cpj.org/reports/brazil2014-english.pdf>>

⁴¹ Freedom House, ‘Freedom of the Press 2015 – Brazil’, available at: <<https://freedomhouse.org/report/freedom-press/2015/brazil>>; OHCHR – South America Regional Office, ‘OHCHR condemns violence against journalists in Brazil’ (8 June 2015), available at: <<http://acnudh.org/en/ohchr-condemns-violence-against-journalists-in-brazil/>>.

⁴² **R.119.31:** ‘Pay particular attention to seek even more effective results in the implementation of policies addressing the following issues: protection of the rights and promotion of the socio-economic situation of indigenous peoples and Afro-descendent Quilombo communities; access to justice and combating impunity; extra-judicial executions, torture in detention and; protection of human rights defenders (Cape Verde)’; **R.119.59:** ‘Establish measures for greater accountability to prevent loss of life (Namibia)’; **R.119.79:** ‘Adopt a policy of taking an explicit and published decision on instituting a federal investigation and prosecution in all cases involving violence against human rights defenders (Netherlands)’; **R.119.120:** ‘Ensure that all killings by law enforcement personnel are properly registered and thoroughly, independently investigated (Slovakia)’; **R.119.122:** ‘Ensure that all members of the police and prison officers that commit human rights violations and abuses, such as torture and ill-treatment, are held accountable (Czech Republic)’; **R.119.123:** ‘Effectively fight against arbitrary and on-duty police killings, in particular by creating a strong framework for impartial investigation (Germany)’; **R.119.121:** ‘Combat impunity on crimes against judges by creating a protection system for judges under threat (United States)’; **R.119.124:** ‘Continue working for the strengthening of the process of truth-seeking (Paraguay)’

⁴³ Domingos Sávio Brandão Lima Júnior (killed 30 September 2002, convictions in 2013), Francisco Gomes de Medeiros (killed 18 October 2010, convictions in 2015), Edinaldo Filgueira (killed 15 June 2011, convictions in 2013), Décio Sá (23 April 2012, convictions in 2014-2016) and Rodrigo Neto de Faria (8 March 2013, convictions in 2014-15) (available at <<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A->

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- [HRC-21-11_en.pdf](#)>).(available at
<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-11_en.pdf>).
- ⁴⁴ Domingos Sávio Brandão Lima Júnior (killed 30 September 2002, convictions in 2013) and Rodrigo Neto de Faria (8 March 2013, convictions in 2014-15).
- ⁴⁵ Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos, Emenda Constitucional Nº 45, de 30 de Dezembro de 2004, available at: <http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc45.htm>.
- ⁴⁶ CPJ, ‘Halftime for the Brazilian press: Will justice prevail over censorship and violence?’ (6 May 2014), available at: <<https://cpj.org/reports/brazil2014-english.pdf>>; IFEX, ‘Human Rights Secretariat in Brazil proposes actions to increase the safety of journalists’ (21 March 2014), available at: <https://www.ifex.org/brazil/2014/03/21/proposal_human_rights/>.
- ⁴⁷ IFEX, ‘Human Rights Secretariat in Brazil proposes actions to increase the safety of journalists’ (21 March 2014), available at: <https://www.ifex.org/brazil/2014/03/21/proposal_human_rights/>.
- ⁴⁸ Journalist Henrique Barbosa, 15 December 2015 (see: <<http://henriquebarbosa.com/ministerio-da-justica-e-policia-federal-vao-investigar-agressao-de-eduardo-monteiro-a-jornalista/>>).
- ⁴⁹ Presidency of the Republic, Department of Human Rights, Defense Council of Human Rights of Person, ‘Working Group ‘Human Rights Professionals of Communication in Brazil’ created by Resolution No. 07/2012’, p. 14, available at: <<http://www.sdh.gov.br/sobre/participacao-social/cddph/relatorios/relatorio-gt-comunicadores-ingles-final>>.
- ⁵⁰ CPJ, ‘Getting Away with Murder’ (8 October 2015), available at: <<https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php>>.
- ⁵¹ IFEX, ‘Human Rights Secretariat in Brazil proposes actions to increase the safety of journalists’ (21 March 2014), available at: <https://www.ifex.org/brazil/2014/03/21/proposal_human_rights/>.
- ⁵² Presidency of the Republic, Department of Human Rights, Defense Council of Human Rights of Person, ‘Working Group ‘Human Rights Professionals of Communication in Brazil’ created by Resolution No. 07/2012’, p. 14, available at: <<http://www.sdh.gov.br/sobre/participacao-social/cddph/relatorios/relatorio-gt-comunicadores-ingles-final>>; Câmara dos Deputados, projecto de lei, available at: <http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=5DAA97DC92C2C284C701152EE05190D9.proposicoesWeb1?codteor=859758&filename=PL+1078/2011>.
- ⁵³ Câmara dos Deputados, Projeto de Lei PL 1078/2011, available at: <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=498538>>.
- ⁵⁴ Presidency of the Republic, Department of Human Rights, Defense Council of Human Rights of Person, ‘Working Group ‘Human Rights Professionals of Communication in Brazil’ created by Resolution No. 07/2012’, p. 39, available at: <<http://www.sdh.gov.br/sobre/participacao-social/cddph/relatorios/relatorio-gt-comunicadores-ingles-final>>.
- ⁵⁵ Reporters Without Borders, ‘“Some wins don’t deserve medals” - RSF’s Rio Olympics campaign’ (3 August 2016), available at: <<https://rsf.org/en/news/some-wins-dont-deserve-medals-rsf-rio-olympics-campaign>>; *Journalism in the Americas – The University of Texas at Austin* (21 January 2016), available at: <<https://knightcenter.utexas.edu/blog/00-16597-violence-against-journalists-increases-brazil-report-says-theres-progress-against-impu>>.
- ⁵⁶ Câmara dos Deputados, Lei Nº 6.683, de 28 de agosto de 1979, available at: <<http://www2.camara.leg.br/legin/fed/lei/1970-1979/lei-6683-28-agosto-1979-366522-norma-pl.html>>.
- ⁵⁷ Organization of American States (OAS), ‘IACHR Takes Case Involving Brazil to the Inter-American Court’ (5 May 2016), available at: <http://www.oas.org/en/iachr/media_center/PReleases/2016/061.asp>.
- ⁵⁸ Simon Kemp, ‘Digital in 2016’, *We are Social* (27 January 2016), available at: <<http://wearesocial.com/uk/special-reports/digital-in-2016>>, slides 95 and 103.
- ⁵⁹ UN General Assembly, ‘Brazil and Germany: draft resolution, The right to privacy in the digital age’, A/C.3/68/L.45 (1 November 2013), available at: <http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/68/L.45>.
- ⁶⁰ OHCHR, ‘The Right to Privacy in the Digital Age’, available at: <<http://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx>>; Human Rights Watch, ‘Brazil as the Global Guardian of Internet Freedom?’ (13 February 2015), available at: <<https://www.hrw.org/news/2015/02/13/brazil-global-guardian-internet-freedom>>.
- ⁶¹ UN General Assembly, Human Rights Council, ‘... The right to privacy in the digital age’, A/HRC/28/L.27 (24 March 2015), available at: <http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/28/L.27>.

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- ⁶² OHCHR, ‘Human Rights Council creates mandate of Special Rapporteur on the right to privacy’ (26 March 2015), available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15763&LangID=E>; OHCHR, ‘The Right to Privacy in the Digital Age’, available at: <http://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx>; UN General Assembly, Human Rights Council, ‘... The right to privacy in the digital age’, A/HRC/28/L.27 (24 March 2015), available at: <https://www.privacyinternational.org/sites/default/files/SR%20resolution.pdf>
- ⁶³ UN General Assembly, Human Rights Council, ‘... The right to privacy in the digital age’, A/HRC/28/L.27 (24 March 2015), available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/28/L.27; OHCHR, ‘The Right to Privacy in the Digital Age’, available at: <http://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx>.
- ⁶⁴ English translation provided in: João Carlos Magalhães, ‘Critically Imagining Internet Governance: A Content Analysis of the *Marco Civil da Internet* Public Consultation’, *Media@LSE MSc Dissertation Series* (2015), p. 1, available at: <http://www.lse.ac.uk/media@lse/research/mediaWorkingPapers/MScDissertationSeries/2014/Joao-Carlos-Magalhaes-Dissertation.pdf>.
- ⁶⁵ Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos, Lei No. 12.965, de 23 de abril de 2014, available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112965.htm.
- ⁶⁶ Melody Patry, Index on Censorship, ‘Brazil: A new global internet referee?’ (June 2014), p.11, available at: https://www.indexoncensorship.org/wp-content/uploads/2014/06/brazil-internet-freedom_web_en.pdf; Freedom House, ‘Freedom on the Net 2015 – Brazil’, available at: <https://freedomhouse.org/report/freedom-net/2015/brazil>.
- ⁶⁷ Article 13: Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos, Lei No. 12.965, de 23 de abril de 2014, available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112965.htm.
- ⁶⁸ Article 15: Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos, Lei No. 12.965, de 23 de abril de 2014, available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112965.htm.
- ⁶⁹ Article 13, § 5 and Article 15, § 3: Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos, Lei No. 12.965, de 23 de abril de 2014, available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112965.htm.
- ⁷⁰ Article 19 and Article 19, § 3: Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos, Lei No. 12.965, de 23 de abril de 2014, available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112965.htm.
- ⁷¹ Matt Sandy, ‘Brazilian Lawmakers Threaten to Crack Down on Internet Freedom’, *Time* (20 January 2016), available at: <http://time.com/4185229/brazil-new-internet-restrictions/>; Robert Muggah and Nathan B. Thompson, ‘Brazil’s Digital Backlash’, *The New York Times* (12 January 2016), available at: <http://www.nytimes.com/2016/01/12/opinion/brazils-digital-backlash.html>.
- ⁷² Gabriel Marchi, ‘Brazilian Watchdogs Say New Bill to Pursue Cyberbullies Is Really a Way to Silence Critics’ (8 June 2016), available at: <https://news.vice.com/article/brazilian-watchdogs-say-new-bill-to-pursue-cyberbullies-is-really-a-way-to-silence-critics>.
- ⁷³ Bill PL 215/2015, and the associated bills PL 1547/2015, PL 1589/2015 and PL 4148/2015. Câmara dos Deputados, Projeto de Lei PL 215/2015, available at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=946034>; Câmara dos Deputados, Projeto de Lei PL 1547/2015, available at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=1278965>; Câmara dos Deputados, Projeto de Lei PL 1589/2015, available at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=1279451>; and Câmara dos Deputados, Projeto de Lei PL 4148/2015, available at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=2075795>.
- ⁷⁴ Luiz Hidalgo Nunes Jr., ‘The Gutting of Brazil’s Internet Bill of Rights’, Canadian Journalists for Free Expression (17 March 2016), available at: http://www.cjfe.org/the_gutting_of_brazil_s_internet_bill_of_rights; Gabriel Marchi, ‘Brazilian Watchdogs Say New Bill to Pursue Cyberbullies Is Really a Way to Silence Critics’ (8 June 2016), available at: <https://news.vice.com/article/brazilian-watchdogs-say-new-bill-to-pursue-cyberbullies-is-really-a-way-to-silence-critics>.
- ⁷⁵ Freedom House, ‘Freedom on the Net 2015 – Brazil’, available at: <https://freedomhouse.org/report/freedom-net/2015/brazil>; Melody Patry, Index on Censorship, ‘Brazil: A new global internet referee?’ (June 2014), available at: https://www.indexoncensorship.org/wp-content/uploads/2014/06/brazil-internet-freedom_web_en.pdf.

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- ⁷⁶ Superior Tribunal de Justiça Brazilian (Superior Court of Justice), Recurso Especial N° 1.352.053 - AL (2012/0231836-9), 24 March 2015, available at: <https://ww2.stj.jus.br/processo/revista/inteiroteor/?num_registro=201202318369&dt_publicacao=30/03/2015>.
- ⁷⁷ AlJazeera, 'Brazil's WhatsApp ban affects 100 million users' (3 May 2016), available at: <<http://www.aljazeera.com/news/2016/05/brazil-whatsapp-ban-affects-100-million-users-160503101425550.html>>.
- ⁷⁸ Robert Muggah and Nathan B. Thompson, 'Brazil's Digital Backlash', *The New York Times* (12 January 2016), available at: <<http://www.nytimes.com/2016/01/12/opinion/brazils-digital-backlash.html>>; Matt Sandy, 'Brazilian Lawmakers Threaten to Crack Down on Internet Freedom', *Time* (20 January 2016), available at: <<http://time.com/4185229/brazil-new-internet-restrictions/>>.
- ⁷⁹ CPJ, 'CPJ alarmed by WhatsApp block in Brazil' (2 May 2016), available at: <<https://cpj.org/2016/05/cpj-alarmed-by-whatsapp-block-in-brazil.php>>; AlJazeera, 'Brazil's WhatsApp ban affects 100 million users' (3 May 2016), available at: <<http://www.aljazeera.com/news/2016/05/brazil-whatsapp-ban-affects-100-million-users-160503101425550.html>>; The Guardian, 'WhatsApp block in Brazil overturned after court appeal and user complaints' (3 May 2016), available at: <<https://www.theguardian.com/technology/2016/may/03/brazil-whatsapp-block-ruling-overturned>>.
- ⁸⁰ The Guardian, 'WhatsApp officially un-banned in Brazil after third block in eight months' (19 July 2016), available at: <<https://www.theguardian.com/world/2016/jul/19/whatsapp-ban-brazil-facebook>>.
- ⁸¹ CPJ, 'CPJ alarmed by WhatsApp block in Brazil' (2 May 2016), available at: <<https://cpj.org/2016/05/cpj-alarmed-by-whatsapp-block-in-brazil.php>>.
- ⁸² Article 5, IV: 'the expression of thought is free, and anonymity is forbidden', Article 5, IX: 'the expression of intellectual, artistic, scientific, and communications activities is free, independently of censorship or license'; Biblioteca Digital da Câmara dos Deputados, 'Constitution of the Federative Republic of Brazil' (2010), available at: <<http://english.tse.jus.br/arquivos/federal-constitution>> (English translation).
- ⁸³ Organisation of American States (OAS), 'Código Penal Brasil: Decreto-Lei n° 2.848, de 7 de dezembro de 1940', available at: http://www.oas.org/juridico/mla/pt/bra/pt_bra-int-text-cp.pdf <.
- ⁸⁴ CPJ, 2002 Civil Code, Articles 17, 18, 20 and 21, available at: <https://cpj.org/reports/brazil_civil_code_english.pdf> (English translation); World Intellectual Property Organization (WIPO), 'Presidência da República, Casa Civil, Lei N° 10.406, de 10 de Janeiro de 2002, available at: <http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm> (in Portuguese).
- ⁸⁵ CPJ, 2002 Civil Code, Articles 17, 18, 20 and 21, available at: <https://cpj.org/reports/brazil_civil_code_english.pdf> (English translation); 'Brazil: Lei n°10.406, de 10 de janeiro de 2002 (Código Civil)', available at: <http://www.wipo.int/wipolex/en/text.jsp?file_id=226198> (in Portuguese).
- ⁸⁶ Simone Marques, Index on Censorship, 'Brazil's banned biographies: When public figures want to control the message' (16 July 2014), available at: <<https://www.indexoncensorship.org/2014/07/forbidden-books-brazil-biographies-law-can-put-end-previous-censorship-may-bring-post-censorship/>>.
- ⁸⁷ BBC, 'Brazil overturns 'ban' on unauthorized biographies' (11 June 2015), available at: <<http://www.bbc.com/news/world-latin-america-33092309>>.
- ⁸⁸ Global Freedom of Expression, Columbia University, 'The National Association of Book Publishers v. the President of Brazil' (2015), available at: <<https://globalfreedomofexpression.columbia.edu/cases/the-national-association-of-book-publishers-v-the-president-of-brazil/>>; The Library of Congress (LOC), 'Brazil: Federal Supreme Court Authorizes Unauthorized Biographies' (17 June 2015), available at: <<http://www.loc.gov/law/foreign-news/article/brazil-federal-supreme-court-authorizes-unauthorized-biographies/>>; Ação Direta de Inconstitucionalidade 4.815 Distrito Federa (ADI 4815/DF), available at: <<http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADI4815relatora.pdf>> (in Portuguese).
- ⁸⁹ Examples of individuals detained for failing to comply with a court order to remove context include: Reuters, 'Facebook executive jailed in Brazil as court seeks WhatsApp data' (1 March 2016), available at: <<http://www.reuters.com/article/us-facebook-brazil-idUSKCN0W34WF>>; and Index on Censorship, 'On the ground: Sao Paulo' (20 March 2013), available at: <<https://www.indexoncensorship.org/2013/03/on-the-ground-sao-paulo/>>.
- ⁹⁰ Google Transparency Report, Requests to remove content – Brazil, available at: <<https://www.google.com/transparencypreport/removals/government/BR/?hl=en>>.
- ⁹¹ Google Transparency Report, Requests to remove content – Brazil, Explore Requests, available at: <<https://www.google.com/transparencypreport/removals/government/notes/?hl=en#authority=BR&period=all>>.

⁹² CPJ, ‘Halftime for the Brazilian press: Will justice prevail over censorship and violence?’ (6 May 2014), pp. 25-26, available at: <<https://cpj.org/reports/brazil2014-english.pdf>>.

⁹³ For example, the case of Sarney v. O Estado de São Paulo, pending since 2009 - see Global Freedom of Expression, Columbia University, ‘Sarney v. O Estado de São Paulo’ (2009), available at: <<https://globalfreedomofexpression.columbia.edu/cases/sarney-v-o-estado-de-sao-paulo/>>, cited in CPJ, ‘Halftime for the Brazilian press: Will justice prevail over censorship and violence?’ (6 May 2014), p. 27, available at: <<https://cpj.org/reports/brazil2014-english.pdf>>.

⁹⁴ Article 19, *Digital Freedom in Brazil: State of Play* (August 2012) p. 18, available at: <https://www.article19.org/data/files/medialibrary/3435/12-09-13-REPORT-brazil.pdf> (accessed 8 August 2016), cited in CPJ, Thomson Reuters Foundation et al, ‘Critics are not Criminals: Comparative Study of Criminal Defamation Laws in the Americas’ (2016), p. 83, available at: <https://www.cpj.org/reports/critics_are_not_criminals-english.pdf>.

⁹⁵ Freedom House, ‘Freedom of the Press 2013 – Brazil’, available at: <<https://freedomhouse.org/report/freedom-press/2013/brazil>>.

⁹⁶ Superior Electoral Court, ‘Elections Law – Law N. 9,504 of September 30th, 1997’, available at: <<http://english.tse.jus.br/arquivos/elections-law>> (English translation) (Articles 57, 57-A, 57-B, 57-C, 57-D).

⁹⁷ Article 53 of Elections Law no. 9.504 - Presidência da República, Casa Civil, Lei N° 9.504, de 30 de Setembro de 1997, available at: <http://www.planalto.gov.br/ccivil_03/LEIS/L9504.htm>.

⁹⁸ Article 53, Paragraph 1 of Elections Law no. 9.504 - Presidência da República, Casa Civil, Lei N° 9.504, de 30 de Setembro de 1997, available at: <http://www.planalto.gov.br/ccivil_03/LEIS/L9504.htm>.

⁹⁹ Article 53, Paragraph 2 of Elections Law no. 9.504 - - Presidência da República, Casa Civil, Lei N° 9.504, de 30 de Setembro de 1997, available at: <http://www.planalto.gov.br/ccivil_03/LEIS/L9504.htm>.

¹⁰⁰ Article 57-D, Paragraph 2; Article 57-E, Paragraph 2; Article 57-H, Paragraphs 1 and 2 of Elections Law no. 9.504 - Presidência da República, Casa Civil, Lei N° 9.504, de 30 de Setembro de 1997, available at: <http://www.planalto.gov.br/ccivil_03/LEIS/L9504.htm>.

¹⁰¹ Sarah Laskow, ‘Google vs. Brazil: Why Brazil heads up Google’s list of takedown requests’, *Columbia Journalism Review* (29 April 2013), available at:

<http://www.cjr.org/cloud_control/brazilian_takedown_requests.php>; Freedom House, ‘Freedom on the Net 2015 – Brazil’, available at: <<https://freedomhouse.org/report/freedom-net/2015/brazil>>.

¹⁰² Sarah Laskow, ‘Google vs. Brazil: Why Brazil heads up Google’s list of takedown requests’, *Columbia Journalism Review* (29 April 2013), available at:

<http://www.cjr.org/cloud_control/brazilian_takedown_requests.php>.

¹⁰³ Freedom House, ‘Freedom of the Press 2013 – Brazil’, available at: <<https://freedomhouse.org/report/freedom-press/2013/brazil>>.

¹⁰⁴ The Access to Information Law (Law No. 12.527/2011); Presidência da República, Casa Civil, Lei N° 12.527, de 18 de Novembro de 2011, available at: <http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm> (in Portuguese); ‘Regula o acesso a informações previsto no inciso XXXIII do art. 5º, no inciso II do § 3º do art. 37 e no § 2º do art. 216 da Constituição Federal’ (in English: regulates access to information provided for in section XXXIII of art. 5º, § 3º of art. 37, and § 2º of art. 216 of the Federal Constitution).

¹⁰⁵ Article 19, ‘Brazil: New Access to Information Law becomes effective today’ (16 May 2012), available at: <<https://www.article19.org/resources.php/resource/3208/en/brazil:-new-access-to-information-law-becomes-effective-today>>.

¹⁰⁶ Escala Brasil Transparente

¹⁰⁷ Controladoria Geral da União

¹⁰⁸ Fabiano Angélico, Transparency Audit Network, ‘After 3 years, the Brazilian Freedom of Information Law is the subject of studies and indices that analyze its implementation and uses’ (June 2015), available at:

<<http://transparenciaaudit.net/news/2015-06/after-3-years-brazilian-freedom-information-law-subject-studies-and-indices-analyze-its>>; Controladoria-Geral da União, ‘Ranking de cumprimento da Lei de Acesso à Informação’, available at: <<http://www.cgu.gov.br/assuntos/transparencia-publica/escala-brasil-transparente/escala-brasil-transparente>> (in Portuguese).

¹⁰⁹ Including two state capitals: Sao Paulo and Curitiba. Fabiano Angélico, Transparency Audit Network, ‘After 3 years, the Brazilian Freedom of Information Law is the subject of studies and indices that analyze its implementation and uses’ (2015), available at: <<http://transparenciaaudit.net/news/2015-06/after-3-years-brazilian-freedom-information-law-subject-studies-and-indices-analyze-its>>; ‘Panorama do governo Municipal’, available at:

<http://relatorios.cgu.gov.br/Visualizador.aspx?id_relatorio=2>; ‘Panorama do governo Estadual’, available at: <http://relatorios.cgu.gov.br/Visualizador.aspx?id_relatorio=2>.

¹¹⁰ Ministro de Estado da Transparência, Fiscalização e Controle

¹¹¹ Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos, Medida Provisória N° 726 (12 May 2016), available at: <http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Mpv/mpv726.htm>

¹¹² Article 19, ‘Brazil: Closure of public agency damages transparency and fight against corruption’ (31 May 2016), available at: <<https://www.article19.org/resources.php/resource/38399/en/brazil:-closure-of-public-agency-damages-transparency-and-fight-against-corruption>>

¹¹³ Article 19, ‘Brazil: Closure of public agency damages transparency and fight against corruption’ (31 May 2016), available at: <<https://www.article19.org/resources.php/resource/38399/en/brazil:-closure-of-public-agency-damages-transparency-and-fight-against-corruption>>; BBC Brasil, ‘Após queda de ministro, Temer é pressionado a recriar órgão anticorrupção que extinguiu’ (1 June 2016), available at: <<http://www.bbc.com/portuguese/brasil-36424080>>

¹¹⁴ BBC Brasil, ‘Após queda de ministro, Temer é pressionado a recriar órgão anticorrupção que extinguiu’ (1 June 2016), available at: <<http://www.bbc.com/portuguese/brasil-36424080>>

¹¹⁵ BBC Brasil, ‘Após queda de ministro, Temer é pressionado a recriar órgão anticorrupção que extinguiu’ (1 June 2016), available at: <<http://www.bbc.com/portuguese/brasil-36424080>>; *O Globo*, ‘Servidores da extinta CGU protestam por saída de ministro da Transparência’ (30 May 2016), available at: <<http://g1.globo.com/politica/noticia/2016/05/servidores-da-cgu-protestam-por-saida-do-ministro-fabiano-silveira.html>>.

¹¹⁶ Article 19, ‘Brazil: Closure of public agency damages transparency and fight against corruption’ (31 May 2016), available at: <<https://www.article19.org/resources.php/resource/38399/en/brazil:-closure-of-public-agency-damages-transparency-and-fight-against-corruption>>