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TRANSPARENCY OVERVIEW IN BRAZIL
PART 1: MANDATED TRANSPARENCY [Executive Version]

1. INTRODUCTION

1.1. Definitions and Historical Evolution of Transparency

Transparency is studied across various areas such as management, public relations, policy, and finance, and is seen as a fundamentally positive feature of relationships. Such dispersion of perspectives also grants transparency some messiness and imprecision as a concept, thus making it difficult to frame. We develop this Overview grounded on a conceptualization of transparency as two complementary perspectives: *verifiability* and *performativity*, in line with the work by Albu and Flyverbom (2019).

The first perspective, *verifiability*, frames transparency as information sharing and focuses on increased disclosure of information. Studies in this area typically measure transparency as the quantity, frequency and relevance of information disclosure (Albu & Flyverbom, 2019; Berglund, 2014). The verifiability perspective centres its focus on a focal company[1] acting as the sender of information and their strategic choices concerning relevance of information, identification of the right audiences, and how to communicate adequately. In other words, this perspective emphasizes an one-way flow, from sender to audiences (Albu & Flyverbom, 2019; Williams, 2005).

We ground *transparency* in two complementary perspectives: *verifiability* (the degree of information disclosure measured as quantity, frequency and relevance) and *performativity* (transparency as a complex processes rife with tensions and negotiations).

The second perspective, named as *performativity*, conceptualizes "transparency as complex communicative, organizational, and social processes rife with tensions and negotiations" (Albu & Flyverbom, 2019, page 277). Such complexity may lead to unintended consequences, such as focal companies that lead the way towards transparency, but disclosing partial information, attracting more criticism than those 'flying below the radar' and not disclosing any information. These dynamics processes influence and are influenced by subjects, objects and relations of the ecosystem. *Subjects* are those involved in the interpretations and enactment of the transparency initiatives, such as the companies themselves, but also regulators, non-governmental organisations (NGOs), etc. *Objects* are artefacts that actively mediate and manage the resulting transparency, such as corporate reports, websites disclosing information, and mandated reports. Finally, the institutional environment represents the loci of transparency initiatives such as virtual networked organizations and transnational institutions, such as the Global Reporting Initiative and the Carbon Disclosure Project. These initiatives offer the setting for relationships between subjects and objects to emerge. The performativity perspective suggests that all these components need to be jointly examined in order to fully understand transparency. Subjects, objects, and the institutional environment are "entangled in socio-material practices" that seek to produce more transparency.

[1]As this research focuses on private companies and their processes of transparency, we use the term **focal company**. This term is used in research in areas such as marketing, supply chain management, etc where private companies [and their decisions] are usually at the centre of the research.

Therefore, this research stream theorizes successful transparency processes as those that can emulate transformative capabilities, influencing the ecosystem (Albu & Flyverbom, 2019).

In **Figure 1**, we present a summary of the diversity of components that form the perspective of transparency-as-process, inspired in the performativity perspective.

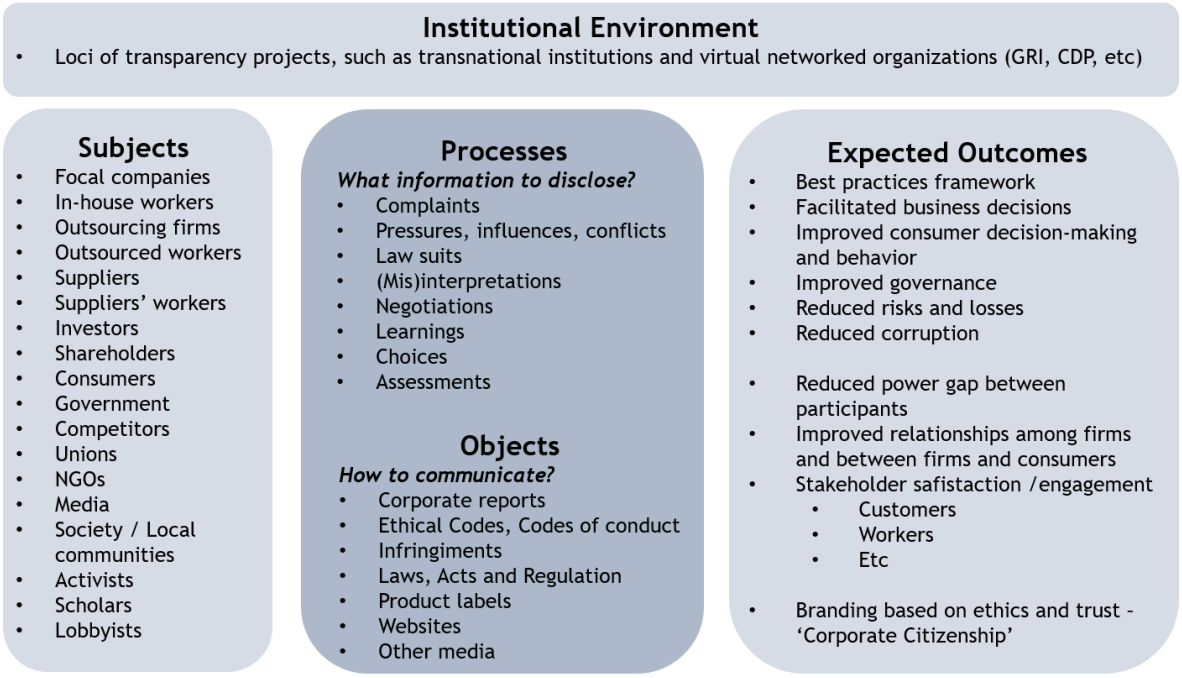

Figure 1: Transparency-as-Process Framework [Source: The Authors]

Concepts and approaches related to transparency have evolved over time, mainly influenced by sociocultural changes. Fung, Graham, and Weil (2007) pointed out three generations of transparency policies which evolve in combination. The first generation is labelled as 'right-to-know' policies, which started around 1960, and focused on expanding public access to governmental information. The second generation has been called 'targeted transparency', which we here refer to ***mandated (or mandatory) transparency***, encompassing the mandated public disclosure of specific information by companies. The main idea of ***mandated transparency*** is that the government can reduce hazards for society and improve social welfare by making companies reveal hidden flaws and risks. Finally, the third generation is labelled as 'collaborative transparency' and it occurs when citizens and society trigger transparency processes. This **Part I of the Transparency Overview** is focused on ***mandated transparency***, whereas Part II will focus on voluntary transparency, including collaborative initiatives.

The main idea of *mandated transparency* is that the government can reduce hazards for society and improve social welfare by making companies reveal hidden flaws and risks. *Mandated transparency* is the focus of this Transparency Overview, Part 1 Mandated.

The historical perspective in the work of Fung and colleagues (2007) summarised above calls attention to a transition in understanding of transparency, from predominantly based in verifiability [information disclosure expectations and demands], to increasingly process-based, showing that the

dynamics of mandated transparency are full of complexities and multi-directional between companies, citizens, government and others; therefore, aligning with the performativity perspective. There are pressures, negotiations and conflicts among different subjects, due to which, ***mandated transparency*** always represents a compromise and may also have unintended consequences. Recognizing the need to understand relationships between multiple subjects and their complexities are typical of the performative perspective.

Mandated transparency results from Governmental action since it is the only subject capable of legislating and compelling companies to disclosure information. Public policy may have the power to generate helpful information for people to use in their everyday decisions. It is expected that mandated transparency will trigger an action cycle where companies will increase information disclosure; which then will be perceived by consumers, NGOs, society more broadly that will be able to eventually change their choices and behaviour [e.g. in particular, consumers may shift to ethical, safer and/or healthier products and services]; and ultimately exposed companies [specially those avoiding adherence to mandated transparency] will perceive consumers' positive response and reinforce further transparency (See Figure 2). In parallel, companies lagging behind in terms of transparency may receive negative feedback and be compelled to change as well. Thus, consumer behaviour often rewards transparency, while stimulating competition (Fung et al, 2007).

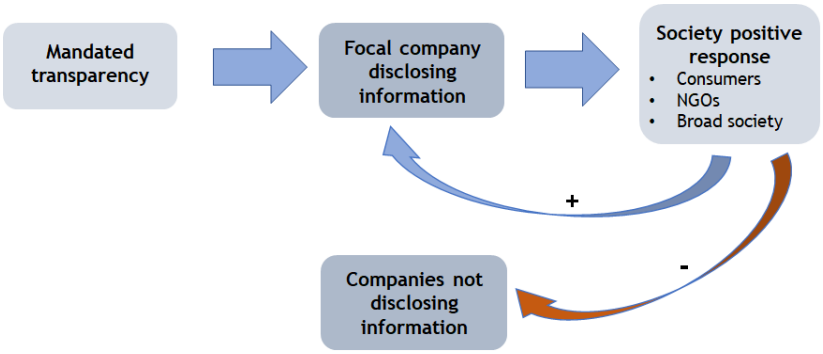

Figure 2: Transparency reinforcing action cycle [Source: The Authors]

Unfortunately, mandated disclosure policies are not always successful due to obstacles such as goals conflicts, misinterpretations, and companies' attempts to avoid the costs of compliance. Therefore, the conception of mandated transparency policies must be grounded on the understanding of the decision-making processes of the involved stakeholders, including goal setting, values, capabilities and interests of both disclosers and users. The disclosed information should fit to the existing decision-making routines of both disclosers and users, considering adequacy of time and place [objects and institutional environment]. Even after enforcement of the public policy, adherence needs to be assessed overtime and to be adapted to an ever-changing landscape (Fung et al, 2007).

1.2. Supply Networks as key to Transparency

We live in an era in which many companies operate through highly complex and globalised supply networks. We here refer to the term ***supply network***, instead of the most commonly adopted counterpart supply chain, as a supply network encompasses not only the linear supply chain of materials suppliers, but also relationships between the focal company and other entities such as third-party logistics, consultancy firms, as well as non-linear relationships such as suppliers interacting without the purview of the focal company (Marques, 2019). Focal companies "have been more and more exposed to liabilities caused by unsustainable behaviour from suppliers in their

globally dispersed supply network" (Marques, 2019, p. 1164). Supplier unsustainable behaviour can range from inadequate working conditions to modern slavery, or from excessive carbon emissions to triggering natural disasters. In a scenario where competition takes place not between individual companies, but rather between supply networks, a focal company is deemed to be no more sustainable than its suppliers. A number of focal companies have suffered reputational and economic loss as a result of media exposure of the unsatisfactory ethical and/or environmental performance of their suppliers. Critical events, such as the 2013 Rana Plaza garment factory collapse in Bangladesh killing over 1,000 workers, have led to an increase of pressure from a multitude of stakeholders such as NGOs and activist groups (Marshall, McCarthy, McGrath, & Harrigan, 2016).

As a result, focal companies are increasingly devoting attention on how to manage the diversity of external stakeholders who demand information that frequently exceeds what the company is legally obliged to disclose, particularly regarding their extended supply network (Marshall et al., 2016). Despite the pressures to disclose information, the reality is that most focal companies have very limited visibility of their supply networks as well as "a poor understanding of their capabilities for capturing and reporting this information, and have not overtly considered their supply chain [network] information disclosure strategy" (Marshall et al., 2016, p. 37). Technology advancements can support supply network transparency including data collection technologies [barcodes and radio frequency identification, or RFiD which acts as a GPS for raw material, parts, and products], data storage technologies [such as blockchain] and data analytics for large datasets [referred to as big data] together offer a fruitful avenue for transparency initiatives, even for globally dispersed supply networks. Although the potential of such applications has been widely discussed theoretically, empirical evidence is still quite limited; regarding blockchain, in particular (Treiblmaier, 2018).

The Marshall et al study (2016) offers a typology of supply network information that tends to be publicly disclosed, according to four types: supply chain membership, provenance, environmental information, and social information – as presented in **Figure 3**.

Many companies operate highly complex and globalized supply networks. Focal companies "have been more and more exposed to liabilities caused by unsustainable behaviour from suppliers in their globally dispersed supply network" (Marques, 2019). Supplier unsustainable behaviour can range from inadequate working conditions to modern slavery, or from excessive carbon emissions to triggering natural disasters.

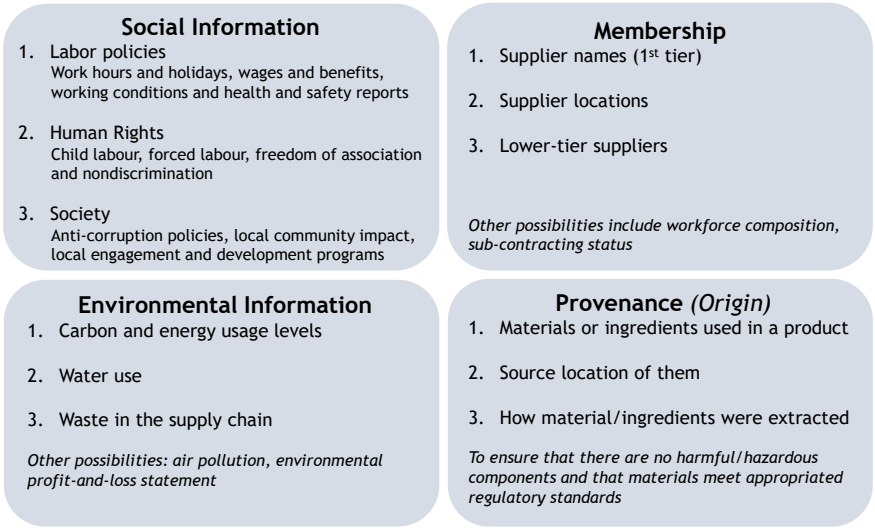

Figure 3: Supply Network Disclosure [Source: Adapted from Marshall et al., 2016].

This Overview is focused on the upper side of the figure – i.e. social information and disclosure regarding membership information which are more closely related to guaranteeing decent working conditions. We draw from the International Labour Organization (ILO)[2] definition:

> *"Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men".*

The remainder of this overview is structured as follows. First, we review the international scenario on mandated transparency, highlighting the advancements and shortcomings of key Laws and Acts. Then, we map the Brazilian scenario to show that Brazil is not only lagging behind in some key fronts, but that is since early 2019, regressing in terms of mandated transparency due to new decrees and reversions of previous established mandated transparency mechanisms. Next, we dive into a case study of the Brazilian apparel sector, as an example of what we label as *inhospitable transparency*. We then provide a concluding framework showing how the current state of mandated transparency fits within the theoretical framework of (a) contrasting verifiability and performativity and (b) mapping the extended supply chain/network. Finally, we provide recommendations for the challenging way forward of mandated transparency in Brazil.

2. THE INTERNATIONAL SCENARIO OF MANDATED TRANSPARENCY

There are scarce examples of mandated disclosure worldwide that include issues of supply network membership and social information such as decent work, although different governments have shown increasing efforts towards mandated transparency. **Figure 4** presents a timeline of the past decade with Brazilian key legislation vis-à-vis legislation from other countries on transparency.

[2] https://www.ilo.org/global/topics/decent-work/lang--en/index.htm. The ILO contributes at the international level by elaborating and promoting International Labour Standards (ILS), which lay down the minimum social standards agreed upon by players in the global economy (including Brazil), to ensure economic growth must go along with decent work. ILS are either conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines. ILO is a driver for change when conventions are incorporated into national legislation. Thus, ILO can influence mandated transparency, but it does not constitute public policy per se.

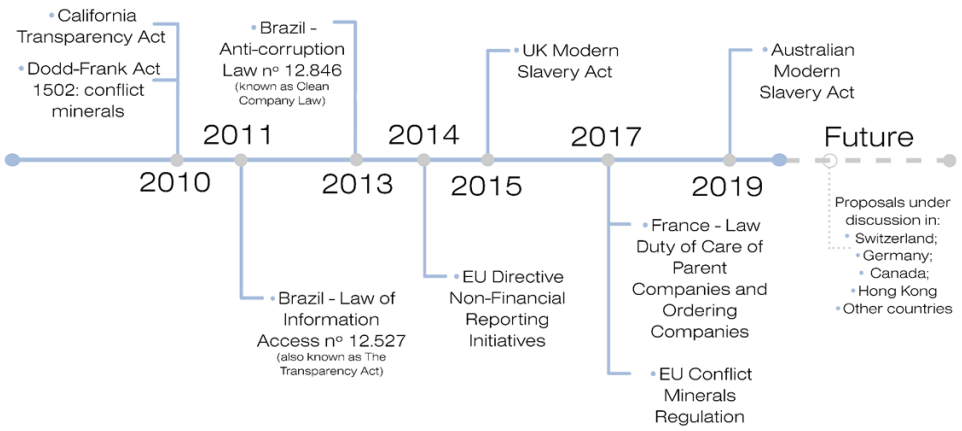

Figure 4: Transparency Legislation Decade Timeline (2010-2019)

Legislations can be grouped into three main themes, which are ***Modern Slavery***, ***Conflict Minerals*** and a broader corporate social responsibility. The following two sub-sections briefly present the concepts of ***Modern slavery*** and ***Conflict minerals***. Both have gained public policy attention in what are considered in most developed countries as key risks resulting from the lack of transparency in global supply networks. Although the term conflict minerals is associated with raw material provenance (origin), the fact that such minerals are extracted in conflict zones has significant social impact and shape (poor) working conditions; therefore it is reviewed here.

2.1 Modern Slavery

The concept of modern slavery differentiates it from previous models of servitude in the ancient world, as there is no more ownership of one person over the other. The ancient model of slavery is officially banned from all countries in the world. Slavery is prohibited by Article Four of the Universal Declaration of Human Rights (UN, 1948) and it is internationally considered as a criminal activity. Modern slavery is therefore a recent term adopted to define a range of exploitative practices in modern society that resemble to slavery. Modern slavery can include victims of sex trafficking and domestic servitude, but within the supply chain domain, the focus is on forced (and child) labour. According to the ILO (2015), forced labour is characterised by elements such as: threats or actual physical harm to the worker; restriction of movement and confinement; debt bondage, where the worker works to pay off a debt or loan, and is not paid for his or her services; withholding of wages or excessive wage reductions that violate previously made agreements; retention of passports and identity documents so that the worker cannot leave or prove his/her identity and status; and threat of denunciation to the authorities, where the worker is in an irregular immigration status. Modern slavery is difficult to be monitored but there is a broad consensus among experts that such exploitation is widespread. The blurred line between modern slavery and inadequate working conditions for waged workers adds complexity to the discussion (New, 2015). Ultimately modern slavery can be framed as the most extreme case of lack of decent working conditions.

The review of the international Acts addressing modern slavery [See Table 1 below] allows the identification of two critical factors in mandated transparency that need to go beyond simply demanding information disclosure. First, effective Acts mandate companies to not only disclose information, but also to establish processes of due diligence that proactively work towards improvement of working conditions. Second, Acts must be inclusive in terms of company demography (sales revenues) and be precise in terms of financial penalties and other sanctions in case of non-compliance.

2.2 Conflict Minerals

Trade of conflict minerals finances conflict and human rights abuses. The Conflict Minerals Regulation covers mostly membership, demanding transparency regarding the names and locations of suppliers at all tiers of the supply chain, but it also concerns social information and can have significant impact on working conditions. On the one hand, in cases where regulation simply pushes companies to move their supply network away from conflict areas, social impact can be devastating. On the other hand, effective legislation on conflict minerals combining disclosure, processual change and clear penalties can be positive for supply network working conditions [basically, in the same combination of critical factors as cited in the previous sub-section on modern slavery]. In addition to the critical factors identified previously, here we identify a third one: mandated transparency must take into account the risk of pushing global supply networks away from conflict/low-performing regions/countries thus avoiding the negative impact of abandoned suppliers.

2.3 A Broader Perspective of Mandated Transparency

In 2014, the EU approved the Directive Non-Financial Reporting Initiatives. The directive, which came to force in 2018, lays down the rules on disclosure of non-financial information by large public-interest companies, i.e. those with more than **500 employees**. These companies must include in annual reports their policies regarding environmental, social and employees, respect for human rights, anti-corruption and bribery. Companies must also report on due diligence processes implemented, the outcome of policies, main risks, and non-financial key performance indicators relevant to their business. Reports are audited by third-party firms hired by the focal company, and there are no sanctions for companies that fail to comply. Conversely, the Directive also allows Member States to determine if any penalties will be imposed upon companies which fail to report adequately. The Danish and Greek governments, for example, have expanded on the EU Directive, increasing the scope of application to smaller organizations not necessarily with public interest (Denmark) or to all companies regardless their size and purpose (Greece).

France took a step forward by approving the French Law on Duty of Care in 2017 and enforcing it that same year. Built upon the EU Directive but with an intent to be even stricter, this Law requires companies operating in France from any industry sector to monitor all subsidiaries or companies it controls, in France or abroad. The plan includes due diligence measures to identify risks and prevent serious violations of human rights, human health and safety, and the environment. A significant advancement of the French Law is the civil liability of those who infringe the requirements and the obligation to repair the damages that could have been avoided if the plan was properly put into practice. Two important aspects had been initially included in this law, but were later taken out of the final version. First, the establishment of civil fine sanctioning non-compliance with duty of care. Second, the original intention was to revert the responsibility of proving decent working conditions to the focal company, but this was rejected, and it still lies within those leading the denouncement. Switzerland is currently working on their own version of the law, trying to include those two changes not approved in France. **Table 1** summarizes the main elements of each law, highlighting the evolution within each category of the Marshall et al framework.

Table 1: Main elements of international legislation in Transparency

	California Transparency in Supply Chains Act	Modern Slavery Act - UK	Modern Slavery Act - Australia	Dodd-Frank Act Section 1502 - conflict minerals	European Union - Conflict Minerals Regulation	EU Directive Non-Financial Reporting Initiatives	French Law on Duty of Care
WHAT? (scope)	Requires the **disclosure of the efforts (or intentions)** to eradicate slavery.	Besides demanding the disclosure of anti-slavery efforts, addresses the **ofenses and penalties regarding the slavery practices**.	Requires the **disclosure of the risks, the actions taken** to minimize the risks and the **assessment of their results**.	Requires the **disclosure of the use** in a production or final product of **conflict minerals (tantalum, tin, tungsten and gold)**.	Lays down **supply chain due diligence obligations** for importers of tin, tantalum and tungsten, **their ores**, and gold.	Lays down rules on **disclosure of non-financial and diversity information**.	Requires a plan to **monitor the activity of the company and all subsidiaries** or companies it controls.
WHY? (motivators)	**Pressure** applied by **consumers, investors, NGOs and competitors** towards more **transparency** regarding modern slavery.			To **prevent the fuelling of conflicts and abuses** from **minerals extraction and commerce**		To legislate what is expected in terms of **transparency**, as it engenders **confidence** among different **stakeholders.**	The need for more **balanced and fairer globalization**, and for corporations to be held **accountable for their activities worldwide**
WHEN? (date of approval)	2010	2015	2018	2010	2017	2014	2017
WHERE? (location of disclosure)	On the company's **website**.	On the company's **annual statement.**	Both previous + on **a specfic public plataform**	File reports with the **U.S. Securities and Exchange Commission** and disclose it in the **company's website**.	Annually report in the **internet** and internally on their **supply chain due diligence policies** and **practices for responsible sourcing**.	In the company's **annual report**.	It must be **publicly available**.
WHO? (disclosers)	**Californian Large retailers/manufacturers** (>U$100M), regarding their own businesses and **direct** supply chains.	**Commercial organisations** (>£36M) operating **in the UK**, regarding their own businesses and **all of their** supply chains.	Entities (>AU$100M) operating in **Australia**, regarding their own businesses and **all of their** supply chains, having **extra territorial application.**	Companies using **conflict minerals originated from Democratic Rebublic of Congo and adjoining countries** in their manufacturing or contracted manufacturing processes	Companies that import conflict mineral into the EU, **no matter where these originate from**, having **extra territorial application** within the supply chain.	Large **public-interest companies** with more than **500 employees**, total assets of more than **€20 million** and a sales revenue of more than **€40 million**.	Any company employing at least **5,000 employees** (direct or in its **French** subsidiaries) or **10,000 employees** (direct, in its French subsidiaries or **abroad**)
HOW? (key requirements)	Disclosure must relate to five specific areas although the **content and depth of the disclosure is not determined**.	**Suggest possible information** to disclose, such as the company's policies and **due diligence** processes related to slavery.	Stablishes **mandatory criteria** and demands the **disclosure of due diligence** and **remediation** processes and **results**; offers **government guidance**; failure to comply **may be published**.	Reports must describe its **due diligence efforts** through a **recognized framework** and must inform about the **origin of the minerals** used. Reports must be **audited**.	Companies must follow **OECD Guidance**, assessing the **risk in the supply chain**, implementing **risk management strategies** and carring out **independent audit** of supply chain **due diligence.**	Reports must include policies related to **environmental** and **social** responsibility (treatment of **employees**, **human rights**, **diversity**, **anti-corruption),** describing **policies** and **due dilligence processes**. **No specific guideline** required.	The plan must include **due diligence measures** to **identify and mitigate risks** and to prevent violations of human rights, human health & safety and the environment. **Alert mechanisms** and **evaluation of effectiveness** must be included.
HOW MUCH? (in case of non-compliance)	**No penalties** for non-compliance.	**No penalties** for non-compliance but the Secretary of State can apply for an injunction to **compel a company to publish a statement**.	**No penalties** for non-compliance but entity must be asked to undertake **remedial action in relation to the requirements unfulfilled**.	The Act is a **disclosure requirement** only and places **no ban or penalty** on the use of conflict minerals.	Member states **may impose penalties** upon EU importers in the event of **persistent failure to comply with the obligations.**	Reports will be **audited, but not verified** – and **no sanctions** are in place for companies that fail to comply. Member States **may impose penalties upon failure to report** adequately.	**Civil liability** of the author of infrigment and the **obligation to repair the damages** that the execution these obligations would have avoided.
TYPOLOGY OF SUPLY CHAIN INFORMATION (Marshall et al., 2016)	**Social information**	**Social information**	**Social information**	**Social information, Membership & Provenance**	**Social information, Membership & Provenance**	**Social information, Membership, Environmental information & Provenance**	**Social information, Membership, Environmental information & Provenance**

3. THE BRAZILIAN SCENARIO

3.1. General Considerations about Transparency in Brazil

Our analysis indicates that mandated transparency is deficient in Brazil, lagging behind the key benchmarking legislations described in the previous section. In addition, there is no evidence that multinational companies from countries such as the USA, UK, Australia and France do follow the strict compliance requested within the Laws and Acts previously described when operating in Brazil. Differently from the international acts, Brazilian legislation is more incipient and sparser, especially considering the ones focusing on mandated private sector transparency. The law that regulates corporations in Brazil[3] is an important a milestone since it requires the disclosure of financial reports in public websites and paid media, annually. However, there are no laws that require private companies to reveal non-financial information on their supply networks. First, we discuss Brazil's position in international transparency rankings, and review *public* transparency, where the law sets clearer standards, before focusing on mandated private sector transparency.

3.1.1 Brazil's Position in International Transparency Rankings

Brazil ranks poorly in public or private transparency when compared with other countries. An annual study published by Transparency International (2018) presents the Corruption Perception Index, which assesses the perception of corruption in the public sector in 180 countries and territories. The index ranges from zero (highly corrupt) to 100 (highly ethical), and Brazil has plummeted to the 35th position, falling for the third time in a row.

The World Economic Forum (WEF) publishes an annual report "The Global Competitiveness Report" to help business policy. This report presents The Global Competitiveness Index (GCI) which ranks the performance of 137 countries on 12 pillars of competitiveness. In 2017-2018, while Switzerland ranked in the 1st place, Brazil ranked 80th. More specifically, Brazil ranks poorly in terms of transparency both from a public sector perspective, measured as 'transparency of government policymaking' (127 out of 137) and from a private sector perspective, tracked in the indicator 'ethical behaviour of companies' (127 out of 137). Although the former is not the focus of this overview, together they show how Brazil is seen worldwide in terms of overall transparency.

3.1.2 Information Access Law[4]

Since 2012, the Information Access Law aims to ensure the fundamental right of civil society to public information, aligned to the targeted transparency mentioned by Fung and colleagues (2007). Principles worth mentioning from this Act are: the prioritization to make all information publicly available unless noted otherwise; the valorisation of transparency as a culture across public offices; and the social control of public administration. The Information Access Law is a citizenship instrument (Soares, Jardim, & Hermont, 2013).

This law focuses on information of public interest. Thus, information related to national security remain protected. In addition, personal information of all citizens are also protected, in order to ensure freedom and individual rights (Soares et al., 2013). The Information Access Law indicates that there must be public, free of charge and easy access to all information produced by public offices. The internet has become the main platform for disclosure (search, access and download) of public information and documents, supposedly including channels for orientation to citizens (Soares

[3] Law nº 6.404 (1977), which regulates Corporations that in Brazil are referred to as 'Sociedades Anônimas'
[4] Law nº 12.527 (2012)

et al., 2013). This law has also impacted private companies as infringements and legal decisions / verdicts are disclosed by governmental agencies and are available on the web.

During the collection of secondary data for this research project, however, it became clear that as much as most public offices follow the Law, information is often not easily accessible. The research team faced challenges to search data in a coherent and easily accessible format. There is a lack of support, "how to" guides and orientation on how to use the high volume of available data. Moreover, it was not possible to produce queries and download data according to specific criteria, such as a specific focal company, a timeframe, or a topic, - all of which are common search criteria in scientific databases. The huge amount of data available is contrasted with an *inhospitable* access. In this Overview, we have coined the term ***'inhospitable transparency'*** to emphasize the challenge of searching, filtering and downloading data that is publicly available. In particular, we have had an enormous effort to map infringements and legal decisions/verdicts regarding working conditions that are available on one online database with low level of public awareness and hard to be assessed and understood by non-lawyers.

As Brazil has just experienced a change in Government, it is uncertain whether transparency is going to advance, freeze, or fall back in the years to come. Yet, initial presidential actions indicate a movement towards a regress in transparency enforcement. In January 2019, the first month of a 48-month mandate, the Brazilian Federal Government issued a decree[5] that alters the Information Access Law, increasing the range of documents that can be classified as top-secret and, therefore, be restricted from the public.

3.1.3 Anti-corruption Law[6]

The Anti-Corruption Law [also referred to as Clean Company Law] was enacted in August 2013, but its implementation occurred in March 2015[7]. This law regulates the administrative and civil liabilities for acts against the public administration, at national or foreign levels. It covers Brazilian companies, foundations, associations, and foreign companies with representation in the Brazilian territory. It can also affect managing directors or any person who authorizes, co-authorizes or participates in an unlawful act. Administrative fines can reach up to 20% of the company's gross revenue, in addition to recovery of damages to public administration through the instrument of agreement of leniency. The agreement between Brazil and the Organization for Economic Co-operation and Development (OECD) was the main driver of the law. In this agreement, 36 countries committed themselves to create anti- corruption legislation[8].

A survey[9] presented by the Federal Controller's Office (CGU) indicates that 30 companies were fined in 2018, with total value close to R$ 18 million, but only R$ 60,000 were actually paid up by the time the report was issued. A study[10] indicates that since the Law came into force, 87 Administrative Processes of Accountability (PAR) were established by different states in Brazil, with a total of 177 legal entities processed. As a reference of values practiced in São Paulo, the study indicates that convictions are equivalent to 1% of the gross income of the company [far from the limit of 20% stated by the law].

[5] Decree nº 9690 (2019)
[6] Law nº 12.846 (2013)
[7] Decree nº 8.420 (2015)
[8] https://presrepublica.jusbrasil.com.br/legislacao/1035665/lei-12846-13
[9] https://br.sputniknews.com/brasil/2019013013210401-lei-anticoccupcao-aprimoramentos-efetiva/
[10] https://www.conjur.com.br/dl/cinco-anos-impacto-lei-anticorrupcao.pdf

Application of penalties depends on "the existence of internal mechanisms and procedures for integrity, auditing and incentive to report irregularities and the effective application of codes of ethics and conduct within the scope of the legal entity". The fine imposed may receive a discount in case of proof of the existence and application of a program of integrity in accordance with the parameters established in the decree itself. Brazilian anti-corruption legislation does not require companies to have a compliance program or integrity program, nor do they have a complaint channel in place, but the associated costs of not having such mechanisms can be disastrous[11].

Our analysis indicates that mandated transparency is deficient in Brazil, lagging behind the key benchmarking legislations described in the previous section. In addition, Brazil ranks poorly in public or private transparency when compared with other countries.

3.2 Transparency of Labour Conditions in Brazil

3.2.1 Background on Human Rights and Labour Legislation in Brazil

If public transparency is limited, but has advanced to some extent as a result of the two Laws revised above, within the private sector advancements are even more limited. Now we turn our attention to transparency of labour conditions in the Brazilian private sector beginning with a historical perspective of human rights, slavery conditions and labour legislation in Brazil.

According to the ILO (2019), more than 35,000 people were rescued from slave labour in Brazil over the past 15 years, but over 600 of them ended up in similar conditions at least a second time.

Under Brazil's Penal Code, slavery may be characterised by degrading conditions, exhaustive working hours, forced labour and/or debt bondage. According to the ILO (2019), more than 35,000 people were rescued from working conditions analogous to slavery in Brazil over the past 15 years, but over 600 of them ended up in similar conditions at least a second time. An important transparency instrument launched to hold focal companies accountable when accused of slave labour has been the Slavery Dirty List [in Portuguese, *'Lista Suja do Trabalho Escravo'*], that used to be published by the former Brazilian Ministry of Labour[12] every six months, listing the names of corporations deemed responsible for situations of slavery, subjecting them to sanctions. Presence in the list represents a risk to brand reputation. This type of exposure can lead to public service agencies and banks denying financing, grants and public credit to those listed, as well as reaction from partners and other stakeholders. Slavery conditions in Brazil are often linked to the space for informality. Understanding slavery conditions and informality is key to understand (the lack of) transparency in Brazilian working conditions.

As noted by Góis (2010), in Brazilian labour law there is a so-called *'protection paradigm'* that reflects a set of principles applied to the interpretation of the law in favour of the worker. Labour legislation guarantees an extensive set of rights that includes: paid annual leave, a 13th salary, overtime, hygiene of the work environment, additional payment in cases of unhealthy environment and transfer of work place, mandated personal protection equipment, paid weekly rest, among others. The law includes important principles, such as: *'in dubio, pro worker'* (i.e. in case of doubt,

[11] http://compliancereview.com.br/legislacao-brasileira-canal-de-denuncias/

[12] In the beginning of 2019, the current Government has extinguished the Ministry of Labour and transferred their responsibilities to the Minister of Economy, a decision that has been permanently questioned ever since.

the worker is favoured), *'more favourable rule'* (i.e. where there is more than one applicable norm, the most favourable to the worker must be used) and *'most beneficial condition of the rules edited a posteriori'* (i.e. when evaluating whether or not it should apply to pre-existing employment relationships). According to the author, the law is based on the patterns of labour relations that emerged from the Industrial Revolution, where the workers had similar characteristics: male sex, responsible for family support and with specific tasks along the production line, keeping long lasting jobs and economic prosperity was assured. In recent decades, the sequence of economic crises and technological innovations have undermined these standards and new possibilities of labour relations emerged that are not reflected in the law. For example, the service sector is becoming predominant and work flexibility needed do not always fit the legal standards. In Brazil, the *'protection paradigm'* has led to a reversed effect through the increase of informality. Particularly during economic crises. Informality is usually associated with poorer working conditions. Brazilian supply chains have often been organised in such a way that while employees within the focal company's hierarchy get formal jobs, and therefore, are protected by the *'protection paradigm'*, a significant share of workers upstream in the supply chains [working in first-tier suppliers, but even more so second-tier suppliers] engage in informal, and therefore un-protected working conditions. The legislation of outsourcing of services has offered a legal path for labour informality across the supply chains by allowing flexibility[13]. Next, we explore the Apparel sector as a case study of how such process has led to lack of transparency, lack of accountability in Brazilian supply chains.

3.2.2 Three 'Degrees of Liability': A Case of (Lack of) Transparency in the Apparel Sector[14]

In the fashion industry, outsourcing is a common practice. The apparel outsourcing contract deals with the hiring of a company for the production of goods which, a priori, does not belong to the sphere of labour law. In order to understand mandated transparency regarding labour policy in Brazil, one has to understand the three 'degrees of liability' in Brazilian legislation: **hierarchical contract, outsourced services** (workforce) and **outsourced production** – as summarized in **Table 2**.

Table 2: Synthesis of Mandated Working Conditions Transparency in Brazil

	Hierarchical contract	**Outsourced services (Workforce)**	**Outsourced production (Raw material, Modules)**
Definition	Hierarchical contract is when control, accountability and ultimately transparency are higher. The focal company is subject to inspections and labour claims and has total responsibility on indemnities.	Outsourced services (workforce), is when a focal company hires another company to provide human resources for activities. Although these workers are not employed by the focal company, there is a close level of liability and if a labour issue is taken to court, the focal company can be liable.	Outsourced production is based on a prevalent understanding in Brazilian legislation that the focal company and the supplier are two completely different companies, and thus there is much less accountability and transparency of labour issues and working conditions regarding supplier's employees.

[13] Law nº 6.019 (1974) and later adjusted by Law nº 13.429 (2017)

[14] Details are based on the following legal processes: nº 233497_2017_1523613600000; nº 286890_2017_1527242400000; nº 113904_2018_1536919200000; nº 100068_2018_1535104800000; nº 38004_2013_1530266400000

Control mecha-nisms	• Government[15] • Labour claims • Unions • CIPA and SESMT	• Focal company can demand the contracted company to provide the proof of payment of labour charges.	• None
Liability	• Total responsibility of the focal company on labour indemnities.	• Subsidiary liability of the focal company. • Depending on circumstances and judge interpretation of the law, there is a possibility of changes in subsidiary liability.	• There is no liability of the contracting company nor of the focal company. • However, depending on circumstances and judge interpretation of the law, there is a possibility of subsidiary liability of focal company in labour defaults in cases of diversion in outsourcing.

One key issue then is that, depending on circumstances and law interpretations, there is often a **blurred line** between outsourced workforce and actual suppliers, so the Court can understand that in some cases outsourced workforce is disguised as a supplier. To better understand these different classifications within Brazilian law, we have reviewed Brazilian Jurisprudence regarding the accountability of focal companies in the apparel sector regarding **outsourcing issues** from 2013 to 2018, covering the 208 cases which were judged by the Brazilian Superior Labour Court.

The apparel production outsourcing contract involves a contracted company delivering semi-elaborated products to be completed in focal company production line. This kind of adjustment does not entail liability of the contracting company. The contract is considered licit, when (i) the contracted company does not exclusively work on the manufacturing of the focal company's (contractor) products, and (ii) the focal company doesn't interfere in the contracted company's activities. Thus, the apparel outsourcing contracts de-characterised when one proves the exclusivity of contracted company's activity to the focal company as well when there is some management intervention by the focal company in the activities of the other company. Employee testimonials, contracts and invoices are common evidences presented to the Court.

The key issue here lies in whether Court can prove that there exclusivity and management intervention by the focal company onto the supplier, which together characterise high supplier dependence, and therefore co-liability of the focal company to any working conditions infringements at the supplier. Exclusivity is based on the percentage of total supplier sales and management intervention includes: constant and direct supervision of contractor employees on contracted employees, supervision and/or interference in the supplier's production process, layout determination and/or requirement, requirements for excessive specifications, power to change and/or stop the production line of the contracted company, among others.

Our above review of the status-quo of labour conditions transparency in the apparel sector provides evidence that: (a) mandated transparency in Brazil is lagging behind international benchmarks, and (b) unless mandated transparency evolves to adopt mechanisms that demand focal companies to disclose outsourcing contracts, there is room for informal and poor conditions to remain as the norm, due to the opacity of supply chains based on outsourcing contracts. In particular, legislation should call for transparency on (i) the percentage of contracted volume against the total volume of each supplier; (ii) the production requirements made to suppliers which reflects

[15] Formerly Ministry of Labour, currently Minister of Economy

the extension of management intervention; (iii) contract's duration [to map continuity]; and (iv) inspections of labour conditions.

Mandated transparency must advance to include mechanisms that are capable of disclosing the conditions of contracts of outsourcing services to map key elements that will define supplier dependence and focal company level of management intervention, such as percentage of contracted volume against total volume; requirements; contract's duration; and the process of inspection of labour obligations.

4. CONCLUSIONS

4.1. Key Conclusions

This ***Part 1*** of the broader ***Transparency Overview in Brazil*** has focused on ***Mandated Transparency***. The document has first grounded our definition of transparency on three key theoretical references:

- First, defining the ***assessment of transparency*** through the combination of two perspectives: (a) *verifiability*, which focuses on the degree of information disclosure measured as quantity, frequency and relevance; and (b) *performativity*, which conceptualizes "transparency as complex communicative, organizational, and social processes rife with tensions and negotiations" (Albu & Flyverbom, 2019);
- Second, emphasizing that in a highly complex and globalized world, focal companies are deemed to be judged not only by what happens within their own operations, but most notably by what happens across their globally dispersed supply network, therefore ***transparency must eventually reach the supply network level*** (Marques, 2019);
- Thirdly, we adopt the typology offered by Marshall et al (2016) that proposes ***four types of information to be publicly disclosed***: supply chain membership, social information, product provenance, and environmental information; and we focus our study on the first two.

Framed by the above theoretical lenses, we have mapped the International scenario and the Brazilian scenario regarding ***mandated transparency***. Despite significant advancements and benchmarking legislation in the global arena, the Brazilian context is currently limited to two acts, namely the Law of Information Access and the Anti-Corruption Law (Clean Company Act), which represent limited mandatory policies and reflect in poor performance in global ranks in terms of transparency.

From the verifiability perspective, the comparison between international benchmarking and Brazilian legislation shows that our country lags behind in a number of ways. Whereas international law has incorporated a definition of modern slavery and expanded the breadth of focal companies' responsibilities to the extended supply chain, in Brazil the legislation is flawed even if distances are much shorter. The legislation itself grants room for opacity, informal work and thus poor conditions, as long as the supply chain is characterised as outsourcing services [technically low supplier dependence], and not direct management intervention [which only then proves high supplier dependence]. The review of recent law suits shows that the three ***'degrees of liability'***, on the one hand, controls working conditions inside the companies' facilities, but on the other hand, offers room for companies that want to hide high levels of dependence and poor working conditions

upstream their supply chains. In addition to nuanced interpretation of what constitutes liabilities in managing supply chains, what we call ***inhospitable transparency*** inhibits searching, filtering and downloading data related to working condition infringements. **Taken together, these two elements of Brazilian legislation, namely three degrees of liability and inhospitable transparency, hinder transparency.** We provide evidence of this problem with a specific case study of the apparel sector. Ultimately, the Brazilian Government is lagging behind other countries in terms of producing reinforcing action cycle pictured in Figure 1, in the beginning of this Overview.

Combining verifiability and performativity, we identify key factors within international benchmarking for successful enforcement of mandated transparency. We contend that adequate legislation must specify not only outcomes [verifiability approach], but also the processes of monitoring and due diligence [performativity approach]. Next, we next present three dimensions that could help change the current situation.

First, we offer a specific recommendation. Technology can mitigate inhospitable transparency. Technology such as 'big data' is already available for processing large amounts of data and build synthetic perspectives to allow society to understand concrete results of labour legislation. Technology can also help 'translating' law-specific language to lame terms, such as what are the most common problems, which companies are involved, what are the verdict and the penalties. A modern approach to this large Brazilian jurisprudence database could shed new light into the current state of working conditions in the country and bring society closer to labour legislation, increasing levels of public awareness. Technology-enabled transparency would also be more friendly and supportive of decision-making processes for multiple stakeholders such as consumers, investors, and society more broadly.

Second, if we are to advance in supply network transparency in Brazil, transparency policy must include the need of due diligence processes across all tiers of the complex supply network. In the case of the apparel sector, even if the focal company can provide evidence of decent work within its operations, and eventually at the first-tier of supply, there can be breaches of human rights further upstream at tier-2, tier-3, etc. Legislation cannot favour opacity in such complex dynamics, but rather bring them to light. Finally, the definition of clear penalties for non-compliance is a final key success factor to induce action from focal companies associating liability poor conditions at any stage of the supply network.

Third, we see an opportunity for advocacy focused on increasing accountability, liability and transparency, if we are to advance on this matter in Brazil. Interested stakeholders must act in order to balance the forces at play in the Brazilian Congress. It is important to note that Brazil is poorly-ranked in the GCI partially due to the lack of transparency regarding corporate ethical behaviour. Therefore, we can posit that a raise in the bar of mandated transparency for the private sector would benefit our country's competitiveness in the global arena.

Brazilian legislation lags behind international benchmarking in terms of both verifiability, performativity. In terms of verifiability, legislation favours opacity and configurations that prevent focal companies from being liable to poor working conditions upstream the supply chain. In terms of performativity, current legislation does not demand due diligence processes to track working conditions in the extended supply network.

4.2. The Next Step: Dialogue between Mandated and Voluntary Mechanisms

There is a dialogue between mandated and voluntary forces, which can produce both positive and negative outcomes. An example of this is seen when anticorruption laws, which although do not always offer a granular pathway in terms of transparency, can act as drivers of voluntary mechanisms by focal companies aiming to become more transparent in case of eventual infringements. Such voluntary mechanisms act as attenuating elements during convictions. On the other hand, some focal companies avoid over-monitoring their suppliers to avoid being framed in co-liability. In this case, we see a mandate eventually hindering transparency. Possibly, revisions of transparency policy must clarify the conditions that characterise supplier dependence and focal company liabilities to align transparency and decent work conditions. The Part II of this Overview will explore voluntary initiatives, main challenges and their accomplishments in Brazil.

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