

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

BRAZIL: OVERVIEW OF CORRUPTION AND ANTI-CORRUPTION

QUERY

Can you provide an overview of corruption and anti-corruption efforts in Brazil?

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CAVEAT: This is an update of a previous Helpdesk answer.



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SUMMARY

Corruption remains one of the main challenges faced by Brazil, affecting the quality of services provided, infrastructure and overall investment in the country. A recent grand corruption scheme allegedly involving high-level politicians, executives from the Brazilian state-owned oil company and the largest construction companies draws attention to the country's systemic failures that give rise to opportunities of mismanagement and corruption.

Such opportunities come from the political finance environment, the politicisation of key government positions and weak oversight mechanisms which, combined with a rather ineffective judiciary, contributes to fuelling the culture of impunity that permeates the country. Brazil needs to reform its political system and ensure that existing laws are implemented and enforced.

1 OVERVIEW OF CORRUPTION IN BRAZIL

Background

Brazil is the world's seventh largest economy, but in spite of improvements in recent years, the country still faces challenges to close the considerably high income inequality gap. Other significant challenges ahead are related to improving the quality and outcome of the country's education system, improving infrastructure and guaranteeing access to basic public services, such as sanitation.

In 2013, millions of Brazilians took to the streets in several cities to demand better services and less corruption. Corruption, the top concern among Brazilians (Dube 2015), was also one of the main issues discussed during the 2014 electoral campaigns, and it is still to be seen how the newly elected governments across the country will respond to this demand.

Extent of corruption

Corruption continues to be one of the main challenges for the country. Brazil ranked 76 out of 168 countries assessed in Transparency International's 2015 Corruption Perceptions Index: with a score of 38 out of 100 – on a 0 (highly corrupt) to 100 (highly clean) scale. The South American country fell 5 points since 2014, when it scored 43. This performance means Brazil is the biggest index decliner in the Americas in 2015 (Transparency International 2015).

The World Bank's Worldwide Governance Indicators, which include an indicator for the control of corruption, and ranges from 0 (lowest control of corruption) to 100 (highest control of corruption), gave Brazil a value of 44.2 per cent in 2014 (World Bank 2015). This is the lowest indicator attributed to Brazil since 1996, when the assessment was first conducted – Brazil's score for control of corruption has fluctuated between the 44.2 percentile rank and the 63 percentile rank.

Findings from the 2013 Global Corruption Barometer also offer a bleak picture: 79 per cent of respondents believe that corruption is a serious problem in the country, 47 per cent state that corruption has increased in the two years preceding

the survey, and 56 per cent maintain that the government is rather ineffective in the fight against corruption (Transparency International 2013).

Corruption is also considered a great problem by the private sector. The majority of businesses surveyed as part of the Global Competitiveness Report (World Economic Forum 2014) believe that the diversion of public funds to companies, individuals, or groups due to corruption occurs frequently in the country. According to the 2015/2016 report, corruption scandals have undermined the trust in both private and public institutions (World Economic Forum 2016). Data from the 2009 Enterprises Survey also shows that close to 70 per cent of businesses consider corruption as the greatest impediment for doing business in Brazil (World Bank Group 2009).

2 NATURE OF CORRUPTION CHALLENGES

Among other things, corruption-related challenges in Brazil are perceived to be a result of the high costs of election campaigns, weak oversight mechanisms and a very bureaucratic public administration. This section highlights some of the drivers of corruption in the country.

Political finance

Recent corruption scandals and analyses of the cost of elections in Brazil show that political finance is one of the main drivers of corruption in the country.

Access to public office in Brazil is restricted by the high costs of election campaigns. Analyses of previous presidential and parliamentary elections show that the winners are usually those who outspend their competitors. Against this backdrop, politicians and political parties have strong incentives to fundraise for their political campaigns and, once in office, gain access to a wide range of benefits and resources.

According to a public prosecutor responsible for investigating a recent corruption scandal, there is a recurrent pattern in corruption cases across the country. They often involve companies donating to political parties and/or candidates in exchange for advantages in the award of public contracts (for example, directed procurement processes and over-

budgeted construction projects) if that candidate or political party is elected (Bulla 2014). Once elected, politicians also ask for kickbacks and the use of overpriced contracts for their personal enrichment and to create a slush fund for the next election campaign.

For instance, recent investigations of corruption in the awarding of contracts by the state-owned oil company, Petrobras, show that directors and senior officials of the state company, several members of congress and governors allegedly created a scheme in collusion with the largest construction companies, which are also the largest campaign contributors, to manipulate public procurement processes. The construction companies are accused of having formed a cartel to drive up the prices of Petrobras infrastructure projects¹. The companies supposedly also paid bribes to executives of Petrobras, other politicians and political parties. According to media reports, 3 per cent of the contract value was allegedly going to the ruling party and allied political parties to serve as funds to electoral campaigns (Folha de São Paulo 2014). Construction companies are also accused of paying bribes to the main opposition party to shut down investigations conducted by a special parliamentary inquiry (Macedo 2014).

According to the Federal Court of Auditors, the losses amount to R\$29 billion (US\$8.5 billion), however, the Federal Police predicts losses up to R\$42 billion (US\$12.5 billion). A sum of R\$2.9 billion (US\$850 million) was recovered and more than R\$2 billion (US\$600 million) in assets belonging to various suspects have been blocked in what may be the largest corruption scandal to hit the country. One hundred and thirty-four people were arrested, including the Petrobras service director and 19 presidents and executives of some of the country's largest construction and engineering firms. There were 93 criminal convictions, including cases of people convicted more than once, adding the total amount of the sentences up to more than 990 years (Justi, Dionisio and Castro 2016).

¹ According to the Federal Police, the group under investigation moved more than US\$3.9 billion in suspicious financial transactions. Twenty-three people were arrested, including the Petrobras service director and 19 presidents and executives of some of the country's largest construction and engineering firms. More than US\$270

million in assets belonging to various suspects have been blocked in what may be the largest corruption scandal to hit the country. Please see: <http://politica.estadao.com.br/blogs/fausto-macedo/juiz-da-lava-jato-aponta-verdadeira-fortuna-de-renato-duque-em-contas-secretas/>

Although not all of these allegations have been fully verified yet and the case has not been concluded, the Petrobras case illustrates how the need to collect resources for political campaigns combined with wide discretionary powers enjoyed by public officials, weak oversight mechanisms and, in the case of state-owned enterprises, an inadequate procurement law can open the door to significant corruption risks.

The Brazilian legal framework for political party financing allows private donations from natural and legal persons to both individual candidates and political parties. It establishes a limit for these donations in terms of a percentage of their gross income in the year preceding the election. Corporations are allowed to donate up to 10 per cent of their income and individuals 2 per cent. According to specialists, this limit consolidates the socioeconomic inequality in the country. "The one who has less income or turnover can contribute less to the campaigns and, consequently, has less influence over the electoral process" (Ethos; Transparency International 2010: 10).

However, the Supreme Court of Brazil decided in September 2015 that electoral campaigns can only be financed by individuals or by the party fund resources (which are mostly public) and that the electoral funding by companies is unconstitutional. This new rule is already in force for the upcoming municipal elections of October 2016 (STF 2016).

The rules of electoral financing have changed after the 2015 decision of the supreme court in the ADI 4650 and with Law nº 13.165 of 2015. The resources for a campaign can come from individual donations (up to 10 per cent of the gross income for the previous year) or the party fund, set at R\$850 million in the budget for 2016, divided among all parties. With this new restriction, campaigns will become cheaper and there might be a reduction in the dependence on private funders.

The new law also includes a shortening of the campaigning period. In 2012, the last municipal

elections, the campaigning period lasted 90 days and TV and radio propaganda for 45 days. The 2016 elections campaigning period will last only 46 days and TV and radio propaganda for 35 (Lupion 2016).

While the law establishes strict reporting rules and requires the responsible oversight body to publish online reports from individual candidates and political parties, it does not set any limit on expenditure, making it harder to control how the money is spent. Public funding is available only to political parties to carry out their activities, but there is no extra public funding during elections.

With the new electoral reform (Lei nº 13.165/2015) and the Resolution nº 23.459/15 of the Superior Electoral Court, the limit of expenditure of candidates is based on the highest expense declared in the previous constituency, in this case, the 2012 elections. The new act establishes that in the first round of the election for mayor the limit is 70 per cent of the highest expenditure declared to the post in 2012.

However, if the previous election has been decided in two rounds, the spending limit will be 50 per cent of the highest amount declared for the office in the previous election. Moreover, from now on, municipalities with up to 10,000 voters have a spending limit of R\$100,000 for mayor and R\$10,000 for city councillor elections. In this case, it will be considered the number of voters in the municipality at the time of the electoral registration closing.

High degree of decentralisation and weak oversight

The challenges of fighting corruption in Brazil are compounded by the country's high degree of political and fiscal decentralisation which provides local authorities with large amounts of resources and wide discretionary power. At the same time, oversight mechanisms at these levels are considered inefficient, paving the way for corruption.

Brazil has more than 5,500 municipalities and the great majority of them depend on transfers, such as

administrative agreements with the federal government or budget amendments by parliamentarians. There are significant corruption risks with regard to the allocation of these funds, which are often used as political bargaining chips, and with regard to the implementation of projects, where municipalities enjoy great discretionary powers with limited oversight.

An analysis of the administrative agreements (*convênios*) signed between federal ministries and municipalities, through which the federal government transfers funds to municipalities for the delivery of key services to the population, highlights some of the corruption risks. While there are accountability and control mechanisms in place, the lack of trained personnel, technology infrastructure, resources, and in some cases political will make the effective control over these funds impossible.

For example, between 2006 and 2009 the amount of transfers made through administrative agreements or other means increased by 77 per cent (R\$16.85 billion in 2006 to R\$29.75 billion in 2009² – US\$6.65 billion in 2006 to US\$11.75 billion in 2009)². Approximately half of this amount was transferred to municipalities who are obliged to report to the respective ministry on how the money was spent. However, during this period the number of accountability reports not verified by the ministries increased by 19 per cent (and the total value involved in these reports increased 47 per cent)³ (Tribunal de Contas da União 2009).

The Office of the Comptroller General (CGU) is also responsible for auditing these agreements. According to the office, audits carried out until 2009 in approximately 32 per cent of Brazilian municipalities found irregularities in 90 per cent of the agreements, and serious irregularities in 60 per cent of them (CGU website).

Analyses of the audit reports show that mismanagement and corruption in public procurement processes related to the delivery of services are very common problems in implementing such agreements (CGU website).

² Transparency International takes "billion" to refer to one thousand million (1,000,000,000).

³ According to the Court of Auditors, in 2009 more than 50 thousand accountability reports totalling more than R\$19

million (US\$7.5 million) went unverified by the responsible ministry.

Nevertheless, in May 2016 the CGU was transformed into the Ministry for Transparency, Monitoring and Control (MTMC) during the interim administration of Michel Temer (through the Medida Provisória nº 726/2016). Employees began to protest that the new version of Brazil's anti-corruption mechanism was itself tainted with corruption, once the first appointed minister, Fabiano Silveira, had been caught on tape allegedly advising the head of the Brazilian Senate about the Lava Jato investigations, the ongoing Petrobras case, biggest corruption scandal in Brazil.

In May 2016 Transparency International published a statement declaring the suspension of its cooperation with the new MTMC until a new minister with appropriate credentials would be appointed.

Excessive red tape

Excessive and complicated regulations (red tape) are known to be a potential source of corruption, as they give public officials leverage to solicit illegal payments by using their discretion to facilitate or hinder administrative processes. Respondents to the World Economic Forum Executive Opinion survey claim that it is very burdensome for businesses to comply with governmental administrative requirements, placing Brazil as the second-worst country assessed. This indeed seems to be one of the main drivers of corruption in the country where 72 per cent of respondents to the Global Corruption Barometer (2011) who have acknowledged paying bribes reported doing so in order to speed things up.

According to the 2015 Ease of Doing Business Index prepared by the World Bank, Brazil is a relatively bureaucratic country. It ranks 120 among 189 countries in the world. The country's ranking is particularly poor with regard to starting a business, dealing with construction permits, paying taxes (167, 174 and 177 places respectively) [174, 169 and 178 places respectively], and areas that largely involve interaction with the public administration.

For instance, starting a business in Brazil requires an average of 12 [11] procedures and 102.5 [101.5] days against a regional average of, respectively, 8.3 and 30.1 [29.4]. In OECD countries, these averages are 4.8 [4.7] procedures and 9.2 [8.3] days. Moreover, businesses in Brazil spend an average of 2,600 hours

per year paying taxes. In OECD countries they need 175 hours.

It is, therefore, not surprising that 90 per cent of respondents to the Ernst & Young Global Fraud Survey in 2016 stated that bribery and corruption are common in Brazil's business environment.

3 OVERVIEW OF SECTORS AND INSTITUTIONS MOST AFFECTED BY CORRUPTION IN BRAZIL

Overview

A representative sample of citizens interviewed for Transparency International's 2013 Global Corruption Barometer (Transparency International 2016) perceive that corruption pervades many of the country's key sectors and institutions. For instance, Brazilian politicians are viewed by citizens as the most corrupt institutional actor, with a staggering 81 per cent of respondents judging them as corrupt or extremely corrupt. Of those interviewed, 72 per cent also believed that the parliament is corrupt or extremely corrupt. Political parties and the parliament also feature among the least trusted institutions in the country.

According to Fundação Getúlio Vargas (FGV) (2015) only 6 per cent of Brazilians surveyed reported trusting political parties and 12 per cent the congress.

Other institutions, such as the police and the judiciary, are also perceived as corrupt or extremely corrupt by 70 and 50 per cent of citizens, respectively. Perceptions of corruption are also high with regard to key sectors, such as public administration, health and education. This section highlights the main corruption challenges related to the public administration and the judiciary.

Other institutions, such as the police and the judiciary have 35 and 32 percent of trust, respectively. Perceptions of trust are also low with regard to key sectors, such as public administration, health and education.

Public administration

In addition to the bureaucratic challenges discussed in

the previous section, public administration in Brazil is also considered ineffective due to the large number of individuals occupying appointed positions.

While the majority of civil servants are selected and hired based on the principles of meritocracy and professionalism through competitive public competitions, a significant percentage of public jobs at all levels of government – the so-called *cargos de confiança* – can be politically appointed.

In fact, the law does not require any professional qualification to fill these positions, and in many cases they are used in exchange for political support or filled on the basis of clientelism and patronage. According to experts, the higher the number of trust positions, the poorer the quality of public services delivered (Instituto Millenium 2013).

At the federal level, for instance, there are about 22,000 people listed under the category of trust positions (DAS 1 to 6 - Direção e Assessoramento Superior) in the direct administration, agencies and foundations of the Federal Executive Government, with salaries ranging from R\$10,000 to R\$30,000 (US\$3,950 to US\$11,900) (Portal da Transparência 2016).

The president and ministers have the prerogative to appoint and remove these officials at any time. This does not, however, automatically mean that they are filled with political appointees from outside. On average, 70 per cent of the individuals come from within the public service, meaning they were previously hired through public competition, and the rest from outside the public administration (Menezes 2016). Yet, these positions are regularly used for political bargaining and filled taking political or personal criteria into consideration.

The number of trust positions is also very high at the regional and municipal levels. In the state of São Paulo, for example, the number of trust positions increased from 13,805 in 2012 to more than 14,400 in 2013 (Portal da Transparência do Estado de São Paulo 2016).

Non-governmental anti-corruption organisations have been advocating for a reduction in the number of trust positions and for more control in the appointment of external individuals for the remaining ones. This could

be achieved, for instance, by establishing more objective criteria during the selection process, such as requirements of technical expertise and qualifications (Congresso em Foco 2006; Instituto Millenium 2013).

Judiciary

Brazil has an independent and autonomous judicial system. The 1988 constitution contains the main guarantees for its independence: the judiciary determines its own annual budget and judicial courts appoint lower court judges, thereby avoiding any potential instruments of control from other branches of government. The supreme court (STF) is comprised of eleven judges, who are nominated for life terms by the president upon approval from the senate.

Nevertheless, the judiciary is seen as rather inefficient in dealing with corruption cases, which helps to fuel the culture of impunity that permeates the country. In fact, 50 per cent of Brazilians interviewed by the Global Corruption Barometer perceive the judiciary as corrupt or extremely corrupt.

Overall, high-level government officials and politicians accused of crimes are rarely prosecuted, and when prosecuted, never convicted, contributing to the general opinion that high-level corruption cases benefit from special treatment from the courts. Until 2012, when the supreme court convicted politicians and businessmen involved in the *mensalão* case, the supreme court had never convicted anyone for corruption.

The main problem of the judiciary system in Brazil is connected to its legal system, which is one of the most crowded and litigious in the world. The supreme court, as well as state and federal courts, are overloaded with cases, and decisions can take many years, especially because procedural rules allow for numerous appeals. Currently the judiciary has a backlog rate of 71.4 per cent, 0.8 per cent higher than the previous year (CNJ 2015).

The backlog also affects cases of corruption and administrative improbity. In 2012, the number of cases of corruption, money laundering and administrative improbity awaiting judgement reached 25,799 (Conselho Nacional de Justiça 2013). In an attempt to solve the problem, the National Council of Justice

established a goal (Meta 18) for state and federal courts to judge all corruption-related cases initiated prior to 2011 by the end of 2013. Overall the goal has not been met, and when considering all state and federal courts, slightly more than 50 per cent of the cases were judged. Some state courts have managed to judge more than 80 per cent of corruption-related cases, in Acre and Amapá, for example⁴. The National Council of Justice will continue monitoring the pace of judgement of corruption-related offences.

4 LEGAL AND INSTITUTIONAL ANTI-CORRUPTION FRAMEWORK

Overview of anti-corruption efforts

Brazil has taken several steps to prevent and curb corruption in recent years. Several laws were approved, control mechanisms strengthened and international partnerships, such as the Open Government Partnership (OGP), launched with the support of the government. However, several challenges, as highlighted in the previous section, remain. Recently, the country has seen a large number of corruption cases uncovered which have left the population waiting to see whether high-level politicians and big businesses will be punished.

President Dilma, while campaigning for re-election, made a series of suggestions to end impunity for corruption in Brazil. They include the creation of a new offence criminalising the use of slush funds in electoral campaigns, a new law criminalising illicit enrichment, changes in the legal process law to speed up the judgement of cases involving embezzlement and mismanagement of public funds, and the establishment of specialised units within the judiciary to investigate and punish members of the government and elected officials involved in corruption, among others (Muda Mais 2014a).

Legal framework

International conventions

Brazil is party to the United Nations Convention

against Corruption (UNCAC), the OECD convention and the Inter-American Convention against Corruption.

Domestic legal framework

Criminalisation of corruption

The Brazilian criminal code criminalises passive and active corruption as well as embezzlement of public funds. The accused may be imprisoned for one to eight years, in addition to losing his/her mandate, and incurring fines.

In this case, immunity rules apply and those in elected positions have special guarantees (*prerrogativa de foro*), and can only be judged by a judicial instance one level above the federative judicial structure (for instance, members of congress can only be judged by the supreme court and mayors by the higher court at the state level), preventing trial courts from being used as political instruments by different groups. However, this prerogative is often abused and used to delay the case.

Corruption can also be dealt with as an act of administrative improbity, according to Law 8.429 of 1992. Such an offence is not a criminal procedure and therefore acts of corruption are punished with a fine, suspension of political rights and repayment of the damages. It can run in parallel to criminal procedures, but it is considered a relatively easier way of punishing corrupt officials, particularly because it can be judged at a first instance court without the privilege of the special venue at a higher court (Arantes 2003).

Finally, politicians engaged in corruption and unethical behaviour can be censured by the legislature. The proceedings against mayors, governors and the president are addressed within the respective legislative houses and they may result in the loss of mandate and suspension of political rights through impeachment.

In 2013, the government approved a new anti-corruption law (Law no. 12,846/2013) that establishes

⁴The monitoring report is available at: http://www.cnj.jus.br/metas2013/docs/relatorio_meta18_cmbate_a_corrupcao.pdf

civil and administrative liability to companies engaged in corruption, in addition to the existing personal liability of its directors and staff. The law prohibits companies from offering or giving an unfair advantage to a domestic or foreign public official or to a related third party. It also forbids certain practices that threaten competition in public procurement processes or that affect the award of public contracts.

The Anti-Corruption Law imposes severe sanctions, including fines that may be up to 20 per cent of the company's gross annual revenues. As it is the case in other laws criminalising foreign and domestic bribery, the Brazilian law also takes into account the existence of corporate integrity mechanisms, such as internal controls and codes of conduct, among others.

The country's legal framework still does not have provisions establishing the offences of corporate criminal liability, private-to-private corruption as well as illicit enrichment. The government proposed a new bill to close these loopholes which is still being discussed in parliament.

Elections

Law 9.840/1999 criminalises vote-buying with the aim of curbing electoral corruption. The law is the result of a citizen's initiative bill where more than one million signatures were collected. Since the approval of the law, committees have been established by civil society groups in several municipalities across the country to monitor its implementation. Several committees offer hotlines through which citizens can denounce vote-buying and other irregularities.

The Clean Record Law (*Lei da Ficha Limpa - Lei Complementar 135/2010*), also a citizen's initiative bill approved in 2010 by the Brazilian congress, disqualifies those convicted of racism, homicide, rape, drug trafficking and misuse of public funds by a second-level court (even if an appeal is still pending), as well as those whose resignations were motivated to avoid impeachment, from holding political office for a period of eight years.

Politicians engaged in vote-buying, abuse of power and electoral manipulation are also considered

ineligible for a period of eight years. As a result, in the 2014 elections, more than 250 candidates were barred from running for public office due to the clean record bill (Congresso em Foco 2014).

Transparency laws

With regard to transparency, Brazil's legal framework is relatively strong. The Fiscal Responsibility Law, enacted in 2000, established a broad framework of fiscal planning, execution, and transparency at the federal, state and municipal levels, requiring the disclosure of administration reports at four-month intervals.

In 2004, the federal government created the Transparency Portal (Portal da Transparência) with the aim of increasing transparency in public administration, enabling citizens to track the allocation of public money and play a monitoring role in this process. The portal offers up to date information in an open format on: i) transfer of resources to states, municipalities, companies and non-governmental organisations; ii) transfers to individuals who are part of social programmes of the federal government, including the names of beneficiaries (for example, information on the cash transfer programme, Bolsa Família); iii) direct expenses by the federal government, including construction contracts, per diems and expenses on government credit cards; iv) all federal public officials, including information about appointed positions; v) and companies sanctioned by public entities and debarred from contracting with the public administration⁵.

The Transparency Portal has been instrumental in supporting the direct social control of the government's activities. The media and watchdog groups have been using the information portal to denounce wrongdoings and monitor how public money is being spent by the federal government.

Adopted in 2009, the Transparency Law (Law 131/2009) added new rules to the Fiscal Responsibility Law. It established the obligation of expanding budget execution transparency based on new technology at all levels of government.

⁵ For more information, please see a previous Helpdesk answer: Transparency in Budget Execution.

According to the law, reports on both mandatory and discretionary transfers made by the federal government have to be disclosed by federal fund recipients online on a daily basis. Non-compliance with the new transparency requirements may lead to the suspension of administrative agreements and imprisonment of the public officials involved.

The access to information law (Lei nº 12.527/2011), adopted in 2011, regulates the right of access to public information already guaranteed by the 1988 constitution. It provides good procedures for processing information requests and covers obligations concerning proactive disclosure and the duty to provide data in an open and non-proprietary format. This piece of legislation also provides sanctions for those who deny access to information not protected by law and outlines exceptions that generally comply with international standards on freedom of information.

The main shortcomings of the law relate to its appeal process, which is considered confusing and lacking independence (Article 19 2012). As such, Brazil ranks 18 out of 103 countries with access to information laws assessed by the global right to information rating 6 (RTI rating), with a score of 108 points out of a possible total of 150 points⁶.

An analysis of the implementation of the access to information law undertaken in 2013 shows that 44 per cent of requests to access information filled were answered in a satisfactory manner, 23 per cent were partially answered, and in 32 per cent of the cases the requested were not answered at all (Article 19 2013).

Conflicts of interest and asset declaration

The Conflict of Interest Law (Lei nº 12.813), approved in 2013, regulates conflict of interest, trading of influence, as well as related prohibitions such as post-public employment. It covers federal public officials and focuses to a great extent on prevention. As such, an online system was put in place through which officials can consult the responsible oversight bodies (Public Ethics Commission and the Office of the Comptroller General) on potential conflicts of interest or ask for authorisations. Nevertheless, the law also

defines a list of actions that are prohibited as well as the incompatibilities with the discharge of a public function. The failure to comply with the law is punishable with a fine, repayment of the damage and/or suspension of the officials' political rights.

The president, ministers, members of parliament, federal judges, federal prosecutors and appointed officials at the federal level must comply with asset disclosure requirements (Lei nº 8730/93). Declarations have to be filed upon taking office and upon leaving office and submitted to the Federal Court of Auditors (TCU). These declarations are not available to the public. However, candidates to electoral offices in Brazil are also required to declare their assets upon registering their candidature. These declarations are available to the public and can be consulted online.

States and municipalities have their own rules regarding asset declaration. In the city of São Paulo, for instance, since 2013 all municipal public officials have been required to annually declare their assets and those of their spouses. An online system has been created to facilitate the submission of declarations, but these are not available to the public (Prefeitura de São Paulo 2013).

Whistleblowing

Whistleblower protection in Brazil is extremely limited. Standard protection to witnesses are provided in the criminal law and in other laws, such as the law on civil service, access to information and the anti-corruption law. They make references to the obligation of civil servants to report corruption and irregularities and to the role of companies in encouraging the reporting of irregularities internally. Nevertheless, the country still lacks a legal framework that protects whistleblowers from retaliation and ensures that the information disclosed will be dealt with confidentially.

Statutes of limitation

Statute of limitation rules in Brazil are considered adequate and appropriate rules on its interruption are in place. However, the fact that the judiciary is so

⁶ The RTI rating assesses the strength of the legal framework for guaranteeing the right to information in a

given country, but it does not measure the quality of implementation of the law.

crowded and litigious often delays final decisions and prevents accused individuals from being punished due to expiry of the statute of limitation (Transparency International 2014).

Recently, for example, the office of the public prosecutor declared that, due to the expiry of the statute of limitation, Brazilian politician Paulo Maluf⁷, accused of corruption in the construction of a road in the city of São Paulo in the 1990s and already convicted in Jersey and New York for money laundering, can no longer be judged for the crimes of passive corruption and embezzlement by the Brazilian supreme court. The indictment was accepted by the supreme court in 2005, but until now there has not been a final judgement (Galucci 2014).

Institutions

The country does not have a single institution responsible for curbing corruption. This task is shared by several bodies at federal and regional levels.

Federal Police

The Federal Police play a key role in the fight against corruption in Brazil. Although the institution is subordinated to the Ministry of Justice, the country's constitution provides provisions that strengthen its independence. Firstly, the Federal Police is a permanent body, meaning that although subordinate to the executive, it cannot be dissolved by the government. Secondly, the organisation is meritocratic with rules to access and the appointment of positions based on technical expertise.

The Federal Police is empowered to investigate corruption cases that involve federal funds or federal entities. It has access to special investigative techniques, but wiretapping, breaking of bank or telephone secrecy, as well as temporary detention or arrest can only be conducted upon authorisation by a judge and may be reviewed by prosecutors.

In 2012, the Federal Police created a special unit to investigate crimes related to embezzlement of public money which, according to studies, correspond to a

loss of 5 per cent of Brazilian GDP. In its first year, the special unit trained 440 police officers to better investigate this type of crime, investigated 21 cases of embezzlement totalling more than R\$ 602 million (US\$235 million) (Ministério da Justiça 2013).

The Ministry of Justice conducts specific training programmes to combat money laundering and prevent corruption. In 2014, over 1,000 public agents were trained, including judges, police officers, prosecutors, analysts of the court of audit and civil society agents in eleven states. (Ministério da Justiça 2014).

In 2014, out of 221 operations conducted by the Federal Police until November, 42 of them were aimed at combating corruption as a major crime, including the embezzlement of public funds, corruption in procurement processes and the payment of bribes. This number does not include cases where corruption appears as a secondary dimension; in this case the number would increase significantly as many of them involve public officials and politicians receiving bribes from private agents.

Public Prosecutor's Office (Ministério Público - MP)

The constitution guarantees autonomy, discretionary power and a wide range of responsibilities to the Public Prosecutor's Office. As a result, the body plays a key role in identifying and curbing corruption in the country. The office is protected from political interference in general, the only prerogative of the executive is to appoint the head of the Federal Public Prosecutor's Office (attorney general) from among the career personnel of the MP with approval of the senate. But the attorney general can only be removed upon authorisation by an absolute majority in the senate. Individual prosecutors enter the career through highly competitive public competitions, and salaries are among the highest in the country for public sector jobs.

At the state level, the head of the Public Prosecutor's Office is appointed by the respective state governor. Several states have created specialised units within the Public Prosecutor's Office. This is the case, for

⁷ Transparency International's Unmask the Corrupt Campaign cites Paulo Maluf as a sample case. For more information, please see: www.unmaskthecorrupt.com

instance, in the states of Ceará, Rio de Janeiro and Goiás, where a web portal was created to feature the work of the unit.

The Public Prosecutor's Office is among the most trustworthy institutions in Brazil, according to 48 per cent of respondents to the FGV survey, behind only the armed forces and the church (FGV 2014).

The Public Prosecutor's Office is the fifth most trustworthy institution in Brazil, together with major companies, according to 39 per cent of respondents to the FGV survey, behind the armed forces, the church, social networks and the written press (FGV 2015).

Office of the Comptroller General (Controladoria Geral da União)

The Office of the Comptroller General (CGU), created in 2003, is the agency of the federal government in charge of assisting the president of the republic in matters which, within the executive branch, are related to defending public assets and enhancing transparency in the management of public funds.

Among other things, the office promotes internal control activities, public audits, corrective and disciplinary measures and corruption prevention activities. More recently, with the adoption of the law on conflict of interest in 2013, the CGU also became responsible for overseeing its implementation with regard to public federal officials.

The head of the CGU is appointed by the president of the republic, which leaves room for political influence. Nevertheless, so far, the CGU has shown great autonomy in the conduct of investigations. Furthermore, the CGU is a professional agency and its work is performed by career staff hired through a competitive public examination.

One of its main responsibilities is to carry out audits and inspections to verify how public money is being spent. The office, therefore, conducts random audits in municipalities receiving transfers from the federal government as part of the administrative agreements scheme. According to the CGU, audits conducted in nearly 32 per cent of Brazilian municipalities identified irregularities in 90 per cent of the agreements. In 60 per cent of them, serious irregularities were found, including corruption in public procurement processes,

embezzlement, overpricing and fake billing, among others.

The office also takes disciplinary actions, and in 2003 264 federal officials suffered some kind of punishment (dismissal, cancelled pensions, or destitution). In 2009 this number increased to 429, and as of June 2010, 201 cases of punishment were enforced.

Moreover, CGU is also making use of new technology to identify suspicious patterns of illegal behaviour. For instance, through the Public Spending Observatory, CGU monitors and detects potential fraud in relation to the use of federal public resources by devising solutions to not only expose current corruption cases but also to prevent future events.

Court of Auditors (Tribunal de Contas)

In Brazil, audit institutions play an important role in promoting good governance and fighting corruption. They are empowered to directly punish misconduct through the imposition of fines and bans on public contracting. However, in many cases, the Tribunal de Contas (TCU) reports misconduct to other institutions, such as the Public Prosecutor's Office for civil or criminal sanctions.

With regard to public contracting, companies involved in severe misconduct can be banned from bidding for government contracts for a period of three to five years. For instance, in 2013, the TCU included 194 companies in its blacklist. The list of banned companies is published on both the TCU and CGU's websites. In 2016, the TCU included 191 companies in its blacklist (TCU 2016).

The CGU website also contains the National Register of Disreputable and Suspended Companies (*Cadastro Nacional de Empresas Inidôneas e Suspensas - CEIS*), a database of companies and individuals who have suffered sanctions that prevent them to bid for contracts with the public administration. In June 2016, there are 12,977 companies/individuals in this situation.

The TCU also has the power to ban individuals from running for public office or being appointed to trust positions in the federal government. In 2013, 104 individuals were prohibited from public positions. In

2016, 726 individuals were prohibited from public positions (TCU 2016).

Audits are conducted after complaints, whistleblowing reports received by the body, or pro-actively. In 2013, the TCU received more than 1,400 denouncements, and the measures taken by the body resulted in R\$8.91 billion (US\$3.45 billion) in savings for the government.

In the first quarter of 2016, the TCU adopted 15 precautionary measures against acts and procedures of government entities, which involved the application of funds from the federal government in an amount exceeding R\$2.374 billion.

The main criticisms of the TCU and the state audit courts relates to the appointment of its senior members. The institution is directed by a board composed of nine ministers at the federal level (TCU), and appointed advisers at the state level (TCE).

However, the constitution is not clear regarding the pre-qualifications necessary for these positions. In fact, only two of the members of the board have to be chosen from technical officials already working at the audit body. The national congress or state assembly chooses two-thirds of the ministers/advisers, and the remaining one-third is chosen by the president/governor, subject to confirmation by the senate.

As a consequence, the vast majority (64 per cent) of the TCU ministers and advisers are politicians, either parliamentarians or senators, who resigned from their position in congress after being nominated to the board (Paiva & Sakai 2014), with little or no expertise in the field of accounting. In addition, 17 per cent of the state advisers are related to a politician (brother, son, father, among others) (Paiva & Sakai 2014).

Recently, the media has denounced several cases of misconduct and conflicts of interest involving ministers of the TCU and advisers at the state level. A recent study also shows that 20 per cent of the state advisers have been indicted for mismanagement of public funds, corruption or other wrongdoings, and some have even been convicted (Paiva & Sakai 2014).

Ombudsman

Brazil does not have a unified and independent ombudsman institution. At the federal level, the CGU has an ombudsman office responsible for receiving, examining, and forwarding complaints and suggestions referring to procedures and actions of federal executive agents, units and entities. In addition, all ministries and federal agencies have an ombudsman office, totalling more than 150 ombudsman offices at the executive level.

Other actors

Civil society

Freedom of assembly and association are guaranteed by the Brazilian constitution. Until the 1970s, however, due to its paternalistic and authoritarian social structure, Brazil had few non-governmental organisations. In the early 1980s, a wide variety of social movements and organisations appeared. After democratisation, they started playing an important role in advocating for enhanced public participation in decision making, and two of the participatory mechanisms created in this period – participatory budgeting and local health councils – were successfully implemented and became established institutional practices (Tranjan 2012).

In subsequent years, the Commission on Justice and Peace of the Conference of Brazilian Bishops (CNDB) played an important role in mobilising citizens and civil society organisations. Several campaigns demanding more integrity in elections took place.

NGOs also assumed an important function in the delivery of public services. During Lula's presidency, the government started building partnerships with social movements and provided financial support to NGOs. During the 2000s, approximately 50 per cent of the money to civil society organisations came from governments (federal and local), 40 per cent from international foundations and agencies, and 10 per cent from the private sector (Gomes no year).

This approach has unfortunately also led to fraud and corruption, with contracts being awarded to NGOs "owned" by relatives of politicians and NGOs receiving public funds without delivering the service, among other irregularities. As a consequence, the Court of Auditors and the CGU started punishing

mismangement and a list of debarred not-for-profit organisations was also created.

Civil society participation in government decision making continues to be encouraged by the current government. In 2014, President Dilma enacted a decree (Decreto nº 8243) obliging federal bodies to establish mechanisms for civil society to take part in policy making, such as regular public hearings, the creation of councils, among others.

While the decree emphasises the consultative role of civil society in the process, the media and the opposition criticised the measure, raising concerns over the influence of partisan social groups in decision making as well as the fact that the measure was adopted through a presidential decree rather than approved by congress. The opposition proposed a bill to cancel the decree, which has been approved by the lower house and has now to be considered by the senate (Muda Mais 2014b).

Media

The Brazilian constitution guarantees freedom of speech and freedom of the press. As such, the Brazilian media provides broad and accurate coverage of corruption at the federal level, but less so for smaller states and municipalities, and has been instrumental in helping to uncover several corruption scandals.

However, there have been instances where journalists have been killed for reporting on controversial issues, and media pluralism is also considered a problem (Reporters Without Borders 2013). Against this backdrop, Brazil ranks 104 out of 180 in the Reporters Without Borders Press Freedom Index 2016, behind Peru (84) and Bolivia (97). Brazil's performance indicator, which measures the level of media freedom violations, climbed from 25.78 in 2014 to 31.93 in 2015: "a significant deterioration", according to the website.

A study conducted by the NGO Transparência Brasil, shows that media ownership in Brazil is very centralised. In several parts of the country, politicians from the old elite are in control of the existing media channels (newspaper, television and radio), including the Sarney family in the state of Maranhão, and the Magalhães family in the state of Bahia (Abramo 2007).

Cases of judicial censorship where media outlets, journalists and bloggers are required by the court to remove content or even to pay fines are also considered a problem (Freedom House 2014).

According to the 2015 Google Transparency Report, in June 2015 Brazil had 286 requests to remove online content, the same number as in the United States. In comparison, in the same period Russia had 1,191 requests. In December 2014 there were 527 requests for Brazil.

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