



OPEN GOVERNMENT AND SOCIAL CONTROL

Sérgio Antônio Nogueira da Cruz Saldanha

Minerva Program – Fall 2011

Prof. Dr. James Ferrer

Advisor: Kathryn Newcomer

WASHINGTON

2011

1	Open Government and Social Control	3
1 –	Open Government – Economic effects of improved supervising tools.....	7
1.2 -	the economic benefit derived from the re-equipping and trengthening the oversight institutions.	7
1.3 –	Strengthening of the citizenship.	14
2.	CGU and OGU Roles in order to assist the social control.	19
2.1 -	The CGU and OGU actions in order to improve transparency in Brazilian public services.	19
2.2 -	Controladoria-Geral da União – CGU (Office of the Controller General)	22
2.3 –	Ouvidoria - Geral da União – OGU (Brazilian General Ombudsman).....	29
3.	Freedom of Information Act (FOIA)	38
3.1 -	Freedom of Information Act (Lei de Acesso)	38
3.2 -	Major Challenges and suggestions for optimal implementation.....	47
4.	Another instruments for the improvement of social control.	51
4.1 –	O Orçamento Participativo (Participative budget).....	51
4.2 –	As Mesas de Diálogo (Roundtables).	56
4.3 –	Audiências Públicas (Public Audiences).	57
4.4 -	Conselhos Gestores e Fiscalizadores de Políticas Públicas (Councils of management and supervision of public policies).	63
5.	Conclusion	67

PAPER OUTLINE

I. Introduction

This paper aims to present positive aspects of social control as an aid in combating corruption and in the Brazilian government being oriented by the public policies. For this, will be highlighting key aspects - of public institutions – that will help in the construction of a government focused on the concerns of citizens. In this sense, the theme will address the follow subjects:

1. Open Government;
2. Controladoria-Geral da União (CGU) (Office of the Controller General) and Ouvidoria-Geral da União (OGU) (General Ombudsman) roles as an institutes that promote transparency;
3. Freedom of Information Act (FOIA) in Brazil;
4. Instruments for the improvement of social control;
5. Proposals for the progressive implementation of Freedom of Information Act (FOIA).

II. Body of paper

1 Open Government and Social Control

- 1.1 - Importance of ***citizen participation in monitoring*** the use of public resources and in the evaluation of the performance of public administration managers and leaders.

The promulgation of the Brazilian Federal Constitution occurred in 1988, set off a chain of actions that had as their basis the strengthening of participatory democracy and so-called "Open Government". After the political opening that followed the dictatorial regime, popular participation and social control was included in the articles 1º, 14, and 197 of the Brazilian Constitution. This fact explains the importance that Brazil gave to the citizens participation in public policies and in monitoring the use of resources resulting from tax collection.

Therefore, it became evident in the Brazilian Constitution the understanding that government transparency is essential for citizen participation in the monitoring of public resources and in the measuring the quality of managers' actions. The purpose of that standardization is give to the citizens the power of evaluating the performance and responsibilities of managers (who work with public resources), the competences of public administration and supervise the proper use of public resources on meeting the social demands. Such a concept remains mainly by active citizenship¹ and public transparency that compose the foundations of the Open Government.

Thereafter, as supports for the Brazilian re-democratization, various instruments have been created that have reinforced public transparency and social control. Among which we can highlight the following: 1) Orçamento Participativo (Participative Budget), 2) Mesas de Diálogo (Roudtables), 3) Audiências Públicas (Public Audiences), 4) Conselhos Gestores e Fiscalizadores de Políticas Públicas (Councils of management and supervision of public policies).

All this is instrumental - available to the society - reinforces the prescription of the constitutional text that aimed to ensure the citizen as an authentic holder in the exercise of power and disposing the community will as a support for the creation of public policies and achievement of social goals. This constitutional guidance has impacts that must also be considered. Therefore, it is necessary to ensure for citizens a co-management and a co-responsibility - shared with the institutional powers of the state - to lead and manage the control and self-control process that are part of the community². This process aims to the improvement of political practices in line with the demands of society.

¹ Direct participation of citizens in government decisions and in overseeing the political power of the state

² Eder Marques de Azevedo - excerpt from his MA article in Public Law from PUC Minas

In this sense, we can glimpse the great importance of Ombudsman activities in this process because it is distinguished as a link between popular demands (covered through complaints) and the government. In its genesis the Public Ombudsman is established as a point of balance between forces that sometimes a very dissonant. The importance of the institute of Ombudsman was inscribing in the Brazilian Federal Constitution³ by Constitutional Amendment No. 19 of 1998, that amended Art. 37 of Brazilian Magna Carta.

Article 37, § 3º, provides:

"§ 3º The law shall regulate the forms of user participation in direct and indirect public administration, especially by regulating:

I - complaints regarding the provision of public services in general, ensured the maintenance of customer support services and the periodic evaluation of external and internal quality of services;"

Because of this, Ombudsman institutes build a bridge between public managers and citizens that use open government and participatory democracy as bricks. Hence the quality of public services could be evaluated by citizens who can improve public policies as their necessities.

The Social Control is the inspection - by the citizens - of public administration with the aim of monitoring the proper and regular use of public resources and the results of government actions as well as identifying problems and proposing solutions for social issues with more efficiency. To do so, citizens should be equipped with tools that allow the equalization of forces facing the various actors present in democracy.

³ Also known as citizen Constitution

However, it is necessary that each person must find himself/herself and take possession of his/her role as controller and watchdog of the state because that is the point of convergence of all government policies. The regulations, the rules, the elected or appointed officials, the state powers have only one duty: to fulfill the demands of every citizen when concurrent with the improvement of the society. This is a crucial point.

So there is a circularity of the model. The actions of citizens are essential to the social control that, in its turn, is critical to the effectiveness of public policy. Thus, the state has the citizen as a great ally in the improvement of their actions. Since this the state needs to be able to do actions that improve the citizen participation. At a time when citizens realize their importance and embrace their social duties, public resources will be applied with more correspondence with the demands of population and the bureaus and public managers themselves - responsible for planning public policies - will cover their actions with more legitimacy because they are based on the popular aspirations.

At the other extreme, the limitation of fiscal agencies and bureaus will be complemented by the citizen's actions that will be presented in all social and political areas. Thus that, the two ends of state action will benefit and strengthen. Therefore, it is not surprising that transparency is an effective tool for improving social control.

1 – Open Government – Economic effects of improved supervising tools.

1.2 - the economic benefit derived from the re-equipping and strengthening the oversight institutions.

Constitutionally Brazil is a federative unit which is divided into Union (Federal), states and municipalities. The Controladoria-Geral da União – CGU⁴ is the federal government office that has the major duty of combating misuse of public funds – It should ensure the best use of public resources (from taxes, fees and contributions). The CGU's actions ensure the spending reduction which contributes to the effectiveness of government policies. The CGU now has regional units in all states of the Brazilian federation. These units have the task of overseeing the allocation of federal funds received by municipal governments.

Considering the limitations of internal control, it is worth noting that the public lottery, a tool, developed by CGU, helped in the task of supervising local government. This tool allows choosing - randomly – some municipalities that will be submitted to the CGU's inspection. Since the year 2004 until June 2011, 33 (thirty-three) periodic public lotteries in municipalities and 2 public lotteries with an emphasis on a federal program named “Programa de Aceleração do Crescimento – PAC”⁵ have been done, which together embrace 1,931 (thousand nine hundred and thirty-one) monitored municipalities⁶.

In this sense, CGU tries to cover most of the funds invested by the federal government through the monitoring plan and the lottery. Even so, it is unlikely that 100% of funds are monitored.

Although there have been improvements in recent years, control actions would be more effective if the citizens were encouraged to participate in the inspections.

⁴ Office of the Controller General

⁵ Acceleration of Growth Program

⁶ Data obtained through “Coordenação-Geral de Operações Especiais - DCOPE da Secretaria Federal de Controle – SFC” and in the site <http://intracgu.df.cgu/controle-interno/acoes-de-controle/sorteios/>

Researches indicate that part of the population ignores the assignments of Internal Control. Individuals - when monitoring their street, their neighborhood and their city - would contribute to the best use of public resources. Instead of thousands there would be millions of "auditors". This amount of effort would reduce the incidence of diversion of public funds.

With the improvement of social control through Open government, greater opportunities would exist to apply public resources more effectively. It's good to say that social programs - especially those focused on the income distribution - for their conditionalities, requirements relating to health and education, eventually reverting to lower demand - in the long-term - for part of beneficiaries of public services, because extend the exercise of citizenship and, therefore, reduce the very need for state actions.

In this virtuous cycle, increase of public resources supervision would contribute to a better allocation function of the state. In this sense, distributive programs such as "Bolsa Família", which distributes R\$ 122.00 (one hundred and twenty two reais) to families who have all children enrolled in school - could be improved. Thus, the extra income of these families contributes⁷ to the regional economic growth, which is one of the bottlenecks for the proper development of the Brazilian economy. Diminish of regional disparities also assists the state action in order to help the balanced development of all regions. This development reduces spending needs, influencing new investment models. Such better balanced development decreases the need of new state spending, influencing new models of investment that are more efficient and have less need for taxes.

⁷ Demonstrated by Marcelo Nery' in his research for Fundação Getúlio Vargas and studies of IPEA - Instituto de Pesquisa Econômica Aplicada.

In this new system, where state action is enhanced by social control it can be questioned if the real effects could be the impoverishment of certain areas for the enrichment of others in the long-term. In fact, the richest regions would be encumbered, but not so much as to be impoverished, because what is happening is a distribution of taxes. On the other hand, the poorest regions would have their citizens' purchasing power increased. Thus that, the differences between Brazilian regions would be minimized toward equilibrium. Without this balance, Brazil will deepen its already great contrasts between regions.

Therefore, as observed, Social Control contributes indirectly to the distribution function of the state helping the economic cycle by reducing poverty. It is necessary to note that social policies are important, primarily, until society becomes more equal. For this reason, social policies are important until the private sector and society are sufficiently strengthened.

Considering the above, Social Control can improve the distribution of income that in turn provides the increase of domestic consumption. Moreover, in a broader context, the increase in consumption leads to higher investments to meet demand. These variables, together, increase the GDP that reflects the country's development. Taking this into account, social control and state control organs (especially the CGU) can benefit the macroeconomic cycle from an isolated action - supervision - creating a chain reaction.

It is also relevant to introduce the Ouvidoria Geral da União - OGU into the state supervision dynamics since its position is near to citizens' demands. Therefore, the work of ombudsman would serve as an input to public policy oversight where reports by citizens would be analyzed and then compose into documents (done by OGU) with the identification of the quality of public services from the very viewpoint of citizens. These documents would be passed on to the CGU that, supported by society, would better plan the audit actions focused on problems identified by citizens. For this, a stronger partnership between OGU and CGU is needed in order to improve the control of public resources. Given this, is very clear the importance of social control as an engine in social ills' combat.

However, for all this gear moves in that engine, it is necessary that the people's demands are received and analyzed as efficiently as possible which has not occurred yet, as seen from the low productivity of the Ombudsman in relation to the amount supervised. In this sense its essential that the offices, bureaus and agencies responsible for this activity will be strengthened by an increase in technology and training of its staff. Therefore, it is urgent that the agencies in Brazil that defend the public patrimony and work with support in citizen' demands (like the CGU through the OGU) are structurally optimized and have their staff appropriated to the new challenges.

In the other hand, the discrepancy can be verified in the CGU's number of auditors (in relation to all people residing in the country) by making a comparison between the number of CGU's auditors and similar institutes in Canada, in England and in the United States.

So, The Auditor General of Canada⁸ has a unit for every province and territory of Canada and leads an organization staffed by 650 employees to about 34,030,589 (sensus 2011) habitants. This means an auditor to approximately 52,300 inhabitants.

In England The National Audit Office⁹ has about 900 servers to 61,792,000 inhabitants of the UK (according to information available on the website www.statistics.gov.uk). Hence, there is 1 (one) server for approximately 68,658 inhabitants.

In the United States, The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars¹⁰. The GAO counts with 3.300¹¹ servers to 311,663,132¹² inhabitants of the US. That means one auditor to approximately 94,443 inhabitants.

⁸ Officer of Parliament who audits the federal government Departments and agencies

⁹ That works on behalf of Parliament and the taxpayer to hold government accountable account for the use of public money and public services to help improve performance

¹⁰ research done on June 30, 2011 on the site of GAO: <http://www.gao.gov/about/index.html>

¹¹ research done on June 30, 2011 on the site of GAO: <http://www.gao.gov/about/workforce/>

In Brazil, in view of the population of 190,755,799¹³ this ratio is 01(one) auditor for every 123,307 inhabitants since we have currently 1,547¹⁴ auditors. As seen in the previous paragraphs countries such as Canada, England and the United States have a far larger proportion of auditors per capita. Consequently, it is necessary to enhance the staff of the CGU (given their numerical gap) in order to better combat against corruption. This increase in staff also serves as a stimulus to citizen participation because numerical increase generates a gain in quality of implementation of actions. The gain in effectiveness encourages citizens to participate in public policy because they realize that their demand is promptly attended with efficiency, efficacy and effectiveness. It means that their manifestations generate results.

Objectively, the "lack of confidence in institutions" should be hard fought as causes of citizen's discouragement in participation in public issues. Another important component to encourage the society to participate in public policy is the improvement of accountability devices. Thus, in addition to expanding the field of action, blaming and punishing the bad managers produces citizen trust in public institutions. All this creates, in the individual conscience, the idea that those who are committing illegal and expensive acts will actually be punished. These actions compel the citizens to report and directly influence government policies because they are certain of the results.

Other actions are important in order to reduce the citizen's lack of confidence. It is necessary to continually capacitate servers, increase their income and improve the physical structure of the institutions, not only in organs¹⁵ and agencies like the CGU and OGU, but in the entire public administration.

¹² research done at 17:42 p.m (Brazilian hour) on June 30, 2011 on the site of US Census Bureau <http://www.census.gov/>

¹³ research done on June 30, 2011 on the site of IBGE: http://www.ibge.gov.br/home/estatistica/populacao/censo2010/tabelas_pdf/Brasil_tab_1_4.pdf

¹⁴ Research done by CGRH (on June 30, 2011) in Siape: TOTAL OF SERVERS BY POST EMPLOYMENT IN A FUNCTIONAL SITUATION.

¹⁵ The definition of Prof. Helly Lopes Meirelles for organs in Brazil is: "they are centers of competence established for the performance of state functions, through its agents, whose performance is attributed to the entity to which they belong "

Besides the actions mentioned above, it is important that the servers are trained continuously in order for the public policies be planned and implemented more effectively. This action is getting more importance in view of new techniques and technologies that are created every day and it is necessary to follow this evolution. The welfare of the citizens also depends on a better government worker able to solve their demands.

We have to include in these actions, the implementation of performance assessments directly related to the remuneration of government workers. In relation to the income, as long as accompanied by goals, improvement of public subsidies is also beneficial because it motivates and minimizes the chances of corrupting cooptation.

So we can identify also in the Maslow pyramid¹⁶ the importance of wage and job security as motivating factors for individuals. Hence, it is clear that the salary contributes, even indirectly, to the satisfaction of human needs as it allow people to achieve goals, obtain approval and gain recognition.

It is also important to understand that an increase in incomes is inversely related to corruption (as seen above) and directly proportional to strengthening the local economy and to more equitable distribution of income. The economic reinforcement also occurs by increasing consumption. This situation is observed in the equation of income ($GDP = C + I + E + G$ ¹⁷). Moreover, the increase in income of public servants impacts indirectly the GDP growth for at least two reasons by increasing consumption and investment.

¹⁶ Maslow pyramid shows the hierarchy of human needs

¹⁷ C = Consumer Spending; I = Investment made by industry; E = Excess of Exports over Imports; G = Government Spending

Regarding the argument that the salary increase of public workers would just harm a portion of society in favor of another through taxes, this is a relevant point to be considered. However, beyond the transfer of tax revenue, state areas such as auditing and monitoring are investment returns. Invested money in each server of these areas generates the return of millions for public treasure because 1) Harmful practices on public area could be better avoid; and 2) Possibility of recovering money improperly applied.

In this sense, in the site of Brazilian Tribunal de Contas da União – TCU we can find studies that point to state economies coming from oversight institutes' actions against corruption. In fact for each R\$ 1.00 had applied in TCU (through Union budget) the return to the country was R\$ 20.01 said recent researches¹⁸.

Para cada R\$ 1 do Orçamento da União alocado ao TCU, o retorno ao País foi de R\$ 20,01



In another study, the Comptroller General of the Union demonstrates the economy of R\$ 2,223,469,346.38 between the years 2006 and 2010. Here it is pointed out that these values are not organized in a structured way in the current system of management control actions of the CGU, and consequently the studies may underestimated the impacts. Therefore, improving oversight institutes generates economy and increases credibility of public management.

¹⁸ Research done in September 9, 2011 in

http://portal2.tcu.gov.br/portal/page/portal/TCU/publicacoes_institucionais/relatorios/relatorios_atividades/NOVO_2010_Relat%C3%B3rio_Anual_de_Atividades.pdf

1.3 – Strengthening of the citizenship.

- a) Considerations about the active participation of society as a public policies and improvement of democracy support.

It is important to strengthen the organs¹⁹ and institutions of control. However, the number of public servants should have parameters that consider performance indicators. For this action, would be necessary a significant number of auditors, which sometimes, become almost impossible.

The fact is that in Brazil, as in most of the countries, there is a large gap between the number of public servants²⁰ available and the ideal amount in order to improve the effectiveness of fighting corruption in the public administration.

In this sense, incentive participation of citizen enables a larger monitoring of public resources without the direct involvement of the government. The State is not omnipresent, but society can be. For this to occur, it is necessary that the citizen is informed about the oversight tools at the citizens' reach. Hence the importance of full disclosure of all instruments that support social control.

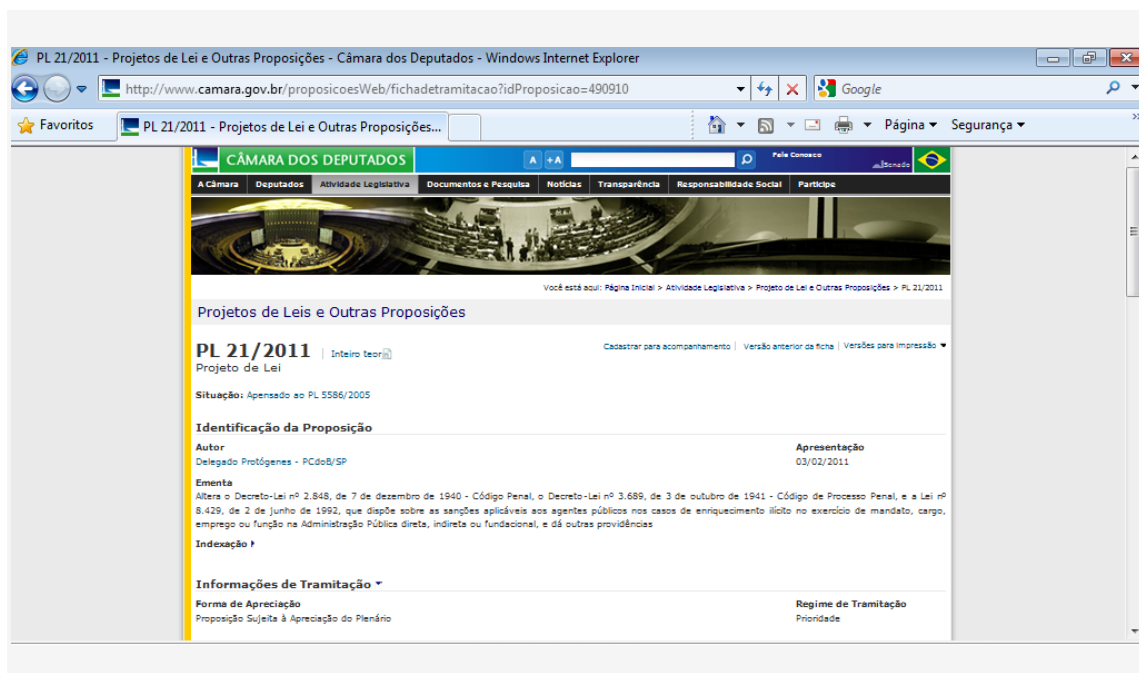
Despite of new technologies, currently the television and radio still reach more people, so it is important that the government do partnerships with these two communication tools and getting their support. In this regard, the campaigns are also an important tool. Link TV spots (that encourage citizens to participate and demand results from the government) would help in the formation of a civic conscience.

¹⁹ see footnote 15 on page 10

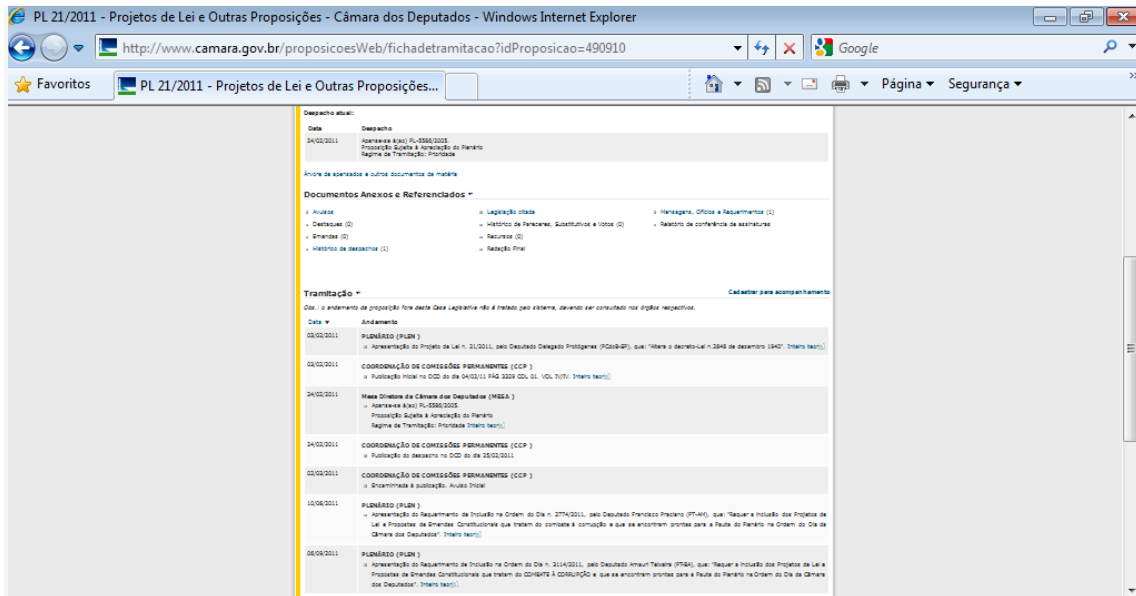
²⁰ public servants are those who maintain professional working relationship with public organs (federal, state, Federal District and municipalities)

However, for the dissemination of instruments of social control it is relevant that the state use new technologies such as the Internet. There must be sites that instruct citizens about the tools at their disposal and the importance of their participation in government decisions. Its fundamental to make sites that expose the information in an understandable way free of technical jargon. The use of images to contextualize the issues is also of great value since they are more user-friendly and understandable than texts full of technical language. In order to illustrate this point of view we can compare two sites that contain the same information but present them in different ways:

First I want to show the official site of “Câmara dos Deputados”²¹:

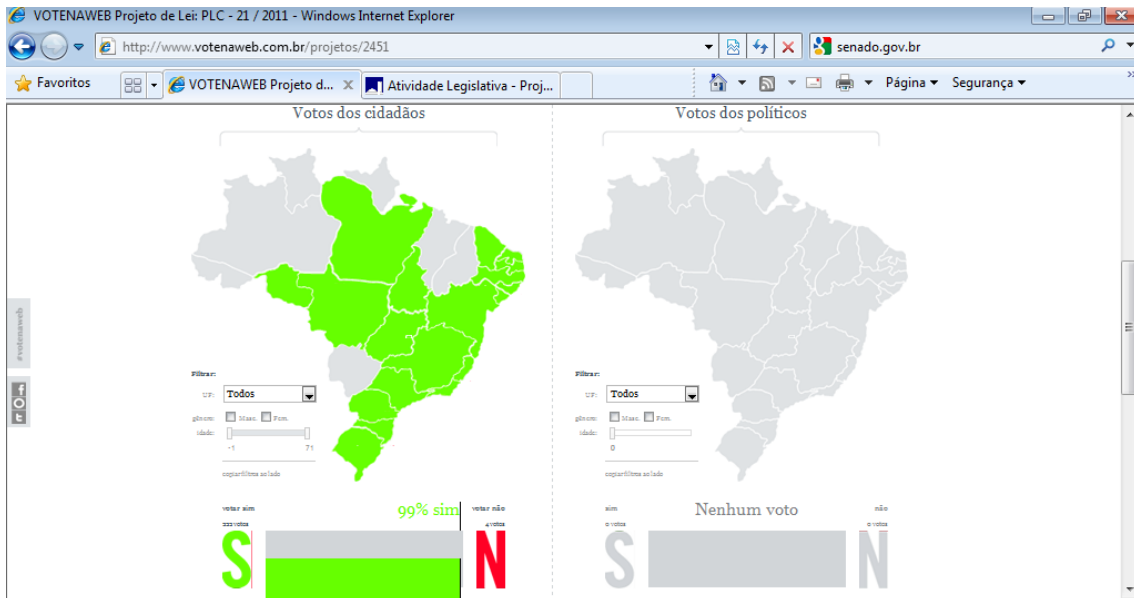


²¹ Information extracted from brazilian House of Representatives site www.camara.gov.br)



We can observe that in fact we have the information but it is not presented in an interactive way and is uninteresting to most users. On the other hand, let's see the site www.votenaweb.com.br (vote on the web):





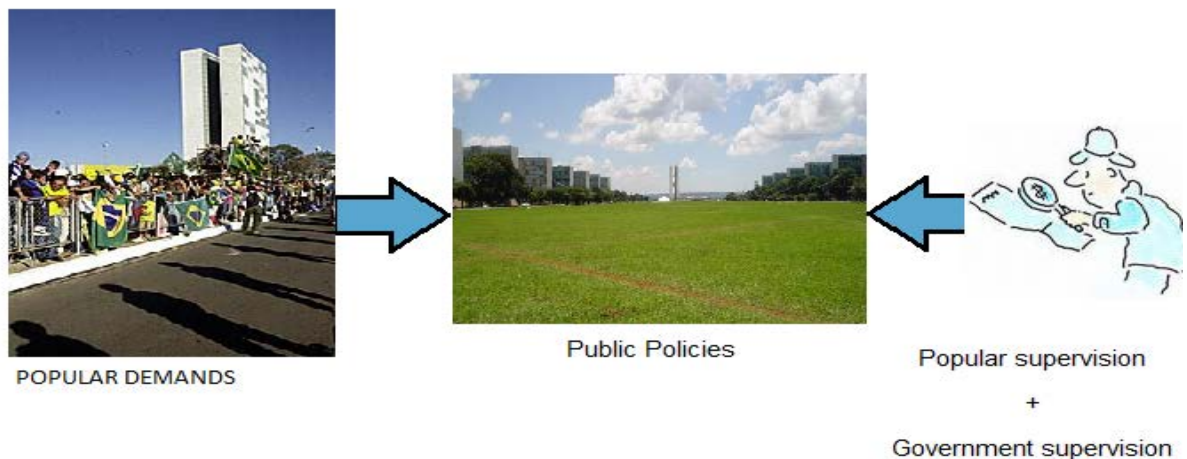
This screenshot shows the '5 comentários' section with five user comments and a 'Notícias relacionadas' sidebar. The comments are from Thiago Abreu, Aguilhon Angelo Alves Pereira Barbosa, Daniel Rocha, Luis L., and Iury Dantas. The news sidebar features a search bar and a list of related news items, including 'Atendimento emergencial deve continuar, dizem médicos' and 'Licença mais barata para 4G aumentaria investimentos-Telefonica'.

In this last site we can see the wide use of pictures and space for the opinions of citizens about the normative. These two actions help to attract the interest of the citizens on projects of laws that are being discussed in the House of Representatives and Senate. In addition, the information is presented in a way that reaches as many people as possible.

In addition, contests that reward ideas that contribute to the spread of popular participation are generally less expensive and very effective. So, there are many ways to inform and encourage the people about their role in participatory democracy.

Therefore, assuming that the state alone can not monitor all activities that involve public money, it is necessary that citizens assist the State in this task. For this, society needs to understand the instruments at their disposal and the scope of their work. Thereafter, the effects of citizen action on public property will be as beneficial as possible. Indeed, corruption and inefficiency will be prevented.

Based upon the premise that the Government, to better manage their resources, needs the assistance of the citizen, it is also true that the government can direct its policy according to the social will. In this sense, it is also important that the citizen participate as a support of public policies. For better visualization, the dynamics of social acting working together with the state would be as follows:



Then:

Public Policy + (Popular Supervision + Government Supervision) = Best use of public resources + Public policies focused on the citizen.

As seen, the society would be a support for public policy and could contribute to its improvement and effectiveness. Therefore, one important thing about participation of society (in formulating and monitoring public policy) is to provide greater transparency and legitimacy to government actions as well as in guiding the application of resources.

2. CGU and OGU Roles in order to assist the social control.

2.1 - The CGU and OGU actions in order to improve transparency in Brazilian public services.

In addition to the audits in institutes and in public agencies that receive public resources from union budget, the CGU works to promote transparency and social control in Brazil. In this sense, works hard and has instituted various programs and actions such as “Portal da Transparência”, “Olho vivo no dinheiro público” and a proposal for FOIA implementation in Brazil.

Through the “Portal da Transparência”²², citizens can monitor (at the federal level) the financial implementation of programs and actions of government. Thus, the citizen can verify where public money is being applied. From this greater transparency comes the possibility that the citizens have more interest to participate in supervision of public money application in their own city. In this context there is the empowerment of the citizen and the possibility of greater control of public spending (to the appropriate application of taxes paid by the citizens) through instruments that consolidate the concept of "Open Government".

²² <http://www.portaltransparencia.gov.br>

The program "Olho Vivo no Dinheiro Público"²³ is another forefront initiative from CGU that aims to prevent injurious actions against public property through the promotion of social control and practices that strengthen the "Open Government." This program enables and directs, through periodic training, municipal officials and citizens on the proper use of federal funds transferred to the municipalities. This action aims to strengthen society by promoting transparency of public actions, enlisting citizens to fight against harmful practices such as corruption and deviation of public funds.

And more, was in "Conselho de Transparência Pública e Combate à Corrupção"²⁴ in which have been proposed a law that regulates the Brazilian Constitutional right of citizens to have access to public information. This proposal has become a Brazilian FOIA project of law that was approved by the Brazilian Senate on October 25, 2011. In this sense, the FOIA project of law is waiting only for the approval of our President before the law comes into force - after the 180 days that Brazilian legislation requires.

Regarding the Ouvidoria Geral da União (OGU), since its creation in 2003, its conception has faced the challenge of providing the citizens structures of government that best interact with society. This proposal has guided the OGU in order to provide technical support for the creation of federal ombudsmen throughout the Brazilian territory. The result was an increase in the amount of federal ombudsmen by 275% since 2003. At the beginning of the work there were about 40 units, and in one of the last measurements reached approximately 150 units.

In addition to the activities of encouraging the creation of ombudsman and training their employees has also given emphasis to the implementation of regional meetings, national forums, seminars, and colloquiums in various capitals, spreading the culture of ombudsman to society and government²⁵. In this sense, the OGU promotes, concomitantly, the formation of partnerships to spread the practice of ombudsman in Brazil.

²³ http://www.cgu.gov.br/olho_vivo

²⁴ Council of Public Transparency and Combating Corruption – that integrates the CGU structure

²⁵ Speech at "I Seminário de trabalho da Ouvidoria-Geral da Secretaria de Saúde do Distrito Federal" Theme: "A Ouvidoria como instrumento de Controle Social"

Internationally, the OGU aims to increase their practices by benchmarking the successful experiences of other countries. For that purpose promoted the signing of cooperation agreements and the participation in international conferences and seminars. These actions also enabled the OGU to share their experience in the ombudsman subject.

Moreover, considering the needs of the Brazilian government to direct their policies to meet the priority demands of our population, it is essential that the State prioritize actions for the strengthening of participatory democracy and public transparency that are intrinsic presuppositions to this process.

In this sense, the CGU is an indispensable organ²⁶ for various actions of support for our democracy because its initiatives include the enforcement of citizen supervision of public funds. Therefore, it is essential that other instruments of citizen control, available to the CGU, be strengthened. One of these tools is the OGU that coordinates the entire segment of ombudsmen at the federal level.

Therefore, the prerogatives of the Ombudsmen should be based, on a large scale, in the fact that they can anticipating the popular desire through the manifestations direct to them by the citizens. Then, the OGU can improve democracy through popular participation in government decisions.

Therefore, actions that aimed the strengthening of ombudsman institutions in Brazil are necessary, because various ombudsman models and different initiatives coexist in the public sphere. Thus, the various structures of ombudsman seek to build and consolidate a model institution that effectively affirms itself as a new space of citizenship and as an instrument of improvement of public administration, seeking to strengthen participatory democracy and public transparency. In this sense, the idea is to unify procedures in order to provide the citizen with better services from public agencies²⁷.

²⁶ See footnote 15 on page 10

²⁷ Speech at “I Seminário de trabalho da Ouvidoria-Geral da Secretaria de Saúde do Distrito Federal” Theme: “A Ouvidoria como instrumento de Controle Social”

2.2 - Controladoria-Geral da União – CGU (Office of the Controller General)

- a) The CGU historical context - The Internal Control and its functions. The CGU's importance increasing in public administration since its beginning in the 1990s.

The CGU is the organ²⁸ (from the Federal Government) responsible for directly and immediately assisting the President regarding matters, within the Executive Branch, whether relating to the protection of public property and the enhancement of transparency of management (through the activities of internal control, public audit, eyre, prevent and combat corruption and ombudsman). In addition, the CGU shall do, as the central office, the technical supervision of the organs²⁹ that compose the Internal Control System and the Eyre System and units of the Federal Executive ombudsman, providing necessary policy guidance.

Nevertheless, until reaching the current structure, the Internal Control System of the Federal Executive authority has gone through several restructurings since its creation. In the late 80s and early 90s, with the redemocratization of the country the need was realized for a centralized body that fostered the transparency of government actions and monitor the effective application of public money within the federal executive branch.

Thus, oversight institutions went from a decentralized and heterogeneous system of supervision to a single central institution that embraces the functions of supervision and control. This idea took shape with the creation of the Secretaria do Tesouro Nacional – STN³⁰. It is relevant to inform that SFC was an office within the STN which, in its turn, was part of the structure of the Ministry of Finance.

²⁸ See footnote 15 on page 10

²⁹ See footnote 15 on page 10

³⁰ Brazilian National Treasury Secretariat

The structure presented in the previous paragraph soon became uncomfortable. In that hierarchical ordering the STN would supervise its own accounts. Given this hierarchical and interest conflicts a proposal of Medida Provisória – MP³¹ was prepared for separating SFC from STN. According to the new proposition, the functions of supervision and control would be reserved for SFC and the Union financial planning, management rights and assets, guarantees and obligations functions for the National Treasury. The MP in question was approved in 1995 starting the activities of Federal Control as an autonomous office under the Ministry of Finance.

The SFC was born strengthened, because carrying a part of the entire structure (ministerial and state) of the STN. Nevertheless, it was necessary to strengthen, to partition and to standardize the works. This effort had already been begun at the time of entry of Instrução Normativa³² MEFP/DTN/COAUD/No. 16, from December 20, 1991. This legal institute lasted until 1998 when it was reviewed by Instrução Normativa No. 01, from April 6, 2001.

The new structure met other recent SFC's assignments as to promote social control. In this model, the planning of control actions was up - especially – to certain coordinations and the supervisions' implementation due to Ciset's³³ and Delegacias Regionais³⁴. However, there remained a lack of ascendance to SFC because it didn't have a directed link with the highest authority of the executive branch. Moreover, the situation of Ciset's was more complicated because they belonged to the structure of ministries. Therefore, Ciset's were subordinated to the respective Ministers of State. Only this

³¹ In a free translation from a text written by the eminent Brazilian Professor of Law Bandeira de Mello and in accordance with the new text of Article 62 given by the Constitutional Amendment number 32 from 2001, Medidas Provisórias: *“are measures ; as the name says temporary, that the President may issue, excepted certain matters, in case of relevance and urgency, with force of law, whose effectiveness, however, will be eliminated from the beginning if National Congress, who will be immediately submitted, not converted the Medida Provisória into law within ; do not run during the parliamentary recess (120 days from its publication.)*

³² Instrução Normativa is a rule expedited within Secretariat or Ministry that aims to regulate ministerial acts.

³³ SFC Offices in Ministries located in Brasília

³⁴ SFC Offices in the states

last fact – alone - could generate, again, conflicts of interest as seen in the old structure where STN was the predominant organ³⁵.

Without the conflict of interests being solved, the Instrução Normativa n ° 1, from April 6, 2001 organized the Internal Control System as follows:

a) central organ: the Secretaria Federal de Controle Interno do Ministério da Fazenda – SFC/MF(Federal Internal Control Secretariat of Ministry of Finance), responsible for policy guidance and technical oversight of organs³⁶, agencies and units that compose the System, without prejudice of the organ³⁷ subordination in which administrative structure they are integrated;

b) sectorial bodies: the Secretariats of Internal Control of the Ministry of Defence, Ministry of Foreign Affairs, Civil House and the Union General - Advocacy;

c) sectorial units: Internal Control Units of the military sector as the sectorials from Secretariat of Internal Control of the Ministry of Defense; and

d) regional units of the central organ: the Gerências Regionais de Controle Interno – GRCI (Regional management boards of Internal Control) in the States.

In this new structure there was perceived a conflict of interest considering that the sectorial units and sectorial bodies were still tied to the organizational structure of other departments. In addition, the SFC remained in the Ministry of Finance. That situation generated questions in other ministries about the competence of the SFC in overseeing their accounts. This thought comes from the fact that the Ministry of Finance was hierarchically analogous to the other Ministries.

³⁵ as seen on paragraph 3 page 21

³⁶ See footnote 15 on page 10

³⁷ See footnote 15 on page 10

As the time passed, with the progressive increase of disclosure - promoted by the media - of scandals involving diversion of public resources, society and media in general questioned the effectiveness of state actions in the fight against corruption. At this point, we can realize the close relationship between the CGU and social control because CGU was the first (if not the only one) agency demanded in order to solve popular complaints. As seen, popular claim was essential in the creation of Corregedoria-Geral da União - CGU.

In this sense, the Corregedoria-Geral da União was created on April 2, 2001 (by the Medida Provisória³⁸ No. 2.143-31) linked directly to the Presidency. In order to suppress the bad administrative practices, the stated purpose of this new structure is to combat, under the Federal Executive Branch, fraud and corruption and to promote the defense of the public goods.

Almost a year later, the Decreto³⁹ No. 4.177 from March 28, 2002, joined the “Secretaria Federal de Controle Interno – SFC” (Federal Secretariat of Internal Control) and the “Comissão de Coordenação de Controle Interno – CCCI” (Coordination Committee of Internal Control) to the Corregedoria-Geral da União – CGU structure. The same Decreto No. 4177 transferred to the CGU the competences of general ombudsman, that was connected to the Ministry of Justice.

The Medida Provisória⁴⁰ No. 103, from January 1, 2003, converted into the Law No. 10,683 of May 28, 2003, renamed CGU to Controladoria-Geral da União (Office of the Controller General) as well as gave to the head of CGU the status of Minister of State of Control and Transparency. More recently, The Decreto No. 5,683 of January 24, 2006, changed the structure of the CGU, ameliorating communication between departments.

³⁸ See footnote 31 on page 22

³⁹ Decree is an order issued by a higher authority or organ that determines the fulfillment of a resolution.

⁴⁰ See footnote 31 on page 22

It is important to understand that between the years 2003 and 2010 there were great advances in the Internal Control System. There was an attempt to recompose the CGU's workforce with the implementation of concursos which led to the admission of 1,230 Analysts of Finance and Control - AFC (academic level) and 193 Technical of Finance and Control - TFC (mid-level position(high school)) that actually strengthen federal control. These changes boosted the Internal Control of an organ unknown (even for some managers and government workers) to an organization recognized as essential for monitoring the correct application of public resources. Initiatives such as "Portal da Transparência"⁴¹ (Transparency Portal), "Olho Vivo no dinheiro público"⁴² (something like "Eye On the public money") and the initiative for implementation of Brazilian FOIA promoted a closer approach between the citizens and CGU and helped to form partnerships in line with the strengthening of social control.

⁴¹ <http://www.portaltransparencia.gov.br>

⁴² http://www.cgu.gov.br/olho_vivo

However, it is important to mention that despite the great improvement in the number of government employees, the number is still too low compared to the challenges of monitoring all federal funds. In addition, there is a migration of control auditors to the other state careers considered better structured and stronger. This information can be ratified by the following tables⁴³:

Chart 01

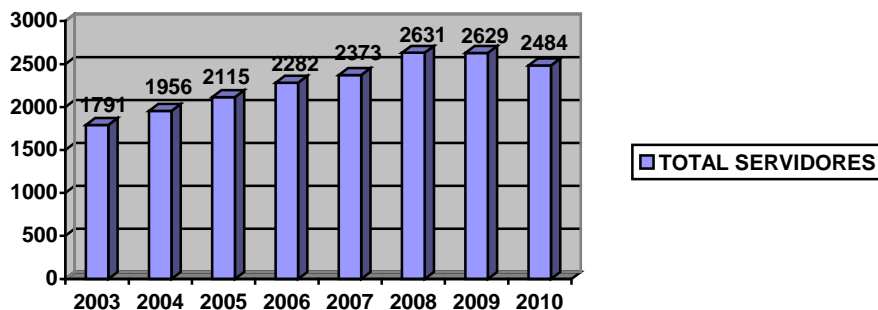
YEAR	EXITS				Subtotal exits
	AFC				
	Vacancies	Exemptions	Retirements	Deaths	AFC
2003	11	0	4	0	15
2004	24	0	4	0	28
2005	11	0	4	0	15
2006	54	8	16	1	79
2007	21	3	11	2	37
2008	63	6	14	2	85
2009	57	2	28	2	89
2010	27	1	14	3	45
TOTAL	268	20	95	10	393

⁴³ Information provided by the Registration and Payment Division of CGU (General Union Comptroller) on June 7, 2011

Chart 02

YEAR	Admission
	AFC
2003	0
2004	243
2005	203
2006	288
2007	154
2008	209
2009	132
2010	1
TOTAL	1230

COMPARATIVE GRAPH OF TOTAL GOVERNMENT EMPLOYEES IN 12/31 EVERY YEAR INCLUDED THE PERIOD FROM 2003 TO 2010



For all the above, despite the need to strengthen the central organ⁴⁴ of control even more, it is observed that there was a grouping of the main administrative functions of control, eyre, prevention and ombudsman, consolidating them into one functional structure. This is a positive fact for improving the control of public accounts. In addition, the internal control system organization migrated from the Ministry of Finance to the Presidency of the Republic and its leader was promoted to the Minister of State. All this evolution strengthen the competence of Internal Control to supervise with greater resourcefulness the other organs of the executive structure.

⁴⁴ See footnote15 on page 10

2.3 – Ouvidoria - Geral da União – OGU (Brazilian General Ombudsman)

The Ombudsman was introduced - by law - in Sweden on June 6, 1809 (art. 96), however similar institutions (in other countries) were only introduced long after. A hundred years later an institution was created in Finland in the same way and after 45 more years the third Ombudsman was elected in Denmark. However, in recent decades of the twentieth century this idea has spread rapidly around the globe. In particular, many countries with a history of authoritarianism elected the Ombudsman as an element to safeguard its transition to democracy and rules based on law. This was the case, for example, of Brazil.

In this sense, in the year 1809 Sweden could not be characterized as a complete democracy. The parliament was not elected by universal suffrage and the king remained the chief judge and head of the state administration for over 100 years. Thus, the Swedish Parliamentary Ombudsman - for a little more than 100 years - subsisted in a state that was not democratic. However the Ombudsman helped to create a democratic thought in this environment since that the opinion of citizens began to be considered. This situation emphasizes that the work of the Ombudsman, even at the beginning, derives from the democratic ideal and contributes to the improvement of democracy.

For all that was explained, despite its Swedish origin, the power of the Ombudsman and its structure varies from country to country. However, in spite of the differences, their actions are always associated with protecting and promoting human rights and good governance. Thus, the Ombudsman shall ensure that citizens are not subject to arbitrary acts of rulers.

In 1980 - before the end of military dictatorship in Brazil - Ombudsman began to be established in different sectors of Brazilian society. It is important to understand that democracy is not a precondition for the creation of ombudsman offices (fact evidenced throughout history). However, the work of ombudsman contributes to the development and strengthening of democracy in a country.

A brief history of development of Ombudsman in Brazilian public administration.

The article 21 of the Universal Declaration of Human Rights of 1948 consecrated the right of everyone to access public service in their own country. However, it's difficult to establish the article 21 in Brazil because citizens were not accustomed with democracy as a result of 20 years of dictatorship.

That said, one can trace the evolutionary timeline of the Ombudsman in Brazil according to lessons learned from the booklet produced by the Ouvidoria-Geral da União – OGU (Ombudsman's General Union)⁴⁵, as follows:

Brazil Colony

In colonial Brazil, the figure of the ombudsman has the role of applying the Metropolis' Law (Portugal). It was totally different from the classical model, since didn't represent the citizen – it only attended the holder of Power – and reported to the King of Portugal what happened in colony.

1538 - Antonio de Oliveira was appointed as the first ombudsman. He accumulated the position of Captain General of the Captaincy of San Vicente⁴⁶ and Ombudsman.

1548 - With the creation of the General Government of Brazil came the figure of the General Ombudsman, with the functions of General Justice Inspector in all colonized territory.

Brazil Empire

1823 - Appears the Ombudsman as the judge of people. Complaints should be directed to the Court ex-officio by the Ombudsman.

⁴⁵ "Guidelines for implementation of the Ombudsman Unit" fifth edition

⁴⁶ Capitão-mor da capitania de São Vicente

Brazil – Republic

1964 - With the dictatorship, all democratic institutions were relegated to a forced silence.

1983 - From this year appears the first signs of democratic opening: the debate for the creation of channels between the power structure and the population begins to take force.

Brazil - New Republic

1986 - In Brazil, with the end of dictatorship in 1986 (a remarkable date in the history of Ombudsman) was created the first municipal public ombudsman of the country, in Curitiba / PR. The example was followed by other cities and states in Brazil. It was a slow and heterogeneous beginning of the ombudsman in Brazil after the military dictatorship.

1986 – The Decree No. 93.714/1986 creates a Committee to Defend the Rights of Citizens, linked to the Presidency of the Republic, in order to defend the rights of citizens against abuses, errors and omissions committed by Federal Public Administration, the committee chairman was appointed as Ombudsman by the President.

1992 – The Law No. 8,490/1992 creates the General Ombudsman of Republic in the Ministry of Justice structure.

1996 and 1998 - Decreto No. 1,796/1996 and 2,802/1998 delegate to the Office of Minister of Justice the assignments to develop the activities of General Ombudsman of the Republic.

Moreover, in face of changes occasioned by the reforms occurring in the Brazilian state, emerge the Constitutional Amendment No. 19, 1998, which in its Article 37, says:

"The directly and indirectly public administration from any of the branches of Union, State, Federal District and Municipalities shall obey the principles of legality, impersonality, morality, transparency and efficiency and also to the following:

[...] § 3º The law shall regulate the forms of user participation in direct and indirect public administration, especially by regulating:

I - complaints regarding to the provision of public services in general, ensured the maintenance of customer support services and the periodic evaluation, external and internal, of service quality;

II – the discipline of representation against the negligent or abusive exercise of post, employment or function in government."

1999 - The State of São Paulo promulgates the law of protection of user of public service and determines the creation of ombudsman offices in all state agencies.

2000 - Decreto⁴⁷ No. 3.382/2000 delegates to the National Human Rights Secretary of the Ministry of Justice the role of General Ombudsman of the Republic.

2001 - The Medida Provisória⁴⁸ No. 2.216/2001 creates an Inspector General of Union, which integrated the presidency.

⁴⁷ See footnote 39 on page 24

⁴⁸ See footnote 31 on page 22

2002 - Decreto⁴⁹ No. 4.177/2002 transfer the competences of the General Ombudsman from Ministry of Justice to the General Union Inspector (Corregedoria-Geral da União), except those relating to general ombudsman for human rights, which remained in the Ministry of Justice.

2002 - Decreto⁵⁰ No. 4.490/2002 creates the General Ombudsman of the Republic (Ouvidoria-Geral da República) in the regimental structure of the General Union Inspector (Corregedoria-Geral da União).

2003 - The Law No. 10.683/03 transforms the General Union Inspector (Corregedoria-Geral da União) into Office of the Controller General (Controladoria-Geral da União – CGU), keeping among its competences the activities of general ombudsman (except the activities of Indians’ Ombudsman, consumer and federal police to the responsibility of Ministry of Justice and the activities of human rights, in charge of the Special Secretariat for Human Rights of the Presidency).

2004 - The Law No. 10.689/2004 sets the name “General Ombudsman of Republic” (Ouvidoria-Geral da República) to the “General Ombudsman of Union”(Ouvidoria-Geral da União), which, by the Decreto⁵¹ No. 4.785/2003, has, among others, the responsibility for technical coordination ombudsman segment on the Federal Executive branch.

2005 - Decreto⁵² No. 5683 from January 24, 2005, in its turn, attributes to the General Ombudsman of Union (Ouvidoria-Geral da União), among others, the power of guidance the performance of the Ombudsman units in the Federal Executive branch.

⁴⁹ See footnote 39 on page 24

⁵⁰ See footnote 39 on page 24

⁵¹ See footnote 39 on page 24

⁵² See footnote 39 on page 24

For all the above, it can be seen that the Ombudsman institute in Brazil came from a structure that served only to the holder of power to a structure focused on the demands of society. In a way, the Ombudsman in Brazil followed the evolution of democracy in our country. In times of authoritarian governments was distorted in its substance and focused on those in power. On the other hand, in times of democracy and political openness ombudsman has been instrumentalized in order to analyze citizen manifestations and charge organs⁵³ and state agencies to solve their manifestations. Thus the certainty of the existence of Ombudsman institutions - that preserve its essence – presupposes a state where popular participation is intense.

- a) Exposure about the diversity of Ombudsman institutions in Brazil with focus on the lack of interaction between these institutes and the need to develop an ombudsman integrated system in the Brazilian government.

Growing in a heterogeneous and disordered form, the ombudsman system of the executive power needs to standardize procedures. Much of that is due to the continental size of Brazil and how the ombudsman offices was created and developed. Because of this, there are differences from the type of operation to the “*modus operandi*”. This situation confirms the lack of interaction between the various ombudsman institutions linked to the federal executive branch.

In this sense, there are several models and initiatives to implement ombudsman offices currently in Brazilian public administration: ombudsman offices formally established by law, decreto⁵⁴, and ordinance or by simply acting from the delegating manager.

There are public ombudsman with mandates previously defined, others appointed to posts formally created or only designated for the exercise of the function, chosen through popular consultation or by society’ representative bodies and even by appointment or designation of an authority.

⁵³ See footnote 15 on page 10

⁵⁴ See footnote 39 on page 24

In face of differences and specificity of each institution, the ombudsman offices are defining their own competences and prerogatives, establishing different ways of acting and to institutionalize themselves, with the aim of forming themselves into institutes that defend the interests of citizens along the units which they are linked.

Therefore, it is important to create an ombudsman offices system where the interaction is strengthened by means of a computerized system that standardizes procedures and actions. It is relevant to explain that the role of the ombudsman offices will be strengthened by the Project of Access Law (project of FOIA) that provides the following rules written in Brazilian Constitution of 1988:

- a) item XXXIII of the article 5^o;
- b) item II of the paragraph 3^o from the article 37; and
- c) Paragraph 2^o from art. 216.

Therefore, FOIA⁵⁵ aims to promote the disclosure of collective or general interest information guarded by public organs⁵⁶, agencies and entities.

Consequently, the OGU shall endeavor efforts in order to unify the general ombudsman system also aiming better comply with Access Law. Light of the foregoing, the new system should also allow and guarantee the fundamental right of access to information. OGU should also ensure that the publicity be considered common thing and secret as an exception. More than that, have to ensure the access of integrity, authenticity and updated information through objective procedures in a nimble, transparent, clear and easy to understand language.

Moreover, it is also an OGU' priority the consolidation and unification of the "*modus operandi*" of all the federal ombudsman offices from Executive branch. For this there must be cooperation of the segment of ombudsman in order to the intended system embrace all the needs and particularities of various ombudsman institutions spread throughout Brazilian territory.

⁵⁵ The Project of Access Law was approved by Brazilian Senate on October 25, 2011 and until the end of this paper was waiting only Presidential approval to come into force.

⁵⁶ See footnote 15 on page 10

So, the new system should ensure:

1) Regarding efficiency:

- The identification of resources (material, financial and institutional) needed to create a policy that integrates better the ombudsman offices in the context of direct federal administration;

2) Regarding the efficacy:

- The mapping of innovative experiences in the context of federal ombudsman offices that can contribute with the reinforcing of the current system;
- The unification, integration and improvement of the bureaucratic procedures for citizen assistance;
- The exposing of documents that inform the citizens about the services offered by the Ombudsman, the ways of access to these services and about the commitments and standards for improving the citizen assistance;
- The integration of the federal ombudsman offices system.

3) As for effectiveness:

- Understanding the current situation of federal ombudsman offices and the quality of services provided to the citizens;
- The strengthening of participatory democracy by ensuring that the procedures for receiving, analyzing and forwarding of complaints (made by citizens) favor the generation of results expected by society for the improvement of public administration;

Therefore the computerized system will assist in transposing a model with heterogeneous diversity of procedures and little interactivity in order to build a new structure based on unification of principles and bureaucratic procedures. These actions are consistent with the speeding of process and resolution of manifestations coming from society.

The foundations of the new system must be ratified by the OGU with actions that approach even more the ombudsman institutes. In this sense, are fundamental:

- a. Definition and dissemination of the precepts about the ombudsman, in particular, within the Federal Executive Branch;
- b. Organization, guiding and harmonizing the actions of ombudsman units;
- c. Collecting, consolidating and managing information due the ombudsman offices actions.

For all the above is fundamental - for the Brazilian Government could provide better services appropriate with citizen demands - a consistent, valued, well equipped and independent system of Ombudsmen. Thus, will corroborate with this consolidation of Ombudsman institutions (and consequently corroborate with participatory democracy and public transparency) use of information technology in order to create a unique system of federal ombudsman procedures. In this sense, the ombudsman can improve the effectiveness of their actions (as an organ of access by excellence) that encourage and promote citizen participation in public policy. To do so, OGU must establish procedures that unify the ombudsman system as well as create facilities for citizen access to public policies.

3. Freedom of Information Act (FOIA)

3.1 - Freedom of Information Act (Lei de Acesso)

FOIA⁵⁷ regulates the access to information foreseen in the:

- a) item XXXIII of article 5^o,
- b) item II of § 3^o of art. 37 and
- c) in the § 2 of art. 216 by Brazilian Federal Constitution;
- d) change Law No. 8.112 of December 11, 1990;
- e) revoking Law No. 11.111 of May 5, 2005, and provisions of Law No. 8159 of January 8, 1991, and makes other provisions.

The FOIA is one of the greatest opportunities for change in politics because it can promote the effectiveness of public policy. So it is of great importance (for the empowerment of citizens) that public institutions work towards strengthening the overall transparency of their documents and actions. In this sense the project of FOIA will help developing the culture of disclosure rather than the culture of secrecy.

However, the fact is that the experience in implementing FOIA - in other countries - has caused some embarrassment to the authorities. This fact, with time, creates resistance and even the revisionism of the Law. In this direction, India received FOIA with enthusiasm, but with time, bureaucratic barriers were being built to curb the institutes written in the Law.

⁵⁷ FOIA was approved by Brazilian Senate on October 25, 2011 and until the end of this paper was waiting only Presidential approval to come into force

So to have an effective implementation, the FOIA – preferably - should be applied after all the structural, bureaucratic and systemic state weaknesses have been supplanted in order to not become just a piece of paper. Therefore, effectiveness and credibility of the Law will be preserved. We must also take into account that many countries have the law but do not have much success in its implementation. Those cases must be considered.

In order to solve all these weaknesses, it is essential that the FOIA include the participation and support of the whole society through:

- a) Ample space in the media;
- b) political support;
- c) Engagement of civil society (prepared, including, technologically);
- d) Focus on classes that form the basis and the half of social pyramid, considering that they demand for more public services.

Therefore, it is interesting that the issues set are worked out even before the provision of the FOIA. The ample space in media (necessary to support the legislation of transparency) can be enhanced by the creation of websites that focus on information that citizens really want. Information on health, education and public safety are the most commonly required and therefore must be scrutinized at the level of neighborhoods and streets. In this sense, it is interesting for the citizen to know the number of schools, hospitals and even the murders in her neighborhood. Thus this fact, the citizens become more aware of the weaknesses and virtues of the street and neighborhood where they live and may charge off the public authorities for improvements. Therefore, the citizen must have clear answers on, for example, the following questions:

- a) Where are the hospitals in my neighborhood?
- b) What is the quantity of crimes occurred in my neighborhood?

The implementation of systems - at this level of detail and magnitude - can be very difficult and costly, but should be considered in regard to the cost-benefit. The fact is that: with the engagement of society everything is possible and requires less spending. As an example, we can take advantage of what was said in the speech of Mr. Andrew Puddephatt⁵⁸ . He explained how the public contests - that take advantage of the best works on the improvement of government practices - can promote economy and efficiency in public administration. In this sense, he exemplified how the system created by a teenager of 16 (sixteen) years, that reported the amount of energy spent by government departments in England, held a great economy to the British treasury.

Moreover, it is necessary - for the information is directed to all people without exception - that even the language used is understandable to part of population not adapted to the technical nature of certain public documents. It can be noted (for instance) that the public budget publication sometimes don't reach the ordinary citizen. The most relevant information for society - which are found in the sphere of health, education and public safety - even though they are contemplated in Budget Act - are not clearly laid out for people not accustomed to public accounting⁵⁹ .

In this context, is characteristic in Brazil say that a law "pega"(works) or "não-pega" (doesn't work). The reality is not quite that. The fact is that the state, after the enactment of a law, often doesn't have structure to ensure compliance with the dictates inscribed in the regulations. For example, in Brazilian Federal District throwing trash on the street is a misdemeanor punishable by a fine⁶⁰ . However, it is not uncommon to see people throwing their trash on sidewalk. This is because there is no punishment.

In this sense, there is no punishment because there is no supervision. Supervision is absent because quantitative of servers - required for this task - is insufficient. So the law is emptied of its content and applicability by lack of infrastructure that supports it. It is important that this does not occur with the Freedom of Access Act.

⁵⁸ British expert on freedom of expression, on 5/5/2011 in the auditorium of the General Comptroller of the Union - CGU in Brazil

⁵⁹ See examples on pages 14,15 and 16

⁶⁰ Law nº 972, December 11, 1995

Like other countries where the bureaucracy is a sector reactive from changes, it can also happen that the servants⁶¹ themselves discourage citizens from filling out forms - with manifestations - in order to minimize negative statistics (as the deadlines for manifestation attendance and quantity of citizen manifestations compose the statistics for evaluation of organs⁶² efficiency).

So all these possibilities should be analyzed and, based on what was observed, produce a law that present plausible and modest goals according to each structure of government at the municipal, state and federal level. In this sense, the FOIA foundations must be built on the following grounds:

- a) Training;
- b) Accurate quality indicators(for example: number of manifestations);
- c) Appropriate structure;
- d) Prudence in the construction of goals, and
- e) Mechanisms of punishment;

If all of these foundations are respected, the Brazilian FOIA will help in gaining time, in minimizing some bureaucratic devices and will increase the effectiveness of government actions.

It is also relevant to expose that the government mid-level servers are the ones who have the most important role in the implementation of this law. They are the ones who make this system works. So much of the necessary training should be focused on this niche of the civil service.

⁶¹ See footnote 20 on page 13

⁶² See footnote 15 on page 10

Another important aspect is planning to provide information. Here we must work with realistic goals in order to not generate disbelief from citizens on the FOIA. Some information are easy to prepare and deliver, others are complex and require more time to be given to the citizen. In this sense, considering that Brazil has passed a period ruled by the military, some information about this period can be very difficult to be provided given the political biases and depth. We can mention that in some developed countries, for an initial response, is common a term ranging from 30 to 40 days. By the above, it is quite reasonable to promise less and be successful instead of promising a lot and be unsuccessful. That is, establish achievable goals for meeting deadlines.

Confirming what has been said, it is necessary that every entity and every organ of public administration do an internal research in order to know its ability to provide reasonable answers depending on the questions presented

- a) is it possible to reply to a specific demand?
- b) Have we enough data to respond to the demand?
- c) How long would be enough to answer a demand?

In short, it is important to be realistic and honest about its ability to provide information.

Thus, it is necessary to create a planned schedule - including stages - before releasing the information. Then list the various types of information and the time they start to be available would be of great importance. In this way, exemplifying:

- a) First step: disclosure of information less complex over a period not exceeding 06 (six) months;
- b) Second step: disclosure of information with average complexity within 12 (twelve) months;
- c) Third step: providing information of great complexity in 24 (twenty four) months.

Corroborating with the practice elucidated in the previous paragraph, this would be the time for the governmental structure could be empowered with the necessary tools for the fulfillment of the Law either.

So, is worth the warning that you can not launch a law that already imposes - immediately - the exposure of all governmental documents starting from its implementation. The lack of structure can generate the citizen discontent and criticism by those who disagree with the law.

Moreover, a citizen who search for a document and receive reiterated negative answers may feel injured and possibly no longer believe in government actions. From this perspective, opposing forces may denounce the lack of observance of the Law and can pointing the FOIA as fictitious and worthless law. A law just for the record. In the meantime, they could add that the government is flawed, that the public servants do not fulfill their functions and so on. From there it is known the speech that varies little between the nations. Therefore, it is necessary to gain the trust of citizens because, often, part of media and opposed interest groups will point only the negative points.

In addition, the law should promote wide disclosure of actions taken by the government, however, must preserve the private life of every citizen including in this category the public servant. Therefore, private information must be preserved (saving certain situations that must be specifically stated in law) even if, somehow undermine the Accessibility Act. In this sense, it is important to clarify, by legal definition, what is private information.

Moreover, in case of major discussions about confidentiality's break of certain information, what should be considered is the public interest. What people think about the confidentiality or disclosure of certain documents? Therefore, in participatory democracies that must be the standard for all government actions and decisions. In case of "qualification of information" should not be different the viewpoint used.

Therefore, it is good that Brazilian FOIA define which information must be confidential. Thus, in the U.S. law of access not all information held by the government is subject to FOIA. So, in the study nº GAO-10-537T⁶³ was written:

“Not all information held by the government is subject to FOIA. The act prescribes nine specific categories of information that are exempt from disclosure: for example, trade secrets and certain privileged commercial or financial information, certain personnel and medical files, and certain law enforcement records or information (attachment I provides the complete list). In denying access to material, agencies may cite these exemptions. The act requires agencies to notify requesters of the reasons for any adverse determination (that is, a determination not to provide records) and grants requesters the right to appeal agency decisions to deny access.”

Above all, balance between individual rights and public interest must be considered. Therefore it isn't a simple task to balance the public interest and ensure the right to privacy. To what extent information about a particular person affects the welfare and security of his/her whole family? Thus, even dead people should have preserved their rights of privacy as the reputation of their families may be at stake.

For everything that was explained, active transparency⁶⁴ is a great ally. Otherwise, less number of citizens will question the administration if governments (at all levels) disposal the maximum amount of information on public and easily accessible sites. In this sense, the information will be already available to all people without the need of application. With that guidance, you can even post the frequent requests from citizen in order to facilitate the search for information. So the idea is to promote active transparency.

⁶³ elaborated by Government Accountability Office GAO

⁶⁴ The government provides the information in public places (easily to be access by population) without the need of citizen manifestation.

In addition, the active transparency helps save time and resources. As more information becomes available, fewer servants⁶⁵ will be required in order to meet and route public demands. Besides, the administration will spend less material for printing and dispatch documents.

It is also needed a lot of support from society and the media. The FOIA must have mass dissemination. So it is important to avoid use a media that only a portion of society have access to. In this sense, the TV spots are the one of those with greater magnitude.

Configures a good practice establish a specializing group on transparency policies in each organ, agency or entity. This department will be responsible for maintenance and construction of best practices of transparency besides suggesting training courses for the entire organization.

It is of great importance to expose that Brazil should not simply try to copy models from other countries in view of the archetypal models come from countries with completely different reality from our. For example, in Canada the Ombudsman played a fundamental role in building a culture of transparency in public service. But in Canada, the Ombudsman is a part of the legislative power and its head is elected by the Congress. Therefore, the Ombudsman actions in Canada have more independence as well as re-enforced by investigative powers.

However, the Brazilian model can take advantage of the mistakes of countries that have established their FOIA in order to avoid errors in our future actions. Thus, Brazil can be a great example for the countries of the south.

It is also important to encourage all organs and agencies to provide information even before the Brazilian FOIA comes into force. This movement helps bridge structural problems and bureaucratic barriers before the enactment of the law. Then, the speed to overcome internal resistance generates a gain in effective.

⁶⁵ See footnote 20 on page 13

Therefore, it is challenging the successful implementation of an Accessibility Law, but it's important to say that after its regular application will come great change in direction of government efforts that can promote the effective of public policy. So, there are two fundamental changes after the implementation of a FOIA:

- a) Change the culture of government, and
- b) Empowerment of citizens due to the greater amount of information available.

In order to strengthen the FOIA is required that all government organs⁶⁶ and agencies commit themselves to its implementation through the creation of quality indicators. The information from these indicators will help in increasing the range of government policies. Therefore, it is necessary that they encompass at least:

- a) Number of manifestations (by region, subject and social group);
- b) Sectors that receive, most often, complaints about their services;
- c) Social groups that ask for more information;

It is relevant to explain that less structured and smaller organs and agencies may have more difficulties to implement FOIA. Thus, it is also necessary the support of a greater and powerful organ which provides support and guide those that need. So, it would be important to think about an organ⁶⁷ that:

- a) Provides support;
- b) Work as a standardized training center.

⁶⁶ See footnote 15 on page 10

⁶⁷ See footnote 15 on page 10

I believe that the Office of the Controller General - CGU has already, in its structure, the instrumentation and expertise - in view of the successful experience of the “Portal da Transparência”⁶⁸ and due to its practice in audit and control of public resources within the federal executive branch - to be an organ⁶⁹ that provides support to others with less experience. In this sense, for CGU encompasses this other function, it was a right decision added - in its structure - the functions of central organ⁷⁰ of transparency in public administration. Moreover, would still be of great value, take advantage of the Union General Ombudsman (OGU), because it characteristic of organ⁷¹ closest to the citizen and directly related to the treatment and referral of complaints, as a key partner in this process.

3.2 - Major Challenges and suggestions for optimal implementation

- a) Future challenges that Brazil will face to implement FOIA and how the experience of other countries with Access Laws can help us to overcome difficulties and resistance from the bureaucracy.

The implementation of FOIA in Brazil will represent a great advance in the political and administrative opening that has been consolidating since the Brazilian Constitution in 1988. However, it will be necessary to transpose various challenges that will certainly occur from the creation to the effective implementation of the Transparency Act. Among them we can bump into the lack of state structure and mood of politicians and administrators. Sectors such as diplomatic and military are resistant to exposure of certain documents because they deal with information whose secrecy can be critical to national security. In this sense, the sectors of society should jointly establish a rule that is viable and achievable. Without these precautions the new law can fall into discredited⁷².

⁶⁸ Portal of Transparency

⁶⁹ See footnote 15 on page 10

⁷⁰ See footnote 15 on page 10

⁷¹ See footnote 15 on page 10

⁷² See example on page 39

In an interview conceded to the newspaper “Valor Econômico”⁷³, Mr Andrew Puddephatt⁷⁴ said that despite the progress, the Brazilian public administration still lacks an Access to Information Act in order to regulate public access to information in three spheres of government (municipal, state and federal).

On the expert opinion, governments (where transparency laws were implemented) become more capable, honest and effective. The more closed are governments, more inefficiency, increase in corruption and little capacity to meet the population real needs can be perceived. Through transparency, social control can flow more properly restraining the bad management practices by the greater exposure of the government official's actions.

One of the biggest challenges to be faced after the implementation of an Access Law is the revisionist aspect. After its approval, the political class starts to change it, adapting the law to the deficiencies of the state not seeking fix the problems. An Australian observer pointed four stages in a system of access to information:

- a) Initial optimism;
- b) growing pessimism;
- c) revisionism in order to limit the scope or application; and finally;
- d) return to fundamentals of the previous regulatory framework.

In addition to political obstacles, it should also be noted the bureaucratic aspects, the British expert warned. The major bureaucratic obstacles are related to the internal management of files and how to align this policy with the types of inquiries received. There is a need to create a system to receive and answer such questions. An improvement of data systems is also needed. A better strategy might be to implement the law, step by step, in ministries and government departments with a strong central support. The UK, for example, spent four years preparing their institutions to implement the law, and then it was applied simultaneously on 100.000 of them.

⁷³ Reporters Máira Magro and Juliano Basile on May 2, 2011

⁷⁴ British specialist in freedom of expression

It is important to emphasize that in implementing Access Laws, the most resistant sectors are the diplomatic and the military, for obvious and comprehensive reasons. In this sense, the security sectors are more apprehensive, considering that those areas work with sensitive information which (in some respects) could weaken some sectors committed with national security. Countries like Brazil - that experienced periods of political turmoil and restrictions on human rights - hold information considered sensitive, which could cause internal conflicts and pressures for punishment of acts committed in the past, during the military dictatorship.

In addition to the points highlighted, the issue related to the privacy of public authorities' meetings produces apprehension. In this case, there must be balance between transparency and confidentiality of meetings. It is important to observe that it is an ongoing process (where the implementation of FOIA is not the high point) the administration should continually try to adapt and improve their procedures. The law will take some time to be widespread and be part of the culture of public administration.

In the process of implementing the FOIA, certainly will be resistance from certain groups and lack of infrastructure (by public administration) in order to meet the demands from citizens. So, it is necessary established a minimum time for public administration adapts itself to the new roles and be able to provide citizens with the information requested. These requirements are premises in order to prevent that the FOIA becomes a worthless piece of paper⁷⁵.

⁷⁵ See example on page 39

For Mr. Puddephatt transparency is a process within a government and is formed by several elements among of them are highlighted the following:

- a) An access law that guarantees citizens the right to request information⁷⁶;
- b) The second element is the pro-active transparency, which means disclose a large amount of information about several categories – it is one thing that Brazilian government is very open to do and have already done in some areas;
- c) The third element is an open data system on which the information is published online and people can question it any way they want. This is very relevant to Brazil.

All these three elements are necessary for a truly open government.

Moreover, it also necessary of great importance verifies the FOIA results. In this sense GAO did a study (GAO-10-537T) with the focus of gathering data from the government agencies and organs to evaluate the efficiency gains generated by the Access Act. In this sense I transcribe the proposed objective in the study in comment:

“The Freedom of Information Act (FOIA) establishes that federal agencies must provide the public with access to government information, enabling them to learn about government operations and decisions. To help ensure proper implementation, the act requires that agencies annually report specific information about their FOIA operations, such as numbers of requests received and processed and other statistics. In work reported from 2001 to 2008, GAO examined the annual reports for major agencies, describing the status of reported implementation and any observable trends. GAO also reported on agency improvement plans developed in response to a 2005 Executive Order aimed at improving FOIA implementation, including reducing backlogs of overdue requests.”

⁷⁶ In Brazil the Project of Access Law was approved by Brazilian Senate on October 25, 2011 and until the end of this paper was waiting only Presidential approval to come into force

GAO was asked to testify on its previous work on FOIA implementation, as well as on selected changes in the FOIA landscape resulting from legislation, policy, and guidance.

To develop this testimony, GAO drew on its previous work, as well as publicly available information.”

4. Another instruments for the improvement of social control.

Instruments that promote popular participation in the supervision and direction of government action.

4.1 – O Orçamento Participativo (Participative budget).

- a) Objectives of the Participative budget and its importance as an instrument of democratization of Brazil. Importance of this institute for the strengthening of social control.

Participative budget is considered a "School of Citizenship" because the government shares power and responsibility (of their actions) with society and encourages citizens to take part in the interfering of government revenue. This thought comes from the premise that, by paying taxes, the community has the right to be part of the roll of actors who decide where these taxes should be applied. In this case, social control would be present both in the shared decision of where to apply resources as well as in the monitoring of budget execution, in other words: in control of what was decided together.

In Brazil, the most emblematic example is the participatory budgeting done by Porto Alegre – RS municipality, which has become a reference for other municipalities since its implementation in 1989. Corroborating with the importance of this groundbreaking effort in improving democracy, the model implemented by Porto Alegre has been awarded on the occasion of UN Conference Habitat II.

Therefore, from the successful experience of Porto Alegre - RS, the participatory budgeting has expanded to other cities in Brazil and in the world⁷⁷. Since this experience in Porto Alegre is considered one of the most successful public policies in Brazil. Currently it is not difficult to identify cities that use the model of citizen participation in application and control of public resources established in the budgets.

The model is essential for the enhancement of participatory democracy, as it balances the public administration power and peaceful society. This is due to the substitution of the tension between the citizen and the established power (represented in this example by the local government) – discarding a model where the society doesn't have opinion by broadening the dialogue between these two forces.

So we can add the participatory budget experience to the several changes in Brazilian society from the democratic openness promoted by social struggles and consolidated by the Constitution of 1988. Since then, democracy has been improving relations between society and state in Brazil. Therefore, the participatory budget also reveals possibilities to expand the concept of co-management of public resources and balance of power in Brazil.

⁷⁷ Spreading to more than 1,000 cities worldwide

In this sense, are in accordance - with the view expressed in the previous paragraphs - the teachings found in the excerpt from the book "Experiências de Orçamento Participativo no Brasil período de 1997 a 2000" written by Ana Clara Torres Ribeiro Grazia de Grazia observes that (in a free translation):

"The Participatory budget results from the claims of popular movements in front of the limits of representative democracy in the country. This System historically demonstrates that is unable to allow, alone, the overcoming of administrative practices that are responsible for space segregation and for exclusion of the popular classes from decision-making arena of public policy. The clashes with the authoritarian culture of public administration traditionally closed to the popular mood and political actions that seek to reverse the processes responsible for the widening of social inequalities, exacerbated in recent decades also contributed to the emergence of participatory budgeting experiences."

Therefore, the participatory budget is a tool that intends to achieve social justice through encouraging social participation in state decisions. It means the enlargement of public space in the Brazilian administrative and political landscape. In this sense, citizenship is increased because the citizen assumes your rights and duties towards the deliberative acts from the government and control of public spending either. It is, above all, an experience of power sharing.

However, the participatory budgeting in Brazil prior than a national challenge is much more a challenge for the municipalities (municipal government and citizen) because the country's reality is very different. As long as there are very rich regions other ones are close to the absolute poverty and exclusion. Thus, the search for a model of participatory budgeting that covers all regions of Brazil seems very distant from the real possibilities and even being questioned its viability.

Nevertheless, the recognition of differences between the various Brazilian locations in socio-economic and policies can help the Federal Government in order to accelerate the democratic process by mapping the regional needs and, in a second stage, with this data, invest better (more or less) in public policies. When the balance between the various regions will be reached, it will be easier the availability - from the State - of tools that will encourage citizen participation in government actions.

Thus, despite regional differences, it is unnecessary talk about to suspend or to delay the process - already underway - of implementation and improvement of participatory budgets in order to create a model that encompasses all the different Brazilian realities. It happens because there is no necessity of a single model but a template that meets the reality of each municipality. In this sense, the participatory budget should change its procedures to meet the citizen - according to the specificities and local customs. However it is necessary don't forget that participatory budget is a democratic tool par excellence.

Participatory budgeting is an evolution of the democratic process of selection, evaluation and control of public policies. It is the Public management guided by the citizens' choices. So, once again, the teachings outsourced by Ana Clara Torres Ribeiro Grazia de Grazia are useful to explain the nature of the Participatory Budget:

"[...] Which effectively configures an experience of participatory budgeting is the public management based on direct participation of the population and / or through their organized representation (entities) in the different phases of development and implementation of the budget. It is, therefore, the content and extent of participation that indicate if the budget is being effectively co-managed. It is, after all, the socialization of an instrument of power, whose traditional control by the ruling classes, has been responsible for the reproduction of social exclusion from the public space and the political sphere

This is the reflective (and proposal) core that allows diversity to be recognized and at the same time, be respected [...]"

And also,

"In summary, the content of the experience called "Participatory Budget" depends on (i) the projects that driven local government, (ii) the level of organization, mobilization and politicization of civil society, (iii) the socio-economic context and the volume of local population involved, (iv) the technical level and the complexity of the administrative area, (v) the involvement degree of whole government, (vi) the funds collected by the municipality, (vii) the methodology applied and (viii) the relationship between administrative area and City Council. "

Participatory budgeting is also a transparency tool. The "black box" - composed by funds collected by government - gains visibility and flexibility by the possibility of citizen interference on the public resources application. Thus, practices such as clientelism and public resources privatization are diminished and possibly purged from government actions.

For all the above, the Institute of participatory budgeting seeks the ideal of expand of popular participation when propose confront the ills of Brazilian society through the eyes of citizens. Dialogue overlaps the imposition. The model "top down" is replaced by the "bottom up". The patrimonialism and paternalism - practices to be extirpated from the Public Administration - are minimized by effective social control and open government. In this sense, the participatory budget helps in the reconstruction of relations between society and government. The materialization of social interests through direct dialogue with the individual becomes the focus of public policy. Therefore, the Participatory Budget is a practice that promotes direct democracy through effective selection and prioritization of public actions through dialogue with citizens.

4.2 – As Mesas de Diálogo (Roundtables).

- a) The Roundtables objectives and its importance as an instrument of democratization of Brazil. Relationship with social control.

The roundtables are another way that the Government has in order to ensure popular participation in the construction of actions that best suit to the social expectations. The edification of public policies - with stay in proposals built through dialogue between different actors involved in the process - is basic to the improvement of participatory democracy.

In this sense, class representatives, advisors, unions, managers, non-governmental organizations and ordinary citizens define, through the exchange of ideas and arguments - and on equal terms - policies that are (in the understanding of most) priority for the improvement of community's quality of life.

In addition, roundtables – when done - are important for the cooperative spirit reinforcing (between the various actors that are interested in a certain subject) in order to search for solutions in favor of common interest. Moreover, this technique corroborates for the improvement of practices and specific actions that best suit to local realities.

Another important feature of Roundtables is its wide range of application. For example, the Federal Government can invite the various stakeholders on the theme "Human Rights" (in order to discuss solutions to improve the conditions of the individual), on the other hand municipality could invite the community to participate in the exchange of ideas, concepts, opinions about, for instance, the situation of women in order to discuss and establish public actions that help to fix possible distortions in the treatment between the genders.

For all the above, a benefit that comes from the Roundtables is the increased of cooperation between social actors. Thus, government invites the various stakeholders in order to discuss a topic of general relevance where everybody can propose or improve ideas to solve improprieties. This activity develops mutual cooperation between organizations that - not rare - have opposing interests. Then, comes from this practice the dialogue improvement (between society (individuals, entities, unions and private sector) and the government) about each theme suggested. The agreement of these actors will generate proposals that fit most all sectors concerned. So, besides a democratic procedure, is a pacifier spirit where all actors involved try a solution that meets, minimally, all the claims.

4.3 – Audiências Públicas (Public Audiences).

- a) Public Audiences and its importance as an instrument of democratization of Brazil. Relationships with social control.

Public Audiences are obvious examples of this new model. These new forms of participatory democracy are a natural evolution of democratic principles because instrumentalize the individual (who takes for themselves the right/duty to follow and equip with ideas public managers) in order to guide the social policies implementation.

The Public Audiences is becoming one of the most used instruments for promoting popular participation in government decisions. Basically consists in a discussion session open to all interested parties who present their views on any important issue to the local society. In this sense, they promote a collective debate about a subject that is a focus in the implementation of public policies. So, help in gathering opinions and in the construction of effective models of public policy either. Therefore, it is a device that guides the managers in their decision making.

A relevant feature arising from the practice of holding Public Audiences is the direct citizen's fostering. It is so because the administrative decisions are based on the ideas of society. In this sense, local governments can carry out the actions prioritized by the citizens which seems a fairer practice in accordance with community consensus. In addition, the managers have their actions supported by the public opinion. This fact gives legitimacy and more effectiveness to the managers' acts because of the possibility of better results in public policies.

It is also important to infer the ways in which public audiences can be held. So the lesson from the following article could clarify this view⁷⁸:

"Participation in public audiences can take place either directly or indirectly. In the first case, the particular, in his own name, attend and expose your opinion, debate and adduce reasons about the relevant subject of general interest. In the second, who participates is a legally recognized organization or association, such as "associations, foundations, civil society, in short, any representative body, whose participation would serve the interests of those who are represented by them" (40).

Are named "part", in a broad sense, the public audiences participants - according with Agustín Gordillo lesson (41) - assuming all those who have a subjective right or a legitimate interest, as well as collective interests, including supra-national public persons (international or foreign) as well as private, as appropriate. At last, "any people, NGOs, political parties, etc." which "discuss previously decisions to be taken by the administration" (42)."

Another characteristic that should be encouraged (when the public audiences are done) is the effective participation of citizens, without which the audience becomes ineffective. A public audience where participants (citizens) passively receive all information (as apathetic spectators) cannot be considered effective. Thus, it is essential to encourage public participation. Also, it is for the manager to ask the public if your actions are consonant to the wishes of society. The consequence of this model is the dynamization and modification of a unilateral procedure (where the government acts (alone) according with it thinks is the best for the citizen) to a bilateral where can

⁷⁸ Evanna Smith in "The public hearing in the administrative process"

be verified the partnership between the state/government and citizen/society. Such importance was given to this instrument that the Brazilian Federal Constitution proceeded to determine their application to situations covering the Executive, Legislative and Judicial powers.

Under the Legislative power, instructs the article 58, § 2º, item II that the Houses of Congress shall have permanent and temporary committees, constituted in the form and with the duties set forth in their respective regulations or in the act that creates them. The normative presented either provides that is committees responsibility (among other duties) - in the reason of their jurisdiction - to do public audiences with civil society organizations. So, that Article says that legislator should consult citizens when preparing laws.

In the judiciary, the public audience is covered in art. 107, § 2º of the Constitution that instructs the Federal Regional Courts to install the itinerant justice, to do audiences and other functions due to judicial activity making use of public and communitarian facilities.

Within the Executive Branch, audiences are widely associated with the formulation of public policies and are arranged in the following articles of the Brazilian Federal Constitution:

- a) Art. 29, XII which predicts the cooperation between representative associations in the municipal planning;
- b) Art. 194, sole paragraph, VII which dispose about the democratic character of management of social security with emphasis on participation of workers, employers, retirees and the government in collegiate bodies;
- c) Art. 198, III that determines the community's participation in the management of public services related to public health;
- d) Art. 204, II, which directs that government actions - in the social assistance area - will have participation of society (through representative organizations) in policy formulation and control of actions at all levels, and;
- e) Art. 225 requires the public audiences because all society has the duty of preserve and protect the environment.

It is important to inform that public audiences forecasts are also found in infraconstitutional norms, that is the case of Law 8.666/93⁷⁹ that in its article 32 requires audiences in bidding processes where the amount of the bid exceeds R\$ 150,000,000.00 (one hundred and fifty million reais) as transcribed (in a free translation) below:

“Art 39. Whenever the estimated value of a bid or bids simultaneous or successive exceeds 100 (one hundred) times the limit specified in art. 23,I, "c" of this Act, the bidding process will begin, obligatorily, with a public audience provided by the responsible authority with at least 15 (fifteen) working days before the date scheduled for the publication of the edict and divulged with - at least - 10 (ten) working days before its realization by the same means provided for advertising the bidding, which will have access and right to all pertinent information and to manifest all interested in.”

Also the Complementary Act nº 101/2000 (Fiscal Responsibility Act), in its article 9º, § 4º determines that the Executive power will demonstrate and will evaluate the fulfillment of fiscal goals of each quarter, in a public audience.

The Administrative Procedure Act nº 9748/99 previses in art. 32, that before making the decision, if the manager find it convenient (and in view of the relevance of the theme) can be held a public audience in order to discuss the process matter.

The promotion and materialization of public audiences are in accordance with the best participatory democracy practices. The effective orality and debate - about the community' relevant issues - are procedures intrinsic to its nature. In this sense, the public audience is one more tool for community consciousness and empowerment of citizens that legitimizes the political or legal decisions. Thus, in decision making process, the responsible authorities search for suggestions and ideas (about the effectiveness of their actions and priorities) in community before implementing the act.

⁷⁹ Law 8.666 from 1993 Procurement and Contracts

That is, the citizens (who are interested on the implementation, suspension or reevaluation of the act) have the opportunity to express themselves before the outcome of the process. This procedure makes the administrative and legislative acts in line with the expectations of society and, for this reason, more susceptible to greater popular acceptance.

The decision makers receive much information about the impact and effectiveness of their actions through report of citizens directly concerned. So, the manager and citizens are beneficiaries in this process. Citizens are favored by this experience because, besides participating in the decision-making process, they are informed of rules - who will impact directly in your community - before its implementation. Therefore, society must be heard before any administrative or legislative decision.

Brazil is not the only country to establish the public audience. In Argentina, the public audience is being widely disseminated. For instance, in article 63 of the Autonomous City of Buenos Aires Constitution provides the convocation of public audiences by the legislative and executive branches or by the community in order to discuss issues of general interest of the city when the initiative count with 0.5% of the local electorate signatures. Moreover, the normative adds that public audience is required before normative projects (in progress at the legislature) that deal with: building, urban planning, industrial or commercial facilities, or modify the use and control of public goods as reproduced below:

"ARTÍCULO 63.- La Legislatura , el Poder Ejecutivo o las Comunas pueden convocar a audiencia pública para debatir asuntos de interés general de la ciudad o zonal, la que debe realizarse con la presencia inexcusable de los funcionarios competentes. La convocatoria es obligatoria cuando la iniciativa cuente con la firma del medio por ciento del electorado de la Ciudad o zona en cuestión. También es obligatoria antes del tratamiento legislativo de proyectos de normas de edificación, planeamiento urbano, emplazamientos industriales o comerciales, o ante modificaciones de uso o dominio de bienes públicos".

We must distinguish public audience and public consultation. Although they are mechanisms where popular participation is encouraged in relation to the government, they do not mix.

The public audience consists in a public debate where citizens (individuals) or civil society representatives talk about an issue considered (by the local community) relevant and of public interest. However, the remarkable character that differentiates the public consultation from the public audiences is the spoken word. The thinking of the community - in the public audiences – is externalized, predominantly, through oral discussions. In the case of public consultation the views of society is manifested through formal documents.

Therefore, the public audience is an instrument of popular participation and may also be defined as a type of public consultation. In this sense, both are mechanisms - available to society - to express the popular will. Therefore, public audience can be defined as a form of public consultation, with the particularity of being done by oral discussions in sessions previously designated for this purpose. Orality is a key feature. In another way, public consultation gives priority to the materialization of public opinion through written parts to be assembled in a process or exposed on Internet.

The public audience can be considered as an instrument that raises the citizen from a passive position for a public manager partner. The exercise of power is now shared between the citizen and the manager because the ideas - drawn from community meetings - come to guide the actions of government. Thus, although the ideas don't have the power of bind the administrator decisions, they provide a glimpse of what citizens actually consider a priority. Therefore, the public audience is one more tool for encouraging public participation. So, it is a tool that allows citizens guide public policies without intermediaries which is one of the open government proposals.

4.4 - Conselhos Gestores e Fiscalizadores de Políticas Públicas (Councils of management and supervision of public policies).

- a) Councils of management and supervision of public policies. Objectives and performance and its importance as an instrument of democratization of Brazil. Relationship with social control.

Councils of management and supervision of public policies are instruments - for cooperation and interaction between society and government - available for the effectively participation of community in formulation, implementation and control of government actions with the aim of promoting best administrative practices for the management of state resources. According to an article published on the website “Portal da Transparência”⁸⁰ these Councils are:

“[...] espaços públicos de composição plural e paritária entre Estado e sociedade civil, de natureza deliberativa e consultiva, cuja função é formular e controlar a execução das políticas públicas setoriais. Os conselhos são o principal canal de participação popular encontrada nas três instâncias de governo (federal, estadual e municipal).”

So, Councils are public spaces - with plural and parity composition between state and civil society – with deliberative and consultative nature, whose function is formulating and monitoring the implementation of sectoral public policies. The councils are the public participation main channel within the three instances of government (federal, state and municipal).

⁸⁰ Managed for the Controladoria-Geral da União - CGU (Office of the Controller General)

The aforementioned article explains and demonstrates that Councils should be formed by an even number of counselors, and, for each counselor that represents the state, there will be a representative of civil society (Example: if a Council has 14 members, seven shall be representatives from state and seven will represent civil society) . But there are exceptions to the Councils's rule of parity, such as health and food safety. The councils of health, for example, are composed by 25% of government entities representatives, 25% of representatives from nongovernmental organizations and 50% of health services users from Brazilian Sistema Único de Saúde - SUS⁸¹.

The councils intend to promote the balance of power between the citizen and public administration. Through this equal composition to be ensured greater presence of society in the control of the state accounts. Thus, the management councils - more than promoters of dialogue between state and citizen - are, in fact, instruments of administrative co-management via public opinion. Therefore, the councils enable people to identify weaknesses in public administration and contribute to the improvement of government policies aimed at the exact needs of the local community. This factor is fundamental for greater transparency in the management of public resources.

A few examples of councils that have achieved significant results in the improvement of public actions and participatory democracy are the Councils of School Nutrition, Education, Council of Health, Social Welfare Council, Parks, Public Policy, Children and Adolescents, Council of elderly, Public Transportation of Urban Passenger, Neighborhood and Food Security.

⁸¹ Brazilian Unified Health Public System - <http://portalsaude.saude.gov.br/portalsaude/area/2/cidadao.html>

Thus, in the words of Eder Marques de Azevedo in his article for master's degree in Public Law from PUC Minas:

“Os conselhos gestores permitem a participação da sociedade civil nas discussões sobre o planejamento e na gestão das diversas políticas estatais responsáveis pela promoção de direitos fundamentais centrados em diferentes segmentos: saúde, educação, cultura, assistência social, habitação, dentre outros. Essa descentralização administrativa passa a ser vista como resultado da implantação do modelo democrático participativo. Tais “órgãos administrativos” permitem um co-gerenciamento do patrimônio público e o encaminhamento de ações destinadas ao atendimento do interesse coletivo.”⁸²

However, each Council - despite having the primary function of controlling and monitoring public spending and share a common identity - works on the basis of such diverse topics as the School Feeding and Health. The first one controls the money destined for meals, verifies if the food (purchased by the city hall) is actually reaching the schools, analyzes the quality of the meals bought and see if the food is well kept and maintained. In contrast, in view of their functions, the Municipal Health Council controls the money of health, follows the money coming from the Unified Health System (SUS)⁸³ and the ones that are result of transfers from federal programs, participates in the development of goals for health, controls the carrying out of the health actions and has the duty to meet at least once a month.

⁸² Free translation: *Management councils allow the participation of civil society in discussions on the planning and management of various state policies responsible for the promotion of fundamental rights focusing on different sectors: health, education, culture, welfare, housing, among others. This administrative decentralization comes to be seen as a result of implementation of the participatory democratic model. Such "administrative bodies" allow a co-management of public property and conveyance of actions destined to the attendance of public interest. "*

⁸³ See footnote 81 on page 63

It is important to highlight that the councils - for greater coherence of the prerogatives of this citizen participation tool with the guiding principles of participatory democracy – must be priority deliberative regardless of their consultative functions. That is, their decisions should be sovereign binding the administrative acts. Therefore, it is essential to expose the need of councils being created by law (coercivity instrument that restricts the discretionary power of public money managers) that delegates more autonomy to their actions - after extensive discussion with the community. In this sense, the creation by law grants certain degree of obligation in implementing the dictates, discussed and agreed within the councils, under penalty of - if not implemented - possible coercive actions by the prosecutors. Therefore, these guidelines contribute to the strengthening and effectiveness of the councils.

Given the above, the Councils of management and supervision of public policies are indispensable tools for the right of participation of civil society - in the guidance of public policy - reach its ultimate goal of controlling, through the social viewpoint, the use of public resources. Therefore, it is one more way that promotes the dialogue between citizens and public administration (through the equalization of forces and strengthening of individual rights and duties) in proposing new directions for public investments.

Thus, social control is strengthened by the Councils of management and supervision of public policies because society does not solely are involved in the supervision of public resources use but also in the appointment of where those resources have to be concentrated. So the management councils strengthen the role of the citizen giving to each individual the prerogatives of fiscal and public management fact that converges to the best use of public funds in the achievement of real interests of the citizen.

5. Conclusion

The Open Government and the Social Control are recurrent subjects in all present democracies around the world. Accordingly to this, society understands that the path to the strengthening of democracies and efficiency of public policies is the improvement of transparency.

In this sense, the social and economic ills can be better combated by expanding citizen participation in the supervision of use of the public resources. Therefore, the deficiencies of the government - both in the field of auditing institutes and in the use of public funds - may be provided by means of Open Government and Social Control. So it is necessary that all society supervise.

Moreover, it is also necessary to reinforce the government institutes that promote transparency and the proper use of public resources. Therefore, the functions of CGU and OGU will be addressed. The paper includes arguments for the necessary strengthening of the structure of these two federal agencies.

In view of all that was exposed, this paper demonstrates the virtues of transparency and public initiatives who had placed Brazil in a prominent position in this matter. Among these initiatives the work aims to emphasize the FOIA and the various other tools available to the citizen in order to enhancement of participatory democracy and transparency of public institutions in Brazil.