

Brazil

In Brazil, Scholars at Risk (SAR) reported the use of executive powers to undermine university autonomy, legal actions intended to retaliate against academic expression, and violence that threatens the safety of higher education communities.

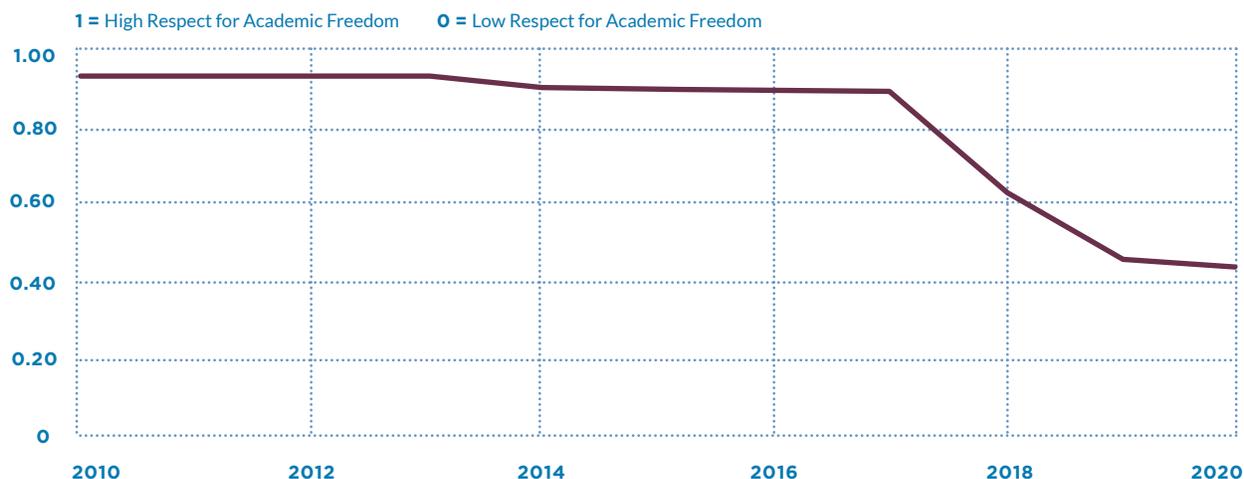
Brazil is bound by national and international legal instruments that provide protections for academic freedom and higher education generally. Brazil is a party to the International Covenant on Civil and Political Rights (ICCPR), which provides for the right to freedom of opinion and expression (Article 19), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which provides for the right to education (Article 13) and calls on state parties to “respect the freedom indispensable for scientific research and creative activity” (Article 15(3)). Full exercise of academic freedom depends also on respect for institutional autonomy, defined as “that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights.”¹ Brazil’s constitution provides explicit protections for academic freedom, noting that “[t]eaching shall be provided on the basis of...” the “freedom to learn, teach, research and express thoughts, art and knowledge” (Article 206.2) and institutional autonomy (Articles 206 and 207), noting that “[u]niversities enjoy autonomy

with respect to didactic, scientific and administrative matters, as well as autonomy in financial and patrimonial management, and shall comply with the principle of the inseparability of teaching, research and extension” (Article 207).²

Since Brazil’s 2018 presidential election, academic freedom and the country’s higher education community have come under intense pressure. President Jair Bolsonaro has frequently used inflammatory rhetoric to disparage scholars and academic institutions. Through executive orders and the powers of his ministers, the Bolsonaro administration has also sought to punish and seek greater control over higher education institutions. His former minister of education, Abraham Weintraub, declared budget cuts targeting three federal universities that he accused of promoting “disorder” and holding partisan gatherings on their campuses, prompting outrage that the ministry was selectively punishing universities on ideological grounds.³ Budget cuts were then extended to all federally funded universities. President Bolsonaro has also issued emergency decrees aimed at giving himself and his minister of education greater power in the rector appointment process and altering federal universities’ own system of rector elections. Although those

* In 2019 and 2020, President Bolsonaro issued two provisional measures (PMs) intended to provide the executive branch enhanced control over the appointment of leadership at the country’s 16 federal universities. Provisional measures can be issued by the president under urgent or exceptional circumstances. Provisional measures go into effect immediately upon being issued; however, Congress has the ability to approve, amend, or reject the provisional measure within 120 days. If not approved within 120 days, a provisional measure lapses and loses its validity. PM 914/2019, issued on December 24, 2019, officially rejected a tradition, dating back to 2003, of Brazil’s President choosing rector nominees that won the most votes by faculty, staff, and students. Under PM 914, the president would be able to pick freely among the top three candidates, referred to as the “triple list.” PM 914 also imposed on federal universities a weighted system for the voting of rector nominees. PM 914 lapsed on June 1, 2020, losing the force of law. On June 10, amidst rapid escalation of the COVID-19 pandemic in Brazil, President Bolsonaro issued PM 979/2020 (PM 979), which would give the Minister of Education the authority to designate rectors and vice-rectors pro tempore at federal universities, without consulting those same institutions. Within two days, however, the president of Brazil’s Congress rejected PM 979 on the basis that it violated university autonomy. See “Legislative and Administrative Threats to Institutional Autonomy and Academic Freedom,” in SAR, *Free to Think 2020* (November 2020), pp. 98-99, <https://www.scholarsatrisk.org/resources/free-to-think-2020/>.

ACADEMIC FREEDOM INDEX: BRAZIL



The 2018 presidential elections marked a drastic turning point for academic freedom in Brazil. Under the government of President Jair Bolsonaro, Brazil's scholars and students have faced threats and harassment based on their views and identities, legal actions for their academic expression, and an erosion of institutional autonomy, especially in the rector appointments process. Learn more about the above data, made available by the Academic Freedom Index, a tool co-developed by the Global Public Policy Institute (GPPi), the Friedrich-Alexander-Universität Erlangen-Nürnberg (FAU), the V-Dem Institute, and SAR, at <https://www.gppi.net/2021/03/11/free-universities>.

decrees were met with opposition and ultimately rejected by Congress, Bolsonaro has nevertheless aggressively used his authority in the university rector appointment process, often ignoring top candidates nominated by university faculty, staff, and students, and instead choosing individuals with whom he is politically aligned. In December 2020, Justice Luiz Edson Fachin of Brazil's Federal Supreme Court declined a Bar Association request for an injunction requiring that the president observe a "decades long tradition" of choosing as rector the first-place candidate from among the "triple list," the top-three candidates nominated by members of the university community. The justice, instead, ordered that appointees only be among the top three.⁴ By February 2021, the Court had overruled Fachin's injunction, on grounds that federal law already required what the justice had ordered and that the same law, Federal Law 9.192/1995, was the subject of a pending action in federal court.⁵ As of this writing, Bolsonaro has appointed 20 rectors who faculty, staff, and students did not recognize as their first choice.⁶

Individual scholars and students have suffered a range of attacks, threats, and harassment on the basis of their work, views, and identities since 2018.⁷ During the reporting period, Brazilian state authorities and public officials sought to punish individual scholars for their public expression through legal actions and by putting pressure on university actors.

On March 2, 2021, the former rector of Federal University of Pelotas (UFPEL) and epidemiologist **Pedro Rodrigues Curi Hallal** and his colleague **Eraldo dos Santos Pinheiro** were subject to criminal investigation and public sanction in retaliation for their public criticisms of President Bolsonaro's role in the rector appointment process. In UFPEL's 2021 rector elections, the university's academic community voted overwhelmingly for Pinheiro to succeed Hallal as rector for the 2021-24 period. President Bolsonaro instead appointed one of Pinheiro's opponents in the election, Isabela Fernandes Andrade. At an official, online UFPEL event on January 7, 2021, Hallal and Pinheiro called Bolsonaro's appointment of Andrade "a blow to the academic community," stated that the president was a defender of torture, and alleged he was responsible for creating instability at universities. Hallal further stated that the university would do everything in its power to appeal President Bolsonaro's decision. Federal Deputy Bibó Nunes opened a federal investigation into the comments with the Comptroller General of the Union (CGU) of Brazil, stating that he intended to have Hallal dismissed from his position. On March 2, the CGU ruled out any serious infractions; however, both Hallal and Pinheiro signed so-called Conduct Adjustment Agreements ("TACs"), extrajudicial modes of dispute resolution under which so-called "aggressors" commit to some change in behavior, and are subject to

legal sanction if they do not meet those conditions. According to their TACs, which were signed under unclear circumstances, Hallal and Pinheiro had made “a disrespectful statement directed at the President of the Republic,” in their “workplace.” Under the terms of the TACs, neither professor could breach Article 117, V, of Law 8112, which prohibits public officials from “promoting expressions of appreciation or disapproval in the workplace,” for a two-year period. During this timeframe, neither professor will be permitted to criticize President Bolsonaro at a university event.

In May 2021, University of São Paulo’s (USP) law professor **Conrado Hübner Mendes** faced the first in a series of attacks for opinion articles he wrote. On May 3, 2021, Brazil’s Attorney General (AG) filed a complaint with the USP’s ethics committee demanding an investigation into Mendes over public comments he made about the AG over social media and in a column for the newspaper, *Folha de São Paulo*.⁸ Mendes had criticized the work of the AG, Antônio Augusto Brandão de Aras, in a column entitled “Aras is Bolsonaro’s anteroom at the International Criminal Court.” In a series of tweets, Mendes also described Aras as a “servant of the president,” and alleged that some of the AG’s legal omissions were for the benefit of Bolsonaro. In his complaint to the ethics committee, Aras accused Mendes of violating Articles 5, 6, and 7 of USP’s Code of Ethics, which state that USP community members have a duty to encourage “respect for the truth,” act “in a manner compatible with morality,” and refrain from “disseminating information in a sensational, promotional or untrue manner.”⁹ USP’s ethics committee has yet to announce whether they will take any punitive actions against Mendes. In addition to the complaint to the ethics committee, AG Aras also filed a criminal complaint against Mendes, accusing him of committing slander, libel, and defamation in connection with the aforementioned expressive activity.¹⁰ Aras’ lawyers argued that Mendes did not limit himself to criticism of Aras, but also accused the AG of being untruthful in his actions, which could be considered libelous. On June 10, the public prosecutor overseeing the case voted in favor of continuing the investigation into Mendes’ comments. As of July 1, the case is ongoing. In a third attack on Mendes, Federal Supreme Court Justice Kássio Nunes Marques submitted a complaint to AG Aras, demanding a criminal investigation into the USP professor for a separate op-ed.¹¹ Justice Nunes Marques accused Mendes of making “false and/or harmful” statements in an April 6 article in *Folha de São Paulo* entitled, “O STF come o pão que o STF amassou” (roughly translated as “The [Supreme Federal Court] eats the bread that the [Supreme Federal Court]

kneaded”).¹² In the article, Mendes criticized Justice Nunes Marques for allowing large religious gatherings during the COVID-19 pandemic. Justice Nunes Marques claimed that the article could be considered slander, libel, and defamation, and requested that the AG investigate and hold Mendes criminally liable.

Violence also continues to threaten members of Brazil’s higher education community, on and off-campus.

At the **Universidade Paulista**, for example, an improvised explosive device was discovered in a bathroom, forcing students and faculty to evacuate shortly before an exam was to be administered.¹³ Military police isolated the area and examined and neutralized the object, which was found to have an amount of gunpowder similar to explosive devices used to detonate ATMs. The university believed the device was placed in that location in order to cause “turmoil” for the students taking the exam.

On May 12, Municipal Guards, a local state security force, forcibly arrested three **Federal University of Rio Grande do Sul (UFRGS)** students during a nonviolent protest over cuts to higher education spending by Education Minister Milton Ribeiro.¹⁴ A small group of UFRGS students had gathered outside the entrance of a radio station, where Ribeiro was scheduled to give an interview, and chanted in protest of the spending cuts. As Ribeiro approached the entrance, members of his entourage, including staff and personal guards, physically engaged with and pushed out of the way some of the protesters. In the street, municipal guards attempted to disperse protesters by firing ammunition toward the ground, using pepper spray, and pushing protesters. Few protesters were in the street and reports and video of the protest do not suggest that students were acting violently or irresponsibly. The commander of the Municipal Guard in Porto Alegre, Marcelo Nascimento, stated that the weapons were loaded with non-lethal ammunition in order to “scatter” the protesters.

SAR remains deeply concerned about the state of academic freedom in Brazil. Frequent attempts to skirt the will of faculty, staff, and students in the rector appointment process represent a dangerous departure from the democratic traditions and norms of Brazil’s federal university community and threaten further politicization of the country’s higher education sector. Legal actions intended to punish scholars for their views and opinions undermine the sector’s ability to inquire and share ideas. Violence directed

at campuses or student protesters also undermines academic freedom and reduces the degree to which higher education institutions serve as spaces for free and open discourse.

SAR calls on state authorities in Brazil to respect, protect, and promote academic freedom, including ensuring the autonomy of university communities to determine and oversee the appointment of leadership, refraining from direct or indirect attacks on academic expression or other nonviolent expressive activity by scholars and students, and ensuring the safety and security of higher education communities. SAR further calls on government and higher education leaders around the world to call on their Brazilian counterparts to press for the above measures.

usp.br/?resolucao=resolucao-no-4871-de-22-de-outubro-de-2001.

10. SAR AFMP, May 20, 2021, <https://www.scholarsatrisk.org/report/2021-05-20-university-of-sao-paulo/>.
11. SAR AFMP, July 14, 2021, <https://www.scholarsatrisk.org/report/2021-07-14-university-of-sao-paulo/>.
12. See Conrado Hübner Mendes, "O STF come o pão que o STF amassou," *Folha de São Paulo*, April 6, 2021, <https://www1.folha.uol.com.br/colunas/conrado-hubner-mendes/2021/04/o-stf-come-o-pao-que-o-stf-amassou.shtml>.
13. SAR AFMP, April 23, 2021, <https://www.scholarsatrisk.org/report/2021-04-23-universidade-paulista/>.
14. SAR AFMP, May 12, 2021, <https://www.scholarsatrisk.org/report/05-12-2021-federal-university-of-rio-grande-do-sul/>.

ENDNOTES

1. See UNESCO, "Recommendation concerning the Status of Higher-Education Teaching Personnel," November 11, 1997, para. 17, http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html.
2. Constitution of Brazil (2017), available at https://www.constituteproject.org/constitution/Brazil_2017.pdf.
3. "MEC cortará verba de universidade e já mira UnB, UFF e UFBA," *R7*, April 30, 2019, <https://noticias.r7.com/educacao/mec-cortara-verba-de-universidade-e-ja-mira-unb-uff-e-ufba-30042019>; Diane Jeantet, "Brazil plans to slash funding of universities by 30 percent," *Associated Press*, May 1, 2019, <https://apnews.com/article/45c37c7b100048f0819571ca60e866ef>; Elizabeth Redden, "In Brazil, a Hostility to Academe," *Inside Higher Ed*, May 6, 2019, <https://www.insidehighered.com/news/2019/05/06/far-right-government-brazil-slashes-university-funding-threatens-cuts-philosophy-and>.
4. James Angelo, "Nomeação de reitores deve respeitar lista triplíce, decide Fachin," *Consultor Jurídico*, December 10, 2021, <https://www.conjur.com.br/2020-dez-10/nomeacao-reitores-respeitar-lista-triplice-decide-fachin>. See also "Lei N° 9.192, de 21 de Dezembro de 1995," Article 1, available at http://www.planalto.gov.br/ccivil_03/leis/l9192.htm.
5. Danilo Vital, "STF derruba cautelar que obriga escolha de reitor mais votado da lista triplíce," *Consultor Jurídico*, February 6, 2021, <https://www.conjur.com.br/2021-fev-06/stf-derruba-cautelar-obriga-escolha-reitor-votado>.
6. Soraya Soubhi Smali, "Listas triplíce e escolha de reitores: por que são vitais para a universidade?" *Metrópoles*, October 3, 2021, <https://www.metropoles.com/ponto-de-vista/listas-triplices-e-escolha-de-reitores-por-que-sao-vitais-para-a-universidade>.
7. See "Assault on Brazil's Higher Education Space," in SAR, *Free to Think 2019* (November 2019), pp. 54-57, <https://www.scholarsatrisk.org/wp-content/uploads/2020/01/Scholars-at-Risk-Free-to-Think-2019.pdf>.
8. SAR Academic Freedom Monitoring Project (AFMP), May 3, 2021, <https://www.scholarsatrisk.org/report/2021-05-03-university-of-sao-paulo/>.
9. See USP's Code of Ethics (in Portuguese), at <http://www.leginf.>