

# Active transparency of the Brazilian Public Prosecutor's Office: from the perspective of information quality and availability

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## Abstract

**Objective:** This study aimed to analyze the active transparency of public prosecutor's offices at the state and federal levels, addressing a sample of institutional transparency websites and portals.

**Method:** Qualitative study and the development of an analytical instrument that considered provisions of the Law on Access to Information (LAI), resolutions, the guidelines of the National Council of the Brazilian Public Prosecutor's Office (CNMP), the Public Prosecutor's Office structural aspects, and the quality of information availability.

**Results:** a high level of compliance was found with the LAI's provisions, mainly related to budgetary matters. However, the Public Prosecutors' Offices failed to comply with most of the CNMP's specifications, such as resolutions, and when they complied, these were not available in open data.

**Contributions:** This study's primary contribution consists of the instrument of analysis proposed here and which can be used to identify the level of transparency of the Brazilian Public Prosecutor's Office. Additionally, many observations concerning changes the CNMP can incorporate to improve transparency levels are presented here.

**Keywords:** Administrative Accountability. Control. Law of Access to Information. Public Prosecutor's Office.

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## 1. Introduction

Accountability requires that public agents provide information and justify their actions before a forum that has the power to question and evaluate them and, if necessary, impose sanctions. In this context, transparency is a crucial element for adequate accountability, as it implies the obligation of public agents to provide information and records of their actions (Bovens, 2006; Schedler, 1999). The point of view usually analyzed in the literature is vertical or social accountability, which concerns the ability of members of civil society, such as ordinary citizens, stakeholders, charitable organizations, or other entities, to hold the State accountable for its actions (Bovens, 2006; O'Donnell, 1998). Transparency is also essential for the exercise of horizontal and administrative accountability though – i.e. when state institutions exercise control over other agents or independent state institutions and bodies external to the controlled organization (Bovens, 2006; O'Donnell, 1998) – which is increasingly necessary for a context of a highly bureaucratic state. Therefore, this study seeks to expand the analysis on transparency from this perspective, focusing on organizations in which members are not directly elected.

In Brazil, the Law on Access to Information – LAI (Law No. 12,527 from November 18<sup>th</sup>, 2011) is the primary legal framework regulating transparency and access to information, a fundamental right established by the Constitution. Bodies of the Executive and Legislative Powers are subordinated to the LAI, including Courts of Accounts, the Judiciary, and the Public Prosecutor's Office. Much of the literature focuses on the Executive branch though. We understand that transparency is crucial for effective social and administrative accountability of democratic institutions such as Public Prosecutors' Offices, which, as representative organizations, must be subject to control; hence, this study's object of analysis. In other words, even though the Public Prosecutor's Office is not composed of elected representatives, it must be subject to social and administrative control. The first control is verified from the society's perspective, and the second is mainly from the National Council of the Brazilian Public Prosecutor's Office (CNMP). In both cases, transparency is essential to be effectively implemented.

Focusing on active transparency, which comprises the regular and systematized dissemination of information, we analyzed a sample of institutional and transparency websites of Public Prosecutors' Offices in different regions of Brazil. The objective is to contribute not only to the analysis of the institution's compliance with the LAI but also to develop an instrument to collect information considering the resolutions issued by the CNMP, the structure of the Public Prosecutors' Offices, and what should be considered relevant when providing performance-related information via electronic means.

Standard cases were selected among those with similar and close to average institutional capacity, considering the number of members per 100,000 inhabitants, with one Public Prosecutor's Office per region and the Federal Public Prosecutor's Office. The following were selected for analysis: the Public Prosecutor's Office of Amazonas, the Public Prosecutor's Office of Goiás, the Public Prosecutor's Office of Rio de Janeiro, the Public Prosecutor's Office of Rio Grande do Sul, and the Public Prosecutor's Office of Sergipe.

Note that the Public Prosecutors' Offices analyzed here obtained high indexes on more consolidated aspects of transparency, such as budget, personnel management, and certain LAI provisions. However, low indexes were obtained regarding *CNMP* resolutions and issues related to internal control bodies and collections of judicial and extrajudicial proceedings, in addition to the poor quality<sup>1</sup> **of the data provided**. Although the *CNMP* makes an effort to standardize the active transparency of Public Prosecutors' Offices, the cases analyzed here failed to comply with some aspects. The Council's assessment instrument, the *Transparentômetro* [Transparence meter], does not assess all resolutions issued. Hence, we emphasize the importance of the *CNMP* to include in its criteria aspects related to open and public data, including the availability of information about internal control bodies and the distribution of processes.

In addition to this introduction, this paper discusses transparency and accountability and the importance of more analyses on the transparency of institutions with non-directly elected members. The second section presents dichotomous classifications of transparency and quality aspects that must be considered when providing data and information in the public sector, the methodology adopted, and how the index proposed here was developed. The results are systematized in the third section, and the final considerations are presented in the last section.

## 2. Transparency and accountability

The term "transparency" originated in the principle of publicity – a concept used by the classics of liberal thought to name what they considered a normative characteristic of the liberal-democratic State. Kant (2008) pondered that norms, policies, and decisions that must remain secret to be effective would no longer be considered moral. Moreover, for Bentham (2011), publicity was a mechanism to prevent the abuse of authorities' political power. Therefore, publicity is established as a mechanism to contain arbitrariness, favoring the citizens' control and working as an interface between those making decisions and the population in general.

Current literature distinguishes between the notions of transparency and publicity. While the first captures the notion of transparency as accessibility to information, the second indicates that information is being communicated and delivered to the population (Lindstedt & Naurin, 2010). In other words, it is not sufficient to divulge information; a transparent institution allows external and internal actors to form their own opinion concerning the institution's actions and processes based on what is observed in the information available (Lindstedt & Naurin, 2010). Transparency, therefore, allows an organization to become crystal clear from the perspective of those receiving the information.

Access to information is considered a human right provided for in the Universal Declaration of Human Rights since 1948, linked to freedom of expression. Since 1990, several countries and intergovernmental organizations have recognized access to information as a fundamental right and instrument for strengthening democracy (Mendel, 2009). Mendel (2009) points out that, in the same period, the disclosure of information became part of treaties of international organizations and recommendations of development banks and international financial institutions. In this sense, access to information can encourage political representatives to make better choices and public decisions, keeping alive the idea of active citizenship present in Tocqueville (1977).

<sup>1</sup> Quality aspects included the level of accessibility and usability of data, i.e., whether the structure of the available data ensures and facilitates understanding of the activity performed.

In political science and public administration, the notion of transparency is closely related to the concept of accountability. It constitutes a necessary, albeit not sufficient, aspect for realizing the latter (Bovens, 2006). According to Bovens (2006), the concept of accountability refers to the association between an actor and a forum, in which the agent is obliged to account for and justify his/her behavior. The forum can interrogate and evaluate him/her, which results in consequences for the actor. According to Schedler (1999), accountability has two crucial aspects: answerability, which requires public agents to provide information and justify their actions, and enforcement, which allows oversight bodies to impose sanctions on power holders who have violated their public duties. Based on these two definitions, it is evident that transparency is a crucial component of accountability, as agents must provide information and present records of their actions' outcomes and processes so that these can be evaluated (Bovens, 2006; Schedler, 1999).

The transparency of government acts is also a concept specific to democratic and republican governments, in which power must be exercised "without masks" (Bobbio, 2017; Sadek, 2010). From the point of view of institutional improvement, the availability of quality information is paramount to improve transparency (Michener & Bersch, 2013), in addition to mechanisms that allow internal control (Sadek, 2010) and the possibility of holding one liable if needed (Loureiro, Teixeira & Prado, 2008). As a result, democracy is qualified, and interactions between the State and society are strengthened (Cunha, 2019). Furthermore, it is an efficient strategy to stop corruption (Zuccolotto & Teixeira, 2019) and improves public policy performance (Rocha, 2011).

Bovens (2006) noted that transparency mechanisms are fundamental for exercising different types of accountability. Among them, three stand out as particularly relevant for the analysis in question: horizontal accountability, which is the control exercised by state institutions over other agents; vertical or social accountability, which refers to the control exercised by the people, stakeholders, charities, or other interested parties over the State (Bovens, 2006; O'Donnell, 1998); and administrative accountability, which consists of supervision and administrative and financial control conducted by independent and external entities or bodies (Bovens, 2006).

It is important to emphasize that even the institutions responsible for horizontal accountability must be subject to control and obliged to publicize their acts and the use of the public budget. Even though the literature on transparency mainly focuses on the Executive branch, all public entities and respective agents must assume such a responsibility. Regarding the second and third types, the importance of internal and external control bodies that oversee compliance with data transparency and can even punish institutions refusing to be transparent is highlighted. In this study, we highlight the importance of the *CNMP* in promoting administrative accountability and the institution's importance in controlling the active transparency of Public Prosecutors' Offices.

These issues become even more relevant in a highly bureaucratic State. Bureaucracy is a condition necessary to modernize society (Abrucio & Loureiro, 2018). However, it is also a risk to democracy, as part of public policy decisions is under the responsibility of bureaucrats, not elected by the people (Weber, 2015). The guarantee for unelected bureaucrats not to jeopardize democracy would be exercising their functions based on technical and non-partisan criteria. Since the second half of the 20th century, however, there has been an increased connection between public administration and the political world (Abrucio & Loureiro, 2018), i.e., a process of bureaucracy politicization. Based on a recognition that "bureaucracy in its various strata defends interests beyond merely technical decisions" (Abrucio & Loureiro, 2018, p. 30) and that bureaucrats decide the direction and design of public policies, it is possible to defend transparency as an accountability instrument in institutions formed by non-elected members, as is the case of institutions of the justice system.

For a long time, the literature on transparency only addressed budget transparency, and even then, it concerned the control performed over elected politicians. Zuccolotto, Teixeira, and Riccio (2015) show several analytical perspectives that can be adopted when dealing with the subject though. Nonetheless, in this paper, we propose changing the focus of analysis to include not only representative institutions or directly elected agents but also the Judiciary, the Public Prosecutor's Office, autonomous and decentralized public entities, public foundations, government-owned companies, and mixed private-public ownership companies. These entities are often underrepresented in analyses addressing this topic in Brazil but are also subordinated to the LAI. In other words, we will treat transparency as the availability of information concerning government-owned institutions or any institution that actively uses public resources for internal or external actors (Grigorescu, 2003).

In Brazil, the Federal Constitution of 1988 – an instrument of the re-democratization process – inaugurated the commitment to policies of transparency and access to information by providing, among citizens' fundamental rights and guarantees, *the right to receive information from public bodies regarding their private, collective, or general interests within the term of the law, under penalty of liability, except for the information that compromises the security of society and the State* (art. 5, item XXXIII, of the FC), in addition to the provisions of art. 37, § 3, item II, and art. 216, § 2, both of FC. Since then, important legal frameworks have been published, such as the Fiscal Responsibility Law (Complementary Law No. 101/2000), which proposes to regulate public accounts (Sacramento & Pinho, 2008), and the LAI, which aims to impose accountability and transparency in fiscal management on the Executive, Legislative, and Judiciary branches, Audit Courts, direct administration bodies, as well as Public Prosecutors' Offices, pursuing the planning, control, accountability, and transparency principles (Motta, 2008).

More than 20 years after the Federal Constitution, the LAI was sanctioned, the primary legal framework for transparency that regulated this fundamental right in Brazil. Additionally, it recognizes access to information as the rule and secrecy of information as an exception, establishing a deadline for responding to requests for access to information and providing a minimum list of information that must be proactively made available (Bairral, Silva & Alves, 2015). The LAI is imposed on all government bodies, including those in the justice system, such as the Public Prosecutors' Office.

Despite the law's scope equally concerning the three Powers of the Republican Pact, the bodies of the Justice system are resistant to the advance of transparency. Although Constitutional Amendment No. 45, from 2004, was approved in a context where there was a perception that mechanisms were needed for the internal and external control of the institutions in the Justice system, monitoring according to Article 19, in 2013 and 2014 (Article 19, 2014; Article 19, 2015), shows that the bodies of the Public Prosecutor's Office (Federal Public Prosecutor's Office, Public Prosecutor's Office of Labor, and CNMP) were among those with the worst performance compared to other bodies regarding the implementation of the LAI, in providing information both actively and passively. Moncau et al. (2015) also show the Brazilian Public Prosecutor's Office's low-level response to information requests.

Cruz and Zuccolotto (2020) show that the Courts of Justice analyzed present relevant deficits in transparency obligations provided for by Resolutions of the National Council of Justice and a lack of open data. They also highlight the importance of "an effective transformation of historically bureaucratic institutions into democratic institutions" (p. 19).

Nevertheless, the National Councils of Justice and the Public Prosecutor's Office have issued resolutions and guidelines to ensure greater transparency in federal and state units. Thus, it is necessary to verify compliance with the LAI and the Justice system's internal provisions intended to coordinate and ensure uniform information disclosure, mainly on institutional websites and transparency portals. Therefore, it means analyzing and verifying a specific type of transparency, i.e., active transparency. The following section presents transparency classifications and the importance of having quality data and information available.

### 3. Dichotomous Transparency Classifications

As previously mentioned, transparency is linked to the concept of accountability. In addition to this connection, Stiglitz (2002) states that public transparency is a fundamental mechanism to exercise democracy fully, as it allows citizens to freely access and use public data, encouraging and enhancing participation and social control over the State's actions.

The greater the possibility of accessing information, the better society can monitor government functions, which enables demanding accountability from the State and encourages the government to improve the quality of expenditures and public services (Zuccolotto & Teixeira, 2019). Thus, the ability and willingness of bureaucratic apparatuses to disseminate relevant data on policies, including decisions, results, and processes, are essential for social control (Hollyer, Rosendorff & Vreeland, 2011).

In this sense, the literature presents some dichotomous classifications regarding transparency, such as general or specific, direct or indirect, and active or passive (Oliveira, 2020). Hood (2007) defines the concept of transparency into these first four distinct types: general or specific and direct or indirect. General transparency concerns a society where no one can be anonymous, and privacy is impractical. However, in specific transparency, there is a separation between public and private life; hence, transparency applies only to the former, that is, to governments, organizations, and public servants.

This analysis is part of the concept of specific transparency, which can also be separated into direct and indirect (Hood, 2007). Direct-specific transparency concerns actions or outcomes the general public can observe. Thus, bureaucrats and political agents are observed by society regarding public activities – whether through public meetings, availability of information on transparency portals, public documents, and others (Oliveira, 2020; Hood, 2007).

On the other hand, specific indirect transparency refers to information mechanisms or reports that show actions or outcomes to agents or technical specialists only (Oliveira, 2020; Hood, 2007). Thus, the focus is on governance methods, institutional procedures and processes, and decision-making rules. This concept provides that public managers must report technical information to central or audit departments, inspection, and classification bodies (Hood, 2007).

Still, in the classifications of the concept of transparency, there is an active and passive dichotomy. Active transparency consists of the periodic and systematic dissemination of information on the State management. Thus, it results from the voluntary actions of public managers or legal obligations imposed on State bodies, determining that necessary and sufficient information is published so that society can assess government performance (Zuccolotto, Teixeira & Riccio, 2015).

In turn, passive transparency refers to the State's obligation to grant all citizens who require timely access to official documents, except those that are legally protected for reasons of national security, public investigation, or third-party rights, etc. (Zuccolotto, Teixeira & Riccio, 2015). Thus, both active and passive transparency concepts refer to access to information, either by supply or demand. Following is a summary table of the transparency classifications identified thus far.



Classification	Description	Theoretical Reference
General or specific transparency	<p><b>General:</b> privacy is impractical for all citizens;</p> <p><b>Specific:</b> public life is separated from private life; transparency only applies to governments, organizations, and public servants.</p> <ul style="list-style-type: none"> <li>- <b>Direct:</b> citizens observe actions or outcomes (public meetings, information available at transparency portals, etc.);</li> <li>- <b>Indirect:</b> reports and mechanisms that provide technical information to audit, inspecting, or classification departments.</li> </ul>	Hood (2007)
Active or passive transparency	<p><b>Active:</b> voluntary or mandatory (via legal regulation) periodic and systematic report of information;</p> <p><b>Passive:</b> information is provided to citizens upon request.</p>	Zuccolotto, Teixeira & Riccio (2015)

**Figure 1.** Dichotomous Classifications of Transparency.

Source: Developed by the authors.

Given the previous discussion, the concepts of specific direct, specific indirect, and active transparency will guide the analysis of information provided by the Public Prosecutor's Office online. Access to the information provided by bureaucratic entities has been transformed with the wide dissemination and use of information technology incorporated in Public Administration. Therefore, electronic government has become one of the primary means of promoting public transparency (Abdala & Torres, 2016). Hence, the active availability of public information on institutional websites and transparency portals allows for monitoring the use of public resources, as well as the actions of political representatives and bureaucrats (Ceolin, Almeida & Alves, 2016).

However, Gama and Rodrigues (2016) state that only the production and publication of information are insufficient to ensure transparency. Additionally, Vieira (2015) points out that the amount of information available does not necessarily represent quality information, as information must add value and generate knowledge. For this reason, citizens must be able to access, use, and understand the information available, and the information provided must communicate the real meaning it expresses to effectively promote transparency (Cruz, Silva & Santos, 2010). Therefore, here we consider how accessible and usable the information provided by the institutional websites and transparency portals of the Public Prosecutors' Offices is.

#### 4. Active Transparency and the National Council of the Prosecutor's Office

The CNMP's resolutions and recommendations determine how the public prosecutors' transparency portals should be organized. The *Comissão de Controle Administrativo e Financeiro (CCAF)* [Commission for Administrative and Financial Control] verifies compliance with the LAI on the transparency portals of all Public Prosecutors' Offices. The results are published periodically by the Transparency meter program on the National Council's website. This platform analyzes transparency aspects related to i) budget and financial execution; ii) bids, contracts, and agreements; iii) personnel management; iv) strategic planning; v) paycheck; vi) core activities; vii) contact of bodies and members; and viii) passive transparency reports.

The main CNMP resolutions dealing with active transparency in Brazilian Public Prosecutors' Offices are Resolution No. 86, from March 21<sup>st</sup>, 2012, which establishes the Transparency Portal of the Public Prosecutor's Office and other measures; Resolution No. 110, from June 9<sup>th</sup>, 2014, which provides for the mandatory disclosure of the list of cases distributed to each member of the Public Prosecutor's Office and institution's bodies; the disclosure of decisions issued by the collegiate bodies in the control of extrajudicial actions, given by Resolution No. 173, from July 4<sup>th</sup>, 2017; and Resolution No. 200, from July 10<sup>th</sup>, 2019, which determines the structure by which information regarding the breakdown of income of members and servants must be made available.

However, unlike the LAI, these resolutions do not consider issues of data quality and openness more broadly. Furthermore, although the Transparency meter is a vital mechanism implemented by the CNMP to verify and coordinate transparency matters, it does not consider essential issues raised in the index proposed here for calculating active transparency. These aspects mainly relate to the following: the collection of judicial proceedings, disclosure of data on extrajudicial and judicial proceedings, disclosure of justification for filing cases, any precedents or understandings consolidated by the Superior Councils, Colleges of Attorneys, or Coordination Chambers, and Review of the various branches of the Brazilian Public Prosecutor's Office, mandatory disclosure of lists with cases distributed to each member of the Public Prosecutor's Office or the institution's body, and relevant information on ombudsman and internal affairs departments.

It is also essential to consider that, except for issues related to internal control bodies, all the other points are contained in resolutions of the CNMP itself but are not evaluated by the CCAF, which is much more focused on structural issues than on information about of the Public Prosecutor's Office. The transparency index on internal control bodies, collegiate bodies, internal affairs, and ombudspersons shows a lack of information about the institution's leading positions and the little control of society over the body's performance. As we will see, the index proposed in this study considers, in addition to the provisions of the LAI and CNMP resolutions, aspects of the institutional structure of the Public Prosecution Service which are highly relevant to exert control over the institution.

## 5. Methods

The institutional portals and transparency portals of the Public Prosecutors' Offices were analyzed, considering the variables based on aspects defined by the LAI, CNMP resolutions, institutional aspects of the structure and performance of the Public Prosecutor's Office, and aspects of quality in the provision of information. It is important to note that the transparency portals are like a repository of information not necessarily available on the institutional portal, hence the differentiation between both. However, we chose not to be restricted to transparency portals, as institutional portals may also contain information about the variables analyzed.

Furthermore, we decided not to use previous methodologies to analyze active transparency, as the transparency assessment indexes are not designed for the structure of institutions in the justice system. The Public Prosecutor's Office has its own design and specific functions; hence, it is necessary to analyze the portals in light of the context of their institutional structure. Also, data already made available by the CNMP portal based on the Transparency meter project, were not used. Even though these have some aspects in common, the instrument used here adds relevant factors that deserve greater attention. On the other hand, the technical work prepared by the NGO Article 19 was considered an important reference to develop the form to collect data.

The following are the items considered in the analysis of active transparency in the Public Prosecutor's Office's portals and the justifications for including each.



Dimensions Analyzed	Justification
Collection of extrajudicial processes	Resolution CNMP No. 173, from July 4 <sup>th</sup> , 2017
Collection of court cases	Art. 16 CNMP Recommendation No. 58, from July 5 <sup>th</sup> , 2017
Summaries or understandings consolidated by the Superior Councils, Colleges of Attorneys, or Coordination and Review Chambers of the various branches of the Brazilian Public Prosecutor's Office	Resolution CNMP No. 173, from July 4 <sup>th</sup> , 2017
Mandatory disclosure of the lists with the processes distributed to each member of the Public Prosecutor's Office or body of the institution, according to the criteria of the resolutions.	Resolution CNMP No. 110, from June 9 <sup>th</sup> , 2014
Budget	Art. 8 <sup>th</sup> , § 1 <sup>st</sup> , items II, III, and IV, from LAI
Personnel management	Resolution CNMP No. 200, from July 10 <sup>th</sup> , 2019
Internal Control Bodies	Based on the institutional design of the Public Prosecutor's Office, on the Organic Law of the Public Prosecutor's Office (Law No. 8,625, from February 12 <sup>th</sup> , 1993), and on Constitutional Amendment No. 45/2004
Programs and Projects	Art. 8 <sup>th</sup> , § 1 <sup>st</sup> , item V, from LAI
List of declassified information made available in the last 12 months	Art. 30, item III, from LAI
List of documents classified in each degree of secrecy available, with identification for future reference	Art. 30, item III, from LAI
Institutional Information	Art. 8 <sup>th</sup> , § 1 <sup>st</sup> , item I, from LAI

**Figure 2.** Items analyzed and justification for their inclusion

Source: developed by the authors.

In this study, accessibility and usability of data are considered an aspect of quality, i.e., whether the information provided is structured and enables understanding of the body's activity. Based on this conception, the following quality dimensions were identified: i) the possibility of identifying all processes available without the need to conduct a specific search; ii) the possibility of searching for procedures according to the unit, member, police inquiries, issued recommendations or terms of adjustment of conduct; iii) information on extrajudicial procedures, the availability of procedures and actions in open data; iv) the possibility of downloading a database containing decisions and/or legal proceedings and actions; v) availability of budget execution on open data; vi) availability of statistical data in an open format on its performance and whether making inferences from the data available is possible; and vii) ease of access to information such as addresses, telephone numbers, and working hours.

Scores 0 (zero), 5 (five), and 10 (ten) were established for the cases in which the aspects were respectively not complied with, were partially complied with, and fully complied with, or only 0 (zero) and 10 (ten), depending on the item (see Annex A). Also, the same weight was considered for each item and sub-item. The following section presents the systematization and discussion of the results.

The quality dimensions were included as the LAI itself incorporates open data principles in its art. 8<sup>th</sup>, § 3<sup>rd</sup>, items II and III. Despite its importance, this is not the only way to measure quality since it is necessary to consider the accessibility of data and whether the information is usable or understandable.

Regarding the Internal Control Bodies dimension, information was analyzed on the General Internal Affairs of the Public Prosecutor's Office, whose functions are provided for by the Organic Law of the Public Prosecutor's Office (Law No. 8.625, from February 12<sup>th</sup>, 1993), and Ombudspersons, foreseen by the Constitutional Amendment No. 45/2004. The internal affairs offices play important roles, guiding and supervising the functional activities and the conduct of the Public Prosecutor's Office members. The Ombudspersons' Offices are responsible for receiving complaints and accusations against members or bodies of the Public Prosecutor's Office. Hence, they are essential bodies for the administrative control of the Public Prosecutor's Office, for the representation of the *CNMP* in the states, and, consequently, for internal and administrative control; therefore, information transparency is essential.

For the analysis of cases, a Public Prosecutor's Office was selected per region based on the number of members per 100,000 inhabitants. This measure was considered a proxy for state capacity. Here we understand state capacity as an essential organizational structure for governments to fulfill their tasks (Evans, Rueschmeyer & Skocpol, 1985) and the domain of technical and administrative attributes mobilized for state action (Grin, Demarco & Abrucio, 2021). Therefore, the number of members mirrors the Public Prosecutor's Office's administrative capacity – i.e., in addition to having technical knowledge, its members are responsible for performing a critical portion of these organizations' attributions. Also, the number of members per inhabitant measures the capacity to serve the population and deal with social demands. Based on data available from the *CNMP*, we selected the Public Prosecutors' Offices with a number of members per 100,000 inhabitants closest to the overall average (*CNMP*, 2022). Additionally, the Federal Public Prosecutor's Office (MPF) was included.

Thus, we selected typical cases based on the typology of case studies performed by Gerring (2008), that is, similar examples in terms of state capacity, making it possible to perform a preliminary analysis more representative of PMs' transparency level. Thus, in addition to the MPF, the Public Prosecutor's Office of Amazonas (MPAM), the Public Prosecutor's Office of Goiás (MPGO), the Public Prosecutor's Office of Rio de Janeiro (MPRJ), the Public Prosecutor's Office of Rio Grande do Sul (MPRS), and the Public Prosecutor's Office of Sergipe (MPSE) were selected.

## 6. Systematization of Results

The results of the analysis of active transparency on the institutional websites and the transparency portals of the Public Prosecutors' Offices of states and MPF indicate the heterogeneity of this aspect in the institution, even between units that present similar administrative conditions and significant differences between the items analyzed. A large discrepancy is found based on transparency in the collection of judicial and extrajudicial processes and mandatory disclosure, as shown in the table below:

Table 1

**Portal transparency index<sup>2</sup>**

Item	MPAM	MPGO	MPRJ	MPRS	MPSE	MPF	Mean
Collection of extrajudicial processes	6.1	5.6	5	6.7	5.6	5.6	5.7
Collection of court cases	0	0	0	2.5	0	7.5	1.7
Summaries or understandings consolidated by the Superior Councils, Colleges of Attorneys, or Coordination and Review Chambers of the various branches of the Brazilian Public Prosecutor's Office	0	10	10	10	0	0	5
Mandatory disclosure of the lists with the processes distributed to each member of the Public Prosecutor's Office or body of the institution, according to the criteria of the resolutions.	0	0	0	10	0	0	1.7
Budget	10	10	10	10	10	10	10
Personnel management	10	10	10	10	5	10	9.2
Internal Control Bodies	4	4	4	2	4	2	3.3
Programs and Projects	6.7	6.7	6.7	3.3	10	10	7.2
List of declassified information made available in the last 12 months	10	10	10	10	10	10	10
List of documents classified in each degree of secrecy available, with identification for future reference	10	10	10	10	10	10	10
Institutional Information	10	10	7.5	10	5	10	8.8
Quality	3.3	3.8	2.9	3.3	4.6	6.3	4
Overall mean	6.1	6.9	6.7	7.7	5.4	6.8	6.6

Source: developed by the authors.

Regarding extrajudicial action, the most significant difficulty of access is found in archived processes with justification. Regarding data quality, the absence of open databases hinders broader analyzes of the institution's performance. Regarding judicial action, data, in general, are not available on the institution's website, and when they are available, the information is incomplete or not in open data. Some websites direct the search for judicial proceedings to court websites; however, we do not consider this solution to be satisfactory since *CNMP* Resolution No. 58 from July 5<sup>th</sup>, 2017, is quite clear:

Art. 16. except for cases of secrecy, all judicial decisions granted and actions filed by the Public Prosecutor's Office must be disclosed, clarifying whether they are injunctions, subject to appeal, or definitive.

Still, the *MPRJ* and the *MPF* were the only ones to present a collection of lawsuits, even though the former did not meet any quality criteria. The completeness and quality of information are essential for understanding the context and scope of the organization's activities - which, in turn, is essential for horizontal and vertical accountability since extrajudicial and judicial instruments are of great importance in the Public Prosecutor's Office performance, mainly in the control it performs of public administration (Rodrigues & Oliveira, 2022).

The publication of precedents and other consolidated understandings, whose obligation is foreseen in the *CNMP* Resolution No. 173, from July 4<sup>th</sup>, 2017, is carried out by three of the bodies analyzed (*MPGO*, *MPRJ*, and *MPRS*), while the dissemination of processes distributed for each member of the Public Prosecutor's Office, provided for in the *CNMP* Resolution No. 110, from June 9<sup>th</sup>, 2014, is performed by just one institution (*MPRS*).

<sup>2</sup> Annex B presents the values according to sub-item.

The disclosure of budgets is highlighted and obtained the maximum index in all the Public Prosecutors' Offices analyzed, both in the mandatory dimensions and in the quality dimension. A potential explanation is that the topic stands out, and public opinion is mobilized regarding resource allocation. This topic is precisely related to the first phase of consolidation of the relevance of transparency as of Complementary Law No. 131/2009, which focuses on budgetary issues. Regarding personnel management, a high level of compliance was found regarding the items considered in the analysis.

The transparency index on internal control bodies, collegiate bodies, internal affairs, and ombudsperson offices shows the lack of information on the institution's leading positions and the little control of society regarding the body's performance. Such a situation contrasts with the theme of programs and projects, on which there is a controlled availability of information and poor data quality.

All institutions published updated declassified and classified data, provided for by art. 30, item III, of the LAI, showing excellent compliance with this device. As for the availability of institutional information provided for in art. 8<sup>th</sup>, § 1<sup>st</sup>, item I, of the LAI, most institutions provide good quality information.

Note that all items scoring above 7 and all those that obtained the highest index were expected; that is, the best-assessed items in the active transparency are derived from the LAI devices, except for the personnel management item, which scored 9.2. This qualification is opposed to the subjects regulated by the *CNMP*, such as the availability of judicial processes performed by the institution and the disclosure of processes distributed by members, which obtain, in both cases, an index equal to 1.7.

There is a noticeable asymmetry of transparency between the items related to the requirements foreseen by the LAI and the norms of the *CNMP*. Such asymmetry may be related to the Board's ineffective controlling instruments and the difficulty exercising administrative accountability. Deficiencies were identified in the Transparency meter, which does not consider essential dimensions to measure the transparency of Public Prosecutors' Offices, giving a barely apparent sensation of high-quality active transparency. The difficulty for the *CNMP* to exercise external control and enforcement over the Public Prosecutor's Office is not new in the literature, as highlighted by Kerche, Oliveira, and Couto (2020); the institutional design of the Council favors the independence of the Public Prosecutor's Office rather than accountability.

## 7. Final Considerations

This study aimed to assess the institutional and transparency portals of the Federal Public Prosecutor's Office and the Public Prosecutor's Office of Amazonas, Goiás, Rio de Janeiro, Rio Grande do Sul, and Sergipe. Future research may expand the analyses to all Federal and State Public Prosecutor's Office units.

Comparison between our results with those released by the *CNMP* through the Transparency meter reveals significant disparities. The items observed by the Board's analysis are mainly related to budgetary matters, personnel management, processes, and procedures; however, they do not consider the openness of data or the existence of a collection of lawsuits.

The worst results obtained in the index presented here are because the institutions do not adopt open data or only occasionally; the material would be more accessible and usable if data were open. Although the dimension concerning the comprehension of data on the part of citizens was not considered, except item 11.3<sup>3</sup>Data quality must be considered in any analysis of active or passive transparency since the mere availability of information is insufficient to ensure transparency.

3 Is information such as addresses, telephone numbers, and opening hours easily accessible?

It is also important to note that, although they follow the layout defined by the CNMP for transparency portals, the Public Prosecutors' Offices analyzed do not fully follow other resolutions that define the availability of a collection of extrajudicial and judicial processes, precedents, and understandings consolidated by the internal control bodies, and process distribution list. In the cases such norms are complied with, data are not open and do not present quality of availability according to the criteria defined in the collection instrument.

Although the CNMP showed some interest in coordinating active transparency on the websites of the Public Prosecutors' Offices, it is possible that, among the cases analyzed, this was not effective in all aspects. Furthermore, despite resolutions on the subject, the body does not consider the dimensions of quality and openness of data. This matter deserves more attention from the CNMP and the Public Prosecutor's Office under analysis. The lack of information about the internal control bodies and the distribution of processes stands out. This information is highly relevant for exercising control over the Public Prosecutor's Office but has been incompletely disclosed.

Even though it was not the focus of this study, future studies are suggested to analyze other means of communication, as these are also important to understand, for example, how Public Prosecutors use social media to provide information to the public. Viegas et al. (2022) performed this analysis for the case of the Federal Public Prosecutor's Office and identified that, despite the intense use of social media as a form of communication, greater participation in digital media did not confer greater public accountability or organizational transparency. Hence, the use of digital media does not ensure greater quality of active transparency on the institutional websites of the Public Prosecutor's Office analyzed.

Finally, we emphasize the importance of advancing studies examining the comprehensibility of published information beyond Public Prosecutors' Offices to contribute to the literature on transparency. Additionally, future studies can deepen the qualitative analysis of available information, expand the cases analyzed to all Public Prosecutors' Offices, and integrate the proposed index with the one already prepared by the CNMP and its capacity to perform accountability. Carrying out studies seeking to identify the reasons for the different levels of transparency in the states Public Prosecutors' Offices is also relevant.

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## Annexes

### ANNEX A

#### Data Collection Form

Code	Topic	Scores
1	Collection of extrajudicial proceedings	
1.1	Are those not involved in the process able to search for procedures?	0 - NO 1 - YES
1.2	Is it possible to look at all processes available without performing a specific search (e.g., by protocol)?*	0 - NO 1 - YES
1.3	Is it possible to search by unit, member, police inquiries, issued recommendations, or terms of conduct adjustment?*	0 - NO 0.5 - PARTIALLY 1 - YES
1.4	Is it possible to access archived processes (with justification for archiving)?	0 - NO 1 - YES
1.5	Is it possible to access the entire content of the opinion reports?	0 - NO 0.5 - PARTIALLY 1 - YES
1.6	Is there other information available, such as subject, parties, completeness of decisions and procedures, member, and position of the person responsible for the process?*	0 - NO 0.5 - PARTIALLY 1 - YES
1.7	Are the decisions handed down by the collegiate bodies of the Public Prosecutor's Office assigned to the control of purposeful extrajudicial action published?	0 - NO 1 - YES
1.8	Are procedures and decisions available in an open format?*	0 - NO 1 - YES
1.9	Is it possible to download a database containing decisions and/or procedures?*	0 - NO 1 - YES
2	Collection of court cases	
2.1	Are court decisions filed by the Public Prosecutor's Office published on the website?	0 - NO 1 - YES
2.2	Is there other information available, such as theme, third parties, completeness of decisions and procedures, member, and position of the person responsible for the process?*	0 - NO 1 - YES
2.3	Lawsuits filed by the Public Prosecutor's Office are available in an open format?*	0 - NO 1 - YES
2.4	Is it possible to download a database containing the actions?*	0 - NO 1 - YES
3	Are any precedents or understandings consolidated by the Superior Councils, Colleges of Attorneys, or Coordination and Review Chambers of the various branches of the Brazilian Public Prosecutor's Office also published?	0 - NO 1 - YES
4	Mandatory disclosure of the lists of cases distributed to each member of the Public Prosecutor's Office or body of the institution, according to the criteria of the resolutions.	0 - NO 1 - YES
5	Budget	
5.1	Records of any transfers or transfers of financial resources	0 - NO 1 - YES
5.2	Expense records	0 - NO 1 - YES
5.3	Information concerning bidding procedures, including the respective notices and results, as well as all contracts	0 - NO 1 - YES
5.4	The budgetary execution of the Public Prosecutor's Office is available in open data?*	0 - NO 1 - YES
6	Personnel management	

Code	Topic	Scores
6.1	Compensation of members and servants	0 - NO 1 - YES
6.2	Is information available on the members of Superior Councils, Colleges of Attorneys, Coordination and Review Chambers?	0 - NO 1 - YES
7	Internal Control Bodies	
7.1	Information about Internal Affairs	
7.1.1	Possibility of monitoring the internal affairs department's concluded processes available to the public, including the content of decisions	0 - NO 1 - YES
7.1.2	Activity Reports	0 - NO 1 - YES
7.1.3	Repair and inspection reports	0 - NO 1 - YES
7.2	Information about the Ombudsperson	
7.2.1	Activity Reports	0 - NO 1 - YES
7.2.2	Possibility of monitoring completed Ombudsman processes available to the public, including the content of decisions	0 - NO 1 - YES
8	Programs and projects	
8.1	Strategic planning released	0 - NO 1 - YES
8.2	Studies and statistical surveys on its performance are made available	0 - NO 1 - YES
8.3	Are statistical data on performance available in open data? Is it possible to make inferences from the data available?*	0 - NO 1 - YES
9	The list of declassified information in the last 12 months is available	0 - NO 1 - YES
10	List of documents classified in each degree of secrecy available, with identification for future reference	0 - NO 1 - YES
11	Institutional Information	
11.1	Records of competencies and organizational structure	0 - NO 1 - YES
11.2	Addresses, telephone numbers, and business hours of the respective units	0 - NO 1 - YES
11.3	Is information such as addresses, telephone numbers, and business hours easily accessible?*	0 - NO 1 - YES
11.4	Answers to society's frequently asked questions	0 - NO 1 - YES

\* Quality dimension

Source: developed by the authors.

## ANNEX B

**Results according to Public Prosecutor's Office and sub-item**

Code	Dimension	MPAM	MPGO	MPRJ	MPRS	MPSE	MPF
1	Collection of extrajudicial proceedings						
1.1	Are those not involved in the process able to search for procedures?	1	1	1	1	1	1
1.2	Is it possible to look at all processes available without performing a specific search (e.g., by protocol)?*	1	1	1	0	1	1
1.3	Is it possible to search by unit, member, police inquiries, issued recommendations, or terms of conduct adjustment?*	0.5	1	1	1	1	1
1.4	Is it possible to access archived processes (with justification for archiving)?	1	0	0	1	0	0
1.5	Is it possible to access the entire content of the opinion reports?	0.5	0.5	0	1	0.5	0.5
1.6	Is there other information available, such as subject, parties, completeness of decisions and procedures, member, and position of the person responsible for the process?*	0.5	0.5	0.5	1	0.5	0.5
1.7	Are the decisions handed down by the collegiate bodies of the Public Prosecutor's Office assigned to the control of purposeful extrajudicial action published?	1	1	1	1	1	1
1.8	Are procedures and decisions available in an open format?*	0	0	0	0	0	0
1.9	Is it possible to download a database containing decisions and/or procedures?*	0	0	0	0	0	0
2	Collection of court cases						
2.1	Are court decisions filed by the Public Prosecutor's Office published on the website?	0	0	0	1	0	1
2.2	Is there other information available, such as theme, third parties, completeness of decisions and procedures, member, and position of the person responsible for the process?*	0	0	0	0	0	0
2.3	Lawsuits filed by the Public Prosecutor's Office are available in an open format?*	0	0	0	0	0	1
2.4	Is it possible to download a database containing the actions?*	0	0	0	0	0	1
3	Are any precedents or understandings consolidated by the Superior Councils, Colleges of Attorneys, or Coordination and Review Chambers of the various branches of the Brazilian Public Prosecutor's Office also published	0	1	1	1	0	0
4	Mandatory disclosure of the lists of cases distributed to each member of the Public Prosecutor's Office or body of the institution, according to the criteria of the resolutions.	0	0	0	1	0	0
5	Budget						
5.1	Records of any transfers or transfers of financial resources	1	1	1	1	1	1
5.2	Expense records	1	1	1	1	1	1
5.3	Information concerning bidding procedures, including the respective notices and results, as well as all contracts	1	1	1	1	1	1
5.4	The budgetary execution of the Public Prosecutor's Office is available in open data?*	1	1	1	1	1	1
6	Personnel Management						
6.1	Compensation of members and servants	1	1	1	1	0	1

6.2	Is information available on the members of Superior Councils, Colleges of Attorneys, Coordination and Review Chambers?	1	1	1	1	1	1
7	Internal Control Bodies						
7.1	Information about Internal Affairs						
7.1.1	Possibility of monitoring the internal affairs department's concluded processes available to the public, including the content of decisions	0	0	0	0	0	0
7.1.2	Activity Reports	1	1	1	0	0	0
7.1.3	Repair and inspection reports	0	0	0	0	1	0
7.2	Information about the Ombudsperson						
7.2.1	Activity Reports	1	1	1	1	1	1
7.2.2	Possibility of monitoring completed Ombudsman processes available to the public, including the content of decisions	0	0	0	0	0	0
8	Programs and Projects						
8.1	Strategic planning released	1	1	1	1	1	1
8.2	Studies and statistical surveys on its performance are made available	1	1	1	0	1	1
8.3	Are statistical data on performance available in open data? Is it possible to make inferences from the data available?*	0	0	0	0	1	1
9	The list of declassified information in the last 12 months is available	1	1	1	1	1	1
10	List of documents classified in each degree of secrecy available, with identification for future reference	1	1	1	1	1	1
11	Institutional Information						
11.1	Records of competencies and organizational structure	1	1	1	1	0	1
11.2	Addresses, telephone numbers, and business hours of the respective units	1	1	1	1	1	1
11.3	Is information such as addresses, telephone numbers, and business hours easily accessible?*	1	1	0	1	1	1
11.4	Answers to society's frequently asked questions	1	1	1	1	0	1

Source: developed by the authors.