



International Economic Law Clinic

LEGAL ANALYSIS OF THE OECD RECOMMENDATIONS ON GENDER EQUALITY AND IMPLICATIONS FOR BRAZIL

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To: Women Inside Trade – WIT (<https://womeninsidetrade.com/>)

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Executive Summary

The moment Brazil received its Roadmap to the accession to the Organisation for Economic Co-operation and Development (“OECD”) represented an opportunity to review its policies, laws, regulations and practices, and demonstrate how they are aligned with the measures and practices required by the OECD legal instruments¹.

To enable women’s economic empowerment means contributing to accelerating economic growth and building more stable, open societies.

This working paper reveals that improvements related to gender equality are underway in Brazil. It presents three case studies of international data on Brazil’s progress and legislative, policy and institutional measures to support gender equality in decision-making positions at the federal level of politics (including in government, parliament, local authorities, and the judiciary system), in public employment and in the private sector.

Regarding gender equality in decision-making positions and public employment, and compliance with item I.C.3 2013 Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship and item IV.3 of the 2015 Recommendation of the Council on Gender Equality in Public Life, respectively, this study provides evidence that the gender representation in Brazil is below OECD Members average figures; and the national policies, measures and legislation are incipient in this regard. The implementation of quotas for decision-making and leadership positions is proposed as an example of conduct which could be adopted by Brazil to enhance its adherence level to the Gender Recommendations combined with encouraging mentoring, networking, capacity-building programmes, changing the culture to address stereotypes, guaranteeing the possibility of work-life balance arrangements and promoting transparency in the recruitment, selection and promotion in public institutions.

In this sense, as a prospective OECD Member, Brazil has to strengthen gender

¹ Please see item 22.1 of the Report of the Chair of the Working Group on the Future Size and Membership of the Organisation to Council - Framework for the Consideration of Prospective Members - available at <<https://www.oecd.org/mcm/documents/C-MIN-2017-13-EN.pdf>>

equality priorities in government programmes and national development plans to address existing barriers.

We also researched some examples of well-succeeded measures within the private sector, which can be taken as examples to be followed by the government officials in our country.

1. Introduction

This working paper assesses the legal aspects of the Recommendations on Gender Equality of the Organisation for Economic Co-operation and Development (“OECD” or “Organisation”), Brazil's path towards accession to the Organisation, and its adherence to OECD’s rules and guidelines.

Considering that Brazil has not completed its adherence proceeding to OECD yet, and also has not adhered to the legal instruments specifically concerning gender equality (*i.e.*, the 2013 Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship, and the 2015 Recommendation of the Council on Gender Equality in Public Life), collectively referred as "the OECD Gender Recommendations", the non-profit Organisation Women Inside Trade (“WIT”)² has requested the elaboration of a working paper to address some aspects regarding the legal nature of the OECD Gender Recommendations as well as its effects upon Brazil as a potential member of the OECD.

This working paper aims to provide answers to five questions presented by WIT in the Terms of Reference agreed in March 2022, listed below, related to OECD’s formal legal structures and norms, as well as its implications for Brazil as a prospective member of the Organisation:

1. What are the procedural and substantive legal requirements for Brazil to

² It is an international, private, independent, non-political and non-profit organisation that aims to contribute to the empowerment of women through its global network of professionals, specialised training and leadership development. Available at: <<https://womeninsidetrade.com/home-eng/>>

join the OECD?

2. Are all OECD members required to adhere to the “2013 Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship”, and the “2015 Recommendation of the Council on Gender Equality in Public Life”?

3. Is Brazil required to adhere to both Recommendations as a prior condition to join OECD? Or is it possible to join the Organisation and adhere to such legal instruments subsequently?

4. What is the legal nature of the “2013 Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship”, and the “2015 Recommendation of the Council on Gender Equality in Public Life”? Are their respective provisions binding on OECD member countries and adherents?

5. Are there any enforcement mechanisms or remedies, or other available tools, to ensure compliance by OECD members and adhering countries with the two Recommendations? What are the applicable legal consequences in the event of non-compliance?

Further, this working paper also presents a case study regarding a more detailed outlook on Brazil’s alignment to the OECD’s 2013 and 2015 Recommendations on Gender Equality, specifically considering the dispositions presented in the item I.C.3 of the 2013 OECD Recommendations on Gender Equality in Education, Employment and Entrepreneurship, and in the item 4.3 of the 2015 OECD Recommendation of the Council on Gender Equality in Public Life:

OECD Recommendation, 2013:

I RECOMMENDS that through a whole-of-government approach and through means such as appropriate legislation, policies, monitoring and public awareness campaigns, Members: (C) Increase in the representation of women in decision-making positions by: (3) encouraging greater participation and representation of women at all levels of politics, including in government, parliament, local authorities,

and the judiciary system.

OECD Recommendation, 2015:

IV RECOMMENDS that Adherents take adequate measures to improve the gender equality in public employment. To this effect, Adherents should: (3) Promote merit-based recruitment; consider positive policies and practices to ensure a balanced representation of men and women in each occupational group in public sector employment; and, develop concrete measures to ensure the effective removal of the implicit barriers within hiring and staffing processes, where appropriate and necessary.

This report presents a legal assessment of the issues raised, in seven sections:

- (1) Introduction;
- (2) The OECD, which focuses on the main information about the Organisation;
- (3) The OECD accession process and the steps Brazil has to follow to become an OECD member;
- (4) The OECD legal instruments, which evidences the legal natures of Gender Recommendations and their mechanisms of enforcement;
- (5) Brazil and the OECD Gender Recommendations, and the need – or not - for the country to adhere to the Recommendations; and
- (6) The Case Study, which encompasses an analysis of Brazil's level of adherence to the selected OECD Recommendation items according to the following structure:
 - (6.1) Representation of Women in Decision-Making Positions (item I (C) (3) of the 2013 OECD Recommendation);
 - (6.2) Gender Equality in Public Employment (item (IV) (3) of the 2015 OECD Recommendation); and
 - (6.3) Impacts on the Private Sector. Item (6) subitems provide information on the methodology adopted for the research.

2. The OECD

To contextualise OECD, it is worth presenting a summary of its history, its members' representation method, and the process's particularities for Brazil's accession to this group of countries.

The OECD is an international Organisation that works to build better policies for better lives. Based in France and created in 1961, the OECD has its origins in the context of world reconstruction after the Second World War.

Together with governments, policymakers and citizens, OECD works on establishing evidence-based international standards and finding solutions to a range of social, economic, and environmental challenges. From improving economic performance and creating jobs to fostering strong education and fighting international tax evasion, OECD provides a unique forum and knowledge hub for data and analysis, exchange of experiences, best-practice sharing, and advice on public policies and international standard-setting.³

Also, OECD focuses its research and analysis on areas such as the environment, governance, finance and investment, science and technology, industry and services, taxation, trade, anti-corruption, energy, agriculture, education, transport, and labour. The Organisation brings together several indicators that serve as input for government decision-making on policies that support sustainable growth.⁴

OECD's 38 current members are Austria, Australia, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.⁵

The Organisational structure of the OECD comprises a Council, committees, and the Secretariat. The Council is formed by all OCDE's member countries and the European Union, which together provide strategic orientations for the OECD.⁶

³ OECD. Home page. Available at <<https://www.oecd.org/about/>>

⁴ OECD. Available at: < <https://www.oecd.org/general/Key-information-about-the-OECD.pdf>>

⁵ OECD. OECD welcomes Costa Rica as its 38th Member. <<https://www.oecd.org/newsroom/oecd-welcomes-costa-rica-as-its-38th-member.htm>>

⁶ OECD Structure. Available at:< <https://www.oecd.org/about/structure/> >

OECD has more than 300 committees, experts, and working groups covering almost all policy-making areas, for instance, education, finance, trade, environment, development, and liaising with country-level experts. These committees propose solutions, assess data and policy, and review policy actions among Member countries. Committees are formed by Member and partner countries participants that represent government bodies, academia, business, and civil society. Some discussions can evolve into negotiations in which all OECD countries define and follow common global rules.⁷

The Secretary-General leads the OECD Secretariat, composed of directorates and divisions that work with policy-makers and shapers in each country, providing solutions or guidelines based on evidence in close coordination with committees. Directorates report to the Secretary-General.⁸

According to OECD, the 3.300 employees of the Secretariat include economists, lawyers, scientists, political analysts, sociologists, digital experts, statisticians, and communication professionals. In addition to its headquarters in Paris, France, the OECD also has centres in Berlin, Mexico, Tokyo, and Washington D.C., which are part of the OECD's public affairs and communications team.⁹

On January 25th, 2022, the OECD approved the formal invitation to start discussions on Brazil's accession to the Organisation. The Brazilian government made the formal request to be part of the group in 2017¹⁰ and adjustments in legislation and policies are still necessary for Brazil to become an effective member of the Organisation.¹¹ On June 10th, 2022, the OECD Secretary-General issued the Accession Roadmap that sets out the terms, conditions and process required for Brazil's accession to the group. In the next

⁷ Idem.

⁸ Idem.

⁹ Idem.

¹⁰ BRASIL, Câmara dos Deputados Federais. Estudos analisam os desafios para a entrada do Brasil na OCDE. Available at: <<https://www.camara.leg.br/internet/agencia/infograficos-html5/estudos-analisam-desafios-para-a-entrada-do-brasil-na-ocde/>>

¹¹ BRASIL, Câmara dos Deputados Federais. Estudos analisam os desafios para a entrada do Brasil na OCDE. Available at: <<https://www.camara.leg.br/internet/agencia/infograficos-html5/estudos-analisam-desafios-para-a-entrada-do-brasil-na-ocde/>>

sections, the requirements to become an OECD member, the accession process, and Brazil's steps regarding its enrolment process are discussed in detail.

3. The OECD Accession Process

3.1. The relationship between Brazil and OECD

Brazil has been engaged with OECD since 1994 and became an active Key Partner¹² of the Organisation on May 16th, 2007. Before becoming a Key Partner in 1999, the Brazilian government was invited to participate in the OECD Ministerial Council Meetings¹³, which evidences the growing relationship between the country and the Organisation over the years.

As a Key Partner - a type of partnership with the OECD, decided by the Council¹⁴ - Brazil expanded its relationship with the Organisation. Nowadays, it can adhere to the OECD instruments, integrate into OECD statistical reporting and information systems, sector-specific peer reviews and engage in partnerships with the OECD Bodies. Further, Brazil can also participate in the OECD's Committees as an Invitee (invited to individual meetings) or as a Participant (invited to attend all meetings for an open-ended period) without the approval of the Council¹⁵.

Among all OECD Key Partners, Brazil was the first country to formalise its aspiration for OECD membership in May 2017¹⁶. Still, since 2007, the invitation to become a Key Partner had the objective of strengthening Brazil's engagement with the OECD, aiming at a possible membership¹⁷.

¹² Other Key Partners: China, India, Indonesia and South Africa.
<https://www.oecd.org/global-relations/keypartners/#:~:text=The%20OECD%20engages%20with%20some.as%20the%20OECD's%20Key%20Partner>

¹³ OECD. The OECD and Brazil: A mutually beneficial relationship. Available at <<https://www.oecd.org/latin-america/countries/brazil/>>

¹⁴ OECD. REVISED RESOLUTION OF THE COUNCIL ON PARTNERSHIPS IN OECD. BODIES. Available at: <[https://www.oecd.org/global-relations/partnershipsinoecdbodies/C\(2012\)100-REV1-FINAL-En.pdf](https://www.oecd.org/global-relations/partnershipsinoecdbodies/C(2012)100-REV1-FINAL-En.pdf)>

¹⁵ OECD. REVISED RESOLUTION OF THE COUNCIL ON PARTNERSHIPS IN OECD. BODIES. Available at: <[https://www.oecd.org/global-relations/partnershipsinoecdbodies/C\(2012\)100-REV1-FINAL-En.pdf](https://www.oecd.org/global-relations/partnershipsinoecdbodies/C(2012)100-REV1-FINAL-En.pdf)>

¹⁶ OECD. Active with Brazil. 2020. Available at <https://issuu.com/oecd.publishing/docs/active_with_brazil_2020_en_web-1a>

¹⁷ Thorstensen, Vera; Rebouças Mota, Catherine. O BRASIL FRENTE AO "MODELO DE SUSTENTABILIDADE" DA OCDE. Available at: <<https://www.ipea.gov.br/revistas/index.php/rtm/article/view/303/286>>

According to OECD, Brazil has been a source of valuable policy experience, providing insights on innovative approaches to global challenges.¹⁸ The Brazilian administration is fully engaged in OECD's work on a wide array of policy issues, from competition to taxation, education to the environment, and digital policies to the regulatory framework. Today, Brazil participates in more OECD bodies (projects and programs) and has adhered to more OECD instruments than any other Key Partner of the OECD.¹⁹ Of the 257 OECD instruments, Brazil has adhered to 123 that are in force.²⁰

3.2. The Accession Process and Brazil as a Prospective Member

To join the OECD, a Prospective Member must undergo a rigorous process that undertakes legislation and policy modifications. The OECD Members fully control the process, which can take several years to be concluded. According to the OECD Watch²¹, prior to any formal invitation, the Organisation enters into accession discussions internally, going through debates that are not always transparent and can be highly political.²² With Brazil becoming a Key Partner in 2007, internal debates and assessments began considering the country as a possible future member.²³ In 2017, as already mentioned, Brazil formally presented its application for OECD membership at the 2017 Ministerial Council Meeting, which occurred on June 8th and 9th, 2017.²⁴

The main legal instrument determining the OECD Accession Process is the Council Resolution "A General Procedure for Future Accessions"²⁵, adopted by

¹⁸ OECD. Trabalhando com o Brasil. Available at: <<https://www.oecd.org/latin-america/Active-with-Brazil-Port.pdf>>

¹⁹ OECD. Active with Brazil. 2020. Available at <https://issuu.com/oecd.publishing/docs/active_with_brazil_2020_en_web-1a>

²⁰ OECD. OECD Legal Instruments. Available at <<https://legalinstruments.oecd.org/en/>>

²¹ OECD Watch is a global network of civil society organisations with more than 100 members in 55 countries, whose main objectives are to inform and advise the NGO community on the use of the OECD Guidelines for Multinational Enterprises and aiming to achieve corporate accountability.

²² OECD Watch et. al. Civil society guide to influencing the OECD accession process. Available at: <<https://www.oecdwatch.org/civil-society-guide-to-influencing-the-oecd-accession-process/>>

²³ OECD. Meeting of the OECD Council at Ministerial Level. Report of The Chair Of The Working Group On The Future Size And Membership Of The Organisation To Council. Framework for The Consideration Of Prospective Members. Available at: <<https://www.oecd.org/mcm/documents/C-MIN-2017-13-EN.pdf>>

²⁴ OECD. Active with Brazil. 2020. Available at <[Active with Brazil by OECD - Issuu](https://issuu.com/oecd.publishing/docs/active_with_brazil_2020_en_web-1a)>

²⁵ OECD. A General Procedure For Future Accessions. Available at: <<https://www.oecd.org/latin-america/Active-with-Brazil-Port.pdf>>

the Council at its 1155th session on May 10th - 13th, 2007. However, other documents complement the procedure, as will be mentioned below.

After a formal application, OECD decides if it wants to open an accession discussion. In the 2016 Ministerial Council Meeting, Ministers discussed the possibility of having future members²⁶ and, consequently, the OECD issued the “Report of the Chair of the Working Group on the Future Size and Membership of the Organisation to Council - Framework for the Consideration of Prospective Members” in 2017²⁷. This working paper (Annex I) contains the Framework for the Consideration of Prospective Members, an evidence-based framework that sets out criteria that evidence the alignment of countries with the OECD practices and values. The Framework helps the Council deliberate if it will open accession discussions with such countries.

On June 25th, 2022, the Council adopted the “OECD Resolution of the Council on the Opening of Accession Discussions”²⁸, which decided to open accession discussions related to Brazil and other five countries (Argentina, Bulgaria, Croatia, Peru and Romania). Based on that decision, there was the recognition that the aforementioned countries made progress toward fulfilling the criteria outlined in the Framework for Consideration of Prospective Members²⁹.

The Resolution also requested the Secretary-General to communicate the Council’s decision to the six candidates and to request each country to confirm its adherence to the OECD’s 60th Anniversary Vision Statement³⁰ and Ministerial Council Statement adopted in October 2021³¹.

<[https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=C\(2007\)31%2FFinal](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=C(2007)31%2FFinal)>

²⁶ OECD. OECD and Enlargement. Available at: <<https://www.oecd.org/about/document/enlargement.htm>>

²⁷ OECD. Meeting of the OECD Council at Ministerial Level. Report of The Chair Of The Working Group On The Future Size And Membership Of The Organisation To Council. Framework for The Consideration Of Prospective Members. Available at: < <https://www.oecd.org/mcm/documents/C-MIN-2017-13-EN.pdf>>

²⁸ OECD. Resolution Of The Council On The Opening Of Accession Discussions. 2022. Available at: <<https://www.oecd.org/newsroom/Resolution-of-the-Council-on-the-Opening-of-Accession-Discussions-C-2017-92-final.pdf>>

²⁹ Idem.

³⁰ OECD. OECD’s 60th Anniversary Vision Statement. Available at: <https://read.oecd-ilibrary.org/view/?ref=1110_1110970-giiac5g3aj&title=MCM-oct-2021-Trust-in-global-co-operation-Mathias-Cormann>

³¹ OECD. 2021 Ministerial Council Statement Part I. Available at: <<https://t4.oecd.org/newsroom/oecd-ministerial-council-statement-and-outcomes-06-10-2021.htm>>

In this regard, the Secretary-General sent a Letter of Invitation to Brazilian President Jair Bolsonaro³².

The Letter of Invitation states that Brazil had to confirm adherence to the shared values, vision and priorities of the OECD. This adherence is considered a central criterion to decide whether to invite Brazil to become a member or not, according to the Accession Roadmap.

Gender equality appears to be one of the shared values of the OECD, as stated in the 2021 Ministerial Council Statement³³. The Statement also affirms the commitment of OECD to achieve the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals³⁴, being one of those goals the achievement of gender equality and empowering of all women and girls as Goal No. 5³⁵.

Considering that Brazil has adhered to the Statement mentioned above³⁶, in the group's opinion, it is possible to ascertain that gender equality is one of the shared values of the OECD and Brazil's commitment to gender equality through its legislation, practices and policies will most likely be an important factor taken into account during the Accession Process.

The Letter also stipulates³⁷ that the Secretary-General would start the preparation of a draft roadmap accession for consideration of the Council, which would set out the terms and conditions and process for accession of Brazil.

On June 10th, 2022, the OECD Council published Brazil's Roadmap for the OECD accession process (hereafter "Roadmap")³⁸.

³² OECD. Letter to H.E. Mr. Jair Bolsonaro, President of Brazil. Available at: <<https://www.oecd.org/newsroom/Letter-to-H-E-Mr-Jair-Bolsonaro-President-Brazil.pdf>>

³³ OECD. 2021 Ministerial Council Statement Part I. Available at: <<https://t4.oecd.org/newsroom/oecd-ministerial-council-statement-and-outcomes-06-10-2021.htm>>

³⁴ Idem.

³⁵ UN. Sustainable Development Goals. Goal 5. Available at: <<https://www.un.org/sustainabledevelopment/gender-equality/>>

³⁶ OECD - Roadmap For The OECD Accession Process Of Brazil. Available at: <https://www.gov.br/casacivil/pt-br/assuntos/noticias/2022/junho/roadmap-oecd-accession-process-brazil-en.pdf>

³⁷ OECD. Letter to H.E. Mr. Jair Bolsonaro, President of Brazil. Available at: <<https://www.oecd.org/newsroom/Letter-to-H-E-Mr-Jair-Bolsonaro-President-Brazil.pdf>>

³⁸ OECD - Roadmap For The OECD Accession Process Of Brazil. Available at:

Section I (Shared Values, Vision and Priorities) of the Roadmap reaffirms that the accession process will serve to confirm Brazil's adherence to the OECD values, vision and priority *in practice*, considered to be a fundamental requirement for membership³⁹. This statement corroborates the group's analysis that Brazilian policies on gender equality will be considered as criteria to evaluate its membership since it is stipulated as one of OECD's shared values.

Section II (Obligations of OECD Membership) of the Roadmap establishes minimum requirements for Brazil to become an OECD member. Item (vii) of Clause 8 expressly implies that one of these obligations is the "acceptance of all substantive legal instruments of the Organisation in force on the date of the decision of the OECD Council to invite the candidate country to become a Member, subject to any agreed reservations or observations reproduced in the Final Statement."⁴⁰

In the group's interpretation of the referred clause, adherence to the OECD Gender Recommendations (characterised as substantive OECD legal instruments as explained in the next Section) becomes an implicit requirement for Brazil to become an OECD member.

In the terms set out on the Roadmap, before the Council deliberates on Brazil's membership, the country will undergo in-depth reviews by OECD committees. Each committee will provide a formal opinion to the Council based on a technical review. For that, the Roadmap identifies policy areas that will encompass the technical review as well as a list of committees responsible for conducting the accession reviews of Brazil⁴¹.

The technical review should cover two principal elements: "*i) an evaluation of the willingness and ability of Brazil to implement any substantive OECD legal instruments within the committee's competence; and ii) an evaluation of Brazil's*

<https://www.gov.br/casacivil/pt-br/assuntos/noticias/2022/junho/roadmap-oecd-accession-process-brazil-en.pdf>

³⁹ Idem.

⁴⁰ Idem.

⁴¹ Idem.

*policies and practices as compared to OECD best policies and practices in the relevant area, with reference to the corresponding Core Principles set out in the Appendix to the present Roadmap.*⁴²

The technical reviews begin with the submission of an Initial Memorandum by Brazil, setting out a first self-assessment of the alignment of Brazil's legislation, policies and practices with each OECD legal instrument, including those to which Brazil has already adhered⁴³.

The Initial Memorandum is, then, submitted to the committees for their technical reviews. If Brazil adopts a new or revised OECD legal instrument after submitting the Initial Memorandum, the country will have to provide a new self-assessment.

In this sense, considering the OECD Gender Recommendations, if they are adopted by Brazil after the submission of the Initial Memorandum, Brazil will have to provide an alignment self-assessment regarding its legislation, policies and practices on gender equality, which evidences the relevance of the case study produced herein.

In this stage, Committees work together with the prospective member, as Committees may require law and policy reforms. The timeline needed to accomplish this step depends on Brazil's provision of information to the committees and the time needed to implement the committee's recommendations to change legislation, policy and practice⁴⁴. However, considering the prior accession process, OECD Watch⁴⁵ stipulates that it can take from two to seven years, depending on the country.⁴⁶

⁴² Idem.

⁴³ Idem.

⁴⁴ Idem.

⁴⁵ OECD Watch is a global network of civil society organisations with more than 130 members in over 50 countries, which key aim is to inform and advise the wider NGO community on how to make use of the OECD Guidelines for Multinational Enterprises ("the Guidelines") and its associated grievance mechanism to achieve corporate accountability and access to remedy. For more information, please access: <https://www.oecdwatch.org/about-us/>

⁴⁶ OECD Watch. BRIDGING BRAZILIAN GOVERNANCE GAPS: Leveraging environmental and human rights reform via the OECD accession process. Available at: <https://www.oecdwatch.org/wp-content/uploads/sites/8/2022/03/Bridging-Brazilian-governance-gaps-Research-series-summary-paper.pdf>

It is relevant to note that this accession discussion between OECD and Brazil is confidential, although parties may agree to disclose certain information⁴⁷.

For conducting the Technical Review, the Roadmap sets out in its “Appendix: List of Accession Core Principles for OECD Committees” a non-exhaustive list of principles and/or issues that should encompass the technical review of each committee. In this regard, it is important to note that gender equality appears in the analysis of two committees: the Public Governance Committee and the Employment, Labour and Social Affairs Committee⁴⁸.

For the Public Governance Committee, one of the core principles stipulates as follows: “**The coherence of the legal, institutional and administrative settings and governance tools needed to design and implement policies, programmes and services to achieve societal goals such as gender equality, youth empowerment and intergenerational equity, access to justice and relevant Sustainable Development Goals, especially Goal 16, underpinned by a strategic vision to enhance policy coherence**”⁴⁹. Therefore, it is understood that legislation, policies and practices on gender equality aligned with OECD values will be considered for the technical review conducted by this committee. The same committee is responsible for proposing the 2015 OECD Recommendation on Gender Equality in Public Life draft along with the Employment, Labour and Social Affairs Committee⁵⁰.

As for the Employment, Labour and Social Affairs Committee, one of the core principles to be considered in Brazil’s technical review is: “*policies to promote gender equality in employment and pay, as well as in training and access to social protection*”. Besides collaborating with the 2015 OECD Recommendation on Gender Equality in Public Life, this committee proposed the draft for adopting the 2013 OECD Recommendation on Gender Equality in Education, Employment and Entrepreneurship.

⁴⁷ OECD - Roadmap For The OECD Accession Process Of Brazil. Available at: <https://www.gov.br/casacivil/pt-br/assuntos/noticias/2022/junho/roadmap-oecd-accession-process-brazil-en.pdf>

⁴⁸ Idem.

⁴⁹ Idem.

⁵⁰ OECD. Meeting of the Council at Ministerial Level, 9-10 June 2022. Report on the Implementation of the OECD Gender Recommendations. Available at: <https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>

In this sense, considering that the core principles are considered an important element of the technical reviews, in the group's opinion, not only the adherence to the OECD Gender Recommendations will be considered as criteria for membership, but also the real alignment between Brazil practices on gender equality and the practices set out by the Recommendations.

After the technical reviews and discussions are completed, the Conclusion of the Accession Process begins with Brazil's submission to the Secretary-General of a Final Statement, which will contain the agreement to all requirements set out in the Roadmap.⁵¹

With the Final Statement submitted, the Secretary-General will present to the Council all relevant analyses and documents for consideration, including a general report on the accession process with (i) the Secretary-General's recommendation, (ii) the Final Statement, (iii) the formal opinions of the committees, and (iv) a report on the technical review by the Secretariat of Brazil's position on OECD legal instruments not reviewed by any committee⁵².

Based on these documents, the Council, by unanimity, decides on whether to invite Brazil to become a Member⁵³. In case of a positive decision, an Accession Agreement is signed between Brazil and the Organisation⁵⁴.

While it is expected that Brazil will conclude all relevant legislative changes and other reforms before the end of the accession process, committees may recommend additional follow-up actions by Brazil or define that further monitoring will be necessary after accession⁵⁵. Brazil then commits to these post-accession processes in its Final Statement. This Post-Accession Reporting Process can include the submission of progress reports to OECD committees by Brazil after accession, evidencing the promotion of the changes stipulated by

⁵¹ OECD - Roadmap For The OECD Accession Process Of Brazil. Available at: <https://www.gov.br/casacivil/pt-br/assuntos/noticias/2022/junho/roadmap-oecd-accession-process-brazil-en.pdf>

⁵² Idem.

⁵³ Idem.

⁵⁴ Idem.

⁵⁵ Idem.

the committees⁵⁶.

The flowchart of the Accession Process, encompassing the steps taken by Brazil so far, is presented below:



Source: GURGEL, Ana; DOS SANTOS, Gabriel; GUERO, Isabelle; SALLANI, João; NOGUEIRA, Mariana; DE OLIVEIRA, Pedro, 2022.

In conclusion, at this point, adherence to the 2013 and 2015 OECD Recommendations and alignment of Brazil's legislation, policies and practice to the OECD best policies and practices regarding gender equality appears to be important requirements of Brazil's accession process to OECD membership, as both adherence and alignment are stipulated as criteria to accession on the Roadmap.

In this regard, the next section elucidates what are the OECD legal instruments, their legal nature and enforceability mechanisms, focusing specifically on the OECD's Recommendations.

4. OECD legal instruments

⁵⁶ Idem.

The legal instruments employed to achieve the objectives of the OECD are provided in the Convention of the OECD (hereafter “Convention”) and operationalized through the Organisation’s Rules of Procedure (hereafter “Rules of Procedure”). These instruments may be divided between those considered “Acts of the Organisation” (decisions and recommendations issued by the Council), and other instruments customarily applied in the OECD’s framework by its members (e.g., conventions, arrangements, declarations)⁵⁷.

Legal instruments that do not fall within “Acts of the Organisation” according to the Rules of Procedure (such as declarations and understandings) are commonly employed by members to implement OECD goals through non-binding policy commitments expected to be voluntarily complied by them.⁵⁸

Throughout the history of the OECD, free-standing treaties and conventions have been adopted by members to voluntarily implement the goals of the Organisation. These agreements⁵⁹ may be binding on the Parties depending on the terms negotiated between them and are not considered agreements of the OECD *per se*.

As presented below, decisions (adopted by the Council and binding upon all members) and conventions/treaties (included in the framework of the Organisation) are the only legally binding instruments of the OECD. Nevertheless, all legal instruments adopted by the OECD are considered to denote the Organisation’s (and its members’) political commitments⁶⁰.

4.1. OECD Decisions

Decisions are legally binding instruments adopted by the OECD Council that all

⁵⁷ Convention on the Organisation for Economic Co-Operation and Development. December 14th, 1960. Available at: <https://www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm>. Accessed on May 31st, 2022.

⁵⁸ BONUCCI, Nicola. The Legal Status of an OECD act and the procedure for its adoption, OECD Directorate for Legal Affairs, 2004.

⁵⁹ BONUCCI, Nicola. The Legal Status of an OECD act and the procedure for its adoption, OECD Directorate for Legal Affairs, 2004.

⁶⁰ THORSTENSEN, Vera; MOTA, Catherine Rebouças. Brazil Facing the OECD "Sustainable Model". *Revista Tempo Do Mundo*, (25), p. 214.

members must follow after they have complied with their constitutional requirements for national internalisation.⁶¹

Decisions are the appropriate legal instrument for the implementation of agreements of the Organisation with its members and non-members. Decisions are also an adequate instrument to implement internal measures regarding the Organisation's work and decisions.⁶²

Although decisions are binding upon OECD members after approval by the Council, a member may choose to abstain from adhering to the decision during the adoption process and not be obliged to implement it. Whenever a decision is taken by the Council but is not generally binding upon all the members, the Council shall indicate to which members it is not applied and provide the conditions in which it would become binding to said Members.⁶³

In case a decision taken by the Council is contingent for certain Members by abstention or upon the requirements of their constitutional procedures, the Organisation's Rules of Procedure demand that they inform the Council so it can indicate whether the other Members shall apply it provisionally in the meantime.⁶⁴

4.1. OECD Recommendations

OECD Recommendations are non-binding provisions adopted by the Council and submitted to the Organisation's members for consideration if they deem it

⁶¹ Rules of Procedure of the Organisation for Economic Co-Operation and Development. September 30th, 1961. Available at <https://www.oecd.org/legal/Rules%20of%20Procedure%20OECD%20Oct%202013.pdf>. Accessed on May 31st, 2022.

⁶² Rule 18, Rules of Procedure of the Organisation for Economic Co-Operation and Development. September 30th, 1961. Available at <https://www.oecd.org/legal/Rules%20of%20Procedure%20OECD%20Oct%202013.pdf>. Accessed on May 31st, 2022.

⁶³ Rule 19, Rules of Procedure of the Organisation for Economic Co-Operation and Development. September 30th, 1961. Available at <https://www.oecd.org/legal/Rules%20of%20Procedure%20OECD%20Oct%202013.pdf>. Accessed on May 31st, 2022.

⁶⁴ Rule 19 (b), Rules of Procedure of the Organisation for Economic Co-Operation and Development. September 30th, 1961. Available at <https://www.oecd.org/legal/Rules%20of%20Procedure%20OECD%20Oct%202013.pdf>. Accessed on May 31st, 2022

opportune to provide for their implementation voluntarily.⁶⁵

Members unwilling to implement the Recommendations may simply abstain⁶⁶ during the adoption process led by the Council.⁶⁷ Abstentions must be made during the approval procedure and may be withdrawn in the future. The Council shall expressly indicate any abstention when approving a Recommendation and the circumstances in which the Recommendation could become applicable to the Members who opted for the abstention.

Once adopted, a Recommendation shall be duly implemented by all members that did not expressly opt for abstention during its approval.

Recommendations give rise to an expectation that all members of the OECD that did not abstain during its approval by the Council will do their utmost to implement their dispositions fully. However, we must stress that the OECD framework does not provide any formal instrument establishing binding sanctions against non-compliance by the OECD members (as detailed below).

According to international practice, the real effect of recommendations is more closely related to their moral force, representing the political will of the members of the Organisation.⁶⁸ Recommendations set out collective and precise standards or objectives that Member countries are expected to implement. Thus, OECD Recommendations are adopted when Member governments are prepared to make a political commitment to implement the principles (and/or guidelines) contained therein.⁶⁹

⁶⁵ Rule 18 (b), Rules of Procedure of the Organisation for Economic Co-Operation and Development. September 30th, 1961. Available at <https://www.oecd.org/legal/Rules%20of%20Procedure%20OECD%20Oct%202013.pdf>. Accessed on May 31st, 2022

⁶⁶ Rule 18, Rules of Procedure of the Organisation for Economic Co-Operation and Development. September 30th, 1961. Available at <https://www.oecd.org/legal/Rules%20of%20Procedure%20OECD%20Oct%202013.pdf>. Accessed on May 31st, 2022.

⁶⁷ An example is Australia as a OECD Member, abstaining from 25/07/1983 to 26/08/2021 from the 1983 Recommendation of the Council concerning the OECD List of Non-Confidential Data on Chemicals. Available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0205>.

⁶⁸ BONUCCI, Nicola. The Legal Status of an OECD act and the procedure for its adoption, OECD Directorate for Legal Affairs, 2004.

⁶⁹ OECD Principles and Guidelines for Access to Research Data From Public Funding, 2007. Available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0347>.

As Recommendations are not legally binding even among OECD members and adherents, which are only obliged to “do their utmost to fully implement a Recommendation”, they may be considered instruments of *soft law*.^{70/72}

In this sense, the “2013 Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship”, and the “2015 Recommendation of the Council on Gender Equality in Public Life” clarify that “Recommendations are adopted by Council and are not legally binding. They represent a political commitment to the principles they contain and entail an expectation that Adherents will do their best to implement them”⁷³.

4.1.1. The enforcement of OECD Recommendations

Differently from other international organisations, the OECD has no provision for sanctions for non-compliance to its norms (regarding both decisions and recommendations) and no pre-established dispute settlement mechanisms⁷⁴.

Due to the intrinsic political nature of the Organisation, the enforcement of the OECD Recommendations is made through multilateral vigilance and *moral/peer pressure*⁷⁵.

This peer pressure is important in the OECD guidelines system since its standards are adopted based on economic incentives and mechanisms of political and moral commitment, instead of a system of international sanctions and adjudication, such as mechanisms for international dispute settlement.⁷⁶

⁷⁰ By the definition provided by OECD itself, “soft law” refers to “co-operation based instruments that are not legally binding, or whose binding force is somewhat “weaker” than that of traditional law, such as codes of conduct, guidelines, roadmaps, peer reviews”. Available at <<https://www.oecd.org/gov/regulatory-policy/irc10.htm#:~:text=Definition,guidelines%2C%20roadmaps%2C%20peer%20reviews.>>.

⁷¹ GUZMAN, Andrew T.; MEYER, Timothy L. International Soft Law. *Journal of Legal Analysis*, vol. 2, n. 1, 2010, p. 221.

⁷² In this point, we must stress that there are academic disagreements to this particular position in the literature. For some authors, the fact that member-states have the opportunity to abstain and refrain from assuming an obligation adopted by the Organisation, combined with the OECD multilateral mechanisms of peer review and vigilance, could mean that these are not soft law norms *per se* - see THORSTENSEN, GULLO, 2018.

⁷³ *Idem*.

⁷⁴ THORSTENSEN, Vera; MOTA, Catherine Rebouças. Brazil Facing the OECD "Sustainable Model". *Revista Tempo Do Mundo*, (25), p. 214.

⁷⁵ THORSTENSEN, Vera; MOTA, Catherine Rebouças. Brazil Facing the OECD "Sustainable Model". *Revista Tempo Do Mundo*, (25), p. 214.

⁷⁶ NOMURA, Daniela Naomi Shimabukuro; PAULA, Leonardo Gioachini de. *A adesão do Brasil à OCDE*:

The Organisation performs this moral pressure through the establishment of committees for monitoring the implementation of its legal instruments regarding each member state. In these proceedings, the OECD seeks cooperation and dialogue between the members in question, other members of the Organisation and representatives of the civil society (companies, workers etc.)⁷⁷. All discussions in the Committees are decided by consensus.

During and after these proceedings, OECD's efforts to publish data and indicators on the adherence of its members to its Recommendations seek to promote enforcement through public exposure and political pressures, aligned with the expectation of compliance with the Organisation's political views presented in such instruments.

As the OECD structure is based on the political views of its Members, Recommendations serve as a minimum standard to be followed on issues selected by the Organisation. In this sense, the use of instruments of *soft law* instead of more precise and rigid agreements seems to derive from a notorious homogeneity and confidence between OECD members, which traditionally present shared values, objectives and concerns⁷⁸.

Despite the absence of coercive measures for compliance with OECD norms, it is a well-established understanding that whenever a state adheres to the Organisation's decisions and recommendations, it assumes an international commitment that denotes its desire for transformation in its behaviour⁷⁹.

During accession processes to the OECD, adherence to the Organisation's recommendations has been particularly relevant, and often considered a prerequisite for their conclusion. Hence, adherence to recommendations

status, perspectivas e análise crítica de seus benefícios. Revista de Direito de Comércio Internacional. Enlaw, 5th edition, p. 196 and 212.

⁷⁷ THORSTENSEN, Vera; MOTA, Catherine Rebouças. Brazil Facing the OECD "Sustainable Model". *Revista Tempo Do Mundo*, (25), p. 214.

⁷⁸ THORSTENSEN, Vera; GULLO, Marcelly F. O Brasil na OCDE: membro pleno ou mero espectador? FGV Working Paper 479, CCGI n. 8, maio de 2018, p. 14.

⁷⁹ SHELTON, D. Conclusions: Understanding Compliance with Soft Law. In SHELTON, D. *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System*. Oxford: Oxford University Press, 2003, p. 2.

becomes an obligation to be fulfilled to access the Organisation, while post-accession compliance is monitored through multilateral vigilance.

5. Brazil and the Gender Recommendations

Considering the legal nature of the Recommendations, it becomes evident that although the Gender Recommendations are not legally binding *per se*, they constitute legal instruments of utmost importance to the Organisation. This is an especially relevant concern for prospective members such as Brazil. According to the Roadmap for Brazil's Accession Process, **Brazil is required to adhere to all OECD recommendations in force to become a member of the Organisation.**

The purpose of the accession process is to assess the country's alignment with the Organisation's values. On the Roadmap for Brazil Accession Process and on the 2021 Ministerial Council Statement (to which Brazil has adhered), gender equality is listed as one of OECD's values. In this sense, since the Gender Recommendations are the expression of the gender equality standards of the Organisation, Brazil's alignment with them is an important aspect for the country to become an OECD member.

The technical reviews produced by the committees encompass Brazil's self-assessment regarding its alignment with the OECD legal instruments. Therefore, it becomes relevant to present the case study elaborated in the next section.

6. Case Study

This section investigates Brazil's level of adherence to item I.C.3 of the 2013 Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship (subsection 6.1) and item IV.3 of the 2015 Recommendation of the Council on Gender Equality in Public Life (subsection 6.2), as well as reflects on the influences of the Private Sector on gender representation (subsection 6.3).

It presents a case study of the legislation, policies and other institutional measures adopted by Brazil on aspects covered by the selected highlighted items of the OECD Recommendations.

The study seeks to draw practical conclusions to better understand the level of Brazil's commitment to gender equality in decision-making positions and public employment and compare it with other OECD countries' progress in these aspects, as noted in publications and statistics developed by the OECD itself, the United Nations (United Nations Statistics Division - UNSD⁸⁰ and the United Nations Inter-Parliamentary Union's PARLINE database - IPU), and the International Institute for Democracy and Electoral Assistance (IDEA). These tools are important to measure progress in policy implementation in Brazil since they provide substantive data and publications to enable comparative analysis between countries and an exchange of experiences, and they can be considered a tool for the accession process.

Considering Brazil's aspiration to become an OECD member and its ongoing accession process, this section also summarises some of the remaining obstacles and key actions suggested by the OECD in the reports analysed.

6.1. Representation of Women in Decision-Making Positions (item I.C.3 of the 2013 OECD Recommendation):

6.1.1. Methodology

To assess Brazil's level of adherence with item I.C.3 of the 2013 OECD Recommendation, it was considered reports and statistics from the year that the related Recommendation entered into force (2013) until the elaboration of this working paper (June 2022 - cut-off date). The mentioned reports and statistics were obtained from the OECD Gender Portal, the United Nations Statistics

⁸⁰ The official website of the United Nations provides information on the latest available gender data and assessment of progress towards gender equality as presented in The World's Women 2020: Trends and Statistics portal. It is maintained by the United Nations Statistics Division (UNSD), a division of the Department of Economic and Social Affairs (DESA). Available at: <<https://unstats.un.org/home/>>

Division (UNSD)⁸¹, the United Nations Inter-Parliamentary Union's PARLINE database (IPU) and the International Institute for Democracy and Electoral Assistance (IDEA), as mentioned above.

The main source of data collection was the OECD Gender Portal. The scope aims to get closer to the analysis made by the OECD and to identify the aspects that have been considered more relevant in the Gender Reports developed by the related Organisation. This approach will contribute to investigating what would be considered by the OECD itself in the verification of Brazil's compliance with the Gender Recommendations. The following documents produced by the OECD bodies were selected, containing updated information on gender equality in decision-making positions worldwide: (i) OECD Government at a Glance (2021)⁸²; and (ii) the 2022 Report on the Implementation of the OECD Gender Recommendations⁸³.

Data and publications produced by the United Nations (UNSD and IPU) and IDEA (this one was used in legislative and electoral matters) were used as complementary and subsidiary tools to the analysis produced in this memorandum.

In turn, the analysis of the development of legislative, policy and institutional measures adopted by Brazil or its public institutions to support women's empowerment in decision-making positions, was collected from Brazil's Federal Government Legislation Portal⁸⁴ and also obtained through bibliographical research. It was considered the cut-off period highlighted above. In terms of legislation, the research prioritised the analysis of federal laws and decrees in force. When federal laws or decrees on the subject were not identified, other

⁸¹ The official website of the United Nations provides information on the latest available gender data and assessment of progress towards gender equality as presented in The World's Women 2020: Trends and Statistics portal. It is maintained by the United Nations Statistics Division (UNSD), a division of the Department of Economic and Social Affairs (DESA). Available at: <<https://unstats.un.org/home/>>

⁸² OECD (2021), Government at a Glance 2021, OECD Publishing, Paris. Available at: <<https://doi.org/10.1787/1c258f55-en>>

⁸³ OECD (2022). Report on the Implementation of the OECD Gender Recommendations. Available at: <<https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>>

⁸⁴ Available at: <<https://www.gov.br/pt-br>>

types of federal norms in force were analysed. Potential legislation that could lead to the increase in women's empowerment in decision-making positions was also verified in this research. For this purpose, data on proposed constitutional amendments to Brazil's Constitution (*PEC*) was collected from the Brazilian Parliament websites, more specifically from the Lower (also called House of Representatives - *Câmara dos Deputados*) and the Upper House of Brazilian Parliament (that is the Federal Senate - *Senado Federal*) websites⁸⁵.

Considering the countries selected for comparison with Brazil, the analysis of other Latin American and Caribbean (LAC) countries was prioritised, since (i) OECD considers such countries and Brazil in the same Regional Programme⁸⁶; and (ii) due to their higher degree of similarity with Brazilian institutional, cultural and historical background - factors which must be taken into account to assess what are the best policy options for a specific country⁸⁷. Other non-LAC countries were selected for comparison based on the policy pathways the OECD itself has pointed out as good practice.

6.1.2. Gender equality in politics: Brazil is below average across OECD countries

To ensure fairness and responsiveness of the public administration and parliaments, OECD publications indicate that it is necessary to achieve gender equality in politics in terms of an equal share of seats and ministerial positions. However, this is not enough. It is also crucial to ensure that all backgrounds have equal access to such positions and can subsequently participate in decision-making processes. Therefore, it is possible to promote inclusive work environments, facilitate equal access to leadership roles and remove socio-economic barriers to political participation.⁸⁸ Women's representation in political decision-making is a major asset considering that the last Report on the

⁸⁵ Brazil has a Bicameral Parliament.

⁸⁶ Available at <https://www.oecd.org/latin-america/regional-programme/>

⁸⁷ 2017 Report, p. 8: "No single road leads to gender equality, and the 'best' policy options are country-specific; policy changes should reflect existing gaps in gender equality and will be influenced by broader institutional, historical, and cultural contexts."

⁸⁸ OECD (2021), *Government at a Glance 2021*, OECD Publishing, Paris. Available at: <https://doi.org/10.1787/1c258f55-en>

OECD Gender Recommendations concluded that this can increase public trust in governments and reinforce democratic representation.⁸⁹

In the Brazilian federal government, about 10% of the seats in the lower house of the legislature/parliaments (*Câmara dos Deputados*) were held by women in 2021 and it represents the second-lowest percentage of the OECD countries, ahead only of Japan - a country which has not shown improvements in this aspect since 2012⁹⁰ (please see figure 1). The average across OECD countries was that 31.6% of the seats in the lower/single houses of their parliaments were held by women in 2021, compared to 26% almost a decade ago.

Brazil appears also below the Latin American and the Caribbean (LAC) countries' average result. Mexico and Costa Rica hold almost 50% of the seats in the lower/single houses of their parliaments held by women in 2021; Chile more than 20%; and Colombia holds almost 20%.

Figure 1⁹¹:

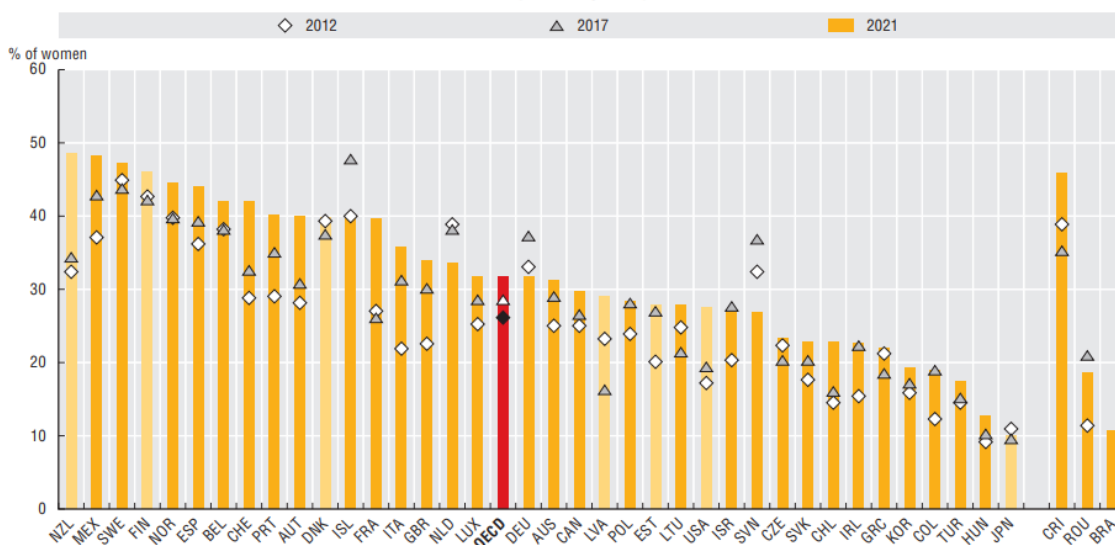
⁸⁹ OECD (2022). Report on the Implementation of the OECD Gender Recommendations. Available at: <<https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>>

⁹⁰ Japan became an OECD member in 1964 and adhered to the 2013 and 2015 Gender Recommendations as it is possible to verify at <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0398>> and <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0418#adherents>>

⁹¹ OECD (2021). Gender equality in public sector employment, in *Government at a Glance 2021*, OECD Publishing Paris, available at <<https://doi.org/10.1787/7f55c675-en>>

3.10. Gender equality in parliament and electoral gender quotas, 2012, 2017 and 2021

Lower or single house of the legislature



Source: Inter-Parliamentary (IPU) PARLINE (database).

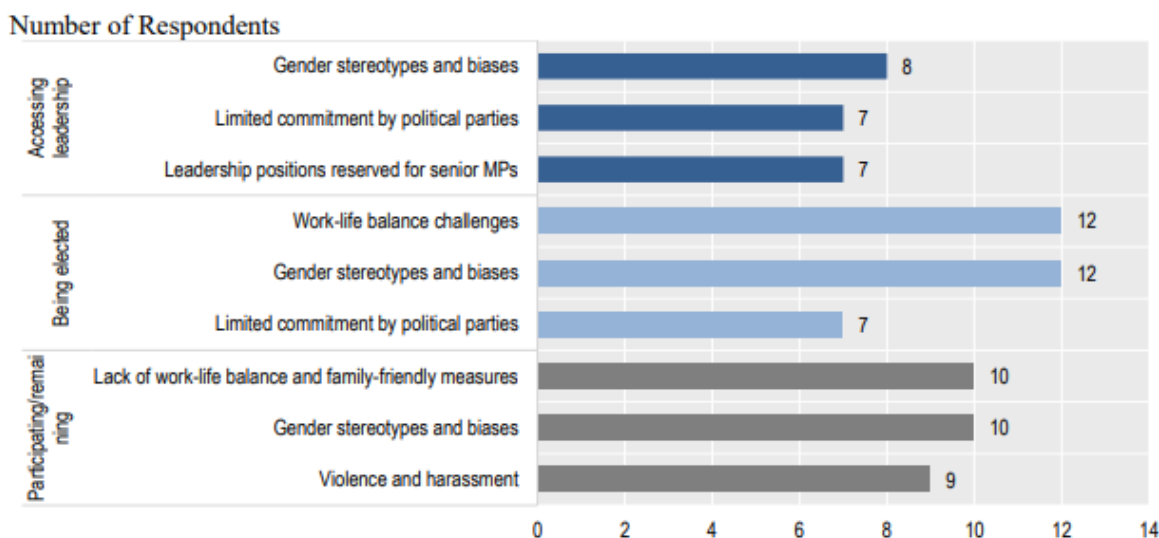
StatLink <https://doi.org/10.1787/888934257508>

To increase Brazil's commitment to gender-balanced parliaments, it is important to bear in mind specific barriers that prevent women from (i) reaching it (being elected); (ii) remaining in the position; and (iii) accessing leadership positions (please see the specific barriers identified in these three aspects in figure 2). There are barriers that are common to the three challenges, such as dealing with gender stereotypes and biases.

Figure 2⁹²:

⁹² OECD (2022). Report on the Implementation of the OECD Gender Recommendations. Available at: <https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>

Figure 26. Barriers reported in women’s election, participation, and access to leadership positions in parliaments



Source: 2021 OECD Survey on Gender Mainstreaming and Governance (2021 GMG Survey).

These barriers reinforce the necessity of equal access to politics by the promotion of gender-sensitive working conditions, especially through changing the culture to address stereotypes, guaranteeing the possibility of work-life balance arrangements and promoting transparency in the recruitment, selection and promotion for decision-making positions in public institutions. A good practice example was introduced by Chile with the issuance of the Law No. 21216/2020⁹³, which established a constitutional reform to allow the creation of lists of independent candidates in the election of Constituent Convention members and to establish a balanced representation of women and men in the Convention for the creation of a new Constitution of the Republic.

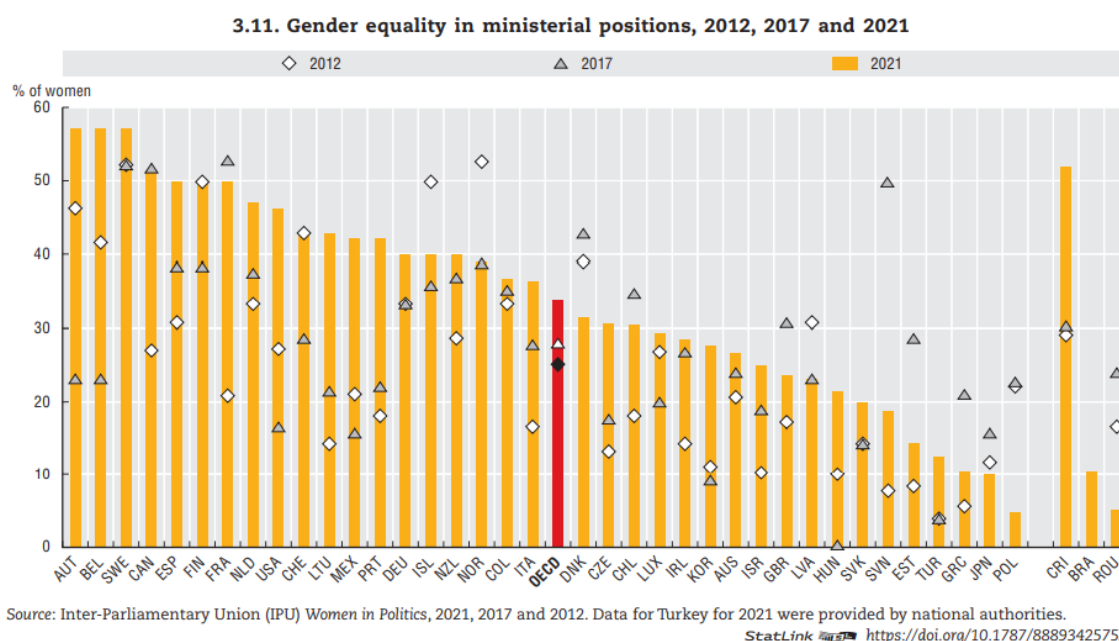
Regarding gender equality in ministerial positions, in 2021, the average across OECD countries was that women held 34% of federal/central government ministerial positions⁹⁴. Brazil’s data showed about 10% in this matter (please see figure 2). In this sense, it is clear the necessity to promote a gender-balanced cabinet and enhance the government’s commitment to gender equality.

⁹³ Available at: <<https://www.bcn.cl/historiadela ley/nc/historia-de-la-ley/7733>> and <https://www.bcn.cl/procesoconstituyente/detalle_cronograma?id=f_publicacion-de-la-ley-21-216-paridad-de-genero-para-el-proceso-constituyente>

⁹⁴ OECD (2021). Gender equality in public sector employment, in *Government at a Glance 2021*, OECD Publishing Paris, available at <<https://doi.org/10.1787/7f55c675-en>>

Even in comparison to other Latin American and Caribbean (LAC) countries, Brazil appears under the region's average results. Mexico and Costa Rica hold more than 40% of the federal/central government ministerial positions held by women in 2021; Colombia holds almost 40%; and Chile about 30%.

Figure 3⁹⁵:



OECD recognizes women as key drivers of a broad-based recovery from the pandemic, so it is even more urgent to promote both gender balance in public decision-making and decision-making processes that incorporate a gender equality perspective to mitigate inequalities and discrimination. As a prospective OECD Member, Brazil has to strengthen gender equality priorities in government programmes and national development plans. The country must support women's access to politics by introducing leadership targets and quotas, mentorship, networking and capacity-building programmes. Above all, it should actively recruit women for leadership positions.⁹⁶

⁹⁵ OECD (2021). Gender equality in public sector employment, in *Government at a Glance 2021*, OECD Publishing Paris, available at <<https://doi.org/10.1787/7f55c675-en>>

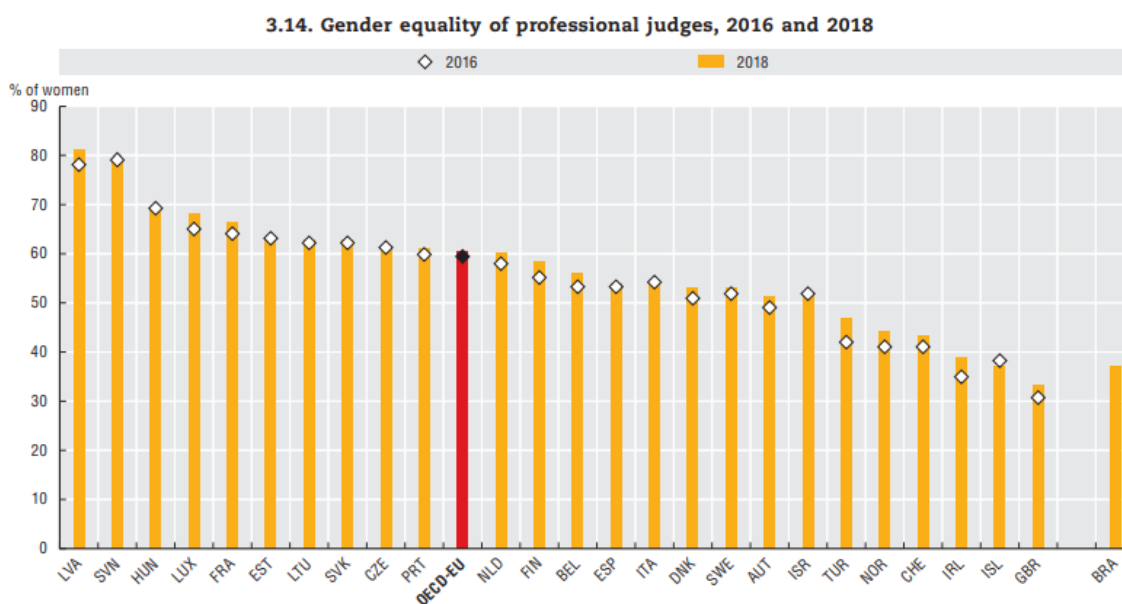
⁹⁶ OECD (2022). Report on the Implementation of the OECD Gender Recommendations. Available at: <<https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>>

6.1.3. Gender equality in the judiciary: Brazil is below average across OECD countries

It is crucial to ensure gender balance in judicial leadership in order to achieve fairness, transparency, diverse perspectives, strengthen citizens' trust, and the effectiveness of the rule of law. It has been a key governance issue observed in OECD countries.⁹⁷

The Brazilian federal government recorded almost 40% of the share of women judges, a percentage below the average of EU-OECD countries, representing 60% of gender balance among judges.

Figure 3⁹⁸:



Source: Council of Europe European Commission for the Efficiency of Justice (CEPEJ) CEPEJ-STAT (database), StatLink <https://doi.org/10.1787/888934257584>

6.1.4. United Nations statistics show that progress has been made in the executive and legislative powers, but there is still a lot to be done

In the executive power, the UNSD identified a predominance of male lenses in decision-making positions in Brazil. Women's share of government ministerial

⁹⁷ OECD (2021), Government at a Glance 2021, OECD Publishing, Paris. Available at: <https://doi.org/10.1787/1c258f55-en>

⁹⁸ OECD (2021). Gender equality in public sector employment, in *Government at a Glance 2021*, OECD Publishing Paris, available at <https://doi.org/10.1787/7f55c675-en>

positions was 9,1% in 2020, from the 22 ministers that existed at the time in the country, only two were led by women. Of the 190 countries evaluated, Brazil ranked 154.⁹⁹ Women's share of government ministerial positions in Brazil represented 26% in 2014; 15% in 2015; 4% in 2017; and 9,1% in 2019¹⁰⁰ (please see figure 1). The percentages of 2014 and 2015 represent the period with higher participation of women in ministerial positions in Brazil and it has relation to the fact that at the time Brazil had a female chief executive in power¹⁰¹.

Figure 1:



Source: GURGEL, Ana; DOS SANTOS, Gabriel; GUERO, Isabelle; SALLANI, João; NOGUEIRA, Mariana; DE OLIVEIRA, Pedro, 2022.

In 2020, Brazil had a female head of the National Statistical Office, being among the 52 countries that also had a female head from a total of 132 evaluated countries.¹⁰²

In Brazil's history, only one woman managed to reach the position of a female

⁹⁹ The countries were ranked according to the percentage of women in ministerial positions, reflecting appointments up to 1 January 2020. Available at: <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Women-in-politics-map-2020-en.pdf>

¹⁰⁰ Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa:womens-share-of-government-ministerial-positions/explore?location=2.052025%2C-178.264019%2C1.34>

¹⁰¹ Available at: https://www.ipea.gov.br/retrato/pdf/190215_tema_g_mulher_no_poder_e_na_tomada_de_decisooes.pdf

¹⁰² Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::sex-of-head-of-national-statistical-office-nso/explore?location=3.074140%2C-178.264019%2C1.34>

head of state.

The same logic follows in the Brazilian Parliament, as presented below.

Brazil was ranked 142 out of 190 regarding the percentage of women in unicameral parliaments/lower house of the parliament, reflecting elections/appointments up to January 1st 2021. The lower house presented 78 women seats of a total number of 513 seats (this represents a proportion of 15.2%) and the upper house presented 10 women seats of a total number of 81 seats (12.4% proportion).¹⁰³

Regarding the proportion of seats held in the upper houses of national parliaments, it is important to verify the past data to observe the evolution of this matter. There were 13.6% of seats for women in Brazil in 2015; and 13.58% in 2020¹⁰⁴ (the total number of seats in the upper house of the national parliament was 11 both in 2015 and 2020¹⁰⁵). In other words, there was a slight decrease in the seats held by women in the upper house of the parliament (please see Figure 2). As for the lower house, the proportion of seats held for women was 8.53% in 2013.; 8.58% in 2014; 8.97% in 2015 (the number of seats in lower or single houses of national parliaments held by women was 46 out of 513 in this year¹⁰⁶); 9.94% in 2016; 10.72% in 2017 and 2018; 15.01% in 2019; and 14.62% in 2020 (the number of seats in the lower house of the national parliaments held by women was 75¹⁰⁷ out of 513 in this year¹⁰⁸).¹⁰⁹ In summary, there was an increase in the proportion of seats held by women in the lower

¹⁰³ Available at: <<https://www.ipu.org/women-in-politics-2021>>

¹⁰⁴ Available at: <<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::proportion-of-seats-held-in-the-upper-houses-of-national-parliaments-by-sex/explore?location=4.161509%2C37.725636%2C1.69>>

¹⁰⁵ Available at: <<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::number-of-seats-in-upper-houses-of-national-parliaments/explore?location=4.161509%2C37.725636%2C1.69>>

¹⁰⁶ Available at: <<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::number-of-seats-in-national-parliaments-lower-or-single-houses/explore?location=2.052025%2C-178.264019%2C1.34>>

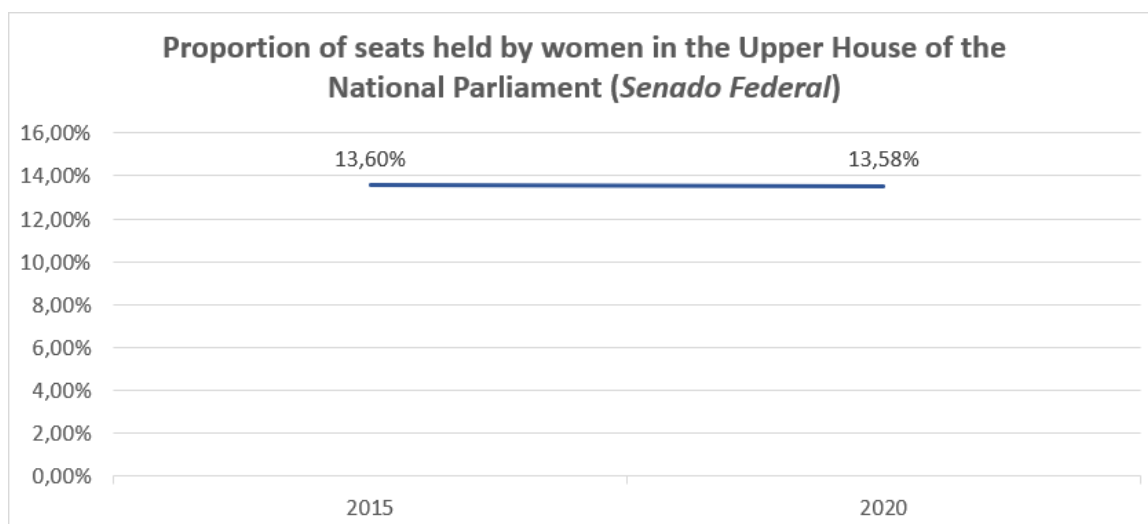
¹⁰⁷ Available at: <<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::number-of-seats-held-by-women-in-national-parliaments-lower-or-single-houses/explore?location=2.052025%2C-178.264019%2C1.34>>

¹⁰⁸ Available at: <<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::number-of-seats-in-national-parliaments-lower-or-single-houses/explore?location=2.052025%2C-178.264019%2C1.34>>

¹⁰⁹ Available at: <<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::number-of-women-speakers-in-national-parliaments/explore?location=-0.000000%2C0.000000%2C0.88>>

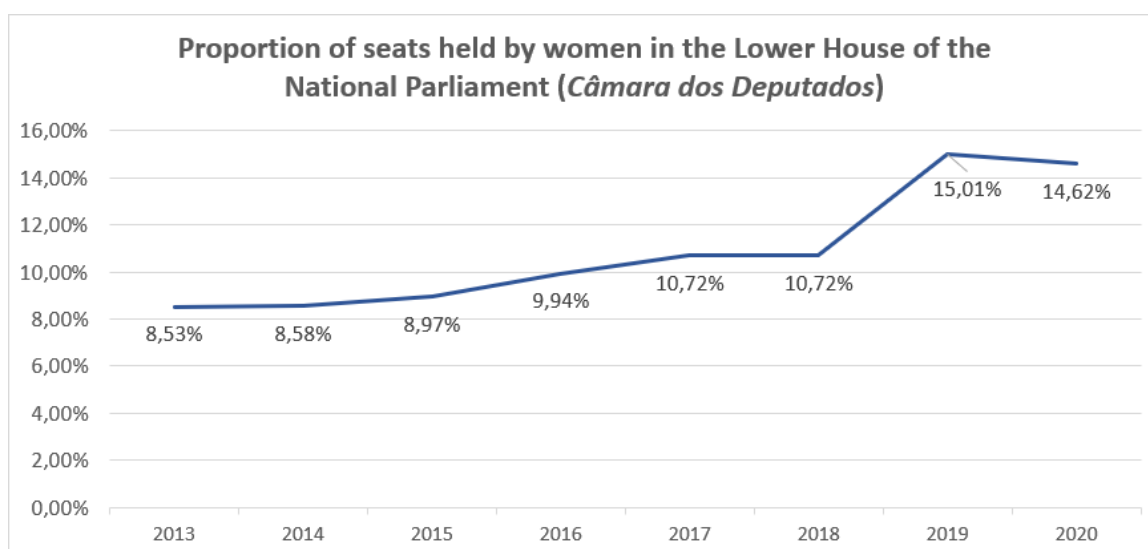
house of the national parliament (please see Figure 3).

Figure 2:



Source: GURGEL, Ana; DOS SANTOS, Gabriel; GUERO, Isabelle; SALLANI, João; NOGUEIRA, Mariana; DE OLIVEIRA, Pedro, 2022.

Figure 3:



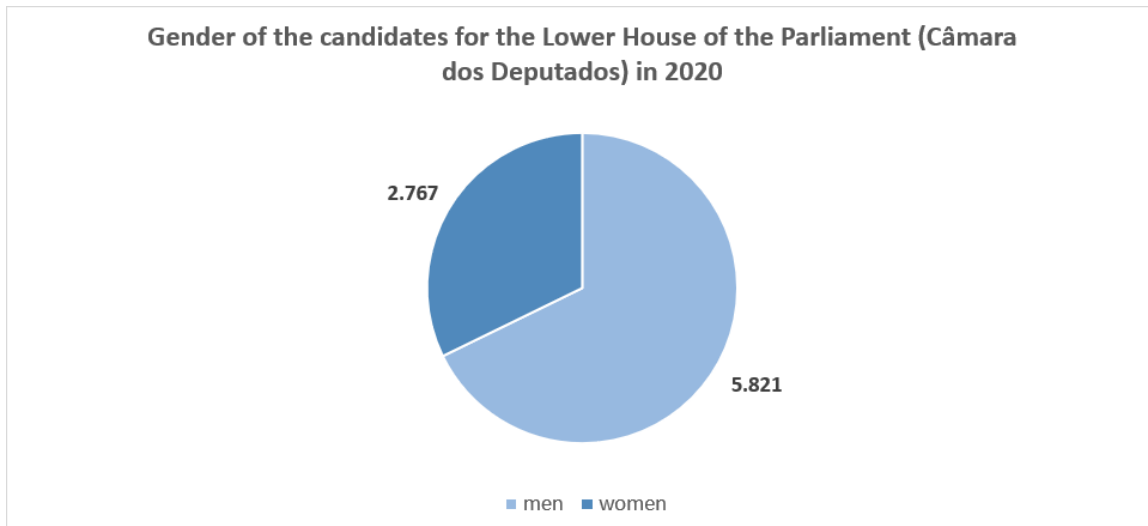
Source: GURGEL, Ana; DOS SANTOS, Gabriel; GUERO, Isabelle; SALLANI, João; NOGUEIRA, Mariana; DE OLIVEIRA, Pedro, 2022.

Although Brazil has a gender quota for parliament candidates for the lower house¹¹⁰, recent data shows that the candidates for the lower house of

¹¹⁰ Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::presence-of-a-gender-quota-for-parliament/explore?filters=eyJUSU1FX1BFUkiPRCI6WzlwMjAsMjAyMF19&location=2.052025%2C-178.264019%2C1.34&showTable=true>

parliament are predominantly male. The total number of candidates for Brazil's lower house of parliament was 8,588 in 2020¹¹¹. Of this number, only 2,767 were women¹¹², representing a share of 32.21%. Of the 50 countries analysed, Brazil was ranked 39th concerning female candidates for lower/single houses of parliament in this period.¹¹³

Figure 4:



Source: GURGEL, Ana; DOS SANTOS, Gabriel; GUERO, Isabelle; SALLANI, João; NOGUEIRA, Mariana; DE OLIVEIRA, Pedro, 2022.

Brazil had only male speakers in the lower and upper houses of the national parliaments in 2020.¹¹⁴ In this period, the world had 57 women speakers in national parliaments¹¹⁵ out of 278 (total of speakers).¹¹⁶

The United Nations Inter-Parliamentary Union and IDEA highlight that, although

¹¹¹ Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::total-number-of-candidates-for-the-lower-or-single-houses-of-parliament/explore?location=2.052025%2C-178.264019%2C1.34>

¹¹² Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::number-of-women-candidates-for-the-lower-or-single-houses-of-parliament/explore?location=2.052025%2C-178.264019%2C1.34>

¹¹³ Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::share-of-women-among-candidate-for-the-lower-or-single-houses-of-parliament/explore?location=2.121198%2C1.735981%2C1.37>

¹¹⁴ Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::sex-of-the-speakers-in-national-parliaments/explore?location=2.078906%2C1.735981%2C1.35>

¹¹⁵ Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::sex-of-the-speakers-in-national-parliaments/explore?location=2.078906%2C1.735981%2C1.35>

¹¹⁶ Available at: <https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::number-of-speakers-in-national-parliaments/explore?location=-0.000000%2C0.000000%2C0.88>

Brazil became one of the first countries in the Americas to implement a gender quota system in 1997 and the new electoral law demands that party lists include at least 30% candidates of each sex, in the 2018 elections - more than 20 years later, women won barely 15% of seats in Brazil's lower house of parliament.¹¹⁷

A curious finding is that even though there are gender quotas for the lower house of the Brazilian parliament, IDEA data shows that there are not for the upper house¹¹⁸.

Data from Brazil shows that donations to male candidates are, on average, three times higher than to their female counterparts. The Inter-Parliamentary Union identified as one of the potential reasons to justify this number that women may not be as well connected as men to potential sources of campaign funding.¹¹⁹ Also, the Inter-Parliamentary Union understood that unregulated campaign funding has skewed the electoral process in favour of men – and against women - in the 2018 elections.¹²⁰

Men were occupying most of the chairs of committees in Brazil in 2020, such as the human rights¹²¹, foreign affairs¹²², finance¹²³ and defence¹²⁴ committees (upper and lower houses). Only the chair of the gender equality committee was occupied by a woman.¹²⁵

¹¹⁷ UNION, Inter-Parliamentary. Women in parliament: 1995–2020. 2020. Available at: <<https://www.ipu.org/resources/publications/reports/2020-03/women-in-parliament-1995-2020-25-years-in-review>>; ASSISTANCE, International Institute for Democracy and Electoral Assistance. Gender Quotas Database - country data. Available at <<https://www.idea.int/data-tools/data/gender-quotas/country-view/68/35>>

¹¹⁸ ASSISTANCE, International Institute for Democracy and Electoral Assistance. Gender Quotas Database - country data. Available at <<https://www.idea.int/data-tools/data/gender-quotas/country-view/68/35>>

¹¹⁹ UNION, Inter-Parliamentary. Women in parliament: 1995–2020. 2020. Available at: <<https://www.ipu.org/resources/publications/reports/2020-03/women-in-parliament-1995-2020-25-years-in-review>>

¹²⁰ UNION, Inter-Parliamentary. Women in parliament: 1995–2020. 2020. Available at: <<https://www.ipu.org/resources/publications/reports/2020-03/women-in-parliament-1995-2020-25-years-in-review>>

¹²¹ Available at:

<<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::sex-of-chair-of-human-rights-committee/explore?location=2.891684%2C2.761507%2C1.41>>

¹²² Available at:

<<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::sex-of-chair-of-foreign-affairs-committee/explore?location=2.098004%2C-177.238493%2C1.36>>

¹²³ Available at:

<<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::sex-of-chair-of-finance-committee/explore?location=2.098004%2C-177.238493%2C1.36>>

¹²⁴ Available at:

<<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::sex-of-chair-of-defence-committee/explore?location=2.806630%2C37.725636%2C1.69>>

¹²⁵ Available at:

The United Nations recognized the work of the women's caucus (known as the *Bancada Feminina*) as parliamentarians that have worked across party lines to promote law reform. It worked with the Feminist Centre for Research and Advice - a feminist lobbying group, to drive the enactment of several laws which advance women's rights, including laws against domestic violence and sexual harassment, a new civil code, and legislation concerning women's health and maternity benefits. It is important to have feminine lenses in the Parliament to work across party lines, to promote law reforms and Gender-responsive law-making.¹²⁶

Regarding the judiciary branch, there was no sufficient information available to be analysed.

6.1.5. Brazil's legislation is incipient to assure gender equality in decision-making positions and some of the legislation in place does not produce major effects

In terms of Brazil's normative framework to assure gender equality in the legislative branch, as mentioned above, although Brazil has no gender quotas for the upper house of the Parliament, there are voluntary party quotas and legislated quotas for the single/lower house level, as mentioned above. This measure was introduced by Law No. 9504/1997, which regulates the norms for the elections in Brazil¹²⁷. Article 10, paragraph 3 of this Law establishes that each party or coalition shall fill a minimum of 30% and a maximum of 70% for candidates of each gender for the House of Representatives (*Câmara dos Deputados*), the Legislative Chamber (*Câmara Legislativa*), the Legislative Assemblies (*Assembleias Legislativas*) and the Municipal Councils (*Câmaras Municipais*). These elections are held through a proportional representation system.

<<https://worlds-women-2020-data-undesa.hub.arcgis.com/datasets/undesa::sex-of-chair-of-gender-equality-committee/explore?location=2.926825%2C37.725636%2C1.72>>

¹²⁶ UNION, UN Women and the Inter-Parliamentary. Gender-responsive law-making - Handbook for Parliamentarians No. 33. 2021. P. 41.

¹²⁷ Available at: <https://www.planalto.gov.br/ccivil_03/L/EIS/L9504.htm>

It is interesting to note that even though the Law establishing a minimum of 30% of each gender in the political party list of candidates running for elections exists since 1997, it only had effectiveness in 2009 when the related law started to demand the observation of the quota for the lists effectively registered by the parties in the Electoral Justice¹²⁸.

Another fact that must be observed is that Law No. 9504/1997 does not establish aspects regarding the destination of financial resources necessary to reduce gender inequalities between men and women in electoral campaigns. Therefore, without concrete support from the party, the launching of female candidates with a low degree of electoral competitiveness sometimes is merely pro forma, to comply with the legal requirement¹²⁹.

A recent alteration in Brazil's Constitution also demonstrates a certain concern with women's political involvement. The Constitutional Amendment No. 117 of April 2021 modified article 17, paragraph 7 of Brazil's Constitution to impose on political parties the obligation to reserve a minimum of 5% of the resources of the parties fund for the creation and maintenance of programmes to the promotion and diffusion of women's political participation. Article 17, paragraph 8 also establishes that a minimum amount of 30% of a portion of the parties' funds destined for electoral campaigns, the Special Fund for Campaign Financing, and the free advertising time on radio and television must be proportionally distributed by the parties to their respective female candidates.¹³⁰

¹²⁸ Vogel, Luiz Henrique. *A histórica sub-representação das mulheres na Câmara dos Deputados: desigualdades e hierarquias sociais nas eleições de 2014*. Technical Study of the Legislative Consultancy of the House of Representatives, 2019. Available at <<https://www2.camara.leg.br/a-camara/estruturaadm/secretarias/secretaria-da-mulher/observatorio-nacional-da-mulher-na-politica/nota-tecnica-01-2022>>; and BACKES, Ana Luiza; and COSTA, João Carlos A. Technical Note No. 001/2022 - *Balço do debate legislativo e das propostas aprovadas de 2021 sobre matéria eleitoral e partidária, sob a perspectiva das mulheres*. Observatório Nacional da Mulher na Política. Available at <<https://www2.camara.leg.br/a-camara/estruturaadm/secretarias/secretaria-da-mulher/observatorio-nacional-da-mulher-na-politica/nota-tecnica-01-2022>>

¹²⁹ Vogel, Luiz Henrique. *A histórica sub-representação das mulheres na Câmara dos Deputados: desigualdades e hierarquias sociais nas eleições de 2014*. Technical Study of the Legislative Consultancy of the House of Representatives, 2019. Available at <<https://www2.camara.leg.br/a-camara/estruturaadm/secretarias/secretaria-da-mulher/observatorio-nacional-da-mulher-na-politica/nota-tecnica-01-2022>>.

¹³⁰ Available at <http://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc117.htm>

Article 2 of the Constitutional Amendment No. 117/2021 also established that the distribution of resources from party funds and the Special Fund for Campaign Financing will observe the votes given to women candidates for the lower house of the parliament during the elections of 2022 to 2030 and double-count them. This measure can be considered a “double quota” under the concept adopted by IDEA, which refers to a quota system that not only requires a certain percentage of women on the electoral list but also prevents women candidates are just placed at the bottom of the list with little chance to be elected¹³¹.

It is important to note that the Law on Political Parties (Law No. 9096/1995¹³²) establishes that part of the resources from the Party Fund must be applied to the creation and maintenance of programs to promote and disseminate the political participation of women, created and executed by the Women's Secretariat or by an institute presided by the Women's Secretariat on a national level, according to a percentage to be determined by the national party leadership body, observing a minimum of 5% of the total amount (article 44.V).

At least 30% of the total time available to the political party must be destined for the promotion and dissemination of women's political participation (article 50-B.V, paragraph 2 of Law No. 9096/1995). Also, political parties properly registered in the Superior Electoral Court (*TSE*) enjoy free party propaganda to promote and disseminate women's political participation on radio and television (article 50-B.V of Law No. 9096/1995).

The *TSE* plays an important role in promoting institutional propaganda on radio and television, encouraging women's political participation during the election campaign (article 93-A of Law No. 9504/1997¹³³). Regarding the *TSE* performance, it is worth mentioning that it has been creating actions to encourage female participation in politics and female institutional participation in

¹³¹ Available at <<https://www.idea.int/data-tools/data/gender-quotas/quotas>>

¹³² Available at <http://www.planalto.gov.br/ccivil_03/leis/l9096.htm>

¹³³ Available at <http://www.planalto.gov.br/ccivil_03/leis/l9096.htm>

Electoral Justice. Ordinance No. 791/2019¹³⁴, established the Management Commission for Gender Policy at the Superior Electoral Court (*TSE Mulheres*) and established guidelines for this work.

Law No. 142211/2021¹³⁵ contributed to ensuring women's participation in debates among candidates in proportional elections by the introduction of article 46.II to the Law No. 9504/1997.

The National Observatory of Women in Politics (*ONMP*) is an initiative of the Women's Secretariat of the House of Representatives (*Câmara dos Deputados*) in association with the Committee for the Defence of Women's Rights. It was created in 2021 by Ordinance No. 012/2021¹³⁶ and aims to monitor indicators, centralise studies on women's political action at the federal, state, and municipal levels, and supervise the application of laws in electoral campaigns and party life¹³⁷. The *ONMP* produced a Technical Note on the balance of the legislative debate and the approved proposals in 2021 on electoral and party matters, from women's perspective¹³⁸. It reveals that since 2015 there is a proposed constitutional amendment to Brazil's Constitution (PEC) 134/15, which seeks to reserve a minimum percentage of representation for each gender in the Legislative Branch, and this percentage will gradually increase in three stages (10%, 12% and then 16% in each legislature term/mandate – each legislature term lasts four years)¹³⁹. However, since 2016 the PEC has not been subject to

¹³⁴ Available at <https://www.tse.jus.br/legislacao/compilada/prt/2019/portaria-no-791-de-10-de-outubro-de-2019> at

¹³⁵ Available at http://www.planalto.gov.br/ccivil_03/ato2019-2022/2021/lei/L14211.htm

¹³⁶ Available at <https://www2.camara.leg.br/a-camara/estruturaadm/secretarias/secretaria-da-mulher/observatorio-nacional-da-mulher-na-politica/institucional/portaria-de-criacao>

¹³⁷ More information on the *ONMP* is available at <https://www2.camara.leg.br/a-camara/estruturaadm/secretarias/secretaria-da-mulher/observatorio-nacional-da-mulher-na-politica>

¹³⁸ BACKES, Ana Luiza; and COSTA, João Carlos A. Technical Note No. 001/2022 - *Balço do debate legislativo e das propostas aprovadas de 2021 sobre matéria eleitoral e partidária, sob a perspectiva das mulheres. Observatório Nacional da Mulher na Política*. Available at <https://www2.camara.leg.br/a-camara/estruturaadm/secretarias/secretaria-da-mulher/observatorio-nacional-da-mulher-na-politica/nota-tecnica-01-2022>

¹³⁹ More information available at <https://www.camara.leg.br/noticias/488716-pec-institui-reserva-de-vagas-para-mulheres-no-poder-legislativo/>

consideration and, consequently, voted by the House of Representatives.¹⁴⁰ However, the reserve of 16% of the seats has already been practically reached by female candidates in the last elections: there were 51 to 75 women elected, equivalent to 14.3% of the total. Thus, it will be necessary to either increase the level of seats (which will face enormous resistance), or the level of openings (which will face enormous resistance), or adopt other types of tools.¹⁴¹

In terms of contributing to an environment for women to engage and stay in political life, Law No. 14192/2021¹⁴² prevents, represses and combats political violence against women; and Law No. 14197/2021¹⁴³ introduced the combat of political violence against women in Brazil's Penal Code, establishing sanctions to prevent intimidation suffered by women in their political participation.

Regarding Brazil's normative framework to assure gender equality in the judiciary branch, it is important to note Resolution No. 255/2018¹⁴⁴, issued by the National Justice Council (CNJ), which establishes a national policy to encourage the institutional participation of women in the judiciary. According to it, all branches and units of the judiciary must adopt measures to ensure gender equality in the institutional environment, proposing guidelines and mechanisms that guide judicial bodies to act to encourage the participation of women in management and advisory positions, in competitive examinations, and as exhibitors at institutional events (article 2).

¹⁴⁰ To be approved, a PEC must follow a constitutional procedure that initiates with the admissibility analysis, focused on formal aspects, of the Commission on Constitution and Justice. If the admissibility of the PEC is approved, it will be analysed by a special commission created specifically for this purpose. Then, the PEC is voted in two rounds in the Plenary of the House of Representatives (Câmara dos Deputados). If approved, it is necessary to be substantively analysed by the Commission on Constitution and Justice this time and then voted in two rounds in the Senate. If the Senate approves the text as it received from the House of Representatives, the PEC is enacted by the bureaus of the House and Senate. If the text is modified, the PEC must return to the House of Representatives for a new vote. The goal is that the same text of the PEC is approved by both the House of Representatives and the Senate. More details regarding the constitutional procedure to approve a PEC is available at <<https://www.camara.leg.br/noticias/450615-conheca-a-tramitacao-de-propostas-de-emenda-a-constituicao>> and details on the status of the PEC 143/2015 is available at <<https://www.camara.leg.br/propostas-legislativas/1724716>>

¹⁴¹ BACKES, Ana Luíza. *Mulheres na Política*. Technical Study of the Legislative Consultancy of the House of Representatives. Available at <<https://bd.camara.leg.br/bd/handle/bdcamara/40109>>

¹⁴² Available at <http://www.planalto.gov.br/ccivil_03/ato2019-2022/2021/lei/L14192.htm>

¹⁴³ Available at <http://www.planalto.gov.br/ccivil_03/ato2019-2022/2021/lei/14197.htm>

¹⁴⁴ Available at: <<https://atos.cnj.jus.br/files/compilado17161720210921614a13616fec5.pdf>>

The *CNJ* Resolution No. 254/2018¹⁴⁵ also created a measure to create an environment to address the barrier to violence against women in judicial branches, establishing a national policy to combat it.

To corroborate with *CNJ* Resolutions No. 254/2018 and 255/2018, *CNJ* recommended the adoption of the Protocol for Judging with a Gender Perspective by all the judiciary institutions¹⁴⁶.

Despite the evolution observed in the discussions about gender equity in the judiciary branch, there is still a need for the implementation of measures to effectively promote equality within the judiciary and through the judiciary, as recognized by the Association of Federal Judges (*AJUFE*)¹⁴⁷. This Association and the University of Oxford developed a study showing that the female representation in the judiciary branch is only 38.8%¹⁴⁸ and women's participation in Brazil's Federal Supreme Court (*STF*) is lower than the global average for the Supreme Courts. While the global average for female participation in the Supreme Courts is 26%, the country has only 11.1% - only three women appointed in the entire history¹⁴⁹.

The *AJUFE* Women's Commission consolidated some data on the participation of women in the federal judiciary, according to answers given by the Council of Federal Justice about aspects regarding the public tender to become a judge and future promotions in the position, in 2019¹⁵⁰. The data analysed in the related report reinforces the very low rates of participation of women in selection boards, commissions, and decision-making positions, in disagreement with the

¹⁴⁵ Available at <<https://atos.cnj.jus.br/atos/detalhar/2669>>

¹⁴⁶ Recommendation No. 128/2022 available at <<https://atos.cnj.jus.br/files/original18063720220217620e8ead8fae2.pdf>>

¹⁴⁷ Available at <<https://ajufe.org.br/images/Cartabrasilia-2022.pdf>>

¹⁴⁸ Available at <<https://www.ajufe.org.br/imprensa/noticias/16800-ajufe-realiza-seminario-que-debate-a-participacao-feminina-no-sistema-de-justica>>

¹⁴⁹ Available at <<https://www.ajufe.org.br/imprensa/ajufe-na-imprensa/16645-participacao-feminina-no-stf-e-inferior-a-media-global-das-supremas-cortes>>

¹⁵⁰ *AJUFE. Nota Técnica AJUFE Mulheres 02/2019.* Available at <https://www.cjf.jus.br/observatorio2/estudos-e-analises/participacao_feminina>

determination made in Resolution CNJ No. 255/2018, mentioned above. Fewer women apply to the federal judiciary in comparison to men, and proportionally, they are approved to a lesser degree, which requires analysis of pre-entrance issues. Concerning the promotion of magistrates, it was noted that there is no conformity on this issue since some federal courts carry out promotions by merit with the order of seniority and in others, there is no clarity about this process. What is verified is that there is a low rate of magistrates promoted by merit to the second instance and lower percentages of promotions by merit to the position of appellate judges. This could be related to the incipient participation in the field of selection boards, decision-making positions, and convocations.

In this sense, it is possible to observe a certain evolution of norms encouraging women to reach decision-making positions in the judiciary branch, but they do not have the legal force and, therefore, there is no legal obligation to observe them or the establishment of sanctions for noncompliance. These norms are simply not binding and do not produce a substantive effect in increasing women's empowerment in decision-making positions in the judiciary branch.

Regarding the executive branch, considering that this study is restricted to decision-making positions such as ministerial positions and they are indicated by the chief of the executive branch (president) based on free will (article 84.I of Brazil's Constitution), for being positions of trust, it is not regulated by Law. Therefore, it was not possible to analyse the applicable legislation in this process.

6.1.6. Conclusions and reflections - What could be done to improve Brazil's compatibility with the item I.C.3 of the 2013 OECD Recommendation?

First of all, considering the difficulty to identify measures to promote gender equality in decision-making positions we suggest the creation of a portal summarising governmental initiatives to promote transparency on the subject. It could also be a tool to summarise the main police actions to demonstrate to the

OECD an effort to comply with the Gender Recommendations in case the country decides to adhere and to demonstrate special attention to international commitments, such as the adoption of the Sustainable Development Goals (SDGs), particularly Agenda 2030's gender-dedicated aims, which promises to increase the prioritisation of gender equality within national and global development agendas.

When analysing the number of ministerial positions held by women, it was notable that the period with the higher participation was when a woman was chief of the executive branch. This may indicate a hypothesis that when a woman is “in charge” as president, she tends to be more willing to include women in decision-making positions in the executive branch and contribute to gender equality¹⁵¹.

It is possible to visualise the urgent need to increase seats in the lower houses of their parliaments held by women, women's representation in cabinets (ministerial positions), and the share of women judges in all types of courts, as provided in the 2021 OECD Report *Government at a Glance*.

This increase in women's political representation can be reached by affirmative actions, such as adopting political quotas in various forms: reserved seats; legal candidate quotas; or political party quotas¹⁵².

IDEA encourages the adoption of gender quotas to reach a gender balance in political institutions and therefore contribute to the processes of democratisation since electoral quotas make recruitment processes more transparent and formalised. The core idea behind this system is to recruit women into political positions and to ensure that women are not only a token few in political life and ensure that women constitute a large minority of 20, 30 or 40%, or even to

¹⁵¹ Available at: https://www.ipea.gov.br/retrato/pdf/190215_tema_g_mulher_no_poder_e_na_tomada_de_deciso.es.pdf

¹⁵² These actions contribute to the increase of women's political representation, as observed in the 2017 Report on the Implementation of the OECD Gender Recommendations available at <https://www.oecd.org/mcm/documents/C-MIN-2017-7-EN.pdf>

ensure true gender balance of 50-50 (gender neutral)¹⁵³.

In this sense, introducing gender quotas for candidates for the upper house of the Brazilian Parliament, and in institutions linked to the Executive and Judiciary branches are of great importance.

Still, gender quotas do not represent a guarantee of action for the expansion of rights and policies in favour of women (especially in proportional elections), but a condition for these policies to be realised¹⁵⁴. In this sense, the establishment of gender quotas must be combined with other methods to address the underrepresentation of women in decision-making positions to effectively remove barriers. It is necessary to encourage mentoring, networking, capacity-building programmes, changing the culture to address stereotypes, guaranteeing the possibility of work-life balance arrangements and promoting transparency in the recruitment, selection and promotion of decision-making positions in public institutions. In this sense, as a prospective OECD Member, Brazil has to strengthen gender equality priorities in government programmes and national development plans.

Civil society, especially women's organisations such as Women Inside Trade, and the media have a key role to play in monitoring progress, suggesting reforms and facilitating debate around progress on gender equality in decision-making positions¹⁵⁵.

6.2. Gender Equality in Public Employment (item IV.3 of the 2015 OECD Recommendation)¹⁵⁶

¹⁵³ Available at <<https://www.idea.int/data-tools/data/gender-quotas/quotas>>

¹⁵⁴ Vogel, Luiz Henrique. *A histórica sub-representação das mulheres na Câmara dos Deputados: desigualdades e hierarquias sociais nas eleições de 2014*. Technical Study of the Legislative Consultancy of the House of Representatives, 2019. Available at <<https://www2.camara.leg.br/a-camara/estruturaadm/secretarias/secretaria-da-mulher/observatorio-nacional-da-mulher-na-politica/nota-tecnica-01-2022>>

¹⁵⁵ ASSISTANCE, International Institute for Democracy and Electoral Assistance. Gender Quotas. Available at <<https://www.idea.int/data-tools/data/gender-quotas/quotas>>; and BACKES, Ana Luíza. *Mulheres na Política*. Technical Study of the Legislative Consultancy of the House of Representatives. Available at <<https://bd.camara.leg.br/bd/handle/bdcamara/40109>>

¹⁵⁶ ~IV. RECOMMENDS that Adherents take adequate measures to improve the gender equality in public employment. To this effect, Adherents should: 3. Promote merit-based recruitment; consider positive policies and practices to ensure a balanced representation of men and women in each occupational group in public

To assess Brazil's level of adherence to the selected Recommendation, this section compares Brazil's figures to OECD Countries' regarding women's share in public employment and concludes that Brazil is below OECD's average on this matter (subsection 6.2.2); details women's representation on trust positions at the Brazilian federal government, highlighting their underrepresentation in leadership positions (subsection 6.2.3); and investigates the existence of practices, policies and other measures at Brazil's federal level to ensure gender equality in public employment, leading to conclude that further efforts are necessary in this regard (subsection 6.2.4). Finally, this study reflects on what could be done to improve Brazil's compatibility with 2015 OECD Recommendation IV.3, and provides an exemplary pathway recently stressed by OECD Reports, which could be adopted by Brazil (subsection 6.2.5).

6.2.1. Methodology

It is difficult to track the direct impact of a specific gender equality measure and its effectiveness on public employment women's representation in objective terms. In an attempt to provide a consistent analysis of Brazil's level of adherence to item IV.3 of the 2015 OECD Recommendation, the following criteria and sources of data were adopted.

The focus of the research is to assess Brazil's improvement in gender equality in public employment since the publication of the 2015 OECD Gender Recommendation until the present moment. Therefore, the period considered in the research was limited from 2015 to 2022.

To assess Brazil's development of measures as stated in the Recommendation, the research considered only Federal Laws and Decrees published between 2015 and 2022 -in line with the cut-off period explained above; and which were specifically oriented to public employment –and not simply employment in general terms.

sector employment; and, develop concrete measures to ensure the effective removal of the implicit barriers within hiring and staffing processes, where appropriate and necessary.

Considering the countries selected for comparison with Brazil, the same reasoning in section 6.1. applies to this section. Other Latin American and Caribbean (LAC) countries were prioritised due to their participation in the same OECD Regional Programme in which Brazil takes part, and because of background similarities. Non-LAC countries were also mentioned to inform what OECD itself has pointed out as good practice.

The main source of data collection was the OECD Gender Portal. As explained in section 6.1, it is an effort of reproducing what would be considered by the OECD itself in the assessment of Brazil's compliance with the Recommendations.

The following documents produced by the OECD bodies were selected, containing updated information on gender equality in the public sector worldwide: (i) OECD Development Centre's Social Institutions and Gender Index (SIGI) 2019¹⁵⁷; (ii) OECD Government at a Glance (2021)¹⁵⁸; (iii) Report on the Implementation of the OECD Gender Recommendations (2022)¹⁵⁹; and (iv) OECD Fast Forward to Gender Equality: Mainstreaming, Implementation and Leadership (2019)¹⁶⁰.

Besides OECD works on Gender Equality, national data was also collected from Brazil's Federal Government Portal¹⁶¹. Such data encompasses Federal Laws, Decrees and the Report *Informe de Pessoal* (2018)¹⁶² produced by ENAP (*Escola Nacional de Administração Pública*), which provides data on women's participation in the public services of the executive power. Some perspectives shared in this study are supported by specialists from ANESP¹⁶³ (*Associação*

¹⁵⁷ OECD (2019), SIGI 2019 Global Report: Transforming Challenges into Opportunities, Social Institutions and Gender Index, OECD Publishing, Paris. Available at: <<https://doi.org/10.1787/bc56d212-en>>

¹⁵⁸ OECD (2021), Government at a Glance 2021, OECD Publishing, Paris. Available at: <<https://doi.org/10.1787/1c258f55-en>>

¹⁵⁹ OECD (2022). Report on the Implementation of the OECD Gender Recommendations. Available at: <<https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>>

¹⁶⁰ OECD (2019), Fast Forward to Gender Equality: Mainstreaming, Implementation and Leadership, OECD Publishing, Paris. <https://doi.org/10.1787/g2g9faa5-en>

¹⁶¹ Available at: <<https://www.gov.br/pt-br>>

¹⁶² Available at: <<https://enap.gov.br/pt/acontece/noticias/acesse-o-arquivo-do-informe-de-pessoal>>

¹⁶³ ENAP is a public institution linked to Brazil's Ministry of Economy, with the purpose of promoting the training, and development of public agents of Federal Executive Power.

Nacional dos Especialistas em Políticas Públicas e Gestão Governamental), a private entity which gathers specialists in public policies and government management.

Inequality in public employment's leadership positions has been an indicator consistently stressed by the OECD in its most recent reports¹⁶⁴. For this reason, this study considers it a critical indicator of Brazil's compliance with the OECD Recommendation, and in the analysis of national data available on gender representation in the public sector special emphasis is placed on the federal government's main leadership positions.

6.2.2. Gender representation in public employment: Brazil is below OECD average figures¹⁶⁵

In the Brazilian federal government, the share of women in senior positions is below OECD Members' average share.¹⁶⁶

In 2019, Brazil's share of women in public sector employment was 57,54%, while OECD's Countries average was 57,87%. At first sight, these figures might suggest that Brazil is quite close to OECD's average on gender representation in public services. However, these figures may lead to a mistaken perception of Brazil's current situation in gender equality, and other variables must be analysed. As explained hereafter, women's representation in the federal government falls significantly behind OECD's average, especially at higher positions of management and leadership.

¹⁶⁴ Government at Glance (2021), p. 106, states that *"Policies that aim at gender balance in the most senior levels of administration, such as developing a diversity strategy or setting hiring targets for women, can attract more women into these roles. this will also contribute to more gender-responsive policy making"* and the Report on the Implementation of the OECD Gender Recommendations (2022) claims that the persistence of gender gaps in senior public administrations *"emphasises the need to eradicate stereotypes, change the culture, improve work-life balance arrangements and increase the transparency in recruitment and promotion processes for leadership positions in public institutions"*.

¹⁶⁵ Data from item 6.2.2. is based on OECD Government at a Glance (2021). For further information on methodology, please see

https://www.oecd-ilibrary.org/sites/1c258f55-en/1/3/3/4/index.html?itemId=/content/publication/1c258f55-en&_csp_ =10e9de108c3f715b68f26e07d4821567&itemIGO=oecd&itemContentType=book#boxsection-19

¹⁶⁶ This information is based on the results provided by the OECD Government at Glance (2021), and refers to the situation on 1 January 2020.

Concerning the composition of the workforce in the Brazilian Federal Government, women hold only 16,84% of senior management positions; 35,13% of middle management positions and 44,13% of other positions. As demonstrated by the following figure (Figure 4), Brazil's women shares are below most OECD countries¹⁶⁷¹⁶⁸, particularly considering the proportion of women in higher-level positions, such as in senior management employment.

Figure 4¹⁶⁹:



Even in comparison to other Latin American and Caribbean (LAC) countries which have accessed OECD, Brazil appears under the region's average results. Costa Rica holds 38,10% of senior management positions; 51,61% of middle management positions; and 67,50% of other positions in the central government. Colombia holds an average of 39,64% of women participation in senior management positions; 53,61% in middle management positions; and 48,61% in other positions. In Mexico, women hold 23,31% of senior management positions;

¹⁶⁷ Countries which completed the 2020 Survey on the Composition of the Workforce in Central/Federal Governments.

¹⁶⁸ It is hard to affirm that the existence of laggard countries in gender representation in public employment among OECD members, such as Japan, can mitigate the OECD's pressure on compliance with the Gender Recommendations. Not only do they represent exceptional situations in contrast with OECD average figures, but have particular contexts of accession at OECD.

For instance, Japan became an OECD member in 1964, and expressly adhered to the 2013 and 2015 Gender recommendations, as verified at:

<<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0398>> and
<<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0418#adherents>>

¹⁶⁹ OECD (2021). Gender equality in public sector employment, in *Government at a Glance 2021*, OECD Publishing Paris, available at <<https://doi.org/10.1787/7f55c675-en>>

37,25% of middle management positions and 57,83% of other positions.

Figure 5¹⁷⁰:

Women's workforce representation in Central/Federal government (Latin American and Caribbean countries)			
Country	Senior Management Positions	Middle Management Positions	Other Positions
Brazil	16,84%	35,13%	44,13%
Costa Rica	38,10%	51,61%	67,50%
Colombia	39,64%	53,61%	48,61%
Mexico	23,31%	37,25%	57,83%

6.2.3. Women have been significantly underrepresented in trust positions at federal government

Positions of trust at the federal government, denominated in Brazil as “DAS”, are positions of leadership filled by appointment. Such appointments are made by the manager of each federal government agency. The DAS is stratified into 6 levels of leadership; the highest of which is filled by national secretaries, directors and presidents of administration bodies.¹⁷¹

National studies show that the higher the position of trust in public employment, the lower it is the presence of women. In public services at the federal level, in 2018, women accounted for 43% of DAS in total. However, the inequality grows as the positions get closer to leadership levels. Women are reasonably represented until level 3 of DAS, however, the governmental decision-making

¹⁷⁰ Based on data provided by OECD Government at Glance (2021).

¹⁷¹ Available at:

<<http://anesp.org.br/todas-as-noticias/2020/3/11/desigualdade-de-gnero-na-remuneracao-persiste-na-burocracia-federal-brasileira>>

process starts at level 4 which is precisely when gender inequality increases¹⁷². At *DAS* level 6, women filled only 17% of the positions.

Figure 6¹⁷³

Women's share in <i>DAS</i> positions (2018)	
Position	Women's share
DAS in total	43%
DAS Level 3	48%
DAS Level 6	17%

In 2021, in turn, women filled 23% of the *DAS* level 6 positions; and only 12% of positions of the first-tier government, which are appointed by the President of the Republic and State Ministries and encompass State Ministries, executive secretaries and special advisors.¹⁷⁴

Figure 7¹⁷⁵

Women share in leadership positions at the Brazilian Federal Government (2021)	
Position	Women's share
First-tier government	12%
DAS Level 6	23%
DAS Level 5	28%

¹⁷²Available at:

<<http://anesp.org.br/todas-as-noticias/2020/3/11/desigualdade-de-gnero-na-remuneracao-persiste-na-burocracia-federal-brasileira>>

¹⁷³ Based on data from Escola de Administração Pública (ENAP). Informe de Pessoal, 2018. Available at: <http://repositorio.enap.gov.br/handle/1/3215>

¹⁷⁴Refers to the situation on November, 2021. Based on data from Painel Estatístico de Pessoal/ME. Available at:

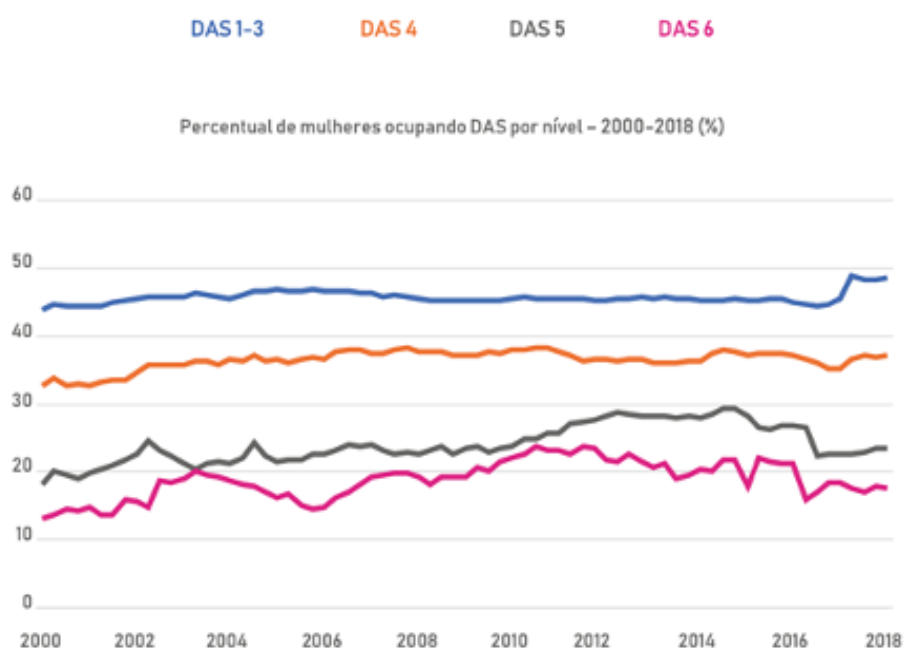
<http://painel.pep.planejamento.gov.br/QvAJAXZfc/opendoc.htm?document=painelpep.qvw&lang=en-US&host=Local&anonymous=true>

¹⁷⁵ Refers to the situation on November, 2021. Based on data from Painel Estatístico de Pessoal/ME. Available at:

<http://painel.pep.planejamento.gov.br/QvAJAXZfc/opendoc.htm?document=painelpep.qvw&lang=en-US&host=Local&anonymous=true>

Such structure of underrepresentation has been consistently repeated over the years and governments. Figure 08 below demonstrates that since the OECD 2015 Recommendations enactment until the national study¹⁷⁶ publication in 2018, there had not been signs of improvement in women's representation from DAS 4 and higher levels in Brazil.

Figure 8:¹⁷⁷



6.2.4 Brazil's practices, policies and other measures to ensure gender equality in public employment: further efforts are necessary.

This section investigates the extension of Brazil's measures directed to the improvement of gender equality in the public sector. Firstly, it considers OECD data concerning the existence of measures and policies to improve gender balance in the federal/central government public services in different OECD Members; and contrasts Brazil's situation and OECD countries in this regard (item 6.2.4.1). Secondly, this section analyses if national legislation directly addresses gender equality barriers in the public sector (item 6.2.4.2). Both items

¹⁷⁶Escola de Administração Pública (ENAP). Informe de Pessoal, 2018. Available at: <http://repositorio.enap.gov.br/handle/1/3215>

¹⁷⁷ Escola de Administração Pública (ENAP). Informe de Pessoal, 2018. Available at: <http://repositorio.enap.gov.br/handle/1/3215>

of analysis lead to conclude that Brazil has not developed policies and measures to improve gender balance in public services in the federal government; and legislation directed to the removal of gender barriers in this sector is still incipient.

6.2.4.1. Brazil lacks policies and specific targets to improve gender balance in the Federal government public services, in contrast with most OECD Countries.

Diversity and inclusion in the public service workforce have emerged as a priority for governments across the OECD. Many countries have identified gaps in workforce representation (which includes gender gaps) and have developed policies aiming at the attraction and recruitment of underrepresented groups in the public sector.¹⁷⁸

OECD has collected data on the use of targets and policies for many under-represented groups, including women. Hiring targets are tools to develop inclusive public workforce recruitment and have been recognized by OECD as “the strongest mechanism as they set specific measurable objectives.”¹⁷⁹

OECD’s data collection on the use of policies and specific targets to improve gender balance in central government¹⁸⁰ shows that 14 countries have targets for the whole central/federal administration; 7 countries have targets only for senior-level public servants; 4 countries don’t have specific targets but have policies in place; and 8 countries do not have any policies or targets in place. Hence, most OECD countries have targets or policies addressing gender equality in the central/federal government¹⁸¹.

¹⁷⁸ *Government at a Glance 2021*, OECD Publishing, Paris, p. 140. Available at: <<https://doi.org/10.1787/59cc68d6-en>>.

¹⁷⁹ *Idem*.

¹⁸⁰ Available at: <<https://doi.org/10.1787/888934258040>>. For further information on the methodology, factors and indicators involved please consult Annex E at <https://doi.org/10.1787/59cc68d6-en>

¹⁸¹ OECD (2021), "Use of policies and specific targets to improve gender balance and the representation of under-represented groups in central government, 2020", in *Government at a Glance 2021*, OECD Publishing, Paris. Available at: < <https://doi.org/10.1787/59cc68d6-en>>.

Concerning LAC countries, Colombia and Mexico have targets for senior-level public servants. According to the OECD indicators, however, Brazil does not have any policies or targets at the federal level¹⁸².

Figure 9¹⁸³:

Policies and specific targets to improve gender balance in central government (2020)	
Tools used for women's recruitment in central government	Number of OECD Countries
Targets for the whole central/federal administration	14
Targets only for senior level public servants	7
No specific targets but policies in place	4
No policies or gender targets on recruitment	8

6.2.4.2 Brazil's legislation is incipient to assure the removal of gender equality barriers in public employment

The 2022 Report on the Implementation of OECD Gender Recommendations provides that women's employment in the public sector continues to be hindered by the prevailing barriers to women's employment in general.

Regarding these barriers, OECD has already elucidated that "*underlying*

¹⁸²Idem.

¹⁸³ Based on data available at: < <https://doi.org/10.1787/59cc68d6-en>>.

*stereotypes and cultural norms can undergird persistent gaps even when (as in much of the OECD) the educational achievements of girls and boys have been equalised, legal barriers to participation have been largely eliminated, violence against women is prohibited, and governments have put equal rights legislation in place.*¹⁸⁴

Therefore, important means of tackling this issue, which are expressly highlighted by the OECD in the 2022 Report, involve the monitoring of trends to mitigate impacts on gender equality in the workplace and the promotion of men's responsibility for care work¹⁸⁵¹⁸⁶.

In terms of normative efforts on gender equality in the public sector, an extension for paternity leave has been allowed in public employment since 2016 by the Presidential Decree 8.737/2016 and in the private sector by Federal Law 13.257/2016. Such extension can be considered an effort toward the promotion of men's responsibility for care work. It is, however, limited to 20 days maximum, whereas Law 11.770/2008 and Presidential Decree 6.690/2008 allows for an extension of maternity leave in the private and public sector, respectively, to 180 days.^{187 188}

Although the measure is not directly related to the recruitment of women in public services, it might contribute indirectly to mitigating the work-life balance problems

¹⁸⁴ OECD (2019), *Fast Forward to Gender Equality: Mainstreaming, Implementation and Leadership*, OECD Publishing, Paris. <https://doi.org/10.1787/g2g9faa5-en>

¹⁸⁵ OECD (2022). *Report on the Implementation of the OECD Gender Recommendations*. Available at: <https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>

¹⁸⁶ Although the Report acknowledges other important measures, these were specifically highlighted in the section which addresses Gender Equality in Public Employment, as demonstrated by the following extract: *"Women's employment in the public sector workforce continues to be hindered by other prevailing barriers to women's employment in general (OECD, 2019[11]). Such barriers have likely been worsened by the pandemic (see The OECD Gender Recommendations in times of COVID-19: the pandemic risks hindering progress in their implementation and outcomes). It will therefore be important to monitor trends to mitigate impacts on gender equality in the workplace and promote men's responsibility for care work, going forward from the COVID-19 pandemic as well as more broadly."* (OECD (2022). *Report on the Implementation of the OECD Gender Recommendations*, p. 79)

¹⁸⁷ Such Decrees were reported by OECD SIGI - Gender Index, demonstrating their potential relevance in an OECD analysis. Available at: <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/BR.pdf>

¹⁸⁸ On average, across OECD countries: (i) mothers are entitled to just over 18 weeks of paid maternity leave around childbirth and (ii) under nine weeks of paid father-specific leave are offered, either through paid paternity leave or paid father-specific parental or home care leave. For more information, please consult: https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf. Legislation as applicable in April 2020.

and gender stereotypes which appear as an invisible barrier to women's representativeness in public and private employment.

Decree 9.727/2019¹⁸⁹ can in turn be seen as a small step towards addressing the implicit barriers within the hiring and staffing processes in federal government positions. The Decree sets rules and directives which address the filling of commissioned posts; and determines that these positions should be **preferably** filled by a public selection procedure. As implied by the Decree's wording, the proposed modifications are not radical but rather timid suggestions. In addition, the Decree does not target gender equality directly, which corroborates the perspective that it is still an incipient measure of the promotion of women's representation in public services.

Specialists point out, however, that such determination may help promote more gender representation in the appointment of higher government positions as of DAS Level 4¹⁹⁰, since it encourages more objective criteria of selection, allowing merit-based recruitment.

Gender bias, however, must be avoided for the true effectiveness of the directive on gender equality. Despite the fact that the Decree encourages more objectiveness through public selection procedures, such processes do not completely prevent a biased selection of men for leadership positions. Concerning gender bias, OECD has elucidated that "*Gender bias, i.e. deeply entrenched and often-internalised social norms, can shape acceptable roles, opportunities and behaviours for women and men in society and the household. Gender-stereotyped norms are passed on to children by families, teachers and communities (...).*"¹⁹¹.

¹⁸⁹ Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9729.htm

¹⁹⁰ Available at:

<<http://anesp.org.br/todas-as-noticias/2020/3/11/desigualdade-de-gnero-na-remuneracao-persiste-na-burocracia-federal-brasileira>>

¹⁹¹ OECD (2022). Report on the Implementation of the OECD Gender Recommendations, p. 24. Available at: <<https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>>

In 2021, a bill (PL 785/21)¹⁹² was drafted proposing the implementation of 30% minimum quotas for women's participation on advisory boards of public companies and other enterprises controlled by the State. The bill, however, has been removed from the agenda.

6.2.5. Conclusions and reflections - What could be done to improve Brazil's compatibility to the IV.3 of the 2015 OECD Recommendation? Relevant and recent pathways and measures on the subject adopted by OCDE Members.

This study finds that the implementation of quotas for women in leadership positions in public employment would be an effective measure to improve Brazil's current level of adherence to item IV.3 of the 2015 OECD Recommendation.

As demonstrated in the previous sections, leadership positions in the federal government have been a major focus of gender imbalance in Brazil's public sector. Since these are decision-making roles, assuring gender representation at such levels is especially relevant to developing strategies to effectively address gender inequalities.

The implementation of quotas is therefore an appropriate measure for such positions since they tend to be filled by trust appointments, susceptible to gender-bias and subjective selection criteria. Cultural barriers that hinder gender equality are especially reflected in these positions.

As a concrete measure which could be considered in Brazil's case, this study suggests the development of a federal law defining quotas¹⁹³ for women in leadership positions in public employment at the federal government, especially at higher hierarchical levels of employment, as in the case of senior management positions.

¹⁹² Available at: <<https://www.camara.leg.br/propostas-legislativas/2273356>>. The bill was proposed by Congresswoman Tabata Amaral, part of the women's bench of the Congress. No official justification for the removal of the bill from the agenda was found.

¹⁹³ Further studies must be developed to precise an adequate quota percentage for this law. However, the percentage of 40% quota provided by Portugal's Law 26/2019 can be an inspirational parameter.

In June 2022, OECD published an updated report on the implementation of the Gender Recommendations by its Adherents and highlighted recent good examples of practices adopted by OECD Members. The report provides exemplary OECD pathways specifically referring to gender equality in public employment and compliance with the item IV.3 of the 2015 Recommendation.

Portugal's recent measures in this regard can be an important source of inspiration for Brazil. Portugal's Law 26, from 2019, defines a 40% quota for women and men in senior leadership positions in public employment. It encompasses civil servants in public administration, as well as public sector employees in public higher education institutions and associations.¹⁹⁴

6.3. Impacts on the Private Sector

Many private companies have already implemented directives on gender equality, as exemplified below.

There is a series of examples and initiatives taken by the high management of private companies that aim to:

- (i) increase the role of women in leadership positions;
- (ii) seek an equalisation of salaries and remuneration perceived by female employees in comparison with male employees;
- (iii) equalisation of benefits that were previously only perceived by women, either by law or collective bargain agreements;
- (iv) solidify gender equality practices in the workplace;

Given the legal and social repercussions of equity between men and women, a significant increase in lawsuits denouncing abuses, harassment and inequalities in remuneration, pressure from government institutions, media coverage, and

¹⁹⁴ OECD (2022). Report on the Implementation of the OECD Gender Recommendations. Available at: <<https://www.oecd.org/mcm/Implementation-OECD-Gender-Recommendations.pdf>>

trade unions' militancy, a cultural change in the corporate world is beginning to take place. As the social image of large corporations became central to their marketing strategy, it is becoming necessary for corporations to demonstrate a 'politically correct' stance towards shareholders and consumers.

A new study from the Institute for Business Value points out that gender equality is still not a priority for global companies (IBV). Also, according to a report issued in June 2021, published during the ESG Summit held by the Brazilian newspaper called "Estadão", only 14.7% of leadership positions are held by women, which shows how much companies still need to advance in the gender equality agenda.¹⁹⁵

Also, according to a survey carried out by the Brazilian National Council of Justice ("CNJ") in 2021¹⁹⁶, the existing wage inequality between men and women is a noticeable data. According to this research, women continue to receive less even in a position that requires higher education, as we can see in the table below:

	Women	Men
Average monthly salary	BRL 2,191.00	BRL 2,694.00
With higher education	BRL 3,910.00	BRL 6,363.00
In occupations that require higher education	BRL 4,913.00	BRL 8,136.00
Amount of hourly wage when occupying the same position	BRL 32.35	BRL 45.83

We highlight that there are other discriminatory features, such as the pre-contractual phase, before the formalization of the employment relationship. Even if there is an express prohibition of any type of discrimination, be it sex, origin, race, colour, marital status, family situation, disability, professional rehabilitation, or age, among others (art. 1, Brazilian Federal Law n. 9.029/1995¹⁹⁷ and article 1, of Conv. 111 of the International Labour Organisation - ILO¹⁹⁸), the reality of the facts demonstrates that it is still present discrimination, which makes impossible to hire certain groups of workers.

¹⁹⁵ Available at: <https://economia.estadao.com.br/noticias/governanca/so-14-7-dos-cargos-de-lideranca-sao-de-mulheres-argumento-da-presenca-feminina-desafia-setor-privado.70003751585>

¹⁹⁶ Available at: <https://www.cnj.jus.br/wp-content/uploads/2021/10/protocolo-18-10-2021-final.pdf>

¹⁹⁷ Available at: http://www.planalto.gov.br/ccivil_03/leis/l9029.htm

¹⁹⁸ Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111

According to a CNJ study¹⁹⁹, as the selection processes are increasingly automated, the criteria for selecting CVs tend to become less transparent. Such automation is done through algorithms and mathematical models, which decide what is important and which end up reproducing prejudices.

Another point of the employment relationship is the contractual phase and termination of the contract, in addition to moral and sexual harassment in the work environment.

Convention 190 of the ILO²⁰⁰, which was not yet ratified by Brazil, recognizes that the practice of gender-based violence and harassment in the world of work disproportionately affects women and girls, which requires an inclusive, integrated and gender, which addresses the underlying causes and risk factors.

In a survey carried out by LinkedIn and the social innovation consultancy Think Eva, which interviewed 414 professionals across Brazil, 47.12% of the participants claim to have been victims of sexual harassment at some point in their work environment. In this universe, the majority are black women (52%) and women who earn between two and six minimum wages (49%). In addition, the North (63%) and Central-West (55%) have a higher concentration of reports than the other regions.²⁰¹

Thus, there is a perception that a culture change is essential to increase women's participation in leadership positions, improve gender equality and fight against discrimination and prejudice.

a) The Bloomberg Gender-Equality Index (GEI)

The Bloomberg Gender-Equality Index (GEI) tracks the performance of public traded companies committed to disclosing their efforts to support gender equality through policy development, representation, and transparency.

¹⁹⁹ Available at: <<https://www.cnj.jus.br/wp-content/uploads/2021/10/protocolo-18-10-2021-final.pdf>>

²⁰⁰ Available at:

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190>

²⁰¹ Available at: <<https://thinkeva.com.br/pesquisas/assedio-no-contexto-do-mundo-corporativo/>>

The demand for data transparency, standardisation, and performance of corporate Environmental, Social, and Governance (ESG) factors is at an all-time high. Quantifying the social element of a company's ESG data has become critical in tying links of human capital to financial materiality.

The Bloomberg Gender-Equality Index, along with the Gender Reporting Framework, mark the first step on a company's journey towards equality. 418 Companies are included in the 2022 GEI across 11 sectors, 45 countries, and a market capitalization of USD 16 trillion.²⁰²

This year (2022), a record number of companies – up 20% year-to-date – released their data for the GEI index through the GEI (Bloomberg Gender Data Disclosure Framework) framework. This demonstrates an increasing commitment to gender equality and recognition that the global business community can lead significant change initiatives by committing to more transparent reporting and social data disclosure. 13 Brazilian companies are participating in the GEI, they are: Afya, Bradesco, BB Seguridade, Braskem, Comgás, Cosan, Eletrobras, Itau Unibanco, Odontoprev, GPA, Sul América, TIM and Telefônica Brasil.

b) Nestlé

As we searched for actions on Gender Balance from various private companies, we found that Nestlé Brazil has been active on this subject since 2008. As they state, the topic is so relevant to the company that one of the company's board members is an advisor on Gender Balance.

According to them, the work in search of balance takes place on several fronts: from accelerating the career plan of women through raising awareness of managers and employees on the subject, to the implementation of a home office. In terms of salary, the company already has as a rule not to differentiate between genders. The subject unites business and society, as 80% of

²⁰² Available at: <<https://www.bloomberg.com/gei/>>

purchasing decisions are made by women.

The company states that the results of this effort are already beginning to appear. Based on their data, women occupy 34.5% of managerial positions. In administrative positions, the balance of 50% has already been reached.

Also, the company opened in Montes Claros, Minas Gerais, the first factory that was born with the concept: NESCAFÉ Dolce Gusto, where 41% of the employees are female.

The balance between personal and professional life is pointed out as one of the key issues for the advancement of gender equality. At Nestlé, some of the initiatives adopted to encourage this was the implementation of flexible entry hours and the institutionalisation of the home office once a week.²⁰³

c) Nubank²⁰⁴

As we reviewed other categories of companies, we thought it would be important to include some actions from the fintech company called Nubank, as they disclose their numbers in a more precise way compared to other companies.

The fintech company commits to having 50% of the leadership formed by women. By 2025, their commitment is to hire 3,300 women and to become the most equal technology company in Latin America.

As per their data, Nubank states that women represent 41% of their 2,800 employees spread across offices in Brazil, Mexico, Colombia, Argentina, Germany and the United States. In addition, today 39% of people in management positions are women.

Therefore, Nubank periodically runs a recruitment program aimed at women

²⁰³ Available at: <<https://www.nestle.com.br/nossas-historias/nestle-aco-es-de-igualdade> >

²⁰⁴ Available at: <<https://building.nubank.com.br/nubank-commits-to-have-50-per-cent-leadership-formed-by-women/>>

software engineers, the Yes She Codes. To date, 95% of the program participants have been hired by Nu. Also, 93% of Nubank employees who took maternity leave opted for extended leave, lasting six months, as per the "Empresa Cidadã" participation.

In 2022, Nubank announced a new benefit for the more than 6,000 Nubankers: 120-day parental leave, which includes all genders and families. The high management believes that these policies are small steps that help to reduce gender inequality, while at the same time we want to empower our employees to make the best decision for their families, as they seek to do with their clients and services.

d) Bradesco

For the fourth consecutive year, Bradesco is part of the Bloomberg Gender Equality Index (GEI – Gender Equality Index), which considers in its selection process the performance of publicly traded companies in metrics related to gender equality in the workplace.²⁰⁵

e) Itaú

Itaú Unibanco Holding was selected for the 5th consecutive time to compose the portfolio of the Gender Equality Index, promoted by Bloomberg in its 2021 edition.

Itaú has been signatories to the Women's Empowerment Principles (WEPs) since 2017. Among the various diversity actions, the following can be highlighted:

- the definition of full payment of the participation in the profits or results of women who enjoy maternity leave,
- the search for more diverse selection processes with the recommendation that the succession committees have, at the minimum,

²⁰⁵ Available at: <https://banco.bradesco/html/classic/sobre/sustentabilidade/internas/noticias/noticia20.shtm>

one woman as evaluated and one woman as an evaluator, awareness raising and employee engagement initiatives on the subject,

- the mentoring program for female leadership and the expansion of the performance of gender equality affinity groups at an institutional level and in specific areas, such as technology and wholesale banking.

Through the Positive Impact Commitment agenda, Itaú confirmed its commitment to this agenda in the Inclusive Management Commitment, which has, among its objectives, the goal of increasing the number of women in leadership positions. As a highlight in 2020, Itaú made great progress in their trainee program, in which it reached more than 63% of women selected (versus 47% compared to the previous year).²⁰⁶

Conclusions

The OECD is fundamentally a political organisation that opts to implement standards through non-binding provisions, usually followed due to the like-mindedness of its members. As the OECD institutional architecture does not provide sanctionary mechanisms nor pre-established dispute settlement mechanisms, the review of compliance with its Recommendations is made mainly by moral/peer pressure.

As presented above, the monitoring of the implementation of OECD norms may be made both at the interstate and the civil society levels. Civil organisations may perform a relevant role through advocacy with national and local authorities, as well as with the spread of information on OECD standards. The private sector, in its turn, may also play a relevant part in the observance of such norms.

In the analysis of the practices related to the search for better representation of women that were implemented by several private companies, it is possible to verify an improvement in the numbers and indicators related to gender equality in our country.

²⁰⁶ Available at:

<[65](https://www.itaubr.com.br/relacoes-com-investidores/We-are-part-of-2021-Bloomberg-Gender-Equality-Index#:~:text=The%20Gender%20Equality%20Index%20is,and%20the%20Pro%2DWomen%20Brand.></p></div><div data-bbox=)

However, it is completely understandable to verify that the implementation in a reduced and consequently private environment is easier to apply if compared to the public environment, which demands laws, regulations and other normative instructions that must be directed to a much larger scale and target audience.

We understand that it is possible to take as an example all the success cases presented above.

Only with the continuity and evolution of the prerogatives presented, will it be possible to change the current scenario of the country - which still lacks initiatives from the public authorities.

A good thermometer is the examples of private companies, such as equal benefits, committees for female participation and gender equality policies in line with the practices of companies that now are part of the Bloomberg report.