

Brazil

PARTLY FREE

64
/100

A. <u>Obstacles to Access</u>	20 /25
B. <u>Limits on Content</u>	23 /35
C. <u>Violations of User Rights</u>	21 /40

LAST YEAR'S SCORE & STATUS

65 /100 Partly Free

Scores are based on a scale of 0 (least free) to 100 (most free). See the research methodology and report acknowledgements.



Overview

Internet freedom in Brazil declined slightly amid an intensely contested presidential election and the antidemocratic political violence in the capital on January 8, 2023. Much of the instability was fueled by online disinformation campaigns—waged by former president Jair Bolsonaro and his allies—that undermined trust in Brazil’s voting system and the outcome of the October 2022 election. During the electoral period and in the months afterward, Brazilian courts undertook aggressive efforts to remove false claims about the election online and to restrict the accounts of individuals who spread false information. While some have seen the measures as warranted to preserve the country’s democracy, concerns remain about the legality, proportionality, and transparency of these actions. Such efforts to restrict false electoral content occurred within a broader debate over content regulation in Brazil—and the wider responsibilities of tech companies to prevent the spread of potentially harmful content on their platforms. A bill regulating social media (often dubbed the “fake news” bill), which would transform Brazil’s intermediary liability regime by establishing new obligations for platforms, remained under consideration by Congress during the coverage period.

Brazil is a democracy that holds competitive elections, illustrated by the country’s most recent general elections in October 2022. Former president Luiz Inácio Lula da Silva of the Workers’ Party (PT) narrowly won the second round of the presidential election late in the month, defeating incumbent president Bolsonaro of the Liberal Party (PL). The political arena, though polarized, is characterized by vibrant public debate. However, political violence is high, independent journalists and civil society activists risk harassment and violent attack, and the government has struggled to address crime and disproportionate violence against and economic exclusion of minorities. Corruption is endemic at top levels, and governmental transparency has decreased, contributing to widespread disillusionment among the public. Societal discrimination and violence against LGBT+ people remain serious problems.

Key Developments, June 1, 2022 – May 31, 2023

- In April 2023, a federal judge ordered a nationwide block of Telegram after the platform failed to comply with a court order to provide authorities with information about neo-Nazi users on the platform. The block was in place for three days before it was lifted (see B1 and B3).
- On October 20, 2022, the Superior Electoral Court (TSE) issued strict content regulations ahead of the second round of the presidential election on October 30. The updated regulations gave the president of the court the authority to act unilaterally to remove false electoral information online. As events progressed in late 2022, concerns arose that the TSE had exceeded its legal mandate to restrict content (see B2 and B3).
- The so-called fake news bill, PL 2630/2020, returned with new momentum in early 2023, having undergone significant changes compared to previous drafts. The far-reaching bill would significantly overhaul Brazil's intermediary liability rules by establishing new "duty of care" obligations for platforms. It would also create due process rights for users, require platforms to compensate media companies for the use of their "journalistic content," and establish new transparency reporting requirements. Questions remain about which agency would enforce the law, if passed, as well as concerns related to encryption and user privacy (see B3, B6, C2, C4, and C6).
- Bolsonaro and his allies continued to spread disinformation online about the integrity of Brazil's electoral system. These false claims undermined public trust in the 2022 general election and polluted the online information environment before and after the vote, helping to fuel the political violence in Brasília on January 8. In June 2023, after the coverage period, the TSE disqualified Bolsonaro from running for office for eight years, in part due to his use of social media to undermine public confidence in Brazil's electronic voting systems (see B5 and B7).
- Digital journalists and other users faced an ongoing threat from both civil actions and criminal charges during the coverage period, continuing a concerning trend of judicial harassment in retaliation for online activities (see C3).

A. Obstacles to Access

A1 0-6 pts

Some 83.2 percent of households have access to the internet, according to Economist Impact's 2022 Inclusive Internet Index. ¹ According to data from the International Telecommunication Union (ITU), internet penetration rates stood at 81 percent as of 2022. ²

Mobile penetration has grown significantly in recent years, and mobile broadband connections have quickly become many Brazilians' primary means of accessing the internet. The 2022 Inclusive Internet Index reported that Brazil had 96.8 mobile subscriptions per 100 inhabitants. ³ According to the Regional Center for Studies on the Development of the Information Society (Cetic.br) data for 2022, the most recent available, some 62 percent of users accessed the internet exclusively via mobile phone. ⁴

Brazil ranked 52nd of 140 countries indexed for mobile speeds in May 2023, with median download speeds of 42.13 megabits per second (Mbps) and median upload speeds of 12.13 Mbps. The country ranked 31st of 181 countries for fixed broadband speeds, with median download speeds of 111.04 Mbps and median upload speeds of 81.97 Mbps. ⁵ The country's level of access to fourth-generation (4G) technology for mobile networks has grown rapidly since it was introduced in 2013. ⁶

Brazil's federal government has implemented several internet expansion and improvement programs since 2010, including the National Broadband Plan (PNBL). ⁷ Although there have been improvements in internet access since its launch, the PNBL, which ended in 2016, ⁸ was criticized by civil society for the low quality of broadband connections offered at popular prices and the plan's poor or nonexistent conditions in rural areas (see A2). ⁹

In December 2020, then president Jair Bolsonaro signed Law No. 14.109/2020, ¹⁰ which reforms the Fund for the Universalization of Telecommunications Services (FUST) law so that money collected can be used for the construction and improvement of broadband infrastructure. ¹¹ Bolsonaro vetoed provisions mandating the allocation of resources to geographical areas based on criteria such as the Human Development Index (HDI) and the requirement to connect all

Brazilian public schools with FUST resources. ¹² However, Congress overrode his veto in March 2021. ¹³ The steering committee in charge of the fund—reappointed by the administration of newly elected president Luiz Inácio Lula da Silva in March 2023—established new regulations before approving the use of resources. ¹⁴ In August 2023, after the coverage period, the Ministry of Communications (MCom) announced that it would disburse 1.17 billion reais (\$235 million) through FUST for broadband connectivity projects. ¹⁵

In February 2021, the National Telecommunications Agency (Anatel) approved the rules for a spectrum auction for fifth-generation (5G) technology. ¹⁶ Following 5G spectrum auctions in November and December 2021, ¹⁷ access to 5G first became available in July 2022 in the capital, Brasília. Access to 5G technology in all municipalities with a population of 30,000 or more will be implemented gradually by the end of 2029. ¹⁸ Prior to the auction, civil society organizations criticized the proposed implementation of 5G, saying it will deepen inequalities and compromise digital inclusion, among other things. ¹⁹ As of January 2023, 6.3 million out of 251.6 million mobile subscribers used 5G. ²⁰

A2 0-3 pts

Is access to the internet prohibitively expensive or beyond the reach of certain segments of the population for geographical, social, or other reasons?

1/3

Geographic and socioeconomic disparities in internet access persist in Brazil, though the divide between urban and rural users has been closing in recent years.

²¹ The most recently available study by Cetic.br, from 2022, shows that fewer households are connected to the internet in rural areas (68 percent) and the North and Northeast Regions (76 and 78 percent, respectively), as well as among lower-income populations (60 percent). ²² Price is considered a main barrier: in 2022, 28 percent of households that did not have internet access said it was because it was too expensive. ²³

Limited mobile plans that include zero-rating agreements—which provide unlimited access to certain online platforms by exempting their use from a plan’s data cap—are common in Brazil. Sharing internet connections is also a common practice in Brazil, particularly in lower-income neighborhoods. Higher data usage poses additional costs, and lower-income users tend to have connection plans

with low data caps. According to Anatel, around 44 percent of mobile subscriptions in May 2023 were prepaid, ²⁴ typically with low data caps.

The government, private companies, and civil society organizations have launched initiatives, sometimes jointly, with the aim of lessening the digital divide. During the first 40 days of 2023, MCom installed 282 Wi-Fi access points through its Wi-Fi Brasil program, mainly benefitting the country's underconnected Northeast region. ²⁵ Previously, in September 2021, MCom signed an agreement with government-owned Banco do Brasil and a private nonprofit small business development entity to expand the public Wi-Fi network with an additional 500 Wi-Fi hotspots by 2022. ²⁶ A number of equitable access projects have been impactful, including one civil society initiative to establish and expand community networks in Indigenous communities. ²⁷

In December 2021, the government created the Internet Brasil program with the aim of providing free mobile broadband connections to low-income public school students whose families are enrolled in the national registry of social programs.

²⁸ The government is expected to deliver and maintain for eligible students up to 700,000 chips with a package of 20 gigabytes (GB) of data per month. ²⁹ The government began delivering an initial 6,250 chips to towns in the Northeast region in late 2022. ³⁰ As of April 2023, 6,950 had been delivered, with localities in the southeastern state of Minas Gerais next in the plan, as part of a "pilot" round to distribute 10,000 chips. ³¹ The government aims to deliver 100,000 chips to public school students by the end of 2023. ³²

A3 0-6 pts

Does the government exercise technical or legal control over internet infrastructure for the purposes of restricting connectivity?	6/6
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The government does not place limits on bandwidth, nor does it impose control over telecommunications infrastructure. There have been no reported instances of the government cutting off internet connectivity during protests or social unrest.

Private backbone infrastructure, such as that of Oi, GVT, and Embratel, has expanded in Brazil since the privatization of the state-owned company Embratel, which had been responsible for building the internet backbone, in 1998. ³³

International undersea cables connect to Brazil from North America and Europe. The first undersea fiber-optic cable linking Brazil to Europe, a joint effort by the governments of Brazil and Spain, **34** began operating in June 2021. **35**

In 2004, the Brazilian Internet Steering Committee (CGI.br) launched the PTT Metro initiative to create internet exchange points (IXPs) across Brazil, and it has expanded ever since. Brazilian IXPs connect a growing number of participants, including internet service providers (ISPs); telecommunications operators; content providers; content delivery networks; academic networks; and research, government, and business customers. **36**

A4 0-6 pts

Are there legal, regulatory, or economic obstacles that restrict the diversity of service providers?

5/6

There continue to be no significant legal or economic barriers for companies competing in the ISP, mobile, or digital technology sectors. The broadband market has become increasingly competitive in recent years, spurred by the growth of regional ISPs, though concentration in the mobile market remains high.

In May 2023, three large private companies—Claro, Vivo (Telefônica Brasil), and Oi—represented 45.7 percent of the country’s fixed broadband market, **37** down from more than 70 percent in 2018. **38** Despite some growth barriers, particularly high taxes, regional ISPs have grown at a fast rate and created more competition in the broadband sector. **39** Moreover, regional providers have filled demand in small- and medium-sized cities as the licensing process has become easier. **40** However, organizations supporting the development of community networks in the country face challenges, particularly due to registration obstacles presented by excessive bureaucracy and the various spectrum-management policies in place. **41**

Concentration in the mobile market remains high and was further entrenched by the April 2022 closure of a deal on major mobile provider TIM’s acquisition of Oi’s mobile operations. **42** As of May 2023, Vivo, Claro, and TIM held 96.5 percent of the mobile market. **43**

A5 0-4 pts

Two regulatory agencies oversee Brazilian information and communications technologies (ICTs): Anatel and the Administrative Council for Economic Defense (CADE), the country's antitrust agency. **44**

Anatel is administratively and financially independent, and not hierarchically subordinate to any government agency. Its decisions are only subject to judicial review in national courts. From MCom, Anatel has inherited the powers of granting, regulating, and supervising telecommunications in Brazil, as well as much of its technical expertise and other material assets. In addition to Anatel's other regulatory responsibilities, the body has pitched itself to be the competent regulator for the so-called fake news bill (see B3). **45**

Anatel has received some criticism for aligning with private interests. **46** In recent years, however, the agency has made moves that counter that perception, simplifying licensing processes to allow for market competition by small, regional ISPs and appointing the first-ever career civil servant to the role of agency president in 2018 (see A4). **47**

The government also created, in 1995, the CGI.br, an independent, multistakeholder organization in charge of coordinating and integrating all internet service initiatives in Brazil, as well as promoting technical quality, innovation, and the dissemination of services. CGI.br's members are government officials and representatives from the private sector, civil society, and the scientific and technological community. **48** Provisions in the Brazilian Civil Framework of the Internet (Marco Civil da Internet, or Marco Civil)—also known as the “Internet Constitution”—mandate that the government consult with CGI.br and, in various instances, directly involve the committee in policymaking and implementation of Marco Civil processes. However, a clear mechanism to do so has not yet been established. Different drafts of PL 2630/2020 have included roles for CGI.br; according to the April 2023 version of the bill, the committee is expected to conduct and publish research related to freedom and transparency on the internet, issue guidelines for combatting online misinformation, and “validate” industry-prepared codes of conduct, among other responsibilities. **49**

B. Limits on Content

B1 0-6 pts

Does the state block or filter, or compel service providers to block or filter, internet content, particularly material that is protected by international human rights standards?

4/6

Score Change: The score declined from 5 to 4 due to the nationwide block of Telegram in April 2023, which restricted access to the platform for three days before it was lifted.

Social networks, communication apps, and video-sharing platforms, such as Facebook, Twitter, YouTube, Vimeo, and Vevo, are for the most part freely accessible and widely used in Brazil. However, an April 2023 court order to block Telegram temporarily restricted access to the communications platform for users across Brazil.

On April 26, at the request of Brazil’s Federal Police (PF), Judge Wellington Lopes da Silva ordered ISPs to block access to Telegram nationwide, and for Google and Apple to remove Telegram from their app stores in Brazil; ⁵⁰ the order remained in effect for three days before it was lifted by another federal judge. ⁵¹ The PF requested the block during an investigation of extremist violence in Brazilian schools after Telegram had failed to comply with an earlier court order to turn over the personal data of neo-Nazi users on the platform, including the users’ contact and financial information. ⁵² In response to the court’s April 2023 decision to block the platform, Telegram head Pavel Durov claimed that it would be “technologically impossible” for the platform to comply with the authorities’ request for data (see C6). ⁵³

Data from the Open Observatory of Network Interference (OONI) appeared to show that some ISPs began blocking Telegram on April 26, the day of the court order, while others did not comply until the following day, if at all. At least one network, Unifique Telecomunicações S.A., did not appear to block Telegram at any point while the court order was in effect. According to OONI, such variation in how the block was implemented “suggests lack of coordination between

providers, and that each ISP implemented the block autonomously.” ⁵⁴ On April 29, three days after the block was ordered, Judge Flávio Lucas partially overturned the decision, maintaining a daily fine imposed on Telegram but lifting the nationwide block of the platform. In his reversal, Lucas argued that an outright ban was neither reasonable nor proportionate (see B3). ⁵⁵ By April 30, Telegram appeared to again be widely available in Brazil. ⁵⁶

Brazilian courts have also issued orders to block social media and communications platforms in the past. In March 2022, during the previous coverage period, Supreme Court justice Alexandre de Moraes ordered the suspension of Telegram on the grounds that the messaging app had failed to cooperate with authorities in the lead-up to the October 2022 general election, including by not removing accounts spreading misinformation. ⁵⁷ However, the 2022 ban did not ultimately take effect; it was lifted two days after being issued, after Telegram quickly complied with court orders to remove certain content and appoint a local legal representative. ⁵⁸ Previously, in 2016, telecommunications companies were asked to block WhatsApp after the company failed to comply with information requests as part of criminal investigations; the company said that it could not comply with the requests because of end-to-end encryption on the platform. ⁵⁹

At least one website featuring human rights content has likely been blocked in Brazil in the past. In late 2019, digital rights groups found that the website of Women on Waves, a Dutch nongovernmental organization (NGO) that promotes reproductive rights (which are heavily restricted in Brazil: for example, abortion is outlawed with a few extreme exceptions), was likely blocked by several networks in Brazil, including two of the main ISPs, Claro and Vivo. ⁶⁰ The Intercept reported in December 2019 that Women on Waves remained inaccessible on Claro, but was available on Vivo, which had also reportedly blocked the site intermittently. ⁶¹ The site appeared to remain accessible during the coverage period. ⁶²

B2 0-4 pts

Do state or nonstate actors employ legal, administrative, or other means to force publishers, content hosts, or digital platforms to delete content, particularly material that is protected by international human rights standards?

2/4

Efforts to regulate online content, particularly related to the spread of electoral disinformation (see B5), intensified in the lead-up to and aftermath of the 2022 elections and the violent, pro-Bolsonaro riots in the capital on January 8, 2023. During the coverage period, judicial authorities regularly issued orders to remove online content deemed to be false or undermine electoral integrity, and restricted the accounts of social media users who were found to spread such content. Many of these orders were issued or otherwise led by Alexandre de Moraes, a Supreme Court justice and president of the TSE. ⁶³

During the 2022 electoral period, the TSE regularly exercised its authority to order the removal of false information. The TSE ordered such content to be deleted at the request of both the Lula and Bolsonaro campaigns. For example, the TSE ordered the removal of social media posts that falsely accused Lula and his political party of maintaining links with organized crime. ⁶⁴ On the other hand, the court ordered Lula's campaign to remove a video implying that Bolsonaro was sympathetic to cannibalism, also preventing the campaign from disseminating such claims online or on television in the future. ⁶⁵

The TSE stiffened content regulations in the final days before the October 30, 2022 presidential runoff election between Bolsonaro and Lula. ⁶⁶ The updated regulations, published on October 20, allowed the TSE to order platforms to remove content more quickly and to impose an hourly fine for noncompliance, raising concerns about the transparency and proportionality of such measures (see B3).

Justice Alexandre de Moraes also issued account suspension and content takedown orders in connection with the political violence on January 8, 2023. On that day, thousands of Bolsonaro supporters invaded and ransacked the buildings of Congress, the Supreme Court, and the presidency. Moraes responded to the right-wing violence by actively ordering content takedowns and account suspensions. An unspecified number of individuals had their accounts withheld under his orders, including far-right congressman and prominent YouTuber Nikolas Ferreira, whose social media accounts were suspended on January 11 and reinstated on January 24. ⁶⁷ The social media accounts of another far-right member of Congress, Carla Zambelli, were suspended from November 2022 until February 2023 after she posted support for those seeking to forcibly overturn the results of the election. ⁶⁸ Many have praised Moraes' actions as decisive in

enabling a peaceful transition of power and helping to repel the attack on the capital; however, others have criticized him, saying he used overly broad interpretations of the law to assume outsized powers (see B3). **69**

Moraes also ordered the suspension of social media accounts as part of “fake news inquiries” by the Supreme Court. An especially concerning case is the suspension of all social media accounts of a far-left political party, the Workers’ Cause Party (PCO). On June 1, 2022, the PCO posted a tweet that insulted Moraes personally while criticizing his avowal to disqualify candidates who “spread fake news,” and also called for the dissolution of the Supreme Court. **70** The following day, Moraes issued a decision ordering platforms to block accounts belonging to the party. **71** That November, after platforms appealed the suspensions, a decision by the full court upheld Moraes’s order. **72** The suspension lasted through the elections and was only lifted in late February 2023; upon the account’s reinstatement, Moraes warned the PCO that failing to comply with an order prohibiting the party from publishing, promoting, and sharing so-called fake news would result in a daily fine of 10,000 reais (\$1,903). **73**

The election year also brought account restrictions for members of the judiciary. At least nine judges had their accounts suspended between October 2022 and January 2023 on orders from the National Council of Justice (CNJ), the national judicial oversight board. **74** The CNJ, led by National Inspector of Justice Luis Felipe Salomão, directly ordered platforms to suspend the accounts and imposed a daily fine of 20,000 reais (\$3,853) for noncompliance. **75** According to the CNJ, some of those who had their accounts blocked endorsed candidates for office; others weighed into politics or called electoral integrity into question. In one case from December 2022, Salomão ordered Instagram and Twitter to suspend the accounts of federal judge Maria do Carmo Cardoso after she expressed support on social media for pro-Bolsonaro demonstrators staged outside military installations. **76** Some raised concerns that the CNJ’s account suspension orders, directed at platforms, fell outside its legal mandate (see B3).

In March 2022, during the previous coverage period, Telegram removed a number of accounts and channels spreading disinformation—including accounts belonging to a prominent Bolsonaro supporter under investigation for such activities—in an effort to avoid a ban imposed by the Supreme Court after the app failed to cooperate with authorities in the lead-up to the 2022 election (see

B1). In compliance with the Supreme Court's orders, the app also removed links to classified information, which had been shared by then president Bolsonaro, related to an investigation into allegations that the government was using official channels to spread disinformation and sow doubts about electoral integrity. ⁷⁷ In addition to removing the specified accounts, Telegram committed to monitoring its 100 most popular channels in Brazil, working with local fact-checking organizations to determine the veracity of posts, and establishing a framework to address court requests more promptly; ⁷⁸ it is unclear whether Telegram kept to its pledges.

In February 2022, the TSE signed cooperation agreements with Twitter, TikTok, Facebook, WhatsApp, Google, Instagram, YouTube, and Kwai, which agreed to remove inauthentic accounts and malicious content, in addition to creating filters to combat misinformation. ⁷⁹ The TSE and Telegram signed a similar collaboration agreement that May to combat electoral disinformation, including by developing functions for marking content as disinformation. ⁸⁰ The extent to which these commitments were fulfilled and whether the measures were effective is unclear, though online disinformation remained a serious concern during the coverage period (see B5).

For years, Brazilian courts have sought the removal of accounts tied to the spread of disinformation. Between July 2020 and early 2021, ⁸¹ the Supreme Court issued a series of orders requiring social media platforms like Twitter and Facebook to block the profiles of individuals implicated in a fake news inquiry, initiated by the court in 2019 and linked to evidence that Bolsonaro supporters had been coordinating on social media to create and disseminate false information. ⁸² Meta complied with the order in August 2020, placing a global block on 12 accounts, but filed an appeal, which was pending as of October 2022. ⁸³ Twitter also complied with the order, removing 16 accounts. ⁸⁴

The April 2023 draft of the so-called fake news bill would require platforms to remove content within 24 hours of receiving a court order for them to do so and would impose financial penalties for noncompliance. New obligations would also require that platforms implement measures to prevent the dissemination of certain content altogether—also under the threat of sanctions for failing to do so (see B3 and B6).

Lawsuits and legal threats have been frequently used, particularly by politicians and political authorities, to restrict the circulation of content criticizing them. ⁸⁵

Between July and December 2022, Google received 1,407 government requests to remove content—up from 1,081 in the prior reporting period—including for electoral law-related reasons (507), defamation (250), and privacy and security (219). ⁸⁶ Google removed 43 percent of requested items for compliance with Brazilian laws, and an additional 4 percent for Google policy violations. Affected content included a YouTube video that made false claims about the security of electronic voting machines, which the TSE ordered Google to remove. ⁸⁷ Facebook’s Transparency Report indicates that 1,134 pieces of content were restricted in Brazil between January and June 2022 “in compliance with orders from local courts related to civil, criminal, and electoral proceedings”; another 145 items were restricted in response to reports by the Brazilian Health and Regulatory Agency. ⁸⁸

B3 0-4 pts

Do restrictions on the internet and digital content lack transparency, proportionality to the stated aims, or an independent appeals process?	2/4
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Brazil’s Marco Civil resolved questions about intermediary liability by establishing that service providers are only held liable for third-party content if they fail to remove content after a specific court order. ⁸⁹ Exceptions were made for copyright infringement and the dissemination of nonconsensual sexual images or videos. In cases pertaining to the latter, the user’s notification alone is enough to make the intermediary liable, should it refuse to make the content unavailable in a short time period. ⁹⁰

Once celebrated as the welcome outcome of a multistakeholder consultation with civil society involvement, the Marco Civil’s future looks uncertain; calls for regulation with more accountability from tech companies have grown, and multiple members of the Supreme Court have suggested they might rule against the statute in a case concerning its constitutionality. ⁹¹ In May 2023, the Supreme Court delayed a hearing on the constitutionality of the Marco Civil’s liability regime, and the case remained pending at the end of the coverage period. ⁹²

Multiple legislative efforts to amend the current intermediary liability system have been made in recent years and continued during the coverage period. In September 2021, then president Bolsonaro issued new social media rules under a provisional measure, which was effective immediately, to keep social media platforms—at the risk of fines—from removing content for violating terms of service and other platform policies, instead requiring a court decision to restrict content. ⁹³ The rules sparked concern from civil society, which considered them to be attempts to allow Bolsonaro and his allies to spread disinformation ahead of and undermine public confidence in the 2022 election. ⁹⁴ The Supreme Court and Brazilian Senate nullified the rules a week later; ⁹⁵ lawmakers labeled the rules unconstitutional and characterized their issuance an “abusive exercise” by the executive. ⁹⁶

In June 2020, after fast-tracked procedures, the Senate approved draft bill PL 2630/2020, commonly known as the fake news bill. ⁹⁷ Civil society groups sharply criticized lawmakers’ move to rush the bill through Senate procedures, as well as the bill itself for uprooting the Marco Civil’s provisions on intermediary liability and undermining encryption (see C4). ⁹⁸ Since the Chamber of Deputies began discussing the bill in July 2020, the draft bill has undergone significant changes, some of which were celebrated by civil society. ⁹⁹

As presented by congressional representative Orlando Silva, the April 2023 version of the bill expands far beyond the scope of combatting so-called fake news, as the bill’s nickname suggests. The bill creates significant new obligations for social media, search engine, and instant messaging providers with over 10 million users in Brazil, with some exemptions. ¹⁰⁰

The April 2023 draft would significantly change the intermediary liability regime in Brazil; according to Article 6 of the bill, providers would be civilly liable for harms resulting from third-party advertisements and user-generated content when providers fail to abide by their duty of care obligations while a safety protocol is active.

Providers would be required to conduct risk assessments to identify “systemic risks resulting from the design or operation of services and related systems, including algorithmic systems” and to publish such assessments annually. ¹⁰¹ The duty of care obligations require providers to “act diligently” to prevent the

dissemination of content that may constitute a criminal offense falling under a list of categories, including crimes against the rule of law, terrorism, crimes against children and adolescents, and racial discrimination. Other categories include violence against women and violations of the public health law. ¹⁰² Digital rights organizations have criticized these duty of care obligations for being poorly defined, noting that it is often unclear whether elements of the relevant criminal offenses are present in social media content. ¹⁰³

Safety protocols may be implemented when an “imminent risk” has been identified, or due to the negligence of providers to mitigate such risks. Such protocols are valid for 30 days, with extensions possible. ¹⁰⁴ Under the bill, providers would face sanctions for repeated noncompliance with their duty of care obligations (see B6).

The most recent version of the bill maintains due process rights for users and transparency reporting requirements, which were added in a previous draft version. Article 17 of the bill requires that content moderation processes “be applied with equity, consistency and respect for the right of access to information, freedom of expression and free competition.” Additionally, providers must publish transparency reports that disclose information about content moderation actions, including the number of posts removed. ¹⁰⁵

Problematic provisions remain, however, including Article 33, which would grant parliamentarians immunity from being held liable for their online speech, including for spreading disinformation, effectively placing them out of reach of platforms’ content moderation policies. ¹⁰⁶

The bill does not name or create an agency to oversee its implementation and enforcement. A proposal that would have allowed the president to create an independent enforcement agency was criticized for its potential to create executive influence over enforcement of the regulations. ¹⁰⁷ There are ongoing discussions about this aspect of the bill, and proposals have been floated to designate Anatel as the oversight agency, ¹⁰⁸ or instead establish an interagency regulator comprising representatives from the judiciary, Congress, independent agencies, and the executive branch. ¹⁰⁹

Several platforms, including Google and Meta, have expressed public opposition to the bill, particularly against provisions that require platforms' remuneration of media companies for journalistic content and the bill's transparency requirements for ad targeting and content moderation (see B6). ¹¹⁰ In response, Brazilian authorities have accused tech companies of illegally attempting to influence public and legislative debate on the matter. ¹¹¹

PL 2630/2020 remained pending in the Chamber of Deputies at the end of the coverage period.

Brazilian judicial authorities actively ordered the removal of content during the 2022 electoral period and in the aftermath of the January 8, 2023 attack on the capital (see B2). On October 20, 2022, days before the October 30 runoff presidential election, the TSE issued updated regulations that expanded its ability to restrict certain online content. ¹¹² Under the updated regulations, the court could order platforms to take down content within two hours (or as little as one hour, for orders issued the day before the election and three days afterward) for content found to be knowingly false or decontextualized and that would "affect the integrity of the electoral process," and impose an hourly fine for noncompliance. The updated regulations also gave the president of the TSE, Supreme Court justice Alexandre de Moraes, the authority to act *sua sponte*—that is, of one's own accord, without having been approached by any parties—to issue removal orders for any content that is identical to something previously ruled illegal by the full court, raising concerns about Moraes' power to regulate content unilaterally. ¹¹³ Moraes was also empowered to suspend platforms for up to 24 hours for repeated noncompliance with content removal orders, with the duration doubling for each new infraction.

The regulations, and judicial efforts to remove online disinformation more broadly, provoked intense debate during the coverage period. Orders issued by Moraes directed social media platforms to remove thousands of posts and block the accounts of dozens of people, sometimes after they had posted a single piece of content, and often without a clear explanation of what the offense was. ¹¹⁴ Account suspension orders were issued without prior or subsequent notice from the court to the users impacted, and there is limited publicly available information on these orders beyond what Moraes has periodically shared on the Supreme Court's website; many records have been kept under seal, even after the elections.

The lack of transparency on account suspension orders issued under the updated regulations has raised concerns. Unsealed records show that the court ordered takedowns *sua sponte* for content that its misinformation department certified as identical to content previously found illegal by the full court. However, the criteria for searching and finding matches to such content was not disclosed.

On October 25, 2022, the Supreme Court refused a stay request in a constitutional challenge against the TSE's electoral content regulations filed by Attorney General Augusto Aras, who argued that the resolution lacked statutory support and violated freedom of expression. ¹¹⁵

The CNJ's orders to suspend the social media accounts of at least nine judges between October 2022 and January 2023 raised concerns that the judicial oversight board had overstepped its mandate (see B2). ¹¹⁶ Though the CNJ has the ability to discipline judges, the Marco Civil guarantees that only a court order can compel platforms to limit content or accounts. This led to criticism that the CNJ, which issued the orders through its internal affairs department, had no legal authority to do so as an administrative body. ¹¹⁷

In his April 29, 2023 decision to rescind the nationwide block of Telegram, federal judge Flávio Lucas said that the block was unreasonable because it adversely affected individuals who were in no way involved with the authorities' investigation. ¹¹⁸

In early 2023, Brazil experienced a series of school shootings. ¹¹⁹ In response, the justice minister issued a resolution in April 2023 that increases pressure on "social media platforms"—a term not defined in the regulation—to restrict certain content and accounts, including that which "encourages attacks against school environments or supports and incites these crimes or their perpetrators." ¹²⁰ The resolution authorizes certain government bodies to request information on companies' compliance efforts, prepare reports on the assessment and mitigation of systemic risks, and, in "exceptional circumstances," order the adoption of undefined "crisis protocols." The regulation does not provide information on how such content is to be identified or on any oversight or auditing mechanism, and has been criticized by digital rights advocates as lacking a legal basis and giving the executive branch too much power over online content. ¹²¹ Indeed, while the government has said it issued limited regulations to respond to a serious crisis

affecting schools and children, the theory articulated by the justice ministry for the resolution could potentially allow it to regulate other types of content and harms.

B4 0-4 pts

Do online journalists, commentators, and ordinary users practice self-censorship?

3/4

Threats and violence against online journalists and independent bloggers in certain areas of the country contribute to self-censorship. ¹²² The climate of intimidation first escalated during the polarized 2018 election campaign that saw former president Bolsonaro rise to power, as both Bolsonaro and his followers launched online intimidation campaigns against critics. ¹²³ Widespread online harassment of journalists, largely perpetuated by supporters of Bolsonaro, continued during the intensely contested 2022 presidential election (see C7). ¹²⁴

Bolsonaro and members of his family continued to intimidate and harass journalists throughout his presidential term, which ended on January 1, 2023. In 2022, the nonprofit Brazilian Association of Investigative Journalism (Abraji) registered 557 attacks against the media, 41.6 percent of which came from Bolsonaro or his sons; according to the report, stigmatizing discourse was the most common type of attack, and more than 60 percent of all attacks were “seeded or fed” on the internet. ¹²⁵ Online outlets and journalists have increasingly self-censored due to this barrage of harassment and assaults.

The threat of violence has led some outlets and online journalists to cease or alter their coverage of certain topics. ¹²⁶ In February 2022, for instance, the day after the murder of online journalist Givanildo Oliveira in the city of Fortaleza, online news outlet Portal de Fortaleza announced that it would stop covering crime and policing to “avoid becoming a target” (see C7). ¹²⁷

The potential for judicial harassment could cause some online communicators, particularly journalists, to practice self-censorship. The threat of both criminal defamation lawsuits and civil actions has fostered a chilling environment for many journalists (see C3). In April 2021, the Brazilian Press Association (ABI) brought a constitutional challenge claiming that criminal defamation and other crimes against honor have created a chilling effect for news reporting and asked the

court to set a standard protecting journalists from being targeted by such legal threats when reporting on government officials and public figures. The case appeared to remain pending at the end of the coverage period. ¹²⁸

An escalation in online harassment has also caused journalists, especially women and LGBT+ communicators (see C7), to self-censor or adjust their behavior online. According to a survey of these journalists conducted by Reporters Without Borders (RSF) between August 9 and September 6, 2021, 25 percent had closed their personal social media accounts, including temporarily, because of online attacks against them, while 8 out of 10 had changed their behavior on social media to protect themselves from such attacks. ¹²⁹

B5 0-4 pts

Are online sources of information controlled or manipulated by the government or other powerful actors to advance a particular political interest?

1 / 4

Manipulated content is common in the Brazilian online environment, with a notable proliferation of disinformation during the 2018 and 2022 election campaigns. A former ally of Bolsonaro has also come forward with claims that, during his administration, the former president directed public funds to a so-called “office of hate,” in which employees attacked Bolsonaro’s critics online.

Disinformation, largely amplified by Bolsonaro and his allies in an effort to cast doubt on the integrity of the vote, flooded the online landscape ahead of the October 2022 general election. One study conducted in the months leading up to the election found that 4 out of 10 Brazilians received disinformation on a daily basis. ¹³⁰ False or misleading information most frequently involved spreading distrust in the electoral system, including the role of the TSE, opinion polls, and electronic voting systems. ¹³¹ According to the Carter Center’s election observation mission, the primary disinformation narrative shifted from unfounded vulnerabilities of electronic voting systems during the first round of the vote to false accusations of bias among the TSE during the second round. ¹³²

Bolsonaro and his allies served as a key source of such claims. ¹³³ Between Bolsonaro’s inauguration in January 2019 and December 2022, fact-checking organization Aos Fatos found Bolsonaro to have made at least 6,685 false or

misleading statements. ¹³⁴ These statements, including frequent remarks alleging that the election was vulnerable to fraud, ¹³⁵ were then reproduced and disseminated on official online channels and social media accounts, constituting an organized and well-financed disinformation machine that was reportedly capable of engaging between 10 and 20 percent of the population, according to reporting from April 2022. ¹³⁶ The Bolsonaro government predominantly relied on WhatsApp, which had previously been a major vector of election disinformation in 2018, ¹³⁷ to spread its narratives, as well as Telegram, which it increasingly favored as other platforms clamped down on the spread of electoral disinformation. As of March 2022, Bolsonaro's Telegram channel had amassed 1.2 million followers and become the most popular in the country. ¹³⁸ Supporters are often directed to prominent Telegram channels via hyperlinks posted to other social media platforms by high-profile Bolsonaro associates; links on Telegram and WhatsApp also lead to false or misleading content on Facebook, YouTube, and Instagram. ¹³⁹

In December 2021, federal police found Bolsonaro to have played a “direct and relevant” role in the proliferation of disinformation around electoral integrity during live streams on social media, calling the 2018 election rigged on claims that he should have been elected in the first round of voting, and casting doubt on the integrity of the 2022 election with insinuations that he would not accept the results unless the electronic system were changed. The federal police alleged that Bolsonaro had a “clear purpose” of misleading the public about the elections’ integrity. ¹⁴⁰ In January 2023, Supreme Court justice Moraes granted a request by prosecutors to formally investigate Bolsonaro—including for his role in the January 8, 2023 attacks on the capital—citing the false information he spread about the country’s elections. ¹⁴¹ In June 2023, after the coverage period, the TSE ruled 5 to 2 that Bolsonaro had abused his political power and misused communications media when, in July 2022, the then president made baseless allegations of election fraud and questioned the legitimacy of the 2022 vote while holding a meeting that was attended by foreign ambassadors and broadcast on social media and television. According to Moraes, Bolsonaro used social media during the event in an intentional effort to “bombard the electorate” with false claims about the electoral system. ¹⁴² The court barred him from running for office again for eight years. ¹⁴³

Supporters of Bolsonaro used online platforms to further amplify his false claims around the likelihood of fraudulent elections in 2022. In September 2022, the newspaper *Estadão* reported that a quarter of messages in Telegram groups supporting Bolsonaro mentioned electoral fraud. ¹⁴⁴ Between November 2020 and January 2022, the Getulio Vargas Foundation research institution recorded 400,000 Facebook posts published by nearly 28,000 accounts about electronic voting machine fraud and auditable printed votes, attracting more than 111 million interactions. Twelve accounts saw the highest volume of interaction, amassing around or over 1 million; all but one belonged to individuals aligned with Bolsonaro or right-wing politics, including elected representatives and the president himself. Of the 20 most popular messages alleging fraud in the use of electronic voting machines, 13 came from Bolsonaro's Facebook page. ¹⁴⁵

False claims about the election, spread by Bolsonaro and his supporters, significantly undermined the reliability of the online information environment during the electoral period and in the weeks before the political violence of January 8, 2023 (see B7). Two days after pro-Bolsonaro rioters stormed government buildings in the capital, Bolsonaro himself shared—and later deleted—a video in which someone falsely claimed that Lula was not legitimately elected but instead chosen by the courts. ¹⁴⁶

Government institutions and private actors undertook various efforts to address disinformation in the run-up to the 2022 election and in the weeks after the vote, including through the March 2022 banning of WhatsApp and October 2022 regulations allowing the TSE to order the removal of online content that spread false information related to the election (see B1, B2, and B3). The effectiveness of these efforts remains unclear. In August 2022, international NGO Global Witness published an investigation revealing that Facebook had failed to detect election-related disinformation in 10 Brazilian Portuguese-language ads it had submitted. The platform approved each of the ads, all of which violated Meta's election advertisement policies for containing false information about the election or content delegitimizing the electoral process and Meta's political advertisement policy, as the ads were placed using an unverified account. ¹⁴⁷

In a report released in May 2020 as part of an investigation into pro-Bolsonaro criticism of the Supreme Court on social media, ¹⁴⁸ the court said it had identified the existence of a criminal association dedicated to the spread of false news. ¹⁴⁹

In the investigation, the federal police named Carlos Bolsonaro, the former president's son, as an organizer of the scheme. ¹⁵⁰

Separately, in December 2019, a former ally of Bolsonaro, Joice Hasselmann, accused the former president of having an "office of hate." Equipped by a so-called "digital militia" comprised of publicly funded civil servants, the office reportedly served as a center from which to attack online the president's enemies, including politicians and journalists. According to independent research published in March 2023 by academics at the University of Texas at Austin, the Bolsonaro government used WhatsApp to help maintain an "ecosystem of disinformation spreaders," where false information could proliferate within trusted online networks.. ¹⁵¹ Bolsonaro has denied the existence of such an office. ¹⁵²

B6 0-3 pts

Are there economic or regulatory constraints that negatively affect users' ability to publish content online?	2/3
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Regulatory and economic constraints are relatively minor in Brazil.

Brazil lacks a regulatory framework around the use of public funds for state advertisement in media outlets, including online media. Discriminatory use of state advertisement for political control remains a concern at the federal and local levels in Brazil. ¹⁵³

While historically much of the state advertising budget has been directed to television, the Bolsonaro administration increasingly shifted advertising funding to online platforms. In August 2020, The Intercept Brasil reported that the Bolsonaro administration paid Google more than 11 million reais (\$2 million) between May 2019 and July 2020 to distribute progovernment ads. ¹⁵⁴

According to data from the first six months of the Lula administration, during that period, the Globo media group received the highest amount public advertising funds, though most funds went to Globo's television stations; of the total 54.4 million reais (\$10.4 million) received by Globo, the Globo.com website received just 394,500 reais (\$75,908). ¹⁵⁵ Among the 15 largest recipients of state advertising funds from the Lula administration, Meta, TikTok, and Google reportedly received a combined 4 percent of all funds. ¹⁵⁶

If adopted, the so-called fake news bill would compel major platforms to pay media companies for the use of their “journalistic content.” In April 2022, a coalition of free press and digital rights organizations published a manifesto urging the removal of the related article, labeling it a threat to journalistic plurality. Echoing criticisms made in an open letter signed by Google, Facebook, Twitter, and Mercado Livre published in March, the coalition warned against the proposed remuneration model’s potential to harm local and independent journalism and favor only large, traditional media outlets, as it could force platforms to choose which outlets to pay for. ¹⁵⁷ The organization also criticized the article’s vague language around what constitutes “journalistic content.” The latest version of the bill allows for media organizations to collectively bargain with digital platforms for the terms of remuneration, and in Article 32 includes a provision guaranteeing equity in negotiations “without prejudice to companies classified as small and medium-sized.” ¹⁵⁸

PL 2630/2020 would also impose sanctions on providers for noncompliance with orders to remove content or the bill’s duty of care obligations (see B2 and B3). Providers would have 24 hours to comply with a judicial order to remove content, with potential fines for failing to do so ranging from 50,000 reais to 1 million reais (\$9,633 to \$192,662) per hour—with fines tripled in cases involving digital advertisements. ¹⁵⁹ Progressive sanctions for “systemic noncompliance” with other obligations established by the bill range from a warning to the temporary suspension of the platform. ¹⁶⁰

Since the approval of the Marco Civil, net neutrality has been incorporated into Brazilian law. Enacted in May 2016, a new decree regulating the Marco Civil solidified the rules that prohibit the discrimination or degradation of traffic for commercial purposes, while permitting it for public emergencies. ¹⁶¹ Any notice of violation of said principle by companies may be investigated and sanctioned. ¹⁶²

B7 0-4 pts

Does the online information landscape lack diversity and reliability?	3/4
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Brazil’s online sphere is vibrant, featuring many frequently updated websites and social media pages that examine issues of the day from a variety of perspectives.

However, many users have limited access to information beyond social media platforms given the widespread practice of zero-rating agreements for mobile plans, ¹⁶³ and some regions lack robust local coverage. The presence of false information, particularly related to the 2022 election, has eroded the reliability of the online information landscape.

A December 2019 survey by the Chamber of Deputies and the Senate identified WhatsApp as the main source of information for a large part of the population. Of the 2,400 people interviewed by phone, 79 percent said they “always” received news from the platform. Other popular online news sources included YouTube, Facebook, news sites, and Instagram. ¹⁶⁴ The YouTube channel Spartakus, which focuses largely on pop culture, discusses topics like white privilege, meritocracy, and LGBT+ rights. ¹⁶⁵ Outlets such as AzMina, which was founded in 2015, provide reporting and content with a gender perspective, particularly for Black, Indigenous, transgender, and lesbian women. ¹⁶⁶

Some areas of the country have limited or no local news coverage, especially in the North and Northeast Regions, which have comparably large Indigenous and Afro-Brazilian populations. ¹⁶⁷ While digital news initiatives have succeeded in slowly reducing the size of these news deserts in recent years, nearly 14 percent of the population did not have access to local journalistic information, online or offline, in 2021. ¹⁶⁸ Some organizations publish online content in Indigenous languages. During the COVID-19 pandemic, for instance, Indigenous organization Namunkurá Associação Xavante started sharing news reports about the pandemic in the Xavante language. ¹⁶⁹

In recent years, new online right-wing media outlets have emerged, including groups focused on “alternative information” like Folha Política or Mídia Sem Máscara (Media Without a Mask). Many of these outlets present themselves as credible journalistic outlets but have been described as “propaganda disguised as journalism.” These pro-Bolsonaro sites reportedly received more than 48 million visits in July 2022, a higher audience than some of the country’s prominent news outlets. ¹⁷⁰

False claims about the 2022 election, shared both online and offline, undermined public trust in the vote and contributed to the pro-Bolsonaro political violence in Brasília on January 8, 2023. Many false claims about the election were shared by

Bolsonaro and his allies in an intentional effort to influence the online information sphere (see B5). According to a survey from December 2022, 82 percent of respondents who voted for Bolsonaro did not have confidence in the outcome of the election. ¹⁷¹ In the months between the October 2022 election and January 8, 2023, the online information landscape was saturated with baseless accusations of electoral fraud and false claims that the results could be overturned. By November 25, 2022, almost one month after the runoff vote, independent news outlet Agência Pública (Public Agency) had detected at least 65 paid advertisements on Facebook and Instagram that challenged the outcome of the election. The ads, which appeared to violate Meta’s policies, had collectively been viewed more than 414,000 times by that date. ¹⁷²

In many cases, false information that gained traction on social media in the aftermath of the election became central rallying cries for the pro-Bolsonaro rioters on January 8, 2023. For example, the false claim that the TSE had not published the source code for electronic voting machines, which circulated on WhatsApp in November and December 2022, ¹⁷³ featured prominently on the signs carried by participants in the attacks in Brasília. ¹⁷⁴ Additionally, several false claims circulated online about January 8 itself, undermining credible reporting on the violence. In the days after the attack, false information that leftist “infiltrators” were responsible for the destruction were shared on WhatsApp and Telegram. ¹⁷⁵

B8 0-6 pts

Do conditions impede users’ ability to mobilize, form communities, and campaign, particularly on political and social issues?

6/6

Social media platforms such as Facebook and Twitter—and, more recently, closed-messaging platforms such as WhatsApp—play a central role in civic activism in Brazil. However, the use of these platforms to mobilize around political causes is complicated by disinformation campaigns and the prevalence of false and misleading content (see B5 and B7).

Between October and December 2022, for instance, think tank Instituto Igarapé identified 410 threats to civic space in Brazil; 229 of those were disinformation campaigns, the highest number on record, which mainly attacked Brazil’s electoral system. ¹⁷⁶

Citizens can engage with lawmakers online to express opinions and shape the design and implementation of legislation. ¹⁷⁷ Activists also use social media as a tool for political mobilization. Reporting from April 2022, for instance, outlined how Indigenous influencers uploaded videos to online channels to inform and mobilize users against a series of Bolsonaro’s policies that threatened the environment and Brazil’s Indigenous peoples. ¹⁷⁸

C. Violations of User Rights

C1 0-6 pts

Do the constitution or other laws fail to protect rights such as freedom of expression, access to information, and press freedom, including on the internet, and are they enforced by a judiciary that lacks independence?

4/6

While the Brazilian constitution guarantees freedom of expression, the broader legal framework provides inadequate protection for that right. The groundbreaking Marco Civil, a framework for internet user rights signed into law in 2014, ¹⁷⁹ establishes the right to freedom of expression online, offers detailed privacy protections pertaining to personal data, guarantees net neutrality, and promises to uphold the participatory nature of the internet. However, constitutional protections and those in the Marco Civil are undermined by defamation penalties and other laws that can be misused to criminalize legitimate speech (see C2). ¹⁸⁰

Concerns remain that Brazilian law does not fully abide by standards for freedom of expression established by the American Convention on Human Rights and international human rights law. In December 2021, the Inter-American Commission on Human Rights (IACHR) admitted a petition against Brazil after the Brazilian courts rejected a challenge to the criminal offense of “desacato” (disrespect or contempt toward a public official). ¹⁸¹ The IACHR’s Special Rapporteur for Freedom of Expression has said that laws criminalizing contempt are inconsistent with Article 13 of the American Convention on Human Rights, which guarantees the right to freedom of expression. ¹⁸² In recent years, legal analysts have noted that there is a lack of legislation or meaningful precedent establishing standards for freedom of expression in Brazil, ¹⁸³ which is inconsistent with international

standards that limitations of freedom of expression must be prescribed by law “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.” ¹⁸⁴ Recent pushes for stricter speech limitations have not adequately addressed the lack of “sufficient precision” required under human rights law (see C2).

In recent years, multiple attempts have been made to change and weaken legal guarantees on freedom of expression, privacy, and access to the internet. To respond to and resist multiple draft bills, digital rights-focused civil society organizations created a coalition in 2016 that has been actively monitoring and engaging with Congress on these issues. ¹⁸⁵ Impunity for crimes against users, such as harassment, threats, and violence, persists (see C7). ¹⁸⁶

The judiciary is largely independent, and the Supreme Court has remained an autonomous counterweight to the executive. The court has illustrated its independence in rulings concerning online freedoms, as when it nullified new social media rules issued by then president Bolsonaro under provisional measure in September 2021 (see B3). ¹⁸⁷

Since entering into force in 2020, the General Data Protection Law (LGPD) had been used in recent years by federal agencies to systematically deny access to information requests. ¹⁸⁸ In February 2023, the access to information body, the Federal Comptroller General (CGU), issued a technical opinion stating that the LGPD does not override the Access to Information Law; additional guidelines with the aim of harmonizing both laws are expected. ¹⁸⁹

C2 0-4 pts

Are there laws that assign criminal penalties or civil liability for online activities, particularly those that are protected under international human rights standards?

2/4

Brazil maintains, and has recently strengthened, legislation that criminalizes online expression.

Defamation is punishable by three months to one year in prison and a fine under the penal code, with increased penalties in cases when public officials are defamed. ¹⁹⁰ In April 2021, the penal code was amended to triple sentences for

criminal defamation “when the crime is committed or disseminated in any mode of social media.” ¹⁹¹ The criminal code also punishes “contempt” against public officials with a penalty of six months to two years in prison, or a fine, which has been criticized for failing to meet international standards for freedom of expression (see C1). ¹⁹² Earlier reforms to the electoral code in 2019 criminalized “slandorous denunciation” for electoral purposes, providing prison sentences between two and eight years for anyone making false accusations, through any means, about a political candidate for the purpose of affecting his or her candidacy. ¹⁹³

Although people are rarely charged or imprisoned for racist or discriminatory speech, Brazilian law establishes penalties ranging from two to five years in prison for practicing or inciting discrimination based on race, ethnicity, or religion in the media or other publications. ¹⁹⁴ The criminal code further outlines punishment for vilifying or mocking religion, with penalties ranging from one month to one year in prison, although whether these penalties have been applied to online speech is unclear.

Brazilian cybercrime law criminalizes breaches of digital privacy such as computer intrusion, the “installation of vulnerabilities,” and editing, obtaining, or deleting information—including credit card numbers—without authorization. The distribution, sale, production, or offer of programs or devices meant to facilitate these actions, or to interrupt ICT services, are also categorized as crimes. ¹⁹⁵

The National Security Act, a law enacted during the military dictatorship in 1964–85 that criminalizes harming or endangering the heads of the branches of government, was increasingly used by the president, legislature, and judiciary to open investigations into critical online expression after Bolsonaro came to power in 2019 (see C3). ¹⁹⁶ A law that repeals and replaces the National Security Act, Bill No. 6764/2002, was approved by the Chamber of Deputies in May 2021 and by the Senate in August 2021, ¹⁹⁷ to little enthusiasm from digital rights activists. ¹⁹⁸ The new legislation is also seen as a threat to free expression, assembly, and association as it includes vaguely worded provisions criminalizing “mass misleading communication” and the dissemination of “secret documents” to foreign governments; it also lacks whistleblower protections for the sake of investigative journalists. ¹⁹⁹ Though Bolsonaro vetoed the article criminalizing

“mass misleading communication” in September 2021, ²⁰⁰ Congress has considered overturning the veto as recently as April 2023. ²⁰¹

The draft fake news bill (PL 2630/2020), approved by the Senate in June 2020, originally provided for criminal penalties, including prison sentences of up to five years for those who generate or circulate content that undermines the undefined “social peace” or “economic order” and fines of up to 10 million reais (\$1.9 million) for the use of “manipulated” content to “ridicule” political candidates, paid to the affected candidate by the candidate determined to have “benefited” from so-called ridicule. ²⁰² The latest draft of the bill, from April 2023, dropped those provisions and instead creates a criminal offense, punishable by one to three years in prison and a fine, for using automation or “other means not made available directly by the provider” to mass-message “facts that are known to be false, that are capable of compromising the integrity of the electoral processes, or that may cause harm to physical integrity.” ²⁰³

C3 0-6 pts

Are individuals penalized for online activities, particularly those that are protected under international human rights standards?

3/6

Online journalists and bloggers reporting on corruption or controversial topics face a pattern of legal threats, including for alleged defamation. Instances of judicial harassment, through both criminal defamation suits and civil actions, continue to pose a threat to users.

The lack of freedom of expression standards (see C1) often means individuals are exposed to civil liability for online content. Court records are often sealed, jeopardizing public debate, and limiting transparency about such decisions. Examples are sometimes reported by the media, however. In June 2022, a Rio de Janeiro court ordered comedian Gregório Duvivier to pay 25,000 reais (\$4,817) to Luciano Hang, a well-known businessman and high-profile Bolsonaro supporter. ²⁰⁴ In 2019, Duvivier tweeted a meme quipping, “I’m sad, someone kill the old man from Havan,” referring to a nickname that Hang uses. ²⁰⁵ One month prior, in May, during the previous coverage period, a São Paulo court upheld a judgment that ordered a woman to pay 5,000 reais (\$951) in damages to the owner of a

clothing store. The woman, who is Black, had speculated in a tweet that she was not hired by the store because of her race. **206**

Reporters for online outlets face arrests, detentions, and criminal charges in connection to defamation suits in retaliation for their digital activities. In March 2023, over 20 civil society organizations expressed concern that a freelance journalist, who reported on a high-profile rape trial for The Intercept Brasil in 2020, **207** faces six different claims of defamation, including three criminal charges, made by the case's judge and the prosecutors. **208** In February 2023, blogger Maria Aparecida de Oliveira, who reportedly spread false claims about several individuals on her Facebook page and YouTube channel, was sentenced—for the second time in two weeks—to more than four years in detention on criminal defamation charges. Her sentence is to be served under a “semi-open regime,” allowing for some autonomy. **209** Aparecida de Oliveira has been the subject of multiple criminal complaints in recent years and was arrested again in July 2023, after the coverage period. **210**

Previously, in September 2021, police arrested sports blogger Paulo Cezar de Andrade Prado, acting on an arrest warrant issued that February, to enforce a five-month prison sentence that had been handed to him in March 2018, when he was first convicted. **211** The conviction was based on a criminal defamation suit filed against Prado in 2016 by business owner Paulo Sérgio Menezes Garcia for an article Prado had published about political donations made during the 2014 and 2016 elections by the claimant and his company. **212**

Another prominent criminal defamation case, concerning a criminal complaint brought by Attorney General Augusto Aras, acting in his personal capacity, against Conrado Hübner Mendes, a law professor who writes a column for the newspaper *Folha de S.Paulo*, continued during the coverage period. In January 2021, Mendes strongly criticized Aras in tweets and his newspaper column, accusing Aras of lacking independence from Bolsonaro and labeling him a “servant of the president.” **213** A federal court opened the criminal action against Mendes in April 2022, following a successful appeal by Aras to overturn an earlier decision that had dismissed the complaint; **214** the case remained ongoing at the end of the coverage period.

In February 2022, state attorney general Jarbas Soares Júnior filed a criminal defamation complaint and civil lawsuit against Thiago Herdy, a reporter for online news outlet Universo Online (UOL), for an article Herdy had written the month prior. The complainant reportedly sought to prosecute Herdy for “crime against honor,” as the article alleged that Soares Júnior had requested that the state include compensation for a project in São Francisco, a town where his family members live, in a recent settlement from a mining company. The complaint’s broad reference to “crime against honor,” of which there are three types in the penal code (see C2), means that prosecutors can choose which charges to pursue, if any. ²¹⁵ Another UOL journalist, Juliana Dal Piva, was ordered to pay 10,000 reais (\$1,927) in civil damages to Bolsonaro’s personal lawyer, Frederick Wassef, in June 2022. The damages were for publishing an “unauthorized” threatening text she received from Wassef in July 2021 in her UOL column (see C7). ²¹⁶

The looming threat of criminal charges, even when such claims are ultimately dismissed, may create lengthy and costly litigation that could have a chilling effect on some journalists (see B4). This also applies to civil cases; a pending constitutional challenge, filed by Abraji in December 2021, claims that reporters experience judicial harassment by actors who strategically file civil suits in locations far from where the defendants live. ²¹⁷

During the Bolsonaro administration, the weaponization of the National Security Act to silence political criticism and opposition online spiked, much to the concern of civil society groups (see C2). ²¹⁸ Federal police conducted an average of 11 investigations under the law per year before Bolsonaro was president; in the first 45 days of 2021 alone, they reportedly conducted more than 10 investigations under the law. ²¹⁹ It was used particularly frequently to open investigations against critics of Bolsonaro’s management of the COVID-19 pandemic, including journalists, ²²⁰ activists, ²²¹ and opposition leaders. ²²² In March 2021, for instance, famous YouTuber Felipe Neto had the law invoked against him after he called then president Bolsonaro “genocidal” in a YouTube broadcast. The law was used to compel Neto to give testimony about the alleged offense, but the case was dismissed two days later due to widespread public condemnation.

C4 0-4 pts

Does the government place restrictions on anonymous communication

2/4

The constitution explicitly forbids anonymity online. ²²³ Although in practice anonymous speech online is common, some judges have occasionally referred to the constitution as a basis for limiting it. Other judges have upheld anonymous speech on the grounds that it is important for free expression and privacy, ruling that anonymous posts are protected so long as they can be technically traced through internet protocol (IP) addresses. The STJ has held that identification through an IP address is a “reasonably effective means for identification” and corresponds to an “average diligence” expected from internet providers. ²²⁴

Several legal provisions also restrict online anonymity in Brazil. Real-name registration is required for individuals or legal entities in order to purchase mobile phones or to access private internet connections, although the use of pseudonyms in discussion forums across the web is common. Lawmakers have pushed for restrictions on anonymity regarding public internet access points, such as local area network (LAN) houses, in order to prevent cybercrimes. Legislation of this kind already exists in states such as São Paulo, ²²⁵ while other proposals that seek to oblige users to identify themselves when accessing the internet or social media remain under consideration. ²²⁶

There are currently no restrictions on the use of virtual private networks (VPNs) and Tor browsers in Brazil, but recent judicial orders have created the possibility of future restrictions. The Supreme Court orders banning Telegram in March 2022, during the previous coverage period, established a fine for those “using technological subterfuge” to continue communicating through the app, effectively barring the use of VPNs to circumvent the ban. ²²⁷ This fine, like the broader blocking order, was ultimately not implemented. On May 10, 2023, however, days after the most recent block of Telegram was lifted (see B1 and B3), Justice Moraes issued another order to this effect, establishing an hourly fine of 100,000 reais (\$19,267) for those who use technological subterfuge to circumvent a block of Telegram, if one is implemented. ²²⁸

Amid public discussions about fake news and the prominent Supreme Court investigation into government-affiliated disinformation networks, lawmakers drafted legislation, since revised, that would have required mandatory identification of users. The original version of the June 2020 fake news bill (PL

2630/2020) set a regime for users' legal identification, enabling social networks and private messaging apps to identify each user through verification of their national identity cards. ²²⁹ The latest draft of the bill, released in April 2023, no longer sets a legal identification regime, though other provisions threatening privacy remain (see C6). ²³⁰

Brazilian law does not currently place restrictions on encryption, though a pending case before the Supreme Court, ADPF 403, could impose them in the future. ²³¹ The LGPD strengthens the adoption of encryption policies, ²³² and some legal analysts have interpreted recent Supreme Court decisions in defense of privacy and data protection as suggestive of a judiciary favorable to protecting encryption. ²³³ While the original fake news bill would have required private messaging services to store the traceability data of messages that went viral—defined as those forwarded by more than 5 users and that reached at least 1,000 accounts—for three months, later versions dropped the traceability mandate. ²³⁴ Article 42 of the bill's latest draft, from April 2023, requires messaging platforms to comply with court orders to retain and provide “information sufficient to identify the first account reported by other users when the sending of illicit content is in question.” ²³⁵ It remains unclear what this provision would mean in practice, and there are concerns that it could be interpreted to allow orders directing providers to undermine encryption.

Further threats to encryption remain in pending Brazilian legislation. Digital rights organizations were concerned about proposed reforms, published in April 2021, to the Code of Criminal Procedure that would oblige internet application providers to assist law enforcement in intercepting communications. Companies with robust security protections, including end-to-end encryption, could consequently be forced to introduce security flaws into their systems as a “back door” for law enforcement. ²³⁶

C5 0-6 pts

Does state surveillance of internet activities infringe on users' right to privacy?

3/6

Brazil has a history of improper surveillance of private communications, particularly targeting social movements and activists. Civil society organizations

routinely denounce the government's lack of transparency surrounding its surveillance operations, which are frequently justified as tools to combat crime.

237

Under the Bolsonaro administration, and especially in the first half of 2021, Brazil experienced an increase in social media monitoring of activists and members of the political opposition. **238** A December 2020 report by a communications company hired by the Ministry of Economy was leaked that unveiled the names, email addresses, and political positions of journalists and influencers deemed government detractors, as well as strategies to neutralize them. **239**

Reports that Brazilian authorities constantly monitor social networks have also emerged. In June 2020, the Ministry of Justice's Secretariat of Integrated Operations (SEOPI) allegedly produced a report on "Actions by Antifa Groups and Anti-Fascist Policemen." The secretive unit had monitored 579 federal and security officials and three university professors, all known to be critical of Bolsonaro's government, and further compiled dossiers consisting of names, photos, and social media accounts. **240**

Separately, in April 2019, the newspaper *Estado de São Paulo* reported that the government had hired a firm to monitor conversations about Bolsonaro on social networks. Services included identifying possible viral posts that would hurt the government and monitoring hashtags and commonly used words. How the data was being used remained unclear. **241**

In September 2022, the TSE contracted the private communications firm Partners Comunicação Integrada to provide social media monitoring services for one year as part of the court's efforts to remove online electoral disinformation (see B2, B3, and B5). As part of the contract, the company is to provide analysis of social media activities in Brazil and advise the court with monthly strategic action plans.

242

Despite the existence of several safeguards in the telephone interception law (No. 9.296/1996), there are concerns regarding their judicial interpretation and implementation. **243** Infiltration through online platforms and political monitoring of social networks by the government remain common practices. **244**

An October 2019 presidential decree established a Citizen's Basic Register (Cadastro Base do Cidadão), which consists of a centralized database of citizens' data, ranging from health records to biometric information, held by federal bodies. Permission from Brazilians to share their data among various federal agencies is not required, nor are they able to track their information. No limits were imposed on the sharing of citizens' health information, and the Central Data Governance Committee (CCGD), which regulates the register, initially lacked representatives from civil society, academia, and businesses. Critics have raised concerns that the register threatens privacy rights, in conjunction with existing surveillance technologies. ²⁴⁵ In September 2022, the Supreme Court upheld the decree but imposed certain data protection requirements on any sharing of personal data, in compliance with the LGPD. ²⁴⁶ It remains to be seen whether such conditions will be effective. The court also required that the CCGD be restructured to include members from outside of government. In November 2022, a new presidential decree was enacted, adding two civil society representatives to the committee; ²⁴⁷ a later decree by the Lula administration, in June 2023, after the coverage period, removed three executive branch representatives from the committee. ²⁴⁸

Brazil has no regulation on the use of malware for lawful surveillance practices. In a 2018 report by Citizen Lab, a Canadian internet watchdog, Brazil is listed as one of 45 countries worldwide in which devices were likely breached by Pegasus, targeted spyware developed by the NSO Group, an Israeli technology firm. Pegasus is known to be used by governments to spy on journalists, human rights defenders, and the political opposition, though whether the Brazilian government is a Pegasus client is unclear. In May 2021, media outlet UOL reported on interference from Councilman Carlos Bolsonaro, the former president's son, in the government's bidding process for Pegasus spyware. UOL sources reported that the councilman sought to reduce the military's intelligence powers by excluding relevant bodies from the negotiations, instead expanding the surveillance capabilities of the Ministry of Justice and the federal police, over which he held significant influence. ²⁴⁹ In March 2023, Brazilian newspaper *O Globo* reported that under the Bolsonaro administration, the Brazilian Intelligence Agency (ABIN) had used software called "First Mile," a tool provided by the Israeli company Cognyte, to track the location of cell phone users using information from cell tower transmissions. ²⁵⁰

Does monitoring and collection of user data by service providers and other technology companies infringe on users' right to privacy?

4/6

The Marco Civil imposes obligations on internet connection providers to keep records of their users' connection logs for 12 months, and for application providers to keep records of access for 6 months. ²⁵¹ In a landmark elevation of privacy rights, Brazilian lawmakers enshrined the protection of personal data in the constitution in February 2022. ²⁵²

Regulations decreed in May 2016 clarified security measures to be taken by providers regarding log-keeping, including how authorities must request users' data from intermediaries; the level of technical security said intermediaries must adopt to safeguard logs from being leaked; and other identification and security procedures to be undertaken by the professionals responsible for handling said data, such as the obligation for individual identification and the use of two-factor authentication. ²⁵³

Beyond the Marco Civil, Law No. 12,850/2013 on organized crime obliges telecommunications companies to retain data regarding the origin and destination of phone calls for five years. ²⁵⁴ Anatel resolutions also establish obligations on the retention of metadata by landline and mobile service providers. ²⁵⁵

Digital-rights advocacy organizations have largely supported recent data protection legislation. The LGPD was approved by Congress in August 2020, after significant delay, though sanctions for noncompliance in the form of monetary fines up to 2 percent of a company's revenue did not go into effect until August 2021. ²⁵⁶ The National Data Protection Authority (ANPD), the body in charge of enforcing the law, was given independent status in June 2022, per a provisional measure. ²⁵⁷ Congress enacted legislation codifying the provisional measure into law in October 2022. ²⁵⁸

In response to the April 2023 nationwide block of Telegram (see B1), chief executive Pavel Durov claimed that it would be "technologically impossible" for

the platform to comply with a court order to provide authorities with the personal data of certain neo-Nazi users on the app. ²⁵⁹

The most recent version of the fake news bill would expand data retention requirements. A December 2019 ruling of the Superior Court of Justice (STJ), while not binding, had decided that an internet application provider could be required to keep logical port data, which can be used to identify users, as long as this was technically feasible. ²⁶⁰ The latest draft of the fake news bill, from April 2023, would amend the Marco Civil to include logical port data as part of the connection and access records that must be retained by providers. ²⁶¹ It would also expand data retention mandates to have providers keep, for six months, the content that has been removed or restricted, along with associated metadata. ²⁶² Article 45 of the bill would further create an obligation that providers report to authorities whenever they have “knowledge of information that raises a suspicion that a life-threatening crime has or may occur.” The scope of such reporting obligations, and the degree to which it would require providers to monitor their users, is unclear.

C7 0-5 pts

Are individuals subject to extralegal intimidation or physical violence by state authorities or any other actor in relation to their online activities?

1/5

Threats, intimidation, and violence against online journalists and bloggers constitute a major restriction on freedom of expression and human rights in Brazil. In recent years, hostility against journalists and the media has escalated amid deepening political polarization. ²⁶³

Murders in potential retaliation for online speech, especially from journalists, are sometimes reported in Brazil. In June 2022, freelance British reporter Dom Phillips and Indigenous expert Bruno Pereira were killed after having disappeared while reporting on Amazon deforestation. ²⁶⁴ When they were murdered, Phillips and Pereira were conducting research for an upcoming book, ²⁶⁵ though Phillips regularly contributed to online outlets, including The Intercept. ²⁶⁶ As of June 2023, after the coverage period, the police had arrested and charged five people—all believed to be part of an illegal fishing operation on Indigenous lands—in connection with the two murders. ²⁶⁷ Digital journalists who report on the

Amazon region, including those who cover environmental issues and Indigenous rights, face considerable physical threats from criminal gangs. **268**

In February 2022, during the previous coverage period, Givanildo Oliveira was fatally shot by an unidentified individual. Oliveira was the founder and journalist of online outlet Pirambu News, which reports on local crime and policing on its website and social media pages; he had previously received threats warning him against publishing information on local criminals. **269**

Online journalists also commonly face other forms of physical violence in potential reprisal for their reporting. At least 16 journalists, including those who work for online outlets, were physically attacked or harassed on January 8, 2023, when Bolsonaro supporters launched an antidemocratic attack on the capital. **270** Rafaela Felicciano, a photojournalist for the digital outlet Metr  poles, reported that she was physically assaulted, and had her cell phone and memory card confiscated, by a group of Bolsonaro supporters as she attempted to cover the riots. **271** Prior to the election, in late September 2022, Datafolha, a polling institute with a significant online presence, reported that its employees had been targeted with over 40 cases of harassment and violence that month alone. **272**

Previously, in July 2021, journalist and cofounder of news site Moju News Jackson Silva was shot multiple times by two unidentified men hiding outside his home. Silva, who hosts a weekly news program posted on his outlet's Facebook and YouTube pages, was in stable condition after undergoing multiple surgeries. On the day of the attack, Silva had covered local arrests and anti-drug operations, among other topics, on his program. **273** Arson attacks against the homes and cars of online journalists, potentially in reprisal for their reporting, have also been recorded in recent years. **274**

Physical attacks, though frequently perpetrated by unidentified actors, have also been leveled by individuals associated with the state. **275** In May 2022, Alexandre Megale, a journalist and the founder of YouTube news channel Canal Sul das Gerais, was hit with rocks by a local city council member, causing Megale to briefly pass out. Megale reported that he believed the attack was for mentioning a 16-year jail sentence served to the official in a broadcast on his channel. **276**

Bolsonaro and his supporters have used social media to harass journalists, which intensified during the 2022 election campaign. An April 2023 report by press freedom watchdog RSF, which analyzed posts on Twitter between August 15 and November 14, 2022, identified more than 3.3 million attacks against journalists on the platform during that period, amounting to one hostile tweet every three seconds. ²⁷⁷ In July 2021, UOL journalist Juliana Dal Piva received a threatening text from Bolsonaro’s personal lawyer, Frederick Wassef, in which he called her an enemy of the homeland, among other insults. Though the message did not mention a specific piece of Dal Piva’s work, UOL’s podcast had published an episode that day containing parts of an interview she had conducted with Wassef for reports the website published on alleged corruption involving Bolsonaro and his family. ²⁷⁸ In June 2022, she was ordered to pay civil damages to Wassef for the “unauthorized” publication of the text in her UOL column (see C3). ²⁷⁹

Journalists who are women and members of the LGBT+ community in Brazil face heightened levels of online harassment and intimidation. A project by RSF and the Laboratory of Studies on Image and Cyberculture (Labic), a research center on the media at Brazil’s Federal University of Espírito Santo (UFES), tracked content targeting female reporters during the 2022 elections. It found that during the week of October 10–16, when Lula and Bolsonaro debated on TV, women reporters were particularly targeted on social media, often with gendered and sexualized insults. ²⁸⁰ A report by Abraji found that attacks in 2022 were up by 23 percent in comparison with the previous year (see B4); at least 145 gender-based attacks against journalists were recorded in 2022, many in the form of misogynistic or homophobic insults on social media ²⁸¹

C8 0-3 pts

Are websites, governmental and private entities, service providers, or individual users subject to widespread hacking and other forms of cyberattack?

2/3

Cyberattacks are frequent, and often target government institutions, public utilities providers, and businesses. Websites belonging to news outlets and civil society groups have been disrupted by technical attacks in the past. Brazil remained one of the Latin American countries most frequently targeted by cyberattacks in 2022. ²⁸²

Government institutions have experienced several notable cyberattacks in recent years. In April 2022, during the previous coverage period, the Rio de Janeiro finance department was hit with a ransomware attack. A ransomware group known as LockBit claimed to have stolen about 420 GB of data in the attack and threatened to leak the data if not given a payment. ²⁸³ In December 2021, the website of the national health ministry was targeted with a cyberattack, during which hackers took down several online systems, causing the government to delay the implementation of new health requirements for travelers entering Brazil. ²⁸⁴ Previously, in the weeks preceding the November 2020 municipal elections, the TSE's systems were the target of more than one attempted attack in what was believed to be an effort to discredit the institution. ²⁸⁵ One of the attacks resulted in a leak of the personal data of TSE staff. ²⁸⁶

The websites of investigative news outlets and rights organizations have also suffered sustained distributed denial-of-service (DDoS) attacks in the recent past. In March and April 2021, online women's rights news portal Portal Catarinas suffered a series of DDoS attacks that rendered the site inaccessible for several hours a day over the course of a week. On the day the attacks began, Portal Catarinas had posted a critical article about proposed legislation in the Senate to offer rape survivors money to forego an abortion. ²⁸⁷ The website of investigative news outlet and human rights organization Repórter Brasil was targeted by DDoS attacks from unidentified users for nearly a week in January 2021. The attacks forced the outlet offline multiple times, during which their general contact email also received two anonymous messages threatening continued attacks unless the outlet removed all reporting from 2003 to 2005. Their reporting from that time covered labor conditions, human trafficking, gold mining, and a hydroelectric plant. ²⁸⁸

Brazilian authorities have made some efforts to increase cybersecurity and invest more resources in overcoming current obstacles. Since 2008, Brazil has engaged in a multistakeholder debate to develop its cybersecurity agenda, which resulted in the opening of a National Cyber Defense Command and a National School for Cyber Defense, which prepares military personnel in the use of cybertools for the sake of national defense. ²⁸⁹

Footnotes

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- 4 ““TIC Domicílios – 2022 [ICT Households – 2022],” Regional Center for Studies on the Development of the Information Society (Cetic.br), 2022, <https://cetic.br/pt/tics/domicilios/2022/individuos/C16A/>.
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More footnotes



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Country Facts

Population

215,300,000

Region

Americas

Global Freedom Score

72/100

Free

Internet Freedom Score

64/100 **Partly Free**

Freedom in the World Status

Free

Networks Restricted

No

Social Media Blocked

Yes

Websites Blocked

No

Pro-government Commentators

Yes

Users Arrested

Yes

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