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## ABOUT US

The **International Journal of Open Governments / Revue Internationale des Gouvernements ouverts (RIGO)** is an academic journal created and edited by Irène Bouhadana and William Gilles at IMODEV, the Institut du monde et du développement pour la bonne gouvernance publique.

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**IMODEV** is an international, independent, non-profit scientific organization created in 2009 that promotes good public governance in the context of the information and digital society. This network brings together experts and researchers from around the world who, through their work and actions, contribute to a better knowledge and understanding of the digital society at the local, national or international level by analyzing, on the one hand, the actions of public authorities in the context of the regulation of the data society and the digital economy and, on the other hand, the ways in which digital public policies are implemented within public administrations and open governments.

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## ACCESS TO INFORMATION, TRANSPARENCY AND SOCIAL CONTROL IN BRAZIL

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The United Nations (UN) estimates that around 70% of the world population is going to live in cities up to the middle of the XXI century; fact that makes the theme of urbanization one of the most relevant topics of this century for countries with a major impact and those which are still poor and suffering with social inequality<sup>1</sup>.

In such context, it is urgent to transcend the static and spatial view of the cities to better understand it as a living and multi-factorial organism that overlaps the old cartography based on its territorial infrastructure. The new urban mapping arises from common interests that gather or differentiate the citizens, that challenges us to assess and question the model for making decisions in urban areas (governance), as well as one may design and manage the cities, as one implements and controls the local public policies.

The current challenges of the Fourth Industrial Revolution, that has its effects quickly widened by new technologies, have imposed a new political agenda to the States that see their hierarchical pillars and centralizers confronted. What was understood so far as innovator and modern in public administration and democracy has its origins in the end of XXVIII century, in the French Revolution and in the Independence of the United States. It is important to understand that we have been through disruptive times and we are able to break barriers and paradigms, including the ones in politics and management, in the states and the cities.

The State that centers the information, that acts exclusively in a hierarchical way, not responsive and extremely bureaucratic is in crisis, the same way that the sheer representative democracy is in crisis.

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<sup>1</sup> UN-HABITAT, 2017a; UN-HABITAT, 2017b.

The citizen, each time more *online*, is not a mere spectator anymore, they assume the author role in their lives, in the life of the cities and the countries. Such change of behavior of the citizen imposes the adoption of collaborative and participative instruments of information technology in order to reconnect the bond between the citizen and the State. As a consequence, the adoption of ample state transparency of public data, for amplified usage of the society is one of the structural grounds of these new disruptive times on the relation between State and society.

The technological and informational revolution, from the decades of 1970 and further, has granted a wide broadcasting of the so-called Information and Communication Technologies (ICTs) and it has remodeled the social structure in a fast pace, forming a new society, a net society, based on information. Such model, since then, is in the increase.

There has been a redefinition in the interpersonal relationships in society. The political systems of representative politics, as well as the authoritarian and autocratic models, have entered in a structural crisis of legitimacy, pulling themselves away from citizens more and more.

It is vital to move from the obscure, vertical and analogic administration and the subordinated and spectator citizen, to the horizontal e collaborative public administration and the digital and participative citizen who is author of the urban spaces and of the ways of living. The citizen becomes a solution agent, applying their talents in the equation of social problems. In the new democracy, the State is transformed in the power plant of innovation and partnerships. In this new logic, there is a search for collaborative economy and social innovation of great impact.

The revolution of information and communication technologies (ICTs) has been a promise in order to reach those objectives because besides allowing the integration of several administrative areas of the State and of the administrated objects, it also allows that the citizen, final objective of the whole state administration system, participates actively in its elaboration and control.

The Power that tends to exceed its limits should always be assisted and controlled. In this sense, the control of the political power must be contained and, when exceeded, it must be repressed, blaming the ones responsible and who are in power<sup>2</sup>.

With the technological revolution and accessibility to information, it is possible to present to society the public accounts easily. In this manner, accessibility and transparency of the public accounts become inherent principles to the Rule of Law from the State, starting from the XXI century. Ahead of its time, the Brazilian Constitution of 1988 set forth and granted those principles in various of its articles and it was followed, in the 30 following years, by several infra-constitutional laws, namely the ordinary law No. 12.527/2011 (Law of Information Access) and the complementary law No. 101/2000 (Law of Fiscal Liability),

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<sup>2</sup> SIRAQUE, 2009, p. 89.

altered by the complementary law 131/2009 (Law of Transparency).

In the Brazilian case, such laws are part of a process triggered by the re-democratization and the enactment of the Federal Constitution of 1988. The recent and most noted facts were the adherence of Brazil to: the Convention on Combating Corruption of Foreign Public Employees in International Commercial Transactions, the Organization for Economic Cooperation and Development - OCDE; the Inter-American Convention against Corruption, the Organization of American States - OES; the Convention of the United Nations against Corruption, adopted by the General Assembly of the United Nations on October 31, 2003, signed by the Brazilian Government on December 09, 2003 and enacted by means of the decree No. 5.687, from January 31, 2006 and the Open Government Partnership, in 2011.

The popularization of the access to mobile phones and consequently to the information networks, researches and data ended up making it feasible to enlarge the external control of the public administration, by the institutional controlling bodies and by all the society, especially in the cases related to the use of public money. The digital society has adhered to organization in decentralized networks that communicate fast and dynamically, allowing a frenetic transference and sharing of data, information and successful experiences.

Although control is one of the classic attributions of the State (as an institutional duty), as a rule, it is defective, especially in countries still stained by corruption and unbalanced among the three powers.

With the wide access to information, stemming from the principles of publicity, transparency and right of access to State data, the citizen may control public accounts in a neutral way searching for administrative morality, the good and efficient management of the public thing. The social control of Public Administration may improve budget management, especially in the local level.

In the Brazilian case, this new social manner has interfered in the State structure that has searched improvements in its management instruments and dialogue to modernize its system. One of the answers presented was the implementation of the electronic government for some State actions.

### **§1 – E-GOVERNMENT (E-GOV)**

While some classic social movements are fragmented, the global networks, accessed by the internet, have allowed an exchange among people, regions, countries, in accordance with the relevance of the themes processed in these global networks, according to a continuous flow of information<sup>3</sup>.

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<sup>3</sup> CASTELLS, 2010.

The current society has a new perspective in relation to the information, using it as a key element of all human activity<sup>4</sup>. Named Society of Information – mediated by computers, nets, apps and other technologies of information and communication – data exchange. Digital information produces knowledge and magnifies the social and organizational relations such as the relation between the citizen and the State.<sup>5</sup>

The accumulation of data, that may be transformed into information and knowledge, becomes a valuable asset and cannot be dismissible, such asset is, many times, more valuable than the currency officially generated in the economy of the States. Owning data has become the new face of wealth that may be definite for the maintenance of democracy or to formalize autocracy and authoritarian regimes of infinite power. Thus, regulation on property, access and usage of data is of significance importance in the current democracies.

Some countries, as is the case of Brazil, consider the theme of data property a matter of fundamental rights according to the article 5, lines XIV and XXXIII, of the Federal Constitution, responsible for the decision making of social players and the State itself. A public policy, a marketing strategy or a vacation trip depend on data, information that make people able to make a decision. By the way, information, besides being a valuable item, is power, in the sense that it is able to determine, according to the symmetry of information between a social player and another, the different decisions made in society.

Therefore, it is possible to affirm that a democratic State, for being classically the largest holder of data and information, must make them Available at a transparent way diluting the concentrated power and allowing the pursuit of its ends in partnership with Society. Although such text deals with governmental transparency and the resistance still in place of some countries<sup>6</sup> to make public data transparent, there is another relevant data that also needs to be studied which is how to regulate the immense quantity of data supplied by us, permanently, under the chance of having access to services, private giants of retail and information technology, as for example: FAANG (Facebook, Amazon, Apple, Netflix and Google); IBM and Google.

Returning to our previous idea, it is vital to say that the memory of Arendt<sup>7</sup>, for whom the totalitarian State has an ostensive and visible front, and that has little power, and an occult dimension whose power increases with its invisibility. According to such author, the true power starts where the secret begins.

In Brazil, the law of information access (Law No. 12.527 from 2011), in its article 3, establishes that it is destined to assure the fundamental right of access to information and it must be

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<sup>4</sup> *Ibidem*.

<sup>5</sup> GOUVEIA, 2004.

<sup>6</sup> HOOD, 2010; MICHENER, 2015; ROBERTS, 2006.

<sup>7</sup> ARENDT, 1973



executed in accordance with the basic principles of public administration. That is, the secret shall always be the exception in the Brazilian democratic State. Only in cases expressly predicted by law is it possible to have secret information as for example, justice secrecy, intellectual property, once transparency allows the citizen to exercise their rights and freedoms, among those, the right to monitor the State.

ICTs, in this way, have a relevant role in managing such contents, allowing its usage in a dynamic way, increasing the availability, transference and sharing among the interested ones.

It is not enough that the citizen have access to data, it is equally relevant that they may understand it, process it and reprocess it in order to monitor and propose new solutions and public policies for the solution of collective problems. The technological revolution allows the citizen to reuse data for new means and applications, its usage or adaptation. Thus, it is not the centralization of knowledge and information that characterizes this revolution, but the application of such knowledge to generate new usage and a cycle of innovation through its use<sup>8</sup>.

As it has been said, ICTs have little by little penetrated the most differentiated structures of the contemporaneous State, firstly used in strategic matters, defense and intelligence, then they were appropriated and developed by the private sector, to appear in sectors of administration and in the achievement of public functions. In the Brazilian case, it has been highly developed in the tax administration for tax returns and collection of taxes and then dissipated into other administrative activities.

In the Federal Government and in the capital of the member states, it is possible for the citizen to accomplish many requests and obtain public services in an electronic way. Electoral justice, with national and local electronic vote, also shows how much new technologies have been occupying space in the context of the Brazilian public administration but not without heated debate as for assurance for the data belonging to the user-citizen.

The electronic government also has the advantage of promoting more productivity and cooperation by integrating governmental sectors and spheres, substantially elevating the capacity to plan and make public information to society available for the population. Furthermore, it would establish a closer and more democratic relation with citizens and with the market. Such integration constitutes the essential interoperability to the *e*-government, being that the result of a government that shall be faced, not as the Executive Power (in cases of countries with presidential system) or with Public Administration structures, but with a greater meaning. The government shall be understood as “the body complex that institutionally has the exercise of power”<sup>9</sup>. Thus, the government constitutes the visible part of the State, considering it as a sovereign judicial system.

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<sup>8</sup> GOUVEIA, 2004; CASTELLS, 2010.

<sup>9</sup> BOBBIO; MATTEUCI; PASQUINI, 1998, p. 555.

In face of such ample definition, the government is nothing more than the externalization of State power, implicit in the sovereignty. According to Silva<sup>10</sup>, the State, that is a social structure, does not have a proper will, manifesting itself then by its bodies that demonstrate the human willingness of the public agents. The State Bodies are classified as follows: *supreme* (constitutional), that exerts the political power (government); and *dependent* (administrative), that is in a hierarchical plan below, forming the Public Administration. Therefore, the government is the “combination of bodies by means of which the State is formulated, expressed and accomplished, or the group of supreme bodies whose function is to exercise the *functions of the political power*”<sup>11</sup>.

As the group of Bodies perform functions of political power (legislative, executive and judicial), the government designs the guidelines to be followed by the other bodies of the State and the society as a whole. In order to amplify the exposed context, the government shall be interpreted and bodies that exercise political power (executive, legislative and judicial), added by the organizational structure of the Public Administration in its subjective meaning (“group of bodies and legal entities which the law attributes the exercise of the administrative function of the State”<sup>12</sup>)

In general, regarding definitions, there is no consensus among authors, it happens due to the fact that each educator has its own way of reasoning, makes a judgement of value over what is defined and ends up including or removing aspects of the object to be defined. It is not different from the concept of electronic government. Global literature presents the most varied definitions of such term.

The OECD<sup>13</sup> defines e-government as “the use of information and communication technologies, and particularly the Internet as tool to achieve better government”.

On the other hand, the electronic government, according to the definition of United Nations<sup>14</sup> consists of the use of information and communications technologies (ICTs), by the State, to bring services and information to the citizens, increase efficiency and effectiveness of public management and exponentially increase the transparency in the public sector, the delivery of accounts and the citizen participation.

But, for Bhatnagar<sup>15</sup>, the term *e-government* can be defined as “the use of emerging technologies for the process of reform for service rendering citizens’ engagement”. One should note that the focus of this definition is the result of the electronical government.

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<sup>10</sup> SILVA, 2011.

<sup>11</sup> SILVA, 2011, p. 108

<sup>12</sup> DI PIETRO, 2009, p. 57.

<sup>13</sup> OECD, 2003, p. 23.

<sup>14</sup> ONU, 2008.

<sup>15</sup> BHATNAGAR, 2009, p. 3.

If we adopt the ample concept of government, according to the above mentioned, the electronic government can be understood as a structural, qualitative, procedural and material update of the State functions and the Public Administration by means of use of information and communications technologies (ICTs).

It is easy to see that such phenomenon has been happening in the several spheres of the state power as: in the judicial function, with the gradual digitalization of the printed processes and the performance of decisions and electronic summoning of the parties in the lawsuit to amplify celerity, procedural savings and accessibility<sup>16</sup>; use of artificial intelligence to review jurisprudence and data analysis of accounting data in lawsuits and anti-corruption measures; in the executive power, the electronic auction has become the way to have a mandatory public purchase and there are many public services that could be requested or received electronically, as issuing of public deeds; in the case of the legislative power, portals such as “*e-democracia*” allow the creation of electronic forums for discussion and proposition of new laws.

It is important to state that *e-government* should be understood in the objective sense, not only as a government using information technology and communication with citizens, but as a government that through the adoption of technologies, transforms its internal and external procedures to the benefit of the population. This way, based on this very information, costs are diminished, information asymmetry is reduced or eliminated and the transparency and *accountability* are intensified, making it easy to advance as a society and promoting the economic and social development.

This way, *e-government* is not to be confused with governmental portals Available at the *internet*, because its meaning transcends being a mere electronic site.

The difficulty in defining the electronic government comes from the absence of limits of its actions, thus it can be seen as a tool to improve services and procedures, connecting several performances of the State in networks, besides being an instrument that promotes democracy and the values of citizenship. Based on such difficulty, *e-government (lato sensu)* can be interpreted in the following types<sup>17</sup>: a) *e-administration* (electronic administration): concerns the electronic mechanisms that act in the public service rendering for citizens and for companies. b) *e-democracy* (digital or electronic democracy): deals with the use of ICTs by the citizens to participate in a direct or indirect way in the political decisions, through the developments of new ways of

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<sup>16</sup> The Civil Procedure Code was reenacted by the Law n 11.419 from 2006 that added several instruments on electronic procedures (e. g. art. 221, line. IV “The quotation is made by: electronic means, regulated by its own law”). The Criminal Procedural Code was reenacted by Law 11. 719 from 2008 and 11.690 from 2008 that also included instruments on electronic procedures (e. g. art. 201, §3 “the communications to the injured shall be made in the address indicated, and it may be, by discretion of the injured one, delivered by *electronic means*”).

<sup>17</sup> VALDÉS, 2008.

participation and the formation of a new culture around the administrative activity. c) *e-government* (electronic government *stricto sensu*): being a more general and ambiguous term, englobes since the simple availability of documents in the *internet*, to the integration among bodies of the government, between citizens and government and between companies and government.

In an interaction perspective, electronic government refers to a process of reform in the way the State relates to itself. (G2G: government-to-government), with companies (G2B: government-to-business) and with citizens (G2C: government-to-citizen or government-to-consumer), modifying the way as it makes available the information and renders public service.

The electronic government attends the central principles of the Rule of Law from the State, in the typical principles of the public administration and in the proper principles of the participative democracy. Among these innumerable central principles of digital government, we highlight the principles of transparency, efficiency, participation and *accountability*.

This way, it is not the information technologies and communication the objective sought by the electronic government, but its usage added by the organizational reforms that allow a substantial addition in the rendering of public services, public policies and the exercise of democracy itself in its plenitude<sup>18</sup>

## § 2 – OPEN GOVERNMENT

The so-called Open Government concerns the release of governmental data, to ensure the full access to governmental information, and the break of barriers between citizens and government, when it allows that citizens may guide and offer opinion on plans to be taken by the government. As there is more transparency and more Available atformation, social control of agendas, choices, public policies and public accounts is generally easier.

Brazil is one, among eight founders of the global initiative to open the State, in search for citizen participation, for transparency, for efficiency and accountability. This movement aims at, among other aspects, the national development, the efficient service rendering of public services and the prevention and combating of corruption, by means of several actions structured on an action plan specified for each member State<sup>19</sup>.

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<sup>18</sup> Gouveia, 2004.

<sup>19</sup> Among the several announced commitments by the Brazilian government, we mention some: a) the Federal System of Information access, that has already had its base implemented; b) the Active Transparency of open data, that predicts specially the construction of *Data Warehouse* from the Transparency Portal, having a unique database, making it possible for a great optimization of the control process; c) the Social Participation and the Citizen Commitment, we highlight the First National Conference on Transparency and Social Control held in three spheres of the federation, enabling the discussion and deliberation over plans and guidelines of a National Plan for Transparency and Social Control; and d) the Budget Transparency and Public

Such initiative is called Partnership for Open Government (Open Government Partnership – OGP), that is formed by governments and by the civil society, it was initiated in September of 2011 and its founders have approved the Open Government Declaration, announcing concrete plans for actions<sup>20</sup>

The Brazilian State is committed to advance in the search for public transparency with the use of information technologies and communication, and with citizen partnerships, recognizing that new technologies allow a considerable material addition to the exercise of democracy.

With the decree from September 15, 2011 the National Action Plan was instituted related to Open Government, imposing several actions and measures that comply with the following rules: I – increase in the availability of information about the governmental activities, including data on expenses and performance of actions and programs; II – inducement to social participation in decision-making procedures; III – fostering the use of new Technologies in management and public service rendering that can induce innovation, strengthen public governance and increase transparency and social participation; and IV – improvement of transparency procedures and access to public information, and the use of technologies that support such processes.

The guidelines from the National Action Plan on Open Government clearly demonstrate the relevance on the use of information technologies and communication in the social control. The Open Government is a key feature in a digital democracy because it is only with the processes of transparency and access to public information that it is feasible to have the participation of the citizen in the decision-making procedures and power control in an effective way.

It is easily seen that there is a strong global movement<sup>21</sup>, but also an internal movement for a more transparent and accessible State. We live in a moment of oxygenation of the democratic dialogue and of the rigid state structure that slowly allows itself to increase the social participation and the due control of the state power.

The transparency and opening of the State present themselves based on principles of material legitimacy of the state power that must have visibility before the citizens and these, rescuing citizenship, influence, participate and control their own power through a relation of dialogue, based on the digital sphere.

It was also in the above mentioned decree that CIGA was instituted (Inter-ministerial Committee for Open Government) responsible for implementing and promoting the execution of

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Resources Management, with plan and actions inter-ministries, it aims to make data available and ease the access to the database. (OGP, 2011)

<sup>20</sup> OPEN GOVERNMENT PARTNERSHIP, 2011-.

<sup>21</sup> The majority of democratic States around the world already have laws the aim at the access to information. Brazil has published its law in 2011, together with El Salvador. Other countries from South America, such as Equator, Peru, Chile and Uruguay had already published national laws of access to information before 2010.

Open Government in the country. CIGA integrates secretaries, ministries and CGU (General Controllorship of the Union) in a group effort aimed at: I – the increase of transparency; II – the improvement of public governance; III – the access to public information; IV - the prevention and combat of corruption; V – the improvement of rendering public services and administrative efficiency; and VI – the strengthening of the public integrity.

Even with these recent actions, the Transparency Portal, kept by the General Controllorship of the Union (*Controladoria Geral da União* - CGU), body responsible for the internal control of the Brazilian federal government, was launched in 2004, what demonstrates a constant evolution process in search for public transparency and public assets defense. In addition, since 2000, the Brazilian government has been improving SIAFI (Financial Administration Integrated System) and it has created the portal *ComprasNet*, to ease the access to information on public purchases and its relation with suppliers, this measure reflects the relation G2B from the Brazilian Electronic Government.

However, it was in the year of 2009 that the Brazilian Electronic Government appeared, with the approval of the complementary law No. 131 that altered the complementary law No. 101 from 2000, with the compromise of the federal government becoming, more than accessible, also more open and transparent. The above mentioned complementary law has been called Law of Transparency because it has altered the sole paragraph from the article 48 and it has added the article 48-A to the Chapter IX, that sets forth rules on transparency, control and monitoring of public accounts. The article 48 of the referred law establishes: “Art. 48. These are instruments for transparency of the fiscal management, which shall be given ample broadcasting, including in electronic means of public access: the plans, budgets and laws on budget guidelines; accountability and its respective previous decision; the summarized report on the Budget Execution and the Report on Fiscal Management; and the simplified versions of these documents. Sole paragraph. The transparency shall be assured also with: I – incentive to popular participation and organization of public hearings during the elaboration process and plan discussions, laws on budget guidelines and budgets; II – release of full knowledge and follow-up from the society, in real time, of detailed information on the budget and financial execution, in electronic means of public access; III – adoption of integrated system of financial administration and control that has a minimum standard of quality established by the Executive Power of the Union and the guidelines from the art. 48-A. Art. 48-A. For the purposes referred in line II of the sole paragraph from article 48, the bodies of the Federation shall make available to any person or legal entity the access to information regarding: I – the expenses: all acts practiced by the managing units during the expense execution, at the moment of its accomplishment, with the minimum data referring to the number of the correspondent process, to the provided asset or to the rendered service to the

State, to the person or legal entity benefited with the payment and when it is the case, the bidding process performed; II – the income: the launching and receiving of all income of the management units, including in reference to extraordinary resources”.

From the simple Reading of referred articles, it is possible to see the main presence of information technologies and communication as instruments of the concentration of public transparency and social control, signaling the movement of the openness of the State, that has reached its apex in May 2012 with the coming into force of a Law No. 12.527, the law of Access to Information. Therefore, the State has the duty to foment and motivate the participation and the social control of the public accounts, not only in the elaboration of the budget, but also in the control of public expenditure.

This sought transparency is the implicit principle in the Federal Constitution, inherent to the democratic principle in the structure of the Brazilian State and concretized by the underlying principles of publicity, motivation and popular participation that request the production of rules based on the demands of the Rule of Law from the State<sup>22</sup>

More than the mentioned public movement in search for enhancement of transparency and digital democracy, the organized civil society is also acting in a way to allow the realization of these objectives. It is seen then, a converging movement of the State and of the social players that interact and complement each other, forcing the dialogical continuity.

The organized, autonomous and democratic civil society has become the active subject in the national political stage after the re-democratization process and promulgation of the Constitution of 1988, with the significant amplification of social organizations with themes that have started to figure as associations, councils, NPO and collective bodies. Even tough, it is the public policies council and the profusion of participative budgets in the municipalities that had been highlighted in these first years of democratic Brazil<sup>23</sup>.

With the digitalization and structuring in networks, new social players are appearing, actively participating of the construction of digital democracy. National Groups, such as *Transparency Hacker*<sup>24</sup> and the *Transparency Brazil*<sup>25</sup>, and international ones such as *Transparency International* and the *International Budget Partnership*, perform several projects in Brazil and actively dialogue with the state power, national and local. These projects, more than only

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<sup>22</sup> MARTINS JÚNIOR, 2010.

<sup>23</sup> AVRITZER, 2009.

<sup>24</sup> *Transparência Hacker* is a community, decentralized in the format of a network, composed mostly by programmers that create tools to release public data offered by the government in a more accessible and transparent way.

<sup>25</sup> *Transparência Brasil* is a non-governmental organization that had a vital role for the Law of Access to Information to be elaborated and approved. Currently, it permanently monitors the budget execution from the analysis of data from transparency governmental sites.

granting accessibility and assistance in search for transparency, they make available important tools of social control, above all public accounts. Without due transparency, the citizens would hardly be able to evaluate, monitor and control the execution of the public budget.

The Law of Access to Information is a relevant milestone in the consolidation of the country's democracy because it concretizes one of the central elements of the Democratic State: the transparency of the State. Among 112 countries of the world, that has a legislation of access to information in a clear and specific way, Brazil is in the 22nd place<sup>26</sup>, behind México and El Salvador, in the Latin America.

As spoken before, information is the base of planning and actions of citizens, companies and the very own state organization. That law comes to fill a great gap present in the Brazilian legal system, once it missed regulation to the fundamental right to information contained in the article 5, line XXXIII, of the Federal Constitution.

The article 3 of the above mentioned law states that the predicted procedures aim at assuring the fundamental right of access to information, having to be executed according to basic principles of public administration, making reference to, therefore, the article 37 of the Federal Constitution and within the meaning of the specified guidelines in the lines of the same article.

Attention must be given to the lines in the article 3: II – release of relevant information to the public interest, independently of the requests; III – usage of means of communication available by information technology; IV – promote the development of transparency culture in public administration; V – development of social control in public administration.

The line II creates the general duty of the public bodies and entities to provide and disclose in a place of easy access, information of public interest, independently of any type of request, that is, official report, constituting a manner of active transparency of the State. The paragraph 1 of the article 8 brings in its body the minimum of information that shall be released: I – register of competences and organizational structures, addresses and telephone numbers of the respective units and schedules for attending the public; II – registers of any lending or transference of financial resource; III – registers of expenses; IV - information concerning bidding procedures, including the respective notices and results, as well as all the signed contracts; V – general data for the follow-up of programs, projects, actions, constructions of bodies or entities; and VI – answers to the most frequently asked questions from society.

There is, therefore, a joint obligation of the State to render information, with the application of the law, not only to integrating bodies of the direct administration, but also to the autarchy, to the public foundations, to the partnerships of mixed

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<sup>26</sup> <http://www.rti-rating.org/country-data/by-section/>



economies, to the other entities directly or indirectly controlled by the Union, States, Federal Districts and Municipalities and to the non-profit private entities that receive any sort of public resource. It is then expected, this way, that the social control and monitoring of the use of public money become easy and enable a more participative democracy.

The line III of article 3 from the Law 12.527 demonstrates the preference for the use of ICTs in the widening of the access to the openness of the State, for the reason that, as it has already been explained, the inherent features of these technologies, besides allowing a speed access they also make it possible for a treatment and processing of information easily, which is essential to the effective social control of the State. For those and other characteristics, the legislator says that the public bodies and entities, as above mentioned, are to obligatorily disclose in official sites of the world networks of computers (*internet*) the public information of mutual and general interest.

These official sites are to attend the following requirements, among others: I – contain research tool that allows the access to information objectively, transparently, clearly and easily intelligible; II – enable the recording of reports in many electronic formats, including open ones and with no owners, such as tables and text, to ease the assessment of the information; III – enable the automated access by external systems in open formats, structured and intelligible by machines; IV – disclose in details of used formats for structuring the information; V – ensure the authenticity and integrity of the Available atformation to be accessed; VI – keep updated Available atformation to be accessed; VII – indicate place and instructions to allow the interested one to communicate, by electronic means or telephone, with the body or entity holder of the site; and VIII – adopt necessary measures to ensure the accessibility to content for disabled people, under the article 17 of the Law 10.098, from December 19, 2000 and the article 9 of the Convention on Disable People’s Rights, approved by Legislative Decree in 186, from July 9, 2008.

That is, it must be allowed that data and information are accessed in a simple way and can be processed and interpreted, creating concrete results and effective control. It is not enough, therefore, to simply make data and information available to record in formats that are not handled, but they must be open and convertible, and enable the automated access. Also, the bodies are responsible to keep the information updated and always available. But, the line IV sets forth the inducement to develop a culture of transparency in the public administration and is consequently the guideline towards its own administration represented by its own servants and managers, who, by means of educational measures, ought to internalize the culture of transparency, making it become a rule.

Finally, the line V completes the relation of dialogue between the State and the civil society (G2C) when it constitutes a duty to the

State the development of social control of the public administration by which the state organization itself motivates and educates the citizen for them to care, monitor and participate of its own management.

With the Law of Transparency and the Law of Access to Information, the Brazilian State mandates itself to enable the accountability by means of ICTs in an easy way for any citizen to exert control of the public accounts. That is active transparency because the information is clear, since the first moment for those who access it.

In this sense, when civil society accesses public accounts in open and analyzable formats, as predicted by Law 12.527/11, they can act in its control, effectively participating of democracy in its digital-participative manner; indirectly, by complaints to public official bodies, or directly to political counsels, administrative procedures and public hearings, able to amplify the public sphere in a way to assure that politicians are controlled more carefully<sup>27</sup>.

Thus, it is not enough that information is given, but its content has to be intelligible and interpretable. This way, the public accounts must have a transparency that reflects in three dimensions: publicity, intelligibility and utility for decisions<sup>28</sup>. The first element concerns the ample disclosing of data and information to the population by means of digital formats, that have low cost and allow its appropriation by the users. It is also included in the first element the timeliness, for the information must be supplied as fast as possible. The second element deals with the visual presentation (format) and language that has to be accessible to the target public. Finally, the information has to be relevant, possible to be compared (comparability), in order to be valued, and reliable, ensuring the veracity of what is disclosed<sup>29</sup>.

Based on these guidelines, it is possible that social control of the public accounts is made satisfactorily through information technologies and communication, constituting a milestone in the digital democracy in the country, founded on social participation and on the main principles of the Rule of Law from the State.

### § 3 – DIGITAL DEMOCRACY

The digital democracy (*e-democracy*) is among the main topics when discussing democracy and the State with information technologies and communication. There are several used terms to refer to digital democracy as *teledemocracy*, electronic democracy, *cyberdemocracy*. Regarding those terms, we follow the example of Hague and Leader<sup>30</sup> that use the term digital democracy, because the term brings with it the idea of electronic technologies and data digitalization that creates an interactive potential around ICTs.

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<sup>27</sup> CENEVIVA; FARAH, 2007.

<sup>28</sup> PLATT NETO, 2005.

<sup>29</sup> *Ibidem*.

<sup>30</sup> HAGUE, LEADER, 2005.

In the same line of thought as the electronic government, digital democracy is not only the use of ICTs in the political sphere, but a modification in the structure of the political relations dealing with State and citizens. Due to an operational and structural update of participative democracy, the digital democracy shortens the distance between the representatives the ones being represented, based on the principles of the citizens' sovereignty. It is necessary to recognize that the new applications of ICTs, when directing them to intensification of democracy, they arise out of a dialogical interaction between society and technology.<sup>31</sup>

This way, democracy develops new characteristics as interactivity, free digital association, wide participation and high degree of access to information. Also, in an extreme way, it englobes the participation of the "global village" in the democratic process for the fact that the networks of communication do not have a limit of territory in the state sovereignty, then participation is not restricted in the country, making it possible for new forms of "trans-democratic" dialogue so needed in the global scenery of the global village.

The digital democracy worries, on the one hand, with modifying the way the power is exerted, and on the other hand, with reconstructing the civil society in a more autonomous and participative way. In reality, there is no correct or wrong form to design the democratic system for the Era of Information, because democracy is a complex phenomenon, dynamic, alive and molded from the demands of a certain space and time.

The participative way of democracy does not void the classic system of representation, they co-exist, complement each other and legitimate each other in a way that there is proximity of the sovereign people in the communication process and the decision of the State. In this sense, Santos affirms<sup>32</sup>: "Coexistence implicates in an interaction, in several levels, of different formats of procedures, administrative organization and variation of institutional design." Moreover, the complementarity is the fact that the formats of social participation may substitute, although not completely, the representation process and the "deliberations as such the ones conceived in the hegemonic model of democracy"<sup>33</sup>.

Participation as the milestone to democracy was left aside during the XX century. The only role of the citizen was to vote periodically, renewing the political power, without feeling represented. "The fall of the legitimacy of legislative and executive bodies is evident, deep, irreparable in the current manner"<sup>34</sup>. Such search for legitimacy has to take priority, recomposing the citizenship and strengthening the democratic debate.

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<sup>31</sup> HAGUE; LOADER, 2005

<sup>32</sup> SANTOS 2009, p. 75

<sup>33</sup> SANTOS, 2009, p 76

<sup>34</sup> BONAVIDES, 2008, p. 18

Since the end of the XX century, the social and political popular movements have been modified, the way democracy has been exercised as well. The Constitutions each day more predict the instrument of participation of citizens in the public matters, gathering the sovereign popular willingness of the government, posing a higher degree of legitimacy to the decisions of the government.

Popular participation according to Britto<sup>35</sup> should be distinct from social control because the former is shared with the state political power stemming from popular sovereignty, able to create general judicial norms seen by all the collectivity, while the latter is subjective public right that does not participate of the elaboration process of judicial norm and, in fact, is justified by the current rules in the legal system.

Taking this position into consideration, Siraque<sup>36</sup> states that *social control* is an individual or collective act to monitor, care, examine, inquire and collect information on something. It is from the democratic canon that social control originates, based on the power emanated from the people, that is “the unstoppable thirsty for legitimacy of all powers”<sup>37</sup>, according to the Constitution, that says in the article 1, sole paragraph. It is within the popular participation, inherent to any material democracy, that social control fundamentals its base.

It is a fundamental right of the first generation, that is, citizenship right, right of freedom, political right acquired with the limitation of powers from the State. It is right-power: fundamental right and thus, eternity clause<sup>38</sup> with the guarantees from it; and power in the form of social participation. In this sense, social control is nothing more than “the effective exercise of democratic prerogatives from citizens before the authorities and institutions responsible for the public asset”<sup>39</sup>

Then, one cannot empty the meaning of social control and fill it with the concept of popular participation as political power. Social control does not come from rules, it is a fundamental right and besides that, it is the power of freedom of the people, therefore, it transcends Constitution.

Social control is, in his aspect, included in the concept of *accountability* that refers to the idea of control and monitoring of the public agents, decentralizing transparency of the State structure and substitution of traditional asset values for social values. The *accountability* is here together with the responsibility of those who occupy public functions for the results of their acts and performance<sup>40</sup>.

In the Brazilian Federal Constitution, *accountability* is implicitly present in many ways, *v. g.* in the efficiency principles and

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<sup>35</sup> BRITTO, 1992.

<sup>36</sup> SIRAQUE, 2009, p. 103

<sup>37</sup> BONAVIDES, 2008, p. 2

<sup>38</sup> Art. 60, § 4, line IV.

<sup>39</sup> GUEDES; FONSECA, 2007, p. 8

<sup>40</sup> CENEVIVA; FARAH, 2007, p. 131

disclosure of the article 37, in the beginning of the accounts rendering of the article 70, in the democratic principles and republican of article 1<sup>41</sup>.

Social Control presents itself as a format of vertical *accountability* when it establishes forms to monitor and control by the citizens and by the civil society on representatives and politicians, and it expresses an asymmetric relation of power that can be balanced with transparency and with the opening of the government to society<sup>42</sup>. This way of social control does not ends the electoral process. On the contrary, it adds an endless form of control means that tries to stablish new formats of participation of the society in the actions of the State.

Social control is an external control not institutionalized, exercised by participative society using it power-right; as to its purpose, it may investigate the merit (convenience and opportunity), or the legality of the act, because it has the purpose to monitor if decisions taken by the State are being executed in accordance with the legal system, not considering the superiority of Constitution<sup>43</sup>. The moment in which it is taken can be before, at the same time, or after once it may be exerted at any time by the society.

Bearing in mind the new law of information, one of the scopes of this new legal diploma is to develop and enhance, for the society, the social control of the Public Administration and, specially, the public accounts.

This way, social control appears, as other forms of control, as a means to monitor the acting of public agents in the management of the public assets. However, although this type of control stems from the very holder of the power, social control is still little expressive in the Brazilian context. Popular participation in the decision-making process of the public power and the social control are still not inherent inside the Brazilian culture. That is why it is important to have article 3, line V, from the Law 12.527. The Brazilian State is committed to creating a new culture of social control of the public administration, and thus stimulating, raising awareness and educating the civil society and the state bodies in the attempt for an effective social control.

This guideline, predicted in the line V of article 3 of the Law of Access to Information, obliges the Public Administration to use means of information, including ICTs to inform the population and its own internal administrative structure (intra-administrative education) on how to accomplish social control in the Public Administration.

Social control presents, this way, undeniable relevance in assuring integrity in the Public Administration, once it would be an external way to complement the control exercised by the powers intrinsically among themselves. Thus, the great importance of this

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<sup>41</sup> PASCOAL, 2006.

<sup>42</sup> CENEVIVA; FARAH, 2007..

<sup>43</sup> SIRAQUE, 2009

so-called social control is to ensure that society has a larger participation and performance before the authorities and representatives of the public system. The need of a control exercised by the civil society derives from the importance that the proper working of the *res publica* (public thing) presents for the people, representing the assurance of the effectiveness of their right before the administration of what is theirs. Bearing in mind that, the control exerted intrinsically by the three powers of the Republic is not enough to guarantee the legitimacy and the proper working of the Public Administration, it is up to the society to complete the monitoring of the power.

Therefore, when one speaks about the need for social control, one speaks about the need to assess and monitor public functions, having as the main player the society itself, holder of the power from the State.

Digital democracy, then, starts to be considered a solution to the deficiency of the liberal representative democracy for using technological instruments that allow the gathering of the civil sphere in relation to political sphere. Such model of democracy maintains the appearance of a semi-direct democracy as it annuls the political representation with the elections but it changes the gravity center of power to the sovereign people, complementing the representative system<sup>44</sup>.

Digital democracy may have five degrees, depending on the stage of participation achieved<sup>45</sup>. The most basic degree is the one that the citizen has access to public service (electronically) and access to more relevant information. This first degree is implemented in the majority of countries that has electronic government and is responsible for the reduction of costs in the administration and substitution of human bureaucracy for a “digital bureaucracy”, besides providing a more efficient management. It is possible to see, in the first stage, that the citizen does not have any type of effective participation, the flow of interaction has only one direction (G2C).

In the second degree, the State searches for the opinion of the citizens with public consultations, creating a flow of communication that has a vector from the government to the citizen (G2C), that is, the main initiative is of the state power that has certain level of “porosity” to the public opinion, but, different from the first degree the government receives some sort of *feedback*.

The third degree of the digital democracy is characterized by a great volume of *accountability* and of Available atformation to the citizen. The State acquires such elevated transparency and civil society acts intensely on the control of the political power. In this democratic stage, the search is for a publicity-transparency towards the strengthening of the citizenship.

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<sup>44</sup> BONAVIDES, 2008.

<sup>45</sup> GOMES, 2005.

In the digital democracy of a fourth degree, the State becomes extremely porous, the civil sphere does not only act in the control of the power but also participates of a production in the political decision, deliberating jointly with the political sphere with a net of electronic devices that allow the citizen to connect and intervene in the most differentiated areas of the public power, but the political sphere is still the key feature of the political representation.

Lastly, the fifth degree is represented by a regaining of a direct democracy in which the professional political sphere is substituted by a government of electronic vote in which the citizen does not only control the political sphere, but also produces political decisions that conduct the State.

The digital democracy worries, on the one hand, with changing the way power is exercised and on the other hand it reconstructs the civil society in a more autonomous and participative way.

#### § 4 – INDICATORS OF TRANSPARENCY

Even with the progress in Brazil related to the approval of specific legislation on transparency and implementation of federal public policies for transparency, recent studies from the General Controllershship of the Union that ranks the Municipalities of the states by their level of transparency on their legislations and specific portals.

The data collected by CGU is worrying, especially regarding the local sphere. Brazil is composed by the union (responsible for the federal government), 27 states, 1 Federal District (Capital of the Republic) and 5.570 municipalities. The federal Government and great part of the capitals from the states have a good level of transparency of their data and have their own legislation, complementary to the Federal legislation on transparency. But for the municipalities, data is not very exciting. In a valuation of 0 to 10 in an universe researched of 2328 municipalities, only 17,3% (403) of those had grades between 7 and 10, 12,8% had grades between 5 and 6 (299) and incredibly 52,3% (1626) had grades between 0 and 4,9. (General Controllershship of the Union)

It clearly shows that the majority of the Brazilian citizens live in the margin of a qualified access to public information public, even with an honorable law and relatively well set internationally, occupying the 22nd position among the 112 analyzed laws.

The study that analyzed the first five years of the application of the Law of Access to Information has observed the advances in public transparency in Brazil, but it still lacks improvement in municipalities and states. With few of them presenting official statistics on the request for information, as well as on the attendance.

The study points out that in the federal sphere, the attending deadline of the requests for information is usually done within the time stipulated by the law, which is of 20 days. It was also seen that the Public Ministry and the Judicial Power have

presented themselves as being little permeable to make statistics of such request available and it becomes difficult to analyse the real application of the law by those bodies.

The study shows the need to create a body to monitor the law implementation to grant access to information in the states and in the municipalities and of a specific platform to make requests to all spheres and powers. In addition, the study has demonstrated that the requests, when answered, few times are followed by clear and complete answers to the citizen<sup>46</sup>.

These studies converge with the analysis made in three large secretaries of the government from the state of São Paulo, (Health, Education and Public Safety), the richest and most populated in the Brazilian Federation, where it has been seen asymmetry in the flow and structure of surveying and supplying of public information, as well as a great concern with the respect for deadlines in detriment of the quality of answers to be given to the citizen<sup>47</sup>.

Studies show that although the approval of the law and the creation of great structures for transparency have been a great evolution to the country, they are still not sufficient to classify the Brazilian government in its three levels (federal, state and municipal) as having transparency (passive or active) as unofficial to the practices of inter-relation with citizens.

We have advanced significantly in the last twenty years but it is still necessary to amplify the spectrum of transparency in the flow of state procedures. The new technologies of information can be used to change such scenario, amplifying the expansion of public transparency public in order to reach the fourth or fifth degrees of digital democracy<sup>48</sup>.

## §5 – CONCLUSION

The growing world urbanization and the Fourth Industrial Revolution are relevant topics for the XXI century. The growth of cities shall have a great demand for public services and a greater social pressure for transparency of the States and citizen participation shall be amplified in the choice, execution and control of public policies. It is urgent to transcend the static and spatial view of the cities to understand them as a living organism, also multi-factorial that overcomes the old cartographies in its territorial infra-structure, and also to include the citizen in the decision-making process of control over state structures.

The new technologies have imposed a new political agenda to the States that see their hierarchical pillars e centralizers confronted. The citizens, every time more online, is not a mere spectator, assuming a role in the cities and countries. Such change in behavior of the citizen imposes the adoption of collaborative and participative instruments of information technology that retake

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<sup>46</sup> MICHENER, 2017.

<sup>47</sup> RAMALHO; CROZATTI; TONELOTTO; BLIACHERIENE, 2018.

<sup>48</sup> GOMES, 2005.



the bond between the person and the State. As a consequence, the adoption of full state transparency, for an amplified use of the society is one of the basis restructuring these disruptive times in the relation of State and society. In this sense, accessibility and transparency in public accounts are seen as inherent principles to the Rule of Law from the State. Ahead of its time, the Brazilian Constitution of 1988 accepted and assured these principles in its articles and it has been continued in the next 30 following years by several infra-constitutionals laws, to be named ordinary law No. 12.527/2011 (Law of Access to Information) and complementary law No. 101/2000 (Law of Fiscal Responsibility), altered by the complementary law 131/2009 (Law of Transparency).

These laws only make sense if the citizen is able to understand and process the information offered by the State, since the technological revolution permits the citizen to reuse the data for new purposes and applications, its updating or adaptation. Thus, it is not the centralization of knowledge and information that characterize this revolution, but the application of such knowledge for the generation of new applications, in a cycle of innovation through its use.

Brazil is one, among eight founders of the global initiative to open the State for Open Government Partnership – OGP), searching for the citizenship participation, transparency, efficiency and accountability. The Brazilian State has committed itself to advance in public transparency with the use of information technologies and communication, and with the citizen participation amplifying digital democracy.

Even with the improvement so far in Brazil as for the approval of specific legislation of transparency and the implementation of a federal public policy for transparency, recent studies from the General Controllershship of the Union, ranking the municipalities and the states for its level of transparency in their legislation and specific portals, show the inefficiency of official portals as for the passive or active transparency with the citizens.

Data disclosed by the General Controllershship of the Union worry, specially referring to the local sphere. The Federal Republic of Brazil is composed by the Union (responsible for the federal government), 27 states, 1 federal district (Capital of the Republic) and 5.570 municipalities. The federal government and a large part of its capitals and states keep a reasonable level of transparency of its data. As for the municipalities, data is not very exciting. In a valuation of 0 to 10 in an universe researched of 2328 municipalities, only 17,3% (403) of those had grades between 7 and 10, 12,8% had grades between 5 and 6 (299) and incredibly 52,3% (1626) had grades between 0 and 4,9.

It clearly demonstrates that a large part of the Brazilian citizens still lives in the margin of a qualified access to public information, even having an honorable law and relatively well set internationally, occupying the 22nd position among the 112 analyzed laws. Recent studies show that municipalities and states

present few official statistics on the requests for information, as well as its attendance and that the municipalities, in its majority, do not comply with minimum criteria of transparency.

The asymmetry in the flow of the designing structures of the transparency systems may induce the need for a centralized structure and superior to receive, follow-up and monitor the implementation of the law of access to information in the states and in the municipalities of Brazil.

It is a fact that the approval of the law and the creation of great structures for transparency have been a great improvement in the last ten years in Brazil, but it is still not enough to declare that what the Brazilian government has in its three levels (federal, state and municipal) is efficiently transparent. The new technologies may be the exit door to a milestone in turning such scenario, amplifying the space for public transparency for us to reach the fourth or even the fifth level of digital democracy, with large social participation.

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