

# BRAZIL

## Setbacks in the Legal and Institutional Anti-Corruption Frameworks

2021 update



**03**

**INTRODUCTION**

**06**

**KEY FACTS**

**07**

**RECOMMENDATIONS**

**10**

**LEGISLATIVE**

**17**

**PUBLIC PROSECUTOR'S OFFICE**

**22**

**JUDICIARY**

**26**

**FEDERAL GOVERNMENT**

**34**

**CIVIC SPACE**

# INTRODUCTION

In January 2022, the Brazilian government announced having received a formal invitation from the Organisation for Economic Co-operation and Development (OECD) to start accession proceedings to the so-called “rich nations club”. Although the path to accession will involve a long process of adjustment to the country’s practices and regulations, there is concern that the invitation comes at a moment of continuous dismantling of structures put in place, over the past years, to fight corruption, promote human rights, preserve the environment, and ultimately protect the country’s democracy. This has translated into restrictions to transparency mechanisms, loss of independence and increased political interference in crucial institutions, neutralization of the country’s checks and balances system and shrinking civic space.

In the past year, Federal Government and National Congress were responsible for unprecedented setbacks to transparency and controls of the federal budget allocation. Through procedural distortions, they created a so-called “secret budget”, a system for distributing an exorbitant amount of public resources (R\$ 16.86 billion or US\$ 3.04 billion set for 2021’s budget) among parliamentarians who support the government in critical votes, in an opaque and unofficial way, infringing laws and the Brazilian Federal Constitution.

The mechanism is of interest of parliamentarians who seek to control and direct funds to their electoral bases, to strengthen their candidature for re-election in 2022 or for irrigating corruption schemes. It also serves President Jair Bolsonaro’s government, which needs to amass support for its legislative agendas and, mainly, to shield itself against more than 100 impeachment requests and the Parliamentary Commission of Inquiry which investigated the government’s role in the Covid-19 pandemic and called for the indictment of the president for nine crimes. They all profit at the expense of the Brazilian population, which suffered in the pandemic with over 650,000

deaths, a 3.9% drop in the GDP<sup>1</sup> in 2020, over 10 million unemployed and a record increase<sup>2</sup> in social inequality.

Besides Mr. Bolsonaro, the other key figure, and biggest “secret budget” beneficiary, is representative Arthur Lira, elected President of the Chamber of Deputies in 2021. A veteran politician, convicted twice for administrative improbity, Mr. Lira amassed extraordinary power through exercising centralized control of the “secret budget” and its discretionary allocation among parliamentarians. Mr. Lira has leverage over the president by having the prerogative to open dormant impeachment requests. Armed with this power, Mr. Lira adopted an authoritarian posture in the presidency of the Chamber of Deputies, unprecedented since the country’s redemocratization in the 1980s. This represented a drastic reduction in transparency and participation, and systematic disregard for due process in the Chamber. With his legislative “blitzkrieg”, Mr. Lira has passed reforms that loosen laws related to fighting corruption and protecting the environment – including regulation that fosters coal energy production and land-grabbing, and undermines the environmental licensing process.

President Bolsonaro’s control over Parliament, through this partnership with Mr. Lira in the “secret budget” scheme, adds to an already consolidated control over the Public Prosecutor’s Office. The Prosecutor’s Office incumbent, Mr. Augusto Aras, was recently reappointed to a further two-years term by the president, upheld without difficulty following a Senate hearing, after Mr. Aras proved his docility<sup>3</sup> with the political class in his first two years in office.

Mr. Bolsonaro thus firmly neutralized the two main pillars, both political and legal, of the system of checks and balances that limit power and ensure accountability for the Presidency of the Republic. This architecture of impunity<sup>4</sup> expands through political interference<sup>5</sup> over control institutions. The process of state capture, vastly documented and denounced by Transparency

<sup>1</sup> <https://valor.globo.com/brasil/noticia/2021/12/02/pib-de-2020-foi-revisado-para-queda-de-39percent-mostra-ibge.ghtml>

<sup>2</sup> <https://g1.globo.com/economia/noticia/2021/06/14/desigualdade-social-renova-recorde-historico-no-1o-trimestre-aponta-estudo.ghtml>

<sup>3</sup> <https://www.jota.info/opiniao-e-analise/colunas/sem-precedentes/por-que-a-politica-e-o-supremo-preferem-augusto-aras-na-pgr-27082021>

<sup>4</sup> The expression “architecture of disaccountability” is inspired by the research “Legal architecture of disaccountability: the Attorney-General’s Office and the Public Prosecutor’s Office in lawsuits against the Jair Bolsonaro government in the Supreme Court”, by Eloisa Machado, professor at FGV Direito SP, and Luiza Pavan Ferraro, a researcher at the same institution, who demonstrated, with data on actions and omissions by Mr. Augusto Aras, the systematic alignment of the PGR with the current government. The study is described in this report in the section dealing with setbacks regarding the PGR’s independence

<sup>5</sup> <https://oglobo.globo.com/politica/da-pf-ao-iphan-interferencias-em-serie-de-bolsonaro-em-orgaos-publicos-geram-reacoes-1-25326176>

International since 2019<sup>6</sup>, has already surpassed the aim of shielding allies and reached a much more dangerous level of persecuting adversaries – as shown by increasingly frequent episodes of retaliation against law enforcement agents and by the accumulation of evidence regarding the setup of intelligence and digital surveillance parallel structures<sup>7</sup>.

This intimidation and retaliation also target the press, academic circles and organized civil society. Recent episodes involve illegal surveillance<sup>8</sup>, investigations based on the National Security Law (created during Brazil's military dictatorship and recently revoked), and coordinated attacks by digital militias incited by the presidential hate speech, in addition to episodes of physical violence<sup>9</sup>. The deterioration of civic space also involves the dismantling of official spaces for participation<sup>10</sup>, systematic disregard for the Access to Information Law, and an institutionalized pattern of misinformation, through dissemination of fake news by government<sup>11</sup>.

The Supreme Court has played an important role as a counterforce to the authoritarian advance of President Bolsonaro and Mr. Lira. Although criticized that its performance could be more incisive and less accommodating, the court has been one of few points of effective resistance to the dismantling of legal and institutional frameworks, and in pursuit of a degree of presidential accountability. Significantly, the Supreme Court's rulings have been triggered much more frequently by political players (parliamentarians and parties) and social players (NGOs) rather than by the Public Prosecutor's Office<sup>12</sup>, which should be the most active authority regarding constitutional oversight of the Presidency. On the contrary, Mr. Augusto Aras' omission has been subject to frequent criticism by members of the Supreme Court. Precisely because it has become a stronghold of resistance, the Supreme Court and some of its judges are among the preferred targets of fake news and the president's hateful rhetoric, supported by his digital militias. There are substantial fears that, in 2022, the escalation of conflict between different branches of powers could generate an institutional crisis of greater proportions.

Despite its resistance to authoritarianism, a controversial 2019 Supreme Court decision has produced, in 2021, serious consequences for the fight against grand corruption in Brazil. The decision stated that it is the competence of the Electoral Justice to judge common crimes (e.g. corruption, money laundering, etc.) that involve a connection with electoral crimes. After this Supreme Court decision, several cases involving very powerful individuals, sentenced by multiple judicial instances, have been entirely or partially annulled and most of them will result in impunity, as they surpass the statute of limitation. More serious, however, is the systemic impact to Brazil's capacity to investigate and prosecute grand corruption schemes (including transnational ones), as several of them are linked to illicit campaign funding and will now fall under the competence of the less resourced and specialized Electoral Justice system.

In 2022, the country will be urged to meet international anti-corruption commitments and will face consequences for non-compliance, as Brazil is expected to undergo three formal review processes: the second cycle of the review mechanism for the implementation of the UN Convention Against Corruption (UNCAC), the fourth round of mutual evaluation of the International Financial Action Task Force (FATF) and phase four of the OECD Anti-Bribery Convention monitoring process.

It has long been President Bolsonaro's aim to join the OECD, align Brazil to major economies and receive a seal of approval for the country's practices and regulations. It is essential, however, that the accession process provides for the participation of independent non-state actors in the assessment of Brazil's compliance with the standards recommended by the OECD, so that regulatory limitations and enforcement issues are thoroughly considered, thus seizing the opportunity for the effective improvement of public policies towards sustainable and inclusive development.

President Bolsonaro's sustained blows to environmental policy have already prompted international players to issue a warning<sup>13</sup> over the need to advance the fight against deforestation and climate change during the accession talks. As fraud, corruption and asset laundering

<sup>6</sup> <https://www.transparency.org/en/publications/brazil-setbacks-in-the-legal-and-institutional-anti-corruption-frameworks>

<sup>7</sup> <https://noticias.uol.com.br/politica/ultimas-noticias/2021/05/19/briga-entre-militares-e-carlos-bolsonaro-racha-orgaos-de-inteligencia.htm>

<sup>8</sup> <https://g1.globo.com/politica/noticia/2020/08/20/stf-forma-maioria-para-proibir-ministerio-da-justica-de-produzir-dossie-contra-antifascistas.ghtml>

<sup>9</sup> <https://blogs.oglobo.globo.com/miriam-leitao/post/truculencia-do-ataque-imprensa.html>

<sup>10</sup> <https://g1.globo.com/jornal-nacional/noticia/2021/10/25/pesquisa-mostra-que-75percent-dos-conselhos-e-comites-nacionais-foram-extintos-ou-esvaziados-no-governo-bolsonaro.ghtml>

<sup>11</sup> <https://www.metropoles.com/brasil/youtube-ja-deletou-33-videos-de-bolsonaro-por-fake-news-sobre-covid>

<sup>12</sup> <https://www1.folha.uol.com.br/poder/2021/08/pgr-e-ago-se-alinham-na-defesa-de-atos-de-bolsonaro-aponta-estudo-sobre-aco-es-movidas-no-supremo.shtml>

<sup>13</sup> <https://www1.folha.uol.com.br/mercado/2022/01/franca-diz-que-nao-vai-aprovar-brasil-na-ocde-sem-aco-es-climaticas-concretas.shtml>

form the backbone of environmental crimes, the setbacks in the anti-corruption system, as pointed out throughout this report, together with the weakening of environmental governance, create a perfect storm for environmental crimes to spread throughout the country. Far beyond the anti-corruption cause, the Brazilian democratic regime as a whole faces blunt deterioration – and 2022's general elections bring new and more serious threats. The already advanced process of capture of oversight, intelligence

and police institutions can be used to attack political opponents and, in the hypothesis of President Bolsonaro's defeat, the risks of challenges to the electoral results, and even of an institutional rupture, are quite real.

It is, therefore, vital that the international community joins efforts by Brazilian institutions and civil society to defend the rule of law and democratic governance.



## KEY FACTS

### Legislative

- Decrease in transparency, social participation and compliance with due legislative process under the rule of the new President of the Chamber of Deputies, Mr. Arthur Lira;
- Major setbacks to transparency and accountability for federal budget decisions, made by National Congress, related to a new form of parliamentary

amendment – the so-called “secret budget”;

- Approval of the Administrative Improbity Law Reform, far beyond technical recommendations, paving the way for a significant increase in impunity;
- Renewal of the Prosecutor-General’s mandate despite a troubling first term.

### Judiciary

- In 2021, several corruption cases were impacted by the 2019 Supreme Court’s decision recognizing the competence of the Electoral Court to prosecute and adjudicate crimes connected with electoral crimes (e.g. corruption, money laundering, etc.), producing serious consequences for the fight against grand corruption in Brazil (including transnational schemes). After this Supreme Court ruling, several cases involving very powerful individuals, that had

been sentenced by multiple judicial instances, were entirely or partially annulled and most of them will result in impunity, as they surpass the statute of limitation. More serious, however, is the systemic impact to the country’s capacity to investigate and prosecute grand corruption schemes, as several of them are linked to illicit campaign funding and will now be under the competence of the less resourced and specialized Electoral Justice.

### Public Prosecutor’s Office

- The Prosecutor-General was reappointed after two years in office, a period marked by widespread criticism for a lack of independence (notably inaction regarding troubling episodes of President Jair

Bolsonaro’s government response to the Covid-19 pandemic), the dismantling of operations to combat grand corruption and authoritarian action against internal and external critics.

### Federal Government

- Continuous threats and attacks by President Bolsonaro against democratic institutions, notably the Superior Electoral Court, the Supreme Court, and state and municipal authorities;
- Alarming revelations of negligence, corruption and crimes against humanity in the Bolsonaro government’s management of the Covid-19 pandemic, leading to a request for indictment of the president and three of his sons in the final report of a Parliamentary Commission of Inquiry set up by the Federal Senate;
- Widespread dismantling of corruption control bodies, through the political capture of institutions such as the Public Prosecutor’s Office, the Federal Police, the Brazilian Intelligence Agency (ABIN), the Department of Assets Recovery and International Legal Cooperation (DRCI), the Federal Revenue, the Financial Intelligence Unit (COAF) and the Administrative Council for Economic Defense (CADE);

- Dismantling of public policies and institutions responsible for the control of environmental crimes, and the resignation of the Minister of the Environment, Ricardo Salles, investigated for alleged involvement in corruption schemes related to illegal logging and international timber trafficking;
- Systematic disregard for the Access to Information Law, and strong setbacks to public transparency, notably in the allocation of federal budget resources;
- Reduction of Brazilian civic space due to systematic attacks by President Bolsonaro, his allies and digital militias against the press, academia and civil society organizations, even with evidence of the unlawful use of parallel intelligence structures and other mechanisms of state surveillance;
- Accumulated evidence on alleged crimes of corruption committed by President Bolsonaro and his family, but investigative processes are systematically obstructed by political interference.

# RECOMMENDATIONS

## For international organisations:

- The Working Group on Bribery of the Organisation for Economic Co-operation and Development (WGB-OECD) should consider the issues mentioned in this report for its Phase 4 monitoring process of Brazil and for its inputs for the country's accession roadmap to the OECD, as well as adopt stronger measures to secure compliance with the OECD Anti-Bribery Convention. The Secretary-General should consider the setbacks in Brazil's legal and institutional anti-corruption, environmental and human rights protection frameworks when drafting Brazil's accession roadmap and secure transparency and independent non-state actors' participation throughout the accession process. The Council should guarantee that Brazil not only commits itself, but effectively demonstrates the capacity and goodwill to implement, on a permanent basis, the policies and good practices recommended by the OECD, so that an eventual accession does not mean an approval to practices incompatible with its own guidelines, but an opportunity for the effective improvement of democratic governance towards sustainable and inclusive development.
- The Financial Action Task Force (FATF) should consider the issues mentioned in this report for its 4th Round of Mutual Evaluations (Joint FATF/GAFILAT Mutual Evaluation) and closely follow the threats to Brazil's Financial Intelligence Unit's (COAF) autonomy and operational capacity, the judicial decisions questioning the use of financial intelligence reports in criminal investigations and judicial procedures, the resistance from the Brazilian Bar Association (OAB) to subject the legal profession to AML/CFT legislation and international standards, the mobilization of AML tools against environmental crimes, the proposed reforms by Experts Committee established by the President of the Chamber of Deputies tasked to propose reforms to Brazil's AML law (risking to weaken its current provisions) and anti-terrorism law (risking to open space for abuses and the criminalization of civil society organizations), as well as the legalization of gambling (recently approved by the Chamber of Deputies and waiting for deliberation and voting by the Senate).
- The International Monetary Fund should consider the facts and circumstances mentioned in this report, with particular emphasis to the revelations of the "secret budget", while preparing the next IMF Article IV Review within its framework for engaging with countries on governance and corruption issues and resist pressures to minimize the assessment of Brazil's setbacks in its anticorruption and environmental protection frameworks.
- The Implementation Review Mechanism of the United Nations Convention against Corruption (UNCAC) should consider the aforementioned setbacks in the ongoing review process of Brazil's obligations under the UNCAC framework and engage with Brazilian officials for the implementation of its recommendations.
- The Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) should consider the facts stated in this report in the review process of Brazil's obligations under the Inter-American Convention against Corruption and under the Lima Commitment and engage with Brazilian officials for the implementation of its recommendations.
- International mechanisms and organizations should take into consideration the nexus between corruption and socio-environmental issues when assessing anti-corruption policies in Brazil.

## For the Brazilian government:

- Cease political interference and promote autonomy of control institutions, especially the Federal Police, the Federal Revenue, the Brazilian Financial Intelligence Unit (COAF), the Brazilian Intelligence Agency (ABIN), the Administrative Council of Tax Appeals (CARF), the Office of the Comptroller General (CGU) and the Administrative Council of Economic Defense (CADE), and protect them from external interference;
- Remove from office high-ranking officials who are under investigation for corruption and related offences;
- Ensure full budget transparency and cease the use of opaque mechanisms for political bargaining;
- Fully respect the Access to Information Law and refrain from disseminating false information, in particular regarding the Covid-19 pandemic and the 2022 elections, and from attacking democratic institutions with false claims;

- Fully secure the constitutional rights of the press and refrain from harassing journalists;
- Secure civic participation, refrain from harassing activists and establish strict transparency and accountability mechanisms for the procurement and use of surveillance tools, including the creation of a national inventory of surveillance mechanisms currently held by Brazilian authorities and the establishment of legal and institutional frameworks for its democratic control;
- Ensure the enforcement and smooth processing of fines and other administrative sanctions for environmental

offences and re-establish social participation in monitoring bodies linked to environmental policies linked to environmental policies;

- Adapt and mobilize integrity, anti-corruption and anti-money laundering instruments for the fight against environmental crimes, also involving the National Strategy Against Corruption and Money Laundering (ENCCLA);
- Preserve the resources, autonomy and expertise of environmental agencies to ensure the enforcement of environmental regulations and to hold offenders accountable.

## For the National Congress:

- Ensure that the Chamber of Deputies' new internal regulations promote transparency, participation and respect for the due legislative process;
- Significantly improve accountability in the process of validation of presidential appointments to high positions (with special scrutiny on appointments to the Public Prosecutor's Office, higher courts, the National Councils of Justice and Public Prosecutor's Office and other control agencies), as a mechanism against the process of state capture;
- Deliberate on and approve anti-corruption reforms, based on proposals by Brazilian experts and civil society groups gathered in the legislative package New Measures against Corruption;
- Deliberate on legislative reform to end the criminal jurisdiction of the Electoral Justice – which is not structured to properly handle the trial of complex

grand corruption cases – restricting it to conflicts of electoral nature and, thus, avoiding that cases involving common crimes linked to electoral crimes be referred to the Electoral Justice;

- Ensure that reforms currently discussed to the anti-money laundering law (Lei 12.683/2012) improve its provisions for the digital age and international cooperation and avoid any setbacks in the legal text;
- Ensure that reforms currently discussed to the anti-terrorism law (Lei 13.260/2016) does not create room for abuse and the criminalization of civil society organizations;
- Reject the bill that intends to legalize gambling in Brazil, at the risk of extraordinarily increasing money laundering in the country;
- Resume the activity of the Federal Senate Ethics Committee.

## For the Prosecutor's Office and the Judiciary:

- Guarantee political independence for the Public Prosecutor's Office to fulfil its constitutional role to hold power to account, acting incisively against the dismantling of legal and institutional frameworks for the protection of human rights and the environment, the attacks against democratic institutions, the spread of misinformation and, very importantly, effectively investigating and prosecuting the alleged crimes revealed by the Parliamentary Committee of Inquiry on the Bolsonaro administration's response to the COVID-19 pandemic;
- Establish a joint working model of "taskforces" as a complement to the GAECOs currently being installed at the Public Prosecutor's Office's state branches. The Public Prosecutor's Office should secure both instances with the necessary resources, mandate and governance system to adequately pursue investigations against macro criminality, safeguarding them from internal and external political interference;

- Establish a permanent structure to investigate and prosecute the environmental macro-criminality in the Amazon Region, including anti-corruption and anti-money laundering approaches;
- Strengthen legal resistance against authoritarian advances and the dismantling of legislative and institutional frameworks for the protection of rights, with special attention to threats to the 2022 electoral process;
- Ensure the expected stability of precedents set by high courts and promote the necessary reforms on tribunals bylaws to limit the reach and impact of individual or chamber decisions in disfavour of plenary deliberations;
- Ensure that the interpretation and application of the recent reforms to the Administrative Improbability Law improve legal certainty for bona fide public managers, but that it does not make room for increasing impunity for corruption;



- Guarantee that the annulment or procedural invalidation of leniency agreements are solely based on identified illegalities in the negotiated settlement and avoid improper interference in the competence of those legitimized to conduct such agreements, producing legal uncertainty and weakening this important instrument against grand corruption;
- Institutions and the law must be able to offer protection to law enforcement officials against acts of intimidation and retaliation, so that they are not inhibited from acting autonomously and applying the law, especially in cases involving high state officials.
- The Public Prosecutor's Office should lead the debate before the National Congress on legislative reforms that improve its own democratic control with emphasis on measures that bring the institution and its correctional system closer to the most victimized social groups. These are measures such as the expansion and qualification of the work of ombudsmen and the democratization of access to correctional bodies (including the CNMP itself) through agreements with other public bodies and human rights civil society organizations.

## LEGISLATIVE

In 2021, there was a severe decrease in transparency and accountability in National Congress owing to disregard of legislative due process, rushed proceedings and the discretionary allocation of billions in budget amendments, made by parliamentarians in accord with federal government, with no clarity as to the money's origin or destination. These concerning developments were fostered by the political rise of the “Centrão” – 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 – and its alignment with the office of President Jair Bolsonaro. A prominent member of this political block, the President of the Chamber of Deputies, Mr. Arthur Lira, amassed such power since his election, in February, that he was able to brush aside internal rules and outside pressure in order to approve bills that could have long-term systemic effects on accountability and fighting corruption.

### The “secret budget” scheme

Despite having spent his campaign criticizing the *modus operandi* of the “Centrão”, in recent months President Bolsonaro has increasingly partnered with the block and its traditional practices. During the campaign for presidency of the Chamber of Deputies, Mr. Bolsonaro's government distributed billions in funds<sup>14</sup> to guarantee Mr. Lira's victory, a practice repeated in subsequent important votes<sup>15</sup>. As reported, in 2021, the Bolsonaro government channeled at least R\$ 9 billion<sup>16</sup> (US\$ 1.7 billion) to its political base through a new type of parliamentary amendment to the budget, created back in 2019. This has been called the “secret budget”<sup>17</sup> due to scant information regarding how the money will be spent<sup>18</sup> by municipalities and which congressmen<sup>19</sup> allocated the amendments.

Much of this parallel budget was used for purchase of tractors and agricultural equipment at prices up to 259% above the reference value set by government<sup>20</sup>. The scheme reportedly involved the transfer of resources through “RP9 amendments”, which are not distributed equitably, but according to the political will of the general rapporteur of the budget, other congressmen and the federal government. They also lack transparency mechanisms. In some cases, resource allocation is not even registered in official documents or stated on ministry

websites, making accountability difficult and significantly increasing corruption risks.

The so-called “secret budget” maximized the old political practice of backstage negotiations between government and parliamentarians for the distribution of federal budget resources to municipalities controlled by political allies. This practice ignores technical recommendations and local needs, and distorts public policies, only to favor political alliances that guarantee governability in the National Congress and, in some cases, corruption schemes.

After several episodes related to funding distribution through the “secret budget” by the government, last November, Justice Rosa Weber of the Supreme Court determined the preliminary suspension of the practice<sup>21</sup>, a decision later endorsed by the Supreme Court's plenary. In her opinion, the “secret budget” lacked objective and transparent criteria. Justice Weber also determined the release of documents that substantiated the allocation of funds from the “secret budget”.

National Congress reacted and quickly approved new “secret budget” rules<sup>22</sup>. The resolution imposes financial

<sup>14</sup> <https://politica.estadao.com.br/noticias/geral,orcamento-secreto-de-bolsonaro-entenda-o-passo-a-passo-do-esquema,70003708734>

<sup>15</sup> <https://g1.globo.com/politica/noticia/2021/11/05/governo-bolsonaro-liberou-r-909-milhoes-do-orcamento-secreto-as-vesperas-da-votacao-da-pec-dos-precatorios-diz-contas-abertas.ghtml>

<sup>16</sup> <https://www.poder360.com.br/congresso/conheca-os-argumentos-a-favor-e-contra-as-emendas-de-relator-ao-orcamento/>

<sup>17</sup> <https://politica.estadao.com.br/noticias/geral,orcamento-secreto-de-bolsonaro-entenda-o-passo-a-passo-do-esquema,70003708734>

<sup>18</sup> <https://www.poder360.com.br/congresso/conheca-os-argumentos-a-favor-e-contra-as-emendas-de-relator-ao-orcamento/>

<sup>19</sup> <https://politica.estadao.com.br/noticias/geral,orcamento-secreto-de-bolsonaro-entenda-o-passo-a-passo-do-esquema,70003708734>

<sup>20</sup> <https://politica.estadao.com.br/noticias/geral,bolsonaro-cria-orcamento-secreto-em-troca-de-apoio-do-congresso,70003708713>

<sup>21</sup> <https://agenciabrasil.ebc.com.br/justica/noticia/2021-11/stf-rosa-weber-suspende-execucao-de-emendas-do-relator>

<sup>22</sup> <https://g1.globo.com/politica/noticia/2021/11/29/congresso-regras-orcamento-secreto.ghtml>

limits on the rapporteur's amendments. In addition, it determines that the justifications for these amendments will be made available on the website of the Joint Committee on Budget (Comissão Mista do Orçamento). Although the measure must be recognized, it is necessary to point out that it fell short of experts' expectations, as it contained several gaps, including the absence of criteria for distributing the resources of the rapporteur's amendments. In this context, risks remain that the more than R\$ 16 billion foreseen in 2022's budget law for the rapporteur's amendments will be arbitrarily distributed to states and municipalities based on the personal and electoral interests of congressmen. Following changes approved by the National Congress, in December, Justice Weber authorized the execution<sup>23</sup> of the amendments.

In aligning himself with the "Centrão" and old political practices he once publicly criticized, President Bolsonaro's reported intention was to ensure that, with a political ally defining the National Congress' agenda, government priorities up until then barred by Mr. Rodrigo Maia, the former Chamber president, would advance. More importantly, it was expected that Mr. Lira would freeze the more than 100 impeachment requests pending against the president.

Mr. Lira is a representative from Progressistas (PP) party, a political heir to Arena, the ruling party during Brazil's dictatorship. It is also the political party with the most politicians under investigation or prosecution before the Supreme Court due to the

special jurisdiction rule preventing the processing of criminal cases in lower instances of the judiciary<sup>24</sup>. Mr. Lira himself faces two lawsuits for administrative improbity<sup>25</sup>. Besides that, a criminal case was rejected by the Supreme Court last February. In this case, the original indictment, by the Public Prosecutor's Office, described the payment of R\$ 1.58 million (US\$ 310,000 in today's conversion rate) in bribes by the building company Queiroz Galvão, an amount that would have been diverted from Petrobras. In 2020, however, the Prosecutor-General changed his mind and requested that the Supreme Court rejected the accusation. The Court accepted the defense's allegation that there was no evidence against Mr. Lira. Proving his efficiency and loyalty, Mr. Lira gained more and more leeway. Dependent on Mr. Lira, President Bolsonaro gave him full power over parliamentary amendments, and began to consult him regarding crucial appointments for government ministries. In this way the "Centrão" has also begun to take over main seats in government, rivaling other political allies.

Another factor explains Mr. Lira's power in the legislature – and highlights another major setback to transparency and social participation in the National Congress. In repeated episodes, Mr. Lira has implemented procedural methods<sup>26</sup> that rushed deliberation steps over crucial bills, some of them even approved without proper knowledge<sup>27</sup> of their content and implications.

## Lack in transparency as a *modus operandi*

Rushed procedures were applied to changes to the Administrative Improbity Law, a proposed Electoral Reform, income tax reforms and the tax of circulation of goods and services. Such procedural tricks were also applied for bills related to crucial environmental matters, such as land regularization, environmental licensing, and the demarcation of indigenous lands, among others.

This undue acceleration undermines transparency and accountability of the legislative agenda, and diminishes social participation in hearings, consultations, votes and deliberations.

One of Mr. Lira's strategies is to put projects on the agenda that have already been presented in the past

and that still await voting. Allied representatives are then encouraged to present related substitutive proposals only hours before the vote. Since the substitutive text is tied to the old bill, it doesn't require further discussion in thematic commissions, where deeper debates with experts and members of civil society organizations traditionally take place. Through this strategy, a text that has not been presented for public debate – and is not necessarily related to the original content of the bill – is voted on in an instant. To ensure support and approval for the proposals, substitutive texts are discussed in informal messaging groups. Thus, by the time they reach voting proceedings, there is already a political consensus built without any public scrutiny.

<sup>23</sup> <https://www.dw.com/pt-br/rosa-weber-libera-execu%C3%A7%C3%A3o-do-or%C3%A7amento-secreto/a-60040331>

<sup>24</sup> <https://g1.globo.com/politica/blog/matheus-leitao/post/2018/04/24/pp-de-ciro-nogueira-e-um-dos-mais-envolvidos-em-investigacoes-como-lava-jato-e-mensalao.ghtml>

<sup>25</sup> <https://www1.folha.uol.com.br/poder/2022/02/lira-usa-lei-patrocinada-por-ele-e-pede-para-arquivar-acao-que-pode-torna-lo-ficha-suja.shtml>

<sup>26</sup> <https://g1.globo.com/politica/noticia/2021/11/05/parlamentares-vaio-ao-stf-para-questionar-rito-adoptado-pro-lira-na-votacao-da-pec-dos-precatorios.ghtml>

<sup>27</sup> <https://politica.estadao.com.br/noticias/geral,lira-atropela-ritos-e-poe-em-votacao-projetos-que-ate-deputados-desconhecem-texto-final,70003872070>

Another trick is to approve so called “urgency requests” in an arbitrary manner. This instrument allows congressmen to skip procedural steps and take proposals straight to vote. In the first semester of 2021 alone, more than 100 urgency requests were approved. In the same period the previous year, when Congress was first discussing Covid-19 fighting measures, there were 70. To ensure success, Mr. Lira passed regimental changes limiting minority guarantees, such as the

filibuster, which fostered the prolongation of debates and civil society greater oversight.

Mr. Lira has argued that his decisions are supported by a majority of parliamentarians. He is right. However, it is important to note that many parliamentarians belong to his circle of influence and dependence – even more so with a push from the “secret budget”.

## Changes to electoral rules and financing

One agenda rushed through by Mr. Lira was an intended comprehensive change to electoral rules with consequences for the 2022 general elections. After much pressure from civil society and a curtail by the Federal Senate, however, the reform had a timid final result. Furthermore, the new electoral code will not be valid for the upcoming election.

The electoral reform proposal was a priority for Mr. Lira since his election as President of the Chamber of Deputies. The promised reform, that could have been the most substantial in the Brazilian electoral system since re-democratization in 1988, was seen as an opportunity for Mr. Lira to favor himself and his political allies. It would increase public funding for parties and politicians and decrease transparency and oversight of these funds, making it difficult to investigate and punish lawmakers. Finally, it would serve to demonstrate political support for the federal government.

Upon reaching the Senate, however, the projects were profoundly altered and controversial points, such as reviving coalitions of parties, abandoned. At the same time, the new Electoral Code, altering more than 900 articles, and a main focus of interest for “Centrão” parliamentarians, was not approved by the Senate in time to be valid for the 2022 elections.

Possible motives for this Senate resistance are diverse. One influencing factor could be the civil society campaign “Press the Brakes on the Reform”<sup>28</sup>, in which Transparency International Brazil took part, that mobilized the press and increased the political cost of the process.

Another is the rise of Senate President Rodrigo Pacheco as a potential candidate for the 2022 presidential race<sup>29</sup>. Senator Pacheco has attempted to separate himself from perceived alignment with President Bolsonaro and Mr. Lira. A final factor is an ongoing crisis<sup>30</sup> between the Senate and the Chamber of Deputies. Senators accused representatives, especially Mr. Lira, of breaking agreements – an important one was the revocation by the Chamber of Deputies of prior Senate changes to a bill altering labor laws.

In parallel to the Electoral Reform, in a vote held in July, the National Congress more than doubled the amount available to finance the 2022 electoral campaigns when compared to 2018. After much speculation, in August, President Bolsonaro vetoed the R\$ 5.7 billion (US\$ 1.1 billion) sum<sup>31</sup>, proposing an amount slightly higher<sup>32</sup> than that used in 2020. Just before leaving for Christmas recess, however, the National Congress overturned Mr. Bolsonaro’s veto<sup>33</sup>. The increase puts Brazil at the top of countries<sup>34</sup> with the highest public expenditure in elections. Congress’ decision to increase public financing for campaigns surprised the country. There was no expectation that such a sharp increase would be approved, particularly in a year marked by the Covid-19 pandemic. After harsh criticism from social media and the press, even congressmen who voted in favor of the Budget Guidelines Law authorizing the new value argued that they did not vote for the increase, but for the budget law itself, alleging that without it, government would be impaired.

The trend for increasing public funding for election campaigns started in 2015, when the Supreme Court banned electoral funding by corporations<sup>35</sup>. While the

<sup>28</sup> <https://www.freio.reformaeleitoral.org.br>

<sup>29</sup> <https://oglobo.globo.com/politica/em-convencao-do-psd-pacheco-da-pontape-em-pre-candidatura-presidencia-em-2022-1-25290275>

<sup>30</sup> <https://noticias.r7.com/prisma/r7-planalto/derrota-da-reforma-trabalhista-no-senado-sinaliza-nova-crise-02092021>

<sup>31</sup> <https://congressoemfoco.uol.com.br/area/governo/bolsonaro-veta-fundao-de-r-57-bi-aprovado-pelo-congresso/>

<sup>32</sup> <https://agenciabrasil.ebc.com.br/economia/noticia/2021-08/previsao-do-orcamento-de-2022-ao-fundo-eleitoral-e-de-r-21-bilhoes>

<sup>33</sup> <https://agenciabrasil.ebc.com.br/politica/noticia/2021-12/congresso-derruba-veto-e-fundo-eleitoral-sera-de-r-57-bilhoes>

<sup>34</sup> <https://www1.folha.uol.com.br/poder/2021/07/com-fundo-eleitoral-de-r-57-bi-brasil-sobe-ao-topo-mundial-do-gasto-publico-com-campanhas.shtml>

<sup>35</sup> <http://g1.globo.com/politica/noticia/2015/09/supremo-decide-proibir-doacoes-de-empresas-para-campanhas-eleitorais.html>

end of private corporate financing reduced perceptions of excessive influence of private companies in Brazilian politics, the ban put pressure on parties to seek sources of public funding elsewhere. As a consequence, there was an increase in the centralization of public financing in party bureaucracies, now responsible for a greater share of resources to be distributed to candidates. The strengthening of parties could have been a positive impact of the 2015 changes. However, the lack of accountability mechanisms and weak internal democracy means that more power has been given to the political top of each party. This decisively influences the electoral prospects of

their candidates through unequal and selective distribution of public resources for the electoral campaign.

All in all, despite Operation Carwash and its revelations of systemic problems in Brazil's political parties and campaign financing, the political system did not respond with reforms to enhance parties' internal governance and compliance systems. Instead, the approved reforms decreased even further transparency and accountability, while public resources for political parties and electoral campaigns increased substantially.

## National Congress reshuffles Administrative Improbability Law

Another rushed deliberation, with profound impact to anticorruption legislation, was the approval by Congress of a bill to change the Administrative Improbability Law (LIA), already sanctioned without vetoes<sup>36</sup> by President Bolsonaro. The changes include major setbacks, such as the establishment of loopholes for non-accountability, restrictions for the punishment of misconduct, exemption for political parties and changes to the statute of limitation.

The Administrative Improbability Law came into effect in 1992 and was a milestone in increasing efficiency, transparency and integrity in the Brazilian public sector. It applied to cases where public agents violated principles of public administration, such as impartiality, illicit enrichment, or that caused damage to the treasury.

Almost 30 years later, a need to update the legislation emerged. Principal critics of the law are Brazilian public civil servants, who have argued that the law was too rigid and constrained good managers from doing their jobs efficiently. They also pointed out that it limited innovation and prevented the attraction of new talent to the public sector, as professionals fear the high liability risks that the vagueness in the law's dispositions imposed on civil service careers.

In 2018, a committee of jurists was established by the then president of the Chamber of Deputies, Mr. Rodrigo Maia, and presented a draft amendment to the law<sup>37</sup>. The proposal voted on by the National Congress, however, was very different from the one suggested by the experts.

The main changes to the law approved by the National Congress were:

### 1. Proof of intention and statute of limitations

The reformed law imposed the requirement of proof that the public official had the intention to commit an illicit act to achieve a specific end, which could represent an obstacle in cases of damages not directly intended, such as, for example, not responding to requests for access to information. Moreover, the bill changed the statute of limitations model to match it to the criminal system. In practice, it reduces the statute of limitations, which could allegedly lead to the dismissal of 40% of ongoing lawsuits<sup>38</sup>.

### 2. Capping investigation time

The Chamber of Deputies set a time limit for investigating a potential administrative improbity offense at 180 days, with a possible extension of further 180 days. The Public Prosecutor's Office and other experts believe this period to be insufficient for investigating complex cases. In the Senate, after pleas from civil society, the limit was extended to one year.

### 3. Restriction on punishment

The punishment of loss of a public position will only apply if the convicted officer is occupying the same position held at the moment of the act of misconduct. In other words, if a governor is convicted for misconduct when he was a mayor, he can continue his mandate.

### 4. Loophole for non-accountability

The bill established that there is no improbity when a public agent does not present accounts, even when obliged, if the necessary conditions to do so are lacking. Since there is no specification of what

<sup>36</sup> <https://www.gov.br/secretariageral/pt-br/noticias/2021/outubro/presidente-bolsonaro-sanciona-alteracoes-na-lei-de-improbidade-administrativa>

<sup>37</sup> <https://www.camara.leg.br/noticias/547581-proposta-atualiza-a-lei-de-improbidade-administrativa/>

<sup>38</sup> <https://www.otempo.com.br/politica/congresso/mudancas-na-lei-de-improbidade-arquivarao-40-das-aco-es-diz-senador-1.2549010>



constitutes this ‘lack of conditions’, the bill opens a route to decreased transparency and accountability.

## 5. Exemption for political parties

The Administrative Improbability Law will no longer apply to political parties and their foundations, under the justification that they constitute private entities. However, other private entities that receive public money, such as NGOs, are subject to the law. Brazilian political parties receive billions in public funds.

## 6. Nepotism

Although the reformed Administrative Improbability Law rejects nepotism, it establishes that nepotism only occurs when a nomination pursues an illicit purpose: “The mere appointment or political indication by the holders of elective mandates shall not be considered improbity, it being necessary to verify the intent with unlawful purpose on the part of the agent” (Article 11, § 5). Interpreted literally, the naming of a family member would not be enough to characterize improbity; it would also be necessary for the appointment to be permeated with a special, illicit purpose. Until the reform, nepotism in Brazil did not depend on an illicit purpose, it being enough to appoint personnel with kinship up to the third degree. The only existing exception was established by a Supreme Court (STF) jurisprudence, according to which the appointment of a relative to<sup>39</sup> (positions in the first level of the federal, state and municipal Executives) does not constitute nepotism, except for “unequivocal lack of reasonableness, due to the manifest lack of technical qualification or moral ineligibility”.

With the changes, the bill, dormant for almost three years, was rushed through by Mr. Lira, who made it a priority. The proposal’s final text was formally presented only 18 minutes before the voting session started. Many representatives – and least of all, Brazilian citizens – did not know the terms of the legislation they were approving. Mr. Lira’s procedural maneuvers, once more, restricted social accountability regarding an important legislative change.

Civil society organizations, including Transparency International Brazil, took action, during the analysis of the proposal in the Federal Senate, to increase debate

and reverse the setbacks approved by the Chamber of Deputies. After several meetings, manifestation of technical opinions and postponement of the vote to allow for a public hearing, improvements to the proposal became possible. Major setbacks, however, remained in the final text approved by Congress.

The rush to approve this matter can be summarized by three main factors: upcoming elections, anti-corruption counter-reforms and personal interests.

Important stakeholders affected in the changes to the misconduct law are municipal public managers, especially mayors, fundamental allies to gather local votes for congressional candidates in the 2022 federal elections. By approving the changes, congressmen are seeking support from their electoral bases.

The second factor is related to the current political context. Following the resignation of Justice Minister and former Carwash judge Sergio Moro<sup>40</sup> in 2020, President Bolsonaro tightened his alliance with the “Centrão” and increased the block’s power. The “Centrão”, on the other hand, has used its influence to roll back anticorruption advances achieved in the last decade in Brazil, in a battle against a trend the block describes as “criminalization of politics”.

The final element to understand the rush to change the LIA is self-interest. Among an estimated 40% of lawsuits<sup>41</sup> that could terminate with changes in the statute of limitation are cases against the President of the Chamber of Deputies, Mr. Arthur Lira, and against the rapporteur of the bill in the Federal Senate, Mr. Weverton Rocha. Although senators like Mr. Alessandro Vieira denounced the conflict of interest in the case, both parliamentarians claimed to see no clash in leading a procedure that could benefit them directly. At the beginning of the legislature, an analysis carried out by a Brazilian newspaper showed that there were 334 accusations of improbity<sup>42</sup> against elected representatives (263 against federal representatives and 71 cases involving senators). Indeed, last February, Mr. Lira asked the Superior Court of Justice (STJ) to annul previous convictions<sup>43</sup> on account of the changes in the law that he championed.

<sup>39</sup> <https://meloeandrada.adv.br/2021/04/15/para-o-stf-nao-caracteriza-nepotismo-a-nomeacao-para-cargos-de-natureza-politica-secretario-estadual-e-municipal-e-quando-ausente-a-influencia-hierarquica/>

<sup>40</sup> <https://g1.globo.com/politica/noticia/2020/04/24/moro-anuncia-demissao-do-ministerio-da-justica-e-deixa-o-governo-bolsonaro.ghtml>

<sup>41</sup> <https://www.otempo.com.br/politica/congresso/mudancas-na-lei-de-improbidade-arquivacao-40-das-acoas-diz-senador-1.2549010>

<sup>42</sup> [https://www.correiobraziliense.com.br/app/noticia/politica/2018/11/05/interna\\_politica,717476/um-terco-do-congresso-eleito-e-alvo-de-investigacoes-judiciais.shtml](https://www.correiobraziliense.com.br/app/noticia/politica/2018/11/05/interna_politica,717476/um-terco-do-congresso-eleito-e-alvo-de-investigacoes-judiciais.shtml)

<sup>43</sup> <https://www1.folha.uol.com.br/poder/2022/02/lira-usa-lei-patrocinada-por-ele-e-pede-para-arquivar-acao-que-pode-torna-lo-ficha-suja.shtml>

# Flexibilization of environmental protection

In disarray with the global consensus<sup>44</sup> on coal-fired energy and fossil-fuel subsidies phase-out, last December, both chambers of the National Congress passed a bill opening the way to extend compulsory acquisition of energy produced by coal-fired power facilities in the state of Santa Catarina until 2040. According to government, the extension of authorization for coal energy acquisition is part of the “Just Energy Transition” Program established by law, “in line with the concept of climate justice discussed [at] COP26”<sup>45</sup>. The law also provides for subsidies estimated at R\$ 840 million (US\$ 159 million) for coal energy production and it secures profitability of power plants<sup>46</sup> by guaranteeing a minimum price for the energy produced.

Back in 2021, the Ministry of Mines and Energy had already launched the program “Sustainable Use of the National Coal”<sup>47</sup> with the aim of organizing “the continuity of coal activities in Southern Brazil” which “may bring investments of around R\$ 20 billion over the next ten years”.

The recent developments and the misuse of sustainability concepts by the government are a symptomatic example of how actors from carbon-intensive industries and their allies in the public sector twist the public debate with distorted arguments and disinformation, as part of a broader lobbying strategy<sup>48</sup> to “greenwash” dirty and unsustainable policies.

Taking advantage of reduced public scrutiny due to the rushed deliberations in the Chamber of Deputies, in June 2021, a majority of representatives voted in favor of a bill that loosens rules for environmental licensing<sup>49</sup> (PL 3.729/2004)<sup>50</sup>. If approved by the Senate<sup>51</sup>, the proposal will make environmental licensing unnecessary for 13

activities with significant environmental impact, such as agriculture, cattle raising, forestry and improvements of pre-existing infrastructure. The proposal also allows most licenses to be issued automatically, in the form of a self-declaratory license, without review by any environmental agencies, including for various projects considered potentially harmful to the environment<sup>52</sup>, such as repaving existing highways in the Amazon. The project also weakens several requirements<sup>53</sup> related to traditional communities and indigenous peoples in the evaluation and monitoring of socio-environmental impacts.

Last August, the Chamber of Deputies approved another bill (PL 2.633/2020), still pending a vote by the Senate, that changes rules for land titling<sup>54</sup> on federal public lands. The reform under consideration could foster legalization of recently land-grabbed areas without effectively addressing<sup>55</sup> the challenges of small informal occupations. In addition, the bill increases the size of areas eligible for the self-declaratory regularization procedure.

The process of land regularization is particularly vulnerable to fraud and corruption practices<sup>56</sup> associated with land grabbing, including the simulation of informal occupations with false data in land registries, sometimes with the support of corrupt public officials. Therefore, loosening controls on land regularization through the widening of self-declaratory procedures could foster fraud and corruption. The bill, informally renamed the “Land Grabbing Bill” by environmentalists, has therefore raised serious concerns about the possible consequences of further incentivizing the misappropriation of public land. In fact, land grabbing is tightly related to deforestation<sup>57</sup> and land conflicts – including those with indigenous peoples and traditional communities<sup>58</sup>.

<sup>44</sup> <https://www.carbonbrief.org/cop26-key-outcomes-agreed-at-the-un-climate-talks-in-glasgow>

<sup>45</sup> <https://www.gov.br/secretariageral/pt-br/noticias/2022/janeiro/presidente-sanciona-pl-que-confere-subsidio-economica-as-distribuidoras-de-energia-eletrica-de-pequeno-porte-e-cria-o-programa-de-transicao-energetica-justa>

<sup>46</sup> <https://economia.estadao.com.br/noticias/geral,contratacao-termicas-carvao-custo-consumidor,70003926237>

<sup>47</sup> <https://www.gov.br/mme/pt-br/assuntos/noticias/mme-publica-detalhamento-do-programa-para-uso-sustentavel-do-carvao-mineral-nacional>

<sup>48</sup> <https://www.oecd.org/corruption-integrity/reports/lobbying-in-the-21st-century-c6d8eff8-en.html>

<sup>49</sup> <https://www.camara.leg.br/noticias/758863-CAMARA-APROVA-NOVAS-REGRAS-PARA-O-LICENCIAMENTO-AMBIENTAL>

<sup>50</sup> <https://www12.senado.leg.br/noticias/materias/2021/11/19/em-audiencia-conjunta-projeto-de-lei-geral-do-licenciamento-ambiental-segure-sem-consenso>

<sup>51</sup> <https://www12.senado.leg.br/noticias/materias/2021/11/19/em-audiencia-conjunta-projeto-de-lei-geral-do-licenciamento-ambiental-segure-sem-consenso>

<sup>52</sup> <https://www.socioambiental.org/pt-br/noticias-socioambientais/projeto-de-lei-geral-do-licenciamento-fara-desmatamento-explodir-diz-analise-do-isa-e-ufmg>

<sup>53</sup> <https://www.socioambiental.org/pt-br/noticias-socioambientais/camara-aprova-texto-principal-de-projeto-que-praticamente-acaba-com-licenciamento-ambiental>

<sup>54</sup> <https://g1.globo.com/politica/noticia/2021/08/03/camara-aprova-texto-base-de-projeto-que-amplia-regularizacao-de-terras-publicas-sem-vistoria.ghtml>

<sup>55</sup> [http://www.lagesa.org/wp-content/uploads/documents/Sparovek\\_Rajao%20et%20al\\_20\\_Analise%20MP910.pdf](http://www.lagesa.org/wp-content/uploads/documents/Sparovek_Rajao%20et%20al_20_Analise%20MP910.pdf)

<sup>56</sup> <https://transparenciainternacional.org.br/grilagem/>

<sup>57</sup> <https://ipam.org.br/35-do-desmatamento-na-amazonia-e-grilagem-indica-analise-do-ipam/>

<sup>58</sup> <https://www.cptnacional.org.br/publicacoes-2/destaque/5664-conflitos-no-campo-brasil-2020>

## THE SUSPENSION OF SENATE'S ETHICS COMMITTEE

With the justification of the pandemic, the functioning of the Federal Senate's Ethics Committee has been suspended for over two years<sup>59</sup> – according to the committee's website, the last meeting<sup>60</sup> was only to decide which senators would preside over the committee. Even if other thematic commissions have resumed work after months of paralysis due to the Covid-19 pandemic, the Ethics Committee has 19 pending cases that have not even been distributed to a rapporteur – including cases against Senator Flávio Bolsonaro, President Bolsonaro's eldest son, charged for a scheme that allegedly collected shares of his employees' salaries<sup>61</sup> during his mandate at Rio de Janeiro's state Assembly, and Senator Chico Rodrigues, caught, in 2020, by the Federal Police with money hidden in his underwear<sup>62</sup>. Up until the

investigation that targeted Mr. Rodrigues, the senator served as deputy leader of government in the Senate.

The Chamber of Deputies' Ethics Committee, on the other hand, resumed work in 2021, after a year of paralysis due to the pandemic, and approved punishments against three representatives: two expulsions, including that of representative Flordelis<sup>63</sup>, charged with ordering her husband's murder in 2019, and a six months suspension<sup>64</sup> for representative Daniel Silveira, an ally to President Bolsonaro, for a video in which Mr. Silveira grotesquely attacks Supreme Court ministers<sup>65</sup> – he was arrested for this episode. However, not only was Mr. Silveira given a light punishment, but the sanction has yet to be confirmed<sup>66</sup> by the Chamber of Deputies' plenary.

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<sup>59</sup> <https://blogs.oglobo.globo.com/lauro-jardim/post/conselho-de-etica-do-senado-faz-aniversario-de-dois-anos-houve- apenas-uma-reuniao-no-periodo.html>

<sup>60</sup> <https://www25.senado.leg.br/web/atividade/conselhos/-/conselho/cedp>

<sup>61</sup> <https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/11/09/rachadinhas-entenda-suspeitas-do-mp-sobre-flavio-bolsonaro.ghtml>

<sup>62</sup> <https://oglobo.globo.com/politica/conselhos-de-etica-do-congresso-tem-produtividades-distintas-senador-admite-esta-pegando-mal-1-25115314>

<sup>63</sup> <https://www.camara.leg.br/noticias/792857-camara-aprova-cassacao-do-mandato-da-deputada-flordelis>

<sup>64</sup> <https://g1.globo.com/politica/noticia/2021/07/07/conselho-de-etica-aprova-novo-relatorio-de-suspensao-de-mandato-de-daniel-silveira-desta-vez-por-seis-meses.ghtml>

<sup>65</sup> <https://www.poder360.com.br/justica/leia-a-transcricao-do-que-disse-daniel-silveira-e-o-que-levou-o-stf-a-prende-lo/>

<sup>66</sup> <https://oglobo.globo.com/politica/daniel-silveira-celebra-volta-camara-enquanto-lira-segura-decisao-do- conselho-de-etica-para-suspensao-do-mandato-25305784>

# PUBLIC PROSECUTOR'S OFFICE

In August 2021, the Federal Senate approved the reappointment of Brazilian Prosecutor-General<sup>67</sup>, Augusto Aras, for a further two-year mandate. President Jair Bolsonaro's choice for the Public Prosecutor's Office was easily endorsed by senators from the left and the right of the political spectrum, despite widespread criticism that Mr. Aras' first term was marked by authoritarianism, undue political interference in high profile investigations and harmful alignment with President Bolsonaro's government. As previously denounced by Transparency International Brazil, these elements combined have the potential to reduce the institutional capacity of the Public Prosecutor's Office and its autonomy to investigate grand corruption schemes involving prominent politicians and businessmen, and to reverse the engagement of Brazilian authorities and institutions in fighting corruption. They may also affect outcomes of the Senate's Covid-19 Parliamentary Commission of Inquiry (CPI), which concluded its investigation demanding punishment for President Bolsonaro for nine different crimes allegedly committed in handling the epidemic.

The unjustified alignment between the Public Prosecutor's Office with Mr. Bolsonaro's government, and the resulting neutralization of a legal axis for the accountability of the president adds to a mounting pressure into the Brazilian system of checks and balances, already undermined by the political association of the Presidency to the Chamber of Deputies' leadership and the "secret budget" scheme (see more in the Legislative section).

During the Senate's hearing that confirmed his nomination, Mr. Aras reaffirmed political stances that explain much of the support he has amassed in the National Congress. The Prosecutor-General again criticized the Operation Carwash taskforce of prosecutors, established in 2014 to investigate irregularities involving the state oil company Petrobras, which has led to the sentencing and imprisonment, for corruption, of prominent national politicians and contractors. Mr. Aras said the taskforce model led to "personalization" and irregularities. He also positioned himself against what he calls the

"criminalization of politics", an argument generally made by critics of Operation Carwash. The script resonated with a majority of the senators, and Mr. Aras received compliments on his day-to-day dealings with politicians. One senator even pointed out that, under previous Prosecutor-Generals, one never knew exactly which charges were "being processed, at a given time, against someone, especially the government"<sup>68</sup>.

A major setback during Mr. Aras' first term was the dismantling of the taskforce model, with direct consequences for grand corruption investigations. In 2021, following concerns caused by short term renewal of the taskforces and an end for exclusive dedication by prosecutors to the cases' investigations, Operation Carwash's taskforces in Curitiba and Rio de Janeiro were terminated. The other branch of the operation, in São Paulo, was discontinued in September 2020 after seven prosecutors resigned. They cited disagreements with their recently appointed head prosecutor, and the creation of obstacles impeding fulfillment of their assigned tasks, as motives for the resignations.

In 2020, the Public Prosecutor's Office also terminated the Operation Greenfield taskforce, which, since 2016, had investigated pension fund corruption at state owned companies, as well as the world's largest meat company, JBS, and former President Michel Temer. Similarly to the smothering of Operation Carwash, for months before its termination, Greenfield prosecutors complained of pressure and uncertainty in the form of short-term renewals of the taskforce and in adequate structure – including the loss of exclusive dedication for prosecutors involved in Operation Greenfield investigations. In a report released after the ending of the taskforce, its prosecutors declared that, despite the recovery of over R\$ 12 billion (US\$ 2.2 billion), 55,6% of the taskforce's goals were left unachieved<sup>69</sup>.

On February 2021, the Amazon taskforce of prosecutors<sup>70</sup>, acting in the Amazonian states, dedicated since 2018 to fighting crimes that affect the environment such as deforestation-related land grabbing, illegal logging and illegal mining, also came to an end after a request for a renewal was not endorsed by the Prosecutor's

<sup>67</sup> <https://www12.senado.leg.br/noticias/materias/2021/08/24/senado-aprova-reconducao-de-augusto-aras-como-procurador-geral-da-republica>

<sup>68</sup> <https://legis.senado.leg.br/comissoes/reuniao?0&reuniao=10172&codcol=34>

<sup>69</sup> <https://valor.globo.com/politica/noticia/2021/01/21/aras-encerra-operacao-greenfield-com-55percent-das-metas-pendentes.ghtml>

<sup>70</sup> <https://www1.folha.uol.com.br/ambiente/2021/05/a-espera-de-renovacao-forca-tarefa-amazonia-realizou-19-operacoes-contra-crimes-ambientais-em-2-anos.shtml>

Office. Fifty-six civil society organizations<sup>71</sup>, including Transparency International Brazil, called for the renewal and reinforcement of the Amazon taskforce. If this was unfeasible, the organizations suggested creation of a permanent structure within the Prosecutor's Office, dedicated to fighting crimes in the Amazon region with wide action and coordination.

In a letter sent to Mr. Aras and the Superior Council of the Public Prosecutor's Office (CSMPF), last July, the 56 organizations said results obtained by the taskforce were significant, with 19 operations against environmental crimes, and important partnerships with official institutions, local organizations and indigenous leaders. The document stated that two operations by the taskforce (Karipuna and Floresta Virtual) reduced, in 2020, deforestation in Kapiruna indigenous land by 40%. "Such results were possible because the taskforce model allowed for more coordinated action between prosecutors, facilitating the exchange of methods and knowledge, specialization of their work and depersonalization of performance, especially relevant in dealing with organized crime", stated the letter.

Mr. Aras downplayed termination of the taskforces, saying that their members had only moved elsewhere within the institutional framework, to the GAECOs (Special Action Groups to Combat Organized Crime), which allegedly maintained guarantees that existed under the taskforce model, such as a fixed mandate for members and workload planning. The Prosecutor-General argued that the GAECOs would solve a lack of institutionality that permeated the taskforce model.

In 2020, an internal commission analyzed the structure and outcomes of the taskforce model, first implemented in 2014, in the wake of Operation Carwash, and later extended to other fields of action. The report highlighted the results achieved by 23 temporary taskforces within the Prosecutor's Office, including Carwash and Greenfield, and their innovations, such as plea agreements and team-based investigation. It also pointed out the need for the Prosecutor's Office to address, with transparent and objective criteria, the taskforces' lack of structure, and for the establishment of plans for future incorporation of the temporary taskforces' within the permanent structure of the Prosecutor's Office. These recommendations were incorporated into a draft resolution<sup>72</sup> intended to enshrine the constitution and functioning of the taskforces within the Prosecutor's Office, which was presented to the Superior Council of the Public Prosecutor's Office (CSMPF), and awaits for analysis by the council, headed by Mr. Aras himself.

The GAECOs promoted by Mr. Aras are new to the federal prosecution service, although they have existed in state prosecution offices for over two decades with some good results. The first federal GAECO was established in January 2020 in the state of Minas Gerais. Until July 2021, six other groups had been created under the federal prosecution service – in the states of Amazonas, Bahia, Pará, Paraíba, Paraná and Rio de Janeiro. In Rio de Janeiro, the former Carwash taskforce coordinator in the state was appointed head of the GAECO, and the taskforce workload was transferred to the new structure, alongside prosecutors with exclusive dedication.

Rio de Janeiro however, seems not to reflect the federal GAECOs as a whole. At least up until now, it appears that the federal GAECOS still lack the necessary configuration that allowed the taskforces to uncover complex corruption schemes and pursue lines of inquiry that unfolded into further investigations. Three elements are critical: 1) guarantees of exclusive dedication for a sufficient number of prosecutors; 2) specialized technical and administrative support; and 3) good governance and accountability.

It's important to observe that a 2013 law strengthened the use of plea bargains in Brazilian criminal justice, which led to an exponential expansion of investigations that unfolded into multiple other complex investigations. In this new landscape, the innovation of teamwork carried out by the taskforces of prosecutors was a crucial one, as it would be impossible to embrace the new potential fronts of investigations under the traditional model of atomized investigations conducted by individual prosecutors. For example, by August 2020, Carwash taskforce in Curitiba alone had 14 prosecutors dedicated exclusively to the operation plus 45 support employees to help with technical and administrative tasks.

Following the dismantling of the taskforce in Curitiba, the Carwash workload in the state was briefly led by the state GAECO and then transferred to a group of five prosecutors with exclusive dedication, two advisors and two trainees.

A further concern was that Mr. Aras' administration imposed the decision to extinguish the taskforce model in favor of the GAECOs without ample debate or a structured plan for the establishment of a common framework in each state, nor a smooth transition to safeguard details of work previously done. This context, and the fact that the Superior Council of the Public Prosecutor's Office has yet to debate a proposal, based on an internal investigation, that could improve the taskforce framework, bolsters perceptions that termination of the taskforce model was political, and not a real attempt to improve its fragilities.

<sup>71</sup> <https://transparenciainternacional.org.br/posts/organizacoes-cobram-pelo-fortalecimento-da-atuacao-do-mpf-no-combate-aos-crimes-ambientais-na-amazonia/>

<sup>72</sup> <http://www.mpf.mp.br/o-mpf/csmfp/documentos-e-publicacoes/anteprojeto-de-resolucao/anteprojeto-no-131-forca-tarefa.pdf>



The GAECOs can have a positive impact, if correctly equipped. It is important to note, however, that they do not substitute the taskforce model, especially relevant in cases involving environmental macrocriminality and complex investigations, such as grand corruption schemes. Both structures are complementary, not exclusive.

In addition to the dismantling of the taskforces, the past year has also seen consolidation of a perceived loss of political independence at the Public Prosecutor's Office under Mr. Aras, a concern previously raised by Transparency International Brazil.

Research released last August by Eloísa Machado, professor at FGV Direito SP, and Luiza Pavan Ferraro, a researcher at the same institution, showed that, in Mr. Aras' first tenure, the Prosecutor's Office decreased participation in constitutional lawsuits against the Bolsonaro government, despite repeated attacks by the president against democratic institutions and the Federal Constitution. The study, part of an international effort under the umbrella of the Project on Autocratic Legalism (PAL)<sup>73</sup>, showed that, from January 2019 to June 2021, Mr. Aras' office was responsible for only 1.74% of lawsuits presented against the government (a historic low since the 1988 Constitution), did not offer legal opinions or offered them with delay in a significant number of ongoing lawsuits, and, finally, sided with government in most cases, even in situations that challenged technical expertise – such as the recommended use of chloroquine for Covid-19 patients.

The researchers expressed their concern that, by systematically siding with the president, both the Public Prosecutor's Office and the Office of the Attorney General (AGU) work to foster a "legal architecture for the unaccountability of the president and his ministers".

Over past months, Mr. Aras' inaction has been the target of multiple accusations. In August 2021, an open letter, signed by 29 deputy prosecutors-general, demanded that the Prosecutor-General take action to defend the Supreme Court and the Superior Electoral Court (TSE) from President Bolsonaro's attacks against court members and the electoral system's integrity. In the same month, Supreme Court Justice Alexandre de Moraes dismissed a request made by two senators to investigate Mr. Aras for nonfeasance due to his supposed omission over attacks by President Bolsonaro against the electoral system. Also in August, four retired deputy prosecutors-general

petitioned the Superior Council of the Public Prosecutor's Office (CSMPF), an instance also headed by Mr. Aras, criticizing the Prosecutor-General for omission in cases that favor President Bolsonaro or his inner circle, including one son of the president's and the former minister of Environment. Five CSMPF members took the case to the Supreme Court, accusing Mr. Aras of illegal maneuvers in the analysis of the representation by the council – a claim dismissed by Justice Antonio Dias Toffoli.

According to reports<sup>74</sup>, allies to Mr. Aras have shielded him from complaints received by the CSMPF. Inaction by the Prosecutor-General led Justices from the Supreme Court to point out undue delays in responses from the Prosecutor's Office in cases regarding President Bolsonaro or an ally. Slow activity at the Public Prosecutor's Office could be strategic, as indicated by the FGV Direito SP study, in order to avoid conflict with the president's office.

It is important to stress that the way Mr. Aras was appointed and reappointed by President Bolsonaro is further element of distrust in the figure of the Prosecutor-General by his peers. As in Mr. Aras' first appointment, in 2019, President Bolsonaro discarded the shortlist of names selected by the National Association of Federal Prosecutors (ANPR), a list endorsed by three previous presidents: Luiz Inácio Lula da Silva, Dilma Rousseff and Michel Temer (although the latter did not pick the head of the shortlist<sup>75</sup>). In doing so, Mr. Bolsonaro broke a tradition, in place since 2003, of choosing from a shortlist of the three most voted names. 70% of federal prosecutors participated in the 2021 selection.

The appointment of someone from outside the ANPR's selection process raises concerns that the prosecutor-general could lack independence and hinder the autonomy of the Public Prosecutor's Office.

Mr. Aras is reportedly interested in a Supreme Court seat<sup>76</sup>. In the past, President Bolsonaro has declared that Mr. Aras would be a strong candidate in the event of him appointing a third judge to the court (which might happen if Mr. Bolsonaro is reelected in 2022). It is expected that the general-prosecutor's attitude towards Mr. Bolsonaro's government will be tied to the president's electoral prospects.

The potential consequences of mixing political interests with the Prosecutor's Office are highly problematic. Mr. Aras' office is responsible for inquiries involving the president

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<sup>73</sup> <http://autocratic-legalism.net>

<sup>74</sup> <https://oglobo.globo.com/politica/aliados-blindam-aras-de-investigacoes-no-conselho-superior-do-mpf-1-25165280>

<sup>75</sup> <https://g1.globo.com/politica/noticia/temer-escolhe-raquel-dodge-para-substituir-janot-na-pgr.ghtml>

<sup>76</sup> <https://blogs.oglobo.globo.com/vera-magalhaes/post/aras-sonha-com-vaga-no-stf-caso-mendonca-se-inviabilize.html>

directly or his allies. Last February, the Prosecutor's Office asked the Supreme Court to close<sup>77</sup> an inquiry opened to investigate suspected misconduct by President Bolsonaro during negotiations to purchase Covaxin vaccine. According to a testimony to the Federal Senate's Covid-19 Parliamentary Committee of Inquiry (CPI), which investigated mismanagement of the pandemic response by the federal government, President Bolsonaro had been warned<sup>78</sup> about irregularities in the process of acquisition of the vaccine and allegedly said he would relate the case to the Federal Police – what he did not do at the time. The Prosecutor's Office must decide whether to charge the president following the the CPI conclusions (see more in section Federal Government). A month after receiving the

CPI's final report, in November, Mr. Aras sent ten requests to the Supreme Court<sup>79</sup> linked to the investigation of high-ranking politicians and the inclusion of new elements in ongoing lawsuits. The requests, however, were put under secrecy, so it is not possible to know its potential impacts.

For the past months, members of the CPI have been pressuring Mr. Aras<sup>80</sup> for him to move forward with investigations started by the committee. However, in an interview in February 2022<sup>81</sup>, Mr. Aras said the committee had yet to handle evidence of omissions by the government. The Prosecutor-General alleged unwillingness to proceed with the CPI's findings led senators to threaten Mr. Aras with an impeachment<sup>82</sup>.

## CHANGES TO THE NATIONAL PROSECUTORS' COUNCIL (CNMP)

Last October, the Chamber of Deputies voted a Constitutional Amendment Proposal (PEC 5/21) attempting to change the composition and legal competences of the National Prosecutors' Council (CNMP). The proposal was rejected<sup>83</sup>, but the motivation may still stand.

The CNMP is responsible for the administrative, financial, and disciplinary supervision of prosecutorial activity. In addition to expanding the council's legal competences, the amendment intended to change its composition, by 1) increasing the number of members chosen by the National Congress, by 2) establishing a new rule by which CNMP's internal affairs officer (responsible for initiating disciplinary proceedings) is chosen by National Congress, and by 3) allowing the CNMP to annul an act performed by a public prosecutor that incurs fraud or violation of duty.

The CNMP was created in 2004, in the same context as the creation of the National Council of Justice (CNJ). Both are administrative, financial and disciplinary oversight institutions created to ensure the integrity of public prosecutors and magistrates without interfering in their independence. A major concern of the Federal Constitution was to guarantee functioning of the Judiciary as an essential institution. However, time has shown that adequate functioning of such institutions also depends on democratic accountability. Council composition, in addition to members of the professions, should also include members capable of bringing external perspectives and mitigating the risks of corporatism. Both the CNMP and the CNJ

have not yet met the high expectations of democratic accountability as a key element of their performance.

It is positive that Congress and society debate CNMP performance, and essential that public prosecutors perceive themselves as bound by rules of conduct and, when appropriate, be held responsible for illegal acts.

However, the need to improve existing accountability mechanisms should not justify a rushed and opportunistic vote. Constitutional reforms, due to their importance, demand greater public participation and broad debate. Despite the complexity of the debate, the PEC n° 5 reached the plenary voting session, in the Chamber of Deputies, in record time, subject to only one public hearing, restricted to representatives of professions directly impacted.

The mentioned constitutional amendment is not the first bill of substantial public interest to have been accelerated through the current legislature (see more in the Legislative section).

The PEC n° 5 prioritizes, as an alleged accountability solution, the expansion of influence over appointments of CNMP members by National Congress – or by its parliamentary majority. There are, however, other ways to improve democratic accountability of public prosecutors other than through political oversight.

The Prosecutor's Office is one of the least transparent public institutions in Brazil. This situation has, recently, been aggravated by Ordinance 454/2018, which greatly extended the list of restricted information

<sup>77</sup> <https://g1.globo.com/politica/noticia/2022/02/18/pgf-stf-bolsonaro-arquivamento-covaxin.ghtml>

<sup>78</sup> <https://www1.folha.uol.com.br/poder/2021/06/acionar-a-pf-e-tentativa-de-calar-testemunhas-e-indica-que-bolsonaro-nao-fez-nada-apos-alerta-sobre-covaxin-diz-deputado.shtml>

<sup>79</sup> <https://www1.folha.uol.com.br/poder/2021/11/aras-entrega-ao-stf-10-pedidos-sobre-relatorio-da-cpi-da-covid.shtml>

<sup>80</sup> <https://valor.globo.com/politica/noticia/2021/01/21/aras-encerra-operacao-greenfield-com-55percent-das-metas-pendentes.ghtml>

<sup>81</sup> <https://www.metropoles.com/brasil/aras-diz-que-cpi-da-covid-nao-apresentou-provas-de-omissao-do-governo>

<sup>82</sup> <https://www1.folha.uol.com.br/poder/2022/02/senadores-inauguram-memorial-a-vitimas-da-covid-e-falam-em-impeachment-de-aras.shtml>

<sup>83</sup> <https://g1.globo.com/politica/noticia/2021/10/20/camara-rejeita-pec-que-altera-regras-do-conselho-do-ministerio-publico.ghtml>

under the new General Data Protection Law. Measures to increase the institution's transparency are essential, including mechanisms to confront privileges enjoyed by prosecutors.

Accountability for abuses and violations of duties can be strengthened by unifying disciplinary regulations for prosecutors in each state and the Union, thus minimizing legal uncertainty and difficulties with CNMP oversight. In 2018, Transparency International Brazil supported drafting of a bill to unify the prosecution disciplinary regime. A positive aspect of the PEC nº 5 goes in this direction: determining elaboration of a unified Code of Ethics for the prosecution.

The need for debate on prosecutor accountability and excessive punishment of vulnerable sectors of the Brazilian population is fundamental. Current discussion ignores this tragic reality and possible solutions that could end collusion with police violence and confront institutional racism in the prosecution services.

Measures are needed to bring the institution and its correctional system closer to the social groups most victimized by abuses and prosecution's negligence. Interesting mechanisms could be the expanded use and qualification of ombudsmen, and the democratization of access to correctional bodies (including the CNMP itself), for example through agreements with other public bodies and civil human rights entities.

But instead of proposing democratic accountability for the prosecution services, PEC nº 5 opts for a dangerous path of political interference. This could take the Prosecutor's Office from the current situation of impunity to another one of selective punishment. It does not address the serious problem of abuses in the work of the prosecution services and, at the same time, brings back a problem, that existed prior to the 1988 Constitution, of a Prosecutor's Office much more vulnerable to political pressure.

While National Congress debated the constitutional bill to increase its influence over the CNMP, in

October 2021, the council approved the dismissal of a prosecutor<sup>84</sup> who, in the past, integrated the Operation Carwash taskforce in Curitiba. Mr. Diogo Castor de Mattos was punished after a disciplinary administrative procedure, which investigated whether payment by Mr. Mattos for a billboard constituted administrative improbity.

In 2019, a billboard celebrating Operation Carwash was placed by Curitiba's airport. It showed Carwash prosecutors and the motto "Welcome to the Republic of Curitiba. Land of Operation Carwash, the investigation that changed the country. Here the law is respected". Carwash critics have argued that the advert is indicative of politicization of the investigation.

Mr. Mattos admitted paying for the billboard, but said he did not participate in the details of its commission. According to prosecutors, Mr. Mattos' punishment is disproportionate and contrasts with past sanctions applied by the council. In a moment of pressure from the National Congress over the council's composition and competency, the punishment has been perceived by congressmen as an attempt by the council to allay criticism<sup>85</sup>.

Similar interpretation applies to another decision, by the CNMP, to open an administrative procedure to investigate 11 prosecutors from the Operation Carwash taskforce in Rio de Janeiro, accused by two former senators of leaking confidential information through a communication made by the Public Prosecutor's Office press department. Despite the release of such information being a fairly common practice<sup>86</sup> within the Prosecutor's Office, in September, the institution's internal affairs inspector called for the dismissal of the 11 prosecutors, six of them now members of Rio de Janeiro's GAECO.

As mentioned above, it is crucial not to transition from the current situation of impunity in the Public Prosecutor's Office to another one of selective punishment, especially against those targeting powerful politicians and businessmen.

<sup>84</sup> <https://oglobo.globo.com/politica/cnmp-aprova-demissao-de-procurador-que-teria-pagado-outdoor-favor-da-lava-jato-25241476>

<sup>85</sup> <https://www1.folha.uol.com.br/poder/2021/10/orgao-do-ministerio-publico-decide-demitir-procurador-da-lava-jato-por-outdoor-em-curitiba.shtml>

<sup>86</sup> <https://oglobo.globo.com/politica/corregedor-do-mp-vota-pela-abertura-de-processo-disciplinar-contra-procuradores-da-lava-jato-do-rio-1-25215872>

# JUDICIARY

In the past year, the Judiciary has functioned as a crucial counterpoint to President Jair Bolsonaro and his government's authoritarian stance against democratic institutions, especially the electoral system<sup>87</sup>, to ensure some level of transparency in the distribution of resources from the federal budget allocated by congressmen to their political bases<sup>88</sup> (see more in the Legislative section), and to push forwards public policies<sup>89</sup> to control the Covid-19 pandemic that had been obstructed by the denialism or the failure of the federal government.

At the same time, in the past months, the Justice system changed the jurisdiction of several high profile corruption convictions due to the repercussion of a 2019 Supreme Court decision<sup>90</sup> that established the competence of the Electoral Justice to hear corruption cases when the alleged crimes are linked to slush funds for campaigns.

The transfer of cases from the Federal Justice to the Electoral Justice is not a simple change of court or

judge of a certain cause. As argued below, the decisions have had significant impacts on the fight against grand corruption, that is, corruption involving powerful politicians and businessmen, large sums of money, transnational reach and serious impact on human rights. Several of the cases being sent to the Electoral Justice are resulting in the nullification of criminal sentences confirmed in multiple judicial instances and, thus, impunity for powerful individuals involved in very serious criminal activities.

This situation also leads to the so-called “chilling effect”, which is the discouragement of agents to get involved in cases they know will not have support or institutional backing and will most likely be overruled at some stage of the legal process. In fact, an environment of fear has been established, caused by increasingly frequent retaliations against those who dare to confront powerful individuals. Police officers, prosecutors and judges then tend to turn to cases with a lower probability of failure and political risks, that is, from white-collar cases to common criminality.

## The referral of criminal cases to the Electoral Justice

In 2021, several legal decisions referred criminal cases containing accusations of common crimes allegedly committed in connection with electoral crimes from the federal ordinary Justice to the Electoral Justice. Changing jurisdiction often means resuming the process from scratch, with the need to produce new evidence and procedural steps that have already been completed. Even very advanced lawsuits have been the object of this type of decision. This trend stems from a 2019 Supreme Court (STF) decision<sup>91</sup> which recognized the competence of the Electoral Court to prosecute and adjudicate crimes that are connected with electoral crimes.

At the time, the STF justices were divided on the matter, with 6 judges in favor of the new interpretation and 5 against. The minority thesis argued that cases should be

divided in two parts: one regarding only electoral crimes, that should be referred to Electoral Courts, and another one, regarding all other crimes, that should follow its course in the common Justice. The majority of the judges, however, ruled that the entire case should be transferred to the Electoral Justice's jurisdiction.

An example of legal decision reformed by the new jurisprudence was the conviction of former federal congressman Eduardo Cunha<sup>92</sup>, by the 13th Federal Court of Curitiba, for the alleged practice of passive corruption, money laundering and currency evasion. In 2016, Mr. Cunha, at the time President of the Chamber of Deputies, was charged by the Public Prosecutor's Office for corruption alongside an electoral crime (false statement in an electoral document)<sup>93</sup>. After he was removed

<sup>87</sup> <https://g1.globo.com/politica/noticia/2021/08/04/moraes-inclui-bolsonaro-em-inquerito-de-fake-news-por-ataques-as-urnas-eletronicas.ghtml>

<sup>88</sup> <https://g1.globo.com/politica/noticia/2021/12/06/rosa-weber-libera-execucao-das-emendas-do-orcamento-secreto.ghtml>

<sup>89</sup> <https://www.cnnbrasil.com.br/nacional/stf-forma-maioria-a-favor-da-apresentacao-do-passaporte-vacinal/>

<sup>90</sup> <https://agenciabrasil.ebc.com.br/justica/noticia/2019-03/stf-decide-que-justica-eleitoral-pode-julgar-corrupcao-da-lava-jato>

<sup>91</sup> <https://agenciabrasil.ebc.com.br/justica/noticia/2019-03/stf-decide-que-justica-eleitoral-pode-julgar-corrupcao-da-lava-jato>

<sup>92</sup> <https://politica.estadao.com.br/blogs/fausto-macedo/segunda-turma-do-stf-anula-decisao-de-moro-e-manda-acao-contra-eduardo-cunha-para-a-justica-eleitoral/>

<sup>93</sup> <https://g1.globo.com/politica/operacao-lava-jato/noticia/2016/06/maioria-do-stf-aceita-denuncia-para-tornar-cunha-reu-por-contas-na-suica.html>

from office by his peers<sup>94</sup>, in the same year, he lost his "privileged forum" and his case resumed under judge Sergio Moro, then a first instance judge. The prosecution then offered new opinions, this time dropping the electoral crime accusation. In September 2021, the Second Panel of the STF understood that, by rejecting the accusation of using slush funds for electoral purposes, former judge Moro contradicted the previous STF decision that had accepted the complaint offered by the Prosecutor's Office and that included the electoral slush funds accusation. With the new decision, the case will be forwarded to the Electoral Court of Rio de Janeiro, which will analyze the validity of decisions and procedural acts carried out previously by judge Moro.

The same jurisprudence (and the annulments that follows it) has been applied to a number of other cases. Despite the new understanding by the Supreme Court, two key reasons recommend a different approach – possibly needing the approval of new legislation – regarding the separation of cases between the federal ordinary Justice and the Electoral Justice when dealing with cases in which electoral and common crimes are presented as connected crimes:

**1. Shared dedication and rotation:** the Electoral Justice is a specialized branch of the Judiciary composed of judges and electoral prosecutors recruited from non-specialized backgrounds. They are regular prosecutors and judges temporarily accumulating their activities with the electoral functions. The exercise of the electoral jurisdiction is not only shared but also performed on a rotating basis. In the first instance, electoral jurisdiction is performed through temporary designations, weakening the principle of the natural judge and prosecutor. In the second instances and high courts, judges who accumulate with their other judicial functions have short terms of two years, clearly an

insufficient period to deal with complex cases that demand a long period of investigations. In many cases they will be also challenged by overloaded dock of cases in both branches, particularly in the electoral period in which the electoral branches receive a large number of cases with comparatively short procedural deadlines. Furthermore, the high electoral court, the TSE, is formed by judges from the Supreme Court and Superior Court of Justice (STJ), as well as by lawyers. They combine their activities in the courts where they belong permanently with the electoral service, which raises concerns such as the fact that the STF occasionally reviews decisions from the Superior Electoral Court (TSE) – thus the same judge will seat in both cases, deciding and reviewing decision in which he or she have already voted;

**2. Revolving doors:** a further concerning issue relates to the regular presence of lawyers as electoral judges. Each of the 27 state Electoral Courts and the TSE have assigned seats for electoral lawyers who become temporary judges and, after two years, return to their regular activity as lawyers. The revolving door at the Electoral Justice recurrently raises questions as to the independence of lawyer-judges who already acted as council, for instance, of the same party involved in a case presented before the Court.

Needless to mention, the institutional design of the Electoral Justice, lacking its own career judges and with rotating positions, short terms for judges and revolving doors of lawyers-judges is far from ideal to deal with complex crimes of corruption, related or not to electoral crimes. Furthermore, the two branches are asymmetric when infrastructure is considered. The Federal Justice is well staffed and has been going through an important process of training and specialization over decades that has allowed it to investigate and prosecute complex cases of organized crime, such as corruption and money laundering, with greater efficiency, particularly via specialized courts.

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<sup>94</sup> <https://www.bbc.com/news/world-latin-america-37346531>



## SPECIAL JURISDICTION FOR POLITICIANS AND AUTHORITIES

In November 2021, the Second Panel of the Supreme Court decided to maintain the special jurisdiction<sup>95</sup> granted to Senator Flávio Bolsonaro, President Bolsonaro's oldest son, by the Criminal Chamber of the Court of Justice of Rio de Janeiro (TJ-RJ). The Panel upheld, by 3 votes to 1, the second instance decision to withdraw the investigation from a first instance judge who had been issuing decisions against the congressman's interest. The Supreme Court had, previously, set a binding jurisprudence according to which special jurisdictions should be only considered for cases in which the alleged crime had been committed during the same political term held by the politician and related to its political activity. Rio State court's decision, however, favored Senator Flávio Bolsonaro by granting him the special jurisdiction even though the alleged crime occurred in a previous mandate as state congressman. According to the recent STF decision, the state tribunal did not violate the jurisprudence of the Supreme Court since the court had established, in the 2018 precedent<sup>96</sup>, a restriction

in the use of the special jurisdiction only for members of Congress – and, as Mr. Flávio Bolsonaro's case developed while he was at the state Assembly, he should not be affected by the Supreme Court's 2018 rule. Such interpretation, however, was not explicitly made by the Supreme Court back in 2018.

At the same time, the Supreme Court's Second Panel annulled four financial intelligence reports from the COAF (Brazil's Financial Intelligence Unity) that had raised unusual financial operations in bank accounts of Mr. Flávio Bolsonaro's and his employees. Before the annulment of the reports, the Superior Court of Justice (STJ) had already annulled other evidence<sup>97</sup> collected by the prosecutors against Senator Flávio Bolsonaro under the understanding that the legal order authorizing the financial investigation could not have been issued by a first instance judge – hence the prosecution must not consider the evidence despite its incriminatory nature. Thus, the STJ and STF's decisions forced the case to resume from the beginning.

## Rule of law at risk: Bolsonaro attacks elections and the Judiciary

Last August, the relationship between the federal government and the Judiciary reached its lowest point since the beginning of President Jair Bolsonaro's government in 2019. If, at first, the president gave speeches distorting Supreme Court decisions – such as stating that the court had prevented him from acting during the pandemic —, Mr. Bolsonaro recently started to attack its judges and even indicated he would not comply with court decisions that “he considered illegal”<sup>98</sup>.

Understanding the current institutional crisis requires grasping three key moments: (i) The campaign to undermine trust in the Brazilian electoral system, (ii) Investigations by the Superior Electoral Court and the Supreme Court targeting President Bolsonaro, his family members and allies and (iii) The impeachment request against Justice Alexandre de Moraes, of the STF, presented by President Bolsonaro. Since the 2018 election, President Bolsonaro has cast doubt on the

integrity of electronic voting machines. Recently, he stated<sup>99</sup>, without providing evidence, that the 2014 presidential election was defrauded and that, had there not been fraud in the electronic voting system, he would have won the 2018 elections in the first round.

While not new, recent attacks against the electronic ballot have taken on a previously unknown dimension with calls for a “printed and auditable vote” for the October 2022 general elections (see more in section Legislative). Mr. Bolsonaro even suggested that, if Congress did not pass a constitutional amendment to include the printed vote, he might not run. Political analysts believe that such questioning is part of a strategy to erode public confidence in the electoral system and to facilitate a possible challenge to the results if President Bolsonaro fails to win. On August 10th, the Chamber of Deputies rejected<sup>100</sup> the proposed constitutional amendment to enable the printed vote.

<sup>95</sup> <https://www1.folha.uol.com.br/poder/2021/11/stf-mantem-foro-especial-de-flavio-bolsonaro-em-investigacao-de-rachadinha.shtml>

<sup>96</sup> <https://g1.globo.com/politica/noticia/stf-decide-por-unanimidade-restringir-foro-privilegiado-para-deputados-e-senadores.ghtml>

<sup>97</sup> <https://www.dw.com/pt-br/stj-anula-quebra-do-sigilo-de-flavio-bolsonaro-no-caso-das-rachadinhas/a-56667969>

<sup>98</sup> <https://www.metropoles.com/colunas/igor-gadella/bolsonaro-estaria-decidi-do-a-descumprir-decisoes-do-stf>

<sup>99</sup> <https://www.cnnbrasil.com.br/politica/bolsonaro-volta-a-dizer-que-apresentara-provas-de-fraude-nas-eleicoes-de-2014/>

<sup>100</sup> <https://www.camara.leg.br/noticias/792343-camara-rejeita-proposta-que-tornava-obrigatorio-o-voto-impresso/>

In response to systematic attacks against the electronic voting system, both the Superior Electoral Court (TSE) and the Supreme Court (STF) reacted with unprecedented institutional unity. At the beginning of August, the TSE opened an investigation<sup>101</sup> into President Bolsonaro's attacks against the electoral system, unlocking a legal confrontation that could cast a shadow over Mr. Bolsonaro's eligibility for the 2022 elections. If the ability of the Prosecutor-General to investigate crimes seems obstructed by the loyalty of Mr. Augusto Aras to the president (see more in the Public Prosecutor's Office section), and the ability of the Chamber of Deputies to investigate impeachable crimes ever more unlikely because of the powerful bargain over the "secret budget" (see more in section Legislative), the Electoral Justice may have a timely impact on President Bolsonaro's electoral dispute.

In addition to the TSE inquiry, the Supreme Court has decided to investigate<sup>102</sup> Mr. Bolsonaro under the "Fake News" inquiry already underway. The rapporteur, Justice Alexandre de Moraes, welcomed a TSE request to examine dissemination of disinformation by the president. According to Justice Moraes, Mr. Bolsonaro's attacks on Brazil's electronic voting system could lead to criminal charges for defamation, encouraging criminal activity, criminal association and false denunciation.

Both investigations potentially intimidate the president, and could produce legal results down the road. The TSE will look for evidence ranging from abuse of political power to corruption, while assessing whether the president has misused the media. The inquiry can carry out inspections, hear testimony from authorities and breach confidentiality, among other measures. The result could be ineligibility for President Bolsonaro.

Also in August, President Bolsonaro submitted a request<sup>103</sup> to the Senate to open an impeachment procedure against STF Justice Alexandre de Moraes, amid growing tension

between the Executive and the Judiciary. Senate President Rodrigo Pacheco, however, rejected the request<sup>104</sup> and criticized the gesture.

The president announced that he would present another request, this time against Justice Luis Roberto Barroso, also from the STF, whom he called an "imbecile" for his actions as president of the TSE. Representative Eduardo Bolsonaro, one of the president's sons, did present a request before Justice Moraes to investigate Justice Barroso within the "Fake News" inquiry for allegedly suppressing documents and giving false testimony. The request was rejected for lack of evidence<sup>105</sup>. President Bolsonaro alleged that Justices Moraes and Barroso exceeded "constitutional limits with acts", and that he could retaliate beyond constitutional boundaries<sup>106</sup>, threatening Brazil's democratic system.

On September 7th, Brazilian National Day, President Jair Bolsonaro's supporters took to the streets with antidemocratic slogans<sup>107</sup> demanding military intervention and the removal of judges from the Supreme Court. The protests were ignited, three weeks before, by a message<sup>108</sup> sent by the president to ministers of his cabinet, friends and allies where he urged supporters to use the National Day as a demonstration of strength and support for himself and the armed forces against a fictitious "coup" supposedly orchestrated by the Judiciary and 'leftist' parties with international influence. President Bolsonaro used the opportunity, once again, to attack the Supreme Court, escalating the ongoing constitutional crisis. During the protests, the president threatened to disobey judicial decisions<sup>109</sup>, declared he would never be arrested and attacked Justice Alexandre de Moraes.

TI Brazil condemned the wave of attacks<sup>110</sup> against the Judiciary that peaked on September 7th, as the "most serious attempt to intimidate its democratic institutions since the end of the military dictatorship".

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<sup>101</sup> <https://www.conjur.com.br/2021-ago-02/tse-instaura-inquerito-envia-noticia-crime-stf-bolsonaro>

<sup>102</sup> <https://www.bbc.com/portuguese/brasil-58095228>

<sup>103</sup> <https://noticias.uol.com.br/politica/ultimas-noticias/2021/08/20/bolsonaro-pedido-impeachment-moraes-stf.htm>

<sup>104</sup> <https://www.migalhas.com.br/quentes/350713/pacheco-decide-rejeitar-pedido-de-impeachment-de-alexandre-de-moraes>

<sup>105</sup> <https://oglobo.globo.com/politica/eduardo-bolsonaro-pediou-ao-stf-investigacao-contrabarroso-mas-moraes-rejeitou-arquivou-25172109>

<sup>106</sup> <https://www1.folha.uol.com.br/poder/2021/08/bolsonaro-insiste-em-ameaca-golpista-chama-moraes-de-ditatorial-e-diz-que-a-hora-dele-vai-chegar.shtml>

<sup>107</sup> <https://www.correiobraziliense.com.br/politica/2021/09/4948012-na-vespera-do-7-de-setembro-manifestantes-mostram-apoio-a-bolsonaro.html>

<sup>108</sup> <https://www.brasil247.com/brasil/urgente-bolsonaro-convoca-seus-seguidores-para-golpe-de-estado-no-dia-7-de-setembro>

<sup>109</sup> <https://www1.folha.uol.com.br/poder/2021/09/na-paulista-bolsonaro-repete-ameacas-golpistas-ao-stf-e-diz-que-canalhas-nunca-irao-prende-lo.shtml>

<sup>110</sup> <https://transparenciainternacional.org.br/posts/seqestro-e-corrupcao-da-democracia/>

# FEDERAL GOVERNMENT

In the past year, President Jair Bolsonaro's government has been under pressure from multiple investigations targeting the president himself, his family members or political allies; from the Federal Senate's Covid-19 Parliamentary Committee of Inquiry (CPI) that attributed crimes to the president himself, three of his sons and several members and former members of his cabinet; and from a plausible threat of losing the reelection in the 2022 general elections after former President Luiz Inácio Lula da Silva was cleared by the Supreme Court to run for government.

Against this backdrop, President Bolsonaro has repeatedly attacked the press (see more in section

Civic Space) and lashed out at Brazilian electoral process, attacking the electoral system's reliability and the institutions involved in securing its correct implementation – explicitly the Superior Electoral Court (TSE) and the Supreme Court (STF). His government has also cut down transparency by curtailing the Access to Information Law (LAI) and using an obscure arrangement to distribute amendments to the federal budget to parliamentarians in exchange for political support (the so-called “secret budget”, see more in the Legislative section). Furthermore, episodes of political interference have proliferated and should be seen as a serious process of political capture of the Brazilian state.

## ATTACKS TO THE ACCESS TO INFORMATION LAW

Repeated episodes of breaches to the Access to Information Law (LAI) have been reported in the past year, following previous attempts<sup>111</sup> by the government to curtail transparency guaranteed by the law. Refusals for information requests are recurrent, and often inadequately justified. Journalists, researchers and activists have all raised concerns that a deliberate strategy and clear orientation from the federal government to defraud the LAI are in place. In July 2021, reports stated that the federal government had imposed 100 years of secrecy<sup>112</sup> over data regarding access of two of President Jair Bolsonaro's sons to the Palácio do Planalto, the Presidential office building. City councilor Carlos Bolsonaro and representative Eduardo Bolsonaro are public agents with great influence over the federal government who have reportedly been interfering in matters such as the government's response to the COVID-19 pandemic, a public procurement procedure to hire digital surveillance tools<sup>113</sup> and protesting against Supreme Court decisions<sup>114</sup>. Revista Crusoé, using the Access to Information Law, made an information request regarding their visits to government headquarters<sup>115</sup>. The request was denied under the justification of protecting personal data, thus undermining transparency and ignoring public interest regarding the data.

In September, two government officials recommended that the Ministry of Health omit existing information<sup>116</sup> about the so-called “secret budget” (see more in section Legislative) requested by a journalist under the LAI, claiming that the “political risk” of releasing the information should be considered. These comments came to air following a mistake in the response sent to the journalist. This episode clearly violates Article 32 of the LAI, which determines that refusing to provide information required under the law, deliberately delaying its provision or intentionally providing it incorrectly, incompletely or inaccurately, configures unlawful conduct by a public agent. Transparency legislation exists to guarantee the provision of public information, regardless of the government's will to release data, or the political risk of publishing the information.

There is concern that LAI violations will no longer amount to serious misconduct in public office. Congress has approved changes to the current Administrative Improbability Law (see more in section Legislative), increasing impunity and removing misconduct regarding the LAI from the scope of the law.

<sup>111</sup> <https://transparenciainternacional.org.br/retrocessos/>

<sup>112</sup> <https://g1.globo.com/politica/noticia/2021/07/31/governo-impoe-sigilo-de-cem-anos-sobre-crachas-de-acesso-dos-filhos-de-bolsonaro-ao-planalto.ghtml>

<sup>113</sup> <https://noticias.uol.com.br/politica/ultimas-noticias/2021/05/19/briga-entre-militares-e-carlos-bolsonaro-racha-orgaos-de-inteligencia.htm>

<sup>114</sup> <https://www1.folha.uol.com.br/poder/2020/05/em-live-com-avos-de-acao-do-stf-eduardo-bolsonaro-defende-reacao-energica-a-moraes-e-celso.shtml>

<sup>115</sup> <https://crusoec.com.br/diario/governo-impoe-sigilo-de-100-anos-sobre-cracha-de-carluxo/>

<sup>116</sup> <https://politica.estadao.com.br/noticias/geral,governo-frauda-lei-de-acesso-a-informacao-por-risco-politico,70003843822>

# Political interference in crucial institutions

Reportedly, the president's family acted to co-opt and interfere with institutions<sup>117</sup> such as the Brazilian Intelligence Agency (ABIN), the Federal Reserve (Receita Federal) and the Institutional Security Office (GSI) to collect evidence to undermine a report made by the national Financial Intelligence Unit (COAF) that triggered a criminal investigation<sup>118</sup> into Senator Flávio Bolsonaro, one of the president's sons. ABIN is said to have produced at least two reports<sup>119</sup>, handed over to Mr. Flávio Bolsonaro, in order to help the senator's defense lawyers crush his lawsuit. According to prosecutors, when Mr. Flávio Bolsonaro was a parliamentarian in the State of Rio de Janeiro, he led a criminal organization<sup>120</sup> that pocketed up to 90% of his employee's salaries and used this money to pay for personal expenses and invest in real estate<sup>121</sup>. Senator Flávio Bolsonaro has refuted the charges<sup>122</sup> alleging the existence of a criminal organization inside the Federal Reserve, responsible for illegally obtaining tax data from politicians, businessmen and public employees and handling them to control institutions, such as the COAF.

In February 2022, it was reported<sup>123</sup> that the accusations made by Mr. Flávio Bolsonaro against the Federal Reserve and the COAF led the Federal Reserve to appoint a team of five employees to investigate the matter over four months, from October 2020 to February 2021. The investigation, that concluded there had been no illegality, was a request made by Senator Flávio Bolsonaro's defense team to the then head of the Federal Reserve, Mr. José Tostes Neto.

In December 2021, Mr. Tostes Neto was discharged reportedly due to a clash<sup>124</sup> with President Bolsonaro's

family over the appointment of a new inspector general for the institution.

Worrying episodes of interference have also increasingly been reported in the Federal Police (PF), even more so after the resignation of former minister of Justice Sergio Moro<sup>125</sup>, in April 2020. A former Operation Carwash judge, Mr. Moro left government accusing President Bolsonaro of trying to interfere with the PF<sup>126</sup> by seeking to change the corporation's Director-General for someone who the president could call for updates on ongoing investigations. Mr. Moro also declared that the president wished to make changes<sup>127</sup> to the PF command in two states – including in Rio de Janeiro, zone of influence of the Bolsonaro family.

Mr. Moro's resignation was triggered by President Bolsonaro's decision to fire the PF's then Director-General, Maurício Valeixo<sup>128</sup>, despite an objection from the former Carwash judge. President Bolsonaro tried to replace Mr. Valeixo with Mr. Alexandre Ramagem, head of the Brazilian Intelligence Agency (ABIN) and with close ties with the Bolsonaro family<sup>129</sup>, but the appointment was barred by the Supreme Court Justice Alexandre de Moraes<sup>130</sup>, under the concern the appointment had not observed constitutional principles<sup>131</sup> of impersonality, morality and the public interest. Mr. Valeixo was, then, replaced by Mr. Rolando Souza, who, after only a few hours in office, did change the head of the Federal Police in Rio de Janeiro<sup>132</sup>. Mr. Souza, however, was replaced less than a year later. To replace him, the government appointed Mr. Paulo Maiurino, who has a strong political background<sup>133</sup>, with over ten years occupying positions of trust outside the Federal

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<sup>117</sup> <https://oglobo.globo.com/epoca/guilherme-amado/a-abin-a-operacao-para-defender-fb-enterrar-caso-queiroz-24791200>

<sup>118</sup> <https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/11/09/rachadinhas-entenda-suspeitas-do-mp-sobre-flavio-bolsonaro.ghtml>

<sup>119</sup> <https://oglobo.globo.com/epoca/guilherme-amado/abin-fez-relatorios-para-orientar-defesa-de-flavio-bolsonaro-na-anulacao-de-caso-queiroz-24791912>

<sup>120</sup> <https://www1.folha.uol.com.br/poder/2020/11/ex-assessora-de-flavio-bolsonaro-admite-rachadinha-e-entrega-de-dinheiro-a-queiroz.shtml>

<sup>121</sup> <https://www1.folha.uol.com.br/poder/2020/11/rachadinha-aumentou-patrimonio-de-flavio-bolsonaro-em-r-1-milhao-diz-promotoria.shtml>

<sup>122</sup> <https://oglobo.globo.com/epoca/guilherme-amado/defesa-de-flavio-leva-bolsonaro-suspeita-que-pode-anular-caso-queiroz-governo-se-mobiliza-para-encontrar-prova-24706926>

<sup>123</sup> <https://www1.folha.uol.com.br/poder/2022/02/flavio-bolsonaro-mobilizou-receita-contrario-caso-da-rachadinha-mostram-documentos-ineditos.shtml>

<sup>124</sup> <https://www.poder360.com.br/governo/em-atrito-com-a-familia-bolsonaro-jose-tostes-deve-deixar-a-receita-federal/>

<sup>125</sup> <https://g1.globo.com/jornal-nacional/noticia/2020/04/24/sergio-moro-pede-demissao-do-ministerio-da-justica.ghtml>

<sup>126</sup> <https://g1.globo.com/jornal-nacional/noticia/2020/04/24/sergio-moro-pede-demissao-do-ministerio-da-justica.ghtml>

<sup>127</sup> <https://valor.globo.com/politica/noticia/2020/05/08/moro-policia-federal-de-pe-tambem-foi-alvo-de-reclamacoes-de-bolsonaro.ghtml>

<sup>128</sup> <https://g1.globo.com/politica/noticia/2020/04/24/bolsonaro-exonera-diretor-geral-da-pf.ghtml>

<sup>129</sup> <https://g1.globo.com/politica/noticia/2020/04/28/novo-diretor-geral-da-pf-alexandre-ramagem-esta-na-corporacao-desde-2005-e-e-amigo-da-familia-bolsonaro-veja-perfil.ghtml>

<sup>130</sup> <https://g1.globo.com/politica/blog/andrea-sadi/post/2020/04/29/ministro-do-stf-suspende-nomeacao-de-alexandre-ramagem-para-a-diretoria-geral-da-pf.ghtml>

<sup>131</sup> <https://www1.folha.uol.com.br/poder/2020/04/alexandre-de-moraes-do-stf-suspende-nomeacao-de-ramagem-na-policia-federal.shtml>

<sup>132</sup> <https://www.cnnbrasil.com.br/nacional/novo-diretor-geral-da-pf-troca-superintendente-no-rio-de-janeiro/>

<sup>133</sup> [https://crusoe.com.br/edicoes/154/a-pf-dominada/?utm\\_source=crs-site&utm\\_medium=crs-login&utm\\_campaign=redir](https://crusoe.com.br/edicoes/154/a-pf-dominada/?utm_source=crs-site&utm_medium=crs-login&utm_campaign=redir)

Police, acting as special aide, secretary or councillor in the Chamber of Deputies, and for the state governments of Agnelo Queiroz, (Distrito Federal), Geraldo Alckmin (São Paulo) and Wilson Witzel (Rio de Janeiro).

Mr. Maiurino lasted until February 2022<sup>134</sup> as head of the corporation, when the Bolsonaro government made its fourth change to the Federal Police's command. The change occurred reportedly because the Justice Minister, Mr. Anderson Torres, was bothered by Mr. Maiurino's proximity to Supreme Court judges.

Mr. Maiurino's connections with the judiciary, however, were said to be one of his great political assets, as Mr. Bolsonaro and his entourage face numerous investigations and inquiries, and an often-conflicting relationship. He has worked with Justice Antonio Dias Toffoli, of the Supreme Court, and more recently with Justice Humberto Martins, of the Superior Court of Justice (STJ). In the latter, Mr. Maiurino acted as police officer, appointed by Justice Martins, responsible for day-to-day proceedings regarding the controversial inquiry<sup>135</sup> opened by Justice Martins to investigate whether Operation Carwash prosecutors were illegally monitoring Justices of the Court – an inquiry later suspended by the Supreme Court and closed by Justice Martins himself<sup>136</sup> after confirmed he found no evidence of criminal conduct.

A major concern under Mr. Maiurino's rule was precisely how his political connections could influence key positions in the corporation and, consequently, crucial investigations. Mr. Maiurino substituted the head of the sector responsible for investigations into politicians – a police officer who identified illegalities in the STJ's inquiry against Carwash prosecutors<sup>137</sup> – by the Supreme Court and the Superior Court of Justice. Mr. Maiurino also changed the head of the Federal Police in São Paulo, appointing Rodrigo Bartolamei, a federal police officer previously allocated to the Institutional Security Office (GSI), an office with close ties to President Bolsonaro. The appointment and its potential to influence investigations have, reportedly, raised concerns from the governor of São Paulo, João Doria<sup>138</sup>, one of Mr. Bolsonaro's political adversaries.

Mr. Maiurino also replaced the Federal Police chief in Amazonas, Mr. Alexandre Saraiva, after the former head of the corporation in the state claimed that the Minister of Environment, Ricardo Salles, interfered with a criminal investigation into the largest seizure of illegally harvested logs in Brazilian history. In April, Mr. Saraiva accused the minister of influence peddling and obstructing criminal investigations. He explained that Mr. Salles was acting directly to undermine the investigation<sup>139</sup> in order to protect individuals suspected of operating the illegal logging scheme.

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<sup>134</sup> <https://oglobo.globo.com/politica/governo-troca-mais-uma-vez-diretor-geral-da-policia-federal-1-25410333>

<sup>135</sup> <https://oglobo.globo.com/brasil/novo-diretor-geral-da-pf-era-delegado-responsavel-por-inquerito-do-stj-contra-procuradores-da-lava-jato-1-24959178>

<sup>136</sup> <https://oglobo.globo.com/politica/stj-arquivo-inquerito-sobre-atuacao-de-procuradores-da-operacao-lava-jato-25394510>

<sup>137</sup> <https://oglobo.globo.com/brasil/direcao-da-pf-substitui-delegado-que-apontou-ilegalidades-em-inquerito-do-stj-contra-lava-jato-1-24970472>

<sup>138</sup> <https://crusoe.com.br/diario/por-que-o-novo-chefe-da-pf-em-sp-preocupa-doria/>

<sup>139</sup> <https://veja.abril.com.br/wp-content/uploads/2021/04/PFAM.pdf>



## INVESTIGATIONS INTO ENVIRONMENTAL CRIMES IN THE HEART OF GOVERNMENT

Another operation named Akuanduba was made public, in May 2021, when Supreme Court Justice Alexandre de Moraes approved a search warrant and lifted bank and fiscal secrecy<sup>140</sup> of 23 individuals and companies including the then Minister of Environment, Ricardo Salles, and Mr. Eduardo Bim, President of IBAMA (Brazilian Institute of Environment and Renewable Natural Resources). The decision was based on a police report suggesting that, after meeting with representatives of timber companies, officials from IBAMA and the Ministry of Environment changed rules previously in place, issuing certificates to retroactively release thousands of timber shipments seized by European and North-American authorities as they did not meet exportation requirements and showed signs of coming from illegal logging operations.

The Federal Police also collected testimonies suggesting that IBAMA's management was purging the agency by dismantling departments responsible for controls and investigations. According to the police's investigation<sup>141</sup>, public servants who opposed the institution's directors or cooperated with the

Federal Police have faced retaliation. Furthermore, communications belonging to an advisor of Mr. Salles showed that the advisor used his influence to directly defend interests of private companies by pressuring public servants from IBAMA<sup>142</sup>. Acts of omission, influence peddling, bribery, money laundering, criminal organization, illicit timber trading and smuggling, among other crimes, have been target of the Federal Police's investigation.

Mirroring the fate of the head of the Federal Police in the state of Amazonas, the police officer responsible for Operation Akuanduba and the head of the Federal Police's division for repression of environmental crimes were quickly removed<sup>143</sup> from their positions after having coordinated and authorized the investigation.

The then Minister of Environment eventually stepped down from the Ministry of Environment, reportedly out of fear that Supreme Court Justice Alexandre de Moraes was on the verge of ordering his pretrial detention to prevent any attempt by Mr. Salles to obstruct the operation Akuanduba<sup>144</sup>.

Other recent interferences in the Federal Police structure have raised concerns that they were meant to protect the president's political inner circle or other high-ranking authorities. It has been reported that the Federal Police's leadership has barred promotions of chief police officers who oversaw investigations into then Minister of Environment Ricardo Salles<sup>145</sup> and a request of inquiry regarding Justice Toffoli<sup>146</sup>, of the Supreme Court. In October 2021, Mr. Maiurino made a change to the head of the corporation in the Federal District<sup>147</sup>, where sensitive inquiries are concentrated, such as investigations targeting President Bolsonaro himself (the so called "Fake News" inquiry<sup>148</sup>), the president's son Renan Bolsonaro<sup>149</sup> and government supporters<sup>150</sup>.

Permeating changes conducted by Mr. Maiurino, is the concern that the new Federal Police Director-General

wishes to impose centralization previously uncommon to the organization's structure, and that political decisions come from the top of the corporation. Last May, reports stated that Mr. Maiurino, in a document sent to the Supreme Court, raised the possibility of changing the Federal Police's internal norms<sup>151</sup> in order to curtail the autonomy of chief federal police officers when investigating politicians with privileged forum in the Supreme Court or the Superior Court of Justice. This benefits authorities such as the president and his ministers, congressmen, some members of the Judiciary and state governors, with the privilege of having criminal offenses heard by the superior courts of Justice rather than by first instance judges. Reportedly, the idea would be to establish "better supervision over investigations"<sup>152</sup> so that they also reflected an "institutional position".

<sup>140</sup> [https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2021/05/decisaomeioambiente2\\_190520213859.pdf](https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2021/05/decisaomeioambiente2_190520213859.pdf)

<sup>141</sup> <https://oglobo.globo.com/brasil/meio-ambiente/salles-amparador-da-devastacao-da-destruicao-diz-servidor-do-ibama-que-prestou-depoimento-pf-25038520>

<sup>142</sup> <https://www1.folha.uol.com.br/ambiente/2021/06/assessor-de-salles-alvo-de-operacao-da-pf-e-exonerado-do-ministerio-do-meio-ambiente.shtml>

<sup>143</sup> <https://blogs.oglobo.globo.com/malu-gaspar/post/diretor-da-policia-federal-afasta-mais-um-delegado-da-divisao-que-investigou-ricardo-salles.html>

<sup>144</sup> <https://politica.estadao.com.br/noticias/geral,ricardo-salles-pediu-demissao-apos-saber-que-seria-pres0,70003759829>

<sup>145</sup> <https://www1.folha.uol.com.br/ambiente/2021/06/direcao-da-pf-barra-promocao-de-delegado-de-caso-salles-para-cargo-de-chefia.shtml>

<sup>146</sup> <https://www1.folha.uol.com.br/colunas/painel/2021/09/cupula-da-pf-barra-nomeacao-de-ex-coordenador-de-combate-a-corrupcao-para-cargo-no-rs.shtml>

<sup>147</sup> <https://www1.folha.uol.com.br/colunas/painel/2021/10/diretor-geral-da-pf-decide-trocar-chefe-do-orgao-no-df-onde-estao-inqueritos-de-fake-news-e-jair-renan.shtml>

<sup>148</sup> <https://g1.globo.com/politica/noticia/2021/08/04/bolsonaro-e-incluido-no-inquerito-das-fake-news-os-principais-pontos-da-decisao-de-moraes.ghtml>

<sup>149</sup> <https://www1.folha.uol.com.br/poder/2021/09/renan-bolsonaro-abriu-empresa-com-ajuda-de-lobista-de-investigada-pela-cpi-mostram-mensagens.shtml>

<sup>150</sup> <https://oglobo.globo.com/politica/pf-diz-ao-stf-que-instaurou-inquerito-sobre-organizacao-criminosa-digital-contra-democracia-1-25113365>

<sup>151</sup> <https://www1.folha.uol.com.br/colunas/painel/2021/05/chefe-da-pf-quer-tirar-autonomia-de-delegados-em-casos-de-autoridades-com-foro.shtml>

<sup>152</sup> <https://www1.folha.uol.com.br/colunas/painel/2021/05/chefe-da-pf-quer-tirar-autonomia-de-delegados-em-casos-de-autoridades-com-foro.shtml>

Mr. Maiurino's proposal was sent to the Supreme Court after an episode in which a chief police officer asked the Court for authorization to investigate Justice Dias Toffoli<sup>153</sup>, from the Supreme Court, on suspicion of receiving R\$ 4 million (US\$ 716,000 in today's rate) to favor mayors from Rio de Janeiro in their lawsuits, an accusation made by former governor of Rio de Janeiro Sérgio Cabral<sup>154</sup>, convicted and imprisoned for several charges of corruption and money laundering. In May, Justice Edson Fachin rejected the request<sup>155</sup> to open an investigation into Justice Dias Toffoli.

In November 2021, another episode raised concerns of political interference in the federal government, this time regarding the Department of Assets Recovery and International Legal Cooperation (DRCI, under the Ministry of Justice). The chief police officer Sílvia Amélia Fonseca lost her position as director of the DRCI<sup>156</sup> soon after she forwarded to the United States a request from the Supreme Court for the extradition of a blogger allied to President Bolsonaro, Mr. Allan dos Santos, target of two inquiries into the dissemination of fake news and attacks on democratic institutions. Reports state that the National Justice Secretary, Vicente Santini, who has close ties to

the Bolsonaro family, tried to delay Mr. Santos' extradition process<sup>157</sup>, but was caught out by Ms. Fonseca, who complied with the standard procedure of dispatching the Supreme Court decision to the United States. In testimony to the Federal Police, Ms. Fonseca and two other employees of the DRCI declared having received pressure from high up within the Ministry of Justice<sup>158</sup> regarding Mr. Santos' extradition, a situation previously unknown in the department. Following the dispatch of Mr. Santos' extradition documents to the United States, Mr. Bolsonaro's government also dismissed the head of Ministry of Justice's special international advisory unit<sup>159</sup> and a chief police officer that worked with Interpol<sup>160</sup>.

This intervention demonstrates fragility in the DRCI, that may affect Brazil's stance on international cooperation. Being a department within the Ministry of Justice, the DRCI lacks institutional and operational autonomy and is subject to political pressure. Not only does this impact international cooperation in general, but may also harm the country's capacity to react and take action against transnational organized crime, especially corruption and money laundering.

## Federal Senate's commission into Covid-19 pandemic

After six months of investigations, last October, the Federal Senate's Parliamentary Commission of Inquiry (CPI) investigating mismanagement of the Covid-19 pandemic by President Jair Bolsonaro's government, ended. The CPI recommended criminal investigations<sup>161</sup> targeting 78 people (including President Bolsonaro, three of the president's sons, ministers and former staff of Mr. Bolsonaro's cabinet) and two private companies.

Among current members of President Bolsonaro's cabinet included in the final report is the Comptroller General, Wagner Rosário (CGU). The CPI believes Mr. Rosário should answer for nonfeasance for ignoring serious

problems in the negotiations for the purchase of the Covaxin vaccine by the Ministry of Health.

President Bolsonaro himself was implicated in nine crimes<sup>162</sup>, including crimes against humanity, epidemic associated with deaths, infractions of preventive sanitary measures and incitement to commit crime. Corruption is also included. The commission indicated that the president committed nonfeasance due to alleged inaction regarding corruption suspicions related to purchase of a Covid-19 vaccine. In January 2022, the Federal Police concluded the investigation regarding the charge of nonfeasance indicating that President Bolsonaro should

<sup>153</sup> <https://oglobo.globo.com/politica/direcao-da-pf-propoe-limitar-investigacoes-contra-autoridades-com-foro-privilegiado-1-25029920>

<sup>154</sup> <https://crusoe.com.br/diario/delegados-da-pf-esperam-represalia-com-pedido-de-inquerito-sobre-toffoli-no-stf/>

<sup>155</sup> <https://oglobo.globo.com/politica/tudo-que-pesa-contra-sergio-cabral-20925848>

<sup>156</sup> <https://oglobo.globo.com/politica/fachin-arquiva-pedido-de-investigacao-contra-toffoli-proibe-apuracao-da-pf-baseada-em-delacao-de-cabral-25019153>

<sup>157</sup> <https://blogs.oglobo.globo.com/malu-gaspar/post/secretario-de-justica-tentou-interferir-no-processo-de-extradicao-do-blogueiro-allan-dos-santos.html>

<sup>158</sup> <https://oglobo.globo.com/politica/funcionarios-do-ministerio-da-justica-relatam-pf-pessoas-sobre-extradicao-de-allan-dos-santos-25309273>

<sup>159</sup> <https://oglobo.globo.com/politica/apos-demissao-de-delegada-envolvida-em-extradicao-de-allan-dos-santos-assessora-especial-do-ministerio-da-justica-deve-ser-exonerada-25292509>

<sup>160</sup> <https://oglobo.globo.com/politica/pf-exonera-delegada-da-interpol-que-atuou-em-ordem-de-prisao-de-blogueiro-bolsonarista-25301449>

<sup>161</sup> <https://www.poder360.com.br/congresso/cpi-da-covid-aprova-relatorio-final-com-80-pedidos-de-indiciamento/>

<sup>162</sup> [https://g1.globo.com/politica/cpi-da-covid/noticia/2021/10/26/cpi-da-covid-aprova-relatorio-atribui-nove-crimes-a-bolsonaro-e-pede-80-indiciamentos.ghtml?utm\\_source=meio&utm\\_medium=email](https://g1.globo.com/politica/cpi-da-covid/noticia/2021/10/26/cpi-da-covid-aprova-relatorio-atribui-nove-crimes-a-bolsonaro-e-pede-80-indiciamentos.ghtml?utm_source=meio&utm_medium=email)

not be prosecuted<sup>163</sup>. In February, the Prosecutor-General, Mr. Augusto Aras, recommended to the Supreme Court the filing of the investigation<sup>164</sup>.

A majority of CPI members approved the final report. Potential charges against the President were distributed to

the Public Prosecutor's Office (see more in section Public Prosecutor's Office), the Chamber of Deputies, Justices at the Supreme Court and the International Criminal Court. There is, however, a lack of belief that the president will be indicted, at least in the Brazilian territory.

## Setbacks to the environmental governance

While deforestation rates have been escalating in the country, efforts to hold accountable environmental abuses have plummeted.

Deforestation in the Amazon rainforest has surged to reach 13,235 km<sup>2</sup> in 2021<sup>165</sup>, the highest figure since 2006 according to the Institute of Spatial Research (INPE). A similar trend has been observed in the Cerrado, with deforestation reaching 8,531 km<sup>2</sup><sup>166</sup>.

At the same time, the number of environmental infraction notices has reached a new low with only 2.534 notices in 2021, a decrease of 40% in comparison with the period before President Bolsonaro took office and the lowest figure in twenty years<sup>167</sup>. Even when infractions are effectively reported by environmental authorities, sanctions are generally not effectively executed. A study by WWF Brazil and the Climate Policy Initiative<sup>168</sup>, indicated that 98% of the infraction notices issued by IBAMA, the main federal agency for the inspection and the enforcement of environmental norms, were paralyzed at least until May 2021. The first reason for this dysfunction was the institution, in 2019, of a conciliation mechanism for environmental infractions, adding one more step to the administrative process of collecting fines, without establishing the necessary capacities to conduct conciliation audiences. In early 2021, the then Minister of the Environment, Mr. Ricardo Salles, also altered<sup>169</sup> twice in a month the procedures for environmental administrative sanctions, jeopardizing the smooth

processing of such offenses by imposing unrealistic operational criteria to fine environmental offenders.

The generalized impunity is particularly concerning in the Brazilian context as virtually all deforestation (99%) is illegal, according to a recent report from MapBiomass<sup>170</sup>. However, environmental crimes are not limited to illegal deforestation. 38% and 55% respectively of the areas exploited for its wood in the states of Mato Grosso<sup>171</sup> and Pará<sup>172</sup>, two of the main timber producers, do not have necessary permits, which indicates illegal logging activities. Similarly, Instituto Escolhas estimates that 47% of the gold mined in Brazil<sup>173</sup> show signs of having illegal origins. This is particularly concerning, as most illegal mining activities occur in Conservation Units and Indigenous Territories<sup>174</sup> and lead to serious consequences<sup>175</sup> such as environmental degradation, conflicts, right violations and public health issues.

It is important to point that fraud, corruption and asset laundering are necessary to dissimulate the illicit nature of the products of environmental crimes and commercialize such goods on national and international markets. This includes<sup>176</sup>, for instance, forged documentation of origin, bribery of environmental inspectors, fraud in transport declarations, influence peddling to obstruct law enforcement investigations, collusion with business partners to turn a blind eye to illegalities, laundering of the proceeds of environmental crimes and policy capture to weaken regulations and control systems. However, when

<sup>163</sup> <https://www.otempo.com.br/politica/governo/pf-conclui-que-bolsonaro-nao-cometeu-crime-no-caso-covaxin-1.2604769>

<sup>164</sup> [https://www.em.com.br/app/noticia/politica/2022/02/18/interna\\_politica,1346120/pgr-pede-arquivamento-de-inquerito-sobre-prevaricacao-de-bolsonaro.shtml](https://www.em.com.br/app/noticia/politica/2022/02/18/interna_politica,1346120/pgr-pede-arquivamento-de-inquerito-sobre-prevaricacao-de-bolsonaro.shtml)

<sup>165</sup> <http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>

<sup>166</sup> <https://www.gov.br/inpe/pt-br/assuntos/ultimas-noticias/nota-tecnica-prodes-cerrado-2021>

<sup>167</sup> <https://www.oc.eco.br/wp-content/uploads/2022/02/A-conta-chegou-HD.pdf>

<sup>168</sup> <https://www.wwf.org.br/?81088/Estudo-do-CPIPUC-Rio-e-WWF-Brasil-aponta-que-98-das-multas-ambientais-estao-paradas>

<sup>169</sup> <https://oglobo.globo.com/sociedade/salles-revisa-norma-que-paralisou-multas-ambientais-mas-fiscalizacao-segue-travada-24994964>

<sup>170</sup> [https://s3.amazonaws.com/alerta.mapbiomas.org/rad2020/RAD2020\\_MapBiomassAlerta\\_FINAL.pdf](https://s3.amazonaws.com/alerta.mapbiomas.org/rad2020/RAD2020_MapBiomassAlerta_FINAL.pdf)

<sup>171</sup> <https://www.icv.org.br/website/wp-content/uploads/2021/10/tf-15-mapeamento-ilegalidade-exploracao-madeira-mt-2020-icv-1.pdf>

<sup>172</sup> <https://imazon.org.br/imprensa/mais-da-metade-da-area-com-exploracao-madeira-no-para-nao-foi-autorizada-pelos-orgaos-ambientais/>

<sup>173</sup> <https://www.escolhas.org/wp-content/uploads/Ouro-200-toneladas.pdf>

<sup>174</sup> <https://www.greenpeace.org/brasil/blog/em-meio-a-covid-72-do-garimpo-na-amazonia-foi-em-areas-protegidas/>

<sup>175</sup> <https://www.brasildefato.com.br/2020/07/31/garimpo-gera-problemas-sanitarios-ambientais-e-culturais-em-terras-indigenas>

<sup>176</sup> <https://transparenciainternacional.org.br/grilagem/>

environmental governance is weak, those practices are harder to prevent, detect and repress.

In parallel to the halt in the sanctioning activity, the federal government has packed environmental agencies with appointees with close ideological and political ties, but little experience with environmental issues. Not surprisingly, the Federal Court of Accounts (TCU) identified irregularities<sup>177</sup> in some of those appointments as they did not meet technical requirements related to academic and professional experience. Various of the appointed officials were thereafter investigated for colluding with illegal loggers<sup>178</sup> for facilitating illegal timber trade (see more above).

Harsh budget cuts have also undermined action of federal environmental agencies. In 2021, the budget effectively spent by the Ministry of the Environment and its associated agencies was the lowest in the last two decades<sup>179</sup>. Noteworthy, even when resources are allocated, they may be not effectively used. For instance, IBAMA has used only 41% of the resources<sup>180</sup> allocated by the National Congress in 2021. Furthermore, there are the international billion-dollar funds (mainly Amazônia Fund and Green Climate Fund) that could be mobilized to prevent and fight deforestation, but are currently paralyzed<sup>181</sup> due to the government's inertia.

Budget cuts have also affected the capacity of other relevant public agencies to fulfill their mission. For instance, last January, the Institute of Spatial Research (INPE) announced that it will cease to publish deforestation data<sup>182</sup> on the Cerrado biome due to a lack of funding. Data blackouts are yet another symptom of the generalized dismantling of environmental governance at the federal level. This includes the discontinuation of releasing an updated list<sup>183</sup> of environmental offenders by IBAMA. This is a crucial public database to ensure that such offenders are barred from receiving funds from financial institutions or from selling cattle raised in deforested areas to meat producers. Transparency on such data is also fundamental to foster social accountability, as civil society, activists and journalists

can use them to detect possible corruption schemes and environmental abuses.

According to the director of the association representing public servants specialized in environmental matters (ASCEMA), this dire situation is not the result of incompetency but of "intentional mismanagement"<sup>184</sup>. In fact, in early 2022, President Bolsonaro celebrated the drop in fines<sup>185</sup> for environmental misconducts despite spiking deforestation rates by boasting that "we stopped having big problems with the environmental issue, especially regarding fines. Does it have to exist? Yes, but we talked and we reduced the fines in the field by more than 80%".

Drawing from this generalized environmental mismanagement and omissions, as well as from the discourse of impunity from members of the government, the Austrian NGO AllRise, filed a petition at the International Criminal Court against President Bolsonaro and other members of his administration for crimes against humanity<sup>186</sup>. The petition connects impunity for environmental crimes, and the widespread abuses against environmental defenders and other populations living off the rainforest to the dramatic human consequences of climate change and looming collapse of the Amazon ecosystem. In its petition, the NGO accused the government of encouraging environmental crimes through systematic omission, policies and acts. Additionally, in multiple instances, the petition claimed that corrupt practices such as bribery, fraud and cronyism have led to impunity for environmental abuses and crimes against humanity.

Finally, last February, the government adopted the Decree nº10.966/2022<sup>187</sup> that established the Program for Supporting the Development of Artisanal and Small-scale Mining. The Decree is a timid response to the long-standing crisis of illegal gold mining that affects mostly the Amazon region and, in particular, Conservation Units and Indigenous Territories. For the first time, the government qualifies garimpo (mostly informal mining activities) as "artisanal and small-scale mining" activities. Although those concepts are common in international

<sup>177</sup> <https://politica.estadao.com.br/noticias/geral,nomeacoes-de-militares-por-salles-no-ibama-sao-irregulares-aponta-auditoria-do-tcu,70003510029>

<sup>178</sup> [https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2021/05/decisaomeioambiente2\\_190520213859.pdf](https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2021/05/decisaomeioambiente2_190520213859.pdf)

<sup>179</sup> <https://www.oc.eco.br/wp-content/uploads/2022/02/A-conta-chegou-HD.pdf>

<sup>180</sup> <https://www.oc.eco.br/wp-content/uploads/2022/02/A-conta-chegou-HD.pdf>

<sup>181</sup> <https://www.oc.eco.br/wp-content/uploads/2022/02/A-conta-chegou-HD.pdf>; <https://www.socioambiental.org/pt-br/noticias-socioambientais/dinheiro-paralisado-por-governo-bolsonaro-no-fundo-amazonia-chega-a-quase-r-3-bilhoes>

<sup>182</sup> <https://g1.globo.com/sp/vale-do-paraiba-regiao/noticia/2022/01/06/sem-verba-inpe-desmobiliza-equipe-de-monitoramento-do-cerrado.ghtml>

<sup>183</sup> <https://infoamazonia.org/wp-content/uploads/2021/12/Relato%CC%81rio-CGU.pdf>

<sup>184</sup> <https://infoamazonia.org/2021/12/21/estamos-em-um-verdadeiro-apagao-de-dados-afirma-fiscal-do-ibama/>

<sup>185</sup> <https://oglobo.globo.com/brasil/bolsonaro-comemora-reducao-de-80-das-multas-no-campo-paramos-de-ter-problemas-com-questao-ambiental-25357722>

<sup>186</sup> <https://www.reuters.com/article/brazil-deforestation-lawsuit-idUSL8N2R84SL>

<sup>187</sup> <https://cdn.brasildefato.com.br/documents/d73f760f96aaa2ec93e02c2d62b8cc06.pdf>

and technical fora, this reframing caused public outcry as it was perceived to be an attempt to whitewash environmental crimes. In fact, criminal networks that are well-connected politically<sup>188</sup> have long shielded themselves behind the historical picture of small informal miners using rudimentary techniques. However, such criminal networks are complex organizations that invest millions in equipment and logistics<sup>189</sup>. Unfortunately, current legislation does not establish clear criteria to exclude such activities from the scope of the program. The only criterium that defines “artisanal and small-scale mining” is whether the mined material belongs to a pre-established list, which tells little about the scale of the activities or the techniques used.

Beyond this reframing, the decree mostly establishes general objectives and an interministerial commission

to strengthen and integrate social environmental and economic policies on artisanal and small-scale mining without much detail. Among those objectives, it is worth noting that the government makes the formalization of the sector an objective. If formalization is an important tool to clearly discriminate between legitimate small-scale mining and environmental crimes and to foster good labor and socio-environmental practices, it is also a double-edged sword, as it can also provide a cover of legitimacy to organized crime groups. Beyond these broad measures, however, the decree does not set any concrete guidelines, instruments or indicators to orientate the policy.

President Bolsonaro has repeatedly positioned himself in support of illegal miners<sup>190</sup>. Therefore, it is not unreasonable to fear that the decree is little more than an attempt of window-dressing.

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<sup>188</sup> <http://emdefesadosterritorios.org/wp-content/uploads/2021/04/Resumo-Executivo-4.pdf>

<sup>189</sup> <http://www.mpf.mp.br/atuacao-tematica/ccr4/dados-da-atuacao/publicacoes/roteiros-da-4a-ccr/ManualMineraollegaldoOuronaAmazniaVF.pdf#page=88>

<sup>190</sup> <https://www.poder360.com.br/brasil/bolsonaro-visita-garimpo-ilegal-em-terra-indigena-de-roraima-oposicao-critica/>



## CIVIC SPACE

In the past year, the civic space in Brazil has been increasingly under pressure, with attacks on journalists and civil society organizations, and a decrease in social participation (see more in National Congress section) and access to information (see more in section Federal Government). According to a ranking made by the NGO Article 19, in the last five years, Brazil left a comfortable position among countries with the best rates of freedom of expression to become a democracy in crisis<sup>191</sup>. The NGO's research showed that, in 2020 alone, President Jair Bolsonaro made over 1,600 false or deceitful affirmations (an average of 4.3 each day). The same investigation<sup>192</sup> revealed that the president himself or his political inner circle was responsible for 464 public declarations that attacked or minimized the press. At the same time, a report released by the Institute for Democracy and Electoral Assistance (IDEA) positioned Brazil as the “democracy with the largest number of declining attributes” in its 2020 report.

Certain episodes demonstrate this dangerous trend. Last April, the Ministry of Justice opened a bidding process for acquisition of a surveillance system, with the alleged intention of hiring a company to monitor and report on citizen activity in social media and instant messaging apps<sup>193</sup>. The procedure excluded agencies usually responsible for national security and intelligence affairs, such as the Institutional Security Cabinet (GSI), the Brazilian Intelligence Agency (ABIN) and the military. As reports indicate, the intention was to form a parallel intelligence structure<sup>194</sup> using digital surveillance technologies, such as Pegasus, an illegal spyware supplied by Israeli company NSO Group.

Transparency International Brazil, alongside civil society organizations Conectas, Instituto Igarapé, Instituto Sou da Paz and Rede Liberdade, petitioned the Federal Court of Accounts (TCU) to suspend the bidding process. The technical requirements for the bid were deemed

insufficient, pointing to a lack of transparency on the type of service or goods that the government intended to hire. Furthermore, several potential irregularities were identified in the bidding process: the procurement mechanism was technically inadequate, the object of the contract was illegal as it potentially violates human rights and the rule of law, and the Ministry of Justice and Public Security does not have the prerogative to contract such services. After negative repercussions, the Israeli company withdrew its bid<sup>195</sup> and another surveillance system, offered by Harpia Tech, was selected. However, in November, the Federal Court of Accounts unanimously issued a provisional measure to suspend the procurement process.

It is vital to create a national inventory of surveillance tools of this nature currently held by Brazilian authorities and to establish legal and institutional frameworks for the democratic control of state surveillance – an issue particularly relevant to the electoral context of 2022.

In December, Mr. Thiago Tavares, president of SaferNet Brasil, an organization that promotes human rights in internet in Brazil, declared he would move to Germany, in a voluntary exile, due to death threats<sup>196</sup> he received after he spoke about neo-Nazism and electoral interference during a conference in October. Previous to publicizing his departure from the country, SaferNet identified that Mr. Tavares' computer had been impaired by Pegasus malware.

Members of the press have also been targeted by President Bolsonaro's hate speech in repeated episodes involving lawsuits, physical violence<sup>197</sup> and public harassment, including a horrific episode in which the president made degrading sexual comments<sup>198</sup> about a female journalist that had been investigating the illegal use of WhatsApp to help in Mr. Bolsonaro's 2018 campaign – in March 2021, the president was ordered by a Court to pay damages to the reporter.

<sup>191</sup> <https://artigo19.org/2021/07/29/relatorio-global-de-liberdade-de-expressao-2020-2021/>

<sup>192</sup> <https://artigo19.org/wp-content/blogs.dir/24/files/2021/08/A19-GxR-2021-FINAL.pdf>

<sup>193</sup> <https://noticias.uol.com.br/politica/ultimas-noticias/2021/05/25/empresa-de-software-espiaopegasus-deixa-edital-que-e-rodeado-de-incertezas.htm>

<sup>194</sup> <https://noticias.uol.com.br/politica/ultimas-noticias/2021/11/11/tcu-suspensao-compra-governo.htm>

<sup>195</sup> <https://www.conectas.org/noticias/entidades-questionam-no-tcu-contratacao-de-software-de-espionagem/>

<sup>196</sup> <https://politica.estadao.com.br/noticias/geral,safernet-thiago-tavares-presidente-tse-fake-news,70003919318>

<sup>197</sup> <https://www1.folha.uol.com.br/poder/2021/12/jornalistas-sao-agredidos-em-evento-de-bolsonaro-na-bahia.shtml>

<sup>198</sup> <https://www.bbc.co.uk/news/world-latin-america-56554635>

The persecution of journalists has, however, extrapolated to other contexts. In February 2022, the head of the state prosecution service in the state of Minas Gerais, Mr. Jarbas Soares Júnior, presented civil and criminal complaints<sup>199</sup> against a journalist that had revealed, a month earlier, that Mr. Soares Júnior allegedly asked the government of Minas Gerais and the mining company Vale

to fund the construction of a bridge in a city where he has family roots<sup>200</sup>. The request was reportedly made in the context of negotiations for the compensation, by Vale, for the disaster that engulfed the city of Brumadinho, in 2019, killing 272 people. The bridge was supposed to be built in a city 612 km distant from Brumadinho, alongside projects in other cities of the state.

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<sup>199</sup> <https://cpj.org/pt/2022/02/procurador-geral-de-justica-no-brasil-apresenta-queixa-criminal-por-difamacao-contra-o-jornalista-thiago-herdy/>

<sup>200</sup> <https://noticias.uol.com.br/colunas/thiago-herdy/2022/01/30/chefe-do-mp-de-minas-ponte-acordo-vale-brumadinho.htm>

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**Coordenadora** | Johanna Nublat

**Autores** | Johanna Nublat / Michael Mohallem / Vinicius Reis / Joachim Stassart / Renato Morgado / André Amaral / Maria Dominguez

**Revisores** | Bruno Brandão / Michael Mohallem / Henrique Bronzoni

**Designer gráfico** | Andreza Moreira [tangentedesign.com.br]

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Transparência Internacional – Brasil  
Associação Transparência e Integridade  
Av. Brigadeiro Luis Antonio, 2367 - Sala 514  
São Paulo, SP

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