

BRAZIL

BETTER PERSPECTIVES FOR FREEDOM OF EXPRESSION

Executive Summary

In a list comprised of twenty-two countries, Brazil ranks thirteenth (in restriction), with a better performance compared to the previous report, when it ranked fifteenth. It performs worse in the Violence and Impunity realm and better in Informed Citizens Free to Express Themselves. As to the negative impact of institutional environments unfavoring freedom of expression, the data indicate a "slight influence" from the legislative, judicial and executive environments.

Introduction

This report shows the Chapultepec Freedom of Expression and Press Index's results for Brazil, corresponding to the August 2022 to July 2023 period. The analyzed data refer to the influence exerted by the Executive, Legislative and Judicial branches' institutional environment, as well as four specific realms: Informed Citizens Free to Express Themselves (Realm A), Practice of Journalism (Realm B), Violence and Impunity (Realm C) and Control over the Media (Realm D). In a list comprised of twenty-two countries, Brazil ranks thirteenth, scoring of 48.41 on a 0-to-100 scale.

The overall figures for Brazil reflect an ongoing change in the national political context, particularly as it relates to the environment associated with the Executive. It should be remembered that in the 2020 report the country scored 37.2, raking nineteenth and just ahead of Nicaragua, Cuba and Venezuela. The 2021 report evinced a similar situation, retaining the same position but scoring an even worse 31.6. Two factors had a major influence on this environment: the political crisis that began in 2013, which was made apparent by a wave of street manifestations, and President Jair Bolsonaro's government. However, 2022's report indicated a change in perspective as at that time Brazil rose to the fifteenth place by scoring 44.26.

The data in this report, which rank Brazil thirteenth, support the relevance of this presumption. Two years (2020 and 2021) after what was classified as "highly restricted" in terms of freedom of expression and the press, Brazil has attained scores in two consecutive reports (2022 and 2023) that grant the country an "in restriction" ranking. Although it remains too early to claim that this makes for a trend, there is a gradual shifting towards an environment less hostile to freedom of expression in the country, which is largely related to two factors: the effectiveness of the measures implemented to counteract threats to the result of the 2022 presidential elections, which has influenced not only the Executive but also the Legislative and Judicial Branches environments, as will be highlighted in the following sections.

Results Analysis

The Chapultepec Freedom of Expression and Press Index considers the influence on freedom of expression that three spheres exercise: legislative, judicial and executive. It also takes into account its relationship with four specific realms: Realm A: Citizens Free to Express Themselves, Realm B: Exercise of Journalism, Realm C: Violence and Impunity and Realm D: Control over the Media.

As for the environments, their classification can be based on how negatively they affect freedom of expression on a scale ranging from zero to ten: slight influence (0.1 to 2.5), moderate influence (2.51 to 5), strong influence (5.01 to 7.5) and very strong influence (7.51 to 10). The data show slight influence in all areas, being the Executive Branch the one exerting the strongest negative influence on freedom of expression and the press, scoring 1.63, followed by both the Legislative and the Judicial branches scoring 1.52.

Regarding the realms, Brazil displays a pattern already identified in previous reports. Of particular concern is Brazil's performance in Realm A: Citizens Free to Express Themselves, scoring 7.71 on a scale that ranges from zero (no freedom of expression) to twenty-three (full freedom of expression). Furthermore, in Realm C: Violence and Impunity, the country hits 16.27 on a zero-(without Generic: free speech)-to-42 (full Generic: free speech) scale. In both realms, the country rates as "highly restricted"

On the other hand, "low restriction" is observed when it comes to Exercise of Journalism, scoring 6.86 on a zero-(no freedom of expression)-to-ten (full freedom of expression) scale. Likewise, as to Control over the Media, Brazil scores 17.57 on a 0 (no freedom of expression)-to-twenty-five (full freedom of expression) scale.

These figures are against the backdrop of and illustrated by episodes that took place in the period analyzed in the following sections.

About the environments: influence of the Executive Branch

When it comes to Brazil, the Executive environment continues to exert the highest influence on freedom of expression and the press if we compare it to the Judicial and Legislative environments. However, this report evidences a significant decrease of this restrictive influence, which has gone down from 5.28, as per 2021's report, to 1.63 in the current report, on a zero (no influence)-to-ten (very strong influence) scale. Thereby, the country has been led to go from having a "strong influence" to a "slight influence" in terms of the type of negative influence on freedom of expression. The high score observed in previous reports was directly related to the government of then-president Jair Bolsonaro (Liberal Party, PL), who was elected in the 2018 general elections.

Throughout his political career, Bolsonaro held a hostile stance towards democratic values and principles, being the press and journalists, especially women, his favorite targets (Azevedo, 2022; Abraji aponta que..., 2021). This behavior, not only on behalf of the president himself, but also his followers and ministers (Ataques de Bolsonaro..., 2021), was systematically documented and analyzed by such organizations as Reporters Without Borders (RWB), the National Federation of Journalists (Federação Nacional dos Jornalistas, Fenaj), the Brazilian Association of Investigative Journalism (Associação Brasileira de Jornalismo Investigativo, Abraji) and the Brazilian Association of Radio and Television Broadcasters (Associação Brasileira das Emissoras

de Rádio e Televisão, Abert). The reports produced by these entities and widely spread, pointed out and blew the whistle on a pattern in the profile of aggressors and victims in the attacks on media companies and journalism professionals (Scardoelli, 2022; Campos, 2023; Haidar, 2023). This scenario changed with the defeat of then-president Jair Bolsonaro in the race for re-election in the October 2022 general elections, when he was defeated in both the first and second rounds by former president Luis Inácio Lula da Silva (Workers' Party, [Partido dos Trabalhadores, PT]).

Lula's return to the presidency of the Republic pointed to a revaluation of fundamental democratic principles such as freedom of expression and the press, from the Executive environment, after Bolsonaro's government, characterized by attacks and hostilities against the media in general (Romeu, 2022). This shows in the figures in this report compared to previous reports. However, a hostile environment is still observed, especially towards the work of journalists, due to undemocratic acts in response to the electoral result and the attempted coup d'état that took place on January 8 in Brasilia, aspects that will be elaborated later.

About the environments: influence of the Judicial Branch

The judicial environment presents a low degree of unfavorable influence on freedom of expression and the press, scoring 1.52 on a zero (no influence) to ten (very strong influence) scale. This marks a very different scenario from that of reports from 2019 (2.86), 2021 (4.46) and 2022 (4.3), years in which this environment ranked as "moderate influence". This significant transformation matches what has been observed in terms of the decrease also in the index as to the executive environment, since the judicial branch has taken a leading role in the exercise of monitoring and balancing on the executive branch.

The Supreme Federal Court (Supremo Tribunal Federal, STF), the highest court in the country, has devoted itself to put some restraint on the production and spread of the so-called fake news since 2019. As to this effort, the landmark case with the greatest impact is the one known as "fake news inquérito" (Inquérito # 4.781), kickstarted by then president of the court itself Dias Toffoli. This led to the investigation of allies of the former president Jair Bolsonaro under accusations of spread of disinformation and hate speech (Inquérito do STF..., 2020). Collectives ideologically akin to the Bolsonaro government and its members accused the Judiciary of persecution and attacks on freedom of expression, while opposition supporters sought to justify the initiative of the Judiciary as a necessary measure based on the circumstances (Weintraub and investigated...2020; Inquérito das fake..., 2020; Girão critique... 2023). This debate ended up influencing the legislature, where Draft Bill 2630 (or the Fake News Draft Bill), aimed at the regulation of digital platforms, is being worked out (Brito, 2022; Souza, Patriolino, 2023).

This atmosphere of debate and the initiatives to fight the spread of disinformation and hate speech were also present in the general elections of October 2022, especially in the context of the dispute for the president's office. Minister Alexandre de Moraes, an STF member and president of the Superior Electoral Court (Tribunal Superior Eleitoral, TSE), which is the judicial office responsible for running the electoral process, took a leading role to ensure clean and fair elections (Suzuki, 2022). In March 2023, after the election period, Moraes stated that the investigation on fake news was a historic milestone (Alexandre diz..., 2023). The change in perception of the Judiciary's influence seems to be have to do with its performance in the moments preceding and following the elections, as well as the exercise of Executive-Branch-related monitoring and balancing during Bolsonaro's administration.

About the environments: influence of the Legislative Branch

Scoring a 1.52 index, classified as mild unfavorable influence, the legislative environment scored the same index as the judicial environment (1.52) and not so distant from the executive environment (1.63). In line with the other environments, it is observed that there has been a significant decrease of the unfavorable influence as to the freedom of expression and the press compared to that observed in 2019's report (2.46), but especially in 2021's (4.73) and 2022's (4.04) reports. The setting of a less threatening scenario has to do with the interaction between the three branches of government (Executive, Judicial and Legislative) in a context in which the legislative environment got much closer to the judicial environment in the exercise of monitoring and balancing against the Executive Branch's authoritarianism during the Bolsonaro administration's years (Gielow, 2020; Benites, 2021).

The judicial environment's predominant agenda, the fight against disinformation and hate speech, was also largely taken on by the legislative environment, especially through the debate of Draft Bill 2630 (PL 2630), known as the Fake News Draft Bill. Basically, this is a proposal to regulate digital platforms, including liability assigning processes in the event of the spread of disinformation-related or democracy-threatening content. PL 2630 has practically monopolized the agenda as to freedom of expression and the press in Brazil and divided opinions in open debate (Schreiber, 2023). Social movements and scientific institutions took a predominantly favorable stance for the proposal (Secretário de Políticas..., 2023), while the Bolsonaro administration's allies and representatives of large technological corporations expressed criticism of the proposed regulation (Affonso, 2023).

The topic became a matter of public interest and got society in general involved, as shown by a survey carried out by the Federal Senate: data from DataSenado evidenced that 80% of the Brazilian population agrees with legislative steps to halt the spread of fake news. It can be inferred that this kind of initiatives would not pose a threat to democracy, as their critics and the executive environment under Bolsonaro tried to make it seem, but rather the opposite. By pursuing this favorable agenda, the legislative environment strengthened its image as an advocate of freedom of expression and the press, which appears to be reflected in this report's indexes.

Realm A: Citizens Free to Express Themselves

The index related to the Citizens Free to Express Themselves realm refers to the State's actions or omissions when it comes to the right to be informed and free expression, and comprises two sub-realms: information flow and freedom of expression. On a zero-to-twenty-three scale (the higher the number, the better), Brazil scored 7.71, according to which its performance worsened compared to 2022, when it scored 8.1, but shows an improvement compared to 2019 (6.2) and 2021 (5.0). Regarding its sub-realms, a gradual improvement is observed in the information flow index: from 3.6 in 2019, it dropped to 1.86 in 2021, rose back to 3.9 in 2022 and now reached 4.0 in a zero-to-eleven scale. On the other hand, the subrealm of freedom of expression shows a somewhat more unstable behavior, since on a scale from zero to twelve, it obtained 2.6 in 2020, increased to 3.14 in 2021, 4.3 in 2022 and now reaches 3.71.

These figures are better understood when seen against the setting around the so-called "Inquérito # 4,781" or "Fake News inquérito", and "inquérito 4,874", referred to as "digital militias inquérito", in the context of the 2022's election race for the Office of the President. This realm is closely related to the discussion on the distinction between freedom of expression and the spread of disinformation, the threat to democracy and hate speech that highlighted Brazilian politics over the last few years (STF distingue liberdade..., 2022). The fake news inquiry intended to "...

investigate the existence of fake news, slanderous complaints, threats and theft of postings that lacked proper copyright, violations that can make for slander, defamation and insult against the members of the Supreme Court and their relatives" (Freitas, 2022). The investigation into digital militias had on its behalf the purpose of "... investigating the existence of anti-democratic digital militias" (Minister Alexandre de Moraes..., 2022).

The development of these two inquests in an environment of intense political struggle between President Bolsonaro's allies and his adversaries powered different sides of the story: on the one hand, it was argued that it was persecution and a curtailment of freedom of expression; on the other hand, it was supported the concept that the investigations ensured the right to information and the democratic rule of law. This confrontation had opposite sides taking stances; above all, the executive environment (2.29 - on a zero [no influence]-to-ten [very strong influence]) scale, with a notable presence by the Bolsonaro government and its allies, and the judicial environment (2.43), in particular TSE, STF and Minister Alexandre de Moraes (Castellar, 2021). On its own, the legislative environment stayed closer to the judicial environment, leading the debate on the Fake News Draft Bill in Parliament (2.07). In this realm, the data indicate that the degree of unfavorable influence on freedom of expression and the press in the legislative (2.07), judicial (2.43) and executive (2.29) environments is slight, on a zero-to-ten scale (being ten very strong).

Realm B: Exercise of journalism

The Exercise of Journalism realm refers to the regulation of other proceedings compromising independence, the plurality of sources of information and their protection. In this item a slight improvement is noticeable in the result. On a zero-to-ten scale (in this case, the higher the number, the better), Brazil scored 6.86, a higher score compared to 2022 (6.6), b2021 (5.14) and 2020 (6.6).

The negative figure referring to the Executive can be credited to President Bolsonaro administration's stance verified over the last two years. Once the report is presented, it refers to a period including the end of his administration, precisely between August and December, 2022 (Batistta, 2023). When compared to previous years, there is a significant decrease in the negative influence of the executive environment as to this realm: 9.30 in 2020; 8.0 in 2021; 5.43 in 2022; and now, 2.43 in this case, on a zero (mild influence)-to-10 (strong influence) scale.

As pointed out in previous reports, the monitoring work and report of authoritarian attacks by entities defending the democratic exercise of day labor are highlighted. These are examples of the efforts made and spread by Fenaj and by Abraji (Scardoelli, 2022; Campos, 2023; Haidar, 2023). Finally, it is worth highlighting the initiative of the executive branch, through the Ministério da Justiça e Segurança Pública, to create the Observatory Against Violence to Journalists, in partnership with Fenaj (Nascimento, 2023). In this realm, the data indicate that the degree of unfavorable influence on freedom of expression and the press in the legislative (1.71), judicial (1.71) and executive (2.43) environments is slight, on a 0-to-10-(very strong) scale.

Realm C: Violence and impunity

The Violence and Impunity realm addresses the State's actions or omissions for the protection of journalists, the prevention of attacks or assaults against media employees and outlets, as well as initiatives to fight impunity for crimes against journalists and media companies. On zero to 42 a scale (the higher the number, the better the performance), Brazil scored 16.27.

Therefore, a significant gradual improvement is noticeable over the years in this dimension, since the country scored 6.0 in 2019, 9.46 in 2020, and 12 in 2022.

This trend can be best observed by examining the four subrealms that make up the index, as long as we remember that here, too, the higher the number, the better the performance. In the protection item, Brazil scored 4.4 in 2020, 0.86 in 2021, 0.0 in 2022, and now 1.14. In terms of persecution, the country obtained 0.0 in 2020, 1.0 in 2021, 0.6 in 2022, and now 3.57, on a zero to 7.5 scale. Impunity yielded 1.6 2020, 0.36 in 2021, 0.8 in 2022, and now 1.36, on a zero to 8.5 scale. Finally, regarding the subrealm of recorded violence, 7.24 were on record in 2021, 10.6 in 2022, and now 10.2, on a zero to twenty-one scale.

Therefore, this realm, directly associated with the strengthening of a broad opposition to Jair Bolsonaro's government at first and his defeat in the run for re-election, allows us to see a better performance by the country. The explanation is the data from different organizations pointed to the Executive as mainly responsible for attacks and threats to journalists in the country, which the Chapultepec Index also confirmed. This became even more evident in the so-called "actions against democracy" that took place shortly after the election results were made public on October 31, 2022, as well as on January 8, 2023 (Carregosa, Mendes, 2022). Journalists and media companies were subjected to attacks and threats throughout the country (Campos, 2023). In this realm, the data indicate a slight degree of unfavorable influence on freedom of expression and the press in the Legislative (1.71), Judicial (1.38) and Executive (1.52).

Realm D: Control over The Media

In the Control over the Media realm, aspects related to actions or omissions linked to State control over the media are addressed, based on two subrealms: direct control and indirect control. Brazil scored 17.57 on a zero to twenty-five scale, which practically iterates 2022's performance, when it obtained 17.6, a quite different score from that which had been recorded in 2021, with twelve, returning to values close to those of 2020, when it scored 18.4. During this period the data had not yet revealed the country's political turmoil.

Like the previously addressed realms, this is strongly influenced by the conduct of the Executive. The improvement in the data about the State's actions or omissions regarding control over the media reflects an opposition to Bolsonaro's administration and its subsequent defeat in his attempt at being re-elected. This is observable by examining the subrealms that comprise this index. The direct control subrealm rose from 11.2 in 2020, 8.57 in 2021, twelve in 2022; to the current 13.57, on a zero to nineteen scale. When it comes to indirect control, it fluctuates somewhat likewise: 7.2 in 2020, 3.43 in 2021, 5.6 in 2022, and now four.

The trend shown in the variation of these numbers is linkable to three moments: the implementation of a logic of influence on the media, especially those considered its adversaries, by the Bolsonaro administration's Executive (Mourão, 2022); the weakening of that influence facing an articulate opposition, especially by media-related unions, both from employers and workers; and Bolsonaro's defeat in the re-election race. In this realm, the data indicate a slight degree of unfavorable influence on freedom of expression and the press in the Legislative (0.57), Judicial (0.71) and Executive (0.71).

Conclusions

In this edition, Brazil achieved its best performance since 2019-2020, when the Chapultepec Freedom of Expression and Press Index began. Compared to 2022, it went from 44.26 to 48.41 on a 0 to 100 scale, which is higher than the world's average, 47.84. Despite having advanced two positions, from the 15th to the 13th in a list of twenty-two countries, headed by the Dominican Republic with an 81.08 index, Brazil remains in the seven-country group with partial restrictions on freedom of expression and press.

For a more accurate interpretation of this change, we need to consider the last ten years' political scenario, especially since the referred to as "June Protests" and their consequences. In 2013, demonstrations multiplied in the country's main cities, which brought to question fundamental democratic values and institutions, including the press, which was the target of constant attacks. An atmosphere of political crisis was set, worsened by the consequences of Operation Lava Jato, the controversial impeachment process of President Dilma Rousseff (2010-2016) and the subsequent election of Jair Bolsonaro as President of the Republic (2019-2023).

During this period, Brazil scored indexes reflecting an environment with high restrictions on freedom of expression and the press. In the 2020 and 2021 reports, the country ranked nineteenth, surpassing only Venezuela, Cuba and Nicaragua, countries notoriously ruled by authoritarian regimes. The main reason for this negative situation was the indexes obtained by the executive environment, whose unfavorable influence was very strong in 2020 (8.39), strong in 2021 (6.13) and in 2022 (5.28). Compared to the other environments, an unfavorable influence also prevailed, but to a moderate extent.

However, in recent years, in Brazil, there has been opposition and resistance to the authoritarian approach of the executive environment. This opposition has come not only from the other branches, particularly the Judiciary, but also from civic society organizations and human rights advocates who mobilized to collect data on episodes of hostility, threats and violence against freedom of expression and press. Annual reports were produced, for example, by Fenaj and Abraji, as well as Abert.

Between 2022 and 2023, the fight to guarantee the exercise of freedom of expression and the press took place mainly in the social media environment before and during the elections. The debate on the legal limits of freedom of expression, as well as on the ethical boundaries of political communication strategies and communication flows, had the Legislative and Judicial Branches involved in an effort to counter the conduct of the Executive and its allies. The STF and the TSE took a leading role in publicly and legally establishing a transparent distinction between freedom of expression and hate speech and the spread of disinformation.

October and November 2022 elections for the president's office represented a turning point in this process. During the pre-campaign, Luiz Inácio Lula da Silva sought to differentiate himself from then-President Bolsonaro as someone capable of guaranteeing the continuity of Brazilian democracy. To some extent, Lula's victory meant a weakening of narratives and initiatives threatening fundamental democratic principles, including freedom of expression and the press. The same can be said of the role played, in particular, by the judicial environment in this period, especially by the STF and the TSE, through Minister Alexandre de Moraes.

The difference is in the figures, which show a slight unfavorable influence on the Legislative (1.52), Judicial (1.52) and Executive (1.63), a very different scenario from that observed previously. Therefore, the data collected in this Chapultepec Index's edition suggest the possibility of a strengthening Brazilian democracy.

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