

Strategies of constitutional erosion in Brazil: “bolsonarismo” and the de-constitution by legal and administrative means

Estratégias de erosão constitucional no Brasil: bolsonarismo e a desconstituição por meios legais e administrativos

Heloisa Fernandes Câmara¹

¹ Universidade Federal do Paraná, Curitiba, Paraná, Brasil. E-mail: heloisafcamara@yahoo.com.br. ORCID: <https://orcid.org/0000-0003-3220-9266>.

Ana Paula Cardoso Almeida²

² Universidade Federal do Paraná, Curitiba, Paraná, Brasil. E-mail: anaana.almeida@hotmail.com. ORCID: <https://orcid.org/0000-0002-3755-5275>.

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Abstract

The process of constitutional erosion happens in several countries around the world and, in many cases, involves changing or creating a new constitution. In Brazil the phenomenon has strengthened under the Bolsonaro government (2019-2022) with the use of the strategies of legislative unilateralism, with the use of infra-constitutional norms; modification of the administrative structure and attacks on bureaucracy; use of the budget as a form of negotiation and the emptying of certain areas, curtailment of spaces for civil society participation, and reduction of transparency and capture of control mechanisms. The categorization made in this paper is not exhaustive, and, as observed in recent years, it is bound to changes resulting from the learning about the effectiveness of such measures. Still, it provides an important panorama for understanding and opposing the process of destruction.

Keywords: Constitutional erosion; Authoritarian infra-legalism; Erosion strategies.

Resumo

O processo de erosão constitucional acontece em vários países do mundo e, em muitos casos, envolve a mudança ou criação de nova constituição. No Brasil o fenômeno fortaleceu-se no governo Bolsonaro (2019-2022) com o uso das estratégias de unilateralismo legislativo, com o uso de normas infraconstitucionais; modificação da estrutura administrativa e ataques à burocracia; uso do orçamento como forma de negociação e esvaziamento de determinadas áreas, cerceamento de espaços de participação da sociedade civil e redução da transparência e captura dos mecanismos de controle. A categorização feita no presente trabalho não é exaustiva, e, como observado nos últimos anos, sujeita a mudanças decorrentes do aprendizado sobre a eficácia das medidas. Ainda assim fornece panorama importante para compreender e se opor ao processo de destruição.

Palavras-chave: Erosão constitucional; Infralegalismo autoritário; Estratégias erosão.



1. Introduction^{1 2}

There are ongoing weakening process of democratization and of the fundamentals of rule of law in many countries, such as: India, Hungary, Poland, Venezuela, Brazil and the United States.

The election of Donald Trump in 2016 made the topic, previously concentrated in the studies of global departments, become more studied in the departments of Political Science, both in the United States and in Europe. As expected, literature had as guiding questions to understand *how* and *why* phenomena have developed, in addition to exploring doubts about the meaning of such a process (Is it temporary? Does it represent a lasting change? What are the dialogues with previous movements, such as the fascism?).

One of the consensuses made is that the ways to threat democracy and institutions have taken place without the “classic coups”, so common in the history of Latin America. Instead of military coups with a power takeover, the current movement involves elected leaders who change the rules, capture institutions, and weaken control mechanisms. Like this, they threaten human rights, persecute opponents and, in the end, compromise the existence of a competitive electoral system.

This work aims to evaluate the instruments used in the Brazilian case. Although there is disagreement about when it started and even about the existence of a “crisis”, a relevant milestone for understanding democratic disarrays is the June Journeys (2013), a complex event that shows the widespread dissatisfaction of part of the population with certain political choices, and, in a broader sense, with political representation itself – so much that one of the mottos was *this representative doesn't represent me*.

Although with significant omissions, the chronology goes through some important occurrences. In 2014, the non-acceptance of the presidential election result

¹ We adopted the term “erosion” inspired by Ginsburg and Huq (2018) - although the authors deal with democratic erosion - in the sense of “slow but substantial decline of all three institutional predicates of constitutional liberal democracy. They are free-and-fair elections, the liberal rights to speech and association, the administrative rule of law, especially the ones related to the possibility of unbiased elections” (GINSBURG, HUQ, 2018, p. 71). However, we consider erosion in its broader sense: as the gradual changes that also affect the control mechanisms, in a way that the changes in public administration weaken them not only among the three branches, but also in social control, such as in the structure of the environment protection.

² A preliminary version of this work was presented at the 2nd Meeting of the International Society of Public Law in Brazilian Chapter (ICON-S BRASIL) in 2021. It was also the subject of debate at Insper. I am grateful for the comments and debates that took place at such events that made it possible to improve the arguments, special thanks to Diego Werneck Arguelhes.



helped to erode the credibility of the electoral system and helped fuel antagonisms³. In 2016, happened the impeachment of President Dilma Rousseff and, in 2018, the win of the far-right candidate, self-proclaimed outsider, Jair Messias Bolsonaro. The intensity of political events was exacerbated by the economic and public security crisis, controversial actions made by the Judiciary, especially the STF (Brazilian Supreme Court) acting in the political field and the Operation Car Wash. The period was therefore marked by political and legal instability.

Given the diversity of possibilities of analysis, the focus established here is to assess how constitutional erosion has occurred in Brazil under the Bolsonaro government (2019-2022). Since the campaign, the then candidate defended anti-democratic and anti-institutional measures, which to a large extent were and are being implemented, as a result of the destruction of public policies and the fragilization of institutions. The objective is to evaluate beyond the rhetoric, trying to analyze the instruments utilized to materialize the threats. As an ongoing process, this article intends to take a picture of the present time, with the risk of both excluding important facts and not following part of the developments.

Anticipating the conclusion, it stands out that in the Brazilian case there is the use of infra-constitutional and administrative mechanisms, with little use of mechanisms of constitutional amendment. Erosion occurs normatively through the predominance of unilateral acts, institutional capture, administrative weakening, appointment of unqualified people to administrative positions and, in parallel, the militarization of public administration. Also, add to this list the restriction of spaces for popular participation - such as councils and committees -; budget constraint in priority areas, and, finally, the reduction of transparency and control.

In this work we bring a very brief overview of democratic erosion, and then expose the strategies adopted in Brazil, with the objective of categorizing them. It is essential to assess the areas that Bolsonarism attacks, such as culture, education, the environment; but it is equally important to know the techniques and strategies, both to understand breaches and illegalities, and to structure effective ways of reaction.

³ Emílio Peluso Neder Meyer (2021, p. 1) chooses as a milestone of the “slow, harmful erosion of the constitutional identity established by the Constitution of 1988” the year of 2014. The choice of that date was due to the institutional analysis, since the 2014 elections would have interrupted institutional confrontations, leading to political crisis.



2. A Brief overview of constitutional erosion

Different countries have experienced significant threats to democracy and constitutionalism. One of the common points of the disparate experiences is the realization that they come from elected leaders; there is no *coup d'état* in the classical sense, but the constitutional and legal manipulation that, even without leaving the framework of the rule of law, captures it and corrodes it in such a way that, little by little, it becomes an authoritarian regime. Considering it as a complex phenomenon, in this work we limit this subject to the topics of strategies and ways of constitutional erosion. Internationally, a reference on the subject has been the concept of abusive constitutionalism by David Landau, as well as that of autocratic legalism by Javier Corrales and used by Kim Scheppele.

Landau gives the diagnosis that, although the use of tools such as military coups to destroy democracy has decreased, the use of constitutional instruments to create authoritarian and semi-authoritarian regimes has increased. Landau works the concept of abusive constitutionalism to describe the process of using constitutional mechanisms to change or to create a new constitution to erode the democratic order (2014, p. 189).

In dealing with the cases of Colombia, Venezuela and Hungary, he exemplified three kinds of erosion. In Colombia, an amendment was elaborated to allow reelection, which would be an example of abusive constitutionalism by amendment. However, the Colombian Constitutional Court considered the amendment unconstitutional, limiting the phenomenon. The Venezuelan case would be an example of abusive constitutionalism by replacement of the constitution, since changes took place in the constituent assembly that led to undermining the limits of power. Finally, in Hungary, abusive constitutionalism by amendment and by replacement sponsored by Prime Minister Viktor Orbán's Fidesz party were combined. The result was the curtailment of opposition and the reduction of control mechanisms. Although Landau's objective is to identify how constitutional weakening can occur on an apparently regular basis, as we will see later, his considerations do not help to understand the Brazilian case.

The process of constitutional weakening is described by Javier Corrales as autocratic legalism (2015, p. 38). Corrales considers that autocratic legalism has three key elements “the use, abuse and non-use of the law in service of the executive branch”. The use of law describes changing the constitution and laws in ways that favor the executive



branch. Laws will not always be overtly autocratic and approved by the legislative process, which hinders the process of change. The second element, the abuse of the law, occurs with the implementation of clearly biased measures that increase the power of the ruler. And non-use implies serious irregularities due to a lack of respect for the laws and the constitution. Corrales analyzed the situation in Venezuela and the process of constitutional degradation carried out without any sudden rupture with the constitutional order.

Following Corrales, Kim Scheppelle uses the concept to describe “When electoral mandates plus constitutional and legal change are used in the service of an illiberal agenda” (SCHEPPELE, 2018, p. 548). This phenomenon is part of a broader scenario of democratic decline.

The concept of autocratic legalism echoed in many other authors as a way of analyzing the weakening of liberal democracy. This implies that the law is used, altered and manipulated in a way that strangles limitations and allows the ruler to subvert the tools that prevent him from concentrating power.

Nationally, Cristiano Paixão has dealt with the de-constitutive process in the sense that it would not be necessary to make constitution amendment, or to invoke a new constituent assembly process, but simply that attacks on social rights, and government actions and omissions in crucial areas of the constitutional order, such as racial equality, culture, historical heritage and the environment, have the ability of destroying the constituent pact. Thus, it would not be necessary to use provisional measures or to approve bills of law, but it would be enough to “destroy from within”, that is, “to adopt administrative practices that directly violate the constitutional text, sometimes removing the minimum protection established by the Constitution, sometimes subverting some of its fundamental articles” (PAIXÃO, 2020). In Brazil, constitutional erosion precisely runs through the de-constitution of the achievements brought by the 1988 constitution, although without the need for textual alteration, but merely by the use of administrative and infralegal mechanisms. In this sense, despite the importance of comparative literature, it cannot adequately map the process that took place in Brazil, so it is necessary to focus specifically on our practices.



3. The mechanisms of constitutional erosion

The greatest obstacle in identifying and categorizing the mechanisms used in Brazil lies in the excess of information and processes, since there were setbacks in all areas. Leonardo Avritzer summarizes it: “The captain's⁴ conception of anti-governability took shape during the first year of his term due to his ability to destroy public policies” (AVRITZER, KERCHE, MARONA, 2021, p. 14). The destruction strategy undergoes incessant changes, making it hard to map and to find institutional and social responses.

Education, health, reduction of social inequality, environment, policies of control and transparency, protection of traditional peoples, science and innovation, human rights, work, public security, it is impossible to find a field unaffected by dismantling policies. In that sense, it is not intended to make a detailed exposition of the process. For more information, we refer to sources that have done qualified thematic mapping⁵.

Policies that bring setbacks in public policies, solely, are not practices of constitutional erosion. Policies, even if they are bad, are part of the democratic field of definition of government action. In this way, the first step is to establish why we consider Bolsonarist practices in this field as capable of destroying the constitution. The Brazilian constitution has as one of its most structured axes the protection of fundamental rights. The destruction of rights, especially those related to vulnerable groups, negatively affects the very constitutional existence. But this argument is still insufficient. The policy of setbacks is part of an agenda of constitutional erosion insofar as it is accompanied by several practices that directly confront the premises and the constitutional text itself, in a continuous attack that naturalizes breaches of constitutional duties. The action on several fronts, the attacks on rights and institutions, the continuous action and the growing difficulty of institutional and social controls go beyond the political dispute and *policies*, promoting the fraying of the constitution itself.

The first strategy concerns the normative arena, in which the president uses part

⁴ Jair Bolsonaro is a former military man who was transferred to the reserve with the rank of captain after being several acts of insubordination.

⁵ Thematic mapping can be verified in the following reports and websites: Sinal de Fumaça – Monitor Socioambiental; Relatório Cronologia de um Desastre Anunciado da Associação Nacional dos Servidores de Meio Ambiente (ASCEMA), Agenda de Emergência LAUT, Assediômetro, Assédio Institucional no Poder Público; the petitions sent to the International Criminal Court provide evidence to characterize the presidential conduct in crimes against humanity and genocide, VENTURA, AITH, REIS, A Linha do Tempo da Estratégia Federal de Disseminação da Covid-19.



of his legislative powers in order to make up for the lack of negotiation with the National Congress, in a practice of unprecedented legislative unilateralism.

3.1 Legislative unilateralism – governing by decrees and ordinances

A persistent theme in Brazilian political science concerns the type of way of governing that exists in coalition presidentialism and the relationship between Executive and Legislative in such model.

From the creation of the expression by Abranches (1987) to the classic study by Figueiredo and Limongi (1999), there is broad literature on the functioning of Brazilian presidentialism. This literature went through an initial assessment that the combination of federalism, presidentialism, proportional electoral system and multipartyism would lead to constant crises, and by further analysis of the concrete functioning of the system.

One of the factors analyzed to explain the functioning of the system, even after the initial negative forecast, was the existence of powers of the President of the Republic, especially regarding the agenda.⁶ These prerogatives embrace the Legislative sphere and include the private initiative of budget laws and the use of the Provisional Measure (MP), which makes it possible to immediately change the legal order. Regarding the MP, there is the benefit of a determined deadline for evaluation by the National Congress, whose non-observance leads to the blocking of legislative agenda. Due to the power of agenda that the MP provides, all presidents made extensive use of that instrument. However, despite such prerogatives, for the regular functioning of coalition presidentialism it is necessary to have negotiation between the Executive and the Legislative, otherwise the president will suffer legislative defeats, making it hard to govern. Some of the indicators used to evaluate this relationship are the success and dominance rates of the Executive and the percentage of conversion of provisional measures into law⁷.

Following these criteria, it is clear that in the first two years of the Bolsonaro government the relationship between the powers is fragile and the president is a

⁶ As defined by Magna Inácio “The agenda power refers to the ability of a given actor to influence or determine the alternatives considered in the decision-making processes, in relation to the content and procedures from which such alternatives are converted into political decisions”. The President has broad agenda powers, including the power of decree, competence to propose a Constitutional Amendment, exclusive legislative initiative in some matters, request of urgency, legislative initiative (2007, p. 170).

⁷ Success rate means the percentage of legislative proposals sent by the executive that are approved, dominance rate measures, among the approved proposals, which percentage was sent by the executive.



minority. In the first year of Bolsonaro's government, the success and dominance rates of the Executive were, respectively, 19% and 21% (BATISTA, 2020), while the dominance rate of the President of the Republic in the National Congress oscillates between 75 and 90%, having an average of 76.6%. The success rate of the President of the Republic in the National Congress is around 80% (SCHIER, 2017, n/p).

In the case of MPs, despite the increase of using during the Bolsonaro government, in the first two years, 47% of the proposals were converted into law, a lower percentage than previous presidents⁸. In 2021, 69⁹ were edited, of which 25 were converted into law, according to data from the Chamber of Deputies website.

The difficulty – or refusal – to negotiate with Congress has led to a broad panorama of administrative unilateralism. Bolsonaro's words that he has the power of the pen to make decrees, which would make him more powerful than the power to make formal laws¹⁰, sums up well the president's response to the lack of dialogue with Congress: the use and abuse of decrees^{11 12}, ordinances¹³, and other regulatory acts.

The editing of normative acts is part of the competence of the President of the Republic (art. 84, IV, Constitution of the Federative Republic of Brazil). However, there are two distinct situations: the use of decrees in a constitutional way to regulate issues that can be regulated by this normative instrument and the use of decrees in an unconstitutional way, that is, outside the presidential attributions. What we argue is that the president adopts unconstitutional practices, and, furthermore, that even its use in

⁸ CAMPEÃO em MPs, Bolsonaro aprovou menos da metade delas no Congresso. Congresso em foco, 25 nov. 2020. Available on: <<https://congressoemfoco.uol.com.br/area/governo/campeao-em-mps-bolsonaro-aprovou-menos-da-metade-delas-no-congresso/>> Access on: 17 nov. 2021.

⁹ Compared to 108 in 2020.

¹⁰ "I told Rodrigo Maia: with the pen I have much more power than you. Although you are actually the one making the laws, right? I have the power to make decrees. Of course, well-founded decrees", Bolsonaro reported, during the launch of the Mixed Parliamentary Front of the Brazilian Merchant Navy, at Clube Naval. Available on: <<https://exame.com/brasil/com-a-caneta-eu-tenho-mais-poder-do-que-voce-diz-bolsonaro-a-maia/>>. Access on: 17 nov. 2021

¹¹ Although in literature the power of decree is used to designate general normative instruments edited by the president of the republic (for all DA ROS, 2008; CAREY, SHUGART, 1998), in this work we separate both because we understand that even if the MP comes from an unilateral act, it needs to be confirmed by Congress, so that the express rejection or non-decision leads to the loss of effectiveness of the measure. Decrees, on the other hand, do not need to be confirmed, and, even if there is the possibility of suspending the executive's normative acts (art. 49, V, Constitution of the Federative Republic of Brazil), it is a greater burden than leaving the loss of effectiveness due to the expiration of the term.

¹² Executive decrees are instruments of the President of the Republic to regulate laws or to address administrative structure. In this way, they are tools that grant celerity and do not require congressional approval. But the excess of decrees, especially on issues that would not be their attribution, may indicate a lack of support in the legislative, which can be corroborated by projects for the suspension of decrees.

¹³ Ordinance is an ordinary administrative act that has the role of disciplining the functioning of the Public Administration.



topics that would be his attribution promotes pressure on other actors, in an act of constitutional hardball¹⁴

In the first eight months of his government, Bolsonaro edited 27% more decrees than Lula. In total numbers, Bolsonaro edited 323 decrees, against 253 by Lula and 131 by Dilma (in the first term of both). In the first two years of government there were 939 decrees – in comparison: Fernando Henrique Cardoso (753), Lula (766) and Dilma Rousseff (460) (RODAS, 2022). In the first year of his term in office, Bolsonaro edited 536 decrees, against 382 by Lula and 239 by Dilma (the first term of both).

The increase in the use of decrees was followed by a significant number of questions, 286 decrees edited by Bolsonaro were the subject of PDL¹⁵ (that can be translated to: draft legislative decree), while only 10 decrees by Lula and the same number by Dilma were subject of PDLs (VIEIRA, GLEZER, BARBOZA, 2020).

Table 1. Data on Decrees and Provisional Measures issued by Presidents of the Republic in different time frames¹⁶

President	First year of term		First two years of term	
	Decrees issued	Decrees that were subject of PDLs	Converted MPs	Decrees issued
Fernando Henrique Cardoso	407	5	82,4% (2001-2002)*	753
Luiz Inácio Lula da Silva	382	10	90% (2003-2006)	766
Dilma Rousseff	239	10	74,5% (2011-2014)	460
Jair Messias Bolsonaro	536	286	47% (2019-2020)	939

And, although decrees are traditionally used to regulate, and not to innovate the legal order, the analysis of Bolsonaro's decrees shows that some significant legal changes were promoted by this normative instrument.

When it comes to the issue of carrying and using firearms, the executive's

¹⁴ For Mark Tushnet (2003) constitutional hardball designates a change in the way rules are evaluated and used, causing institutions to adopt confrontation as the best political strategy.

¹⁵ The PDLs mean a proposal for a legislative decree to suspend the executive decree, according to note number 8. In this way, they signal conflicts between the executive and the legislative.

¹⁶ Sources: Portal da legislação, Palácio do Planalto, Congresso em Foco, Poder 360. *As stated in Congresso em Foco, during the FHC administration, only the MPs edited after Constitutional Amendment 32 were counted.



normative strategy of using unilateral infra-constitutional instruments and building a tangle of norms is evident. In a brief overview of 2019, the first year of the government, this *modus operandi* is demonstrated.

On January 15, decree 9.685 was published. It allowed the purchase of up to four firearms and expanded the right to possession. On May 7, Decree 9.785 was published, revoking the Disarmament Statute, and annulling the effects of the previous decree, expanding the right to carry to professional categories and to possess to rural landowners, in addition to allowing the purchase of a rifle - which was for exclusive use of police forces. On May 21, Decree 9.797 was edited, which gave the Army the power to edit an ordinance with a list of which firearms could be purchased by citizens. On June 18, the Senate revoked decrees 9.785 and 9.797. On June 26, the STF put on the ruling schedule five actions that questioned the constitutionality of the acts. On June 25, Bolsonaro edited four new decrees¹⁷ and revoked 9.787 and 9.797, but kept part of the text, including the possibility of purchasing a rifle. On the same day he forwarded bill 3723/2019¹⁸.

Between 2019 and February 2021, the executive issued 14 decrees and 14 ordinances on the subject, with 31 amendments¹⁹, making the mapping of applicable rules a complex mission. And, in parallel, the number of firearms registered in the country increased eightfold between 2018 and 2020²⁰.

Changes in access to firearms were widely reported, having been a campaign agenda and an important item on the presidential agenda of public insecurity²¹, but the scenario is similar in other areas.

¹⁷ Decrees 9.844, 9.845, 9.846 e 9.847.

¹⁸ Summary available on: <https://www.conectas.org/noticias/entenda-o-vai-e-vem-da-politica-de-armas-de-bolsonaro/?gclid=CjwKCAiA1uKMBhAGEIwAxzvX9wO5iRGx1cP6cvsZ2dTH24brxjl0SXHamGjz8_9A6XH4GiAU9idXKhoCOUQQAvD_BwE>.

¹⁹ As examples of normative acts in 2020: Ordinance 62/2020 prevented the screening of weapons. Decrees 10.627, 10.628, 10.629 and 10.630, edited on February 12, 2021, on the pretext of regulating law 10.826/2003 – the disarmament law – which, among other items, facilitated access to firearms and removed the control of the Army Command from projectiles, and items related to weapons. See: <https://www.cnnbrasil.com.br/politica/desde-inicio-do-governo-bolsonaro-mudou-31-vezes-a-politica-de-armas-no-brasil/>>. Access on 15 mar. 2022.

²⁰ Available on: <<https://brasil.elpais.com/brasil/2021-09-17/atuacao-vacilante-do-stf-nao-contem-a-venda-de-armas-incentivada-por-bolsonaro.html>>.

²¹ By this term we designate the presidential rhetorical action that, despite referencing public security, he does so without concrete policies, but with nods to public security officials, his base of support. Despite this, he seeks to attribute positive numbers to himself in the area. As an example of this posture: <https://g1.globo.com/politica/noticia/2022/02/21/bolsonaro-atribui-reducao-de-assassinatos-a-liberacao-de-armas-especialistas-dizem-que-presidente-distorce-fatos-e-que-mais-armas-em-circulacao-sao-risco-a-sociedade.ghtml>>. Access in 02 set. 2022.



The use of normative acts seems to be a presidential tactic for modifying public policies on important issues for his electorate. The target areas of alteration are the same in which the president, since his campaign, has already signaled as central. Despite the normative strategy used, there were recent negotiations with the “Centrão”²², which made it possible to approve an amendment to the Brazilian Constitution^{23 24}.

3.2 Modification of the administrative structure and attacks on bureaucracy

The President of the Republic has constitutional powers to make changes in public administration (art. 84, II, VI, Constitution of the Federative Republic of Brazil). However, the alterations that were made resulted in the precariousness of some areas, reduction of control and administrative disruption that, even with decisions of the STF, characterize constitutional erosion in the terms previously presented.

The modification of administrative structure took place in the very first days of government, through MP 870/2019, published on the day the president's took office and it brought changes to the ministries.

The MP established the transfer of attributions from the Ministry of the Environment to the Ministry of Agriculture, which have completely different agendas, so that the protection of the environment would be severely threatened. In addition, it determined that the competence for demarcating indigenous and quilombola lands would fall to the Ministry of Agriculture. FUNAI (Fundação Nacional do Índio - Translated to: National Indian Foundation) would be removed from the Ministry of Justice to the Ministry of Women, Family and Human Rights²⁵. The aim would be “to institute extensive agriculture, mining and other activities in the existing indigenous land”. This measure was

²² This term designates a set of political parties with low ideological adherence that negotiates support with the president of the moment through demands for positions and resources.

²³By this term we designate the presidential rhetorical action that, despite referencing public security, he does so without concrete policies, but with nods to public security officials, his base of support. Despite this, he seeks to attribute positive numbers to himself in the area. As an example of this posture: <https://g1.globo.com/politica/noticia/2022/02/21/bolsonaro-atribui-reducao-de-assassinatos-a-liberacao-de-armas-especialistas-dizem-que-presidente-distorce-fatos-e-que-mais-armas-em-circulacao-sao-risco-a-sociedade.ghtml>. Access in 02 set. 2022.

²⁴ Amid the debates related to the “secret budget”, PEC 23/21 was voted in the Chamber of Deputies, which limits annual expenses with precatories. The issue is sensitive to the president since its approval is a condition for him to have a budget to establish payment of financial aid. The PEC was approved in two rounds in the Chamber, first by 312 in favor and 144 against, and second, by 323 votes in favor and 172 against.

²⁵ These changes were subject to amendment during the MP 870 process.



not approved by Congress²⁶ (HOCHSTELER, 2021, p. 275). The aforementioned changes follow the presidential manifestations that there would be no more demarcation of indigenous lands²⁷.

To the alterations in the structure must be added deinstitutionalization and curtailment of functional autonomy and persecution of civil servants.

In a survey made with 141 bureaucrats, Gabriela Lotta, Mariana Silveira and Michelle Fernandez classified the persecution of civil servants into four types of oppression: 1) physical, 2) on administrative routines and procedures, 3) moral and social, in addition to ideological oppression, and 4) of erasure and silencing (LOTTA, SILVEIRA, FERNANDEZ, no prelo, p. 10).

Physical oppression is characterized by control of the workplace; for example, there is the control and modification of the physical space, regulation of schedules in telework, as well as control of platforms to generate the feeling of control and surveillance. The oppression on routines and procedures happens in the changing of rules and procedures, leaving public servants without the protection of standardized rules. One of the examples is the ban on processing demands via SEI (Sistema Eletrônico de Informações – Translated to: Electronic Information System), curtailing the application of procedures provided by law and questioning established routines and indicators. Through moral and social oppression, the aim is to demoralize bureaucracy. It can occur with the questioning and demoralization of decisions, or, in everyday life, with threats of lawsuits and punishments. This item includes various institutional harassments, such as non-release for training or institutional representations. In this sense, several high-ranking demonstrations against technical knowledge and against public administration fit in. In oppression by erasure/silence, the objective is to silence bureaucrats, which occurs through impeding decision-making processes or through purging. Furthermore, there was use of administrative processes against civil servants who were carrying out their duties, as can be seen in the environmental area in relation to civil servants who imposed fines (LOTTA, SILVEIRA, FERNANDEZ, no prelo, p. 10).

The environmental area was directly affected, and all the forenamed

²⁶ Once in Congress, competence for demarcating indigenous lands returned to Funai, which, in turn, was reincorporated into the structure of the Ministry of Justice. Even so, Bolsonaro reissued an MP with the same content (MP 886), but the MP was suspended by the STF due to the prohibition of reissue of an MP in the same legislative session (ADIs 6172, 6173 and 6174).

²⁷Available on: <<https://www1.folha.uol.com.br/poder/2018/11/no-que-depender-de-mim-nao-tem-mais-demarcacao-de-terra-indigena-diz-bolsonaro-a-tv.shtml>>. Access on 15 mar. 2022.



oppressions can be identified in it. In addition to being the target area of attacks since the campaign, according to Lotta, Silveira and Fernandez (no prelo), environmental agencies were possibly “guinea pigs” for measures that, when effective, were later adopted in other areas.

First, through normative impulse: between March and May 2020, 195 acts on the environment were published in the *Diário Oficial* (Translated to: Official Federal Gazette), against 16 in the same period of 2019²⁸. Second, through administrative changes via the aforementioned MP 870, which extinguished the *Secretaria de Mudanças do Clima e Florestas* (Translated to: Secretariat for Climate Change and Forests), the *SFB - Serviço Florestal Brasileiro* (Translated to: Brazilian Forestry Service) and the *CAR - Cadastro Ambiental Rural* (Translated to: Rural Environmental Registry), which went to the Ministry of Agriculture, and the *National Water Agency (ANA)*, which was transferred to the Ministry of Regional Development (MDR) (ASCEMA, 2020, p. 9).

Early in 2019, 21 of Ibama's 27 regional superintendents were exonerated; afterwards, many superintendencies went months without being appointed any superintendents and some of the new appointees were military police officers without expertise in the area (ASCEMA, 2020, p. 8). The militarization of the structure is quite clear in the case of the environmental agency, as we will see later.

Besides, there was an interpretative order²⁹ from the president of Ibama that facilitated the export of wood by eliminating the authorization requirement of the agency, favoring the smuggling of wood.

In February 2021, an inter-ministerial normative instruction was issued, which made field investigation more difficult, as it removed the autonomy of field inspectors, who now needed prior authorization from a superior to impose a fine. Even before the instruction, there was already a drop in the number of infraction notices by Ibama³⁰, a situation that increased after the instrument³¹.

Another department that was heavily impacted was the Federal Police, which

²⁸ Available on: <<https://www1.folha.uol.com.br/ambiente/2020/12/em-dois-anos-bolsonaro-promove-desmonte-no-meio-ambiente-funai-e-reforma-agraria.shtml>>.

²⁹ Available on: <https://cdn.oantagonista.net/uploads/2021/05/SEI_IBAMA-7036900-Despacho-Gabin.pdf>.

³⁰ There was a 43.5% drop in the agency's infraction notices in the Amazon between 2019 and 2020, a period on which there was an increase in fires and deforestation. Available on: <https://csr.ufmg.br/csr/wp-content/uploads/2021/06/colabora_autos-de-infracao-na-amazonia-caem-com-bolsonaro.pdf>.

³¹ For example, in Amapá the drop was 85%. Available on: <<https://g1.globo.com/ap/amapa/natureza/amazonia/noticia/2021/06/04/ibama-tem-queda-de-85percent-em-multas-com-menor-autonomia-de-fiscais-no-ap-diz-associacao.ghtml>>.



affects the control of acts by the Federal Public Administration, as seen in item 3.5.

The first restriction was due to the appointment of the Director General who, in his first meeting, indicated that the autonomy of investigation of police chiefs and superintendents would be limited, under what he called “secrecy” and “anarchy”, referring to autonomy guarantees created in the first decade of the year 2000 to avoid political interference. In the best-known case, the superintendent of Amazonas, Alexandre Saraiva, was transferred to the countryside of Rio de Janeiro after defending the work of the Federal Police that led to the largest seizure of wood in history, an operation that was criticized by the former minister of the environment, Ricardo Salles. The relocation took place after an interview in which Saraiva informed that “he would not run the cattle herd in the PF”³² (ABREU, 2021, p. 20-26).

Furthermore, deinstitutionalization involves appointing people committed to the destruction of their areas. That is why the former Minister of Education has identified public education with immoralities, the Secretary of Culture is against cultural manifestations, the president of the Fundação Palmares excludes black personalities from the website, and the regional coordinator of FUNAI in Vale do Javari, an army reserve lieutenant, encouraged leaders of the Marubo ethnic group to shoot at isolated indigenous peoples in the Amazon.

Also, it is important to mention the emptying and dismantling that took place in the Mecanismo Nacional de Prevenção e Combate à Tortura – (initials MNPCT, in portuguese). Through decree 9831/19, the president reallocated non-career appointments of the department, linked to the Ministry of Women, Family and Human Rights, to the secretariat of the Ministry of Economy, automatically exonerating the career civil servants of the reassigned positions, in addition to transforming the participation in the MNPCT on unpaid public duty.

The Office of the Prosecutor General (initials PGR, in portuguese) submitted an Action Against a Violation of a Constitutional Fundamental Right (initials ADPF, in portuguese) against the mentioned decree, with the argument that there was an extrapolation of presidential prerogatives by changing, via decree, the functioning of an

³² The mention of “running the cattle herd” comes from the public release of the ministerial meeting that took place on April 20, 2020, in which Salles says that the pandemic and the attention of the press on the subject could be an advantage to “run the cattle herd” and make the environmental protection mechanisms more flexible. The meeting was released in the context of an STF inquiry to investigate Sérgio Moro's allegation of Bolsonaro's interference in the Federal Police.



office created by law (12847/13). In March 2022, the Brazilian Supreme Court (initials STF, in portuguese) ruled on the action recognizing the abuse of regulatory power by the Executive.

Parallel to this process, there is the militarization of public administration³³, which has been carried out in such a way as to weaken the areas, since there is a replacement of career civil servants by military personnel who do not have expertise in the area. Between 2018 and 2020, the number of military personnel in the federal administration increased by about 55%, that year there were 6157 military personnel, in addition to being almost half of them ministers (NOZAKI, 2021, p. 9). In March 2021, there were 92 military personnel occupying top positions in the largest state-owned companies, a number ten times bigger than what occurred in the Temer government (SEABRA, GARCIA, 2021). It should be added that 30% of non-career appointments are occupied by military personnel, and “in certain offices – such as environmental, CGU, human resources areas, etc. – they occupy 90% of the direction spots” (LOTTA, SILVEIRA, FERNANDEZ, in press, p. 13). As the authors note, militarization allows both politicization and the creation of a climate of fear, oppression and control. The degree of militarization of public administration is unparalleled in other democracies.

In the environmental area, in addition to appointing military personnel to important positions³⁴, GLO (Law and Order Guarantee) was used in operations Verde Brasil 1 (translated to Green Brasil 1) (2019) and Verde Brasil 2 (translated to Green Brasil 2) (2020-2021), which assigned the Armed Forces the role of preventing environmental crimes in the Amazon. The Armed Forces were then hierarchically above Ibama and the Chico Mendes Institute (ICMbio), offices with knowledge and experience in the function they perform, which, it should be noted, are in the process of being emptied. In addition to the resources spent³⁵, there was an increase in deforestation in the period of operations, showing the absolute inefficiency of government operations.

Many of the military appointed to political positions are on active duty, which generates conflicts between political demands and military life.

³³ Although in this article the evidence of militarization occurs through the quantitative analysis of military personnel in civilian positions, it is possible to consider militarization through the prism of the form of organization of activities, occupation of the political system, etc. On the topic see SCHMITT, 2022.

³⁴ “in socioenvironmental administration there are more than 90 military personnel allocated in areas such as Funai, Ibama, ICMbio, Sesai, Incra, Mapa, Funasa, FCP, in addition to the Ministry of the Environment and the Ministry of Agriculture, Livestock and Supply.” NOZAKI, 2021, p.21.

³⁵ According to data on the Ministry of Defense website, Operation Brasil Verde 2 (between 05/11/2020 to 04/30/2021) cost BRL 379,230,988.82.



3.3 Budget – decrease and non-budget execution

The budget definition is always at the center of political debates, it is expected that each ruler prioritizes important issues for his/her base in ordinary political action. There are, however, limits to the definition, either by constitutional obligation or by the need to negotiate with Congress. In the analyzed time-lapse there was an economic crisis, which directly affects the budgetary field. Nonetheless, this occurs unevenly, with a decrease in certain areas and an increase in spending in others, which suggests that, similarly to what happened in other countries³⁶, the budget has been used as a mechanism for the destruction of areas and bureaucratic dismantling.

The Bolsonaro government has acted to reduce the budget in areas involving rights, such as education, science, and technology, in addition to the environmental area, which already faced budget reductions. At the same time, there was an increase in the budget in areas that speak directly to Bolsonaro's base, in addition to non-execution of the budget in areas such as human rights. Therefore, the budget bottleneck in some sectors is added to the increase in expenses without proper transparency and control.

According to Lotta et al (2022, p. 476), the drastic reduction in agency budgets or the impediment to the execution of resources has been quite effective in demobilizing and demotivating civil servants. According to Miguel (2022, p. 688) "the budget cuts are forms of direct and sometimes lethal attacks on institutions because they make the formulation and execution of public policies by these same institutions unfeasible."

Budget cuts are identified by civil servants as institutional harassment, as it makes it difficult to predict the execution of their tasks. These cuts, however, also affect the provision of public services, since projects and actions need to be interrupted, directly affecting the population (MIGUEL, 2022).

Lately, the federal budget has shown some tendencies³⁷ such as an increase in resources for the Ministry of Defense and a decrease for the Ministry of Environment (GERBASE, 2021). In this example, there is a budget reduction of 30% between 2019 and

³⁶ Trump signed an order on his fourth day in office banning the use of federal funds to assist women abroad who wanted an abortion. The decree order restores a measure adopted by Ronald Reagan in 1985. In Hungary foundations were created to manage public colleges, including their budget. Despite claiming the institution's autonomy, the members of the councils are appointed by the government.

³⁷ The COVID-19 pandemic established some peculiarities in the analysis and comparison between annual budgets as it required significant resources in 2020.



2020 in Ibama³⁸. In the same sense, although the budget for Incra has increased, the budget for Technical Assistance and Rural Extension, Promotion of Education in the Countryside and Agrarian Reform and Land Regularization has been reduced by more than 99%³⁹.

As examples of the first case, we have the cut of 600 million for the Science, Technology, and Innovation portfolio for the year of 2022⁴⁰, which corresponds to 87% of the portfolio's budget. Education had cuts of 27%⁴¹, remembering that there was already a context of diminishing resources⁴², which has led to precariousness and the phenomenon of brain drain⁴³. Budget cuts directly affected federal universities⁴⁴. Dealing with the Hungarian case, Renáta Uitz says that:

universities can be disciplined through budget cuts, the appointment of financial administrators and deans to control their spending, and also through scholarships and allocation of funds for students to study in certain places, and finally, but not least, by financing teachers' salaries (VENTURINI, 2021).

The use of budget as a form of pressure also occurs through cuts in specific areas. As an example, the April 2020 public notice from the CNPq (Translated to: National Council for Scientific and Technological Development), among the 25.000 scientific initiation scholarships did not include humanities courses. This happened in parallel with demonstrations that associated public education with immoral activities, and the idea that humanities courses are useless.

Between the submission of the project and the approval of the 2021 budget, there was a significant increase in resources in the areas of public security (increase of 28.2%), protection of life, strengthening of the family (15,1%) and regional development, that is, construction works (647,5%)⁴⁵, areas of direct interest to Bolsonaroism.

³⁸ Available on: <<https://www.camara.leg.br/noticias/703644-frente-detalha-queda-no-orcamento-ambiental-e-busca-solucoes-para-reverter-o-rombo/>>. Acesso em 20 mar. 2022.

³⁹ Available on: <<https://www1.folha.uol.com.br/poder/2020/09/bolsonaro-incrementa-verba-para-ruralistas-e-reduz-quase-a-zero-a-reforma-agraria.shtml>>.

⁴⁰ Available on: <<https://www12.senado.leg.br/noticias/materias/2021/10/21/cct-vai-debater-corte-de-r-600-milhoes-no-orcamento-da-ciencia-e-tecnologia>>.

⁴¹ Available on: <<https://www.brasildéfato.com.br/2021/03/26/orcamento-2021-e-aprovado-com-cortes-em-areas-centrais-para-o-combate-a-covid-19>>.

⁴² "In Education, public investments fell in real terms from BRL 109 billion in 2018 to BRL 106 billion in 2019 (...) Capes' budget fell from BRL 9 billion in 2015 to BRL 4.5 billion in 2019." GERBASE, 2021.

⁴³ Data on the phenomenon and budget cuts in the area can be accessed on: <<https://piaui.folha.uol.com.br/materia/a-diaspora/>>.

⁴⁴ In April 2019, MEC announced a 30% cut in funding from federal universities and federal institutes. After protests, the cut was reversed.

⁴⁵ Available on: <<https://www1.folha.uol.com.br/mercado/2021/04/orcamento-de-2021-favorece-programas-ligados-ao-bolsonarismo.shtml>>.



In addition to cuts in priority areas and the directioning to Bolsonaroist agendas, there was a strategy of non-budget execution. The MPF, through a civil inquiry, investigates the low execution of the budget of the Ministry of Women, Family and Human Rights, of Minister Damare Alves. According to the opening inquiry ordinance, only 44% of the planned budget for 2020 was executed, this at a time when cases of human rights violations increased, especially violence against women. The Casa da Mulher Brasileira (Translated to: The House of the Brazilian Woman), a reference in assisting women victims of violence, spent only BRL 1 million in 2021, out of the total authorized BRL 21.8 million⁴⁶.

The same process of non-budget execution can be seen in the paralysis of the Amazon Fund, managed by BNDES. The purpose of the Fund is to “raise donations for non-reimbursable investments in actions to prevent, monitor and combat deforestation, and to promote the conservation and sustainable use of the Legal Amazon”⁴⁷. The government dismantled the Fund's governance by extinguishing two collegiate departments that made up its management: the Guidance Committee (initials COFA, in Portuguese) and the Technical Committee (initials CTFA, in Portuguese). In this way, given that the contract with the donors prescribed that governance would happen through the aforementioned committees, the money donated for new projects could no longer be used. Thus, there are 3.3 billion reais stuck in the Fund since January 2019⁴⁸, which directly affects protection in the Amazon region.

The budgetary area has also been central to Bolsonaroist policy, as it was used to crown the partnership with Centrão. In this sense, there is the use of the rapporteur's amendments to strengthen support for government projects, a mechanism with little possibility of control⁴⁹. The “rapporteur's amendment”, or secret budget, makes budgetary control difficult. In 2021, R\$ 16.86 billion were distributed in this way, without

⁴⁶ Available on: <<https://www.correiobraziliense.com.br/brasil/2022/03/4991333-orcamento-do-governo-para-combate-a-violencia-contramulher-e-o-menor-em-4-anos.html>>.

⁴⁷ As defined by the website: <http://www.fundoamazonia.gov.br/pt/home/>.

⁴⁸ Data and information regarding the dismantling of the Amazon Fund were taken from the interview given by researcher Suely Araújo to the podcast “Ilústríssima Conversa, on September 3, 2022, available on: <<https://www1.folha.uol.com.br/ilustrissima/2022/09/brasil-so-reconstrui-politica-ambiental-sem-bolsonaro-diz-ex-presidente-do-ibama.shtml>>. Access on 04 set. 2022.

⁴⁹ The budget law can be subject to amendments, however in 2019 the rapporteur amendment modality was created allowing the transfer of resources on behalf of the rapporteur, therefore without identifying which parliamentarian receives it, in addition to the absence of criteria for receipt or not (different from other forms of amendment). It has been used as a form of negotiation for the approval of measures such as the PEC on Precatories.



having defined criteria and, in some cases, without information on the expense, and part of the amount was used in the purchase of tractors with a value 259% above the reference value⁵⁰. Despite having been suspended on November 5, 2021, by preliminary decision of the STF in ADPF 854, reported by Minister Rosa Weber, the reestablishment was decided in Plenary after explanations sent by the National Congress.

3.4 Restricting spaces for civil society participation

The issue of Decree 9759/2019 directly affected public policy councils, committees and work groups⁵¹, as it established the revocation of all government bodies that were not established by formal law⁵². This action was defended by Bolsonaro in a tweet, his favorite form of institutional communication, as “a gigantic economy, reducing bureaucracy and reducing the power of politically equipped entities” (apud BEZERRA, RODRIGUES, ROMÃO, 2021). The then Minister of the Civil House, Onyx Lorenzoni, stated that there would be a reduction from about 700 deliberation entities to 50, and that “They had as their genesis an ideological vision of the governments that preceded us of weakening the representation of society. They were created in the PT government and brought the payment of per diems, airline tickets and food.”⁵³ Thirty-five collegiate entities were extinguished⁵⁴.

⁵⁰ Available on: <<https://politica.estadao.com.br/noticias/geral,orcamento-secreto-de-bolsonaro-entenda-o-passo-a-passo-do-esquema,70003708734>>.

⁵¹ Councils are collegiate bodies in which there is social participation, and they exist at federal, state and local levels, and they have the objective of formulating, supervising and evaluating public policies in their area of operation.

⁵² The councils created in the form of decrees or ordinances should have been justified by June 28, 2019, or they would be extinguished.

⁵³ Available on: <<https://www.diap.org.br/index.php/noticias/noticias/89189-presidente-jair-bolsonaro-extingue-varios-conselhos-federais>>.

⁵⁴ In portuguese: 1) Conselho Nacional de Combate à Discriminação e Promoção dos Direitos de LGBT (CNCD/LGBT); 2) Comissão Nacional de Educação Escolar Indígena; 3) Comitê Nacional de Educação em Direitos Humanos (CNEHDH); 4) Comitê Intersetorial de Acompanhamento e Monitoramento da Política Nacional para a População em Situação de Rua; 5) Comissão Nacional de Alfabetização e Educação de Jovens e Adultos (Cnaeja); 6) Comissão Nacional de Florestas (Conaflor); 7) Comissão Nacional para Erradicação do Trabalho Escravo (Conatrae); 8) Conselho Nacional de Políticas sobre Drogas (Conad); 9) Conselho Superior do Cinema (CSC); 10) Conselho Nacional dos Direitos do Idoso (CNDI); 11) Conselho da Transparência Pública e Combate à Corrupção (CTPCC); 12) Conselho das Cidades (Concidades); 13) Conselho Nacional dos Direitos da Pessoa com Deficiência (Conade); 14) Conselho da Autoridade Central Administrativa Federal contra o Sequestro Internacional de Crianças; 15) Conselho Deliberativo da Política do Café (CDPC); 16) Conselho Nacional de Desenvolvimento Rural Sustentável (Condraf); 17) Conselho de Desenvolvimento do Agronegócio do Cacau (CDAC); 18) Conselho Nacional de Combate à Pirataria e Delitos contra a Propriedade Intelectual (CNCP); 19) Conselho Nacional de Proteção e Defesa Civil (Conpdec); 20) Conselho de Recursos da Previdência Social (CRPS); 21) Conselho Nacional de Segurança Pública (Conasp); 22) Conselho de Relações do Trabalho (CRT); 23) Conselho de Representantes dos Brasileiros no Exterior (CRBE); 24) Conselho Nacional de



In addition to the extinction, there was a change in the composition⁵⁵, with the reduction of the representation of civil society, the non-calling of meetings and the indication of people with possible conflicts of interest. The alterations have made the participation institutes merely formal mechanisms, without effective representation of the areas, which gives the government greater power to change or to paralyze public policies. The most direct effect of actions against councils is the weakening of those labeled as political opponents and the de-constitution of consolidated public policies (BEZERRA, RODRIGUES, ROMÃO, 2021), which, as they are related to the protection of human rights, are presented by the president to his supporters as “ideology”.

Although we may question whether all the councils were effective and contributed to public policies in their areas, the decision to extinguish or modify them did not depend on this analysis, but on the attempt to destroy a previous legacy. In this sense, the destruction of collegiate bodies in the federal public administration would imply both a deviation from the Workers' Party, as well as the dismantling of public policies, many aimed at protecting the human rights of vulnerable groups.

Two elements make up the picture of Bolsonaro's destructive diagnosis of participatory institutions: its role in the social governance of PT governments and the significant presence in these spaces of social movements and civil society organizations committed to identity, progressive and human rights agendas. (...) Combating the PT also means expelling from institutionalized channels the constellation of social actors that defined the web of links between the PT governments and civil society, especially the segments committed to these agendas (LAVALLE, BEZERRA, 2021).

The decree was subject to constitutionality control actions and had an injunction partially granted by the STF. Decree 9812/2019 was then edited, in what seems like a government strategy: to the judicial questioning, a new normative act is edited correcting the weakest points, but at the same time maintains the central points of previous decrees.

Integração de Políticas de Transporte (Conit); 25) Comissão Especial de Recursos (CER); 26) Comissão Nacional de População e Desenvolvimento (CNPd); 27) Comissão Nacional de Erradicação do Trabalho Infantil (Conaeti); 28) Comissão Nacional da Biodiversidade (Conabio); 29) Comissão Nacional de Desenvolvimento Sustentável dos Povos e Comunidades Tradicionais (CNPCT); 30) Comissão Técnica Nacional de Diversidade para Assuntos Relacionados à Educação dos Afro-Brasileiros (Cadara); 31) Comissão Nacional de Política Indigenista (CNPi); 32) Comissão de Coordenação das Atividades de Meteorologia, Climatologia e Hidrologia (CMCH); 33) Comissão Nacional de Agroecologia e Produção Orgânica (Cnapo); 34) Comissão Nacional dos Trabalhadores Rurais Empregados (Cnatre); 35) Comitê Gestor da Internet no Brasil (CGI.br)

⁵⁵ As examples: the Ministry of Women, Family and Human Rights dismissed nine entities that represented civil society in the National Committee for the Prevention and Combat of Torture, Decree 9926 reduced the composition of the National Council for Drug Policies (Conad) from 31 to 14 members, excluding all civil society representation. Decree. 9806/2019 changed the composition of Conama, reducing its components from 96 to 23.



In this new normative act, the functioning of the councils was limited by reducing the number of members and presential meetings.

Decrees were edited to change specific councils in order to reduce, change their composition or make meetings unfeasible. Of the 21 cases analyzed by Bezerra, Rodrigues and Romão (2021, p. 9), 13 had new regulations issued by means of a specific decree and/or ordinance. Only one of the councils had brought an action in the STF for constitutionality control, indicating that even the STF's performance has been insufficient to face the changes and curtailment of participation.

The reduction of space for civil society also leads to the opacity of public policies, avoids questioning and pressure and closes an important democratic channel. Public administration ends up closing itself off, and with the tactics of persecuting bureaucracy, the objective is to dissipate any possibility of divergence.

3.5 Opacity of Transparency and the capture of control mechanisms

Faced with a scenario of weakening institutional autonomy, attacks on bureaucracy, and the use of obscure budgetary strategies, it is not surprising that there are attacks against transparency and control.

Among the attacks, there are some examples: changes in the Law on Access to Information (LAI), dismantling the structure to combat corruption, political control of Parliament through the secret budget, legal control through the immobility of the Attorney General of the Republic. As a result, an architecture of impunity was created (TRANSPARÊNCIA INTERNACIONAL BRASIL, 2022, p. 3).

There were two unsuccessful attempts to modify the LAI in order to omit public information. The first one took place in January 2019, through Decree 9690/2019, which expanded the list of public agents authorized to classify public information as confidential, secret and top secret. With a greater number of civil servants qualified to carry out the classification, the expected effect would be an increase in the exceptionalities that would prevent public access to government information and documents. However, the Chamber of Deputies initiated a bill that would suspend the effects of the decree, and before the project was put on the agenda, Bolsonaro revoked the presidential decree.

In the second attempt, in March 2020, MP 928 was edited, which established a limitation on access to data from public bodies during the health emergency situation



caused by the COVID-19 pandemic. Furthermore, the appeal filed against the denial of a response based on the aforementioned suspension would not be heard. However, the MP was suspended by the Federal Supreme Court in the same month.

In addition, secrecy, and denial of information on relevant facts in the political sphere was decreed. In 2019, the Ministry of Justice claimed the right to privacy and denied a request for information requested via LAI about the meeting between then-Minister Sérgio Moro and representatives of the arms and ammunition sector. The imposition of 100 (one hundred) years of secrecy has been constant in any uncomfortable facts to the government. As examples: the studies that supported the pension reform, the president's COVID-19 exams, and the Army's internal process against General Eduardo Pazuello for participating in a political act in early 2021.

Disinformation directly affected the production of data on the country. COVID-19 data were no longer updated, which led to the creation of a press pool to guarantee updated information. The Brazilian Institute of Geography and Statistics (IBGE) had a significant budget reduction, making it impossible to produce the Census⁵⁶, the main source of information about the population, fundamental for understanding the demands of public policies.

The opacity affected control mechanisms, despite the anti-corruption rhetoric. In the Bolsonaro government there was the capture of several control agencies with a central role in identifying suspicious cash flows. In this sense, both the Federal Police, the Federal Revenue, the Council for the Control of Financial Activities - COAF, were affected, which possibly influenced the drop in the index of perception of corruption⁵⁷.

In addition to the changes in the Federal Police that were already mentioned, there was interference in the PF in Rio de Janeiro, an institution that investigated a possible corruption scheme by Flávio Bolsonaro, accused of appropriating the salary of advisors. There was a replacement of the superintendent and chiefs of the Federal Revenue Service in Rio de Janeiro. There were changes in COAF, which is responsible for preventing and combating money laundering. The body was subordinate to the Ministry of Economy; however, it was transferred to the Ministry of Justice, a change that was later

⁵⁶ The census was scheduled for 2020, but because of the pandemic it was postponed to 2021, when there was no budget available. In May 2021, in a demand from the state of Maranhão, the STF determined that the federal government should adopt measures to carry out the census.

⁵⁷ Available on: <<https://www.dw.com/pt-br/sob-bolsonaro-brasil-volta-a-cair-em-ranking-de-corrup%C3%A7%C3%A3o/a-60548242>> .



rejected by Congress. There was also a significant reduction in the budget that would be used to modernize the anti-corruption system⁵⁸. The agency was central in identifying abnormal movement of funds by a former adviser to Senator Flavio Bolsonaro, initiating the investigation of the “cracks” scheme. In 2019, the President of the Republic established that COAF would be part of the structure of the Central Bank. With the transfer to the Central Bank, Bolsonaro stated that he intended to “take COAF out of the political game”⁵⁹.

As we can see, government interference in control mechanisms – in particular the Federal Police, COAF and the Federal Revenue – in addition to affecting the activities of these government entities, hinders the fight against corruption, since the three bodies together acted in cooperation in several operations, such as Lava-Jato, Zelotes, Greenfield and Furna da Onça.

The dismantling of control mechanisms involves the capture of the position of the Attorney General of the Republic. The PGR has the exclusive prerogative of offering complaints against the President of the Republic, in addition to being heard in actions of abstract constitutional control. According to a survey by CNN, the PGR was against 74 requests for an investigation against Bolsonaro and in favor of 1, but in this case the Attorney General later requested the investigation to be closed⁶⁰. The PGR has served as a buffer against the possibility of investigating the President of the Republic, and it remains to be seen how he will act in an election year in which the president will be a candidate for re-election.

4. Conclusion

In recent years there’s been a process of constitutional and democratic erosion in Brazil. In this article we intended to deal with the constitutional sphere to think beyond the affected areas, focusing on the strategies that were used to do so. Through the mapping and systematization of destruction strategies, we intended to think not about where or

⁵⁸ Available on: <<https://www1.folha.uol.com.br/mercado/2021/05/bolsonaro-corta-verba-do-coaf-destinada-a-modernizacao-de-sistema-contra-corrupcao.shtml>>.

⁵⁹ Available on: <<https://noticias.uol.com.br/politica/ultimas-noticias/2019/08/09/bolsonaro-diz-querer-tirar-coaf-de-jogo-politico-apos-suspeita-contra-filho.htm>>.

⁶⁰ Available on: <<https://www.cnnbrasil.com.br/politica/desde-a-posse-aras-foi-contra-74-pedidos-de-investigacao-contra-bolsonaro-e-a-favor-de-1/>>.



why, but how. The systematization is not meant to be exhaustive, because even the destruction is an ongoing process that uses lessons learned from national and international experiences to be more effective. When analyzing the strategies, we sought both to identify the limits of the detected analyses, some centered in the field of constitutional change, and to analyze the ruptures with the law, so that it is possible to structure resistance and provide a path for the reconstruction of protected areas.

Even though the established time frame is the Bolsonaro government, it was evident that the practices did not start in 2019. There was an amplification and deepening in terms of quantity, speed and creation of tangles that make control and opposition difficult. While the strategies are not new, the concomitant use, the quantitative explosion, allied to the contents and areas show that there is a new panorama with the potential to erode the constitution.

The use of normative unilateralism, the changes in public administration and the persecution of civil servants, the use of the budget as a way of bottlenecking certain areas, the curtailment of spaces for civil society participation, and finally, the measures to reduce transparency and control show a scenario of using several concurrent measures as a way to hinder coordination and prevent resistance. In some areas, such as environment and culture, this is even more evident, but it is impossible to mention an area in which there has not been a setback. Consolidated policies were reduced to dust.

Initially, we also intended to bring the institutions and practices that have brought limits to the phenomenon of destruction. In this sense, analyzing the National Congress, the STF and the action of civil servants can provide important lessons. However, as we understand that this topic requires specific research, we refer to existing works, such as those by Lotta et al, and suggest continuing to monitor these institutions and practices to assess the extent to which they are successful in limiting practices of destruction.

Translation

Sângela Mendes Lima, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, Rio de Janeiro, Brasil.

E-mail: sangelamendeslima@gmail.com



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About the authors

Heloisa Fernandes Câmara

Doctor in State Theory (UFPR), State Theory and Political Science Professor (UFPR), CCONS researcher and PET Direito UFPR tutoress. E-mail: heloisafcamara@yahoo.com.br. ORCID: <https://orcid.org/0000-0003-3220-9266>.

Ana Paula Cardoso Almeida

Law student at the Universidade Federal do Paraná (Federal University of Paraná), member of the Núcleo de Estudos em Sistemas de Direitos Humanos (Center for Studies in Human Rights Systems) - NESIDH/UFPR, and the Núcleo de Estudos em Direito e Gênero (Center for Studies in Law and Gender) - NEDIGE/UFPR. E-mail: *insirir aqui*. ORCID: <https://orcid.org/0000-0002-3755-5275>.

The authors contributed equally for the writing of the article.

