

Brazil: Freedoms threatened in the midst of an institutional crisis

Executive summary

This report addresses Brazil with regard to the Chapultepec Index of Freedom of Expression between May 1, 2019 and April 30, 2020. Among 22 countries in the Americas, it ranks 19th, with a score of 37.2, on a scale of 0 to 100. It performs the poorest in the realms of violence and impunity and informed citizens free to express themselves. The realms of exercise of journalism and control over the media show the best figures. The data also points to the Executive as the greatest threat to freedom of expression.

Introduction

This report addresses Brazil's performance regarding the Chapultepec Index of Freedom of Expression and the Press for the period between May 1, 2019 and April 30, 2020. In order to approach this institutional environment, however, it is necessary to retrace the track record of the country in recent years, especially since 2013, along which we find essential facts for a better understanding of the outlook reflected by the figures herein.

That year, there was a series of street protests known as the June Demonstrations (Jornadas de Junho, Harvey et al, 2015; Bucci, 2016). The rallies had multiple and rather unclear agendas, but with some common highlighting issues as follows: Absence of clear political leadership and rejection of the basic institutions of liberal representative democracy, especially political parties, as well as the press. Media crews were attacked and mobile broadcast units burned in the streets (Rossi & Bedinelli, 2014). The discontent expressed during the protests was gradually channeled by political groups opposed to the government of the Workers' Party (Partido dos Trabalhadores, PT), holding the presidential office since 2002.

This movement was reinvigorated after the 2014 elections, from which then President of the Republic Dilma Rousseff (PT) was re-elected. However, she would undergo a controversial impeachment process in 2016, which resulted in her dismissal, amidst biased and largely unfavorable media coverage (van Dijk, 2017). The context of what became known as *antipetismo*¹ was further encouraged by the

¹ Translator's Note (TN): That is, "against the PT", a term coined to refer to stances and political movements or thinking opposed to the Workers' Party.

media coverage of a series of corruption allegations, consolidated in Operation *Lava Jato*² ([Operation Carwash] Venceslau, 2014; Feres Júnior & Sassara, 2016).

The actions of then Judge Sérgio Moro and the Federal Ombudsman's Office (Ministério Público Federal, MPF) Working Group in Curitiba against the political and business elite received wide media coverage (Baptista, 2018; Ciocari, 2015). Several political leaders were targeted by law enforcement and court proceedings, among them former head of State and then pre-candidate for president in the 2018 elections Luís Inácio 'Lula' da Silva (PT – left). Convicted and serving time, Lula could not run. From this context emerged as a candidate former Army Captain (Carvalho, 2019) and then Federal Representative Jair Messias Bolsonaro, elected based on a background of anti-systemic discourse and authoritarian bias, including attacks on freedom of expression.

Since then, there has been a context of intense institutional conflict between, on the one hand, the Executive and, on the other, the Legislative and Judiciary, as well as news media and journalists.

Analysis of results

Brazil holds, among 22 countries of the Americas, the 19th position in the Chapultepec Index for Freedom of Expression, according to data collected in the period from May 1, 2019 to April 30, 2020. The rating achieved is 37.2 on a scale of 0 to 100. This number placed Brazil only ahead of Nicaragua (16), Cuba (6.2), and Venezuela (3.8).

On a scale of 0 (slight influence) to 10 (very strong influence), the executive environment stands out negatively as the most unfavorable influence on free speech (8.39). The institutional action of the Judiciary, in turn, was assessed as having a moderate influence (2.86). Finally, the action of the Legislative was perceived as having a slight influence (2.46) when it comes to situations discouraging free speech.

In relation to the realms reviewed, Realm A (informed and free citizens) stands out negatively, with 6.2, on a scale from 0 (no free speech) to 23 (full free speech); and Realm C (violence and impunity), with 6 for high restriction and no freedom, on a scale from 0 (no freedom) to 42 (full freedom). On the other hand, Realm B (exercise of journalism), with 6.6 on a scale from 0 to 10, and Realm D (control over the media), with 18.4 on a scale from 0 to 25, both reflecting low restriction.

² TN: A comprehensive anti-corruption probe into high-ranking government offices, agencies, and state-owned companies.

Environments: Institutional action and freedom of expression

Data related to institutional action show the Executive (8.39) with the highest degree of unfavorable influence on free speech in Brazil. In this context, two realms in particular stand out negatively: Realm B, regarding exercise of journalism, which achieved a rate closer to the maximum negative influence (9.3) on a scale from 0 to 10; and Realm D, regarding control over the media (9.17). The above study period was marked by an intense confrontation between the Federal Executive and some major Brazilian media, which contributes to this interpretation of the ratings.

President Jair Bolsonaro usually identifies the press in general as his political opponent (Folha de S.Paulo, 2019), with regular attacks on print media companies and newsmen (Congresso Em Foco 2019; Jiménez, 2019; Federação Nacional dos Jornalistas 2019). Gradually, threats have become actions, such as the selective removal of newspaper *Folha de S. Paulo* from a bidding process for supplying digital signatures to the federal government (Uribe, 2019) and a decrease in allocation of official advertising on media to those accused of unfavorable coverage (Fabrini, 2019).

The climate of conflict between the federal government and the press further worsened after the #vazajato ("car" leaks) scandal, which began on June 9, 2019. The hashtag refers to a series of reports prepared by *The Intercept Brasil*, headed by award-winning journalist Glenn Greenwald, but also published by other media, such as newspaper *Folha de S. Paulo*, magazine *Veja* and *Grupo Band* (Grupo Bandeirantes de Comunicação, GBC). These reports reveal messages exchanged among prosecutors and a judge, which would question the fairness of the procedures in place for the Operation *Lava Jato* Task Group ((The Intercept Brasil, 2019). At that time, the head judge in this process, Sérgio Moro, had already become Minister of Justice in the Jair Bolsonaro government. This episode led the President of the Republic to publicly threaten the American journalist (Satriano, 2019).

Aggressive behavior towards the press, both by the president and his supporters, has become frequent (BBC News Brasil, 2020; Redação Notícias, 2020). This led media companies *Rede Globo* and *Folha de S. Paulo* to suspend coverage from the *Palácio do Alvorada* seat of the president's office due to "lack of security" (Do UOL, 2020). This stance, however, caused reactions from the National Congress (Congresso Nacional) [Legislative – bicameral] in defense of freedom of expression and criticism of the president's hostility. This adds up to the interpretation of data regarding the legislative environment, with a score on free speech much more favorable against that of the Executive. Negative influence is generally perceived to be slight: 2.46 on a scale from 0 to 10.

As a response of sorts to the Executive, the House Committees on Human Rights and Minority and Culture held a joint session on the issue "Freedom of the Press and Communication: the Culture of Violence against Journalists and Communicators as a Threat to Human Rights and Democracy" on June 4. In the wake of the #vazajato episode, the House of Representatives and the Federal Senate

summoned then Minister of Justice Sérgio Moro ((Estadão, 2019), as well as journalist Glenn Greenwald (Da Redação, 2019 a, 2019; Audiência Pública Ordinária, 2019), for a hearing. During the debate, the minister defended the legality of the relationship between him and the government attorneys in charge of the prosecution in Operation *Lava Jato* and accused the press of sensationalism, while Greenwald praised investigative journalism for improving democracy. Both received wide media coverage.

With regard to the legislative environment, Realm B (exercise of journalism) stands out at 1.10, as well as the C Realm (violence and impunity) at 2.27, with an even lower degree of influence. To illustrate these issues, it is worth mentioning the demonstrations of Speaker of the House Rodrigo Maia (Democratas [Democratic Party – center-right]), on July 30, 2019 (Redação, 2019 a). Following the scandal of #*vazajato* revelations, he defended the secrecy of the source in the face of allegations that this series of reports had obtained information illegally. The congressman, for example, recorded a video after the arrest of alleged hackers who illegally tapped telephone conversations from public officials. The video was shown in support of journalist Glenn Greenwald at the headquarters of the Brazilian Press Association (Associação Brasileira de Imprensa, ABI), in Rio de Janeiro, on July 30, 2019 (Molica & da Silva, 2019).

Another noteworthy episode regarding institutional actions of the Legislative is the establishment of the Joint Congressional Inquiry Committee (Comissão Parlamentar Conjunta de Investigação, CPMI), formed by federal representatives and senators on September 4, 2019, to investigate the dissemination of fake news. The so-called ‘Fake News CPI’ was created with the aim of probing into, among other things, cyber-attacks against democracy and public debate (Senado Federal, 2020). During depositions given in public sessions, which began on October 22, 2019, there were aggressions against *Folha de S. Paulo* journalist Patrícia Campos Melo, behavior that was condemned by Speaker of the House Rodrigo Maia (Galvani, 2020). Patrícia Campos Melo revealed, in a report published by *Folha de S. Paulo*, that the campaign of then-candidate Jair Bolsonaro had used bulk messaging on WhatsApp, something prohibited by electoral legislation (Campos Melo, 2019). This caused Jair Bolsonaro himself to publicly insult her on February 18, 2020 (UOL play, 2020).

As for institutional actions from the Judiciary, the data points to an unfavorable influence on free speech at a moderate level: 2.86 on a scale of 0 to 10; an unfavorable influence at a low level in Realm B (exercise of journalism), with 2.2 and, particularly, Realm D (control over the media), at 1.79. Realm C (violence and impunity), in turn, is rated with an unfavorable influence at a moderate level, with 3.03, as well as Realm A (informed citizens free to express themselves), at 3.9.

Amidst conflict between the Executive and the Legislative over freedom of expression, the Brazilian Judiciary would therefore stand by the latter rather than the former. Some actions help illustrate what the ratings reveal. In the turmoil of reports published on #*vazajato*, there was news, on July 25, 2019, of what would be the

intent of then Minister of Justice Sérgio Moro to destroy proof of leaked messages obtained after the arrest of the suspected hackers of phone calls among officials (Coelho, 2019). The alleged intention of the then minister was immediately disapproved by members of the Judiciary, who described it as an authoritarian action if accomplished (Fernandes, 2019). The reaction may have led the minister to change his mind and desist (Coelho, 2019). The debate about leaked messages spawned by the #vazajato reports was also coupled with questions about a relativistic approach on the confidentiality of sources, which was quickly rejected by justices to the Supreme Court, as reported by the media on June 11 (Da Redação, 2019 b).

The Brazilian Supreme Court (Supremo Tribunal Federal, STF), however, found itself cornered by accusations of restricting the exercise of freedom of the press. This episode involved two media outlets, *O Antagonista* website and *Crusoé* magazine, which published, on April 11, 2019, an excerpt of the testimony by Operation *Lava Jato* defendant Marcelo Odebrecht, in which he mentions the name of Chief Justice Dias Toffoli (Rangel & Coutinho, 2019). Under the allegation that this was fake news, Justice Alexandre de Moraes ordered to remove the report from the sites of the above media outlets immediately and imposed a fine³ of R\$100,000 per day in case of contempt, as announced by the press on April 15 (Brigido, 2019). Following criticism from STF colleagues, three days later, the justice reversed his order (de Carvalho, 2019). This incident illustrates the data regarding institutional actions seeking to control the media and thereby restrict free speech under vague allegations.

Realm A: Informed citizens free to express themselves

The data in general indicate a decline of freedom of expression worldwide, but the Brazilian case seems particularly peculiar. Among 161 countries, Brazil experienced the third largest drop according to a survey by NGO Artigo 19 (Tajra, 2019). The numbers in the Chapultepec Index confirm this view of a fragile environment regarding free speech. Realm A scored 6.2 (on a scale of 0 to 23), which indicates a high restriction according to the parameters of the Chapultepec Index. This realm is composed of two sub-realms, information flow and free speech, in which Brazil scored 3.6 and 2.6, respectively. Widely known examples, some of which are detailed below, help illustrate the reality shown by these figures.

It is noteworthy what happened at the Rio de Janeiro Book Biennial 2019, when, on September 7, 2020, the Attorney General's Office (Advocacia-Geral da União, AGU) requested that the STF injunct the recall of LGBT-themed books exhibited at the event (Juca, 2019). The initiative to recall books from the literary fair came from the Mayor of Rio de Janeiro, Marcelo Crivella, an incident considered as "very serious" by the most senior member of the Supreme Court, Justice Celso de Mello.

³ TN: Real (pl. Reais), Brazil's currency (ISO: BRL).

To support his actions, the mayor invoked the Statute on Children and Adolescents (Estatuto da Criança e do Adolescente, ECA), claiming that the material on exhibit was unsuitable for children because it was pornographic or obscene.

The incident generated another reaction on social media, led mainly by YouTuber Felipe Neto. He bought 14,000 copies of books on the subject and distributed them for free, with a sticker reading, "This book is not appropriate for the backward-thinking, the retrograde, or the prejudiced" (Juca, 2019; Estadão Conteúdo, 2019). This YouTuber, who has close to 40 million followers, began to be harassed online and in real life, as reported by the press on September 16, to the point of needing to remove his own mother from the country in view of threats against her family (Redação, 2019 b). At the same time, he began to increasingly antagonize President Jair Bolsonaro and his sons, who have very active profiles on social media (Redação, 2019 c).

Realm B: Exercise of journalism

Regarding journalistic activity, as reviewed by Realm B, Brazil achieved a score of 6.6 on a scale ranging from 0 to 10, and therefore ranked in the low-restriction range. These results can be interpreted as reflecting the understanding that, despite the hostile relationship between Jair Bolsonaro and a significant portion of the press, the media have done their job (Padiglione, 2020).

However, it is possible to cite certain events that could be catalogued as an attempt to weaken both the journalists as a professional class and the activity of a portion of the press considered by the federal government as its opponent. One of them is Temporary Order (Medida Provisória, MP) No. 905/19, of November 11, 2019, which declared the affiliation to a professional association non-mandatory for the exercise of various activities, including that of journalists and announcers. The initiative was viewed as another offensive by the Federal Executive against the endeavor of news professionals (Scardoelli, 2019). The MP was ultimately repealed after demonstrations against it by unions and legislators.

It is also worth mentioning the exercise of journalism in the face of the government's practice of adopting alternative versions of reality when facts do not suit its convenience, with noted incidents occurred during the period covered by this report. In June 2019, the Minister of Citizenship banned the release of a research by the Oswaldo Cruz Foundation (Fundação Oswaldo Cruz, Fiocruz) on controlled substance use in the country, to the point that the Attorney General's Office was called to overcome the impasse (Oliveira, 2019). The president himself even shed doubts about official data on hunger and deforestation in the country (Pereira, 2019). During the recent coronavirus pandemic, mistrust of official data and access to evidence-based information was fueled (Muniz, Fonseca & Oliveira, 2020).

Realm C: Violence and impunity

On a scale ranging from 0 to 42, Realm C, violence and impunity, scored only 6, which reflects a situation of no free of speech, stressed on the sub-realms of persecution (0) and impunity (0.6). To illustrate this outlook, it is worth mentioning a report by the National Federation of Journalists (Federação Nacional dos Jornalistas, FENAJ) released in early 2020, which states that, in 2019, violence against newsmen increased 54% over 2018 (FENAJ, 2020). The document lists 114 attempts at discrediting the press and 94 direct attacks on professionals. President Jair Bolsonaro was responsible for 58% of these attacks, with a total of 121 instances. FENAJ understands that the head of the Federal Executive has institutionalized discrediting speech towards the work of the press as a political strategy.

There were also 2 assassinations, 28 instances of threats and intimidation, 15 physical attacks, 10 instances of censorship or obstruction to professional practice, 5 instances of restrictions on freedom of the press by means of court actions, 2 instances of racial slurs, and 2 acts of violence against said profession's labor union. The Southeastern Region concentrates most cases of violence (46.81%), probably because it gathers the largest number of print media outlets in comparison with the other regions. Then comes the Midwestern Region (19.15%), in which the federal capital of the country, Brasilia (13.83%) is the seat of the federal government. Finally, there are the Southern (15.96%), Northeastern (11.70%) and Northern (6.38%) Regions.

Another study, this time by the Brazilian Association of Radio and TV Broadcasters (Associação Brasileira de Emissoras de Rádio e Televisão, ABERT), a body with ties to owners of audiovisual media, also points to an average of 11,000 daily attacks against the press on social media in 2019 (Lis, 2020). Once more, the President of the Republic stood out negatively. The document reports that, of the 5,708 posts by Jair Bolsonaro on Twitter, 432 included criticism, innuendo, and warnings regarding the media and journalists. This was reflected in 51.7 million interactions.

Realm D: Control over the media

As for Realm D, regarding control over the media, Brazil achieved a score of 18.4 on a scale ranging from 0 to 25, indicating low restrictions in this matter. Data on the sub-realms indicate greater indirect (7.2) than direct control (11.2). This extent of indirect control over free speech seems evident when looking at data on budget allocation for government advertising among media companies or even favoring some by granting them exclusive interviews on prime time to defend the government's agenda.

During the traditional Brazilian Independence Day parade, held on September 7, in its 2019 edition in Brasilia, Jair Bolsonaro ([Social Liberal Party] Partido Social Liberal, PSL – right) stood between Bishop Edir Macedo (*Rede Record*) and Silvio Santos (*SBT*), two of Brazil's most important media businessmen. Historically benefiting from the largest share of government advertising budget, the *Globo* Organizations (*Organizações Globo*) fell behind *Rede Record*, which received R\$ 10.3 million in advertising allocations during the first half of 2019, followed by *SBT*, with R\$ 7.3 million. *Globo*, which was not on the main stand on September 7, received R\$ 7.1 million.

Media coverage on President Jair Bolsonaro and his government is mostly negative, including that by major broadsheet newspapers (*O Globo*, *O Estado de S. Paulo*, and *Folha de S. Paulo*), as well as *TV Globo*, while TV networks *Record*, *Band* and *SBT* have portrayed a softer side to the president (Manchetômetro, 2020). The editorial direction taken seems to reflect and, at the same time, be motivated precisely by a negotiation process, through indirect control over the media.

Conclusions

The overview presented in this report reflects a process that Brazil has been experiencing intensely since 2013, with the demonstrations known as *Jornadas de Junho*. At that time, an environment of gradual political polarization was evident, in which the main victims have been basic democratic values, including freedom of expression. Legal issues regarding Operation *Lava Jato* consolidated this climate of discrediting institutions, including the press, from which a candidate who openly flirts with authoritarianism rose to victory in the 2018 presidential elections.

The Chapultepec Index confirms in numbers the process of deterioration of the historically fragile Brazilian democracy, with a prominent role of the environment embodied by the Executive, especially President Jair Bolsonaro. His influence is expressed verbally, with regular attacks on news staff and organizations, or formally, through acts of government, such as discrimination in allocation of advertising funds. This ultimately encourages a climate of intolerance that does not contribute to increasing freedom of expression, but quite the opposite.

At the same time, the data highlights the role of the legislative and judicial environments as responsible for applying checks and balances against the attacks from the Executive against freedom of expression and the press. Two elements that seem to be intertwined should be decisive in this regard. The first one is the activity of the Joint Congressional Inquiry Committee on fake news, as its probe may clarify whether there exists or not a ring with ties to the Executive for spreading disinformation. The second one is the ruling by Federal Supreme Court Justice Alexandre de Moraes, whereby Facebook and Twitter accounts of President Jair Bolsonaro's supporters suspected of spreading messages of slander and defamation were blocked.

This is an ongoing debate. On the one hand, most political groups opposed to President Jair Bolsonaro have saluted the parliamentary inquiry of the CPMI on fake news and the decision of the STF considering it a fundamental measure to stop the fabrication and spread of fake news. On the other hand, the President's allies adopt the counterargument by blaming the Legislature and the Judiciary for restricting basic individual freedoms. Amidst this crossfire stands freedom of expression.

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