

BRAZIL ANNUAL REVIEW ← 2021

(English Summary)

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INTRODUCTION



2021 was a dramatic year for Brazil. An estimated 412,000 Brazilians lost their lives to Covid-19 between January and December, more than double the previous year's total. The pandemic has been tragic for the country, which witnessed, in disbelief: the death of at least 31 people from lack of oxygen in Manaus, the negationist rhetoric of President Jair Bolsonaro, and corruption revelations and other crimes attributed to state agents - including the President of the Republic himself - by a Parliamentary Commission of Inquiry into Covid-19. Despite the harmful consequences of these crimes, there is a great risk that accountability will not be achieved, due to systemic impunity for white-collar defendants in Brazil - aggravated by a continuing process of state capture by the current government.

Instead of prioritizing transparency and strengthening integrity mechanisms to ensure efficient and fair allocation of public resources in the face of humanitarian tragedy, Brazil followed the opposite direction. The country has been dismantling legal and institutional anti-corruption frameworks that took decades to build.

National Congress undermined the Administrative Improbity Law with a reform that substantially exceeded recommendations made by legal experts. The Federal Government continues to capture control and intelligence organs, whose apparatus no longer serves "only" to shield allies, but the much more dangerous activity of persecution of opponents. Together, the Legislative and Execu-

tive branches created a “secret budget” scheme - an unprecedented setback in terms of oversight of the allocation of public resources in Brazil. In the Judiciary, a series of decisions have overturned sentences confirmed by multiple instances or transferred jurisdiction for corruption cases in a generalized manner, resulting in legal uncertainty and the prescription of macro-corruption cases with serious consequences for human rights.

If the anti-corruption framework is rapidly collapsing, the Bolsonaro government and its “Centrão”¹ allies are constructing an increasingly solid “architecture of unaccountability”². The first pillar of this structure was established, in 2019, with appointment of a Prosecutor-General outside the ‘triple list’³, resulting in a historic shrinkage in functions of the Public Prosecutor’s Office for monitoring the constitutionality of action by the Presidency of the Republic, and criminal prosecution of authorities with privileged forum - a role rewarded, in 2021, with the reappointment of the incumbent Augusto Aras to a new term.

The second pillar was consolidated in 2021, with the election of Arthur Lira to the presidency of the

¹ An informal group in Congress composed by center-right and right-wing parties known for offering political support in exchange for nominations and budget perks

² “Architecture of unaccountability” is an expression used by professor Eloísa Machado and researcher Luiza Pavan Ferraro, of FGV Direito SP, to describe the historical retraction, on the part of the Public Prosecutor’s Office, in the constitutional control of the acts of the Presidency of the Republic. Data from their research demonstrates this retraction and was published at <https://www1.folha.uol.com.br/poder/2021/08/pgr-e-agu-se-alinham-na-defesa-de-atos-de-bolsonaro-aponta-estudo-sobre-aco-es-movidas-no-supremo.shtml>

³ A shortlist of names selected by the National Association of Federal Prosecutors (ANPR) and respected by previous presidents.

Chamber of Deputies. Strengthened by his control of the “secret budget” and authoritarian management style, marked by setbacks in transparency, participation and respect for due legislative process, Lira plays a key role in shielding President Bolsonaro, keeping more than a hundred impeachment requests in his drawer.

This architecture, which neutralizes the legal and political pillars of the Brazilian state’s system of checks and balances, not only guarantees impunity for extremely serious and well-documented crimes, but also permits clear deterioration of the democratic regime, while fermenting a state of permanent threat and growing risks of institutional breakdown in the run-up to the 2022 elections.

Parts of Brazilian institutions and civil society have acted as an important bulwark against this degradation of the democratic rule of law. The Superior Electoral Court (TSE) has come out in defense of the electoral system against disinformation campaigns and the Supreme Court (STF) has united in the face of attacks on the court and its members, and ministers have made decisions to guarantee implementation of health policies sabotaged by the government and to mitigate the dismantling of protective frameworks for rights and the environment.

Despite operating in an increasingly hostile context, the Brazilian press has played a fundamental role in providing information withheld by the government on the progress of the pandemic, investigating cases of corruption in the purchase

of vaccines and other supplies, embezzlement of public money involving the family of the President of the Republic and the serious “secret budget” scheme. In the same way, civil society organizations have resisted dismantling of institutional spaces for participation, and setbacks in access to public information. By persisting with denunciation and vindication, they have achieved victories in raising the awareness of the international community, in obtaining judicial decisions and in mobilising historically marginalised sectors of Brazilian society against violations of rights, environmental degradation, impunity for corruption and the erosion of democracy.

Year after year, through this effort of documentation, Transparency International - Brazil seeks to confront misinformation regarding the fight against corruption, to defend the legitimacy and importance of this cause, to persist in the search for solutions and, always, to remember what it really means: a fight for rights.

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POSITIVE **AND NEGATIVE** **HIGHLIGHTS**



POSITIVES

- The Supreme Court (STF) and the Superior Electoral Court (TSE) acted as an important bulwark against anti-democratic initiatives on the part of President Jair Bolsonaro and his allies, coming out in defence of the Brazilian electoral system and acting against misinformation and attacks on institutions;
- STF action to guarantee policies to control the Covid-19 pandemic obstructed by inoperativeness and denialism by the federal government;
- The Federal Senate's Parliamentary Commission of Inquiry (CPI) that investigated the mismanagement of the Covid-19 pandemic by the federal government was able to extensively investigate and document corruption and other serious crimes attributed to public and private agents in the context of the pandemic, which exacerbated the humanitarian tragedy in Brazil;
- Submission by the Federal Government to Congress of a bill to regulate lobbying;
- Actions by the National Strategy to Combat Corruption and Money Laundering (ENCCLA) setting obligations to prevent money laundering linked to wildlife trafficking, illegal logging and cattle laundering, and to improve the traceability of gold and the fight against illegal mining;

- Congress approves bill, already sanctioned by President Bolsonaro, to end the secrecy of corporate tax waivers and incentives;
- Even when frequently attacked by President Bolsonaro and his allies, the Brazilian press played a crucial role in revealing corruption schemes in the context of the pandemic and the political use of funds from the “secret budget”.

NEGATIVES

- Serious setbacks to the transparency of the federal Budget through the Federal Government's alliance with the "Centrão" parliamentary bloc in the scheme known as the "secret budget", involving the distribution of billions of reais without transparency and regular control mechanisms;
- Macro corruption schemes in the Ministry of Health, exposed by the press and by the Parliamentary Commission of Inquiry, in the context of the humanitarian tragedy of COVID-19;
- Political capture of the Federal Police and serious interference in state control and intelligence agencies - Federal Revenue, COAF (Brazilian Financial Intelligence Unit), Abin (Brazilian Intelligence Unit), DRCI/MJSP (Department for Recovery of Assets and International Legal Cooperation), CGU (the Office of the Comptroller General);
- President Bolsonaro's attacks on electoral institutions and threats to the Supreme Court and its members seriously raise the risk of democratic rupture;
- A series of decisions that have annulled sentences confirmed by multiple instances or transferred the competence to judge corruption cases in a generalized manner, causing legal insecurity, prescription of crimes and impunity for macro corruption cases with serious consequences for human rights;



- A marked downturn in transparency, participation and respect for the due legislative process in the Chamber of Deputies under the presidency of Arthur Lira;
- Reform of the Administrative Improbity Law, approved by National Congress and sanctioned by President Bolsonaro, which exceeded the recommendations of the group of experts who proposed improvements to the legislation, and which has seriously expanded the risks of impunity;
- Systematic alignment of the Public Prosecutor's Office with the Bolsonaro government, with unprecedented retraction to the exercise of constitutional control over the acts of the government and demobilization of the fight against macro corruption;
- Dismantling of public policies and the environmental governance system, leading to the suspension of fines, persecution of agents, impunity for environmental crimes linked to corruption and record Amazon deforestation;
- Continuous deterioration of the civic space, with the dismantling of institutionalized mechanisms for participation, setbacks in transparency and access to public information, systematic dissemination of fake news by officials and public channels, in addition to serious attacks on the press and strong evidence of illegal monitoring of citizens.

RECOMMENDATIONS



FOR THE FEDERAL GOVERNMENT

- Cease political interference and uphold the autonomy of control institutions, especially the Federal Police, the Federal Revenue Service, COAF, the Brazilian Intelligence Agency, the Administrative Council of Tax Appeals (CARF), the CGU and the Administrative Council for Economic Defense (CADE), and protect them from outside interference;
- Fully respect the independence of the Public Prosecution Service and other external oversight bodies;
- Ensure full budget transparency and cease the use of opaque political bargaining mechanisms;
- Fully respect the Access to Information Law and refrain from disseminating false information, in particular on the Covid-19 pandemic and the 2022 elections, and from attacking democratic institutions with false allegations;
- Fully guarantee the constitutional rights of the press and refrain from harassing journalists;
- Ensure civic participation, refrain from persecuting activists and academics, and establish strict transparency and control mechanisms for the acquisition and use of surveillance tools;
- Remove from office senior government officials who are under investigation for corruption and related offences;

- Remove from office any official under investigation for environmental crimes and re-establish social participation in monitoring bodies linked to environmental policies.

FOR NATIONAL CONGRESS

- Establish strict transparency, control and integrity mechanisms for the federal budget deliberation process, avoiding allocation of resources purely based on political criteria and the risk of corruption in parliamentary amendments to the budget;
- Ensure that a new internal regulation of the Chamber of Deputies effectively guarantees transparency, participation and respect for due legislative process;
- Significantly improve democratic control over the process of validating presidential appointments to senior positions, with special scrutiny in appointments to the Public Prosecutor's Office, higher courts and control agencies, reinforcing the “checks and balances” mechanisms against the process of state capture;
- Deliberate and approve anti-corruption reforms, based on proposals by Brazilian experts brought together in the New Measures Against Corruption legislative package;
- Ensure that discussed reforms to the anti-money laundering law (Law 12.683/2012) improve its provisions for the digital age and interna-

tional cooperation and avoid retrogressions in the legal text;

- Ensure that reforms currently under discussion for the anti-terrorism law (Law 13.260/2016) do not open space for abuse and criminalisation of civil society organisations;
- Reject the bill that intends to legalise gambling in Brazil, at the risk of dramatically increasing money laundering in the country;
- Resume the activity of the Ethics Committee of the Federal Senate.

FOR THE JUDICIARY

- Maintain and strengthen resistance against authoritarian advances and the dismantling of legal and institutional frameworks for the protection of rights, with special attention to threats to the 2022 electoral process;
- Ensure that decisions of higher courts that reverse jurisprudence and/or produce systemic effects are voted on by the full composition of their members and respecting the reasonable duration of proceedings, avoiding the instability of judicial decisions and impunity;
- Ensure that the interpretation and application of the recent reforms of the Law of Administrative Improbability improve the legal security of public managers in good faith, but do not open space for increasing impunity for corruption.

FOR THE PUBLIC

PROSECUTOR'S OFFICE

- Ensure the political independence of the Public Prosecutor's Office to fulfill its role of constitutional control and accountability for the acts of the authorities under its jurisdiction, acting incisively against the dismantling of legal and institutional frameworks for the protection of human rights and the environment, attacks on democratic institutions and disinformation campaigns with dissemination of fake news;
- Effectively investigate the evidence of crimes revealed by the Parliamentary Inquiry Commission regarding the Bolsonaro government's management of the COVID-19 pandemic and act independently for due accountability for the worsening of the humanitarian tragedy;
- Promote broad debate, involving the Superior Council of the Public Prosecutor's Office and internal technical advice, about the best structures and mechanisms to improve the model of joint work of the "task forces", complementing the GA-ECOs, in addition to ensuring, at both instances, the necessary resources and governance system to properly carry out investigations against macro-crime, safeguarding them from internal and external political interference.



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