

Brazil

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Update

In September 2021, 29 CSOs launched a campaign to promote Brazilian democracy and raise awareness about the challenging situation faced by Brazilians CSOs, the press, academics, and other important civil society actors due to restrictions on freedom of expression, public participation, association, and assembly. In addition, on October 2021, Law 14.215/21 entered into force and established a provisional legal system concerning CSOs and the public administration during the COVID-19 pandemic. The new Law allows for adjustments on the transfer of funds, accomplishment of goals, rendering of accounts, and other issues as a result of restrictions imposed during the pandemic. This Law increases the legal certainty for agreements signed under the aegis of Law 13.019/14.

Introduction

After an intense dictatorial period (1964-1985), Brazil began to undergo a process of democratization. Brazil's so-called Citizen Constitution was approved in 1988 at the end of the period of repression and military dictatorship. The current Brazilian Constitution defines the Brazilian State as a Democratic State of Law in which political pluralism and citizen participation in public affairs are paramount principles.

Thirty years later, democracy in Brazil is still a work in progress. In the midst of a deep political and economic crisis, the country is also facing various kinds of problems regarding its relationship with civil society. Following the 2016 impeachment process of President Dilma Rousseff – considered by many as a parliamentary coup – persecution, restrictions, and violations of rights have become more prevalent against leaders and activists of social movements and civil society organizations.

Efforts to prevent and combat corruption have been on the rise in Brazil. Many members of different political parties have been implicated in anti-corruption investigations in the country. On one hand, the investigations have unveiled corruption practices and the misuse of public funds by politicians, public officials, and business actors in Brazil. On the other hand,

investigations have been controversial because of potential violations of due process rights of those investigated.

2011-2016: NEW LEGAL FRAMEWORK

During the 2010 presidential election, a coalition of civil society organizations (CSOs), *Plataforma por um novo Marco Regulatório das Organizações da Sociedade Civil*, asked presidential candidates to prioritize the development of a new legal framework for CSOs in Brazil. Throughout President Dilma Rousseff's administration, the General-Secretariat of the Presidency prioritized this agenda and created a team to facilitate political dialogue. Indeed, between 2011 and 2016, a series of dialogues took place, resulting in legal reform to strengthen the role of civil society in Brazil. The challenges of the legal and funding environment for civil society at that time were clear. As acknowledged by the [European Union](#), while state funding was available to CSOs, there was no national legislation that would, based on clear criteria, guarantee a fully transparent distribution of funding. At the same time, foreign investment and funding for CSOs were dwindling, affecting CSOs working on environmental issues, development, and human rights, who did not want to rely on state funding. This context prompted CSOs to question their role in society, while still being keen to ensure that their status as autonomous organizations would be recognized and strengthened. To respond to these challenges, CSOs demanded a new regulatory framework that would improve the mechanisms and conditions for partnerships with the state and safeguard their overall role and viability. As a result, the National Congress enacted and President Dilma Rousseff approved in July 2014 a new law regulating partnerships between CSOs and public authorities: Law 13.019/2014. It introduced objective criteria and procedures for maintaining partnerships with CSOs and standards to be followed by all three levels of government to ensure more clarity on rules that interfere with the execution of such partnerships. This, therefore, has increased legal certainty for all actors involved.

LOOKING AHEAD: AFTER THE 2018 ELECTION

In October 2018, general elections for the presidency, state governorships, House of Representatives, state legislatures and two-thirds of the Federal Senate took place. The presidential election was characterized by controversy and social protests. The candidate with the best prospect of winning the most votes, Luiz Inácio Lula da Silva, a former President of the Republic, saw his candidacy blocked by Brazilian courts based on the fact that he had been arrested and was responding to legal proceedings. The United Nations Human Rights Committee, however, [stated](#) that Brazil should guarantee his right to run for the presidency. However, the Brazilian Supreme Court ruled that the Committee was an administrative body without legal jurisdiction.

In addition to the institutional and legal controversies, social protests and some cases of violence occurred. For example, Jair Bolsonaro, who eventually won the election, was stabbed during the campaign and was hospitalized for several days. During electoral rallies and interviews, Bolsonaro also made troubling statements such as “we are going to put an end to all activism in Brazil” and “there will be no public financing to CSOs.” Moreover, supporters of Bolsonaro made controversial statements regarding gender and ethnicity.

The new legislature is a truly “new one” due to the high turnover rate (almost 50% of the House of Representatives and 75% of the Federal Senate). Newly elected state governors represent 13 different political parties, most of which are supporters of Bolsonaro. Bolsonaro’s vice-president, General Mourão, is a military official, and Bolsonaro has been inviting other military officials to be part of his administration.

Bolsonaro’s official [government plan](#) is named “Brazil above everything, God above all” and does not mention CSOs specifically. Some have called his government plan economically liberal and socially conservative. The plan refers to the “freedom to people to be able to make effective their political, economic and spiritual individual choices” in a society that “gives a hand to the fallen” and where “nobody will be persecuted” (p. 15). In the plan, Bolsonaro calls himself a defender of the freedom of opinion, information, press, and Internet, as well as of political and religious freedom. However, the government plan also envisions socially conservative proposals, such as to “reduce the age of criminality to 16 years,” “reformulate the Disarmament Statute,” “recognize as terrorism invasions of rural and urban properties on Brazilian territory,” “rewrite the Constitution to exclude any relativization of private property,” and “redirect human rights policy, prioritizing the defense of victims of violence” (p.32).

The new federal government took office in January 2019. Immediately following this, the enactment of Provisional Measure No. 870 of January 1, 2019 established the structure of the Presidency of the Republic’s bodies and ministries as the first official act of the government. It also provided the Government Secretariat of the Presidency of the Republic with the power to supervise, coordinate, monitor and follow-up on the activities of international and national CSOs in Brazil. This Provisional Measure further restricted the right to freedom of association, pursuant to article 5, XVIII, of the Federal Constitution.

As a result, Brazilian CSOs opposed the Provisional Measure, and the National Congress agreed on a new wording that was subsequently vetoed by the Presidency of the Republic, which argued that the new wording infringed on the Executive’s exclusive power to provide for the organization, functioning, and competence of bodies of the federal government. After further advocacy efforts from Brazilian CSOs, Law No. 13.844/2019 passed, but incorporated changes to the original legal wording to reflect the wording

in the version articulated by CSOs that had been previously vetoed by the Presidency of the Republic. Despite this positive development, CSOs in Brazil have been subjected to numerous administrative and fiscal procedures since January 2019, which often drain their institutional capacity and materialize in the form of taxes and administrative liabilities.

AT A GLANCE

Organizational Forms	Associations and Foundations.
Registration Body	Registro Civil de Pessoa Jurídica (Legal Entity Public Register Office).
Barriers to Entry	No significant legal barriers.
Barriers to Operations / Activities	Brazilian CSOs have been subjected to numerous burdensome administrative and fiscal procedures and reporting requirements, including requests for documents not that are not required in the legal system. This drains CSOs' institutional capacity and results in "bureaucratic criminalization." Due to social inequalities, historically marginalized groups, such as indigenous peoples, quilombolas (Afro-Brazilians), LGBT+s, women, black people, and people with disabilities are especially affected.
Barriers to Speech and/or Advocacy	The country has not been safe for activists in general, especially in the environmental, land dispute issues: Activists and journalists have been murdered for reporting and investigating public interest issues, especially involving public security, environment, and land disputes.
Barriers to International Contact	Presence of foreigners curbed in the Amazon region.
Barriers to Resources	Disincentives for donations rooted in taxation and bank rules.
Barriers to Assembly	Police violence often occurs against demonstrators opposing the government and representing less advantaged social groups.

KEY INDICATORS

Population	213,445,417 (July 2021 est.)
Capital	Brasilia
Type of Government	Federative Republic
Life Expectancy at Birth	Total population: 74.98 years (male: 71.49 years; female: 78.65 years (2021 est.)
Literacy Rate	Total population: 93.2% (male: 93%; female: 93.4% (2018 est.)
Religious Groups	Roman Catholic 64.6%, other Catholic 0.4%, Protestant 22.2% (includes Adventist 6.5%, Assembly of God 2.0%, Christian Congregation of Brazil 1.2%, Universal Kingdom of God 1.0%,

	other Protestant 11.5%), other Christian 0.7%, Spiritist 2.2%, other 1.4%, none 8%, unspecified 0.4% (2010 est.)
Ethnic Groups	White 47.7%, brown (mixed white and black) 43.1%, black 7.6%, Asian 1.1%, indigenous 0.4% (2010 est.)
GDP per capita	\$14,652 (2019 est.)

Source: [CIA World Factbook](#).

INTERNATIONAL RANKINGS

Ranking Body	Rank	Ranking Scale (best - worst possible)
UN Human Development Index	84 (2020)	1 - 182
World Justice Project Rule of Law Index	77 (2021)	1 - 139
Transparency International Foreign Policy: Fragile States Index	94 (2020)	1 - 180
Freedom House: Freedom in the World	75 (2020)	178 - 1
	Status: Free	Free/Partly Free/Not Free
	Political Rights: 31	1 - 40
	Civil Liberties: 43 (2021)	1 - 60

LEGAL SNAPSHOT

INTERNATIONAL AND REGIONAL HUMAN RIGHTS AGREEMENTS

Key International Agreements	Ratification
International Covenant on Civil and Political Rights (ICCPR)	Yes
Optional Protocol to ICCPR (ICCPR-OP1)	Yes
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Yes
Optional Protocol to ICESCR (OP-ICESCR)	No
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Yes
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Yes
Optional Protocol to the Convention on the Elimination of Discrimination Against Women	Yes
Convention on the Rights of the Child (CRC)	Yes
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)	No
Convention on the Rights of Persons with Disabilities (CRPD)	Yes
Regional Treaties	
American Convention on Human Rights and Marrakesh Treaty	Yes

* Category includes ratification, accession, or succession to the treaty

CONSTITUTIONAL FRAMEWORK

The 1988 Constitution establishes a federal system comprising the Union, States, the Federal District, and Municipalities; divides authority among the legislative, executive and judiciary powers; and establishes Brazil as a representative democracy, where people's power is exercised by legitimately elected representatives.

In response to the prior period of authoritarianism, the constitutional text expressly recognizes the freedom of peaceful assembly and freedom of association for the realization of lawful purposes (Article 5, XVI and XVII). It also makes clear that the action of armed groups (civil or military) against the constitutional order and the democratic state is a non-bailable and imprescriptible crime (Article 5, XLIV).

Freedom of Association

Article 5 (XVII, XVIII, XIX, XX, XXI) ensures the right to freedom of association:

XVII – freedom of association for lawful purposes is fully guaranteed, any paramilitary association being forbidden;

XVIII – the creation of associations and, under the terms of the law, that of cooperatives is not subject to authorization, and State interference in their operation is forbidden;

XIX – associations may only be compulsorily dissolved or have their activities suspended by a judicial decision, and a final and un-appealable decision is required in the first case;

XX – no one shall be compelled to become associated or to remain associated;

XXI – when expressly authorized, associations shall have the legitimacy to represent their members either judicially or extra-judicially.

Freedom of Assembly

Article 5 (XVI) ensures the right to freedom of assembly regardless of authorization:

XVI – everyone may meet peacefully, without arms, in places open to the public, regardless of authorization, as long as they do not frustrate another meeting previously called to the same place, subject only to prior notice to the competent authority.

Freedom of Expression

Article 5 (IV, V, IX, XIII, XIV) also protects freedom of expression broadly:

IV – the manifestation of thought is free and anonymity is forbidden;

V – the right of response is ensured, proportional to the grievance, in addition to compensation for material, moral or image damage;

IX – the expression of intellectual, artistic, scientific and communication activity, regardless of censorship or license, is free;

XIII – the exercise of any job, occupation or profession is free, accomplished the professional qualifications established by law;

XIV – access to information is ensured to everyone and the confidentiality of the source is safeguarded, whenever necessary for professional practice.

Articles 220-224 of the Constitution, covering social communication,

guarantee that “manifestation of thought, creation, expression and information, in any form, process or mean shall not be subject to any restriction” and prohibit “every and all censorship of a political, ideological and artistic nature.”

Taxation

The Constitution prohibits the imposition of taxes on assets, income, or services (related to the essential purposes) of political parties, including their foundations, workers’ trade unions, and not-for-profit education and social assistance organizations (Article 150, VI, c). However, this immunity is subject to the requirements set forth in the tax legislation. In addition, constitutional immunity is granted to social assistance charities regarding the payment of social security contributions (Article 195, §7).

Trade Unions

Trade union freedom is also constitutionally guaranteed. State authorization is not required to establish trade unions, and any interference or intervention by the government in union organizations is prohibited. Similarly, all workers, including those in rural areas and in fishermen’s colonies, have the right to decide whether or not to join the representative bodies (Article 8, V and Sole §). Striking is recognized as a social right itself and as a guarantee or tool for protecting and promoting other guaranteed social rights (Article 9).

Religious Organizations

In order to ensure freedom of conscience and belief as fundamental rights and to enable the work of religious organizations, the Constitution ensures the free exercise of religious services and provides protection for places of worship and liturgies (Article 5, VI). It also expressly prohibits the imposition of taxes on temples of any religion (Article 150, VI, b), ensures the provision of religious assistance to civilian and military entities of collective detention (Article 5, VII), and makes clear that no one will be deprived of rights because of religious beliefs or philosophical or political convictions (Article 5, VIII).

Indigenous Communities

The Constitution recognizes the legitimacy of indigenous communities and their organizations to enter a court in defense of their rights and interests, except when the intervention of the Public Prosecutor is required in all acts of the process (Article 232). Despite the constitutional text, in practice, indigenous organizations have had great difficulty in gaining recognition and access to justice. The demarcation of their lands and protection of their traditional knowledge, among others, are important topics in this regard.

Participation in Policy-making

The Constitution ensures the participation of CSOs in the formulation and implementation of policies, such as the participation of civil society in areas such as social assistance (Article 199), health, education (Article 205), culture (Article 216), environment defense (Article 225), and children and adolescents (Article 227).

Relation to International Law

Regarding the interaction with international human rights law, the 1988 Constitution recognizes that Brazil submits to the jurisdiction of the International Criminal Court to which it is a state party (Article 5, §4). In

addition, it grants constitutional status to international human rights treaties adopted through approval in each of the Houses of the National Congress in two shifts, by 3/5 of the votes of the respective members (Article 5, §3, included by Constitutional Amendment 45/04).

The International Covenant on Civil and Political Rights (enacted in Brazil through Decree n. 592/1992) and Article 23 of the American Convention on Human Rights (enacted in Brazil through Decree n. 678/1992) recognize the rights of direct and indirect political participation. Under Article 5, §2 of the Federal Constitution, these are also recognized as fundamental rights.

NATIONAL LAWS AND REGULATIONS AFFECTING SECTOR

Relevant national-level laws and regulations affecting civil society include:

- [Brazilian Federal Constitution](#) (Articles 5(XVII-XXI), 150(VI)(c), and para. 4)
- [Law on Partnerships between the Public Administration and Civil Society Organizations: Law 13.019 of July 31, 2014 \(English\)](#);
- [Provisional Measure 658 of October 29, 2014 Law 13.204 of December 14, 2015](#);
- [Decree 8.726, of April, 27, 2016](#)
- [Tax Code: Law 5.172 of October 25, 1966 \(Articles 9, 14, and 111\)](#)
- [Civil Code: Law 10.406 of January 10, 2002 \(Title II, Chapter II-III\), as amended by Law 13.151 of July 28, 2015](#)
- [Legislation on Public Interest Civil Society Organizations: Law 9.790 of March 23, 1999; Decree 3.100 of June 30, 1999 \(English\)](#)
- [Legislation on Social Organizations: Law 9.637 of May 15, 1998; Decree 5.396 of March 21, 1995](#)
- [Legislation on Certified Social Assistance Entities: Law 12.101 of November 27, 2009, Decree 8.242 of May 23, 2014](#)
- [Law on Public Registries: Law 6.015 of December 31, 1973 \(Title III, Chapter II, Articles 114-126\)](#)
- [Law on Volunteerism: Law 9.608 of February 18, 1998](#)
- [Law on Crimes Resulting from Racial Prejudice: Law 9.459 of May 13, 1997, modifying Law 7.716 of January 5, 1989](#)
- [Law on Supporting People with Disabilities and their Social Integration: Law 7.853 of October 24, 1989](#)
- [Legislation on Tax Incentives for Cultural Projects: Law 8.313 of December 23, 1991; Decree 5.761 of April 27, 2006](#)
- [Legislation on Tax Incentives for Sports Projects: Law 11.438 of December 29, 2006; Decree 6.180 of August 3, 2007](#)
- [Legislation on Tax Incentives for Child Protection Projects: Law 8.069 of July 13, 1990 \(English\)](#)
- [Legislation on Tax Incentives for Elderly Protection Projects: Law 12.213 of January 20, 2010](#)

- [Legislation on Tax Incentives for Oncology and People with Disabilities Health Care Projects: Law 12.715 of September 17, 2012; Decree 7.988 of April 17, 2013](#)
- [Legislation on Conditions for Tax Exemptions: Law 9.532 of December 10, 1997 as amended by Law 13.151 of July 28, 2015](#)
- [Legislation on Tax Deduction: Law 9.249 of December 26, 1995](#)
- [Provisional Measure \(“Medida Provisória”\) 2.158-35 of August 24, 2001 \(Article 59\); Law 9.249 of December 26, 1995 \(Article 13, §2, III\)](#)
- Decree 6.170 of July 25, 2007; Ministerial Ordinance 507 of November 24, 2011
- [Law on the Remuneration of Civil Society Organization Officers: Law 12.868 of October 15 2013](#)
- [Law providing amendments to the Civil Code regarding the purposes of foundations, and amendments to the tax law allowing for charitable associations and foundations to remunerate officers: Law 13.151 of July 28, 2015](#)
- [Law on Crimes Resulting from Money Laundry: Law 9.613 of March 13, 1998](#)
- [Law on Access to Information: Law 12.527 of November, 18. 2011](#)
- [Law on Anti-Corruption: Law 12.846 of August 1, 2013](#)
- [Law on Anti-Terrorism: Law 13.260 of March 16, 2016](#)
- [Decree of the “Law and Order” that authorizes the use of the Armed Forces in the State of Rio de Janeiro: Decree of July, 28, 2017](#)
- [Decree of Federal Intervention, that approves the federal intervention of a military nature in the state of Rio de Janeiro: Decree 2,988, of February 16, 2018](#)
- [Social Participation Policy of May 23, 2014](#)
- [Brazilian General Data Protection Law of August 14, 2018](#)
- [Federal Decree nº 9.588/2018 creating the Union Grants Monitoring and Evaluation Committee](#), whose purpose is to continuously monitor and evaluate public policies funded with union subsidies regarding their fiscal and economic impact. (CSO’s tax incentives are listed in the Decree. It is important due to the context of fiscal adjustments and the reduction of fiscal benefits, which may also affect CSOs in Brazil.)
- Law nº 13.800/2019, regulating the creation of “endowments” to support CSOs aimed at causes of public interest in the areas of education, science, technology, research and innovation, culture, health, environment, social assistance, sports, public safety, human rights and other public interest purposes.
- Law nº 13.810/2019, providing for enforcement of sanctions imposed by the United Nations Security Council in Brazil and freezing of assets of people investigated for terrorism.
- Decree nº 9.759/2019, eliminating after June 28, 2019 various federal government collegiate bodies, such as committees; commissions; forums; boards, counsel that were created by federal decrees or any other acts of the Executive Branch. It also

revoked the Brazilian National Policy for Social Participation created during Dilma Rousseffs' Presidency.

- Law nº 13.709/2018, General Protection Law on Personal Data. This Law provides for personal data processing, including in digital media, by individuals and by public and private legal entities, aiming at protecting the fundamental rights of freedom, privacy and the free development of a person's personality.
- Decree nº 10.224/2020, which regulates Law 7,797/1989, which created the National Environment Fund. This Decree presented a new composition of the Advisory Board of the National Environment Fund, which no longer include the participation of CSOs.
- Law No. 13.844/2019 provides for changes in the federal government structure such that the Secretariat of Government of the Presidency of the Republic will *"monitor the actions and results of the Federal Government's partnership policy with these organizations and promote good practices for the enforcement of applicable legislation."* Law No. 14,132/2021 defines the crime of persecution by any means, such as the the internet (cyberstalking), which threatens anyone's physical and psychological integrity or interferes with the victim's freedom and privacy.
- Law No. 14.016/2020 regulates the donations of food surpluses for human consumption to be carried out in partnership with food banks and other charitable social assistance entities.
- Law No. 14.215/21 institutes a transitional legal regime for partnerships between the government and CSOs during the COVID-19 pandemic.

PENDING NGO LEGISLATIVE / REGULATORY INITIATIVES

1. Monitoring of International Donations

[PL nº 4953/2016](#) was first presented in 2016, but it is back under discussion in 2021. It requires CSOs to annually declare funds received from abroad or from foreign entities or governments, even if in the national currency. This requirement in no way complements existing legislation because all CSOs already are under an obligation to account for funds received, whether from national or international sources. Moreover, this requirement imposes discriminatory and disproportionate obligations on CSOs because neither companies nor other private persons are subject to similar requirements.

2. Tax Treatment of Individual Donors, Grants

Until 1995, individuals and corporations were both allowed to deduct their grants and gifts to CSOs from their taxable income up to a certain limit. In 1995, new laws were introduced that limited the availability of tax deductions only to large corporations and solely for funds granted to CSOs with public benefit status. While the tax law subsequently expanded the available recipients of tax-deductible donations, only large corporations may currently claim tax deductions for such contributions. Restrictions imposed on grantors, therefore, leave small and medium size companies and individuals without tax incentives for donations to civil society. To respond

to this gap, Congressman Paulo Teixeira introduced a draft bill in 2015 to provide tax incentives for donations by individuals. The draft bill was not, however, approved by the Chamber of Deputies. In 2017, the draft bill was moved to the Senate House, where it was discussed with a law focusing on endowment funds ([PL 4643/2012](#)). The bill has since received a new number (PLC 158/2017) and remains before the Senate.

In addition, grants are taxable at the state level by the ITCMD tax at an average rate of 4% (the tax starts at 2% and may reach 8% in certain states). The tax is payable by grantees upon receipt of the grant, whether in cash or in kind, and it is payable to the state of residence of the grantor, except in the case of grants in properties, when the tax is due to the state where the property is located. A Senate resolution to limit the tax rates on donations at the state level has been proposed but remains pending as of November 2021. The main purpose is to increase the flow of private resources to civil society. An alternative approach would be to adopt a national law that would address the issue with consistency across the entire country.

Lastly, it is worth noting that the European Union supports a project entitled “CSO Economic Sustainability”, which is being implemented by Grupo de Institutos, Fundações e Empresas, Fundação Getúlio Vargas, and Instituto de Pesquisas Econômicas Aplicadas, and which aims to develop studies and proposals to improve the legal and fiscal environment for CSOs.

3. Regulation of CSOs in the Amazon Region

On November 9, 2020, the newspaper, *O Estado de S. Paulo*, published an [article](#) saying that the federal government was planning to impose greater regulatory controls on CSOs in the Amazon region. The report was based on documentation from the Amazon Council, which was established to direct the government’s actions towards forest preservation and which is chaired by the Vice President of the Republic, Hamilton Mourão. According to the article, the regulatory intent is to “obtain control of 100% of the CSOs that work in the Amazon region until 2022 in order to authorize only those that serve national interests.”

4. Regulations on Lobbying

[PL 1202/2007 \(Lobby Regulation\)](#) is a draft law to regulate lobbying in Brazil and has been on the federal legislative agenda but has not yet been voted on by the Plenary of the House of Representatives. It has, however, been fast-tracked through an emergency process. If this regulation is approved, it will be sent to the Senate. For [some organizations and specialists](#), the text of the Regulation is inadequate with respect to important issues.

5. Terrorism Bill

[PL 9.604/2018](#) would define as terrorism the “abuse of the right of expression by social movements.” The draft Bill intends to modify Law No. 13.260/2016, known as the Antiterrorism Law, which defines “terrorism” and “terrorist organization” and establishes harsh penalties for terrorist offences. The new provision may lead to the criminalization of activities of social movements in Brazil.

6. Personal Data Protection

[PEC No. 17/2019](#) would change the Federal Constitution to include the protection of personal data among the fundamental rights and guarantees and would establish the exclusive competence of the federal government to legislate on the protection and processing of personal data. The draft is awaiting promulgation by the President as of November 2021.

7. Government-CSO Partnerships

Bill No. 4,113/2020 was proposed by the Joint Parliamentary Committee in Defense of Civil Society Organizations in 2020 and introduced transitional rules applicable to partnerships entered into between the public administration and CSOs during the COVID-19 pandemic, including simplifying processes and allowing for the possibility of re-negotiating CSO goals, results, and extensions of performance periods during the pandemic. The Bill was seen as positive and necessary by Brazilian CSOs. It was approved in 2021 and became Law 14.215/21. However, another Draft Bill No. 67/2021, which was intended to improve the transparency and inspection rules concerning government-CSO partnerships under Law No. 13.019/2014, includes provisions that reinforce a negative view on CSOs. For example, it prevents public administration from entering into partnerships with CSOs whose leaders were convicted either definitively or in second instance of any criminal, civil or administrative crimes.

We are unaware of any other pending legislative/regulatory initiatives affecting NGOs. Please help keep us informed; if you are aware of pending initiatives, write to ICNL at ngomonitor@icnl.org.

LEGAL ANALYSIS

ORGANIZATIONAL FORMS

The Civil Code of Brazil recognizes two primary forms of civil society organizations: associations and foundations.

An association is a not-for-profit membership organization created by at least two individuals and/or legal entities seeking to achieve a particular goal. Associations may pursue all kinds of not-for-profit purposes that are considered lawful under Brazilian legislation.

A foundation is an organization established through an endowment dedicated to a public interest cause, with not-for-profit aims. It can be either public or private. Public foundations are formed by the government and must be created by law. Private foundations can be established by legal entities (including foundations) and/or individuals, either living or through the disposition of a will. By definition, foundations must serve public benefit or public interest purposes, as defined in the Civil Code, including “social

assistance; culture; education; health; nutritional security; defense, preservation and conservation of the environment and promotion of sustainable development; scientific research; promotion of ethics, citizenship, democracy and human rights; and religious activities” (Civil Code, Article 62).

According to Law 13.019/2014, which governs partnership relations between civil society and the government, CSOs include (a) not-for-profit, private entities that do not distribute any results, remains, operational, gross or net surplus, dividends, waivers of any nature, shares, or portions of their assets earned through the exercise of their activities and that implement them in full pursuit of their corporate purpose, directly or through the establishment of an endowment or reserve fund among shareholders or partners, directors, officers, employees, donors, or third parties; (b) cooperative societies under Law No. 9.867 of November 10, 1999 addressing people at risk or subject to personal or social vulnerability, the poor and unemployed, and rural laborers through development, education, and training, among others; and (c) religious organizations that engage in activities or projects that are in the public interest and of a social nature that is distinct from those aimed at exclusively religious purposes. Associations and foundations fall into the first of these categories.

PUBLIC BENEFIT STATUS

Recognition as a CSO under Law 13.019/2014 provides private, not-for-profit legal entities a public benefit status. The Cadastro Nacional de Pessoa Jurídica (CNPJ), the document listing organizations enrolled with the Federal Revenue Office, indicates the kind of public benefit activities to which each CSO is dedicated.

In addition, CSOs can be eligible to obtain one or more government designations of public recognition (federal, state, and local) that grant tax and other benefits to the entity or its funders/donors. The following designations are the most relevant ones at the federal level:

- 1. Public Interest Civil Society Organization (OSCIP):** This designation is granted by the Ministry of Justice pursuant to Law 9790/1999. To be eligible, the entity cannot have public employees and/or officials in its governing bodies, and it must comply with certain restrictive rules regarding transparency, accountability, and conflict of interest.
- 2. Social Organization (OS):** The OS designation is currently very restrictive, as it is granted on a discretionary basis by the federal government on the advice of the Ministry in charge of the field of activity of the concerned CSO, pursuant to Law 9637/1998. To be

eligible, the entity must have public officials in its governing bodies.

3. **Certified Beneficent Social Assistance Entity (CEBAS):** To be exempt from required payments of certain fringe benefits and social security taxes, CSOs must obtain the Social Assistance Beneficent Certification (CEBAS). The CEBAS is granted to CSOs with activities in the fields of health, education, or social assistance by the Ministry in charge of the corresponding field.

PUBLIC PARTICIPATION

In April 2019, President Bolsonaro issued Decree No. 9,759/2019, ordering the extinction of counsels, committees, commissions, groups, and other collegiate bodies connected to the Federal Public Administration created by Decree or by another normative act. The justification behind the Decree was to save funds by dissolving inoperative and inefficient bodies. Based on the Decree, approximately 700 collegiate bodies were at risk of being terminated, such as the National Council on the Rights of Persons with Disabilities, the Council on Public Transparency and Fight Against Corruption, the National Commission for the Eradication of Slave Labor, the Management Committee of the Internet in Brazil, and the National Council on Human Trafficking. Claiming that the Decree harmed the democratic principle of popular participation and that federal councils could only be extinguished by a law approved by the National Congress, the Workers Party (Partido dos Trabalhadores) filed a constitutional challenge before the Federal Supreme Court (STF). In June 2019, the STF ordered a preliminary suspension of the Decree to prevent Federal Administration counsels created by law from being extinguished. There were divergent opinions in the Court. Some were in favor of suspending the implementation of the Decree for all councils and some believed that the restrictions should only apply to bodies created by decree or normative act. This latter understanding prevailed in the Supreme Court decision. As a direct consequence, important commissions, such as the National Commission for the Eradication of Slave Labor and the Commission against Sexual Exploitation of Children and Adolescents, were terminated.

In February 2020, the government again [adopted](#) measures restricting civic participation by excluding through Decree nº 10.224/2020 civil society representation in the Deliberative Council of the National Environment Fund (FNMA), which is the oldest fund in the country and is responsible for managing socio-environmental projects and initiatives. Previously, the Deliberative Council of the FNMA had included five representatives of environmental CSOs and one representative for each geographical region of the country.

Lastly, Decree No. 9,759 of April 11, 2019 eliminated approximately 700 social participation organizations and revoked the National System of Social Participation. This resulted in serious repercussions on the following councils: Mechanism for the Prevention and Fight against Torture (MNPCT), National Council for the Elderly (CNDI), National Council for Social Assistance

(CNAS), Commission on Special on Political Deaths and Disappearances (CEMDP), National Committee for Prevention and Combating Torture (CNPCT), National Drug Policy Council (CNPD), National Council for Combating Discrimination (CNCD/LGBT), National Council for Women's Rights (CNDM), National Council for the Promotion of Racial Equality (CNPiR), and National Council for Environment (CONAMA). The majority of councils, which had guaranteed the participation of CSOs and social movements in their work, are likely to continue to be affected by the Decree.

BARRIERS TO ENTRY

Brazilian law does not prohibit the formation and operation of unregistered groups. Groups are free to exist and operate without legal personality. There are, however, benefits to legal personality; for example, legal personality is necessary to enter into relationships with third parties or possess assets.

Associations and foundations acquire legal personality by registering articles of incorporation and statutes with a notary in charge of the legal entity public register office (*Registro Civil de Pessoa Jurídica*), along with paying a fee. There is no need to obtain prior authorization or certification from a government body. After acquiring legal personality, the association or foundation must register with the Department of Federal Revenue.

In the case of foundations, the founder (*Instituidor*) must first submit to the District Attorney's Office (*Ministério Público*) the draft deed of incorporation (*escritura pública de constituição*), statutes, and information about the endowment, which is mandatory for the creation of a foundation in Brazil. Upon approval, the documents shall be registered as described above. The Civil Code mandates the Districts Attorney's Office be responsible for foundations, which are created by individuals for a public interest cause. The District Attorney's Office must ensure that the person's cause is accomplished. Therefore, although this can be considered a type of "authorization", the role of the District Attorney's Office is limited by the law and must be limited to the protection of assets.

Previously, the Foreigner Statute (Law 6,815 of August 19, 1980) prohibited foreigners with temporary residence from participating in the management and administration of trade unions, professional associations, and professional regulatory bodies, such as the Brazilian Bar Association or the Federal Council of Medicine. The Foreigner Statute also provided that when foreigners make up more than half of the membership, the association is subject to prior approval by the Ministry of Justice. In May 2017, however, the Foreigner Statute was revoked and replaced by the Law of Migration (Law 13.445/2017). Developed with the broad participation of civil society, the Law of Migration introduced new protections into the Brazilian legal order in accordance with international human rights standards, thus guaranteeing rights in a context where xenophobia is gaining momentum internationally.

The 2017 Migration Law contains principles such as non-discrimination and equality of rights of immigrant and national workers, extending the equality of civil and political rights between Brazilians and foreigners through the express revocation of the Foreigner Statute's restrictive rules, since they were incompatible with the universal right of association. The Law also replaced the concept of "foreigner" with "immigrant" to cover those persons categorized as stateless or refugees, reaffirming on equal terms the possibility of exercising their civil and political rights.

BARRIERS TO OPERATIONAL ACTIVITY

The Civil Code allows associations to pursue all kind of activities, provided they are lawful. Only para-military or unlawful activities are specifically prohibited. Associations are also free to arrange their internal self-governance as they choose; there is no need for government approval or involvement in the designation of board members or conduct of internal meetings.

Associations are protected against termination and dissolution on arbitrary grounds, as guaranteed in Article 5, section XIX of the Constitution: "associations may only be compulsorily dissolved or have their activities suspended by a judicial decision, and a final and un-appealable decision is required in the first case."

However, there are several practical barriers that impede the institutional development of CSOs in Brazil. Government harassment of CSOs is generally linked to questions of access to public funding and tax exemptions and is being called "bureaucratic criminalization." For example, all organizations are subject to burdensome reporting requirements to prove their not-for-profit status in administrative or judicial procedures relating to tax exemptions, as described in the *Barriers to Resources* section below. Moreover, CSOs have also been targeted by the current Bolsonaro government. For example, in January 2019, the Minister of Environment, Ricardo Salles, suspended for 90 days the implementation of partnerships entered into between CSOs and the government administration. CSOs were also summoned to present accountability and activity reports. In July 2019, during the fires in the Amazon region, public declarations were made, alleging that "environment 'xiitas' [referring to the international environmental organizations] are preventing the growth of business in ecologic reserves" and "farmers could be responsible for the fires in Amazonia, everyone is a suspect." Furthermore, President Bolsonaro said, "The major suspicion is that the fires comes from CSOs." Also, members of an internationally well-known CSO were called "ecoterrorists" by the Minister of Environment.

The current government has also targeted civic participation. In April 2019, President Bolsonaro issued Decree No. 9,759/2019, ordering the extinction of counsels, committees, commissions, groups and other collegiate bodies connected to the Federal Public Administration created by Decree or by another normative act. The justification behind the Decree was to save funds by dissolving inoperative and inefficient bodies. Based on the Decree, approximately 700 collegiate bodies were at risk of being cancelled, such as the National Council on the Rights of Persons with Disabilities, the Council on Public Transparency and Fight Against Corruption, the National Commission for the Eradication of Slave Labor, the Management Committee of the Internet in Brazil, and the National Council on Human Trafficking. Claiming that the Decree harmed the democratic principle of popular participation and that federal councils could only be extinguished by a law approved by the National Congress, the Workers Party (Partido dos Trabalhadores) filed a constitutional challenge before the Federal Supreme Court (STF). In June 2019, the STF ordered a preliminary suspension of the Decree to prevent Federal Administration counsels created by law from being extinguished. There were divergent opinions in the Court. Some were in favor of suspending the implementation of the Decree for all councils and some believed that the restrictions should only apply to bodies created by decree or normative act. This latter understanding prevailed in the Supreme Court decision. As a direct consequence, important commissions, such as the National Commission for the Eradication of Slave Labor and the Commission against Sexual Exploitation of Children and Adolescents, were terminated.

In February 2020, the government again [adopted](#) measures restricting civic participation by excluding through Decree nº 10.224/2020 civil society representation in the Deliberative Council of the National Environment Fund (FNMA), which is the oldest fund in the country and is responsible for managing socio-environmental projects and initiatives in the country. In the previous composition, the Deliberative Council of the of the FNMA included five representatives of environmental NGOs and one representative for each geographical region of the country.

Further, in March 2020, an agent from ABIN (the Brazilian Intelligence Agency) was appointed as General Coordinator of Articulation with Civil Society Organizations, which is the coordinating body within the Government Secretariat responsible for relationships with CSOs. The ordinance published in the Union Official Gazette to publicize the nomination only presented the registration number without disclosing the ABIN agent's name. A civil public action was [filed](#) by Conectas Human Rights requesting the revocation of the ordinance. The preliminary order issued by the 10th Federal Civil Court of São Paulo found that the interaction of this agent with civil society may instill fear. The final judgement remains pending.

A Civil Public Action was [filed](#) by Conectas Human Rights requesting the revocation of the ordinance. According to the preliminary order issued by the 10th Federal Civil Court of São Paulo, the arguments presented by Conectas Human Rights were reasonable because the interaction of this agent with civil society or other international organizations may instill fear. Because the agent could not be identified due to the confidentiality of the

agent's identity, it was impossible to know who was appointed to the position. The Civil Public Action is still pending judgment. All of this above reflects the concept of "bureaucratic criminalization" whereby there is a clear tendency towards government discourses that stigmatize CSOs, human rights defenders, and social movements.

BARRIERS TO SPEECH / ADVOCACY

The Brazilian Constitution protects the freedom of expression broadly, in Article 5, sections IV, V, IX, XIII and XIV, as following:

IV – the manifestation of thought is free and anonymity is forbidden;

V – the right of response is ensured, proportional to the grievance, in addition to compensation for material, moral or image damage;

IX – the expression of intellectual, artistic, scientific and communication activity, regardless of censorship or license, is free;

XIII – the exercise of any job, occupation or profession is free, accomplished the professional qualifications established by law;

XIV – it is ensured to everyone access to information and safeguarded the confidentiality of the source, whenever necessary for professional practice.

There are no legal restrictions on the ability of individuals or CSOs to criticize the government or to advocate for unpopular causes, including human rights and democracy issues. At the same time, however, there are no incentives and almost no protection for those performing these activities. Studies from independent CSOs point out that Brazil is one of the most dangerous countries for those who exercise freedom of expression as a regular activity. Journalists have been murdered for reporting and investigating public interest issues; between 2012 and 2017, the international CSO [Article 19](#) counted 177 cases of serious violations against communicators in Brazil, including homicides, murder attempts, death threats, and kidnapping.

For example, in March 2018, Marielle Franco, a city councilwoman of Rio de Janeiro, human rights activist, and member of the leftwing party PSOL, was assassinated while returning from an event on empowering young black women. Franco had often pointed out that social inequalities and aggressive police culture were the roots of the violence afflicting Rio de Janeiro. The investigations of the case are still not concluded. In addition, 23 protesters who participated in the 2013 protests in several Brazilian cities about issues such as high corruption in government and police brutality were convicted and sentenced to seven years in prison for crimes such as being part of a criminal association, causing damage, and engaging in resistance.

Crimes against activists are committed with impunity: investigations are superficial, perpetrators are rarely identified, and there is limited accountability, especially when the suspects are state agents. The influence of local power on the investigation process often prevents these cases from being properly investigated and perpetrators from being brought to justice.

Since 2019, Brazilian citizens, and especially public commentators and academics, who publicly express their opinion against President Bolsonaro, have been criminally prosecuted by Bolsonaro or by members of his family. More than 200 incidents involving the expression of ideas or criticism against public authorities have been reported since Bolsonaro took office. It is worth noting that the National Security Law enacted during the previous dictatorial regime in Brazil has been used to justify the legal claims that such opinions are a threat to national institutions.

An emblematic case is of Youtuber Felipe Neto, who referred to President Bolsonaro as committing genocide due to his conduct in relation to the COVID-19 pandemic. This has generated significant national debate. The academic community has also reported on initiatives aimed at intimidating voices of civil society that criticize the government. During the COVID-19 pandemic, the Brazilian federal government was very resistant to supporting social distancing measures and the use of masks, despite scientific recommendations. The same occurred with the production and distribution of vaccines, which were left to the states of the federation and broke with the Brazilian tradition of having an efficient and well-articulated national plan.

Scientists have also taken up the interference by hackers during the defense of their academic theses when addressing issues that contradict the interests of extreme right groups that support the current government. Works related to indigenous and environmental issues and the poor conduct of health authorities during the COVID-19 pandemic have been especially targeted.

The law does not expressly prohibit political or legislative advocacy activities by associations or foundations. These organizations may freely support candidates for public office, for instance, and advocate for or against legislation. The only explicit limitation on political activities applies to public interest CSOs, which may not take part in political campaigns under any circumstances or support political parties or politicians in any way (Law 9.790/99, Article 16). These restrictions cover political party activities and the nomination of candidates for parliamentary and local government elections at the county level. In addition, tax law stipulates that only donations to CSOs that do not have political party activities are tax deductible (Law 13,019/2014, Article 84-C).

Lobbying activities are not directly regulated in Brazil. Brazilian law generally imposes no restrictions on the ability of CSOs to engage in legislative lobbying or political activities. The Brazilian Election Law (Law 9,504, of September 30, 1997) prohibits foreign entities and not-for-profit organizations that receive funds from foreign or governmental sources from donating money to political campaigns. Similarly, a domestic not-for-profit organization that was declared as a public benefit entity or has obtained the qualification of a public benefit civil society organization (OSCIP) cannot donate to political campaigns.

It is noteworthy that other legal entities, including for-profit companies that have international capital, were still able to donate to candidates under the 1997 Brazilian Election Law. However, after a Supreme Court decision on September 17, 2015 (ADI 4650) regarding the analysis of the electoral legislation, all legal entities were prohibited from donating to electoral campaigns. Subsequently, Law 13,165 of September 29, 2015 was enacted, specifying that only individuals can make donations to candidates during the electoral process.

Brazil's Digital Bill of Rights, approved in 2014, is considered to be on the leading edge of digital rights protection. A relevant concern is the dissemination of "fake news," especially in the electoral context, as there will be elections for President, governors and state and federal deputies in Brazil in October 2018. There is a national discussion and draft legislation relating to this topic under discussion. Civil society actors supportive of the freedom of internet access are seeking to ensure that any regulation establishes a fair price and broad access to users of both fixed and mobile broadband internet services.

Furthermore, in both their production and programming, radio and television stations prioritize educational, artistic, cultural, and informational programs. Ownership of media outlets (newspaper, radio, and television companies) is limited to native Brazilians or those naturalized for at least 10 years and to legal entities established under Brazilian law, with headquarters in the country and at least 70% of the voting capital comprised by native Brazilians or those naturalized for at least 10 years.

Lastly, Brazil's Judiciary Branch has taken arbitrary measures against social activists, undermining the public perception of social movements and encouraging their criminalization. The imprisonment of Preta Ferreira, a singer, cultural producer, and activist of the Roofless Movement, is an example. She was arrested in June 2019 without concrete grounds and remained for 109 days in prison. She was released last October 2019 due to an habeas corpus petition.

BARRIERS TO INTERNATIONAL CONTACT

There are no restrictions in Brazil on international contact or cooperation. Brazilian legislation does not impose any restrictions on the ability of CSOs to contact or cooperate with colleagues in civil society, business, and government sectors, either within or outside the country. Neither the law nor the government impose any restrictions on participating in networks or on accessing the internet.

However, in 2010, a Senate investigation concluded that it was necessary to curb the presence of foreigners in the Amazon region, recommending that all

their activities, even when carried out through CSOs, be submitted to the Ministry of Defense. Therefore, in 2016, Bill Project No. 4,953/2016 was presented in the House of Representatives. The project was aimed at establishing greater control over activities performed by foreign CSOs, especially those acting in the Amazon region. The Bill Project requires CSOs to annually declare their resources received from abroad or from entities or governments in foreign currency. It was [submitted](#) to the Committee on Labor, Administration and Public Service (CTASP) of the House of Representatives in March 2019 and returned without anything occurring. Regardless, the presence of foreigners in the Amazon region is a sensitive issue for Brazilians.

Although there are no specific restrictions that prohibit the receipt of international resources by organizations established in Brazil, there are disincentives in place; please see the *Barriers to Resources* section below.

BARRIERS TO RESOURCES

There are no legal prohibitions against the receipt of international or domestic resources by organizations established in Brazil.

Donations

There are disincentives to donating to CSOs in taxation and bank rules:

- Brazil has specific state-level legislation that imposes a 4% tax on donations, whether the source of the donation is foreign or domestic.
- Not-for-profit organizations are having increasing difficulty opening bank accounts, obtaining credit, and developing financial relations, as banks have come to view not-for-profit organizations less favorably than other legal entities.
- Bank rules introduced in 2018 impose new requirements for the issue of a specific bill commonly used in Brazil by individual and corporate entities to donate to not-for-profit organizations, which will hinder donations.

Income from Economic Activities

The Civil Code defines associations as entities organized for non-economic purposes, which means that these organizations may pursue economic activities but may not have economic goals. Thus, associations and not-for-profit organizations in Brazil may generally pursue economic activities, invest in the stock market, participate in mergers and acquisitions, and acquire control of companies.

There are, however, relevant restrictions. First, economic activities cannot constitute the primary purpose of the organization. Second, no profits or income of any kind may be distributed to employees, directors, managers, collaborators, or members under any circumstances; instead, any surplus must be used to carry out the organization's mission. Third, the revenues resulting from economic activities must be fully applied in Brazil to fulfill the organization's purposes (Tax Code, Article 14(II)). An organization's by-laws may impose additional restrictions on its economic activities.

Tax Treatment

Tax benefits in Brazil depend on the nature of the not-for-profit organization's activities rather than the nature of the organization itself. In other words, the legal form of a not-for-profit is irrelevant in determining its tax benefits.

Article 150(VI)(c) of the Brazilian Constitution stipulates that the federal government, states, federal district, and cities are not allowed to tax private, not-for-profit legal entities engaged in education and social assistance. This tax exemption applies only to those assets, income, and services related to the essential activities of the entity. In addition, Article 150(VI)(c) provides that complementary laws may specify criteria that educational and social assistance organizations must satisfy in order to obtain the tax benefit.

Article 14 of the National Tax Code stipulates that to obtain tax exemption, CSOs shall:

- Not distribute its assets or profits among its members;
- Keep accounting books in order to promote transparency of its activities and accounts; and
- Limit the use of its resources to the Brazilian territory and to maintaining and developing its aims.

Other laws impose additional conditions for CSOs to be eligible for tax exemption:

- Invest all its funds in the maintenance and development of its objectives;
- Keep full records of income and expenses using proper accounting procedures;
- Keep records for at least five years to demonstrate the origin of revenues, the nature of expenses, and any other acts and transactions that may change its net worth;
- Submit income tax statements to the Federal Revenue Office annually;
- Ensure that in case of merger, acquisition, liquidation, or dissolution, its assets are transferred to another similar organization that is also eligible for exemption; and
- Comply with additional requirements set out in statutes related to the operation of tax-exempt organizations.

Provided that the foregoing requirements are met, the educational or social assistance entity needs merely to declare that it is eligible for the exemption before the Revenue Service Authorities (*"Receita Federal"*).

Lastly, the Supreme Court decided in ruling RE 851108 in 2020 that the Constitution requires a federal law to establish the Imposto sobre Transmissão Causa Mortis e Doação (ITCMD) when the donor has his/her domicile or residence abroad. Thus, according to the Supreme Court, "States and the Federal District are forbidden from instituting the ITCMD in the cases referred to in article 155, § 1, III, of the Federal Constitution without

the intervention of the complementary law required by the aforementioned constitutional provision.”

BARRIERS TO ASSEMBLY

Article 5 of the Constitution enshrines the individual right to the freedom of assembly:

XVI – everyone may meet peacefully, without arms, in places open to the public, regardless of authorization, as long as they do not frustrate another meeting previously called to the same place, being only required prior notice to the competent authority.

Articles 220-224 of the Constitution guarantee that “manifestation of thought, creation, expression and information, in any form, process or means shall not be subject to any restriction” and prohibit “every and all censorship of a political, ideological and artistic nature.”

Advance Notification (see also Counter-demonstrations below)

Under Brazilian legislation there are no restrictions relating to public meetings, demonstrations, parades, and protests, which are only subject to an advance notification requirement. The justification for advance notification is to avoid two meetings at the same place, as one meeting could frustrate the other, and to guarantee other constitutionally important freedoms and rights, such as the right to freedom of movement and to public safety, which includes both the safety of the demonstrators and of the general population. Advance notification is not a request for authorization, since the exercise of the right does not depend upon the consent of public authorities. In general, local procedural norms regarding such rights are reasonable and do not impose obligations on organizers or participants that may undermine the exercise of the right.

Excessive Force and Enforcement

In February 2018, the Federal Government decreed and the National Congress approved a federal military intervention in the security forces of the state of Rio de Janeiro (Decree 2,988, of February 16, 2018), in order to deal with escalating crime rates and large areas of the territory controlled by drug lords and militias. This measure is the latest in a series of violations to the constitutional order already perpetrated in the country, and more specifically in the field of public security in the State of Rio de Janeiro. Military operations of “Law and Order Guarantee” (Decree of July, 28, 2017) executed by the armed forces cause degradation of the civilian environment of the occupied areas and are excessively expensive. These operations focus on poor communities, controlled by drug lords and militias, where the population is predominantly black.

Police violence often occurs against demonstrators opposing the government and representing less advantaged social groups, notably black and poor communities. This dynamic came into focus during popular demonstrations in 2013. While the demonstrations were initially against the increase of bus fares in the city of São Paulo, after violent repression by the Military Police of

the State of São Paulo, the protests grew, gained strength, and incorporated other agendas concerning the guarantee of freedoms and social rights.

As a result, there has been a significant increase in bills attempting to criminalize protests. In 2013, Law 6,528/2013 was approved in the State of Rio de Janeiro to establish rules for public demonstrations and prohibit the use of masks. The constitutionality of this law has been challenged, and as of November 2019 it is still pending judgement in the Federal Supreme Court (ARE 905149).

Criminalization

Police officers have brought criminal charges against demonstrators on various grounds, which CSOs have denounced as an attempt to suppress the right to assembly. For example, 23 demonstrators in Rio de Janeiro were arrested on the eve of the World Cup final in 2014 and were later sentenced to seven years in prison. Police officers' use of lethal weapons also led to 10 deaths at a protest in June 2013 in the Maré Complex on the periphery of Rio de Janeiro. On the eve of the Olympic Games in Rio de Janeiro, Brazil also approved the Anti-Terrorism Law (Law 13,260/2016), which, despite excluding political, social, trade union, religious, class, or professional movements, introduced a vague classification of the crime of terrorism, which could lead to increased criminalization of social movements and CSOs. Investigative journalists have also been victims of police abuse while covering protests. For example, some have been injured by less lethal weapons, such as pepper spray and rubber bullets.

Time, Place, Manner Restrictions

There are few legal restrictions regarding the time and place of assemblies or demonstrations.

In general, demonstrations and protests in Brazil occur without restriction on the use of images or symbols. One exception is the use of the Nazi swastika. According to Law No. 9,459 of 1997, which defines the crimes resulting from discrimination or prejudice of race, color, ethnicity, religion, or national origin, it is a crime to manufacture, trade, distribute, or display symbols, emblems, ornaments, badges, or propaganda using the swastika or for purposes of spreading Nazism. To be clear, the law does not prohibit the use of the symbol itself, but its use for the purpose of spreading Nazism.

More recently, religious groups have supported the enactment of laws prohibiting the use of religious symbols during public gatherings, notably ones regarding the LGBT community.

In 2011, the Supreme Court unanimously upheld the legality of the so-called "marijuana march," which advocated decriminalization of the drug. In its ruling, the Court recognized the breadth of constitutional rights of assembly and free expression of thought, emphasizing that the freedom of expression and assembly can be prohibited only when it directly incites illegal actions.

Counter-demonstrations

Brazilian law does not specifically address counter-demonstrations. During

the process of impeachment of President Dilma Roussef, various protests were organized by opposition political groups in neighboring localities. On these occasions, the authorities worked to guarantee the freedom of assembly and avoid clashes.

In addition, in April 2018, the Supreme Court began the trial of case RE 806339 concerning the scope of Article 5, paragraph XVI of the Federal Constitution, which states that “everyone can meet peacefully, unarmed, in places open to the public, irrespective of authorization, as long as they do not frustrate another meeting previously called to the same place, only requiring prior notice to the competent authority.” The Supreme Court rule in RE 806339 that the constitutional requirement of prior notice is satisfied by a transmission of information from protest organizers that allows the public authorities to ensure that the exercise of the right to freedom of association occurs in a peaceful way and that it does not frustrate another meeting in the same place.

The police often use the crime of “contempt of authority” in the Penal Code to arrest demonstrators. This issue, however, has not been addressed by the courts.

REPORTS

UN Universal Periodic Review Reports	May 2017 (Brazil)
Reports of UN Special Rapporteurs	Report of the Special Rapporteur on the rights of indigenous peoples – Mission to Brazil (A/HRC/33/42/Add.1) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil
Council on Foundations Country Notes	Report on Brazil
U.S. State Department	2020 Human Rights Report (Brazil)
IMF Country Reports	Brazil : 2017 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Brazil
International Commission of Jurists	Certain Questions concerning Diplomatic Relations (Honduras v. Brazil)
International Center for Not-for-Profit Law Online Library	Brazil

NEW AND ADDITIONAL RESOURCES

While we aim to maintain information that is as current as possible, we realize that situations can rapidly change. If you are aware of any additional information or inaccuracies on this page, please keep us informed; write to ICNL at ngomonitor@icnl.org.

KEY EVENTS

In March 2021, more than 70 Brazilian civil society organizations (CSOs) launched a global alert about the situation of human rights in Brazil during the 46th session of the UN Human Rights Council. The joint statement highlighted how human rights have been dramatically deteriorating during the first year of President Bolsonaro's government. During the previous 45th session of the Human Rights Council, on September, 14, 2020, Michelle Bachelet, the UN High Commissioner for Human Rights, also highlighted the increasing involvement of the military in public affairs and law enforcement in Brazil and acknowledged that despite the challenging security context "any use of the armed forces in public security should be strictly exceptional, with effective oversight."

GENERAL NEWS

[Massive marches in Brazil to demand the removal of Jair Bolsonaro \(October 2021\)](#)

Thousands of people protested in the streets of 251 cities of Brazil against president Jair Bolsonaro and in favor of a impeachment against him. The demonstrations achieved greater adherence than in previous mobilizations. The protests have their epicenter in capitals such as Rio de Janeiro, Recife, Salvador, Fortaleza, Goiania, Teresina, Belem, Sao Luis and Florianópolis. On the posters carried by the protesters you can see slogans such as "Bolsonaro genocidal and corrupt" or "Vaccine in the arm, food on the plate and out with Bolsonaro."

[Brazilian Coalition of CSOs for the FATF-GAFI \(November 2020\) \(Portuguese\)](#)

On November 12, 2020, the Brazilian Association of Fundraising Professionals (ACBR) and Conectas Human Rights launched the Brazilian Coalition of CSOs for the FATF (Financial Action Task Force), aimed at working towards the implementation of Recommendation 8 of the FATF, which specifically advises the adoption of proportionate and appropriate measures to prevent the misuse of CSOs.

[Announcement to send army troops to remove the 11 ministers of the Supreme Federal Court \(August 2020\) \(Portuguese\)](#)

In August 2020, the magazine Piauí published that President Jair Bolsonaro announced a decision to send army troops to remove the 11 ministers of the Supreme Federal Court. According to the article, the decision taken on May 22 was a reaction to investigations of a crime reported against the President and his son, Carlos Bolsonaro.

[Declaration against censorship in Brazil \(August 2020\) \(Portuguese\)](#)

On February 7, 2020, Brazilian artists, intellectuals, politicians and other distinguished international figures launched a declaration calling on the international community to publicly speak out against censorship in the country. They pointed to restrictions imposed by Jair Bolsonaro's

government on the press and on cultural, scientific and educational institutions.

Brazil restricts access to government information amid COVID-19 emergency (March 2020)

On March 23, Brazilian President Jair Bolsonaro signed Provisional Measure 928, which suspends deadlines for public authorities and institutions to respond to requests for information submitted under the country's freedom of information legislation, and forbids appeals in cases of denied requests. According to the measure, those changes will be valid while Brazil remains in a "state of calamity" due to the coronavirus outbreak.

Preta Ferreira and other activists gain freedom (October 2019) (Portuguese)

After 109 days of imprisonment sustained by fragile allegations, three activists of the housing movement in the city of Sao Paulo were released on through habeas corpus (HC) granted by the Court of Sao Paulo. Preta Ferreira, her brother Sidney Ferreira, and the Maria do Planalto leadership left the prison. Ednalva Franco, another arrested activist, is still awaiting the trial regarding her HC.

Environmental 'Xiitas' campaign against Brazil (July 2019) (Portuguese)

At the opening of Glauber Rocha Airport, in Vitória da Conquista, Bahia, Jair Bolsonaro said he has "a profound disgust for non-Brazilian people" when it comes to environmental issues in Brazil. According to him, "environmental Xiitas" would impede the growth of enterprises in ecological reserves.

STF decides that councils created by law cannot be extinguished (June 2019) (Portuguese)

On June 13, the Federal Supreme Court (STF) granted an injunction (provisional) so that the Federal Administration Councils, which were created by law, will not be extinguished on June 28. According to the press, the plenary split into two positions: those who voted to prevent the president from unilaterally extinguishing any council of the federal public administration, and those who understood that the ban was restricted only to the councils mentioned in laws.

The new government has established a regressive, anti-rights agenda (February 2019)

In the October 2018 elections, Brazil elected as president a former military officer and far-right populist, Jair Bolsonaro, who ran a particularly aggressive campaign against women's and LGBTI rights. CIVICUS speaks to Paula Raccanello Storto about the impact that the Bolsonaro administration, which began in January, is already having on civil society.

Bolsonaro presidential decree grants sweeping powers over NGOs in Brazil (January 2019)

Brazil's new President Jair Bolsonaro has used an executive order to give his government secretary potentially far-reaching and restrictive powers over non-governmental organizations working in Brazil. The temporary decree, which will expire unless it is ratified within 120 days by Congress, mandates that the office of the Government Secretary, Carlos Alberto Dos Santos Cruz, "supervise, coordinate, monitor and accompany the activities and actions of international organizations and non-governmental organizations in the national territory."

Charities Aid Foundation World Giving Index 2018 (December 2018)

Brazil's performance in the World Giving Index plummeted to the lowest position in all editions of the survey: 122 out of 146 surveyed countries -in the previous year Brazil was 75th.

Six months on, slain black activist still symbol of hope in Brazil (September 2018)

Six months ago, the slaying of black rights activist Marielle Franco shocked Brazil and prompted major demonstrations against the surging violence in Rio de Janeiro, where she served on the city council. Now, her widow is working overtime to preserve her memory, and says Franco remains a beacon of hope in a country still coming to terms with her brazen murder, which has not yet been solved.

Government must not deploy Armed Forces to halt national strike (April 2018)

Brazil's federal government must halt its deployment of the military to clear highways blocked by striking truck drivers, Amnesty International said. The government order represented the first time that the Brazilian government has authorized the Armed Forces to enforce the law and halt civic disruption at national level since the end of the military regime in 1985.

Brazil Looks to Crack Down on Fake News Ahead of Bitter Election (February 2018)

While there is widespread agreement among Brazilians that fake news has had a corrosive effect on the country's democracy, some worry about the ramifications of a government crackdown. The Internet Rights Coalition, a civil society group that opposes regulation and censorship of online content, recently issued a public letter raising alarm about Brazil's plans.

The foregoing information was collected by the ICNL Civic Freedom Monitor Partners in Brazil, Paula Raccanello Storto, Laís de Figueirêdo Lopes, Stella Camlot Reicher, Eduardo Szazi and Aline Souza, members of Szazi Bechara Storto Rosa Figueirêdo Lopes Advogados