

# BRAZIL ANNUAL REVIEW 2019



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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of January 2020. Nevertheless, Transparency International Brazil cannot accept responsibility for the consequences of its use for other purposes or in other contexts. **Revised edition January 24th.**

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# INSTEAD OF PROGRESS, RESISTANCE. INSTEAD OF REFORMS, SETBACKS.



This was the motto for the anti-corruption agenda in Brazil during the course of 2019. High expectations were met with few accomplishments. Corruption was one of the main issues for voters during the 2018 elections and remains one of the [biggest problems for Brazilians](#). President Bolsonaro and a host of members of Parliament were elected based on their promises to deal with the issue and implement effective reforms. Not only have they failed to do that, but, along with the Supreme Court, they have dealt [several blows](#) to the country's anti-corruption framework.

There are a number of reform proposals on the table, chief among them the “[New Measures against Corruption](#)”, a package of anti-corruption legislation developed by the Brazilian society.

Throughout the year, however, instead of discussing and improving upon these reforms, public officials across all branches of power challenged and undermined some of the most basic anti-corruption tools. For example, the president of the Supreme Court halted the ability of the country's Financial Intelligence Unit to share information on suspicious transactions with law enforcement agents, something that has been done for over 20 years.







While working at the federal level proved challenging, the potential for promoting integrity and transparency at the sub-national level has never been clearer. States and municipalities provide basic services to the population, such as education and healthcare. Corruption at those levels, thus, produces a direct impact on the most vulnerable members of society, aggravating inequality and social injustice. Transparency International Brazil decided to take this opportunity to work together with state

governments in order to design and implement State Integrity Plans, with the overarching goal of strengthening their corruption prevention, detection, and repression tools.

This yearly review aims to highlight the most significant developments for the anti-corruption agenda in Brazil. It is organized into five main chapters dealing with all branches of power - Executive, Legislative, and Judiciary - and with the Prosecutor's Office, the press, and civil society. For each chapter, positive and negative developments are presented, including, but not restricted to, new legislations, judicial rulings, administrative decisions, and corruption scandals. The report finalizes with a set of recommendations by Transparency International.





# FEDERAL GOVERNMENT

## section 01

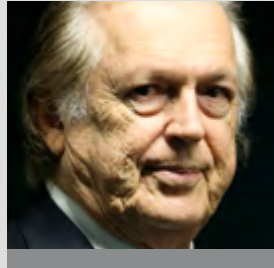
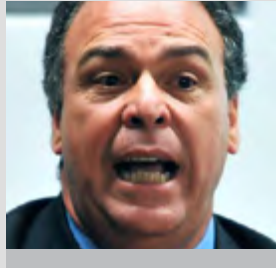
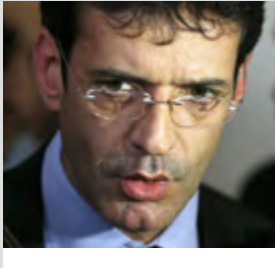
President Jair Bolsonaro campaigned heavily on an anti-corruption platform. However, the first year of the recent elected government showed limited progress on the implementation of an anti-corruption agenda. Neither were the [promises](#) to maintain a zero-tolerance policy towards corruption kept. Besides, a series of decisions made by the executive branch of the federal government show signs of political interference in key corruption-fighting bodies, such as the Federal Police, the Federal Revenue Service, and the Public Prosecutor's Office. Positive actions so far have been limited to the establishment of stricter rules for political appointments, criminal investigations, led by the Federal Police, into numerous corruption schemes, and institutional development and capacity building prompted by the Office of the Comptroller-General and the Ministry of Justice.





a series of decisions made by the executive branch of the federal government show signs of political interference in key corruption-fighting bodies, such as the Federal Police, the Federal Revenue Service, and the Public Prosecutor's Office

# CORRUPTION ALLEGATIONS



During the past year, corruption allegations tainted some of President Bolsonaro's close allies and family members, and little action was taken to distance them from positions of power or the president's inner circle.

In February, allegations arose around the involvement of **Marcelo Álvaro Antônio**, a Congressman and Minister for Tourism, in a corruption scheme in Minas Gerais. As the President of his party in the state, Mr. Antônio allegedly diverted campaign funds from the women candidates, who were supposed to receive, at least, 30 percent of the resources. There were allegations that he also selected women to run for office as "ghost candidates" in order to use their campaign funds to his benefit. Finally, he's also said to have **threatened** some of the women candidates to avoid having them testify against him. In October, Mr. Antônio was charged for **falsification**, **criminal association**, and **fraud**. Notwithstanding the charges, Mr. Antônio has remained in office as Minister for Tourism.

In May, **Senator Fernando Bezerra Coelho**, the leader of the government in the Senate, had his **assets frozen** as part of an investigation in which he is accused of having received bribes from construction companies in exchange for supporting their interests while working in Pernambuco government. Notwithstanding, he has remained the leader of the government in the Senate.

In October, the president of the Liberal and Social Party (PSL), **Congressman Luciano Bivar**, became the subject of investigations over the misuse of campaign funds that should have been directed at women candidates in his state of Pernambuco. PSL was President Bolsonaro's party during the 2018 elections.

Since the end of 2018, **Senator Flavio Bolsonaro**, the president's son, has been under investigation for allegedly receiving back part of the salary of his cabinet employees while a State Congressman in Rio de Janeiro, between 2007 and 2018. Some of them were allegedly "**ghost**" **employees** who never effectively worked in the Rio de Janeiro State Assembly. **Along with his chief of staff**, Fabrício Queiroz, Flavio is said to have received more than 2 million reais (500 thousand dollars) in structured cash deposits. Investigators suspect that Flavio concocted a **money laundering scheme** using real estate and a candy shop. There are also a number of other, unrelated, **investigations into the Bolsonaro family**.

Beyond these investigations, a number of reports arose on the widespread **nepotism** practiced by President Bolsonaro and his three sons while holding public offices in Rio de Janeiro and Brasília. The latest example was the move by **President Bolsonaro to appoint his son**, Congressman Eduardo Bolsonaro, to be Ambassador to the United States.

Photos: 1- Valter Campanato / Agência Brasil | 2- Antonio Cruz / Agência Brasil | 3- Marcelo Camargo / Agência Brasil  
4- Fabio Rodrigues Pozzebom / Agência Brasil

# POLITICAL INTERFERENCE



Political interference seemed to have played a role in nominations and dismissals in positions key for anti-corruption efforts.

During 2019, for example, political interference in the Federal Police grew, provoking unrest among investigators, detectives, and directors. In August, President Bolsonaro removed Ricardo Saadi from the position of head of the regional office in Rio de Janeiro, leading police chiefs to [threaten mass resignations](#).

Mr. Bolsonaro [declared that the move was motivated by “performance issues.”](#) However, internal assessments by the Federal Police revealed that during Mr. Saadi’s administration, the state of Rio de Janeiro [moved from the 24th to the fourth best-performing unit among Brazilian states](#). He has also [threatened](#) to fire Mauricio Valeixo, the Federal Police’s Director-General, who had been chosen by Minister of Justice Sérgio Moro.

At the Federal Revenue Service (Receita Federal do Brasil, RFB), which is also responsible for combating tax evasion and, in that capacity, collaborates intensively with other law-enforcement agencies in the fight against corruption and money laundering, there were three significant changes in its upper hierarchy. [Marcos Cintra](#), the Secretary-General, and [João Paulo Ramos Fachada Martins da Silva](#), the Deputy Secretary-General, were both dismissed in September and August, respectively. President Bolsonaro also [fired](#) Ricardo Pereira Feitosa, Head of Fiscal Intelligence of the RFB, in charge of cooperating with and sharing information with other law-enforcement agencies.

While the changes may have had different motivations, including divergences on policy decisions, Mr. Bolsonaro’s dissatisfaction with the RFB has been notorious. He has [publicly expressed](#) his displeasure, accusing the RFB of targeting his family’s businesses with excessive scrutiny. Even a [fine imposed](#) on a small tax irregularity committed by his brother has been brought up as justification for such disgruntlement.

There were also other [reports of politically motivated interference](#) in key posts. Efforts were to replace the customs official in charge of Itaguaí Port – one of the country’s busiest points of entry and exit for imports and exports, including drugs and illegal arms – as well as the head of Rio de Janeiro’s RFB Office. The potential assignment of political appointees to these posts aggravated the [tensions](#) between [RFB civil servants](#) and the president.

Photo: Marcello Casal Jr / Agência Brasil







Photo: Marcello Casal Jr / Agência Brasil

Roberto Leonel de Oliveira Lima, President of the Conselho de Controle de Atividades Financeiras (COAF) – Brazil’s Financial Intelligence Unit – was dismissed, according to [reports](#), because of [his criticism](#) of a Supreme Court ruling paralyzing the institution’s activities. Mr. Oliveira Lima was an experienced tax auditor who specialised in money laundering investigations, having acted for four years in the Carwash Taskforce.

President Bolsonaro, in August, [broke with tradition](#) and chose Augusto Aras as Prosecutor-General, a prosecutor who had not competed in the internal elections organized among career prosecutors.

The Council on Defence of Economic Activities, Brazil’s main antitrust body, was emptied and unable to fulfil its legal role. Between July and October, the Council, which is composed of seven members, had only three active commissioners, making it [impossible for it to conduct its proceedings](#). The political interference became evident when President Bolsonaro [withdrew](#) the nominations of the two new commissioners selected by the Ministers of the Economy and of Justice, both with recognized expertise in the fields of Law and Economics.

President Bolsonaro, instead, appointed new names negotiated with Senators, in what was [reported](#) to be a political bargain to obtain

support for the nomination of one of his sons, Congressman Eduardo Bolsonaro, as Brazil’s Ambassador to the United States.

Beyond questions on the political appointment of officials within the Executive branch, it should also be noted that President Bolsonaro, in August, [broke with tradition](#) and chose Augusto Aras as Prosecutor-General, a prosecutor who had not competed in the internal elections organized among career prosecutors. Mr. Aras was confirmed by the Senate and [has taken office as Head of the Prosecutor’s Office](#).

The process for appointing the Head of Brazil’s Public Prosecutors’ Office leadership is highly political – it is an exclusive responsibility of the President to appoint the Prosecutor-General, among career prosecutors, subject to the Senate’s approval. Since 2003, however, an important tradition gained ground. The President would appoint the Prosecutor-General from a shortlist of names chosen through an election process organized by the [National Association of Federal Prosecutors](#). This practice became an efficient way to select names that were well regarded internally and to increase the institution’s independence.



# ANTI-CORRUPTION POLICIES



In January, Vice-President Hamilton Mourão signed a [decree](#) which would dramatically increase the number of public officials, within the federal government, able to declare an information to be confidential and, thus, not available to the public. More than one thousand people would potentially gain that power, threatening to [reduce the transparency of public information](#) across the whole government.

In March, President Bolsonaro signed a [decree](#) setting restrictions to the appointment to commissioned and trust positions – usually political appointees – in the Brazilian federal bureaucracy. According to the new rule, whoever is ineligible according to the criteria established by the Clean Record Law ('Lei da Ficha Limpa') [cannot be nominated to those positions](#). Also, the Decree requires an unblemished reputation and previous professional and academic experiences of relevance. In July, the President signed [another decree](#) (9.916/2019) [widening the reach of these restrictions](#) to other positions in the federal administration.

In a move that has yet to come to fruition, the Office of the Comptroller General (CGU) [drafted a decree proposal](#) that would partially regulate lobbying for the Executive branch.

In 2019, the Office of the Comptroller General (CGU) was responsible for important initiatives to prevent, detect, and fight corruption. In order to consolidate preventive action, there were measures for the development of [Ombudsman's Offices](#) and [Sanctioning Offices](#) on federal, state, and municipal levels. This was accompanied by efforts to guarantee the [protection of whistleblowers](#) and to further develop digital platforms such as [Fala.BR](#), allowing more effective response to corruption complaints. Furthermore, the CGU offered capacity-building programs to foster integrity in the [public](#) and [private](#) sectors. As a way to detect corruption, the agency enhanced its [auditing system for public bids](#) and its [risk-assessment tool](#) for partnerships involving other levels of government. The CGU also joined federal and state-level agencies in [58 special operations](#) in different areas, such as healthcare, transportation, and education.

According to the new rule, whoever is ineligible according to the criteria established by the Clean Record Law ('Lei da Ficha Limpa') [cannot be nominated to those positions](#). Also, the Decree requires an unblemished reputation and previous professional and academic experiences of relevance.

Leniency agreements have been signed between a host of companies ([Braskem](#), [Technip](#), [Flexibras](#), [Camargo Correa](#), [Nova Participações](#), and [OAS](#)) and the Office of the Comptroller General (CGU) and the General Attorney of the Republic (AGU). They totaled payments of around 7.5 billion reais (1.8 billion dollars).

In December, President Bolsonaro signed a Provisional Measure allowing for the legalization of lands (illegally) occupied before 2018.

In June, after years of delay, the Federal Revenue Services started requiring the register of beneficial owners from companies, a measure that, while still insufficient, mostly because the register has not been made public, will help combat money laundering and provide information to assist prosecutors in corruption-related investigations.

They totaled payments of around 7.5 billion reais (1.8 billion dollars).

In April, President Bolsonaro signed a Provisional Measure – dubbed Economic Freedom – on debureaucratization. It was approved by Congress and enacted into law in September. While there are many controversial aspects, there is potential for it to reduce corruption since it digitalizes certain procedures.

During 2019, the Ministry of Justice was able to restructure the REDE-LAB, a national network of technology labs for the detection of money-laundering schemes. It also fostered the implementation of 29 police units specialized in anti-corruption efforts in 18 Brazilian states. The Federal Police was also strengthened with the hiring of an additional 1,200 agents.

Several important investigations have been conducted by the Federal Police into corruption schemes across Brazil. Operations Pé de Barro, Calvário, and Faroeste are three of note. Operation Faroeste, for example, uncovered a scheme, in which magistrates took bribes to rule in favor of farmers to recognize land-grabbed areas as their property. It resulted in over 3,600 km<sup>2</sup> of illegally-seized land. Besides lawyers, public servants, and farmers, several judges in the State of Bahia, including the president of the state's court, were also the target of the operation, many of them arrested and temporarily removed from office.

On the environmental front, however, the federal government's actions during 2019 may have facilitated the work of criminal organizations responsible for illegal deforestation, illegal logging, and land grabbing. The Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) – the federal public agency responsible for combating environmental crimes – was drastically weakened by Ricardo Salles, the Minister of the Environment. For example, throughout the year, IBAMA applied the lowest number of environmental fines in 15 years, even though deforestation reached a peak not seen since 2008.

The Federal Police was also strengthened with the hiring of an additional 1,200 agents.

In December, President Bolsonaro signed a Provisional Measure allowing for the legalization of lands (illegally) occupied before 2018. This measure promoted impunity in regard to land grabbing, which is one of the biggest causes of deforestation in the Amazon and a hotspot for corruption. It further encouraged the illegal occupation of public lands, many of them on environmentally protected areas and Indigenous reserves.

# FINANCIAL INTELLIGENCE UNIT



One of President Bolsonaro's first acts in office, back in January, was to implement a change to the institutional framework upon which the Conselho de Controle de Atividades Financeiras (COAF) – Brazil's Financial Intelligence Unit – rests. It had been, since its founding in 1998, a part of the Ministry of the Economy, from where it played an important role in providing financial intelligence related to corruption cases. [Provisional Measure nº 870](#), however, transferred the COAF to the structure of the Ministry of Justice.

Provisional Measures are immediately enacted, but are subject to Congress' confirmation. The COAF was thus transferred to the Ministry of Justice, where it remained until May, when Congress revoked its transfer and reinstated the previous framework, with the COAF returning to the Ministry of the Economy. [Press reports](#) associated the Congress' decision against the placement of COAF in the Ministry of Justice with the strong opposition shared by Congress members toward Minister Sérgio Moro, the former Carwash judge who helmed the transfer.

Following the defeat in Congress, President Bolsonaro enacted another [Provisional Measure \(893\)](#), which transferred the COAF to the Central Bank, under the argument that this would reduce political interference in the organization. However, the [bill of law that would](#) grant autonomy to the Central Bank (and a fixed 4-year term to its president) is currently being discussed in Congress, with little indication that it

will be approved. A recent [best practices comparative study](#) by Transparency International also shows that this arrangement is a highly unusual institutional design choice.

Although some aspects regarding the COAF's new normative structure initially [raised some concerns](#), Congress addressed them and the [legislation](#) put in place to (re)organize the COAF within the Central Bank's structure is largely adequate, though the Financial Action Task Force has yet to analyze the final result of the legislative process. An issue that will likely draw the FATF's attention, and potentially reopen discussions on the subject, is that Congress excluded the responsibility of [combating the financing of terrorism](#) from the COAF's mission.

## section 01 - ups & downs

President Bolsonaro signed a decree setting restrictions to the appointment to commissioned and trust positions – usually political appointees – in the Brazilian federal bureaucracy.

The Federal Police was strengthened with the hiring of an additional 1,200 agents and it led important investigations into corruption schemes across Brazil, such as Operations Pé de Barro, Calvário, and Faroeste.

The Ministry of Justice and Public Security fostered the implementation of 29 police units specialized in anti-corruption efforts in 18 Brazilian states.

The Office of the Comptroller General (CGU) fomented the improvement of the Ombudsman system on federal, state, and municipal levels and enhanced the protection of whistleblowers.

Corruption allegations tainted some of President Bolsonaro's close allies and family members, and little action was taken to distance them from positions of power or the president's inner circle.

Political interference seemed to have played a role in nominations and dismissals in positions key for anti-corruption efforts.

Brazil's Financial Intelligence Unit has gone through a year of tremendous instability and having been housed at the Ministry of Justice, the Ministry of Economy, and, finally, at the Central Bank.

President Bolsonaro signed a Provisional Measure allowing for the legalization of lands (illegally) occupied before 2018, a move that promoted impunity in regard to land grabbing.

The Government failed to propose and defend in Congress an ambitious set of anti-corruption reforms, one that could tackle the structural causes of Brazil's systemic corruption.





## section 02

# NATIONAL CONGRESS

Despite high expectations for a renewed Congress, for which many Federal Deputies and Senators were elected on anti-corruption platforms, there have been few concrete advances on this issue. On the other hand, a host of new legislations have been approved that threaten a decades-long process of strengthening Brazil's anti-corruption legal and institutional framework.







# ABUSE OF AUTHORITY LAW



In September, an [abuse of authority law](#) was approved following a rushed legislative process, which allowed for little discussion and participation from specialists and affected authorities. Although the law is generally aimed at public officials who abuse their powers, its provisions clearly focus on law enforcement agents, allowing for the criminalization of their regular activities.

There are several vague and undefined provisions in the law, most of which leave ample room for judges, investigators, and prosecutors to suffer retaliation from powerful individuals under investigation for corruption. For example, the law threatens with 1 to 4 years of detention any official who prosecutes a case “without just cause” (art. 30). Many of these provisions have had their [constitutionality questioned](#) by judges’ and prosecutors’ associations, but the Supreme Court has yet to rule on this matter.

The OECD Working Group on Bribery (WGB) had previously [advised on the risks](#) such legislation posed to the independence of prosecutors and judges. Following the law’s approval, the WGB issued a [statement](#) in October, noting “that the approval of a bill introducing an overly broad definition of what constitutes abuse of authority by judges and prosecutors would have a significant chilling effect on anti-corruption prosecutions and investigations in Brazil and beyond.” A [high-level mission](#) was

There are several vague and undefined provisions in the law, most of which [leave ample room](#) for judges, investigators, and prosecutors [to suffer retaliation](#) from powerful individuals under investigation for corruption.

subsequently sent to Brasília in order to convey, directly, this – among other concerns<sup>1</sup> – to Brazilian authorities. While the country does need to address a severe problem of systemic abuse of authority, the vague legal text and the rushed legislative process produced an inadequate remedy that may better serve the impunity of powerful defendants and could provide a tool for retaliation against law enforcement agents.

1- The WGB also expressed concerns about the impacts of the injunctions of the Supreme Court, which limited the use of reports by Financial Intelligence Unit, Federal Revenues, and other administrative agencies in criminal investigations. Combined with other actions by the Supreme Court and the Federal Auditor’s Court, there was a concern that these actions might seriously hamper Brazil’s ability to detect and effectively fight corruption.

# ELECTIONS AND POLITICAL PARTIES



Looking at the 2020 municipal elections, a comprehensive reform was also approved by Congress in October on legislation applicable to political parties and electoral campaigns. However, instead of improving upon the current system, **the new law** further reduced transparency and accountability requirements for political parties, multiplying the loopholes for illicit campaign financing. Other changes relate to the new **possibilities for expenditures using public resources**: acquisition and renovation of party headquarters, real estate acquisition or rental, sponsored posts in social media, and airline tickets

This legislation also determined that political parties should not be treated by financial institutions as Politically-Exposed Persons (PEPs). It is an effort to protect political parties from scrutiny and additional transparency requirements.

It also assured that, for the 2020 elections, political parties and campaigns will be funded by public resources distributed between two funds: a Special Campaign Fund and a Political Parties Fund. Although the amount of resources in each fund remains undefined, Congress established that the Special Campaign Fund would be composed of approximately 500 million dollars and the Party Fund would receive approximately 230 million dollars.

Despite increased **societal pressure** for President Bolsonaro to veto it, he has argued, **with little supporting evidence**, that he's legally forbidden from vetoing the bill and sanctioned it in the beginning of 2020.

However, instead of improving upon the current system, the **new law further reduced transparency and accountability requirements for political parties**, multiplying the loopholes for illicit campaign financing.

Special Campaign Fund would be composed of approximately

# US\$500mi



Photo: Antonio Cruz / Agência Brasil





# ANTI-CORRUPTION PACKAGE



In February, an anti-corruption package was presented by Minister of Justice Sérgio Moro. That package dealt with other issues beyond corruption, such as organized crime and public security, and was eventually merged, for consideration by Congress, with another set of anti-crime propositions – previously presented by Supreme Court Justice Alexandre de Moraes. The package was thus limited in its anti-corruption dimension and largely dealt with measures against violent and organized crimes. It was also particularly limited when it comes to preventive measures.

Discussions within a working group in the House of Representatives took up most of the year and reconfigured the package. Finally, a version of

the package was approved by Congress and sanctioned by President Bolsonaro. It contained, however, few of the provisions initially included in Moro's package. Most noticeably for the anti-corruption agenda was the approval of the extended forfeiture for proceedings from criminal activities.

One other measure in the approved anti-corruption package was the improvement of the whistleblowing system in the public sector. It is now mandatory for all bodies of the Public Administration to maintain an Ombudsman's Office or a Sanctioning Office, responsible for receiving reports of illegal conducts and acts that are contrary to public interest. The law now also establishes protections regarding the confidentiality of the whistleblower's identity and against retaliation and specifies monetary awards to whistleblowers whose complaints result in asset recoveries.





Although still timid if compared to **whistleblowing legislative best practices**, the new directive seems to be an advancement towards the right direction. Future improvements in the legislation should consider protections towards private sector whistleblowers and further detail protection proceedings.

On the other hand, the newly-instated law also included provisions that created the so-called “**juiz de garantia**” (investigating judge). Basically, it determines that a judge cannot preside over both the investigations and trial proceedings of the same case. The goal of this separation of duties is to ensure the fairness of the trial and to preserve the impartiality of the judge ruling on the case. Calls for the creation of the investigating judge intensified due to concerns of excessive proximity between former Judge Sérgio Moro and Carwash

prosecutors, as revealed by the “**Vaza Jato**” leaks. The case helped to shed light on Brazil’s single judge system, prompting the discussion on reforms that can secure more distance between the sentencing judge and prosecutors.

Though this measure has received wide praise as a necessary criminal justice reform, it was approved in a rushed legislative process, without the necessary studies for the implementation of such structural reform in the country’s judicial system. Scheduled to enter into effect in January 2020, **the high costs** for hiring more judges, the risk of **increased slowness** in judicial proceedings (and **impunity**), and the **difficult situation** of small cities where there is usually only one judge are just some of the concerns that have been raised since the approval of Law n. 13.964/2019.

# FEDERAL COURT OF ACCOUNTS



During 2019, the Federal Court of Accounts (TCU) did 243 inspections and convicted more than 2 thousand individuals and 82 companies for irregularities committed with public funds.

The TCU also replicated the methodology previously applied for the [federal executive branch](#) and mapped the risks of fraud and corruption in all public bodies the state of [Mato Grosso do Sul](#). Moving forward, the Court has begun the process of applying this methodology in the whole country.

On the other hand, it also interfered, along with the Supreme Court (more on that at the Judiciary section below), with the auditing performed by the Federal Revenue Services of Politically-Exposed Persons. [Minister Bruno Dantas requested](#) that the RFB submit details about all auditing activities on PEPs in the last five years, including the identification of all civil servants who had access to the information. This request was considered to be [beyond the Court of Accounts'](#) competence and an effort to intimidate the auditors. Another ruling that has drawn criticism for its intimidatory purposes was the [request](#) made to the Supreme Court with the goal of obtaining the leaked messages (from the Vaza Jato) between one of the TCU's prosecutors and members of the Carwash Taskforce.



# OTHER MATTERS



Beyond these serious setbacks, there has been a noticeable lack of progress in the passing of legislation that could have a positive impact on Brazil's anti-corruption efforts. A bill reforming public procurement rules was approved by Congress [back in June](#), but its final passing is still pending. The House of Representatives debated including a [bill of law](#) on lobbying regulation in the agenda for a vote in March, but that never came to be.

In a successful effort to block President Bolsonaro's attempt to reduce the transparency of public information, by increasing the number of public officials empowered to declare a document to be confidential, the [House of Representatives voted to suspend](#) the president's decree.

Transparency International also led the development of a comprehensive package of reforms, the "[New Measures Against Corruption](#)", which have become an important reference in the country's anti-corruption debate, but so far, only a few proposals have been approved – or even extensively discussed – by Congress. Drawn from said package, [legislation](#) destined to make judicial proceedings before the Supreme Court more agile and [improvements](#) to the rules on citizen suits have been approved by the House of Representatives, with consideration by the Senate pending.

On a final note, while the spread of fake news and its detrimental impact on democracy should be a top concern for legislators, a Parliamentary Inquiry Committee looking into the issue [produced little results](#), other than some grandstanding opportunities for its members and other politicians, some of them responsible for spreading fake news themselves.

## section 02 - ups & downs

A bill reforming public procurement rules was approved by Congress in June, but its final passing is still pending.

The approval of the extended forfeiture for proceedings from criminal activities and improvements of the whistleblowing system in the public sector.

Congress acted swiftly to block an attempt by President Bolsonaro to reduce the transparency of public information.

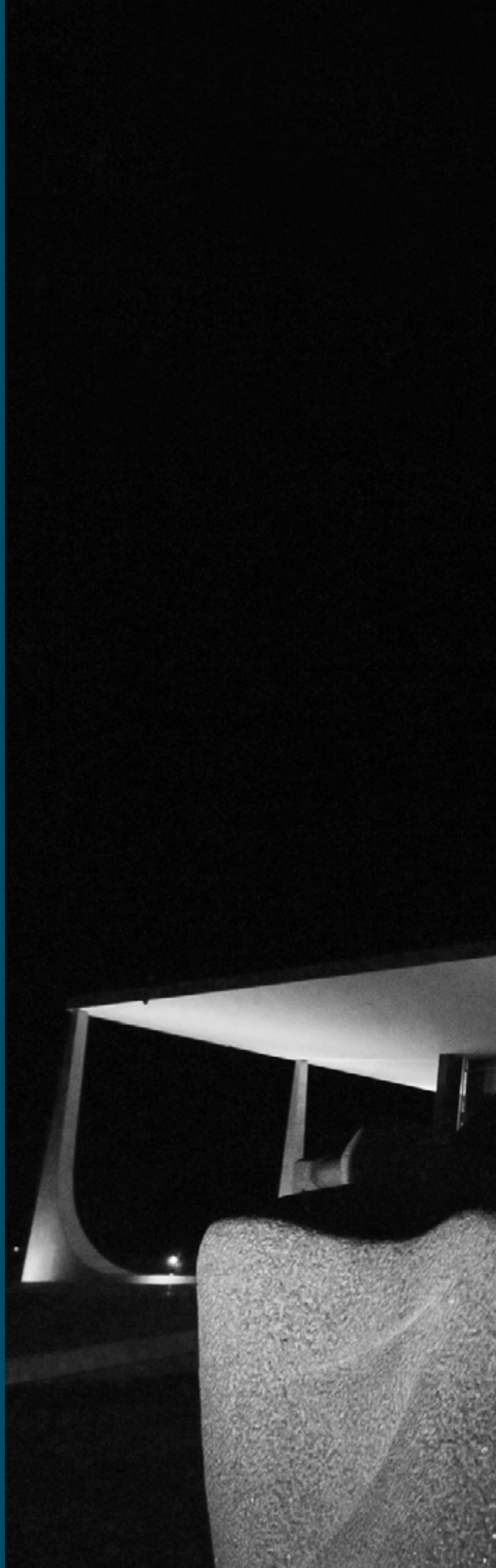
An abuse of authority law was approved following a rushed legislative process and, although the law is generally aimed at public officials who abuse their powers, its provisions clearly focus on law enforcement agents, allowing for the criminalization of their regular activities.

New legislation further reduced transparency and accountability requirements for political parties, multiplying the loopholes for illicit campaign financing.

section 03

# COURTS

In 2019, the Supreme Court was responsible for some of the gravest setbacks in the fight against corruption in Brazil. Its decisions, even when taken by a single justice, produced systemic impacts, and there was often a lack of accountability for its rulings.









# ANTI-MONEY LAUNDERING



In July, an [injunction](#) by the Supreme Court President Dias Toffoli virtually paralyzed Brazil's AML system, prohibiting the Financial Intelligence Unit to share intelligence reports on suspicious financial transactions with investigators in the police and prosecutors. Under arguments that judicial authorization was needed for sharing this type of information, Mr. Toffoli also suspended all criminal investigations and judicial proceedings that used this type of intelligence. The decision went against international best practices, [threatening the most important investigative tool against corruption](#).

The decision was issued in response to a request by the defence of Senator Flavio Bolsonaro, President Jair Bolsonaro's eldest son. Mr. Flavio Bolsonaro is being investigated for allegedly hiring "ghost" (no-show) employees, while he was a parliamentarian at the State of Rio de Janeiro, and pocketing large shares of their salaries. This investigation was initiated by [financial intelligence reports on suspicious activities](#), such as sequenced cash deposits in Mr. Flavio Bolsonaro's bank account.

The decision went against international standards and warranted a [public statement](#) by the Financial Action Task Force, expressing "serious concerns regarding Brazil's ability to comply with international standards and combat money laundering and terrorist financing that result from the limitation placed by a recent provisional injunction issued by one judge." It was also one of the motivations to the OECD WGB's [high-level mission](#) to Brasília.

Mr. Toffoli's decision led to more than [900 investigations to be paralyzed](#) between July and November, including [criminal organization cases and investigations carried out by the Carwash Taskforce](#). Those numbers refer only to investigations conducted at the federal level, meaning the impact of said [decision](#) was likely much wider.

In the days leading up to the Supreme Court's final deliberations on this matter, another controversy was installed by a new decision by Mr. Toffoli. He requested all the information produced both by the Federal Revenue Services and the COAF in the three previous years on suspicious financial transactions. This would amount to privileged and confidential information on more than 600,000 people, many of them high-level officials. Mr. Toffoli went under [severe criticism](#) and eventually [reversed his decision](#).

Mr. Toffoli's decision led to more than [900 investigations to be paralyzed](#) between July and November

Concerning the Supreme Court's decision on the matter, deliberations by the eleven justices overturned Mr. Toffoli's earlier decisions in December. The [final ruling](#) allowed for both the Federal Revenue Services and the Financial Intelligence Unit to share information with prosecutors and investigators, as long as they follow proper and official channels. Even Mr. Toffoli [reversed his position](#) and, along with nine other justices, supported this understanding.



# LAW ENFORCEMENT



In March 2019, the Supreme Court **decided** that it was the responsibility of Electoral Courts in Brazil to analyze and decide on criminal cases involving fraudulent campaign financing (campaign slush funds). The structure of Electoral Courts is mostly **precarious and already overburdened**. Election judges and prosecutors, for instance, perform double duty, combining – for two years – their main attribution with the responsibility for electoral matters. A **proposal** to widen the jurisdiction of federal specialized courts, currently responsible for most corruption cases, to include electoral matters has not been implemented.

only one of 70 cases sent to the Electoral Courts has resulted in a conviction.

There is, thus, the risk that the Electoral Courts will be **unable to properly carry out investigations** and criminal proceedings regarding complex corruption and money laundering schemes. Their insufficient resources and lack of technical expertise, combined with the statute of limitations, make up the recipe for impunity for high-level public officials and business executives. Despite **efforts** to adapt, a **recent report** has found that only one of 70 cases sent to the Electoral Courts has resulted in a conviction.

In August, the Supreme Court **overturned** the first criminal conviction against a defendant from Operation Carwash, marking a significant setback for the

operation. The reason for the Supreme Court's ruling was that the period designated for defendants to present their final arguments before the court was the same for both “regular” defendants and defendants who had made plea bargains, though there is no explicit rule determining different (and subsequent) deadlines. The Supreme Court's understanding – which was reaffirmed in an **October ruling** – was that defendants should have the opportunity to respond to claims presented in plea deals and, therefore, the final word in closing arguments.

The Supreme Court has thus far **not decided** whether this understanding will be applicable retroactively, which is to say, to previous judgements. If this is the case, it will allow most of Operation Carwash's convictions to be overturned – according to analysis of other cases, more than 30 sentences, concerning more than 140 convicted individuals, **would be overturned**.

Following this decision in November 2019, the Supreme Court **changed** its case law to bar imprisonment before all appeals are exhausted. This had been an **ongoing legal dispute** since 2009, when the Court originally adopted this interpretation of the Constitution and Brazil's Criminal Procedure Code. In 2016, the Supreme Court recognized the possibility of imprisonment after a confirmation of the conviction by an appeals court. Since then, however, there has been a change in the make-up of the Court and new understandings by the current justices. Although the decision can be sustained by the dubious constitutional text and should be considered in the face of Brazil's over-incarceration and chronic prisoners' rights abuse, it will inevitably aggravate the long-standing impunity of white-collar crimes.

the Supreme Court **changed its case law to bar imprisonment** before all appeals are exhausted.

This latest ruling is said to benefit around 5,000 prisoners, among which the former President Lula, who has been released, pending his appeal judgement by the Supreme Court (he has already been convicted, in the “Triplex case,” **by the Superior Court of Justice**).



# FAKE NEWS INQUIRY



Photo: Dorivan Marinho / SCO / STF



In March 2019, the President of the Supreme Court, Dias Toffoli [opened an inquiry](#) (INQ 4781) into the alleged threats and fake news against the Court and its members. To act as presiding judge of the inquiry, Mr. Toffoli appointed Minister Alexandre de Moraes, a fellow Supreme Court justice.

There are several unique and unconstitutional features to said inquiry: (i) its object does not define a specific fact and/or person, rather it has been used to deal with a number of different circumstances, individuals, and perceived threats; (ii) it was opened directly by Minister Dias Toffoli, not as a response to a prosecutor's request, as is the standard practice; (iii) the presiding judge was appointed directly, not randomly selected; (iv) it was secret and not even the Prosecutor-General was able to access its files for months; (v) it is based on a provision of the [internal statute of the Supreme Court](#) that refers to crimes committed in the building of the court; (vi) Minister Alexandre de Moraes has been acting both as the prosecutor and the judge of the inquiry, meaning impartiality has been made impossible – considering the crimes were supposedly committed against the Supreme Court and its members, he may have also been a victim.

This inquiry has been instrumental for the Supreme Court to interfere in a number of circumstances, from [censuring a magazine](#)

This inquiry [has been instrumental for](#) the Supreme Court to [interfere in a number of circumstances,](#) [from censoring](#) a magazine publication [to investigating](#) controversial statements made by a former Prosecutor-General.

[publication to investigating controversial statements](#) made by a former Prosecutor-General. It was also the justification for the Supreme Court to [request and access the records](#) of message conversations of upper echelon authorities' hacked cell phones. It was also within the scope



of this inquiry that the Supreme Court **decided** to suspend the activities of tax auditors in charge of auditing a group of Politically Exposed Persons, as discussed above. Among the 133 people included in the group subject to greater scrutiny, there were **reports** about the presence of the wives of two Supreme Court justices, including Mr. Toffoli's. Judge Moraes also suspended two of the tax auditors involved and opened disciplinary proceedings against them.

### section 03 - ups & downs

The Supreme Court granted an injunction partially blocking President Bolsonaro's attempt to indiscriminately extinguish hundreds of public policy councils.



After months of uncertainty, the Supreme Court settled the matter on the possibility of both the COAF and the Federal Revenue Services to share information on suspicious activities with law enforcement agents without the need for a judicial authorization - following international standards.

An injunction by the Supreme Court President Dias Toffoli virtually paralyzed Brazil's anti-money laundering system, prohibiting the Financial Intelligence Unit to share intelligence reports on suspicious financial transactions with investigators and suspending criminal investigations across the country for almost half a year.

The Supreme Court decided that it was the responsibility of Electoral Courts in Brazil to prosecute corruption and money laundry cases when they are linked to other electoral crimes - a decision that is already resulting in increased impunity due to the lack of capacity of the Electoral Justice to deal with the complex nature of these types of crimes.



The illegal fake news inquiry (INQ 4781) has been instrumental for the Supreme Court to interfere in a number of unrelated circumstances.

The Supreme Court changed its case law to bar imprisonment before all appeals are exhausted - a decision that can be sustained by the dubious Brazilian constitutional text and should be considered in the context of the country's over-incarceration and chronic prisoners' rights abuse, but inevitably aggravates the impunity of white-collar crimes.





# PROSECUTOR'S OFFICE

## section 04

Brazil's Public Prosecutors' Office (Ministério Público, MP) was granted a high level of functional and financial autonomy in the 1988 Constitution. The process for appointing its leadership, however, remained highly political. It is an exclusive responsibility of the president to appoint the prosecutor-general, from career prosecutors, subject to the Senate's approval.

Since 2003, however, an important tradition has gained

ground. The president would appoint the prosecutor-general from a shortlist of names selected through an election process organised by the National Association of Federal Prosecutors (ANPR). This practice became an efficient way to select names that were well regarded internally and to increase the





institution's independence. President Bolsonaro, however, [broke this tradition](#) and chose Augusto Aras as prosecutor-general, a prosecutor who had not even competed in the internal elections. Mr. Aras was confirmed by the Senate and [has taken office as head of the Prosecutor's Office](#).

In August, Operation Carwash's taskforce of prosecutors in Brasilia [collectively resigned](#) in protest against former Prosecutor General Raquel Dodge's refusal to investigate a [Supreme Court judge](#) and the speaker of the House of Representatives, despite what they considered to be substantial evidence against them. Shortly after Ms. Dodge's departure, the prosecutors [returned to their positions](#). The institution had already suffered a strong blow in the first half of the year with the [publication](#) of hacked cell phone messages from the Operation Carwash taskforce of prosecutors. The content of the messages revealed a problematic level of proximity

between Judge Moro and the prosecutors, as well as instances of unethical or questionable behavior. Although part of the criticism towards members of the taskforce has reasonable grounds, the Vaza Jato leaks have been used to attack the operation and its agents. There have not been any reports of more serious breaches during the investigations or trial procedures, such as production of false evidence or coercion of witnesses. The scandal has affected Operation Carwash's image and has aggravated divisions within the Public Prosecutors' Office.

# LAW ENFORCEMENT



In 2019, the [Carwash Taskforce in Curitiba](#) initiated a record number of criminal procedures: 29 cases. This meant there was a total of 150 defendants, out of which 99 people who were charged for the first time. The year also showed a marked increase in the sheer volume of work done by the Curitiba Carwash Taskforce – more than 68,000 acts (in investigations or cases) were registered, an increase of 1,200 percent over the previous year. In its history, it is estimated that the operation recovered approximately 14 billion reais (3.4 billion dollars) in assets, with over 4 billion reais (1 billion dollars) recovered in 2019.

In February, [arrests](#) were made in connection to an alleged improper relationship between Transpetro and Estre Ambiental. Techint has also been subjected to [investigations](#), as well as maritime transportation companies [Maersk](#), [Ferchem](#), and [Tide Maritime](#). Search warrants were also served in [Switzerland](#), at the request of Brazilian prosecutors, on Trafigura and Vitol.

In May, Lava Jato prosecutors started to focus their attention on banks and their role in facilitating money laundering, first [accusing Banco Paulista](#) and later [investigating Itaú, Bradesco, Banco do Brasil, Caixa, and Santander](#) – the five biggest Brazilian banks. According to

prosecutors, it is possible that banks might have failed to put the proper anti-money laundering prevention mechanisms in place to prevent illicit money from flowing through accounts they host. Investment banks have also been subjected to scrutiny – BTG Pactual, the biggest Brazilian investment bank, was raided in [August](#) and in [October](#).

Discussions on the destination of fines and assets recovered from the corruption schemes, however, were abruptly interrupted by misinformation and confusion. 80% of the fines to be paid by Petrobras in a [leniency agreement](#) signed with US authorities were allowed, exceptionally, to be returned to Brazil. However, the agreement between US and Brazilian authorities did not specify the means of repatriation and final destination of these resources (amounting to USD 685 millions). Also, since Petrobras is partially state owned, the money could not simply return to

In 2019, the Carwash Taskforce in Curitiba initiated a [record number of criminal procedures: 29 cases](#). This meant there was a total of 150 defendants, out of [which 99 people who were charged for the first time](#).

the public treasure, as that would mean the company's owner receiving the fine that itself had to pay. With the lack of specific regulation and jurisprudence to orient, the Lava Jato taskforce of prosecutors in Curitiba developed a solution through the creation of a [compensatory fund](#), to support social and educational programs and to promote transparency and compliance in Brazil's public sector. However, the arrangement provoked public outcry, as it did not involve other public institutions and reserved the Curitiba prosecutors an active – although minor





– role in the governance of the fund. The controversy led to an [hostile act from the then Prosecutor-General Rachel Dodge](#) and an [intervention by the Supreme Court](#). In the end, the funds were [diverted to state and federal governments](#) to be spent on fighting the fires in the Amazon and education initiatives.

While there was reasonable criticism in the arrangement proposed by the Lava Jato team, the debate was quickly captured by the current extremism of Brazilian politics and the many interests around the Lava Jato case. An extremely important [debate about compensation measures](#) to the diffuse consequences and victims of corruption was thus prematurely aborted.

While long-term solutions to the destination of resources recovered in corruption investigation remain distant, innovative solutions have been deployed by prosecutors. For example, in the [CCR Rodonorte](#) case, as part of the agreement with the company, prosecutors negotiated the reduction of local highway toll fares, managed by CCR Rodonorte, in order to compensate in some way the local communities for the damages caused by corruption.

#### section 04 - ups & downs

The Carwash Taskforce in Curitiba initiated a record number of criminal procedures: 29 cases. This meant a total of 150 defendants, out of which 99 people who were charged for the first time.

Lava Jato prosecutors started to focus their attention on banks and their role in facilitating money laundering, as well as Petrobras' core business, implicating multinational shipping and trading giants.

President Bolsonaro broke with tradition and chose Augusto Aras as prosecutor-general, a prosecutor who had not even competed in the internal elections.

The content of the messages leaked in the Vaza Jato scandal revealed a problematic level of proximity between Judge Moro and the prosecutors, as well as instances of questionable behavior.



# CIVIL SOCIETY AND THE PRESS

section 05



A worrisome by product of 2019 is the [loss of confidence](#) in democracy. Compared to 2018, when 69 percent of the population believed that it was the best form of government, only 61 percent of Brazilians held this opinion by December 2019. On the other hand, 22 percent of Brazilians now see no difference between a democratic government and a dictatorship.

Civic space has been shrinking across the society. A vibrant civil society and a free press are both essential for [sustained efforts to fight corruption](#) and fundamental pillars of a democratic society.



Photo: Nayani Teixeira / Unsplash

In January, in one of President Bolsonaro's first acts in office, he attempted to provide his administration with [ample monitoring powers over civil society organizations](#). The effort ultimately failed, but subsequent [unfounded allegations](#) against non-governmental organizations have continued to stream from the President and high-level officials. For example, they claimed that [Greenpeace was responsible](#) for an oil spill that occurred off the Brazilian coast probably in August. In November, the state police in Pará arrested members of a volunteer

firefighting brigade in the Amazon on [baseless charges](#) of setting the fire themselves and the headquarters of their organization was the target of search and seizure. Efforts to undercut funding for NGOs have also been put in place, resulting in the [suspension of the Amazon Fund](#).

In April 2019, President Jair Bolsonaro [extinguished hundreds of public policy councils](#). If it is true that certain public policy councils have been used for political objectives in disregard to their official mandate and principles of plural composition, this is certainly not the general reality of the whole system of participatory councils and their extinction definitely not the adequate solution. Established by Brazil's Federal Constitution of 1988, these councils are institutional tools capable of enhancing transparency, exercising participatory democracy, and increasing governmental



Photo: José Cruz / Agência Brasil

# 22%

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legitimacy, as they allow the civil society to participate in policy-making and monitoring processes in a wide range of policy areas.

Several councils were affected by Decree nº 9.759/2019, including ones on the environment, LGBT+ rights, disability rights, slavery, indigenist policies, and others. Even councils not subject to dissolution suffered changes in order to reduce the space for participation by NGOs, as was the case of the National Environment Council. In June, the Supreme Court partially, and temporarily, revoked the decree. The Court granted an injunction after it considered unconstitutional the broad dissolution of the councils by the President.

Attacks and false allegations against Transparency International have also been deployed by Supreme Court Justice Gilmar Mendes.

There has been “a surge in politically-motivated pressures on Brazilian’s universities, including raids on campuses, threats and attacks on minority students, and legislation that threatens universities’ activities and core values,” according to the latest Free to Think 2019 report, by the SAR’s Academic Freedom Monitoring Project. President Bolsonaro has routinely interfered with the nomination of deans of federal universities, against the standard practice of nominating the most-voted candidate. A rule formally freeing the President from said tradition has been established.

Other research centers have also been subject to discreditation, abuse, and political interference. In August, President Bolsonaro fired Ricardo Galvão, the Director of the National Institute for

Space Research (INPE), which is in charge of producing and disseminating data on deforestation in the Amazon. The mischaracterization of INPE’s data – widely considered a reliable and indispensable source of data on fighting illegal deforestation – was a reaction to the institute releasing data showing increased deforestation in the Amazon.

unfounded allegations against non-governmental organizations have continued to stream from the President and high-level officials.

Regarding the press, Brazilian journalists have been under frequent harassment. President Bolsonaro has repeatedly attacked and threatened traditional news media outlets. Journalists are said to have suffered more than 200 attacks – an increase of 54 percent, according to the National Federation of Journalists – with President Bolsonaro being responsible for more than half of those. It’s no surprise that Brazil has fallen three positions in the latest World Press Freedom Index, to





Photo: Fernando Frazão / Agência Brasil

105th (among 180 countries). According to Reporters Without Borders, the election of President Bolsonaro “heralded a dark era for democracy and press freedom in Brazil.”

Recent legislative changes have also been decried as **retaliatory measures against the press**. Among the latest attacks, the federal government **cancelled** its subscription of the Folha de São Paulo newspaper and threatened its advertisers. President Bolsonaro also attempted to **illegally** exclude that same

**Brazil has fallen** three positions in the latest World Press Freedom Index, **to 105th** (among 180 countries).

newspaper from a public procurement proceeding and **threatened** not to renew TV Globo’s broadcast frequencies in 2022 after damning reports about his family involvement in the murder of Rio de Janeiro Councilwoman Marielle Franco.

Data from the federal government spending on official publicity during

2019 had already pointed towards a **biased decision-making process** in favor of media outlets more politically aligned with the President – in detriment of objective standards such as rating levels. While the **concentration of Brazil’s media** is a longstanding issue, signs of political interference and **conflicts of interests** indicate that the current policy is not geared at increasing the plurality of media vehicles, but at promoting the ones that favor the current administration.

## section 05 - ups & downs

✓ Brazil’s Supreme Court partially revoked a decision by the federal government that attempted to extinguish hundreds of participatory public policy councils;

✓ Journalists and activists have stood strong against the numerous attacks and in defence of the constitutionally assured freedom of press and association.

✗ Unfounded allegations against non-governmental organizations have continually streamed from the President and high-level officials. President Jair Bolsonaro extinguished hundreds of public policy councils, a decision that was later partially revoked by the Supreme Court.

✗ President Bolsonaro has routinely interfered with the nomination of deans of federal universities – against the standard practice of nominating the most-voted candidate - and fired the director of the National Institute for Space Research (INPE) after it released data showing increased deforestation in the Amazon.

✗ President Bolsonaro has repeatedly threatened traditional news media outlets, attacked journalists and instilled hatred against these professionals on social media.

✗ Recent legislative changes have also been decried as retaliatory measures against the press.





# **RECOMMEN -DATIONS**



## NATIONAL CONGRESS

The National Congress must deliberate and approve structural anti-corruption reforms based on the package of measures prepared by Brazilian experts: The New Measures Against Corruption.

## JUDICIARY AND FEDERAL PROSECUTOR'S

The Judiciary and the Federal Prosecutors' Office must act in the face of their administrative inefficiency, the lack of accountability of its members for poor performance and corruption, and privileges, such as abusive vacations and exorbitant remuneration, which result in inefficient, time-consuming and selective jurisdictional provision.

## ELECTORAL COURT

For the 2020 municipal elections, the Electoral Court and control institutions must coordinate their actions against illicit financing of campaigns and the diversion of public funds under the control of the political parties, including the use of 'ghost' candidates and new forms of digital manipulation, such as the use of robots and the dissemination of fake news.

## FEDERAL GOVERNMENT

The Federal Government must remove from office the high-level authorities currently under investigation for corruption, in addition to proposing and working for the approval of structural anti-corruption reforms in the National Congress. It must fully respect the constitutionally-based freedom of expression and association, refraining from harassing professionals from the press and civil society organizations.







Photo: Josue Isai Ramos Figueroa / Unsplash

## STATE AND MUNICIPAL GOVERNMENTS

State and municipal governments must improve their institutional control mechanisms, update their anti-corruption legal frameworks and promote Integrity Programs that strengthen the fight against corruption at subnational levels.

## PRIVATE SECTOR

The private sector must promote collective actions for the establishment of sectoral codes of conduct and integrity pacts, the insertion of ethical values in the processes of training the workforce and fostering compliance in supply chains, including for small and medium-sized companies. Industry and trade federations and other business associations should also exercise their leadership to promote best practices in public and private integrity.

## BRAZILIAN SOCIETY

Brazilian society must consciously exercise its right to vote in the 2020 municipal elections to elect candidates with a clean record, commitment to the anti-corruption agenda and respect for democratic values, and it should also put pressure on the parties to increase their transparency, improve their governance and ensure internal democracy.

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