

REGULATORY FRAMEWORK AND PUBLIC POLICIES ON JOURNALISTIC PRACTICE IN BRAZIL



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Supported by: German Cooperation



Fevereiro de 2024

INTRODUCTION

Free, pluralistic, independent and sustainable journalism is critical to fully securing citizens' right to information, and therefore it is a core element to strengthen democratic regimes. The development of human rights has shown that the state's role is not only not violating citizens' rights, but also promoting such rights. In democratic societies, respect for and promotion of rights are directly influenced by the state's actions in different stances – from drafting bills and adopting other rules for industries to the public policy-making and implementation.

It also applies to journalism. The rights to free expression and information in contemporary societies do not constitute civil liberties, but collective rights. In this regard, international conventions and declarations in the field of human rights stress the need to protect a free and pluralistic journalism in various media outlets, which are made up of different media types, genres, sizes, content formats and distribution channels.

Given such premises, this report seeks to assess the Brazilian regulatory framework and public policies to promote free and pluralistic journalism in the country. The profession has specific professional regulation in Brazil. The Consolidated Labor Laws (Decree-Law 5452/1943, Article 302) define journalists as professionals who seek information and write news and articles. This definition is supplemented by the profession's regulation, especially Decree 83284/1979¹, which lists journalistic activities, such as writing, condensing of information, headline writing, interpreting, editing, and managing stories to be published, whether or not they contain commentaries, among others.

THE DEVELOPMENT OF HUMAN RIGHTS HAS SHOWN THAT THE STATE'S ROLE IS NOT ONLY NOT VIOLATING CITIZENS' RIGHTS, BUT ALSO PROMOTING SUCH RIGHTS.

Reporters Without Borders (RSF) adopts a broader understanding and stems from a functional definition of the journalistic profession, not anchored in occupational category. It is from this perspective that this report assesses the effective regulatory framework under discussion in the National Congress of Brazil, federal public policies and Judiciary's initiatives for journalists and communicators. Our purpose is to contribute to Brazilian society's discussions on the challenges of building an information environment where the population can truly access their right to information, and where both freedom of the press and the exercise of ethical and quality journalism are recognized and valued.

Hence, this document analyzed such initiatives based on topics and aspects that are central to this endeavor: 1) Protection of journalists and communicators; 2) Promotion and sustainability of journalism; 3) Information access and integrity; and 4) Broad communications regulatory environment in Brazil. This thematic selection covers a comprehensive scope of elements required to the full exercise of free and pluralistic journalism, not only from the perspective of these industry agents, but also from the collective view of the society on the information environment.

The regulatory framework is referred to herein as the set of legal and infra-legal rules approved or proposed at federal level. Such framework encompasses the Constitution of Brazil, federal laws and decrees in force, which have been selected for analysis through the review of the sector's laws and of the rules related to the topics listed above. Taking into consideration that this document intends to contribute to the public debate on improving this regulatory framework, the research included bills under debate in the National Congress that have gained prominence in the legislative body².

Policies and initiatives on the topics above involving the executive and judicial branches were also examined. The information was collected through documentary research in institutional repositories, press reports and academic or technical journals. Moreover, we interviewed representatives of different governmental institutions and journalistic organizations, such as the Secretariat for Social Communication of the Presidency

¹ Available at: https://www.planalto.gov.br/ccivil_03/decreto/antigos/d83284.htm#:~:text=DECRETO%20N%C2%BA%2083.284%2C%20DE%2013.7%20de%20dezembro%20de%201978.

² Whether because there are several riders attached to them or they are at a more advanced stage in the House of Representatives or in the Federal Senate of Brazil.

of the Republic, Empresa Brasil de Comunicação (Brazil Communications Company – EBC), Office of the Federal Attorney General for Citizen's Rights of the Federal Prosecution Office, the National Federation of Journalists (FENAJ), the Brazilian Association of Investigative Journalism (ABRAJI), and the Digital Journalism Association (AJOR).

The report underlines the shortcomings and massive challenges to journalism in Brazil. Scarred by a troubled development of democracy, Brazil had its most recent Constitution approved 35 years ago. It enshrines rights such as the right to information and the right to freedom of expression of intellectual, artistic, scientific or communication activity, regardless of censorship or license, besides setting out key guidelines, such as the prohibition of monopolies and oligopolies, the priority to informative, educational, artistic and cultural content in mass media, and the mediatic promotion of national and regional cultures.

However, there is still a long way to go before this plural and diverse environment can come to fruition. Being one of the most dangerous countries for journalists and communicators in Latin America, the guarantee of protection for professionals still takes baby steps, given the lack of a robust legal framework for preventing, monitoring and addressing threats and violence reported. Likewise, the Protection Program for Human Rights Defenders, Communicators and Environmentalists (PPDDH) still lacks institutionality so that it is not held hostage to changes by the ruling government. In Parliament, there are plenty of bills related to crimes against journalists and communicators; however, they need to be discussed carefully to avoid that the industry receives only criminal interventions as remedy.

In terms of promotion and sustainability, the existence of non-commercial news media runs into lack of resources and limited funding models/policies, which must be tackled with legal and political reforms to strengthen public broadcasting and community media. For the journalistic ecosystem as a whole, there is also an agenda involving payment regulation on news used by digital platforms, a heated debate in the National Congress that has not come to a conclusion yet. Within the federal executive branch, there is still plenty of room for improving the allocation of government advertising funds in order to promote a free and pluralistic journalism.

The Constitution provides for the access to public information, which is crucial to journalistic practice and was granted a specific law in 2011: the Access to Information Act. In spite of its relevant provisions, such law has faced implementation issues, especially at the state level.

And as it is not enough to just talk about access to information, but also about information quality and integrity, the agenda of digital platform regulation has gained momentum in the global debate as a way of tackling disinformation and fraudulent content, which have a major impact on journalism. In Brazil, Bill No. 2630/2020 has emerged as an important solution to such problems, but it still runs into resistance from big tech companies and ultra-liberal political groups.

The backdrop to these challenges is a dated regulatory framework aimed to communications in general, which has historically favored the establishment of a verticalized media system focused on few commercial conglomerates that deliver journalistic and other content mainly produced in the Rio de Janeiro-São Paulo axis. In view of the political unwillingness from different governments and political agents – from right-wing to left-wing parties –, Brazil continues to fail to meet the 20th century agendas for communication democratization and is currently struggling with the immediate need to tackle the challenges of information and content spread online.

Thus, this report briefly diagnoses the limitations imposed on journalism by the regulatory framework and public policies in Brazil, and advocates for some measures to bring such instruments into compliance with international recommendations and other guidelines protecting and promoting freedom of the press introduced by international organizations globally and regionally. At a time where Brazil is trying to restore its institutional normality after four years of a federal government characterized by freedom of press and democracy under attack, it is becoming increasingly imperative to mobilize different sectors of society to overcome these constraints and put the advocacy of journalism at the heart of the national democratic debate. We hope that the publication of this report can contribute to this ambitious challenge.



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DOMAIN

1

PROTECTION OF JOURNALISTS AND COMMUNICATORS

Violence against journalists and communicators is one of the most brutal examples of censorship. Physical attacks, kidnappings, threats and murders of journalists not only constitute assault and battery, but also a violation of the right to information held by society as a whole. This topic occupies a central position in international organizations' opinions and documentation on international human rights rules and standards regarding freedom of expression. In Latin America, the Inter-American Commission on Human Rights (IACHR) has included such matter in its Declaration of Principles on Freedom of Expression³, which condemns violence against journalists and considers that states shall prevent, investigate and properly punish such events, as well as redressing the victims⁴.

Actions are especially necessary in a scenario of structural violence against journalists and communicators. Unfortunately, this is the case in Brazil. The new administration of Luiz Inácio Lula da Silva, which began in 2023, has brought a climate of institutional stability to the relationship between the federal executive branch and the press; however, the structural and systematic pattern of violence against journalists is one of the main challenges for freedom of the press in Brazil. In the last decade, at least 30 journalists have been killed, making Brazil the second deadliest country for journalists in Latin America for the period⁵. In the World Press Freedom Index, designed by Reporters Without Borders

3 Available at: <https://www.oas.org/en/iachr/mandate/basics/declaration-principles-freedom-expression.pdf>.

4 The IACHR devoted a study to this subject in 2013, entitled "Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and the prosecution of perpetrators". Available at: https://oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf.

5 Available at: <https://rsf.org/pt-br/barometro>.

(RSF), Brazil went from 110th place in 2022 to 92nd in 2023. However, in the safety category, it fell from 124th to 149th place⁶.

The most vulnerable victims are communicators based in small and medium-sized towns. Between 2011 and 2020, there were 19 murders in cities with fewer than 100,000 inhabitants. As RSF pointed out in the report “Protection Paradigm: making protection mechanisms work for Latin American journalists”⁷, the assaulters are usually politicians (especially from local governments) and security forces officers, such as police officers. According to the 2022 report “Violence Against Journalists and Freedom of the Press in Brazil” by the National Federation of Journalists (FENAJ), 376 cases of violence were recorded that year.

This scenario is aggravated by the slowness and lack of effectiveness in investigating and punishing episodes of violence against journalists and communicators. According to the 2019 survey by the National Council of the Federal Prosecution Office (CNMP), the courts solved only half of the cases of journalist murders between 1995 and 2018⁸. In 2023, Brazil ranked 10th in the Global Impunity Index for murders of journalists, according to a study by the Committee to Protect Journalists (CPJ). Brazil appeared in the ranking for the 14th consecutive year⁹.

Against this background of violence, Brazil is following the example of several other countries and has developed protection mechanisms, rules and policies to combat attacks and mitigate the risks experienced by communication workers. Such endeavors are an imperative government response to the structural violence against journalists and communicators in the country, although they still fall far short of what is needed. These efforts, however, have been more focused on public policies, with a noticeable lack of bills on the matter.

The oldest Brazilian public policy in force – the National Program for the Protection of Human Rights Defenders, Communicators and Environmentalists (PPDDH) – was created around 20 years ago. Nevertheless, no law has been passed to guarantee the institutional stability of this policy, which lacks specific procedures for assisting journalists and communicators, disregarding the specific characteristics of the profession. Thus, very few journalists and communicators in danger use such program in Brazil¹⁰.

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Although the new Lula administration has implemented some changes recently – such as a federal budget growth, a greater engagement by civil society organizations in the Decision-Making Council for the abovementioned policy, and the PPDDH’s participation in the follow-up to the provisional remedies IACHR granted to defenders based in the Amazon after the murders of Dom Phillips and Bruno Pereira¹¹ –, there is still little progress. The Decision-Making Council has not yet resumed its work, and efforts to get closer to organizations that advocate for free expression and freedom of the press have come to a standstill.

On the other hand, pursuing the enforcement of a court order, the government created a technical working group (TWG) in 2023 under the Ministry of Human Rights and Citizenship. With ten representatives from the federal government and ten from civil society, Sales Pimenta TWG’s objectives are to develop a National

Protection Plan for defenders and a draft bill institutionalizing the PPDDH. The administration opened a public consultation in February 2024 to prepare the new plan.

6 Further information at: <https://rsf.org/pt-br/pais/brasil>.

7 Available at: <https://rsf.org/pt-br/sob-risco-um-relat%C3%B3rio-in%C3%A9dito-da-rsf-sobre-os-mecanismos-de-prote%C3%A7%C3%A3o-jornalistas-na-am%C3%A9rica>.

8 Available at: <https://www.cnmp.mp.br/portal/images/Publicacoes/documentos/2019/Violencia-contra-comunicadores-no-Brasil-VERSAO-FINAL-.pdf>.

9 Further information at: <https://www.abraji.org.br/noticias/brasil-e-o-10o-no-ranking-mundial-da-impunidade-nos-assassinatos-de-jornalistas>.

10 Further information at: <https://rsf.org/pt-br/sob-risco-um-relat%C3%B3rio-in%C3%A9dito-da-rsf-sobre-os-mecanismos-de-prote%C3%A7%C3%A3o-jornalistas-na-am%C3%A9rica>.

11 Further information at: <https://agenciagov.ebc.com.br/noticias/202312/implementacao-das-medidas-cautelares-da-cidh-no-caso-bruno-pereira-dom-phillips-e-representantes-da-univaja-2014-nota-conjunta-mre-mdhc>.

Another measure implemented during Lula administration was the establishment of the National Observatory on Violence against Journalists and Communicators by the Ministry of Justice and Public Security. Its purpose is to monitor journalists and communicators on duty and suppress violence against them by calling in the proper authorities and following up on investigations. One of the Observatory's main initiatives was the creation of a reporting channel, which allows episodes of aggression to be recorded, helps the identification of patterns and contributes to the development of a national database, thus, supporting preparation of more efficient public policies on violence against journalists and communicators.

Recent concern about the protection of journalistic practice has also translated into initiatives in other branches of government. Two major examples are the National Judiciary & Press Freedom Forum, created by the National Council of Justice, and the cooperation between the Office of the Federal Attorney General for Citizen's Rights (PFDC) and press freedom entities. The forum aims to qualify how emblematic cases involving journalists were addressed by the Judicial Branch. The partnership with the PFDC represents a substantial effort to face attacks on freedom of speech and to combat judicial harassment of press professionals, as well as offering a reporting channel from Federal Public Prosecution Office.

Apart from the several initiatives in course, the absence of a structured regulatory framework to continuously support both public policies and state actions to protect journalists is evident. It is a key challenge for Brazil to establish laws that provide for mechanisms for preventing and protecting journalist against attacks, reporting channels with rapid responses, framework and procedures for investigating cases, including the possibility of the Federal Police Department to intervene when the local authorities cannot hold those involved accountable. The regulatory framework should address not only physical violence but also cyberviolence, preventing harassment and other types of attacks against these professionals. As for the Judiciary, the rules should promote speedy proceedings and set boundaries to prevent judicial harassment and misconduct that curtails journalists' right to legal defense.

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In view of this scenario, and especially after the election of Jair Bolsonaro, it could be noticed that bills have been introduced before the National Congress to address this legal gap, showing that Brazil must move forward faster than in recent decades in order to solve the issue of structural violence against journalists and communicators. Most of the bills under consideration address this issue criminalizing misconduct and attacks against press professionals. They include the creation of new criminal offenses (such as crimes against life or harassment of press professionals to hinder the performance of their activities), the inclusion of journalists in the list of crime victims (such as heinous crime, aggravated murder, battery, threat and damage) and the insertion of this category as aggravating factors in sentencing.

Several of these initiatives have legitimately attempted to strengthen the protection of press professionals; however, bills must be enhanced. One of the required improvements is ensuring that the scope of the legislative proposals encompasses all press workers, and not just professional journalists. Another improvement example is to ensure that the criminalization of misconduct is based on concrete offenses, such as homicide, aggravated battery and assault. It is necessary to be careful to avoid vague concepts that can lead to misinterpretation or improper law enforcement, or that can limit the democratic right to criticize the press.

We also found proposals that seek to fight against the impunity of crimes against journalists, especially through the federalization of case investigations – a measure of extreme relevance considering the low rate of case resolution in Brazil. There are also bills under consideration to amend the Small-Claim Courts Act, so that journalists can answer to a lawsuit in their city of residence in case they are sued for any online publishing, a measure that facilitates their right to defense, in addition to proposals to guarantee the protection for journalists' family members, establishing an obligation for employers to provide life insurance for field personnel.

Finally, there are comprehensive legislative proposals for the protection of press workers, such as Bill

No. 2378/2020, which lists rights such as equal access to sources and to press conferences, as well as imposing obligations on public bodies, including the establishment of clear rules for professional and media outlet accreditation. The text inserts several types of misconduct as crime of abuse of power, such as the seizure and destruction of journalistic material and arrests that are not caught in the act of committing an offense.



LAWS AND BILLS

Source confidentiality guarantee

Name

**Federal Constitution,
Article 5**

Topics addressed

- Right to information
- source protection

Draft, approval or implementation stage

Law in force

CONSIDERATION OF THE JOURNALISTIC PRACTICE

Article 5 of the 1988 Federal Constitution of Brazil protects the source confidentiality when it is necessary for professional practice. Such provision constitutes an exception to the access to information statement set forth in the supreme law of Brazil, as such restriction contributes to the public interest and to the free flow of information through journalism.

The source confidentiality protects a crucial mean of information gathering by journalists. As pointed out above (see page 3, the Consolidated Labor Laws (Decree-Law 5452/1943, Article 302) define journalists as professionals who seek information and write news and articles. The journalism regulation supplements this definition and reinforces information gathering as one of the professional activities.

GUARANTEES AND SAFEGUARDS

A fundamental part of journalists' quest for information lies in their sources, which can be either documentary materials or individuals. The latter can range from authorities to regular persons who have witnessed or became aware of the facts and decided to report them to the press. Such endeavors, which play a key role in revealing wrongdoings or negligent acts committed by people, organizations or public institutions, generally give rise to investigations and/or accountability/liability.

The constitutional guarantee of source confidentiality prevents journalists from the obligation to reveal who are the providers of the information they share; therefore, whistleblowers may feel more protected, an element that increases their willingness to share information. Another benefit directly linked thereto is the protection of whistleblowers against retaliation. This safeguard is especially important in the event of claims against groups that enjoy economic or political power and that can mobilize their resources to attack the information sources through intimidation or even abusive or illegal conduct.

The source confidentiality is acknowledged in the form of principle 8 set out in the Declaration of Principles on Freedom of Expression by the Organization of American States' Special Rapporteurship for Freedom of Expression¹²: "Every social communicator has the right to keep his/her source of information, notes, personal and

¹² Special Rapporteurship for Freedom of Expression of the Organization of American States. Declaration of Principles on Freedom of Expression. 2000. Available at: <https://www.oas.org/en/iachr/mandate/basics/declaration-principles-freedom-expression.pdf>.

professional archives confidential.” In its document “Background and Interpretation of the Declaration of Principles”, the Special Rapporteurship for Freedom of Expression of the Organization of American States¹³ stresses that this guarantee is grounded on the public interest of public information collection, selection and dissemination. The text highlights that this guarantee does not constitute a duty since it is up to professionals and media outlets, after discussing with their sources, to decide whether to disclose the information provider.

I CHALLENGES AND OBSTACLES

The source confidentiality provision as a constitutional safeguard has strengthened this right that protects journalistic practice in Brazil. However, even though court decisions generally have reaffirmed such provision, it does not prevent the filing of abusive lawsuits or investigations aimed at forcing the disclosure of the sources of certain news reports.

One example was the lawsuit filed in 2011 by Federal Prosecutor Álvaro Stipp against a journalist from *Diário da Região*, a newspaper from the city of São José do Rio Preto, state of São Paulo. The journalist was forced to reveal the content regarding an operation by the Federal Police Department and the Federal Prosecution Office. In 2014, the Federal Public Prosecution Office¹⁴ requested the disclosure of the journalist’s and newsroom’s phone records, which was granted by a local federal judge. The case was taken before the Federal Supreme Court, which issued an injunction against the plaintiff and ended the trial in 2021, denying access to the source. In this sense, the Judiciary must build mechanisms so that this constitutional right can be respected in all spheres and such judicial decisions can be curbed.

I PLURALISM AND DIVERSITY

This constitutional guarantee must be respected and applicable to journalists worldwide. Nonetheless, in view that judicial decisions continue breaching it, in addition to ensuring its enforcement, the Judiciary shall identify how the violation of source confidentiality has impacted women, non-white or underprivileged journalists in a more specific or intense way, offering solutions to these issues.

13 Special Rapporteurship for Freedom of Expression of the Organization of American States. Background and Interpretation of the Declaration of Principles. Available at: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=132&IID=2>.

14 Ranier Bragon. Supremo encerra processo contra repórter e reafirma proteção constitucional a sigilo da fonte jornalística. Folha de S. Paulo, 13 Feb. 2021.



Crimes against press workers

Names

Bill N° 239/2011

(amends the Consolidated Labor Laws)

Bill N° 7107/2014

(includes journalists in the Heinous Crimes Act)

Bill N° 4777/2016

(classifies crime against journalist's life)

Bill N° 3347/2019

(establishes safeguards for news coverages and provides for investigations into crimes against journalists)

Bill N° 2874/2020

(provides for aggravated battery)

Bill N° 2813/2020

(amends the Criminal Code with respect to aggravating factors)

Bill N° 4522/2020

(criminalize hostility toward the press)

Bill N° 1080/2023

(provides for penalty enhancement regarding homicide, battery, defamation, threat and damage against press professionals)

Topics addressed

- Crimes while the professional is on duty or crimes on grounds of profession
- federalization of investigations
- life insurance for journalists

Draft, approval or implementation stage

- Bill No. 7107/2014 – Under consideration by Constitution, Justice and Citizenship Committee of the House of Representatives. Bills No. 4777/2016 and 3347/2019 are attached to this one. If approved, they will be submitted to the Senate for consideration.
- Bill No. 239/2011 – Approved by the Committee on Welfare, Social Assistance, Children, Adolescents and the Family of the House of Representatives. The draft bill is in the final stages of being passed (which means that there is no need to go to a plenary session), but it still has to be considered by the Labor and Public Service Committee and the Constitution, Justice and Citizenship Committee before being submitted to the Senate.
- Bill No. 2874/2020, 2813/2020 and 4522/2020 – Under joint consideration by the Constitution, Justice and Citizenship Committee and the Senate. If approved, they shall be submitted to the House of Representatives for consideration.
- Bill No. 1080/2023 – Under consideration by the Communication and Digital Law Committee of the Senate. Approval by House of Representatives is pending.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

There are several bills on the criminalization of actions against journalists, press workers and communicators. Some legislative proposals create new crimes to protect such professionals, while others include workers as victims of existing criminal offenses or introduce new aggravating factors. There are also proposals on investigating institutions that are making progress, appointing the Federal Police Department to act in these cases.

Bill No. 2874/2020, submitted by senator Weverton (PDT-MA party), includes a penalty enhancement of one to two thirds of the term for battery, a crime set forth in the Criminal Code, when the harm is committed against "a journalist or press professional on duty or crimes on grounds of profession, or crimes against their spouse, life partner or consanguineal kin up to the third degree¹⁵." Bill No. 2813/2020, by senator Lucas Barreto (PSD-AP party), goes further and sets out crime against press professional as a comprehensive aggravating factor, that is, it does not only apply to specific crimes.

15 Further information at: <https://legis.senado.leg.br/sdleg-getter/documento?dm=8114971&ts=1688684330305&disposition=inline>.

Bill No. 7107/2014, by deputy Domingos Sávio (PSDB-MG party), includes journalists and press professionals on duty in the Heinous Crimes Act (Law No. 8,072/1990). There are other 12 bills on the same subject attached thereto under consideration of the House of Representatives. Bill No. 1080/2023, by Senator Veneziano Vital do Rêgo (MDB-PB party), is the most comprehensive proposal in this regard. The bill also enhances the penalty in the event of battery against journalist or press professional on duty or crimes on grounds of profession, and it goes further by including journalists as victims of non-bailable aggravated murder (Article 121); threat (Article 147), subject to imprisonment of one to two years; and damage (Article 163) when occurred in an attempt to prevent the press work. With regard to slander, libel and defamation, the text also establishes penalty enhancements of one third of the term when crime is committed against journalists.

Among the proposals that introduce new criminal offenses, one example is Bill No. 4522/2020, by senator Fabiano Contarato (PT-ES party), which includes as crime the act of “hostilizing press professionals in order to prevent or hinder their work” in the Criminal Code (Decree-Law 2848/1940)¹⁴. As for Bill No. 4777/2016, by deputy Afonso Motta (PDT-RS), it classifies crime against the journalist’s life.

However, this bill also addresses investigations into these crimes by amending Law No. 10,446/2022 to include criminal offenses against journalists or press professionals on duty or criminal offenses on the grounds of their profession among crimes that require uniform repression and the engagement of the Federal Police Department. Bill No. 3347/2019, by Maria do Rosário (PT-RS party), follows a similar vein, but it broadens the scope of criminal offenses against journalistic or communication activities. Both are attached to Bill No. 7107/2014, which means that their proposals will only be considered if they are included in a new report on this bill, which has not happened so far.

There are also legislative proposals that envisage benefits for journalists. One example is Bill No. 239/2011, which adds to the journalism regulation the guarantee of life insurance for professionals who works in field coverage (Decree-Law 972/1969). Deputy Laura Carneiro’s substitute report was approved in 2023 by the Committee on Welfare, Social Assistance, Children, Adolescents and the Family¹⁷ of the House of Representatives, but it still has to be considered by several committees before it goes to the Senate.

I GUARANTEES AND SAFEGUARDS

Threats and attacks on journalists or communicators on the grounds of their profession constitute violations not only of their physical and mental integrity, but also of press freedom. Thus, extending the protection of these workers supports the promotion of the free journalistic practice and the of population’s right to information.

Among the bills verified, the most equitable approach is the penalty enhancement for actions against the physical and mental integrity of journalists and press workers. This is the case of criminal battery, whose aggravating factor was proposed in Bill No. 2874/2020, and threat, which is set forth in Bill No. 1080/2023. Adding penalty enhancement may cause more fear in potential aggressors while generating a more severe punishment for their actions.

Such measures also offer important safeguards to the issues by including crimes against journalists in the list of crimes subject to investigation by the Federal Police Department. Trade associations have reported that, in many cases, the local authorities provide inadequate responses to crimes, for which reason the engagement of the Federal Police can represent a more impartial and effective investigation and lead to proper accountability.

¹⁶ Further information at: <https://legis.senado.leg.br/sdleg-getter/documento?dm=8889317&ts=1688684363746&disposition=inline>.

¹⁷ Available at: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2371723&filename=Tramitacao-PL%20239/2011.

CHALLENGES AND OBSTACLES

On the one hand, protecting journalists and communicators is a key challenge for promoting freedom of speech in an environment of attacks like in Brazil, on the other hand, proportionality shall apply and measures must be balanced and in line with international human rights standards. In this sense, despite the good intentions of the bills above and in order to avoid abuses or disproportionate remedies, it is necessary a more in-depth debate about more stable paths towards the criminalization of attacks or of acts against the safety or physical integrity of journalists and communicators.

It also applies to the consideration of which actions should be criminalized and which penalties should be imposed, for example, the criminalization of hostile acts against press professionals that aims to prevent them from working. On the one hand, this is an issue to be addressed, on the other hand, the term “hostile” must not open the door to possible misinterpretations of press criticism, which is a normal behavior in democratic regimes as long as it does not give rise to intimidation or threat.

Another example is the penalty enhancement for defamation crimes against journalists and press professionals. If these actions constitute de facto methods employed for intimidation or in retaliation against communicators, it is important to remember that international human rights standards recommend that such actions be addressed in the civil sphere, and not in the criminal sphere as occurs in Brazil, regardless of who is the target of the attacks.

With regard to approval, most of the matters under consideration by the House of Representatives are attached to Bill No. 7107/2014. This legislative proposal, however, was introduced 10 years ago and did not pass the first committee (Constitution, Justice and Citizenship). The appointment of a rapporteur is pending, showing that it is not a priority matter for parliamentarians. In the Senate, although a public hearing on violence against the press was held in 2022¹⁸, the proposals have had no recent progress and there is no prospect of approval by committees.

It is necessary a more in-depth debate about more stable paths towards the criminalization of attacks or of acts against the safety or physical integrity of journalists and communicators

PLURALISM AND DIVERSITY

The bills mentioned above do not provide for journalistic pluralism whatsoever. It also does not refer to the impact of gender, race, and socioeconomic class on attitudes toward journalists. For example, we found no responses to the structural problem of online attacks against women journalists. Remedies would also be essential to tackle racist violence and attacks against black journalists¹⁹. Finally, the bills also fail to address violence and harassment in labor relations, which also impacts the freedom of speech and well-being of such workers.

¹⁸ Further information at: <https://www12.senado.leg.br/noticias/materias/2022/06/15/jornalistas-denunciam-aumento-de-ataques-a-imprensa-durante-governo-bolsonaro>.

¹⁹ Available at: <https://rsf.org/pt-br/brasil-desinforma%C3%A7%C3%A3o-e-ataques-nas-redes-contramulheres-jornalistas-imp%C3%B5em-s%C3%A9rios-desafios-para>.



Misconduct against journalism practice

Name

PL No. 2378/2020

(sets out guarantees for the full enjoyment of freedom of the press)

Topics addressed

- Journalists' rights
- crimes against the press

Draft, approval or implementation stage

Bill No. 7107/2014 – Passed Culture and Communication Committees and routed to the Constitution, Justice and Citizenship Committee of the House of Representatives. Senate approval is pending.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

Bill No. 2378/2020, submitted by deputy Shéridan (PSDB-RR party), had a substitute version approved in 2023 by the Communication Committee of the House of Representatives²⁰. The proposal sets forth fundamental rights for journalists, such as: 1) freedom of creation, expression and practice of their profession without “embarrassment, whether internal or external, aimed at obstructing, directly or indirectly, the free dissemination of information”; 2) isonomic access to sources of information; 3) access to public information when requested through the Access to Information Act, subject to written justification when delivery is denied; 4) isonomic access to press conferences of public authorities or officials; 5) reporter’s privilege; 6) free access to public places when on duty.

The bill lists other guarantees, such as seizure of journalists’ material only upon court order and the prohibition of sanctions against professionals to protect source confidentiality. The draft also requires public bodies to establish clear rules for media outlet accreditation and prohibits registration denial regarding media outlets or journalists who meet such criteria.

The bill also identifies as abuse of authority the act of preventing or hindering journalistic practice upon the seizure, as well as the destruction of work material or arrest of a professional who is not caught in the act of committing an offense. It also includes actions by authorities who, in order to prevent or hinder journalistic work, falsely impute a criminal act or a fact that damages journalists’ reputation, offend professionals’ dignity or decorum, incite harassment of journalists, and obstruct access to public information with no legal grounds.

GUARANTEES AND SAFEGUARDS

The latest legislative proposal version, approved by the Communication Committee of the House of Representatives, implements a crucial set of guarantees for professionals and journalistic activities, especially fact finding, information seeking and news reporting regarding public institutions. It is worth highlighting guarantees as the isonomic access to sources of information, the protection of work material and the free movement in public offices. Another relevant provision refers to securing the professional right to not sign texts or have their image linked to stories to which the journalist object. This right is a fundamental legal provision set forth in the Code of Ethics of the National Federation of Brazilian Journalists, referred to as “conscience clause”²¹, which grants journalists a protection against improper amendments to news material by their editors.

20 Available at: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2327539&filename=Tramitacao-PL%202378/2020.

21 Available at: https://fenaj.org.br/wp-content/uploads/2014/06/04-codigo_de_etica_dos_jornalistas_brasileiros.pdf.

These safeguards facilitate access to information and prevent discrimination when making public data available or organizing press conferences. These provisions help to protect professionals from abuse by authorities within the scope of their journalistic work, as well as preventing the seizure or destruction of their work materials.

| CHALLENGES AND OBSTACLES

The bill also features other points that are worthy of attention. Vague terms can make room for legitimate press protections to bring about questionable side effects. One example is the prohibition of “direct or indirect embarrassment” that obstructs the dissemination of information. While on the one hand embarrassment should be avoided and impeded, on the other hand, the institutionalization of this type of prohibition should abide by clear definitions, enforcement criteria, and sanctions set forth in law, which is not the case of the draft under discussion.

A bigger problem is including as abuse of authority conduct such as inciting journalist harassment, offending their dignity or decorum and obstructing access to information held by a public body. Inserting such conduct in the Abuse of Authority Act implies criminalization with penalties of one to four years, therefore, it is necessary a more in-depth debate on whether such actions should be treated as crimes – especially when taken into account vague and undefined concepts – and whether related penalties would be proportionate.

The proposal has already advanced in the House of Representatives after passing two committees, and it only needs to be approved by the Constitution, Justice and Citizenship Committee before it can be submitted to the Plenary. If approved, it must also be voted on by the Senate. Amendments to the draft content could help to correct problems with its wording and eliminate any openings for abuse.

| PLURALISM AND DIVERSITY

The bill presents an economic class approach by listing a set of rights for journalists. However, it could include specific guarantees to tackle gender and racial violence and oppression against press workers, such as prohibiting specific misconduct like sexual harassment, racism and discrimination.

The proposal sets fundamental rights for journalists, lists other guarantees and also identifies as abuse of authority the act of preventing or hindering journalistic practice

Vague terms can make room for legitimate press protections to bring about questionable side effects. One example is the prohibition of “direct or indirect embarrassment” that obstructs the dissemination of information

It could include specific guarantees to tackle gender and racial violence and oppression against press workers



LAWS AND BILLS

Tackling judicial harassment

Name

Bill No. 2855/2020

(amends article 4 of Law No. 9,099/1995 to establish the jurisdiction of small-claim courts)

Topics addressed

- Lawsuits against journalists
- small-claim court

Draft, approval or implementation stage

Under consideration by Constitution, Justice and Citizenship Committee of the House of Representatives

CONSIDERATION OF THE JOURNALISTIC PRACTICE

Bill No. 2855/2020, by deputy Alexandre Frota (PSDB-SP party), amends the Small-Claim Court Act (Law No. 9,099/1995) to provide that, in mental distress claims against press entities and independent journalists for articles published on the internet, the court jurisdiction must be established according to the domicile of the defendant.

GUARANTEES AND SAFEGUARDS

The bill simplifies journalists' right of defense and impedes the curtailment of right by determining that professionals and media outlets should be tried where they are domiciled. Currently, Small-Claim Court Act sets forth that the selection of venue is at the discretion of the plaintiff of a mental distress claim.

This measure has obstructed the defense of press workers, who are often required to structure the work of their legal representatives in other locations – especially in the event of judicial harassment in which several lawsuits on the same matter are entered by different plaintiffs in several regions of the country, forcing journalists to extensive and costly travel. The legislative proposal also implicates a process improvement since jurisdiction based on the defendant's domicile helps to locate the defendant more quickly for various procedures within the case.

The venue for mental distress claims against the press is also the subject of two Direct Action for Declaration of Unconstitutionality before the Federal Supreme Court (ADI Nos. 7055 and 6792). Organizations that advocate for journalism requested the Supreme Court to rule that, in the event of lawsuits filed against a journalist in several cities, they should all be tried in the journalist's place of residence.

PLURALISM AND DIVERSITY

The bill presents an economic class approach by strengthening press professionals' right of defense. Nonetheless, it could also address specific obstacles to the full performance of right of defense of women and non-white journalists and communicators.



PUBLIC POLICIES AND JUDICIARY'S INITIATIVES

Protection Program for Human Rights Defenders, Communicators and Environmentalists (PPDDH)

Topics addressed

- Risk analysis
- safety
- protection measures

Management

Ministry of Human Rights and Citizenship

Objective

Adopt and coordinate measures intended to safeguard those subject to threats as a result of their engagement in the promotion of human rights, freedom of expression, and the environment²²

Draft, approval or implementation stage

In course since 2004. The PPDDH operates under agreements entered into with the states of Minas Gerais, Bahia, Mato Grosso, Pará, Pernambuco, Paraíba, Rio de Janeiro, Ceará, and Maranhão. Beneficiaries who live in the other states are monitored by a federal technical team based in Brasília.

Social engagement, monitoring and evaluation

Civil society engages in the program through Decision-Making Councils. At the federal level, the council is composed of seven representatives from civil society organizations and seven representatives from government bodies on a parity basis²³. Nonetheless, such council has not resumed its works since the changes in the numbers of representatives. There is neither active transparency regarding the program's actions, nor any regular disclosure of the data and impacts of this public policy.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The expansion of the program's scope in 2018²⁴ in order to expressly include communicators and journalists in the list of beneficiaries represents a step forward towards the acknowledgment of the systemic risk scenario facing this group. It also shows the importance of such group for the human rights advocacy. The concept employed to define this group, however, limits the participation in the program to communicators and journalists who promote human rights in their coverage. There is neither a specific methodology for risk analysis of communicators and journalists nor specific protocols for this group, which significantly limits the effectiveness of the PPDDH.

ACTIONS, STRATEGIES, AND MECHANISMS

Throughout the Brazilian territory, civil society organizations that entered into partnership agreements with the government are at the front line of the policy implementation, offering and coordinating protection measures. Based on a technical opinion, the Decision-Making Council is responsible for admitting new beneficiaries to the program and for the measures offered, taking into account the beneficiary profile, the aggressor profile, existing support networks, coordination with local public authorities, the origin and reason of the threats. Admission requirements include professional-related threat evidence, recognition of the professional's work by community or human rights institutions.

²² Further information at: https://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Decreto/D9937.htm.

²³ Decree 11867/2023 – Provides for the Protection Program for Human Rights Defenders, Communicators and Environmentalists and its Decision-Making Council. Available at: http://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/decreto/D11867.htm.

²⁴ https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/39528373/do1-2018-09-04-portaria-n-300-de-3-de-setembro-de-2018-39528265.

Temporary emergency measures can be approved in the event of impending risk, in coordination with the Public Security Secretariat of the relevant state. For common cases, the technical team generally takes at least two months to prepare an opinion containing aggression episodes and intervention strategies. Then, the Decision-Making Council resolve whether it will admit the case and design the Protective Action Plan, which is reassessed every three to six months, according to the risk. Protection is usually offered for two years and can be renewed if the threat persists.

| GUARANTEES AND SAFEGUARDS

The PPDDH offers measures like periodic beneficiary monitoring, self-protection guidelines, psychological support and institutional coordination to spotlight threat cases. Cases that import greater risk may require the furnishment of security equipment, patrols and escorts offered by the military police departments. In the event of extreme risk circumstances, temporary shelter is an option to reduce the immediate risk by removing the beneficiary from their city on a provisory basis. The program also monitors inquiries and complaints.

| CHALLENGES AND OBSTACLES

One of the main obstacles to strengthening the PPDDH is the lack of a law that provides for program operations and secures the institutionality and continuity of this public policy, which has suffered the impact of changes of government since its creation around 20 years ago. This regulatory framework should prioritize financial stability and the program structuring through the coordination with federal and state spheres throughout the country. Nowadays, more than half of Brazil's states do not have agreements for local implementation of this public policy.

Another major obstacle to the success of the PPDDH is the lack of specific protocols for threatened communicators and journalists, in addition to the limited protection of those who work "to disseminate information aimed at advocating for human rights and who, as a result of their work towards this goal," are threatened. This concept does not comply with international standards for the protection of press freedom, which sets out safety guarantees for all media workers, without distinction of the object of media coverage.

It is also necessary to develop communication and dialogue strategies targeted at beneficiaries and their representative organizations. A poor communication strategy contributes to the program low visibility and can make beneficiaries distrustful of the state's immediate response, causing that many threatened professionals refrain from seeking this public policy.

Finally, a change in the management tool agreed between the government and the civil organizations is essential. The current partnership model has already generated several delays in transfer of funds, jeopardizing the policy continuity and putting beneficiaries at risk.

| PLURALISM AND DIVERSITY

The PPDDH's general guidelines and proposals need more detail in terms of ethnic-racial, gender, and class diversity for the management of rights violations cases. It is also crucial to recognize the particularities and challenges of journalistic practice in different social contexts, from professionals of large media groups to grassroots communicators in risk or vulnerable areas. An intersectional and contextualized approach would allow the program to offer more effective protection in line with the complexities of journalistic practice in different realities.



PUBLIC POLICIES AND JUDICIARY'S INITIATIVES

Technical Working Group for the National Protection Plan and Policy

Topics addressed

- National Protection Plan and Policy
- bill draft
- human rights defenders

Management

Ministry of Human Rights and Citizenship

Objective

Develop, with the participation of government and civil society representatives, proposals for the National Protection Plan and for a bill draft establishing the National Protection Policy for Human Rights Defenders, Communicators and Environmentalists

Draft, approval or implementation stage

in course. The technical Work Group (TWG) Sales Pimenta will operate for six months, and this term may be extended once for the same period of time²⁵.

Social engagement, monitoring and evaluation

The social participation in the TWG surpasses the election of civil society representatives for the group composition and includes public hearings throughout the group's work

CONSIDERATION OF THE JOURNALISTIC PRACTICE

Initially, there is no specific action or approach for communicators and journalists. The TWG adopted an initial methodology that prioritizes public consultations and hearings to listen to the demands from the protection policy's target audience, including organizations and the community in general. This initiative aims to guide the group's actions and to support the proposals for the protection plan.

ACTIONS, STRATEGIES, AND MECHANISMS

The bill draft for the creation of a national protection policy for human rights defenders was an order rendered by the Inter-American Court of Human Rights, which condemned the Brazilian state for the impunity of the murder of defender Gabriel Sales Pimenta in 1982. A decision by the Regional Federal Court of the 1st Circuit also ordered the federal administration to establish a National Protection Plan for Human Rights Defenders with the participation of the society. Years later, it originated the TWG Sales Pimenta.

The group work started at the end of 2023 and it had held three meetings by January 2024. A public consultation was launched, inviting the population, civil society organizations, public bodies and rights committees to submit proposals for the design of the new National Protection Plan²⁶. The meetings have been held on a monthly basis, in person or online, and special meetings can be convened. In view of the complexity and range of the activities, the work schedule should be extended.

²⁵ 1st Meeting of the TWG Sales Pimenta. Available at: <https://www.gov.br/mdh/pt-br/assuntos/noticias/2023/novembro/grupo-de-trabalho-technico-sales-pimenta-realiza-1a-reuniao-e-define-calendario-de-atividades>.

²⁶ Further information at: <https://www.gov.br/mdh/pt-br/assuntos/noticias/2024/fevereiro/aberta-convocacao-popular-para-elaboracao-do-plano-nacional-de-protecao-a-defensores-de-direitos-humanos-comunicadores-e-ambientalistas>.

| GUARANTEES AND SAFEGUARDS

The TWG is open to suggestions and contributions from civil organizations, including those that represent journalists and communicators, such as Artigo 19 and the National Forum for Communication Democratization (FNDC). This measure reflects a commitment to the inclusion of the interested parties in the development of protection policies, facilitating a discussion that incorporates the different needs, challenges and backgrounds of such workers so that more assertive and effective proposals can emerge to secure the rights.

| CHALLENGES AND OBSTACLES

The proposals must take journalists and communicators into account in a complex and contextualized manner, so that the proposed actions do not generalize their context, origin and experiences, effectively guaranteeing their protection and safety without jeopardizing or hindering their professional practice. In addition, it is crucial to guarantee the continuity and engagement of civil society and communications entities along the policy-making process and during the effectiveness of protection policy, through targeted and segmented discussion and communication.

| PLURALISM AND DIVERSITY

The group is composed of representatives from different segments and areas of civil society²⁷. In addition to the aforementioned organizations that work for safety of journalists and communicators, the TWG also includes the Brazilian Lesbian, Gay, Bisexual, Travesti, Transgender, and Intersex Association (ABGLT) and Malungu – Coordination of the Associations of Remaining Quilombo Communities of Pará, being that there is room for a diverse approach in the design of the public policy and for the incorporation of different perspectives and demands during the preparation of the proposals. Taking into consideration that the issue of violence against activists, environmentalists and communicators is crossed by different structural and systemic traits of society, such as racism, machismo, and political and economic interests, it is essential that the TWG's work proposes an articulation with different segments of government and society.

There is no specific action or approach for communicators and journalists, but the prioritization of public consultations and hearings to listen to the demands from the protection policy's target audience, including organizations and the community in general

The TWG is open to suggestions and contributions from civil organizations, including those that represent journalists and communicators, such as Artigo 19 and the National Forum for Communication Democratization (FNDC)

Taking into consideration that the issue of violence is crossed by different structural and systemic traits of society, such as racism, machismo, and political and economic interests, it is essential that the TWG's work proposes an articulation with different segments of government and society

27 Further information at: <https://www.in.gov.br/web/dou/-/portaria-n-642-de-11-de-outubro-de-2023-516140436>.



PUBLIC POLICIES AND JUDICIARY'S INITIATIVES

National Observatory on Violence against Journalists and Communicators

Topics addressed

- Freedom of speech
- justice
- judicial harassment
- cyberviolence
- prevention

Management

Ministry of Justice and Public Security through the National Secretariat of Justice

Objective

Monitor and combat violence against grassroots journalists and communicators on duty by calling in the proper authorities and following up on investigations²⁸

Social engagement, monitoring and evaluation³⁰

The ordinance establishing the Observatory provides for the participation of civil society organizations' representatives in the design and implementation of the policy³¹. There are not specific transparency and evaluation mechanisms in operation yet.

Draft, approval or implementation stage²⁹

In course since February 2023

CONSIDERATION OF THE JOURNALISTIC PRACTICE

For the purposes of the extension of the public policy, the Observatory covers journalists and communicators who work independently or for media outlets throughout the Brazilian territory, regardless of the object of the media coverage, place of work, and media type³².

ACTIONS, STRATEGIES, AND MECHANISMS

The Observatory arranges its actions in Working Groups (WGs), with the aim of consolidating violence records and data, supporting case follow-up, contributing to hold aggressors accountable and proposing public policies on prevention and reparation. The WGs are divided into five thematic areas: race and diversity, gender violence, judicial harassment, online attacks & protection protocols, and procedural paths & legal protocols. The groups are composed of researchers, jurists and representatives of public bodies and civil society organizations, including RSF. Regular meetings are held every two months in person, but it is possible to attend them online. The WGs have the autonomy to convene online meetings at their own discretion. Member participation is voluntary and unpaid.

The first year of activities focused on structuring the policy, promoting public debates and institutional coordination, and monitoring specific cases. At the end of 2023, a reporting channel was launched on the website of the Ministry of Justice and Public Security, particularly projected to record incidents of violence against journalists and communicators on duty. Both industry workers and the general public can submit a report.

28 Further information at: <https://www.in.gov.br/en/web/dou/-/portaria-mj-sp-n-306-de-16-de-fevereiro-de-2023-465082108>.

29 Further information at: <https://www.gov.br/mj/pt-br/assuntos/noticias/mj-sp-lanca-canal-de-denuncias-do-observatorio-da-violencia-contra-jornalistas-e-comunicadores-1>.

30 Further information at: <https://www.gov.br/mj/pt-br/aceso-a-informacao/transparencia-e-prestacao-de-contas>.

31 Further information at: <https://www.in.gov.br/en/web/dou/-/portaria-mj-sp-n-306-de-16-de-fevereiro-de-2023-465082108>.

32 Further information at: <https://www.gov.br/mj/pt-br/canais-de-denuncias/jornalistas-e-comunicadores>.

In order to consolidate violence cases, it is expected the development of a national database, which allows segmented analysis by gender, race/ethnicity, region, and aggression type, as well as communication campaigns highlighting the importance of freedom of the press and free expression for democracy.

| GUARANTEES AND SAFEGUARDS

The establishment of an Observatory focused on violence against journalists is a long-standing demand of journalism organizations in Brazil, which finally materialized in 2023. The initiative demonstrates the ruling federal administration's commitment to the press freedom agenda, as well as the willingness to undertake institutional endeavors to provide concrete solutions to cases of aggression, threats and intimidation. The fact that the Observatory emerged out of the Ministry of Justice and Public Security and, from the very first moment, has been in coordination with Judiciary's institutions (such as the National Council of the Federal Prosecution Office and the National Council of Justice) and civil society organizations also bolsters its intervention capacity. Finally, the proposal to develop a centralized national database represents a significant step towards comprehensive incident analysis, the identification of patterns and, consequently, the proposal of public policies on prevention.

| CHALLENGES AND OBSTACLES

The major challenge facing the structuring of this public policy is the lack of a technical team or public officials available to manage the initiative, coupled with the late implementation of protocols and procedures for case processing. Assistance offered through the public policy lacks transparency and communication tools, a fact that compounds the poor understanding of journalists and communicators in general about the Observatory development and purpose. The lack of information campaigns aimed at this audience is an obstacle for the engagement and participation of these professionals.

| PLURALISM AND DIVERSITY

The creation of gender and race working groups demonstrates the recognition of this approach impact on journalistic practice. Besides promoting the participation of organizations that advocate for freedom of the press and free expression, the Observatory is also focused on journalists and communicators from different media formats, coverage areas, and background. However, aspects related to social class diversity or economic and social inequalities have not yet been structured for the debate.



PUBLIC POLICIES AND JUDICIARY'S INITIATIVES

National Forum on Judicial Branch & Freedom of the Press

Topics addressed

- Justice System
- institutional relations
- democracy

Management

National Council of Justice (CNJ)³³

Objective

Conduct a comprehensive assessment of legal cases involving journalists and/or the media outlets and learn judicial procedures in democratic countries, in order to improve our understanding of disputes related to the role of the press in the justice system

Social engagement, monitoring and evaluation

In course since February 2014

Social engagement, monitoring and evaluation

Three civil society organizations hold seats in the Forum Executive Committee: the Brazilian Bar Association (OAB), the Brazilian Press Association (ABI) and the Brazilian Association of Investigative Journalism (ABRAJI). There is a demand for the inclusion of new journalism advocacy organizations, which should happen in 2024.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The forum concentrates its works on journalism, a response to the increasing legal challenges faced by the press in the past years. The initiative encompasses monitoring threats to press freedom, such as prior censorship, predatory litigation and judicial harassment, as well as discussing the punishments for attacks against journalists and communicators, disinformation, and artificial intelligence (AI).

ACTIONS, STRATEGIES, AND MECHANISMS

The forum's actions include conducting a statistical survey of press-related court cases and studying judicial procedures in democratic countries, with the purpose of having the judiciary assimilate issues related to the forum's goals. A National Executive Committee – made up of organizations representing the sector – is in charge of leading actions and ensuring diversity of perspectives. Furthermore, the forum holds annual national meetings and can establish partnerships and cooperation agreements to strengthen its operations at its own discretion.

GUARANTEES AND SAFEGUARDS

The forum stands out for promoting dialogue between the judiciary and the press through supporting initiatives that provide a data-based approach to understand the challenges faced by the press and how the judicial branch can perform better to foster an environment for advancing journalistic practice. In view of the growing participation of the Judiciary in resolving disputes and guaranteeing democratic freedoms in Brazil, the forum can play a strategic role offering guidelines and guidance for the Justice system's approach on this matter.

³³ Further information at: <https://atos.cnj.jus.br/atos/detalhar/1632>.

CHALLENGES AND OBSTACLES

For the actual fulfillment of this role, the forum would have to prepare an agenda, a roadmap and a regular meeting calendar, besides establishing effective communication with judiciary members. The design and delivery of practical solutions to the challenges imposed on the press within the scope of the judicial branch – particularly with respect to impunity for crimes against journalists and to judicial harassment – are crucial features for the forum's success.

PLURALISM AND DIVERSITY

We did not discover any specific approaches or initiatives aimed at pluralism in journalism or at perspectives on race, gender and class among the set of actions developed by the forum.



PUBLIC POLICIES AND JUDICIARY'S INITIATIVES

Cooperation with the PFDC for monitoring violations of freedom of the press

Topics addressed

- Violation of rights
- access to justice
- freedom of speech

Management

Office of the Federal Attorney General for Citizen's Rights of the Federal Prosecution Office (PFDC/MPF)³⁴

Objective

Preventing and combating attacks on freedom of the press and freedom of speech, with a special focus on protecting journalists and communicators and tacking judicial harassment, while promoting preventive and educational measures on such matter³⁵

Draft, approval or implementation stage

The initiative was launched in September 2023, and there is an activity schedule that will run until the end of the first half of 2024

Social engagement, monitoring and evaluation

This initiative is based on the cooperation between the PFDC and organizations that advocates for journalism and freedom of speech, being the monitoring of the roadmap execution under PFDC representatives and member entities' responsibility.

34 Available at: [https://www.mpf.mp.br/o-mpf/sobre-o-mpf/atuacao/procuradoria-federal-dos-direitos-do-cidadao#:~:text=A%20Procurado-ria%20Federal%20dos%20Direitos%20do%20Cidad%C3%A3o%20\(PFDC\)%20tem%20como,medidas%20necess%C3%A1rias%20a%20sua%20garantia.](https://www.mpf.mp.br/o-mpf/sobre-o-mpf/atuacao/procuradoria-federal-dos-direitos-do-cidadao#:~:text=A%20Procurado-ria%20Federal%20dos%20Direitos%20do%20Cidad%C3%A3o%20(PFDC)%20tem%20como,medidas%20necess%C3%A1rias%20a%20sua%20garantia.)

35 Available at: [https://www.mpf.mp.br/pfdc/temas/atuacao-do-mpf/protocolos-de-cooperacao/memorando-de-entendimento-para-garantia-da-liberdade-de-impressao-2023/view.](https://www.mpf.mp.br/pfdc/temas/atuacao-do-mpf/protocolos-de-cooperacao/memorando-de-entendimento-para-garantia-da-liberdade-de-impressao-2023/view)

I CONSIDERATION OF THE JOURNALISTIC PRACTICE

The partnership was developed in response to attacks on freedom of speech, particularly attacks against journalists, communicators, and media professionals on duty. The purpose of the agreement is to facilitate the coordination between the participants, aimed to the prevention, accountability, and creation of mechanisms to enforce the rights to freedom of speech, to freedom of the press and to information through the protection of journalistic practice. The fight against judicial harassment is a central focus to extend journalists' defense against cascading lawsuits.

I ACTIONS, STRATEGIES, AND MECHANISMS

The cooperation between the PFDC and civil society organizations, including RSF, is based on a memorandum of understanding and a roadmap focused on preventing violations, holding aggressors accountable and enforcing the rights to freedom of speech and freedom of the press. A reporting channel was launched in October 2023³⁶, and measures can be taken at both the federal and state levels of the Public Prosecution Office. Semi-annual statistical reports on case processing and guidelines to drive the MPF's work in cases of violence against journalists are also foreseen, in addition to outreach events for 2024.

I GUARANTEES AND SAFEGUARDS

The initiative confirms a core commitment to press freedom — highlighting such right as a fundamental cornerstone for a fair and informed society — and reinforces approaches for protecting journalists against attacks on press freedom and judicial harassment through MPF's actions in cooperation with civil organizations. Furthermore, it promotes access to justice by holding aggressors accountable, mobilizes society to advocate for journalism, and promotes awareness of rights for communications workers.

I CHALLENGES AND OBSTACLES

The lack of institutional coordination within the MPF is among the main challenges to ensure a swift case processing. Moreover, it is crucial that the body establishes a national investigation protocol for crimes against journalists, communicators, and communications workers, taking into consideration the peculiarities of these violations. Due to the temporary effectiveness of the partnership, prevention and education efforts must be continuously in force.

I PLURALISM AND DIVERSITY

There is no explicit reference to or guidelines on diversity and pluralism in the action plan or in the memorandum of understanding executed between the PFDC and civil society organizations. However, there are specific fields in the reporting channel about race, gender, and sexual orientation, which could be used to record cases more effectively.

³⁶ Reporting channel available at: <https://docs.google.com/forms/d/e/1FAIpQLSeYvQ830-rDorh5dXd5Q7DxB4sc4G-NpWYLyT-CIGMieFu6jJQ/viewform>.



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DOMAIN

2

PROMOTION AND SUSTAINABILITY

Freedom of speech and freedom of expression of thought and of journalistic information, enshrined in the Federal Constitution and in international treaties signed by Brazil, are characterized not only by the respect for journalistic practice and the inhibition to prior restraint (except for cases set forth in law), but also by the federal positive measures to promote and support the information ecosystem so that it can thrive.

In the 2023 Joint Declaration on Media Freedom and Democracy, the rapporteurs on freedom of expression from United Nation (UN), the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and the African Commission on Human and Peoples' Rights (ACHPR) assert the importance of a pluralistic and diverse information ecosystem and highlight the financial sustainability of journalistic agents as a key issue that, if not guaranteed, has great potential to promote market concentration and give rise to “media deserts”³⁷. “Financial sustainability of the media is crucial for building a robust and resilient media sector, free from the threat of being co-opted or otherwise directly or indirectly controlled by State and/or private actors, or excessive media concentration that diminishes pluralism,” the rapporteurs affirm.

The document contains recommendations for states, such as the development of mechanisms to support independent journalism and a wide range of news production. Examples of the mechanisms proposed are subsidies based on public interest, public advertising pursuant to clear and non-dis-

³⁷ Available at: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1274&IID=2>.

criminary criteria, and stimulus to online platforms' contribution to media sustainability (through subsidies, taxes and/or competition regulations).

Such efforts are even more important at a time where sustainability of news outlets is being challenged by shifts in national and global markets. Between 2018 and 2021, a survey conducted by the Brazilian portal Poder360 showed that at least 17 medium-sized to large-sized national media outlets closed their doors or shut down part of their operations in Brazil³⁸. In 2021 alone, Portal Comuniquese reported 12 national and state media outlets phased out their print edition, such as Diário do Nordeste (Ceará), Jornal do Comércio (Pernambuco) and Época magazine, by Organizações Globo³⁹. Abril, one of the country's largest publishers, filed for court-supervised reorganization.

Those that continue to operate have also suffered impacts. According to a survey by the National Federation of Journalists (FENAJ), although journalistic companies benefited from tax relief policies, they executed a staff reduction of 21% between 2013 and 2021⁴⁰. In terms of circulation, another study by Poder360 reveals that the 15 largest print media outlets in Brazil reported a drop in circulation. The combined average daily circulation of these publications fell from 963,000 in 2017 to 394,000 in 2022⁴¹. These data support the already noticed shrinkage of news consumption in traditional media outlets and formats, which has materialized as the print operations shutdown mentioned above.

On the other hand, digital media has witnessed a rise in the same period, indicating the migration of news consumption habits from offline to online media. Digital edition circulation grew from 593,000 in 2015 to 1.1 million in 2022. As for print and digital circulation combined, there was a drop in the same period, from 1.62 million to 1.47 million⁴².

Between 2018 and 2021, a survey conducted by the Brazilian portal Poder360 showed that at least 17 medium-sized to large-sized national media outlets closed their doors or shut down part of their operations in Brazil

The migration to digital has also occurred in the advertising market. According to a report by Deloitte, the advertising share on free-to-air TV services in Brazil fell from 68% in 2015 to 55% in 2020, while digital media rose from 7.2% to 32% in the same period. In 2023, FTA TV services' share on the advertising pie drop to 43%, while the internet's share increased to 36.9%.

Another advertising market survey named project CENP-Meios pointed out that internet advertising investments increased from 15% in 2017 to 35.7% in 2022. As for FTA, their share fell from 58.7% to 41.7% in the same period, and newspapers, from 3.3% to 1.7%⁴³, corroborating the audience and revenue drop trend in traditional media indicated above. Thus, the Brazilian media industry has had to compete with digital players, both in journalism and advertising markets.

On the Internet, investments are mainly directed to social networks such as Facebook, Instagram, and TikTok, as well as to search engines. IAB Brasil conducted a study on online advertising titled "Digital AdSpend 2022", which showed that 53% of funds were allocated to social networks, 28% to search engines, and 19% to digital media outlets, content producers and others in that year. Large international conglomerates dominate these segments, particularly Meta (controlling company of Facebook, Instagram, WhatsApp, and FB Messenger) and Alphabet (controlling company of Google and YouTube).

Against this background, an analysis of the laws, bills and public policies related to journalism promotion and sustainability reveals that initiatives are sluggish and incipient to comply with internatio-

38 Available at: <https://www.poder360.com.br/brasil/ao-menos-17-veiculos-de-midia-fecharam-no-brasil-em-4-anos/#:~:text=Entre%20eles%2C%20o%20Di%C3%A1rio%20do,depois%20de%20decis%C3%B5es%20da%20Justi%C3%A7a.>

39 Available at: [https://portal.comuniquese.com.br/12-veiculos-de-comunicacao-fecharam-as-portas-no-brasil-em-2021/.](https://portal.comuniquese.com.br/12-veiculos-de-comunicacao-fecharam-as-portas-no-brasil-em-2021/)

40 Available at: [https://fenaj.org.br/mesmo-com-desoneracao-da-folha-mercado-de-trabalho-formal-de-jornalistas-encolhe-21-em-nove-anos/.](https://fenaj.org.br/mesmo-com-desoneracao-da-folha-mercado-de-trabalho-formal-de-jornalistas-encolhe-21-em-nove-anos/)

41 Available at: [https://www.poder360.com.br/economia/jornais-impressos-circulacao-despenca-161-em-2022/.](https://www.poder360.com.br/economia/jornais-impressos-circulacao-despenca-161-em-2022/)

42 Available at: [https://static.poder360.com.br/2023/02/circulacao-jornais-no-impresso-digital-ivc-2015-2022-1.png.](https://static.poder360.com.br/2023/02/circulacao-jornais-no-impresso-digital-ivc-2015-2022-1.png)

43 Available at: [https://cenpmeios.cenp.com.br/cenp-meio/.](https://cenpmeios.cenp.com.br/cenp-meio/)

nal recommendations for a pluralistic and diverse ecosystem in Brazil.

There are deficiencies in Brazil's 20th century policies, for example, regarding the sustainability of non-commercial media in view of the increasing need for regulatory advances to ensure the existence of independent and sustainable journalism in the digital public sphere.

In the first group, the public and community media funding in Brazil still faces major obstacles. During Michel Temer (2016-2018) and Jair Bolsonaro (2019-2022) administrations, Empresa Brasil de Comunicação (EBC) – a state-owned public broadcasting company – underwent an institutional dismantling, including editorial interference⁴⁴, funding cut, budget reduction and repeated threats of closedown. In 2015, the last year of the Dilma Rousseff administration before her impeachment, the earned revenue was BRL 756 million⁴⁵. In 2022, after the two administrations referred to above, the budget released was BRL 565.8 million⁴⁶. In addition to the nominal decrease, cumulative inflation for the period was 46%⁴⁷.

Another fact relevant to the sector sustainability was the withholding of the Public Broadcasting Promotion Contribution (CFRP), a fee paid by telecom companies and allocated to EBC and other public channels as an additional source of revenue, in addition to the federal budget. Since the establishment of EBC, the CFRP has been challenged in court by telecoms, and the fees collected have been deposited in court. In 2013, some companies started to pay the fee, but access to the funds relied on the yearly allocation by the federal government. Successive federal administrations withheld these transfers, maintaining part of the CFRP in government coffers. In 2022, for example, only 35% of the BRL 230 million collected was released to EBC⁴⁸.

In 2023, the government instituted a new funding for educational radio and television stations, including a broadcast permit for institutional advertising by the Federal Executive Branch on these broadcasters. In 2024, the Secretariat for Social Communication of the Presidency of the Republic (SECOM) published the Ordinance No. 15, launching a call for proposals for community radio stations, so that they can be sponsored through cultural support from federal administration bodies⁴⁹. However, the social movement that brings together community communicators defends the removal of major obstacles and the adoption of rules authorizing institutional advertising. In August 2023, federal government representatives stated they were working on new regulatory decrees on this matter⁵⁰. By the beginning of 2024, no rules had been published.

An analysis of the laws, bills and public policies related to journalism promotion and sustainability reveals that initiatives are sluggish and incipient to comply with international recommendations for a pluralistic and diverse ecosystem in Brazil

As for the federal legislative branch, there are proposals to amend the Community Broadcasting Act (Law No. 9,612/1998) in order to allow advertising on these stations. By title of example, Bill No. 4822/2020, by deputy Bacelar (Pode-BA party), sets aside 20% of government advertising funds for community, educational, and citizenship-related channels and stations. Bill No. 666/2019, by senator Weverton (PDT-MA party), which is under consideration by Senate, provides for up to 10% of programming to be used for social-oriented institutional advertising and for the disclosure of administrative acts. Bill No. 55/2016, by former senator Donizeti Nogueira (PT-TO party), is also under consideration by Senate and authorizes any paid advertising on community radio stations.

44 This issue will be addressed in Domain 4 of this report.

45 Further information at: https://www.ebc.com.br/sites/institucional/files/atoms/files/relatorio_de_administracao_2015_-_final_-_assinado_color.pdf. Taking into account the 2015 average exchange rate, the budget would be equivalent to USD 227 million. Exchange rate extracted from: <http://www.ipeadata.gov.br/ExibeSerie.aspx?serid=31924>.

46 Further information at: https://www.ebc.com.br/sites/institucional/files/atoms/files/relatorio_da_administracao_2022.versao_final.pdf. Taking into account the 2012 average exchange rate, the budget would be equivalent to USD 109.5 million. Exchange rate extracted from: <http://www.ipeadata.gov.br/ExibeSerie.aspx?serid=31924>.

47 Data obtained from the calculator provided by the Central Bank of Brazil. Available at: <https://www3.bcb.gov.br/CALCIDADA/O/jsp/index.jsp>.

48 Further information at: https://www.ebc.com.br/sites/institucional/files/atoms/files/relatorio_da_administracao_2022.versao_final.pdf.

49 Available at: <https://www.in.gov.br/en/web/dou/-/portaria-secom/pr-n-15-de-6-de-fevereiro-de-2024-541948642>.

50 Further information at: <https://agenciapulsarbrasil.org/lancamento-de-frente-parlamentar-em-apoio-as-radios-comunitarias-e-marcado-pelo-anuncio-de-novo-decreto-regulatorio/>.

With regard to the advertising pie for these stations, the executive branch's ads can play an important role in terms of sustainability, provided that, as the rapporteurs for freedom of expression highlighted, such ads are distributed with clear criteria and without discrimination in order to strengthen pluralism. In this sense, there are efforts to improve the public policy regarding the federal government allocation of advertising funds, such as the public consultation on digital advertising launched in 2023 by SECOM⁵¹.

Nevertheless, Brazil still needs a more robust and structured policy on the promotion of journalistic pluralism and diversity. With regard to for-profit media outlets, the main agenda for promotion and sustainability is the enactment of a law that establishes the sharing of funds earned by online platforms through the use of journalistic content on social networks. There are several related proposals under consideration by the National Congress, but there are no expectations of prompt approval.

Bill No. 2370/2019 was the legislative proposal that came closest to voting in the Plenary of the House of Representatives. The current bill version sets out rules on payment carried out by platforms and application providers regarding copyright and journalistic content, but the bill voting is locked due to disagreements, particularly over the rules of musical and audiovisual works protected by copyright.

Even though the journalism payment regulation did not stir much controversy under the legislative process, the proposal is far from guaranteeing pluralism in journalism financing. The text follows the model adopted in countries like Australia and Canada, where online platforms negotiate with media outlets for the use of their content⁵²; however, the wording does not clearly define what type of use of journalistic content would require payment, nor does it establish criteria to encompass small, regional, and non-profit media outlets. Also, there are no rules to prevent the funds transferred by the platforms from reaching media outlets that disseminate disinformation or disrespect journalistic ethics. Without proper safeguards, this crucial mechanism could adversely strengthen large media conglomerates only, increasing the historical journalistic market concentration and inequality in Brazil.

Of greater concern is the lack of policies that objectively reflect the specific features of independent and grassroots journalism, which plays a crucial role in shaping informed, critical and participatory citizens. There are no specific measures promoting the sector, which undermines not only the financial stability of media outlets and the plurality of voices in society, but also poses challenges to the preservation and autonomy of journalists and communications workers. The same warning applies to the noticeable gap in existing and/or proposed policies regarding a suitable approach of ethnic-racial, gender and class diversity.

The challenge facing media outlets, authorities, professionals and civil society is to make these agendas move forward in the legislative process and to grasp the opportunity of the government openness to address the issue and demand more consistent and permanent public policies.

51 Further information at: <https://www.gov.br/secom/pt-br/assuntos/noticias/2023/09/secom-abre-consulta-publica-sobre-novas-regras-para-publicidade-de-governo-na-internet>.

52 A detailed explanation on these countries' models can be found in Bulow, M. V.. Remuneração do jornalismo por plataformas digitais. Comitê Gestor da Internet no Brasil, 2023. Available at: https://cgi.br/media/docs/publicacoes/1/20230517100031/Estudo_Remuneracao_Jornalismo_pelas_Plataformas_Digitais.pdf.



Financing of public and non-governmental communication

Names

Law No. 11,652/2008

(establishes the principles and purposes of public broadcasting services under the Executive Branch or indirect state administration; creates Empresa Brasil de Comunicação – EBC)

Decree-Law No. 236/1967

(provides for broadcasting property rules and establishes the educational television service)

Law No. 9612/2008

(establishes the community broadcasting service)

Topics addressed

- Public broadcasting
- educational broadcasting
- community radio stations

Draft, approval or implementation stage

Laws passed and partially implemented.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The complementarity of the public, private, and governmental systems is established in Article 223 of the Federal Constitution of Brazil. The public system comprises public and community broadcasters whose purpose is to provide diverse and pluralistic information to the society, including through journalistic activities. Therefore, the sustainability of these broadcasters' existence may directly affect the information ecosystem in Brazil by ensuring the propagation of news free from the influence of commercial interests.

While the Brazilian Telecommunications Code (Law No. 4,117/1962) authorizes commercial broadcasters to seek financing through advertisements, the non-commercial broadcasting financing must observe a number of rules defined in Brazilian laws and follows different interpretations of the services provided.

Law No. 11,652/2008 defines the rules applied to public broadcasters under the Federal Executive Branch, such as those controlled by EBC (TV Brasil and radio stations MEC, Nacional, and Nacional da Amazônia), whose operation should observe a set of principles and purposes (see page 59). According to the ruling, EBC may obtain funds from the General Government Budget; from service provision; from donations; from cultural support mechanisms, via sponsoring, and institutional advertising by public and private companies; and by broadcasting legal advertisements from federal administration entities and bodies. Advertising products or services is prohibited by this law, which establishes the Public Broadcasting Promotion Contribution (CFRP), payable by telecommunications companies. EBC is entitled to at least 75% of the sum collected through CFRP.

On the other hand, Decree-Law No. 236 establishes the educational television concept, aimed at promoting educational shows by airing classes, conferences, lectures, and debates. This model is used by most educational channels bound to state governments (such as TVE and TV Cultura of several states). The law prohibits these broadcasters from airing any advertisement or accepting sponsorships for their shows; however, it does not create specific funding means.

Finally, Law No. 9,612/2008 sets the rules applied to community radio stations, defining these as restricted-coverage, low power, sound broadcasting services operated by nonprofit community foundations and associations. The law only admits the possibility of sponsorship from establishments located in the attended area, which is aligned with the idea of only restricting their funding origin.

| GUARANTEES AND SAFEGUARDS

In spite of limiting the funding origin, the abovementioned mechanisms are crucial for public media, including community ones, to be able to comply with their mission of contributing to a diverse and pluralistic information environment. By limiting advertising, the model established for EBC creates a barrier against risks associated with the use of this type of funding, such as the public communications' co-optation by the commercial dynamics as the entity becomes dependent on corporate advertisers, which affects its journalistic activity. On the other hand, the creation of the CFRP as a public fund aimed at backing not only EBC, but other non-commercial broadcasters, represents the collection of a fee to be paid by companies to finance public media – according to UNESCO this is a good practice to ensure the sustainability of the sector and of the journalistic services provided by such media.

| CHALLENGES AND OBSTACLES

Over 15 years after CFRP's creation, this source of funding has never been regulated, and the allocation of the collected sum is marked by court disputes. Taxable telecommunications companies litigated the measure in court and, in the first years after the rule became effective, the collected sum was deposited with the court. After the dispute, in the 2010s, the Brazilian federal government managed to set deals with some of these companies and receive an insufficient part of the sum collected. However, these funds were still not fully transferred to the public communications sector. During the COVID-19 pandemic, for example, Jair Bolsonaro's administration destined the CFRP's accumulated funds to actions aimed at preventing and mitigating the virus' effects, wiping out the reserve that could be used to the sector's benefit.

The non-regulation of the CFRP keeps an instable institutional scenario for the EBC access to the funds levied and hinders their transfer to other non-commercial agents, such as state-owned and community educational broadcasters. As to the financing of state-owned broadcasters, although some of them do not observe the rule that prohibits advertising, they still face a chronic resource insufficiency problem from the part of many state administrations. In the field of community broadcasting, the sponsorship limitation is a long-running criticism by associations in the sector, who advocate broader possibilities of fund seeking, including by advertizing. Even recent actions by the Brazilian Executive Branch authorizing sponsoring by public bodies as a form of cultural support in community broadcasting do not mean the issue has been overcome.

| PLURALISM AND DIVERSITY

The abovementioned legislations are focused on promoting pluralism in communications, with provisions on public and community media funding. However, these rules could be updated, including specific fund allocation mechanisms to strengthen workforce diversity within broadcasters, since such workforce is directly responsible for their maintenance and content production. Another improvement to be implemented is to allocate funds to promote gender and race equality through content creation, fostering pluralism and diversity throughout genres and formats and producing content aimed at tackling gender and racial discrimination.



Journalistic content payment by digital platforms

Names

Bill No. 2370/2019

(amends, updates, and consolidates the copyright law)

Bill No. 1354/2021

(amends the Civil Rights Framework for Internet Use in Brazil to promote the news pluralism and diversity; assure Brazilian journalism protection measures and combat fake news; enforce a non-discrimination policy within newspaper, magazine, radio station, and television companies; and create mechanisms of content equanimity, pluralism, and diversity on the internet)

Topics addressed

- Payment of media outlets by digital platforms
- copyright

Draft, approval or implementation stage

Both await review by the Communications Committee of the House of Representatives. The bills also need to be reviewed by the Constitution, Justice and Citizenship Committee and by the Plenary of the House of Representatives. Upon its passing, it must undergo senatorial analysis.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

Initially focused on amendments to the copyright law, Bill No. 2,370, by deputy Jandira Feghali (PCdoB-RJ party), was also complemented with provisions on the payment of media outlets by digital platforms considering the use of journalistic content. According to the last opinion on the matter, drafted by the plenary rapporteur, deputy Elmar Nascimento (União-BA party), such payment would be due to at least one-year-old entities that produce journalistic content in an original, regular, organized, and professional manner and are registered as legal entities, with physical address and a chief editor in Brazil. Journalistic content is defined in the report as that of “eminently informative purpose, addressing facts, opinions, events, and general cases in the public interest, regardless of its type or format, observing the ethical principles and standards of conduct during journalistic practice.”

Bill No. 1,354, by deputy Denis Bezerra (PSB-CE party), also establishes mechanisms for media outlets to be remunerated by digital platforms; however, it is based on an amendment to the Civil Rights Framework for Internet Use in Brazil. In its latest version, dated November 2023, drafted by the rapporteur, deputy Gervásio Maia (PSB-PB party), the proposed text reproduced in full excerpts of Bill No. 2,370 on journalistic content payment.

Both bills, with a same writing, limit the payment obligation to digital platforms using third-party content with more than 2 million users. According to the proposal, the sum to be paid as payment would be negotiated between media companies and platforms. It would be possible for such negotiations to include individual content creators, who would be able to constitute legal entities. Should the negotiation fail, the dispute may be settled by a private arbitration chamber or public administration body.

The payment computation should consider criteria such as: original journalistic content volume; audience, in disregard of manipulation techniques; and investment in journalism as verified by the number of professionals hired by the outlet.

Recent reports on the bills exclude the payment obligation in cases where the use of journalistic content is made by simple, profitless, link sharing by the final user; provided that the platform “does not add elements, briefs, or use other tools to amplify the information contained in the content shared.” According to these

reports, the sharing of content that entered the public domain or via private message services no longer entitles their creators to receive a payment. Platforms are also prohibited from removing journalistic posts to avoid meeting their obligations under the bill.

| GUARANTEES AND SAFEGUARDS

These bills aim to tackle a core issue for the professional journalism sustainability: the concentration of advertising funds with big digital platforms that use content produced by media outlets in different application services (as a result in search tools or by social media sharing), not paying a percentage of their profit to the original content creators. An aspect criticized by journalistic and digital rights organizations in both bills was the lack of rules including individual journalists as parties entitled to be paid by platforms. The concern was negotiations between companies ending up benefiting only the owners of media outlets, and not the workers who ultimately create the content. After this input, the topic was included in the latest versions of the respective reports.

| CHALLENGES AND OBSTACLES

The main challenge of these bills is the lack of clarity regarding which type of “use of journalistic content” by platforms could give rise the obligation of payment by these platforms. In August 2023, circa 50 journalistic and civil society organizations published a public statement warning about the issue, as well that criteria used in the payment computation should not favor predatory businesses, baits, or the distribution of sensationalist or misinforming content. According to the organizations that signed up the statement, these aspects should be specified in the regulation and law enforcement supervision should be performed by bodies with mechanisms enabling civil society participation, including entities in the sector.

There are further concerns on which media outlet would be benefited by the payment. The negotiation model proposed in the bills depends on the digital platforms’ willingness to negotiate with journalistic companies, which ultimately gives them the power to decide which outlets will or will not be considered for payment.

Considering the model limitations, journalism advocacy organizations are defending, in a supplementary manner, the levy of a fee from digital platforms so as to create a public fund to support the sector, enabling the promotion of pluralism in outlets and diversity in content production. The funds could be allocated to the creation of new journalistic projects and to the maintenance of existing outlets, in addition to aiding in training and qualification endeavors.

| PLURALISM AND DIVERSITY

Latest reports on the bills do not include the aspects of diversity and pluralism, also excluding mid- and small-sized, regional or local nonprofit outlets (such as the public and community ones). Though it incorporated the class framework so the due payment may get to the sector workers, the writing of the bills did not add the gender and race frameworks to the computation criteria, missing the opportunity to benefit media outlets aimed at tackling the inequality issues faced by Brazil.



LAWS AND BILLS

Royalty payment for the use of journalists' work by digital platforms

Name

Bill No. 4255/2020

(amends copyright law to address the royalty payment when press publications are distributed by internet application providers)

Topics addressed

- Journalists' rights to their own work
- payment by online news platforms

Draft, approval or implementation stage

Under consideration by Economic Affairs Committee of Senate. Review by Science and Technology Committee is pending, and, if approved, it will be taken to the consideration by the House of Representatives.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The bill, by senator ngelo Coronel (PSD-BA party), amends Law No. 9,610/2018 (the Copyright Act), establishing new guarantees for holders of rights to press publications disseminated on the internet. According to the law in force, these rights are currently guaranteed to journalistic content editors and media outlets. However, legal uncertainty still hangs over the obligations to pay royalties for publication on media outlets' websites. Moreover, the wide circulation of such content on digital platforms, which are also paid for advertising and other forms of news monetization, is not regulated. Therefore, the bill imposes copyright payment obligations for internet application providers.

Under the bill, rights-holders should be entitled to some privileges in the event of the unauthorized reproduction of their content on the internet. The first privilege would be, upon delivery of a notice, to request the removal of the content posted. The second one would be to request payment for the dissemination of the content when the provider "carries out this activity in an organized and professional manner, for financial purposes, within Brazilian territory". If the request is not satisfied, provider may be jointly and severally liable for damages derived from the unauthorized use of the content.

According to the proposal, copyright payment can be processed to its owners on an individual basis or to a collective rights management association dedicated to press publication right-holders. The privileges created do not apply in the event of disclosure of hyperlink to news only.

GUARANTEES AND SAFEGUARDS

The bill adds to the list of proposals aimed at editing journalistic content exploitation by websites and digital platforms and without compensation to their original producers, thus, there are relevant grounds since the bill identifies the issue and seeks to provide a solution. Unlike other bills, such as 2,370/2019 and 1,354/2021, the rule is based on the extent of journalistic content copyright on a pay-per-use basis. This imports that compensation

is not subject to negotiation between platforms and media outlets, but it is guaranteed to the owners of any journalistic content. The text also transcends payment obligations and provides owners with an additional right –disabling content reproduced without authorization.

| CHALLENGES AND OBSTACLES

While on the one hand the legislative proposal has honorable concerns, on the other hand, it establishes a generic royalty payment obligation, without setting up implementation mechanisms (which would be under the responsibility of collective rights management associations dedicated to such right-holders). The payment model could cause troublesome side effects on content circulation and news access in the online environment. Firstly, there are limitations whether content can be shared without authorization since there is not a definition of what would fall under the concept of “short excerpt”, which is set forth in the Copyright Act in force as an exception for royalty payment. Such uncertainty can result in a great number of journalistic content removals by application providers in order to avoid paying for rights.

The possibility of having the content disabled could also lead to excessive content removal upon owners’ request, limiting the use of the content and compromising the right to access information and to a pluralistic public debate in the online environment.

Also, as the text does not differentiate the provision of content for economic purposes or to inform certain piece of news, regular internet users could be penalized by copyright holders or their representatives.

| PLURALISM AND DIVERSITY

Considering that it is quite common for copyright holders of journalistic works to be media companies or organizations, it would be relevant to rule that part of the payment inures to the benefit of media outlet employees. Another relevant measure would be to ensure that workers are represented in collective rights management associations, as well as women and black journalists.

The bill, by senator ngelo Coronel (PSD-BA party), amends Law No. 9,610/2018 (the Copyright Act), establishing new guarantees for holders of rights to press publications disseminated on the internet

While on the one hand the legislative proposal has honorable concerns, on the other hand, it establishes a generic royalty payment obligation, without setting up implementation mechanisms

Considering that it is quite common for copyright holders of journalistic works to be media companies or organizations, it would be relevant to rule that part of the payment inures to the benefit of media outlet employees



PUBLIC POLICIES

Publicity by the bodies of the Executive Branch Communications System of the Federal Executive Branch - SICOM

Topics addressed

- Media buying
- publicity campaigns
- public interest

Management

Secretariat for Social Communication of the Presidency of the Republic (SECOM)

Objective

Ensure the effectiveness of government communication, promoting transparency and the dissemination of relevant information through publicity campaigns that reinforce institutional image, foster civic awareness and contribute to the construction of an informed and participatory society

Social engagement, evaluation and monitoring

This is promoted through public consultations and hearings, as well as through the Integrated Ombudsman and Information Access Platform – Fala.br, the Ombudsman Portal of the Presidency of the Republic and the Open Data Portal

Draft, approval or implementation stage

In the implementation stage

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The institutional publicity policy considers the journalistic practice essential. Actions and guidelines set out by SECOM for the allocation of publicity funds of the Executive Branch Communications System (SICOM) aim to contribute to the diversification of revenue sources in the journalistic industry.

ACTIONS, STRATEGIES, AND MECHANISMS

The mechanisms implemented for government publicity include the authorization to broadcast public interest, institutional, marketing, and legal advertising⁵³. Moreover, each SICOM body (such as departments and secretariats) prepares its Annual Communications Plan and Annual Media Plan pursuant to Decree No. 6,555/2008 and SECOM Ruling No. 2/2023. These documents, which may be updated, are submitted to the Secretariat for Social Communication of the Presidency of the Republic at the beginning of the year, and SICOM monitors the implementation of the planning for the fiscal year. SICOM bodies employ technical inputs – such as studies on media consumption habits, market trends, target audience characteristics, profitability, lagging indicators and priority markets – to substantiate advertising strategies.

Pursuant to data disclosed by the Transparency Portal⁵⁴, the federal administration spent more than BRL 237.5 million on publicity services in 2023, being that 64.99% was used by the Ministry of Health, 15.13% by the Ministry of Social Development and Fight against Hunger, and 11.38% by the Presidency of the Republic. Three out of ten media agencies that were awarded funds (Calia/ Y2 Propaganda e Marketing Ltda., NOVA S.A., and Agência Nacional de Propaganda Ltda.) received a share of 58%.

⁵³ According to SECOM Ruling No. 2/2023, government federal government publicity can be divided in four categories: public interest, aimed at exploring social issue topics; institutional, aimed at publicizing actions and outcomes of public bodies; marketing, aimed at boosting sales; and legal, aimed at publishing information required by law or regulation. Each category has specific objectives, such as informing, educating, strengthening institutions, promoting product sales and enforcing legal requirements.

⁵⁴ Available at: <https://portaldatransparencia.gov.br/programas-e-acoas/acao/4641-publicidade-de-utilidade-publica?ano=2023>.

CHALLENGES AND OBSTACLES

The reduced number of communications companies benefiting from government publicity represents a hindrance to a significant impact of this policy in terms of building a pluralistic and diverse journalistic environment in Brazil. Without a policy targeted at non-commercial, independent and regional media outlets, the actual promotion of a variety of voices in Brazilian communications remains inexistent.

Another challenge relies on regulating the distribution of government advertising funds allocated for digital media, given the need to preserve the integrity of the information ecosystem and to support ethical and responsible dissemination of journalistic content. Therefore, the public consultation for a new Online Publicity Ruling, carried out by SECOM in 2023⁵⁵, could offer positive solutions.

Finally, when it comes to advertising funding through government, it is important to be aware of the risk of editorial bias due to a partisan allocation of advertising campaign budgets to certain media outlets, which may be pressured to adjust their editorial line according to the interests of the ruling government, compromising journalistic objectivity.

PLURALISM AND DIVERSITY

Recently, with regard to ethnic-racial diversity, SECOM and the Ministry of Racial Equality initiated the National Anti-Racist Communications Planning, proposed by Decree No. 11,687/2023⁵⁶. The plan sets out mechanisms, which have not been disclosed yet, that foster sustainability and strengthening of black media outlets. There are provisions regarding the promotion of grassroots media through public notices, aiming at facilitating a more representative and equitable communication.

Pursuant to data disclosed by the Transparency Portal⁵⁷, the federal administration spent more than BRL 237.5 million on publicity services

The reduced number of communications companies benefiting from government publicity represents a hindrance to a significant impact of this policy in terms of building a pluralistic and diverse journalistic environment in Brazil

The National Plan of communication Anti-racist, in preparation, provides mechanisms of strengthening and sustainability of black media and the promotion, via notices, to peripheral media

55 Further information at: <https://www.in.gov.br/web/dou/-/consulta-publica-n-2-de-20-de-setembro-de-2023-511134169>.

56 Available at: http://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/decreto/D11787.htm.

57 Available at: <https://portaldatransparencia.gov.br/programas-e-acoos/acao/4641-publicidade-de-utilidade-publica?ano=2023>.



Topics addressed

- Public broadcasting
- cultural, and regional diversity

Management

Empresa Brasil de Comunicação (EBC)

Objective

Promote relevant public civic communications, fostering cultural diversity, assuring the quality of broadcast content, and seeking to represent and reflect the different cultural, ethnic, and regional realities in Brazil, encouraging the critical formation of society⁵⁸

Social engagement, monitoring and evaluation

There is just one tool promoting the dialogue with the society: EBC Ombudsman Office. There are not public mechanisms to monitor and assess this public policy.

Draft, approval or implementation stage

In the implementation stage

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The guidelines of the National Public Communication Network (RNCP) stress the promotion of communication with a focus on quality informative and educational content, corroborating the importance of journalists' and communicators' work as an essential tool for the exercise of citizenship and the critical formation of society.

ACTIONS, STRATEGIES, AND MECHANISMS

The RNCP currently operates 41 FM radio stations and 72 educational and regional university TV stations. In 2023, 16 federal institutes and 32 federal universities also joined the network⁵⁹. In order to become a member of the RNCP, broadcasters execute cooperation agreements with EBC, in which they undertake to broadcast content from EBC programming. In turn, EBC offers technical support, accessibility resources, training and equipment to the partner broadcasters.

GUARANTEES AND SAFEGUARDS

RNCP expansion aiming at including broadcasters from federal institutes and universities promotes the diversification of content production, including local and regional programming, and represents a major opportunity to expand journalistic activity in these localities, incorporating viewpoints that are often overlooked by the mainstream. Moreover, in the event EBC provides technical support, training and equipment, it can offer future communications professionals more opportunities for education and practical experience. The integration of these educational institutions by the RNCP also allows the connection between academia and journalistic practice, offering an interface for the expansion and visibility of public interest communication.

58 Law No. 11,652/2008. Available at: https://www.planalto.gov.br/ccivil_03/ato2007-2010/2008/lei/111652.htm.

59 Further information at: <https://www.gov.br/secom/pt-br/assuntos/noticias/2023/12/rede-nacional-de-comunicacao-publica-tera-49-novas-emissoras-de-radio>.

CHALLENGES AND OBSTACLES

Effective civil society engagement in the RNCP management and decision-making process is an enduring challenge for the network. Continuous efforts are required to promote representative participation and to assure that different voices in the society are genuinely reflected in the implementation of this public policy. This would also grant the RNCP and its broadcasters the capacity to preserve editorial independence, preventing political influences that may compromise journalistic objectivity.

Political interference and frequent changes in EBC's top management can also impact the network's coordination, resulting in the discontinuity of services and consequently restricting the promotion of public communications. Budget limitations and the lack of financial and technical support for broadcasters that are members of the RNCP have also proved to be obstacles to the network consolidation since they impede investment-making processes and implementation of strategies required for the initiative's growth and expansion. Furthermore, it is essential to stimulate the introduction of economies of scope among the partners.

In the face of continuous technological changes and public preferences, journalistic practice by the RNCP must also be adjusted on an ongoing basis. This entails ensuring an effective presence on digital and interactive platforms and remaining in line with expectations and behaviors of contemporary audience.

Finally, no concrete data on how the EBC supports RNCP members, as well as a probable shortage of resources due to the lack of regulation of the Public Broadcasting Promotion Contribution (CFRP), could generate significant obstacles to the sustainability of the network and of the journalism produced by these broadcasters.

PLURALISM AND DIVERSITY

Promoting the production of content that reflects Brazilian regional diversity is one of the main goals of the network, which also aims to support both culture and independent production. However, we could not find specific guidelines for racial, gender or class diversity in the policy.

The guidelines of the National Public Communication Network (RNCP) stress the promotion of communication with a focus on quality informative and educational content

The RNCP currently operates 41 FM radio stations and 72 educational and regional university TV stations. In 2023, 16 federal institutes and 32 federal universities also joined the network

Effective civil society engagement in the RNCP management and decision-making process is an enduring challenge for the network. Continuous efforts are required to promote representative participation and to assure that different voices in the society are genuinely reflected in the implementation of this public policy



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DOMAIN

3

INFORMATION ACCESS AND INTEGRITY

Access to information is a key element for the effective functioning of democratic societies. Citizens and organizations need be aware of community actions and problems in order to take a position on collective decisions. The lack of transparency may trigger power asymmetries between social groups, as well as between public or private institutions and the population. Within regard to the government, access to information is even more important and necessary since democratic regimes entail accountability on the part of governing authorities and elected representatives for the actions and management involving public affairs.

Access to information, especially public information, facilitates the enjoyment of other rights and is an indispensable feature for the practice of journalism and communication, as the access to information involves the ability to obtain inputs for such activities. Therefore, the more accessible and transparent a society and its government institutions are, the better the conditions for journalistic outlets to monitor government actions and report them to society, strengthening political control and participation on the part of society.

International organizations acknowledge this centrality. In their 2018 Joint Declaration on Freedom of Expression, the rapporteurs pointed out among their recommendations to states passing laws on access to public information and implementing concrete measures to ensure law enforcement. The rapporteurs highlight the importance of countries establishing specific transparency requirements on media ownership.

This subject is also addressed in the American Convention on Human Rights⁶¹, which sets out the right to seek, receive and disseminate information in its Article 13. In 2011, the Special Rapporteurship for Freedom of Expression of the Organization of American States published a detailed document containing parameters for the right of access to public information. The text lists principles and guidelines for the execution of this right, including maximum disclosure, according to which dissemination should be the rule and secrecy the exception in specific cases upon justification by the state.

However, the growth and spread of information-related issues – such as concerted disinformation campaigns and hate speech – have shown that guaranteeing access to public information and to plural and diverse information in general is not enough. Thus, it is also necessary to protect and promote reliable and democracy-oriented information, especially in the internet.

Since 2018, Reporters Without Borders has brought together heads of state, experts and civil society organizations to boost an international initiative that asserts global information and communication environment as a common good of humanity and stresses democratic guarantees related to the freedom, independence, pluralism and reliability of information. Signed by 52 countries, including Brazil, the International Partnership for Information and Democracy is monitored by the Forum on Information & Democracy, which has been preparing studies and recommendations for the signatory countries to move forward with the objectives of the partnership⁶¹.

The Brazilian regulatory landscape regarding information access and integrity features progress and important challenges

This debate and recommendations are in line with the agenda of the United Nations, which has worked on the issue under the concept of information integrity, with a focus on the circulation of information on the Internet. In 2023, the United Nations Secretariat released the “Our Common Agenda Policy Brief 8: Information Integrity on Digital Platforms”, which highlights the online threats to information integrity and the urgency to give responses to such matters⁶². According to the brief, information integrity is related to the accuracy, consistency and reliability of the content produced and disseminated. The document outlines the development of a United Nations Code of Conduct, based on respect for human rights, support for independent media, increasing transparency, user empowerment and strong discouragement to harmful practices, among others.

The Brazilian regulatory landscape regarding information access and integrity features progress and important challenges. Concerning the first issue, the right of access to public information has been acknowledged in the Brazilian Federal Constitution in different instances. Article 5, which addresses the fundamental rights, establishes that “all 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.” Article 37, which provides for the Public Administration, determines one of the forms of citizen engagement in such sphere as “the access of users to administrative records and to information about government initiatives, with due regard for article 5.”

Therefore, the Constitution set fundamental parameters to acknowledge not only this right, but also the requirements comprehensively provide for in law the obligation to make information available and the criteria and procedures for citizens to request it. However, it was only in 2011 that the Brazilian Access to Information Act (LAI) was enacted, with the conclusive support of Dilma Rousseff administration (2011-2014) and after powerful mobilization of civil society.

LAI (for a detailed description, see p. 43), abided by the international recommendations mentioned above, covered all public entities and set forth rules regarding the rights, means and procedures for access to public information by all citizens. It established measures for public bodies to make information available (including on their websites) and to respond to requests. LAI provisions also regulate possibilities of imposing secrecy orders and their respective duration, meeting international

60 Available at: https://www.oas.org/dil/esp/tratados_b-32_convencion_american_a_sobre_derechos_humanos.htm.

61 Further information at: <https://rsf.org/pt-br/informa%C3%A7%C3%A3o-e-democracia#a-comissao-2905>.

62 Available at: <https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-information-integrity-en.pdf>.

standards by clearly defining such cases as exceptions. The law was a crucial step towards the effective access to public information in Brazil.

As for the textual content, there are occasional debates about improvement needed that take place in the legislative processes aimed at ensuring anonymity upon data request. However, the major challenge resides in the law implementation, law applicability to the standard of the performance of obligations by public agencies. With respect to the first subject, the number of municipalities without local LAI regulations is alarming: around 86% according to *Campanha Regulamenta LAI* (a project aimed at regulating the Access to Information Act at the municipality level). Within the federal executive branch, implementation encompassed a set of initiatives, such as the creation of the Federal Administration's Transparency and Access to Information Policy and of the Federal Administration's Information Integrity, Transparency and Access System (SITAE), managed by the Office of the Federal Controller General (CGU) (see page 51).

Still with regard to implementation, there are further challenges. Since its enactment, LAI and access to public information policies have crossed a tortuous path, especially during Jair Bolsonaro administration (2019-2022), who sponsored initiatives to disfigure the law or undermine obligations, terms and procedures set forth therein⁶³. Also during Bolsonaro administration, there was an increase in denials of information requests based on the General Data Protection Act (LGPD)⁶⁴. The justification for denial was also applied to prevent access to inspection reports on labor analogous to slavery. Such approaches were not limited to the executive branch, but have also been adopted by the Superior Electoral Court (TSE) to deny data on political party members⁶⁵.

As will be described further below, such instrumentalization of the LGPD triggered the resistance of civil society, which resulted in a new CGU statement in 2022 and 12 statements in 2023, already under the new Lula administration⁶⁶. However, the issue still requires conformity between the CGU and the National Data Protection Authority, as well as provision of training for public agents so that data protection is not improperly applied to deny requests.

The main challenge lies in the implementation of the law, from the scope to the quality of execution of their obligations by public bodies

Still in the realm of public information, we could identify relevant legislative proposals on transparency measures in official advertising under consideration by the House of Representatives. The 60 bills attached to Bill No. 1330/2003 were summarized in a new report in November 2023, providing for mandatory information on advertising agreements, on the amounts spent on such contracts, and on the media outlets in which advertisements were published. In spite of their merits, it is important to overstep the boundaries of such provisions so that public bodies not only adopt policies for advertising budget allocation with a view to promoting pluralism, but also implement active transparency measures that help citizens and the media to check these investments.

With regard to information integrity in the online environment, the rise of several harmful practices on the web has marked the last decade, such as the large-scale disinformation spread, hate speech, political violence and threats to democratic rule of law. These problems have been compounded by major digital platforms' operation mode and business model, which encourage the dissemination of

63 In 2019, in the first year of his term, the former president issued a decree extending the possibilities for imposing secrecy orders, but the act was overturned in the same year by a Draft Order from the House of Representatives. In 2020, during the Covid-19 pandemic, the Executive issued the Provisional Measure No. 928 to withdraw the response deadline for government bodies with remote work system in force. The rule was overturned again, this time by the Federal Supreme Court.

64 Agencies like the National Institute for Educational Studies and Research (INEP) (Further information at: <https://www1.folha.uol.com.br/educacao/2022/02/inep-tira-do-ar-informacoes-detalhadas-sobre-alunos-e-professores-do-censo.shtml#:~:text=%22Os%20microdados%20da%20educa%C3%A7%C3%A3o%20%E2%80%94%94que,tornando%20mais%20opaco%22%2C%20disse>) and the National Institute for Colonization and Agrarian Reform (INCRA) (Further information at: Marina Atoji. Proteger dados pessoais, sem perder a transparência jamais. In: Fórum de Direito de Acesso a Informações Públicas. A LAI é 10, 2022. Available at: <https://informacaopublica.org.br/leia/publicacao/a-lai-e-10-o-brasil-apos-uma-decada-da-lei-de-acesso-a-informacao/>.) removed data from their website pursuant to this claim during Bolsonaro administration.

65 Further information at: <https://www.jota.info/justica/com-igpd-tse-limita-divulgacao-de-dados-sobre-filiados-a-partidos-politicos-23082021>.

66 Further information at: <https://blog.transparencia.org.br/resultado-da-revisao-de-sigilos-e-bom-indicativo-sobre-cumprimento-da-lai/>.

extreme content to generate engagement, directly interfering in information flows.

This multiplication of risks and harmful practices – particularly during election processes and the Covid-19 pandemic – and the platforms' failure to solve these issues have put a spotlight on the need for specific rules to secure information integrity in the online environment, supplementing the Civil Rights Framework for Internet Use (Law No. 12,965/2014). Notwithstanding the provisions of the Brazilian legal framework that apply to both offline and online actions (such as election legislation or the Anti-Racism Act (Law No. 7,716/1989)), awareness of the need for new laws has gained momentum, aiming at regulating these services, increasing transparency on digital platforms, strengthening freedom of speech, and establishing obligations to combat content and conduct that are illegal or that pose serious risks to the community if disseminated on the networks.

Although many legislative proposals submitted to the Parliament have offered solutions focused on criminalizing part of these practices – such as the dissemination of fake news –, the National Congress gave priority to Bill No. 2,630/2020, which, while it followed on its way through the legislative process, was the subject of intense public debate. In the end, it incorporated in its most recent version many claims from civil society and researchers on the matter, adding and deepening procedures to reinforce transparency requirements, due process rules for content moderation, liability provisions to hold companies accountable for content posted by third parties, and new obligations related to surveillance and monitoring of risks to society.

However, such a hard legislative process demonstrates how economic interests heavily influence decision-makers. In the case of the internet, there is the example of the ban on debates on broadcasting regulation. In 2023, aggressive campaigns against the legislative proposal by large platforms have been under investigation by the National Consumer Secretariat (SENACON) for potential abuse of economic power⁶⁷.

Within the scope of the federal government, the information integrity agenda has involved several fronts, including a regulation on platforms and the legislative debates referred to in this section of the report. The federal executive branch has been contributing to the discussions on Bill No. 2630/2020 and defending the urgency of approving new rules concerning the actions of these agents on the internet. Government efforts also comprise initiatives on media education, countering disinformation, journalism strengthening and sustainability (addressed in Domain 2), and promotion of media pluralism and diversity (addressed in Domain 4). The Executive has also stressed this subject in its international agenda, encouraging multilateral convergences between countries and multisectoral convergences between international agents, especially in 2024, when Brazil presides over G-20.

⁶⁷ Further information at: <https://www.gov.br/mj/pt-br/assuntos/noticias/senacon-notifica-google-por-publicidade-abusiva-sobre-pl-das-fake-news>.



Access to Information Act

Name

Law No. 12,527/2011

(rules on access to information provided for in section XXXIII of article 5, in item II of paragraph 3 of article 37 and in paragraph 2 of article 216 of the Federal Constitution)

Topics addressed

- Provision of information by state-level entities
- processing requests from citizens demanding information from public institutions

Draft, approval or implementation stage

Provisions in force

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The Access to Information Act (LAI) does not specifically address journalistic activities. Still, it rules on providing the inputs needed to perform it: it rules on information about activities related to public institutions. The law rules on different constitutional commands that establish state obligations regarding forms of access to data from organizations in the three powers of government and at the federal, state, and municipal levels (including autonomous government agencies and public companies), as well as their expenses, operation, decisions, and actions. Private, non-profit organizations receiving public funds directly or through partnerships, agreements, and legal contracts are also eligible to fulfill such obligations.

The law regulates procedures, response deadlines and methods of assistance and justification in case of refusal or impossibility of availability

They must proactively disclose information about institutions and their actions and make such information available on their websites. They must also create information access services for citizens to cater to information requests and make such information accessible using information and communication technologies. The Law regulates procedures, response deadlines, methods of service, and justification in case of refusal or impossibility of availability (as in the case of access to information only at the body's headquarters or when the required information is absent).

Refusal may also be motivated by the institution's adoption of access restrictions for certain information. In this case, the interested party may appeal to the hierarchically superior authority or, if the refusal remains, to the Office of the Federal Controller General (CGU), the highest authority.

LAI also regulates cases of limiting access with the degrees and deadlines for enforcing secrecy, such as when there are risks to national sovereignty, Brazil's negotiations and international relations, threats to the lives or safety of Brazil's population, Brazil's financial stability and safety of authorities, among others. Deadlines vary from five years (classified information) to 25 years (top secret information). LAI's provisions set forth events in which access restriction is not permitted, such as when it is necessary for the judicial or administrative protection of fundamental rights or related to human rights violations committed by public agents.

GUARANTEES AND SAFEGUARDS

Since Brazil's Federal Constitution rules that access to information is a fundamental right, enacting LAI was a milestone in implementing these guidelines. As previously noted, the law follows recommendations from international organizations, such as joint declaration by rapporteurs on freedom of expression from United Nation (UN), rapporteurs of the Organization for Security and Co-operation in Europe (OSCE), rapporteurs of the Organi-

zation of American States (OAS) and rapporteurs of the African Commission on Human and Peoples' Rights (ACHPR) on media independence and pluralism, published in 2018.

As for the inter-American parameters published by the OAS in 2011, the law fulfills, in theory, a set of principles and guidelines, such as maximum disclosure, access to information by all citizens, inclusion of all public institutions, and limitation of exceptions or arbitrary or disproportionate exclusions.

LAI represents long-standing demands from civil society, such as the Forum for the Right to Access Public Information, which brings together around 30 organizations. Furthermore, it establishes transparency as a rule and secrecy as an exception. Therefore, LAI's content represents a rich framework to ensure the right to access public information, allowing this to be performed and establishing obligations for all public bodies.

According to LAI's Panel, a monitoring system maintained by the CGU for compliance with the law, federal government bodies had received, by January 2023⁶⁸, 1.34 million requests with a response rate higher than 99%. Between 2011 and 2023, the average time for requests to be answered was 14.5 days. Access was granted in 69.5% of cases, denied in 8%, and partially granted in 5%. As for the remaining 9.2% of cases, they were not information requests. With respect to user satisfaction, on a scale of 1 to 5, the average level of agreement for citizens regarding the information they received was 3.61 over that period. The index shows a substantial number of people who requested information from public authorities and were dissatisfied with the responses received, signaling that there is plenty of room for progress in approaching the top of the scale.

CHALLENGES AND OBSTACLES

As in any other regulatory framework, LAI also depends on the agents involved in its enforcement so that its objectives are achieved and guarantees are effectively provided to citizens. In the case of a law with broad scope, fully covering the vast and unequal complex of state entities in all powers, at the three levels of the federation, the first challenge lies in its effective adoption by this vast number of institutions, especially at the municipal level, considering that over five thousand cities and towns have their own executive, legislative, and judiciary branches.

According to *Campanha Regulamenta LAI*, coordinated by the Forum for the Right to Access Public Information and Instituto de Tecnologia e Sociedade do Rio, 4,806 municipalities have not yet regulated how to enforce the Law in their territories, which represents 86% of the total number of Brazilian cities and towns.

Where LAI is regulated, its full compliance has several challenges and obstacles. At the federal level, 63% of appeals submitted to the system were motivated by receiving incomplete or unrelated responses to the initial request⁶⁹. As authors have stated, more than responding to a request is needed; we must effectively respond to citizens' requests.

Among denials to requests, using the General Data Protection Act (Law No. 13,709/2018) as justification is more robust now, especially under Bolsonaro Administration. Given the growth of this practice, in 2021, around 30 organizations released a manifesto questioning the instrumentalization of the LGPD and arguing that the principles of transparency and publicity must prevail for state entities, authorities, and civil servants who pursue a public career. In 2022, CGU published guidance to set standards for the understanding of enforcement of LAI with the provisions outlined in LGPD. In 2023, the new executive management published another 12 guidelines reviewing decisions to apply confidentiality.

⁶⁸ Accessed on 17 Feb. 2024.

⁶⁹ Lázaro Jr., J., Ribeiro, A., Frey, J. e Martins, R. Dez fun facts sobre direito à informação para você abafar na festa de aniversário da LAI. In: Fórum de Direito de Acesso a Informações Públicas. A LAI é 10: o Brasil após uma década da lei de acesso à informação / organização Fórum de Direito de Acesso a Informações Públicas. São Paulo: ABRAJI, 2022. Available at: <https://informacaoorganizacao.org.br/leia/publicacao/a-lai-e-10-o-brasil-apos-uma-decada-da-lei-de-acesso-a-informacao/>.

In 2023, the Forum for the Right to Access Public Information and Coalizão Direitos na Rede met with Brazil's National Data Protection Authority (ANPD) to discuss setting standards for both legislations. In a document, the Forum highlighted that despite CGU's guidelines, the problem persists and would require regulation by authorities.

In recent years, discussion has also grown on the adverse effects of identifying the authors of requests, which could generate biases in assessing requests, giving rise to different responses or even retaliation against them.

Faced with criticism from civil society entities, the federal government took action to face the problem. In 2018, mechanisms were implemented to allow the applicant's data to remain solely available to Office of the Federal Controller General, which forwards anonymized requests to the body receiving the request. The challenge remains, however, for a similar mechanism to be implemented in state and municipal executive branches and bodies at other powers of government. In the National Congress, Bill No. 5,531/2020, by deputy Adriana Ventura (Novo-SP), was introduced with the provision to change the Law to allow anonymous information requests of public interest.

Finally, a notable deficiency in the Brazilian regulatory framework and the implementation of LAI on the topic is the need for more availability of information on the ownership of media controllers. Brazil's National Telecommunications Agency (ANATEL) maintains the Broadcasting Control System⁷⁰ with data on grants for various broadcasting services (such as radio and TV stations). Still, there needs to be more information on the owners of each entity responsible for operating these services. It is crucial to bear in mind that the Ministry of Communications has this information as the provision of social contracts and changes to such contracts are legal obligations. As mentioned above, this deficiency conflicts with the rapporteurs' recommendation for freedom of expression.

Identifying the authors of requests could generate biases in assessing requests, giving rise to different responses or even retaliation against them

Lack of information on the ownership of media controllers

I PLURALISM AND DIVERSITY

A LAI não traz previsões específicas de recortes de gênero, raça e classe. Tais aspectos poderiam ser fortalecidos na norma ou em regulamentações específicas de modo a favorecer o acesso por meio de mecanismos de transparência ativa e passiva e dados sociodemográficos e que possibilitam a compreensão do funcionamento e ações dos entes estatais nessas dimensões. Entre os requisitos de transparência ativa poderia constar, por exemplo, disponibilizar, sempre que houvesse, informações acerca do atendimento das ações e políticas públicas por tais recortes. Da mesma forma, equipes dos serviços de acesso à informação poderiam mapear obstáculos adicionais no âmbito desses marcadores sociais para desenvolver respostas e políticas afirmativas.

LAI does not provide specific predictions regarding gender, race, and class

⁷⁰ Available at: <https://sistemas.anatel.gov.br/srd/>.



Transparency in official advertising

Name

Bill No. 1330/2003

(requires disclosure of total expenses and contract numbers for bidding processes)

Topics

addressed

- Advertising contracts
- supervision
- channel diversification

Draft, approval or

implementation stage

It awaits analysis by the Plenary of the House of Representatives. If approved, it will need to be considered by Senate.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The bill, created by then-deputy Iriny Lopes (PT-ES party), connects a set of around 60 proposals in the House of the Representatives on access to official advertising information. The most recent version of the text of the draft, in the form of the proxy for congressman Rodrigo Valadares (União-SE party), in the Plenary, changes a set of laws to establish rules for the availability of information on advertising contracts between Federal Public Administration bodies and media outlets.

The proposal enables to monitor how public funds more effectively are spent on advertisements and which media outlets benefit

Among them is the Law on advertising contracts in public administration (Law No. 12,232/2010), which requires each entity to disclose tenders and advertising contracts, action plans, channel selection strategy, complete advertising pieces, payment amounts, and inspection and execution reports on the National Public Procurement Portal. The proposal also determines the disclosure of this information on websites outlined in LAI.

The opinion also determines that contracts must “be aligned with relevant communication plans, which shall establish guidelines and objectives for democratization, pluralism and diversification of channels, means and vehicles of dissemination.” Finally, the law provides that broadcasting advertising pieces must cover the costs of each advertisement and the campaign.

These rules are essential considering that government advertising is a significant form of financing journalism and that ensuring transparency in this process also allows for the development of sustainability policies for the sector to be monitored (covered in Domain 2 of this document). Thus, the proposal will enable media outlets, press professionals, citizens, authorities, supervisory bodies, and civil society entities to monitor how public funds more effectively are spent on advertisements and which media outlets benefit.

GUARANTEES AND SAFEGUARDS

The Bill establishes transparency of information to qualify monitoring of the distribution of official advertising and media outlets that benefit from it. This is fundamental for the population and, therefore, of interest to journalism. In the case of official advertising, the risks of abuse or misdeeds justify more significant transparency measures.

Regarding journalistic activities, the proposal has the merit of allowing for better informed and in-depth monitoring by the population, authorities, researchers, and civil society organizations on how each public entity distributes its funds. Therefore, one can evaluate, for example, whether a given institution favors a certain outlet, group, or media type, creating conditions for the population to monitor whether public bodies are adopting parameters for managing these funds to meet the public interest and promote plurality and diversity in the media environment.

| CHALLENGES AND OBSTACLES

Despite the merits listed, the proposition still faces challenges and areas for improvement. The first is related to enforcing LAI itself and the capillarity of its reach since, as previously pointed out (see page 43), the law still needs to be regulated in a considerable number of municipalities. In this sense, the bill could introduce mechanisms so that all public entities meet such requirements.

Secondly, the text could go beyond providing individual information for each contract to having access to information facilitated by active transparency practices by those responsible for official advertising.

| PLURALISM AND DIVERSITY

The bill does not include specific aspects of gender, race, and class. However, guidelines regarding the availability of information about representation in advertising pieces in terms of these social markers, as well as the composition of the outlets and agencies involved, could be added. Another possibility of implementing a class-inclusion perspective would be providing information on whether media outlets and agencies deal with labor issues or labor-related sentences.

It would also be essential to include among the obligations (whether legal or regulatory) periodic disclosure of how the advertising pie is distributed depending on the size of media outlets benefiting, the locations where they are based, and which locations they serve. Even though the text sets this as an objective, there needs to be more clarity regarding concrete mechanisms to promote pluralism in allocating official advertising funds.

The proposal could introduce mechanisms that can ensure compliance with its provisions by all public entities, expanding its regulation

It does not include specific aspects of gender, race and class. It could include guidelines for information on representation in advertising pieces and the composition of the vehicles and agencies involved

It could include periodic disclosure of the distribution of resources depending on the size of the vehicles benefiting and the locations where they are based and where they serve



Regulation of applications, information, and content on the internet

Names

Bill No. 2630/2020

(establishes Brazil's Freedom, Responsibility, and Transparency on the Internet Act)

Law No. 4737/1965

(Elections Code)

Topics addressed

- Internet application
- online content
- digital platforms
- accountability
- transparency

Draft, approval or implementation stage

It was approved in the Senate and is awaiting a replacement for voting in the Plenary of the House of Representatives

CONSIDERATION OF THE JOURNALISTIC PRACTICE

In recent years, there has been a profusion of disinformation, hate speech, political violence, and other problems arising from content circulated in online environments. This phenomenon gained traction mainly through digital platforms, whose business model allowed the publishing and dissemination of this content cheaply, quickly, and with great reach. The lack of effective responses from these companies in the face of such phenomena contributed to the problem worsening, with the disruption of communication ecosystems and severe damage to the integrity of information, called infodemics or information disorder. Free and pluralistic journalism has suffered the impacts of the spread of these practices, whether through the loss of confidence in information and facts resulting from disseminating false or hateful content or through direct attacks received at various times from sectors that question its reference to society⁸⁰.

Faced with this problem, several countries, including Brazil, discussed new laws regulating social media platforms. In 2022, in the Federal Senate alone, 17 legislative proposals focused on measures to fight disinformation on the Internet were placed⁸¹. Among the many proposals, one gained centrality in the debate in Brazil's National Congress and Brazilian society: Bill No. 2,630/2020, by senator Alessandro Vieira (MDB-SE party).

The proposal was approved by Federal Senate in 2020, and since then, it under consideration by the House of Representatives, to which 91 other bills⁸² are attached, which indicates parliamentarians' concern with the topic. In its most recent version, filed by rapporteur Orlando Silva (PCdoB-SP party), the proposal covers the rules for digital platforms, such as social network services, messaging services, and search engines, which have at least 10 million users in Brazil. The opinion creates liability for these services in two cases: when content posted by third parties is distributed as advertising (therefore resulting in financial gains for the digital platform) and when companies breach certain obligations (called "duty of care"). The duty of care includes obligations to prevent and mitigate the dissemination of content related to threats to the democratic rule of law, acts of terrorism, induction and instigation of suicide, acts against children and adolescents, racism, violence against women, and health violations.

Thus, the proposal would change the liability regime for content providers provided for in the Brazilian Civil Rights Framework for the Internet (Law No. 12,965/2014), according to which these applications are only sub-

80 However, it is worth highlighting that disinformation and information integrity problems are also detected in traditional media.

81 Further information at: <https://www12.senado.leg.br/noticias/materias/2022/09/26/projetos-em-analise-no-senado-combatem-desinformacao-e-fake-news>.

82 Further information at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2256735&fichaAmigavel=nao>.

jected to punishment for damages resulting from third-party content if they do not comply with a court's decision determining its removal⁸³.

The issue also forces platforms to monitor and adopt measures to mitigate the so-called “systemic risks” (a term inspired by the model of the EU Digital Services Act) arising from their services and algorithmic systems. Therefore, they will need to consider how their recommendation systems, moderation, terms of use, and advertising can increase the volume of illegal content disseminated on the network, the risks to guaranteeing freedom of expression and the press, violence against women, racism, protection of public health, children and adolescents and older people. The risks to the democratic rule of law and the health of the elections process must also be assessed.

The complex bill also lists platform transparency rules regarding the measures adopted on content and digital advertising. Furthermore, it empowers users and content producers in their relationship with platforms by prohibiting unjustified decisions about content or accounts and by establishing rights of appeal when moderation measures are taken on content.

In addition to the initiatives on platform regulation being debated in Parliament, the Brazilian regulatory framework has valid standards for practices in the offline world that also apply to behavior on the internet. As regards elections legislation, Article 323 of Law No. 4,737/1965⁸⁴ provides for imprisonment of two months to one year or payment of a fine to anyone who “discloses, in election propaganda or during the electoral campaign period, facts that they know to be untrue about parties or candidates and capable of exerting influence on the electorate” or “whoever offers or sells videos with untrue content about parties or candidates.” Other examples are crimes of racism (Law No. 7,716/1989) or crimes against the democratic rule of law, which also apply to the online environment.

It empowers users and content producers in their relationship with platforms by prohibiting unjustified decisions about content or accounts and by establishing rights of appeal

| GUARANTEES AND SAFEGUARDS

Bill No. 2,630/2020 measures aim to combat the dissemination of problematic content, which undermine public debate and weaken general confidence in journalism, show a balance between performance obligations focusing on structural problems (in actions on systemic risks) and reaction in exceptional crisis situations. By imposing to the digital platforms an obligation to combat these practices, the bill can contribute to reduce the dissemination of such content, reducing narratives that compromise the integrity of information and destruct society's trust in public information and journalism.

The provision in the bill on the approval of a code of conduct containing a set of guidelines, regulatory provisions, and new obligations to the platforms, in addition to the existing rules in the bill, also helps to face the production and dissemination of disinformation content on digital platforms.

Two other positive aspects worth mentioning are: a) transparency obligations, which allow the authorities and society to monitor the performance of the platforms, including their content moderation measures; and b) the empowerment of users and content producers, such as journalists and communicators, through determination of justification by the companies of the actions they adopt regarding accounts and publications, instituting resource mechanisms. The measure favors the online freedom of expression, fundamental to the journalistic practice.

83 Available at: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2265334&filename=Tramitacao-PL%202630/2020.

84 Further information at: https://www.planalto.gov.br/ccivil_03/leis/14737compilado.htm.

CHALLENGES AND OBSTACLES

If Bill No. 2,630/2020 is a good legislative proposal to fill the gaps already pointed out to face problems arising from the circulation of certain online content, on the other hand it still needs adjustments and improvements. The obligations of the so-called “duty of care,” if not balanced, can have the effect of empowering platforms further by imposing that they monitor and judge whether or not content fits the list of illegal content outlined in the rule.

The extension of the principle of parliamentary immunity to the internet can mean an unnecessary and inadequate protection for malpractice on the web

Another point that merits attention is the extension of the principle of parliamentary immunity to the internet, as outlined in the bill. Considering the growing number of parliamentary members that adopt problematic practices (such as the spread of disinformation and hate speech on line, including against journalists), this rule can mean an unnecessary and inadequate protection for malpractice on the web. Finally, the bill must provide a structure of regulatory institutions that ensure a participative governance on the one hand and ensure its effectiveness, on the other. In this sense, a major obstacle has been the persistent campaign of opponents of the proposal against the creation of independent regulator entities empowered to monitor compliance with the law. The opposition of digital platforms added to the discourse of far-right sectors that opposes any limitation on the circulation of harmful content online, has also contributed to the fact that Bill No. 2,630/2020 is yet to complete its course in Parliament.

With regard to the Elections Code, the House of Representatives approved a mini electoral reform (Bill No. 4438/2023) in September 2023, but the changes will only be examined by the Senate within the scope of the structured revision of the Elections Code (Bill of Supplementary Law No. 112/2021) in 2024.

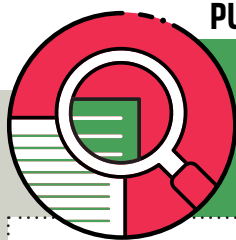
PLURALISM AND DIVERSITY

Bill No. 2,630/2020 lists violence against women and the crime of racism among online crimes to be monitored and tackled. However, the project and its due regulation must provide a more detailed treatment of diversity. On the one hand, specific rules can be implemented to address such discriminatory practices on the internet, either among systemic risk mitigation obligations or in particular code of conduct guidelines. On the other hand, diversity in these three social markers must be represented in Brazil's internet governance and participation spaces.

Although it includes violence against women and crime and racism among the illicit acts to be monitored and combatted, Bill No. 2,630/2020 must deal more closely with diversity aspects in general

If not balanced, the “duty of care” can further empower platforms by requiring them to monitor and judge whether or not content falls within the illegalities listed in the standard

Bill No. 2,630/2020 must provide for a structure of regulatory institutions that ensures participatory governance, on the one hand, and its effectiveness, on the other



Federal Government's Policy on Transparency and Information Access

Topics addressed

- Access to information
- social control
- active transparency
- passive transparency
- open data

Objective

To ensure active and passive transparency and the opening of databases as per Law No. 12,527/2011. It involves responding to information requests, actively disseminating information on official websites, and making data available for researches, studies, innovations, and for the society to engage in improvements to public policies and services

Draft, approval or implementation stage

In the implementation stage

Management

Office of the Federal Controller General (CGU)

Social engagement, monitoring, and assessment

The initiative involves the Transparency, Integrity, and Anticorruption Committee (CTICC) under CGU, which monitors and assesses transparency policies. The

CTICC is composed of government and civil society representatives, including journalism-related organizations, such as Brazilian Association of Investigative Journalism (ABRAJI) and Fiquem Sabendo. On the other hand, the project "*Diálogos em Controle Social*" (in free translation, "Social Control Dialogs") enables the exchange of experiences among civil society organizations involved in the fight against corruption through thematic lives

and workshops. Finally, Escala Brasil Transparente (EBT – in free translation, "Transparent Brazil Scale") is a methodology employed to assess transparency in states and municipalities. It allows the monitoring of measures adopted by government entities to promote the access to information while involving the society in this process.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

Though it does not explicitly mention this purpose, by promoting the access to information of public interest, Transparency Portal positively affects the journalistic activity, as it provides detailed, official data on governments' budgets, finances, and properties which are relevant for the media work. The emphasis put on active transparency further enables journalists to obtain such information more easily, enabling their role as watchdogs over government actions.

The Brazilian Open Data Portal gathers datasets in open e reusable formats, being a valuable tool for journalists seeking for more complex information and deeper analyses. Besides, Integrated Ombudsman and Information Access Platform – Fala.br provides media professionals with a tool to make requests for information, amplifying their ability to obtain official data to inform the whole society.

The Brazilian Open Data Portal is a valuable tool for journalists looking for more complex information and in-depth analysis

The Integrated Ombudsman and Information Access Platform (Fala.BR) offers press professionals a tool to make requests for information, expanding their ability to obtain official data to inform the entire society

| ACTIONS, STRATEGIES, AND MECHANISMS

The policy is a strategic initiative to provide many related federal actions with consistency and unity, such as the Federal Executive Branch's Open Data Policy (Decree No. 8,777/2016) and the Digital Government and public efficiency guidelines (Law No. 14,129/2021). By unifying these aspects, the Policy on Transparency and Information Access incorporates and amplifies the principles established by the of Information Access Act (LAI – see page 51), thus contributing to the journalistic practice by ensuring active transparency and facilitating the access to government administration information.

The Transparency and Access to Information Policy incorporates and expands the principles established by the Access to Information Law, ensuring active transparency and facilitating access to information about public administration

Bound to the federal government's Integrity, Transparency, and Information Access System (SITAE), the policy is operated by a set of tools managed by the CGU. As a central body, SITAE provides strategic coordination and integration, establishing rules, procedures, and guidelines for the whole federal government administration.

The main tools of the policy are: a) Integrated Ombudsman and Information Access Platform – Fala.br, aimed at receiving information requests, complaints, suggestions, and compliments made by society members; b) Transparency Portal, which provides detailed information on the government's budget, finance, and property use, prioritizing active transparency; c) Escala Brasil Transparente, a methodology that assesses the transparency level of Brazilian states and municipalities, aiming at promoting public transparency and providing a detailed analysis of how governmental entities disseminate information of public interest; and d) Open Data Portal, which gathers governmental datasets in open and reusable formats.

ding a detailed analysis of how governmental entities disseminate information of public interest; and d) Open Data Portal, which gathers governmental datasets in open and reusable formats.

| GUARANTEES AND SAFEGUARDS

The Transparency and Access to Information Policy contributes directly to the full exercise of journalism, allowing a more comprehensive and informed media coverage

The Policy on Transparency and Information Access plays a core role in strengthening and effectively implementing LAI. By establishing a strategic, comprehensive framework, it does not only observe the principles set by the abovementioned law, but also amplifies their application and binds them to other policies, promoting an environment that favors the unrestricted access to information of public interest. This tool contributes directly to the full exercise of journalism, allowing a more comprehensive and informed media coverage.

Besides, by allowing journalists to monitor and report on government actions, the policy promotes the accountability and public surveillance, thus contributing to the accountability of authorities and playing a fundamental role in the strengthening of democracy. Active transparency is amplified by specialized portals that ease the proactive dissemination of relevant information and reduce the need for formal requests. Finally, the social participation mechanisms implemented enable the involvement of civil society organizations engaged with the defense of journalism, promoting a more holistic and efficient approach of the information access.

| CHALLENGES AND OBSTACLES

For the media, the response time of information requests and, often, the negative responses obtained, constitute an obstacle for the dissemination of information within a context of agility in news production. At the same time, more than a decade after the law implementation, the knowledge on the policy and qualification of journalists to use the tools it provides are yet a challenge for the sector. The complexity and volume of information available require specific abilities for a deeper analysis by press workers. Assuring the ongoing participation of journalism-related organizations in the CTICC and amplifying its scope, representativeness, and decision-making power is crucial to strengthen the media voice in the policy implementation.

The closing of public information databases with no prior consultation or notice, as reported in the document drafted by the Forum for the Right to Access Public Information⁸⁵, is another challenge. Besides, the demand for a justification to access public records, as requested by some state bodies, also promotes the bureaucracy and creates legal uncertainties in the access to information. The same applies to the obligation of prior registration to obtain public data on government websites.

These conducts violate the purposes established by the policy, jeopardizing the active transparency, right to information, and journalistic practice.

| PLURALISM AND DIVERSITY

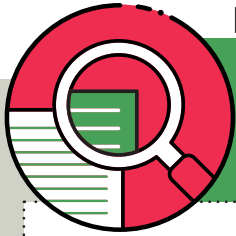
The policy does not present specific guidelines related to gender, race, and class pluralism and diversity.

More than a decade after the adoption of the law, knowledge about the policy and training journalists to use its tools still prove to be a challenge for the sector

Another challenge refers to the closure of public information databases without consultation or prior notice, as indicated by the document produced by the Forum for the Right to Access Public Information

The policy does not present specific guidelines related to plurality and diversity of gender, race and class

⁸⁵ Document available at: <https://informacaopublica.org.br/wp-content/uploads/2023/09/Propostas-para-a-ANPD-Forum-de-Direito-de-Acesso-a-Informacoes-Publicas.pdf>.



Federal Supreme Court's Program to Combat Disinformation

Topics addressed

- Disinformation
- freedom of information
- democracy
- institutional collaboration

Objective⁸⁶

To face the negative impacts of disinformation and narratives detrimental to the image of the institution and the judicial branch, emphasizing the importance of strengthening press freedom and balancing the information ecosystem, through collaboration with actors such as checking agencies, journalists, and social media platforms

Draft, approval or implementation stage

In the implementation stage

Management

Federal Supreme Court (STF)

Consideration of the journalistic practice

The journalistic activity is contemplated through the development of studies to map and understand the strategies that attack freedom of journalistic information, identify the regulatory models and good practices to strengthen the communication ecosystem, and understand artificial intelligence in the disinformation industry. In addition, there are initiatives to increase the social visibility of fact-checking journalism, the creation of a network for the reliable production and distribution of information.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The journalistic activity is contemplated through the development of studies to map and understand the strategies that attack freedom of journalistic information, identify the regulatory models and good practices to strengthen the communication ecosystem, and understand artificial intelligence in the disinformation industry. In addition, there are initiatives to increase the social visibility of fact-checking journalism, the creation of a network for the reliable production and distribution of information.

ACTIONS, STRATEGIES, AND MECHANISMS

The program works in two primary areas: organizational management and communication strategies. Within the framework of organizational management, regular meetings of the management committee are scheduled to implement and monitor the progress of the actions. There is a particular focus on the development and acquisition of information technology resources to identify disinformation practices and hate speech more effectively. In addition, the managing committee establishes connections with public and private institutions involved in the combat of disinformation, promoting events and seminars.

With regard to communication strategies, three initiatives stand out. The first is media literacy, and the second involves the dissemination of news on the page #VerdadesdoSTF (in free translation, Truths about the STF) to rebut rumors or unmask fake news involving the Court. Finally, there is an initiative aimed at promoting the image of the Court through communication actions directed to various audiences.

⁸⁶ Further information at: <https://www.stf.jus.br/arquivo/norma/resolucao742-2021.pdf>.

In addition, the initiative also has a Strategic Action Plan that establishes a framework for a specialized work to be conducted during the management (2023-2025)⁸⁷.

I GUARANTEES AND SAFEGUARDS

The program adopts a proactive stance in developing studies and analyses focused on mapping and understanding strategies that attack the freedom of journalistic information. It seeks not only to combat disinformation about the judicial branch, but also to strengthen the information ecosystem, increasing the visibility of fact-checking journalism and building a network of reliable production and distribution of information on the subject. This synergistic and collective approach reflects the assumption that the defense of the democratic regime requires the constant participation of citizens, the professional press, and various sectors of society.

I CHALLENGES AND OBSTACLES

Among the challenges identified, the complexity of the task of mapping and understanding attacks on the freedom of speech and journalistic freedom, especially in the digital environment, considering its complexity. Discrimination, reputation attacks, economic pressures, intimidation and threats to media outlets and media professionals are multifaceted and dynamic phenomena, requiring a continuous and adaptive approach to effectively address them. In addition, it is important to have an effective communication regarding the achievement of the goals proposed in the Strategic Action Plan.

I PLURALISM AND DIVERSITY

The initiative does not include aspects of diversity related to race, gender, class, and pluralism in its Strategic Action Plan.

The program adopts a proactive stance when developing studies and analyzes focused on mapping and understanding strategies for attacking freedom of journalistic information

Among the challenges identified, the complexity of the task of mapping and understanding attacks on freedom of expression and journalism stands out, especially in the digital environment

The initiative does not include aspects of diversity related to race, gender, class and plurality in its strategic action plan

⁸⁷ Further information at: https://portal.stf.jus.br/desinformacao/doc/SCO%20-%20Programa%20Desinformação%20-%20Plano%20Estratégico_novo.pdf.



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DOMAIN

4

AN OVERVIEW OF COMMUNICATIONS IN BRAZIL

The building of an environment leading to the journalism activity is directly linked to the structures and conditions for exercising the right to communication. Such collective effort, based on the respect for and promotion of the right to freedom of expression to seek, receive and disclose information, well-recognized in international declarations of human rights (such as the aforementioned Inter-American Convention on Human Rights), is dependent not only on a regulatory environment that avoids censorship with direct interference by the state, but also ensures favorable conditions for the collective exercise of such right, with active policies to promote pluralism, diversity and democratic public discussion.

The joint declarations of rapporteurs for freedom of expression mentioned in the foregoing chapters (for the years 2018 and 2023) expressly state the importance of adopting measures to avoid market concentration in this industry, and to encourage the sustainability of the press vehicles in order to promote pluralism and diversity in the media. Independent public and community media should also be part of this scenario. The rapporteurs also add that the regulation of such services should be made by independent, transparent and effective bodies. The same documents add that pluralism and diversity must also be ensured in the online environment, preventing a few economic players from having excessive power over the flow of information.

Brazilian communications, however, are moving in the opposite direction. In 2017, the project “Me-

dia Ownership Monitor”, coordinated globally by RSF and implemented in Brazil by Intervozes⁸⁸, a collective group, mapped the owners of the media vehicles with the largest audience in the country. The study pointed out high risks posed to media pluralism in several indicators, such as: audience concentration, concentration of cross-ownership (control of different media vehicles) and political control over the media financing.

Media market data shows how the concentration is maintained. According to the Mídia Dados Brasil group, even with a slight decrease in audience in recent years, the three main TV networks in the country (Globo, Record, and SBT) controlled, in 2023, more than half (53%) of the audience share.⁸⁹ Such figures support that, even in view of the growth of other broadcasters in the last decade (including non-commercial and emerging networks, especially religious ones), the predominance of the market leaders remains remarkable.

On the internet, the entry of new players did not result in an expansion of pluralism and diversity, but in a dispute between new and old monopolies. According to a survey carried out by the consultancy Hostinger⁹⁰, the 10 most accessed websites in Brazil in 2023 were: Google, YouTube, Facebook, Globo.com, Instagram, WhatsApp, UOL, Google.com.br, Twitter, and MercadoLivre. Another survey on the most used apps, carried out by Mobile Time website in the same year, showed a similar list, led by WhatsApp and followed by Instagram, Facebook, Nubank, YouTube, Telegram, Uber, Spotify, Banco do Brasil, and Caixa. When analyzed together, the rankings show the market power of international platforms, followed by the large Brazilian media groups (Globo and UOL/Folha).

This scenario is the result of a regulatory framework that combines historical weaknesses in the broadcasting regulation with the absence of responses to new challenges on the internet. Brazil still has its major media vehicles (radio and TV), the core spaces of national journalism, regulated based on the institutionalization of private interests and extremely outdated rules – in force for more than 60 years.

In 1988, the Federal Constitution accepted the industry legislation already existing in the Brazilian Telecommunications Code (Law No. 4,117/1962 and Decree-Law No. 236/1967), and established general guidelines for the broadcasting service, listed in article 5, among those deemed as essential audiences, which must be ensured by the state directly or through third parties, among which the prohibition of monopolies and oligopolies in the industry (article 220).

The Constitution also included specific rules for the ownership of broadcasting and press companies, setting limits on foreign capital for such service providers. Article 223, on the other hand, established that Brazil’s communications system should be complementary between public, private and state services; fixed the term for concessions (10 years for radio stations and 15 for TV stations); and determined the need for a court decision to revoke the concessions.

With regard to programming, Article 221 listed as the main principles the preference for educational, informative, artistic content, and the promotion of national culture and regional and independent contents. Article 54, on the other hand, prohibits deputies and senators from signing or maintaining agreements with public entities, which could be constructed as a prohibition on controlling radio and TV stations⁹¹. Such aspects affirm in the most important law of the country the foundations for what could be, in theory, an independent, pluralistic and diverse media and press system.

On the internet, the entry of new players did not result in an expansion of pluralism and diversity, but in a dispute between new and old monopolies

88 Further information at: <https://brazil.mom-gmr.org/br/destaques/>. Accessed on 30 Jan. 2024.

89 Further information at: https://midiadados.gm.org.br/view-content/tableau@7f-51c358-baed-43a6-a852-cf7a15b694c1?category=tv_aberta. Accessed on 30 Jan. 2024.

90 Further information at: <https://www.hostinger.com/tutorials/most-visited-websites-in-the-world>. Acesso em 30 janeiro 2024.

91 Historically, different governments have interpreted the rule differently. In 2011, PSOL (Socialism and Liberty Party) filed two Lawsuits for Non-compliance with a Fundamental Requirement (ADPF) questioning the granting and renewal of grants to entities having deputies and senators on their shareholding. In 2016, the federal government filed a lawsuit with the Supreme Court asking for the suspension of similar lawsuits filed by the Federal Prosecution Office.

However, despite the relevant principles approved in 1988 and positive dispositions adopted later, in practice, the industry legislation allowed the consolidation of a concentrated and verticalized media. Due to the non-limitation to the formation of national networks and cross-ownership, the control of TV stations, radio stations, newspapers and internet portals by networks, which articulate large national communication groups with large regional communication groups, has dominated the Brazilian media landscape.

In the last two decades, despite administrations that declared themselves committed to the building of a pluralistic and diverse media environment, the country has experienced, in practice, the easing of the few anti-concentration rules in the ownership of broadcasters. In relation to the programming of such broadcasters, the priorities established in the Constitution for educational, artistic, informative and cultural purposes, and for the promotion of national and regional culture remain only on paper.

In the last two decades, the country has experienced, in practice, the easing of the few anti-concentration rules in the ownership of broadcasters

In the field of non-commercial broadcasting, the industry regulation has not been able to bring such media out of a marginal condition. The public broadcasting system, for example, was regulated only 20 years after its inclusion in the Constitution, with Law No. 11,652/2008, the basis to establish Empresa Brasil de Comunicação (EBC), the national public communication company. In the field of community media, the rules show the asymmetry of treatment for such vehicles, with excessive and undue restrictions on reach, power and funding. One of the few initiatives to expand such service, the creation of Canal da Cidadania (citizenship channel)⁹² in 2006, was soon discontinued, showing the lack of priority in the implementation of community TV programming by public entities, both at the federal and municipal levels.

It is also worth mentioning the lack of independent and participating regulators for the industry. The Social Communication Council, an advisory body to the National Congress on the matter, and a unique body with social participation, has no powers to directly influence communication policies.

Across the industry, other issues in the Brazilian regulatory framework still exist, involving the journalistic practice and freedom of speech. This is the case of the dispositions on slander, libel and defamation existing in the Brazilian Criminal Code, contrary to the recommendations made by international rapporteurs for freedom of expression, which point out that the issue should be dealt with in the civil level.

The analyzed picture shows that Brazil remains far from a regulatory framework that protects and promotes pluralism, diversity and a sound and relevant journalism. And that the country now has the Herculean challenge of simultaneously answering to unsolved historical problems in terms of concentration of the so-called traditional media and new obstacles placed in the online environment.

⁹² Canal da Cidadania was provided for in Decree No. 5,820/2006, which regulated open Digital TV in Brazil. Considering the possibilities of multiprogramming, the channel consisted of a service with four programs, combining contents from the public authorities and the communities.



Regulation on broadcasting

Names

Law No. 4,117/1962, Decree-Law No. 236/1967 and Law No. 14,812/2024
(establish, supplement and amend the Brazilian Telecommunications Code)

Law No. 12,485/2011

(provides for audiovisual communication which conditional access)

Law No. 13,424/2017

(provides for the renewal of broadcasting services concessions and licenses)

Law No. 11,652/2008

(establishes purposes for the public broadcasting and authorizes the executive branch to establish Empresa Brasil de Comunicação)

Law No. 9,612/2008

(establishes the community broadcasting service)

Bill No. 1,441/2015

(regulates Article 221 of the Constitution, establishing percentages of regionalization of cultural, artistic and journalistic production)

Bills No. 4,026/2004 and No. 6,667/2009

(provide for the limits to economic concentration in the media vehicles)

Topics Addressed

- Exploitation of concessions public communication
- community communication
- concentration
- diversity

Draft, approval or implementation stage

- Laws in force
- Bill No. 1,441/2015 – Under analysis by the Culture Committee of the House of Representatives
- Bills No. 4,026/2004 and No. 6,667/2009 – Under analysis by the Communication Committee of the House of Representatives. Rejected by the Economic Development Committee.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The Brazilian Telecommunications Code (CBT) and its regulation institutionalized in Brazil a model similar to that adopted in the United States, with the State being able to directly provide or grant to third parties (especially private entities and for commercial purposes) the provision of such service, as long as the requirements regarding technical, bureaucratic and content aspects are satisfied. As for ownership, the limits established provide that each provider should manage a maximum of 5 VHF TV and 10 UHF stations in the country, or 6 local FM radio stations, 2 for national medium waves and 2 for short waves. In 2024, Law No. 14,812 eased such limits, expanding the numbers to 20 radio stations and 20 TV stations, in addition to allowing such services to be exploited by individuals through “sole proprietorships”.

Also in terms of ownership, the Conditional Access Service Law (SeAC), aimed at pay TV, set limits between broadcasting and telecommunications operators, allowing the latter to control a maximum of 30% of the capital of the former. In 2016, president Michel Temer issued Provisional Measure No. 747 (converted into Law No.

13,424/2017), which eased rules for radio and TV and excluded some obligations from entrepreneurs in the industry⁹³. Although they do not deal directly with journalistic activity, such provisions have a direct impact on the building of a pluralistic and diverse communications system.

Regarding content, the CBT and its regulatory decrees determined that at least 5% of the broadcast stations' program schedule must be used for broadcasting journalistic content, and 5 hours per week for educational programs⁹⁴. It is prohibited to broadcasting programs that expose people to situations of embarrassment and promote campaigns of prejudice. And advertising during the programming time may not exceed 25% of the daily schedule.

In 2024, Law No. 14,812 eased such limits, expanding the numbers to 20 radio stations and 20 TV stations, in addition to allowing such services to be exploited by individuals through “sole proprietorships”

With regard to non-governmental communication, it was only in 2008 that the provision of a public communications system was partially regulated by Law No. 11,652, which authorized the establishment of Empresa Brasil de Comunicação (EBC). The model adopted was based on international experiences, with relevant space for journalistic content of public interest and for engagement of society, especially in the Board of Trustees, entrusted with powers to recommend guidelines for programming and to cast votes of no confidence against leaders.

In relation to community communication, the radio service was regulated in Brazil by Law No. 9.612/1998, establishing the means for creation and operation of associations supporting the stations (with the right of participation by the community), coverage and power limits, in addition to the restrictions above mentioned in the financing model (see page 29). Community television has received a more fragmented regulation, being provided for in the pay-TV legislation as a mandatory charging channel by operators of the service.

Among the bills in progress aiming to regulate broadcasting with impact on journalism, the highlight is those with the purpose of regulating constitutional guidelines. Bill No. 1,441/2015, by deputy Jandira Feghali (PCdoB-RJ party), proposes the establishment of percentages for regional productions programming, as provided for in Article 221 of the Constitution, and Bill No. 4,026/2004 and Bill No. 6,667/2009 seek to regulate the prohibition of monopoly and oligopoly practices contained in Article 220.

| GUARANTEES AND SAFEGUARDS

The CBT and its regulatory decrees included provisions to, although no completely, limit the ownership of radio and TV broadcasters, which in some way favors pluralism in the informational scenario. In terms of programming, although also in a very initial stage, the legislation establishes minimum percentages for journalistic and educational content. Non-commercial communication made an important advance with the creation of public and community broadcasting laws. In the first case, which enabled the establishment of EBC, the model was based on positive international experiences (such as BBC in the United Kingdom) to establish purposes for the production of journalistic content and to ensure the participation of society in the building of the channels' programming.

⁹³ It extinguished the need for approval by the executive branch of the corporate changes of broadcasters (with the exception of the total transfer), and revoked provisions of the Brazilian Telecommunications Code that provided for the annulment of changes in shareholding control, capital increase or changes in the board of directors that contravened obligations contained in the legislation. In December 2016, an ordinance allowed any broadcaster to have its administrative sanctions transformed into fines, which in practice put an end to the effectiveness of such punishments, which were rarely applied by the Ministry of Communications.

⁹⁴ Broadcasters must also broadcast free electoral propaganda of political parties and candidates, as well as communications when national networks are called (such as those delivered by government officials or the Electoral Court).

CHALLENGES AND OBSTACLES

The regulatory framework of the Brazilian communications must be analyzed in the light of the interests served in its conception, and how the principles, guidelines and several established rules have or have not been implemented in practice. Despite the positive constitutional rules, the Constitution also included major requests made by the industry's business community, such as extended deadlines for exploitation of concessions, a high quorum (2/5 of the National Congress in a show of hands) to vote the non-renewal and cancellation of licenses only upon a court decision, unlike other public services in the country operated by private entities.

Democratization provisions, such as the prohibition of monopolies and oligopolies in the industry, the promotion of educational, artistic, informational and cultural purposes in the programming, the stimulation of regional and independent production and the complementation of public, private and state systems have not been translated into regulatory rules nor cause the actual implementation of public policies. In a fast-changing scenario, Brazil still depends on a broadcasting regulation based mainly on the sixty-year-old CBT. At the same time, the already inadequate rules are barely supervised by the proper authorities, and there are clear violations of property and content rules.

In 2009, the National Communication Conference approved, among its proposals, a reform of the legal framework for the industry. The then Lula's administration (2007-2010) formed a working group on the matter, but the two following administrations failed to achieve such effort, and held back the proposal for a new legislation⁹⁵. As of 2016, instead of improvements, the already fragile communications legal framework became even more flexible. Law No. 13,424/2017 reduced requirements for shareholder changes in concessionaires, and Law No. 14,812/2024 expanded the already wide ownership limits for radio and TV stations.

Despite the progress with the approval of Law No. 11,652/2008 and the establishment of EBC, since then the company has struggled to maintain its public nature. After the impeachment of president Dilma Rousseff in 2016, Michel Temer put an end to EBC's autonomy mechanisms, and the company became the target of partisan and social political forces, with ongoing threats of privatization. During the administration of Jair Bolsonaro, EBC was charged with systematic and persistent practices of editorial interference and censorship of journalists and workers⁹⁶.

This condition of marginality of non-governmental communication is also expressed in the rules for community broadcasting. Law No. 9,612/1998 imposed limits on power, range and financing of such stations. For TVs, they never were the subject of a proper law. At a time of increasing focus on the digital media, radio broadcasting remains very relevant as a source of information for the Brazilian population as a whole, and may not be disregarded as a mean to promote a pluralistic and diverse journalistic environment.

PLURALISM AND DIVERSITY

As analyzed above, the Brazilian legislation for radio broadcasting has no concrete mechanisms to confront concentration in the industry, to the detriment of journalistic pluralism. At the same time, it fails to promote diversity of content and representations, without clear cutouts of gender, race and economic class. A possible reform of the legal framework would need to take such aspects into account, both in valuing a diverse workforce and the representation of such majority segments of the Brazilian population in broadcasters' programming.

95 Resolutions and bill draft are available at: Ramos, M.C., Paulino, F.O., Valente, J. Urupá, M. Carvalho, M. M. "Conferência Nacional de Comunicação: 10 anos depois, velhos e novos desafios das políticas de comunicação no Brasil". União Latina de Economia Política da Informação, Comunicação e Cultura, 2021. Available at: <https://sites.google.com/ccom.unb.br/home/confecom>.

96 Campanha Calar Jamais. Violações à Liberdade de Expressão no Brasil 2019-2022. Fórum Nacional pela Democratização da Comunicação, 2022. Available at: <https://fndc.org.br/campanha-calar-jamais/>.



Slander, libel and defamation

Names

Decree-Law No. 2,848/1940

(Criminal Code)

Bill No. 7,475/2017

(revokes provisions of the Criminal Code on crimes against honor)

Bill No. 3,734/2023

(typifies the crime of embarrassment to public authority)

Bill No. 215/2015

(punishes crimes against honor committed on social networks)

Topics Adressed

- Aggravation of penalties
- public authorities
- new types of penalties
- internet

Draft, approval or implementation stage

- Law in force.
- Bill No. 7,475/2017 – Ready for vote before the Plenary of the House of Representatives. If approved, it will be considered by Senate.
- Bill No. 3,734/2023 – Under consideration by Constitution, Justice and Citizenship Committee of the House of Representatives. If approved, it will need to be voted before the Plenary of the House of Representatives, and then analyzed by Senate.
- Bill No. 215/2015 – Ready for vote before the Plenary of the House of Representatives. If approved, it will be considered by Senate.

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The Criminal Code lists slander, libel and defamation in its provisions. Although they do not directly concern the journalistic activity, such infringements can be used to embarrass and silence press workers, including conducts involving judicial harassment, when individuals or authorities file a series of lawsuits, alleging they are victims of slander, libel and defamation by journalists. According to the Brazilian Association of Investigative Journalism (ABRAJI), 299 journalists were charged with slander, libel or defamation in the state of São Paulo between 2015 and 2022.

In the case of slander, the offense occurs when someone falsely attributes a crime to another, subject to a penalty of six months to two years of imprisonment and the imposition of a fine. The crime of libel involves offending the dignity or honesty of a person, subject to a penalty of one to six months of imprisonment or the imposition of a fine. Defamation, on the other hand, occurs when there is an attribution of a fact offensive to the reputation of a third party, subject to a penalty of three months to one year of imprisonment and the imposition of a fine.

Punishments are increased by one third if the crimes are committed against the presidents of the Republic, the Federal Supreme Court, the Federal Senate or the House of Representatives, against a public official in the exercise of his or her duties, in a way that makes easy the dissemination of the content or act, or if committed against a child, adolescent or elderly person.

Several propositions on the matter are currently being processed before the National Congress, typifying related crimes, creating aggravating factors for certain situations or victims. Bill No. 3734/2023, by deputy Rubens Pereira (PT-MA party), for example, typifies the crime of embarrassment to a public authority in the exercise of their function through slander, libel, defamation and other infringements under the Criminal Code, such as three-

at and violence. According to the most recent report approved for the bill⁹⁷, the punishment established is two to six years of imprisonment, in addition to punishments corresponding to slander, libel and defamation. The penalty is doubled if the act is committed in a group of more than three individuals or through the internet.

Bill No. 215/2015, by former deputy Hildo Rocha (MDB-MA party), strengthens this approach. In his most recent report, approved by the Constitution, Justice and Citizenship Committee in 2015⁹⁸, the punitive effects of slander, libel and defamation will have double penalties, in case the messages are disseminated on the internet or with the use of a device used in telecommunications services. Other proposals bring related approaches, such as Bill No. 675/2021, in progress before the Senate. The most recent report, presented before the Plenary of this house in 2022⁹⁹, also aggravates the penalties for slander, libel and defamation if committed on social networks or with the use of technologies to change human images or voices.

On the other hand, Bill No. 7475/2017, by former deputy and now senator Veneziano Vital do Rêgo (MDB-PB party), decriminalizes these crimes. The most recent report, approved by the Constitution, Justice and Citizenship Committee of the House of Representatives in 2019¹⁰⁰, provides for the repeal of the articles governing the crimes of slander and defamation, and keeps the crime of libel restricted to offenses using elements making reference to race, color, ethnicity, religion, origin or the condition of elderly person or person with a disability.

I GUARANTEES AND SAFEGUARDS

Considering the inadequacy of treating speeches as crimes, Bill No. 7,475/2017 stands out as a positive element, which suggests the repeal of crimes against honor contained in the Criminal Code. The proposition is in line with international recommendations that advocate against the existence of legislation that criminalizes such expressions. The foregoing 2023 joint declaration of the rapporteurs on freedom of expression includes, among its recommendations to the states, to repeal rules in this regard.

I CHALLENGES AND OBSTACLES

Slander, libel or defamation does not directly mention the journalistic practice, but they have greater potential to affect journalists and communicators by reinforcing punishment against agents who are normally the subject of press coverage or criticism in the media, such as public officials. On different occasions, the rapporteurs on freedom of expression have pointed out the dangers of criminalizing speech for freedom of expression and freedom of the press. The OAS Special Rapporteurship for Freedom of Expression published a report on the matter in 2004, in which it reinforces this understanding.

Unfortunately, the Brazilian legal framework moves in the opposite direction, with proposals in progress before the legislative branch aimed at increasing the possibilities of instrumentalization of such crimes, as is the case of the creation of a new broad criminal type of embarrassment of public authorities. Bill No. 215/2015 and Bill No. 675/2021 also create new punitive paths for journalists and communicators by increasing penalties for broadcast of content on the internet, since articles and publications are increasingly made available in the online environment.

97 Available at: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2371727&filename=Parecer-CCJC-2023-12-07.

98 Available at: <https://imagem.camara.gov.br/Imagem/d/pdf/DCD0020151014001750000.PDF#page=522>.

99 Available at: <https://legis.senado.leg.br/sdleg-getter/documento?dm=9126080&ts=1686676619930&disposition=inline>.

100 Available at: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1769464&filename=Tramitacao-PL%207475/2017.



Right of reply

Names

Federal Constitution

Law No. 13,188/2015

(provides for the right of reply in matters disclosed by media outlet)

Topics Addressed

- Rectification
- honor
- intimacy
- court decision

Draft, approval or implementation stage

Law in force

CONSIDERATION OF THE JOURNALISTIC PRACTICE

The Federal Constitution ensures the right of reply as a right of citizens. Law No. 13,188/2015 regulated this constitutional provision and regulated the procedures for its access, claim, and enforcement by the media. Anyone who considers themselves offended by articles published by the media outlets may request rectification.

Content against the honor, intimacy, reputation, concept, name, brand or image of an identified or identifiable individual or legal entity may give rise to a right of reply. In the event of a favorable court decision, the right of reply must be communicated within two months. The reply has to be published with a prominence comparable to the content that generated the question, whether it is size in the press or time of duration on radio or TV.

GUARANTEES AND SAFEGUARDS

The right of reply contributes to a pluralistic, diverse and responsible information environment. If the journalistic activity is vital to the democratic societies, the international standards of Human Rights emphasize that democratic regimes should also establish mechanisms to curb abuses in the exercise of journalism. Such restrictions must be clearly established by law, be proportionately responsive to any excess, and not constitute a prior restraint. The Brazilian legal framework for the right of reply is in line with this model of content regulation. Citizens and organizations may seek the courts in the cases described above. If the request is granted, the law ensures that the rectification has proportional prominence, avoiding minimizing the enforcement of such determination.

CHALLENGES AND OBSTACLES

The right of reply was regulated in a specific law almost 30 years after the promulgation of the Federal Constitution, and also within the framework of the social communication of traditional media, such as the press, audio and audiovisual media. Considering the growth of content publication and consumption on online platforms, one of the main gaps of the law is the lack of detail on how it should be applied on different websites and applications on the web.

As in several internet applications, the view of content is personalized, such as in search engines and social networks, and considering that each content has a certain reach, there is a lack of parameters for reparations to equal the reach of the content generating the offenses. Thus, it is necessary to discuss how to translate the right of reply to the online environment.

Bill No. 2,630/2020 had proposals in this regard throughout its processing, but the most recent version of the report (see page 48) does not contain a provision that allows the request and enforcement of this right by digital platforms.

CONCLUSION

PERSPECTIVES FOR A REGULATORY AGENDA THAT PROMOTES A FAVORABLE ENVIRONMENT FOR THE FREE, PLURALISTIC AND RELIABLE JOURNALISM

The effort to analyze the regulatory framework and public policies for journalism in Brazil unfortunately demonstrate that the challenges and obstacles ensuring a free, pluralistic and diverse information ecosystem are still much greater than the safeguards institutionalized, both in the legislation and the federal Executive and judicial branches actions. Despite the constitutional guarantees mentioned above, the Brazilian regulatory framework has a myriad of limits, failures and weaknesses. The country's Constitution, which has just completed 35 years of enactment, is far from being fully regulated, coexists with outdated rules and, in many cases, requires fundamental supplements.

A first example is the framework for protection of journalists and communicators, a basic dimension for the exercise the right to freedom of the press, and a regulation recommended by international human rights organizations in a violent country like Brazil. If it is true that several bills criminalizing attacks against press workers are being processed before the National Congress, the latter has the duty to move forward on issues such as prevention measures, receipt of reports and complaints, timely answers, prompt investigations, and effective accountability. In this context, the proposal and approval of the National Protection Law, institutionalizing the Protection Program for Human Rights Defenders, Communicators and Environmentalists (PPDDH), as well as the adoption of in-depth improvements in its service to journalists, are tasks that can no longer be postponed.

At the level of the executive branch, initiatives such as the National Observatory on Violence against Journalists and Communicators need to be structured quickly, so that they are able to offer effective responses to victims. In the judicial branch, the fight against judicial harassment is crucial. The Direct Actions for Declaration of Unconstitutionality (ADIs) mentioned in the report, under analysis by the Federal Supreme Court, can greatly contribute to addressing the problem.

When it comes to the journalism promotion and sustainability, the Brazilian State needs to seriously face the consequences of changes occurred in the last decade in the industry, as a result of the emergence of large online conglomerates (especially large digital platforms) and the redistribution of advertising revenues, which have caused both the closure of many media outlets and print operation shutdowns. On the other hand, non-profit media, which also have the potential to carry out pluralistic and diverse journalism, but which, historically, are subject to regulatory frameworks that restrict their existence, need to be at the core of the government's priorities. It is mandatory to overcome the financial restriction of community radios and guarantee resources and the autonomy for EBC and members of the National Public Communication Network.

THE CHALLENGES AND OBSTACLES TO GUARANTEE A FREE, PLURAL AND DIVERSE INFORMATION ECOSYSTEM ARE STILL MUCH GREATER THAN THE INSTITUTIONALIZED SAFEGUARDS IN BRAZIL

The distribution of government advertising funds is a material source of financing, but only if such policy becomes a structure having among its purposes the promotion of pluralism and diversity, which covers non-commercial, independent and regional media outlets. In the legislative branch, the vote on bills dealing with the payment of news outlets by digital platforms for the use of news may represent a relief for the industry, but their wordings still need to be improved in order to finance the free and pluralistic journalism, based on the diversity of gender, formats and representations. The approval of a journalism development fund, based on the taxation of large internet applications, would have a more significant effect in terms of sustainability.

A key input of the journalism activity, the access to public information has been the subject of regulatory improvements in Brazil. However, despite positive initiatives by the executive branch, such as implementation of the Federal Administration's Transparency and Access to Information Policy and of the Federal Administration's Information Integrity, Transparency and Access System (SITAE), there are also significant challenges for their implementation, especially by the municipalities. Putting this discussion back on the public agenda of the federative entities is a challenge that will demand the political commitment of public administrators and political parties, and the participation of civil society at the local and state levels.

IN A CONTEXT OF RECENT ATTACKS AGAINST THE DEMOCRATIC RULE OF LAW IN BRAZIL, THE URGENCY OF ENSURING RULES AND POLICIES THAT STRENGTHEN THE FREE, PLURALISTIC AND TRUSTWORTHY JOURNALISM IS CRUCIAL FOR THE BRAZILIAN DEMOCRACY ITSELF

Much more complex will be the achievement of concrete globally improvements to guarantee the integrity of information. The issue has mobilized the main international organizations and the United Nations, and organizations such as the Forum on Information & Democracy have already highlighted the need for a specific regulatory framework to fight problems such as disinformation and hate speech. In Brazil, the issue has been the subject of intense discussion since 2020. A key obstacle to approve a first law regulating digital platforms is the opposition of far-right forces in the National Congress, added to the lobbying of the large platforms. Overcoming specific divergences in the wording of Bill No. 2630/2020, so that it is possible to have a majority vote in the National Congress to conclude its processing, is one of the priorities for 2024 for organizations working in favor of the information integrity.

The approval of a regulation for digital platforms is directly related to the challenges linked to the communications overview in Brazil, addressed in the last domain of the report. While RSF has repeatedly reaffirmed the importance for the country to regulate the provisions of the 1988 Federal Constitution in order to democratically regulate the broadcasting and promote pluralism in the industry, the current situation shows setbacks in the already fragile obligations applicable to media companies.

An analysis of the recent history of the radio and TV regulatory framework has shown how the movements of governments and lawmakers have not been in the direction of modernizing the legislation applicable to such services, but of making antitrust and inspection mechanisms more flexible. Unfortunately, the lack of willingness to face the problem is present in the entire Brazilian political sphere, resulting in concerns for the journalism activity.

In a context of recent attacks against the democratic rule of law in Brazil, the urgency of ensuring rules and policies that strengthen the free, pluralistic and trustworthy journalism is crucial for the Brazilian democracy itself. RSF, prompted by the gaps and opportunities identified by this study, calls on all players affected by such concerns to join forces in this direction.



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