



## **Access Now & Data Privacy Brasil Research Association Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 41st Session Fourth Cycle for Brazil**

31 March 2022

### **About Access Now**

Access Now is an international organization that works to defend and extend the digital rights of users at risk around the world. Through representation worldwide, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions, and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organization, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age.<sup>1</sup>

### **About Data Privacy Brasil Research Association**

Data Privacy Brasil Research Association is a Brazilian non-profit civil society organization founded in 2020 that promotes the protection of personal data and other fundamental rights in the face of the emergence of new technologies, social inequalities and power asymmetries. We have a multidisciplinary team from different Brazilian regions that develops public interest research and advocacy.<sup>2</sup>

### **Follow-up from Brazil's third cycle**

1. The Universal Periodic Review (UPR) is an important U.N. mechanism aimed at addressing human rights issues across the globe. Access Now and Data Privacy Brasil Research Association welcome the opportunity to contribute to Brazil's fourth review cycle. This submission examines the state of digital rights, particularly the right to privacy, in Brazil including the deployment of a unique digital identity system.
2. During Brazil's third UPR in May 2017, Brazil received a total of 246 recommendations, of which 242 were accepted and 4 were noted.<sup>3</sup> No recommendations were made on the state of digital rights in Brazil. For many years, Brazil was considered a pioneer in the defense of fundamental human rights related to the use of information and communication technologies (ICTs) and the Internet. However, in the past years, this scenario has changed

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<sup>1</sup> Access Now, available at: <https://www.accessnow.org/>, March 2022.

<sup>2</sup> Data Privacy Brasil Research Association, available at: <https://www.dataprivacybr.org/>, March 2022.

<sup>3</sup> UPR Info, *Responses to Recommendations*, Brazil: Third Review Session 27, available at: [https://www.upr-info.org/sites/default/files/document/brazil/session\\_27\\_-\\_may\\_2017/response\\_to\\_recommendations\\_brazil\\_2017.pdf](https://www.upr-info.org/sites/default/files/document/brazil/session_27_-_may_2017/response_to_recommendations_brazil_2017.pdf), March 2022.

dramatically, with the rise of right-wing populism in Brazil.<sup>4</sup> As noted by social scientists,<sup>5</sup> the Brazilian government is engaging “in a memorialisation of the military regime based on anti-human rights rhetoric and pro-military authoritarian ideology.”<sup>6</sup> According to reports published by Freedom House, the situation for human rights, online and offline, in Brazil is getting worse each year:

- a. In 2019, two journalists were shot and killed;<sup>7</sup>
  - b. In 2020, several journalists who wrote critical stories about the President were the targets of hacking and other digital security threats;<sup>8</sup>
  - c. In 2020, the President declared that NGOs are a “cancer”;<sup>9</sup>
  - d. In 2021, the President also clashed with the Supreme Court and mobilized public rallies against members of the Judiciary power.<sup>10</sup>
3. Overall, the political situation in Brazil is extremely unstable and belligerent, which impacts the exercise and enjoyment of human rights, online and offline, at the domestic level. Digital rights must therefore be a priority issue for Brazil’s fourth UPR.

#### **Brazil’s international, regional, and domestic human rights obligations**

4. Brazil has signed various international human rights instruments, including the Universal Declaration of Human Rights (UDHR), and ratified the International Covenant on Civil and Political Rights (ICCPR), and its Second Optional Protocol, as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>11</sup>
5. Brazil is a Member of the Organization of American States (OAS) and has ratified the American Convention on Human Rights.<sup>12</sup>
6. Brazil has several legal instruments which affirm fundamental human rights. Article 5 of the Brazilian Constitution sets the fundamental rights for citizens and foreigners living in the country, including the right to privacy and the right to personal data protection

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<sup>4</sup> MIT Technology review, *Brazil is sliding into techno-authoritarianism*, available at:

<https://www.technologyreview.com/2020/08/19/1007094/brazil-bolsonaro-data-privacy-cadastro-base/>, August 19, 2020

<sup>5</sup> Public History Weekly. *Memória Brasileira do Autoritarismo: Um Novo Rumo*

available at: <https://public-history-weekly.degruyter.com/8-2020-2/brazils-memory-bolsonaro/>, February 20, 2020.

<sup>6</sup> *idem*.

<sup>7</sup> Freedom House, *Brazil*, available online: <https://freedomhouse.org/country/brazil/freedom-world/2020>

<sup>8</sup> *idem*.

<sup>9</sup> France 24, *Bolsonaro slams 'cancer' of environmental NGO*, available online: <https://www.france24.com/en/20200904-bolsonaro-slams-cancer-of-environmental-ngos>, September 4, 2020.

<sup>10</sup> *idem*.

<sup>11</sup> United Nations Human Rights Treaty Bodies, *UN Treaty Body Database, Ratification Status for Brazil*, available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN), March 2022.

<sup>12</sup> Organization of American States, Department of International Law, Multilateral Treaties, American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32) *Signatories and Ratifications*, available at: [https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm), March 2022.

(Constitutional Amendment no.115/2022).<sup>13</sup> The Civil Code<sup>14</sup> has a chapter on personality rights and the Code of Consumer Defense<sup>15</sup> provides norms regarding good-faith, transparency rights and access to information. In 2011, Brazil enacted its own Freedom of Information Act<sup>16</sup> and, in 2014, the Brazilian Framework for Internet Rights<sup>17</sup>, or Marco Civil da Internet, a pioneering legislation that defines the fundamental right to Internet access and the respect for human rights in the use of the Internet.

7. In 2018, the General Data Protection Law (LGPD) - Law n. 13.709<sup>18</sup> was approved and came into force completely in 2021. Article 2 values respect for privacy, informational self-determination and freedom of expression, information and communication. The LGPD defines basic rights for data subjects, principles for data processing and a set of obligations and duties for data controllers and data processors. The law applies to both public and private sectors. The LGPD is aligned with influential personal data protection policies, such as the European Union's (EU) General Data Protection Regulation (GDPR) and the Organisation for Economic Co-operation and Development (OECD) Privacy Guidelines.

### **Situation of digital rights in Brazil: Centralized personal databases, digital civil identity, and human rights violations**

8. Based on the fact that the protection of personal data is a fundamental right recognized in the Brazilian Constitution, and by the international community, this submission addresses two central problems: (i) urgent attempts to centralize government databases containing personal data, to allow private sector access, and to renew the digital civil identity in Brazil and (ii) violations of rights in the abusive sharing of data with intelligence and public security agencies in Brazil.

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<sup>13</sup> Brazil Federal Constitution, available at: [https://www.oas.org/es/sla/ddi/docs/acceso\\_informacion\\_base\\_dc\\_leyes\\_pais\\_b\\_1\\_en.pdf](https://www.oas.org/es/sla/ddi/docs/acceso_informacion_base_dc_leyes_pais_b_1_en.pdf)  
Amendments to the Federal Constitution, available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/Emendas/Emc/emc115.htm](http://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc115.htm)

<sup>14</sup> Civil Code, available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/l10406compilada.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/l10406compilada.htm)

<sup>15</sup> Code of Consumer defense, available at: [http://www.planalto.gov.br/ccivil\\_03/leis/l8078compilado.htm](http://www.planalto.gov.br/ccivil_03/leis/l8078compilado.htm)

<sup>16</sup> Freedom of Information Act, available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2011/lei/l12527.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm)

<sup>17</sup> Brazilian Framework for Internet Rights, available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2014/lei/l12965.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm)

<sup>18</sup> [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/lei/l13709.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm)

9. In the midst of COVID-19 pandemic,<sup>19</sup> Brazil managed to expand social aid programs to redistribute resources to poor families,<sup>20</sup> digitize public services,<sup>21</sup> formalize the request to join the OECD<sup>22</sup> and structure an authority for the protection of personal data.<sup>23</sup>
10. The Law n. 13.853 of July 8th 2019<sup>24</sup> created the National Data Protection Authority (ANPD), in charge of the oversight of the LGPD, which only began its operations in September 2020. The ANPD is not an independent body as it is an entity of the federal public administration, and belongs to the Presidency of the Republic Office. Such a configuration differs from the standard positioning of data protection authorities in most countries, as well as from the OECD Guidelines, as it does not guarantee an impartial and transparent exercise of its activities. Currently, there is an intense militarization of positions in the Executive Power, which reflects in the composition of ANPD, with three of five of its directors, the ones with the longest mandates, being from the military.<sup>25</sup>
11. In 2021, the Federal Revenue Service of Brazil (*Receita Federal*) blocked more than 2.7 million attempted scams involving Pix, the new payment system created by the Central Bank<sup>26</sup>. There has been a massive increase in scams and security incidents. In January 2021, there was a leak of personal data involving 220 million Brazilians. Despite the suspicion surrounding a credit bureau (Serasa), no legal action was taken<sup>27</sup>.

<sup>19</sup> The Covid-19 pandemic caused the death of more than 650,000 people in two years (The New York Times. *Tracking Coronavirus in Brazil: Latest Map and Case Count*, available at:

<https://www.nytimes.com/interactive/2021/world/brazil-covid-cases.html> . The unemployment rate is at 11.2% (Agência IBG, *Continuous PNAD: unemployment rate is 11.2%, underutilization rate is 23.9% in quarter ending in January*, available at: <https://agenciadenoticias.ibge.gov.br/en/agencia-press-room/2185-news-agency/releases-en/33254-continuous-pnad-unemployment-rate-is-11-2-underutilization-rate-is-23-9-in-quarter-ending-in-january>). Food inflation in Brazil has been increasing (Reuters, *Brazil faces another year of high food inflation due to drought*, available at: <https://www.reuters.com/world/americas/brazil-faces-another-year-high-food-inflation-due-drought-2022-01-12/>) and (The Brazilian Report, *Food inflation continues to soar in Brazil*, available at, <https://brazilian.report/liveblog/2021/08/05/food-prices-inflation/>)

<sup>20</sup> Barberis, Maria, *Tackling poverty: Brazil's COVID-19 Emergency Cash Transfer*, available online:

<https://socialprotection.org/discover/blog/tackling-poverty-brazil%E2%80%99s-covid-19-emergency-cash-transfer>

<sup>21</sup> Agência Brasil, *Brazil ranks seven in digital transformation in public service*, available online:

<https://agenciabrasil.ebc.com.br/en/geral/noticia/2021-09/brazil-ranks-seven-digital-transformation-public-service>. September 30, 2021.

<sup>22</sup> Gov.br, *Joint Press Release by the Ministry of Foreign Affairs, the Office of the President's Chief of Staff and the Ministry of Economy - Brazil is invited to start the OECD accession process*, available online: <https://www.gov.br/mre/en/contact-us/press-area/press-releases/joint-press-release-by-the-ministry-of-foreign-affairs-the-office-of-the-president2019s-chief-of-staff-and-the-ministry-of-economy-2013-brazil-is-invited-to-start-the-oecd-accession-process>, January 26, 2022

<sup>23</sup> Gov.br, *Estrutura Organizacional*, available online: <https://www.gov.br/anpd/pt-br/aceso-a-informacao/institucional/estrutura-organizacional-1> March 09, 2022

<sup>24</sup> Lei Nº 13.853, de 8 de julho de 2019, [http://www.planalto.gov.br/ccivil\\_03/ato2019-2022/2019/lei/l13853.htm](http://www.planalto.gov.br/ccivil_03/ato2019-2022/2019/lei/l13853.htm)

<sup>25</sup> Data Privacy Brasil Research Association; Analysis of Freedom and Authoritarianism Center

(LAUT), *Techno Authoritarianism Retrospective 2020*, available at: <https://laut.org.br/wp-content/uploads/2021/06/Techno-Authoritarianism-Retrospective-2020.pdf>. Accessed on March 17, 2022.

<sup>26</sup> UOL Economia, *Golpe do Pix: hackers contam como enganam vítimas*, available online:

<https://economia.uol.com.br/noticias/bbc/2021/11/16/golpe-do-pix-hackers-contam-como-enganam-vitimas-saiba-como-se-proteger.htm> and Amala, Joney, *Brazil weighs halting Pix instant payments over rise in crime rate*, available at

<https://www.electronicpaymentsinternational.com/news/brazil-weighs-halting-pix-instant-payments-over-rise-in-crime-rate/>

<sup>27</sup> Mari, Angelica, *Experian challenged over massive data leak in Brazil*, available online: <https://www.zdnet.com/article/experian-challenged-over-massive-data-leak-in-brazil/>, February 20, 2021.

## **Digital Civil Identity in Brazil**

12. In Brazil, digital civil identity is mainly regulated by the Brazilian National Civil Identification Law (Identificação Civil Nacional - “ICN” - Federal Law 13,444/2017).<sup>28</sup> This law intends to ensure a legal identification of the citizens in both its relations with government bodies and private actors. The initiative is supported by the discourse of public efficiency and social inclusion. For this purpose, a mandatory system and a centralized database was instituted by the law, resulting from the sum of other databases whose sensitive information, governance architecture, and current use, impose a high risk to Brazilian citizens’ rights and liberties.
13. One of those databases, the Superior Electoral Court database, contains voters’ biometric data, fingerprints and photos,<sup>29</sup> and was collected for the purpose of ensuring the safety of the election and avoiding fraud.<sup>30</sup> Gradually, through municipalities, the electoral court is making biometric voter enrollment mandatory: if the voter does not enroll, they will lose their electoral registration, which could impact their access to services including issuance of passports or identification documents. In this context, it is important to remember that general elections are scheduled to be held on 2 October 2022 in Brazil to elect the President, Vice President, and the National Congress.
14. Article 3 of the ICN Law ensures that the Executive and Legislative powers, in the federal, state or municipal level, have free access to the ICN database, except for the electoral information. The first paragraph of Article 3 even allows for the Executive power of federal, state or municipal level to incorporate the data from the ICN database, except for the biometric data, into its own databases. The second paragraph of Article 3 allows the biometric data from the ICN database to be integrated to the database of Federal and Civil Police. It is evident that Article 3 allows the free flow of data taken from the centralized database amongst government bodies. This violates data protection principles such as purpose limitation and informational separation of powers.
15. We are deeply concerned with a draft bill currently in the Congress - Draft Bill 3,228/2021 (draft bill). This draft bill alters the ICN Law and pushes the free flow of data beyond. It proposes that the Superior Electoral Court could replicate the ICN database in the computer infrastructure of the Federal Executive Power, and allow the integration of the biometric data to the executive power databases’ in the federative units, so long as there is a valid legal agreement.
16. Even though the ICN Law prohibits the sale of the data from the National Civil Identification database, it foresees the possibility of the Superior Electoral Court, exclusively, providing identity verification services to private parties using the ICN massive database. In line with

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<sup>28</sup> For a translated version of the law and Draft Bill in English available at: [https://www.dataprivacybr.org/wp-content/uploads/2022/03/dpbr\\_ong\\_civil\\_identification\\_law.pdf](https://www.dataprivacybr.org/wp-content/uploads/2022/03/dpbr_ong_civil_identification_law.pdf)

<sup>29</sup> Justiça Eleitoral, *Biometria*, available at: <https://www.justicaeleitoral.jus.br/biometria/>

<sup>30</sup> Tribunal Superior Eleitoral, *Biometria*, available at: <https://www.tse.jus.br/eleitor/biometria>

the provisions of the ICN Law, the draft bill goes further by allowing the Superior Electoral Court to establish monetary agreements, contracts, partnerships or instruments alike with private entities for the maintenance of the ICN database and for the provision of identity verification services.

17. For instance, in 2021, the Federal Executive Power made agreements with National Associations of Banks to provide, free of charge, for a trial period, verification services for the banks using the ICN database. There was a significant lack of transparency to the public as to the terms of the agreement. As a result, there is no certainty whether there has been any transfer of data between the ICN database and the banks' databases and vice-versa, and what would be the justification to provide these services free of charge in the light of public interest.<sup>31</sup>
18. Moreover, although the Brazilian federal government has an information security policy,<sup>32</sup> Brazil has had several security incidents involving personal data from its citizens in the past few years, involving, especially, databases from the public sector. According to MIT researchers, between 2018 and 2019, Brazil had an increase of 493% in its security incidents number.<sup>33</sup> As further stated by the Surfshark Alert Report,<sup>34</sup> Brazil was the sixth most affected country by data leaks in 2021.<sup>35</sup> Regarding security incidents involving public databases it is possible to give two significant examples: (i) the Ministry of Health data leak in 2020, which exposed data from more than 243 million people<sup>36</sup>; (ii) a security breach from the Ministry of Education, which exposed more than 5 million people in 2021.<sup>37</sup> The fact that the ICN database is centralized, contains vast amounts of sensitive data, and is freely shared and consulted in the face of such an insecure scenario, is concerning.

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<sup>31</sup> Ministério da Economia, *Pesquisa Processual 19974.102057/2020-15*, available at: [https://sei.economia.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?eFOCVVdtsOap90ZhY3vyEbvoQXrwljBTmm-AkpaukldZ4EaeM5wJJ9hV8wfkpgYw1OI2BPtOcpOni3zm-gBsCkwollBtHR7g4yWlYxsNhSmCyI6WI74\\_Dwr0romzuzhM](https://sei.economia.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?eFOCVVdtsOap90ZhY3vyEbvoQXrwljBTmm-AkpaukldZ4EaeM5wJJ9hV8wfkpgYw1OI2BPtOcpOni3zm-gBsCkwollBtHR7g4yWlYxsNhSmCyI6WI74_Dwr0romzuzhM) and *OFÍCIO SEI Nº 22422/2022/ME*, available at [https://sei.economia.gov.br/sei/modulos/pesquisa/md\\_pesq\\_documento\\_consulta\\_externa.phf...\]](https://sei.economia.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.phf...) PzE8KkX3Gw5KAlwbTJBswk5IEEwKbOVaIblU85PMs76zJ8l Ws0ItEISSA

<sup>32</sup> Gov.br, *Segurança da Informação e Proteção de Dados*, available at: <https://www.gov.br/governodigital/pt-br/seguranca-e-protecao-de-dados>

<sup>33</sup> Novaes Neto, Nelson, Stuart Madnick, Anchises Moraes G de Paula and Natasha Malara Borges, *Developing a Global Data Breach Database and the Challenges Encountered*, available online: <https://dl.acm.org/doi/pdf/10.1145/3439873> See more: VC S/A, *Vazamentos de dados aumentaram 493% no Brasil, segundo pesquisa do MIT*, available at <https://vocesabril.com.br/sociedade/vazamentos-de-dados-aumentaram-493-no-brasil-segundo-pesquisa-do-mit/>

<sup>34</sup> “The data from this study was taken from the Surfshark Alert (a data breach detection tool) database, which comprises all publicly available breached data sets to inform our users of potential threats. The examined data was taken from a twelve-month period between November 2020 to November 2021. The selected data was then analyzed and compared to similar information of the year before.” See more: <https://surfshark.com/blog/data-breach-statistics-by-country-in-2021>

<sup>35</sup> Canaltech, *Brasil é o sexto maior país em total de vazamentos de dados*, available at: <https://canaltech.com.br/seguranca/brasil-e-o-sexto-maior-pais-em-total-de-vazamentos-de-dados-204715/>, December 16, 2021.

<sup>36</sup> Globo, *Nova falha do Ministério da Saúde expõe dados de 243 milhões de brasileiros na internet, diz jornal*, available at: <https://g1.globo.com/economia/tecnologia/noticia/2020/12/02/nova-falha-do-ministerio-da-saude-expoe-dados-de-243-milhoes-de-brasileiros-na-internet-diz-jornal.gh.html>, December 2nd, 2020.

<sup>37</sup> Santa Rosa Giovanni, *Inep, órgão vinculado ao Ministério da Educação, expõe dados de 5 milhões*, available at: <https://tecnoblog.net/noticias/2021/09/08/inep-orgao-vinculado-ao-ministerio-da-educacao-expoe-dados-de-5-milhoes/>, September 8, 2021.

19. Considering the current stage of the digital identity implementation in Brazil, and the fact that the Brazilian Data Protection Law is in force, it is possible to affirm that no accountability measures, such as Data Protection Impact Assessments, were taken to assess the risks of such implementation to the fundamental rights and civil liberties of the citizens. Arguably, its whole implementation process has been opaque. Citizens specifically do not have easy and full access to information on how their personal data has been processed, nor a direct channel through which they can exercise their data protection rights.
20. Additionally, the ICN implementation process includes issuing a single identity document for Brazilians called the National Identification Document (Documento Nacional de Identificação – “DNI”). In February 2022, the Superior Electoral Court, in a joint initiative with the Federal Government, launched a new step towards the issuing of DNI.<sup>38</sup> However, without further notice, the Federal Government had launched (also in February 2022), through the Presidential Decree n. 10,977/2022, a new unique identity document for all Brazilian citizens.<sup>39</sup> In this scenario, Brazil has two simultaneous initiatives involving the deployment of a national unique (digital) identity document, which implies the creation of more identity documents, more centralized databases containing sensitive personal data, and more confusion, not actually guaranteeing the right to have legal identification.

### ***The expansion of opacity, intelligence and abusive use of data by the State***

21. The centralization and free flow of personal, and sometimes sensitive, data is another concerning issue. The Decree 10.046/2019 (“Cadastro Base do Cidadão”)<sup>40</sup> from 2019 already centralizes several government databases, whose consultation by registered bodies would facilitate the provision of public services. The Decree also foresees easy access to such databases to all public administration bodies. However, there is no provision for adequate and transparent processing of personal data, contrary to the LGPD, therefore weakening the right to access information and informational self-determination.
22. In 2020, the Federal Council of the Brazilian Bar Association filed a lawsuit before the Federal Supreme Court in order to have all the legal devices of the decree considered unconstitutional. The Federal Council pointed out that the decree violates constitutional rights and principles such as human dignity, privacy, honor and reputation, secrecy of data and non-interference of correspondence, as well as data protection and informational self-determination. Data Privacy Brasil Research Association is involved in the ongoing action as an *amicus curiae*.<sup>41</sup> The Association argues that the decree presents insufficient safeguards to guarantee the public interest and that the principle of purpose is being followed in the

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<sup>38</sup> Tribunal Superior Eleitoral, *TSE lança nova etapa de implementação do DNI, a identidade digital dos brasileiros*, available at: <https://www.tse.jus.br/imprensa/noticias-tse/2022/fevereiro/tse-lanca-nova-etapa-de-implementacao-do-dni-a-identidade-digital-dos-brasileiros>, February 8th, 2022.

<sup>39</sup> Gov.br, *Decreto presidencial cria RG com número único para todo o país*, available at: <https://www.gov.br/secretariageral/pt-br/noticias/2022/fevereiro/decreto-presidencial-cria-rg-com-numero-unico-para-todo-o-pais>, February 23th, 2022.

<sup>40</sup> Decree 10.046/2019 (“Cadastro Base do Cidadão”) available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2019/decreto/D10046.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D10046.htm)

<sup>41</sup> Amicus Curiae on Ação Direta de Inconstitucionalidade nº 6.649 by Data Privacy Brasil available at: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=755538665&prclD=6079238>



secondary uses of personal data by the government.<sup>42</sup> Up until the submission of this document, the Supreme Court hasn't issued any ruling on the case.

23. Within this scenario, ABIN - the Brazilian Intelligence Agency sought data from the National Traffic Department (Denatran) to enrich its base with biometric data, in yet another example of the federal government's attempt to secondary abusive uses of citizens' data.<sup>43</sup> The sharing of data would be supported by the "Cadastro Base do Cidadão Decree" (Decree 10046/2019), in addition to the vague justification of it processing for purposes of public security, national defense and State security, case in which the LGPD would not apply, according to the Attorney General's Office (AGU). Firstly, ABIN requested access to databases from Denatran based on a 2016 ordinance that regulates general procedures for accessing data from the transit agency's systems. Subsequently, an Authorization Term, based on this ordinance, was published in the Federal Official Gazette (Diário Oficial da União). The Attorney General's Office (AGU) argued that the procedure was completely lawful and supported by the law that established the Brazilian Intelligence System (Sisbin), created ABIN and regulated access to Sisbin information. This case was also taken to the Federal Supreme Court and in the precautionary judgment of the case, the existence of a right to "due informational process" was recognized. According to the Court, the entire government should not be seen as a single entity considering its access to data and citizens have the right to avoid exposure of their personal data without minimum possibilities of control and adequate safeguards<sup>44</sup>.
24. Alongside these events the draft bill PLS 272/2016<sup>45</sup> ("antiterrorism law") paves the path for criminalization of social movements and human rights activism. This bill was introduced in 2016, it is not until lately that it is being heavily discussed in the National Congress. As it is, the bill can criminalize access to databases and computerized systems, reaching extreme situations of categorization of conducts as terrorism. This could affect the work of journalists, activists, researchers, members of the LGBTQIA+ community and protesters.
25. Another issue in Brazil is the misuse of the LGPD by the government to prevent access to public information, contrary to the Freedom of Information Act (FOIA - LAI), Act n.12527/2011. The government has canceled the disclosure of information that used to be public, such as states' Rural Environmental Register (Cadastro Ambiental Rural - CAR), and has stopped processing FOIA requests with the justification that the LGPD does not allow

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<sup>42</sup> Observatorio Privacidade, *Data Privacy Brasil afirma que Cadastro Base do Cidadão fere "direito fundamental à proteção de dados"*, available at: <https://www.observatorioprivacidade.com.br/2021/04/09/data-privacy-brasil-afirma-que-cadastro-base-do-cidadao-fere-direito-fundamental-a-protecao-de-dados/>, April 9, 2021.

<sup>43</sup> GROSS, C. et al. *Vigiar e Confundir: do acesso a dados de cidadãos pela Abin à criação do Cadastro Base do Cidadão, as trapalhadas do governo envolvendo a vigilância no Brasil*. Quatro cinco um, 01mai2021, available at: <https://www.quatrocinco.com.br/br/artigos/laut/vigiar-e-confundir>. Accessed March 18, 2022.

<sup>44</sup> Data Privacy Brasil Research Association; *Analysis of Freedom and Authoritarianism Center (LAUT)*. Techno Authoritarianism Retrospective 2020. Available at: <https://laut.org.br/wp-content/uploads/2021/06/Techno-Authoritarianism-Retrospective-2020.pdf>. Accessed on March 24, 2022.

<sup>45</sup> The draft bill PLS 272/2016 available at: <https://www25.senado.leg.br/web/atividade/materias/-/materia/126364>



the disclosure of any personal data.<sup>46</sup> Such movements have an adverse impact on journalism and activism activities. In theory, there is a need to balance the right to data protection with a collective right to access public interest information. However, there is no incompatibility between the LGPD and the Freedom of Information Act: one protects the fundamental rights of citizens related to their personal data, and the other guarantees the publicity of public information. They actually should be interpreted as complementary in guaranteeing transparency.

26. The authoritarian movement against digital rights is also related to the use of the technological system “Plataforma Integrada de Operações e Monitoramento de Segurança Pública,” or Cortex,<sup>47</sup> for the collection and processing of personal data by the Federal Government, without legal parameters and transparency. This platform uses a license plate riding system and cross reference with databases that contains vast personal data from the Rais, the Annual Social Information Report, of the Ministry of Economy.” With just a few clicks, officers can access registration and employment data that all companies have about their employees, including ID, CPF, address, dependents, salary and position.”<sup>48</sup> The indiscriminate and unsupervised use of this system poses a high risk to freedom of expression, due process of law and other fundamental rights and guarantees.
27. Another worrying incident related to the growth of authoritarianism in the country was the initiative to create dossiers containing the names of activists with a public political position against the government. The Ministry of Justice and Public Security, through its Secretariat of Integrated Operations (Seopi), opened a secret action against 579 people that they identified as “anti-fascists.” The dossier contained photographs and social media addresses in some cases. Seopi's acts are not supervised by the Justice, as it was classified as an intelligence service, by presidential decree. The Federal Police, the Brazilian Intelligence Agency and Seopi's “intelligence centers” are among bodies that would have received the dossiers. On August 20th, 2020, the STF determined the suspension of the preparation of the dossiers, considering it unconstitutional.<sup>49</sup> Minister Carmen Lucia, of the Federal Supreme Court, stated that such investigations with no specific purpose are not admissible for the State.
28. Seopi was also involved in the attempt to buy spyware. Seopi published a public notice of the acquisition of tools to access open sources for the purpose of public security in actions against organized crime. Journalists found that Pegasus was going to be the selected tool, but the developers abandoned the process after there was news that the son of the

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<sup>46</sup> Fiquem sabendo, *Governo usa LGPD para fechar acesso a relatórios de trabalho escravo*, available at:

<https://fiquemsabendo.com.br/transparencia/governo-usa-lgpd-para-fechar-acesso-a-relatorios-de-trabalho-escravo/>

<sup>47</sup> Rebello, A., *Da Placa de Carro ao CPF*. The Intercept Brasil, 21 de Setembro de 2020, available at:

<https://theintercept.com/2020/09/21/governo-vigilancia-cortex/>

<sup>48</sup> Rebello, A. *Da Placa de Carro ao CPF*. The Intercept Brasil, 21 de Setembro de 2020. Available at:

<https://theintercept.com/2020/09/21/governo-vigilancia-cortex/>

<sup>49</sup> Data Privacy Brasil Research Association; *Analysis of Freedom and Authoritarianism Center*

(LAUT). Techno Authoritarianism Retrospective 2020, available at: <https://laut.org.br/wp-content/uploads/2021/06/Techno-Authoritarianism-Retrospective-2020.pdf>

President of the Republic was involved in the negotiations.<sup>50</sup> According to the news, they selected the software of Harpia Tech. This tool can cross data from different sources, such as social media, message apps, dark web forums, etc. It can be used to track hacktivism, cybercrime, academic publications, exploits scripts, ostentation hacking (when there is no criminal intention), cyber espionage, open data published by security companies, communication groups and research institutions<sup>51</sup>. After the mobilization of civil society organizations, the Court of Auditors of the Union issued a decision on the case suspending the acquisition process in order to assess the capacities of this technology. The court sees illegalities in the process of acquisition and in the selection of this type of technology that can monitor citizens without a legitimate justification.<sup>52</sup>

## Recommendations

29. We urge that digital rights and data protection rights become prominent issues in the upcoming UPR review cycle. We therefore recommend that Brazil:

- a. *Ensure the full independence of the National Data Protection Authority and the demilitarization of its personnel;*
- b. *Conduct data protection impact assessments whenever a public policy based on data processing imposes a high risk to the citizens' fundamental rights and civil liberties - such as the deployment of a digital identity centralized system;*
- c. *Ensure that data collected for civil identification are used solely for that purpose;*
- d. *Ensure government regulation restricts the flow of citizen's data between government entities and bodies, in respect of the necessity and proportionality principles that prohibit the abusive secondary use of data;*
- e. *Enhance the security of government databases;*
- f. *Assess, critically, the use of biometric data in government public policies, putting a moratorium on the use of biometric data in the digital identity system until the government proves that it is completely safe, inclusive, not liable to error, and is the only method of authentication available and proportional for the purpose of the system;*
- g. *Ensure accountability and justiciability mechanisms for rights violations in the digital identification implementation process;*

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<sup>50</sup> UOL, *Empresa de software espião Pegasus abandona licitação do governo*, available at: <https://noticias.uol.com.br/politica/ultimas-noticias/2021/05/25/empresa-de-software-espiaopegasus-deixa-edital-que-e-rodeado-de-incertezas.htm>, May 25th, 2021

<sup>51</sup> Ministério da justiça e segurança pública, *NOTA TÉCNICA N° 8/2021/AQUISIÇÕES-CAD-DINT/DINT/SEOPI/MJ Análise de Proposta Referente ao Item "1" do Pregão Eletrônico n° 03/2021*, available at: [https://www.gov.br/mj/pt-br/aceso-a-informacao/licitacoes-e-contratosv1/licitacoes-e-contratos-segen/cglic/cpl/procedimentos-2021/pregao-2-2021-1/sei\\_mj-14730947-nota-tecnica-pe-3.pdf](https://www.gov.br/mj/pt-br/aceso-a-informacao/licitacoes-e-contratosv1/licitacoes-e-contratos-segen/cglic/cpl/procedimentos-2021/pregao-2-2021-1/sei_mj-14730947-nota-tecnica-pe-3.pdf)

<sup>52</sup> Conectas, *TCU mantém veto à compra de sistema espião pelo governo Bolsonaro*, available at: <https://www.conectas.org/noticias/tcu-mantem-veto-a-compra-de-sistema-espiao-pelo-governo-bolsonaro>, January 20, 2022.

- h. Approve the legislation regarding data protection on criminal investigation (LGPD “Penal”);*
- i. Encourage meaningful public participation in the discussion process of data-based public policies implementation.*

30. The UPR is an important U.N. process aimed to address human rights issues worldwide. It is a rare mechanism through which citizens around the world get to work with the government to improve human rights and hold them accountable to international law. For more information, please contact: [un@accessnow.org](mailto:un@accessnow.org) and [pesquisa@dataprivacybr.org](mailto:pesquisa@dataprivacybr.org).