

Report on Brazil

Presented to the Global Forum II on Fighting Corruption

The Hague, May 2001



Cartoon by Hilde Weber.
Published in *O Estado de S. Paulo* newspaper, 1977.
(Signs read: "Do not feed"; "Beasts".)

Note on responsibilities

This report was prepared by a team co-ordinated by Cláudio Weber Abramo¹ and having as academic co-ordinator Dr. Bruno Wilhelm Speck.² The report is co-authored by them. Mr. Marcelo Figueiredo³ drafted part of the material.

Information not attributable to sources/documents explicitly referred to in the text was collected in the course of interviews with assorted officials, civil society representatives etc., and by recourse to background knowledge. The latter was especially the case in those fields the responsables are professionally familiar with.

Responsibilities for first drafts were distributed as follows:⁴

Executive	MF
Legislative	BWS
Political party funding	BWS
Supreme audit institution	BWS
Judiciary	MF
Civil service	MF
Police and prosecutors	MF
Procurements	CWA
Ombudsman	BWS
Media	CWA
Civil society	BWS

After consolidation, texts and questionnaires were distributed to a group of specialists who were invited to comment on them. A one-day long seminar brought them together. A structured discussion covered all points. In addition to the primary responsables, the group was formed by the following:

Belisário dos Santos Júnior – lawyer, ex-Justice secretary, São Paulo state
Benedito Mariano – Currently São Paulo municipality *ouvidor* (an Executive-appointed ombudsman), ex-*ouvidor* for the state of São Paulo police
Denise Frossard – ex-judge, member of TBrasil board
Mauro Sérgio Bogea Soares – Executive secretary, Public Ethics Commission
Ricardo Rodrigues – Director, Legislative consultant body, Federal Lower House

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⁴ Three themes were not applicable to Brazil.



Their valuable contribution enriched the report and helped to better focus many points. However, they are not to be held responsible for the opinions and/or reportings expressed here. This is the sole responsibility of Mr. Abramo and Dr. Speck. Overall harmonisation and organisation (including departures, additions and abridgements during the process of translating the material from Portuguese to English) is due to Mr. Abramo.



Introduction

The study's framework takes as model a smallish country, with a predominantly centralised state structure.

Brazil, however, is huge in every sense: it has 170 million inhabitants; it is the 8th world economy, with a GNP of US\$ 750 billion, corresponding to 50% of all Latin America (excepting Mexico) and the Caribbean put together; its federal budget for 2001 turns around US\$ 470 billion, of which about US\$ 265 billion correspond to debt service (both internal and external – Brazil's foreign debt is one of the world's largest).

Brazil's surface area is 8547 km² (the world's fifth biggest country), or 42% of the whole LA-Carib region. The areas of the states of São Paulo or Rio Grande do Sul (medium-sized states) are each similar to Italy's. São Paulo state alone has something like 35 million inhabitants.

More to the point, Brazil is a Federation of 26 states (plus a Federal District) and has about 5650 municipalities, of which 200 to 300 are big. There are several cities with more than 1 million inhabitants, such as São Paulo (10 million within the city itself, 15 million within Greater São Paulo). A significant number of municipalities have budgets in excess of many small countries'. Ditto some departments of the more wealthy state governments, such as Rio de Janeiro, São Paulo, Rio Grande do Sul.

States and municipalities have a good measure of autonomy (not so much as in the US, but much more than is common in Europe, for instance). Corruption, anti-corruption measures, civil society participation and all other relevant events, programs etc. happen at all three levels of government. Many initiatives occur at the state and municipal levels.

Brazilian state and society are much more structured, layered and branched than the average Third World country's. Whereas income distribution is appalling (Gini index of 60), still the middle class is sizeable. There are extensive professional classes working in all venues of life. This means that information exchanging is not limited to a small group of officials, businessmen, politicians, civil society activists etc. Contrary to what happens in smaller countries, even getting inkling on who would be the relevant people in each sphere is not always an easy task.

Due to the size of the country and to the complexity and depth of its institutional structures, many initiatives may have been overlooked in this report. Even federal initiatives can pass unnoticed. Furthermore, aggregated state and municipal information of the type the report aims at are usually non-existent.

Over all this operates the lack of a systematic concern with data and information gathering and maintenance. Historically, official agencies, the academy, and professional, business and civil society organisations have only sporadically concerned themselves with this. Apart from econometric data and some social development indicators (health, education etc.), other data is extremely hard to get by, if at all available.

These drawbacks may perhaps be better understood in financial terms. Two instances suffice: 1) In the southern state of Paraná there is a 250 thousand inhabitants town named Maringá. In 2000, its mayor, some other city officials and a number of businesses (including two newspapers, which the received view usually takes as sacrosanct) were implicated in irregularities totalling US\$ 15 million and, possibly, reaching US\$ 50 million. 2) The ex-president of the São Paulo Regional Labour Court (a branch of the Judiciary), who is presently in police custody awaiting trial, was implicated in an US\$ 80 million scam involving the construction of one single building (the US\$ 80 million correspond only to the disappeared amount). A senator charged with complicity had his mandate revoked. A former close aid to the President was under investigation on the same charges. While the press has extensively reported the second scandal, the first one got internal pages coverage, if at all.

Even narrowly sectoral corruption cases can have multimillion-dollar magnitude. How many other detected local cases of similar import (US\$ tens of millions) there are is an open



question. Fraud and corruption in the social security system alone (not covered in the study) are perceived as immense.

Another area not covered is a variety of special federal programs, which transfer monies to municipalities to be redistributed to the poor. At the very day this was being written, the press reported⁵ that the Federal Internal Control Secretary discovered that, from a total of about US\$ 900 million that left the federal Treasury to attend to one single such project, 25% disappeared along the way. Mayors are the prime suspects. Of course, this example shows not only the absolute magnitude of corruption but, also, that the federal government is able to detect it and take the necessary corrective and punitive actions.

Corruption in the Judiciary is an extremely significant drawback to the possibility of curbing government and Legislative corruption and is not pursued in the questionnaire. This is of course a thorny question to research in any country – which is a further reason why it could be subjected to closer systematic scrutiny. Likewise, the corruptor's side is not treated as an issue per se – while, of course, there's no corruption in the absence of corruptors.

Corruption is very much in people's minds. Political campaigns from left-wing parties during the last municipal elections, held in October-November 2000, centralised on corruption. The polls responded by giving them an unprecedented victory in big cities. Even in view of such a clear mandate, structured anti-corruption initiatives are not being forwarded. Thus, at this writing, there was no anti-corruption program being applied anywhere in Brazil in any sphere, although, as a direct result of *Transparência Brasil's* efforts, a few were being studied by new mayors.

All this means that the Brazilian National Integrity System presented in the report is per necessity partial. This works both ways: on the one hand, it is possible that significant fragilities passed unnoticed; on the other hand, in some areas actual progress may be more intense than the perceptions stated here. Brazil is not easily grasped by the eagle's eye.

Cláudio Weber Abramo

⁵ *O Estado de S. Paulo*, Feb 4, 2001, front page.

A remark on methodology

Control of corruption is intimately linked to the genesis of modern political systems. The “public interest” idea appeared and got hold in the midst of the fight against governing elite abuses. The universal application of the rule of law against privileged groups’ socio-economic power used to be a constant challenge and continues to be so. And the notion of giving power to elected representatives relied on periodic reconduction based on an assessment by electors. Republicanism, Civil Rights and Democracy are central elements of modern political systems.⁶

Corruption constitutes one of the main factors threatening to subvert these values. With political scientist Paul Noack, we could say that the fight against corruption is confused with the very genesis of liberal-democratic systems.⁷

Surprisingly, however, academic studies have been less alert to the phenomenon than could be expected. Social sciences, political philosophy, law, administration and economy, usually focus other features of political systems – as public policy formulation, its discussion and popular legitimisation, its implementation by the administration. Monitoring, checking, evaluating and keeping track of corruption earned less attention during the last few decades.

Thus, control mechanisms are still relatively less known and researched compared to interest groups, political parties, planning and implementing of public policies and so on. There’s neither a great deal of theorisation on the control issue or systematic research on the institutions charged with this role.

The concept of integrity system used in the study suggests that, in practice, modern political organisms developed great ability in analysing such control institutions and mechanisms – which, however, lacks substantiation. In the international level, during the 90s corruption was subjected to an increasing amount of analyses.⁸ But systematic assessments of mechanisms and control systems are relatively rare.⁹ In Brazil, research along both directions is practically non-existent.¹⁰

The integrity system concept suggests that one of the political system’s task would be precisely to zeal for its own integrity. Public interest must be respected, laws must be enforced, public policies must show results. A series of institutions and mechanisms contribute to those ends.

The present study framework suggests that they be to be addressed separately. Comparing one country’s Legislative or General Audit Authority with their counterparts in other countries is

⁶ Guilherme O’Donnell: “Accountability horizontal e novas poliarquias”. *Lua Nova* **44**, p. 27-54. São Paulo: 1998.

⁷ Paul Noack: *Korruption - die andere Seite der Macht*. Munich: Kindler, 1985. Michael Johnston revisited the theme (“The search for definitions: The vitality of politics and the issue of corruption”. *International Social Science Journal*, UNESCO, Vol. XLVIII, n° 3, 1996, p. 321-335).

⁸ Many journals dedicated special sections to the matter. Examples are *International Social Science Journal* (UNESCO, USA, Vol. 149, 1996), *Political Studies* (Political Studies Association, UK, Vol. 45, no. 3, 1997) and *The European Journal of Development Research* (Vol. 10, no. 1, 1998). Corruption is increasingly being addressed in special issues (such as the classic Arnold Heidenheimer J./Michael Johnston/Victor T. LeVine (org.): *Political Corruption. A handbook*, New Brunswick/London: Transaction Publishers, 1989; Donatella della Porta, Yves Meny (org.): *Democracy and corruption in Europe*. Pinter, 1997; among many others).

⁹ Transparency International’s *Source Book* is an exception (Jeremy Pope (ed.): *National Integrity Systems: The Transparency International Source Book*, Washington: Transparency International, 1996).

¹⁰ Concerning this issue, it is worth looking at Carlos Estevam Martins: “Governabilidade e controles”, *RAP*, FGV, vol. 23, n° 1, 1989, pp. 5-20.

a natural way to attack the question. The rationale is that, through comparisons, one can reach indications concerning, for instance, best practices.

One first doubt concerns whether the institutional framework exclusively refers to institutions as controlling agents, as suggested by the integrity optic, or these should also be viewed as vulnerability areas. Thus, the Legislative offers important instruments to externally controlling public administration, but, at the same time, representatives are targets for corruption. In the text, whenever we deemed relevant, we opted for the second interpretation, analysing not only each institution's control role but, also, the risks they are subjected.

However, such approach has other limitations that must be recognised. In the majority of cases, modern institutions are multi-functional. Different agents can fulfill the same function. Thus, the role of orienting public administrators on issues of integrity can fall on the Legislative, the ombudsman, the audit authority or all these simultaneously. Punishment can be administered by the administrative sphere, the judicial system (which sometimes includes the supreme audit authority), the Legislative. Detecting irregularities can be a task for political rivals, for civil society, for economic players, as well as for prosecutors and comptroller and audit institutions.

An approach springing from functions to be fulfilled could be a complement to the present study in order to better depict an integrity system. However, this requires more theoretical knowledge on what we call integrity systems. A critical mass of empirical knowledge to give foundations to the theory must first be in place. As well as more time to elaborate a global perspective over the integrity challenge confronting modern political systems.

Bruno Wilhelm Speck



Descriptive section

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National Integrity System

In the sequel, the main components of the Brazilian NIS are presented, together with short remarks stating, when applicable, the existence of contrasts between formal provisions and what actually happens. A general assessment of NIS is presented in the concluding section. The items follow the document “Guidance Notes for Researchers”.

- Democratic Accountability. Present. There is reasonable consensus on the electoral system’s inability to reflect citizens’ control over elected representatives. Legislative monitoring of the Executive is faulty.
- Civil Society role. CS organisations are usually ill-prepared, but show increasing will to enhance their participation.
- The press has a mixed role, depending on the environment. There is great sensitivity to report corruption charges, but there are limitations to the press’ capability in autonomously investigating such charges. The press is formally free, but often retains links with economic and political interests.
- Civil Rights. Formally guaranteed, but not exercised as they should. In poor social strata, civil rights are frequently violated; individuals of the middle class know reasonably well their rights and usually try to enforce them; the rich often avoid their duties by exercising pressures and by using connections.
- Civil Service. Formally proper, but in practice often lacking in competence and political independence. Corruption is perceived as widespread in some sensitive areas.
- Rule of Law. In place.
- Ombudsman. Present only in a few offices and states/municipalities.
- Judicial System. Formally independent and provided with formal mechanisms of career promotion etc. In practice, very inefficient, backward-looking and lacking in transparency.
- Public Prosecutors. Independent and increasingly active.
- Supreme Audit Institution. In place, with all formal requirements fulfilled. In practice, not very efficient in exercising compliance audit. The relatively recent duty of exercising performance and program audit is met incipiently.
- Procurements. An advanced national law is present. Knowledge about its main principles may be lacking among important stakeholders.
- Anti-Corruption Agencies. There are none.

Executive

The Brazilian state has been subjected to profound changes during the last decade. Many of them have a bearing on corruption. Noteworthy are structural reforms such as (a) the end of public monopoly in a number of economic sectors and opening up of markets, introducing the competition principle in areas subjected to extensive rent-seeking activities;¹¹ (b) the privatisation of public enterprises, a heavy financial transaction subjected to corruption attempts but that, on the other hand, significantly reduces the amount of resources and positions subjected to political bargain; (c) outsourcing of services, broadening the public-

¹¹ On the relationship between rent-seeking and corruption, see Pritzl, Rubert F. J.: “La corrupción pública: una forma dinámica e ilegal de rentismo o rent-seeking en la lucha distributiva de los grupos de interés organizados”. *Contribuciones* 4, pp. 127-162. Buenos Aires: 1995; Silva, Marcos Fernandes Gonçalves da: “A economia política da corrupção”. *Estudos Econômicos da Construção* 2, 1996, pp. 71-96.

private interface and (d) the administration's managerial reform, creating new discretionary margins for the regulating agencies concerned.

Not all vectors of these changes can be considered as naturally beneficial from the perspective of corruption control. This is true of the last two items mentioned above, but these belong more properly to the procurements section. One further transformation the Brazilian state went through, with a bearing on corruption control, refers to the end of chronic inflation, which stamped Brazil's Twentieth-century history, reaching dizzying heights during the first post-military regime decade (1985-1994).

In the Brazilian federation, there is a strong interrelation between all three levels of government in what regards legal obligations and the material resources needed to attend to them. Among the interactions: obligatory states and municipalities participation in federal taxes collected by the Union (44% of the Revenue Tax and the Industrial Tax); obligatory participation of municipalities in state taxes (25% of value-added commercial and services tax is passed on to municipalities); transfers based on standard agreements with the federal government to decentralise certain public services (health and education, for instance); other voluntary (i.e. not obligatory) transfers. These co-operations offer both risks and opportunities to fight corruption.

Two factors affect risks. First, the federal bureaucracy's opacity and discretionary power concerning voluntary transfers leave space for corruption of the process. It is symptomatic that one of the first great corruption scandals after the end of the military dictatorship happened exactly around transfers from the Union to municipalities. Go-betweens used to offer their services, in return of a stiff charge, to facilitate the transfers. In that scandal, which became public in 1997, it became obvious that the Brazilian state opacity is a reality even concerning the lower spheres. Furthermore, opacity organises itself systemically: artificial hurdles were created in order to sell facilitation.¹² A similar case occurred in 1997 in São Paulo, involving state transfers to municipalities.¹³ In 2000, in São Paulo alone these transfers totalled US\$ 3.25 billion.

These peculiar arrangements between different state levels, intermediated by private actors, bring to mind central planned economies corruption schemes. Transfers are probably still a target for corruption attempts, but federal and state governments were able to reduce the public officials' discretionary latitude by means of more transparent processes.¹⁴ As a result, reporting of these cases have ceased.

The second breach comes from the precarious monitoring of how these transfers are used. As collecting and execution pass through different levels, legal responsibility and practical monitoring capabilities are frequently weak. This was one of the main criticisms resulting from a Special Investigating Commission created by Congress to look at irregularities affecting health system transfers (in 1994, the federal authority transferred US\$ 7 billion; according to the Commission, 23% of these were subjected to fraud). Recent internal audits concerning educational transfers from 1996 on revealed serious problems – ranging from non-existent students to disappearance of moneys. The subtracted amounts were estimated in US\$ 1.5 billion in two years.¹⁵

¹² These cases were studied by Bezerra, Marcus Otávio: *Corrupção. Um estudo sobre poder público e relações pessoais no Brasil*. Rio de Janeiro: Ed. Relume Dumará, 1995.

¹³ There were strong political implications. The cases happened within the context of two other scandals involving the federal and state governments.

¹⁴ The Federal Internal Control Secretary publishes in the internet data concerning transfers and agreements for services delivery. The same transparency policy is applied by various state Treasury Secretaries concerning transfers to municipalities.

¹⁵ *Jornal da Tarde*, March 27, 2000: 'TCU audita MEC para apurar irregularidades'.

On the other side of the coin is the fact that transfers help to discipline the recipients. Frequently, municipalities and even states are strongly dependent on transfers. This opens the way to conditionalities concerning transparency and honesty. Among these there is the implementation of internal and external controls over management. This depends on the value each federal government agency responsible for transfers attributes to integrity. However, the new Fiscal Responsibility Law¹⁶ states that non-compliance to austerity is to be punished by a suspension of voluntary transfers from the federal government.

The federal government shows no systematic concern with controlling corruption. However, it is concerned with its own public image. As society's sensitivity concerning morality in the public sector has grown, corruption scandals may cause serious crises and shaken the government. For this reason, as a rule ministers and high-placed officials involved in scandals are swiftly dismissed. But measures or systematic reforms directed to prevent specific corruption schemes are rare.

Some public agencies are frequently mentioned as foci of corruption. One of them is the Central Bank; Congress investigated its higher echelon behaviour during the 1999 monetary crisis. As a result, the then head of the Central Bank was criminally charged, but otherwise results were scant. All other officials remained in place. Other agencies suspect of being prone to corruption are the federal authority for roads (DNER), subordinated to the Transportation Ministry (US\$ 1.5 billion in 2000); and the agencies responsible for north-eastern (SUDENE) and Amazonian (SUDAM) development, as well as the agency charged with draught-related projects, all of them subordinated to the Ministry for National Integration. The three agencies spent together US\$ 700 million during 2000.¹⁷

Legislative

Analysing the Legislative role in the national integrity system requires two different perspectives: first, as a possible focus of corruption; then, its role in fighting corruption.

Representative democracy states few rules to positively define the parliamentary mandate. Such mandates are based exactly on freedom to interpret popular will and common good. Popular voting is the most severe way to make elected officials responsible for their acts. The electoral system and the party structure are important elements in the fight against corruption within this context. In this respect, Brazilian electoral system's efficiency is subjected to many doubts. Among them:

- The enormous number of candidates running for office in each election, jeopardising the electors' ability in rationally discerning among candidates. The open list system, together with individual campaigning, reflects on parliamentary performance.
- The reduced influence parties have over candidacies, over electoral success and, lastly, over the actual performance. Elections and political parties are institutions potentially important in monitoring the parliamentarians' behaviour, but their influence is scant. In addition, the turnover in all levels is presently around 50%. To many researchers, this creates a negative stimulus to representatives. Their interest in gaining approval for their behaviour is diminished, and they perceive that must recover investments made in electoral campaigns.

¹⁶ Complementary Law # 101/2000 (ie complementary to the Constitution) on Fiscal responsibility. Law # 10.028/2000 on Penalties.

¹⁷ In December 2000, the then Senate president, Antonio Carlos Magalhães, accused President Fernando Henrique Cardoso of conniving with corruption in DNER and SUDENE. *Jornal da Tarde*, December 12, 2000. "ACM: Presidente 'tolera' a corrupção". He repeated the charges after being replaced in the Senate Presidency in February 2000.



As a result, with few exceptions, Legislative members don't pursue parliamentary careers. Only 33% of the Lower House current members are serving in their 3rd or more legislatures. Often, the parliamentary mandate is perceived as a "bench" while one waits for a new mandate or appointment to the executive (mayor, secretary etc.). The great majority of Congress members are unused to decision-making, hold no power and have scant, if any, parliamentary activity. Their political influence is limited to negotiating personal or group interests in return of support given to party leaderships when issues come to the floor.

The party and electoral systems are the subject of many proposed reforms. However, as well as accountability, there are other values that must be contemplated. Among these there are principles as pluralism and representation, but also specific interests concerning small parties, less-populated states, all of which are protected by the present system.

Parliamentarian mandates are subjected to a set of restrictions. Persons cannot be elected to public office if they: (a) have previously lost their mandates; have been found guilty of administrative charges, like having one's accounts rejected; have lost their political rights; (b) occupy executive positions that could be used to unfairly tip the balance in one's own favour, like presidents, state governors, mayors, ministers, secretaries; occupy high management positions in public enterprises and public agencies; spouses and relatives of chiefs of Executive (all three levels); directors of firms that hold contracts with the state, (c) magistrates and prosecutors.¹⁸

However, such restrictions are weak and not sufficient to block access to public office to persons with questionable antecedents. In some cases, there persist suspicions that the main objective in running for Congress is to get immunity.¹⁹

Due to the recent military regime experience, parliamentary immunity is broadly defined. While still recognising crimes, immunity blocks investigation and prosecution during term. A parliamentarian (all levels) can only be arrested if caught *in flagrante delicto* upon committing unbailable crimes (rape, kidnapping, torture, racial discrimination and others). Even then, the records must be sent within 24 hours to the respective Chamber, which votes on granting permission to go on with the investigation and charging process. An absolute majority is required. Furthermore, parliamentarians can only be criminally prosecuted upon specific authorisation from the Chamber. Federal representatives can only be prosecuted before the Supreme Court.²⁰

The Legislative does not show great concern on positively orienting its members concerning expected behaviour. There are no clear rules regarding contacts with interest groups (there is not a lobbying regulation law), acceptance of gifts and travel (only the Senate has a code of ethics), monitoring parliamentarians' assets etc.

Parliamentarian performance is far from the image of a legislator concerned with checking on government's actions, guided by principles and a follower of party lines. Due to the strong political relationships between the Executive and the Legislative, parliamentarians swap parties frequently. Thus, during 1999, a total of 112 parliamentarians from the lower federal house changed parties; in 2000, they were 41; and in 2001, until February 14th, 23 moved over from one party to another.²¹ After each election, there is a growth of the government's support basis. This happens because parliamentarians loyal to the government influence both the

¹⁸ The Constitution, Art. 14; Complementary Law # 64/1990.

¹⁹ During the 2000 municipal elections, in the São Paulo municipality alone an excess of 1,000 candidates ran for the 55 seats in the Municipal Chamber. It is illustrative that 214 of them had criminal records (homicide, kidnapping, embezzlement, robbery). *O Estado de S. Paulo (apud Revista Consultor Jurídico*, September 10, 2000).

²⁰ The Constitution, Art. 53.

²¹ There are 23 political parties in Brazil, about half of them represented in Congress.

budget and the budget's execution, appoint people to occupy "trust positions", vote legislation that the government is interested in, exert pressures to expedite transfers and federal-sponsored state and municipal projects. One of the big scandals brought to light during 1993-1994 involved the lower chamber Budget Commission. Parliamentarians²² used to negotiate kickbacks with firms holding contracts for projects included in the budget; they also diverted transfers to "social" and "educational" organisations under their control.²³

Support for government projects is frequently incumbent on negotiations with the Executive. In 1997, a number of parliamentarians literally sell their favourable vote to amend the Constitution in order to allow President Fernando Henrique Cardoso (as well as governors and mayors) to run for re-election.²⁴ The main suspicions fell on one of the most intimate political collaborators of the President (and also a partner in business ventures), the powerful Communications minister, already deceased, Sérgio Motta. Pressures and political favours allowed the Executive to avoid investigation by Congress, illustrating the deep interdependency of the two republican institutions, directly arising from the weaknesses of the party structure.

Parliamentarians can lose their mandates if: (a) there is a violation of incompatibilities; (b) parliamentary decorum is breached; (c) the person is found guilty in a court of law, after all appeals were rejected; (d) the Electoral Justice so decides; (e) the parliamentarian fails to attend to one third of the sessions without justification; and (f) one loses one's political rights.

Apart from arbitrary political dismissals during the military regime, since 1945 there were 16 cases where house parliamentarians lost their mandates and one involving a senator (this one last year). The first case happened in 1949 and second four decades later (1989). In historical perspective, the 16 cases in a little over a decade (1989-2000) must be considered a progress. There are also many cases in which parliamentarians step down in order to avoid losing their political rights as a consequence of a probable Congress condemnation. On the other hand, the parliamentary corpus frequently decides for not stripping parliamentarians of their mandates.

As depicted in the questionnaire, Congress does not play its part on checking on the budget execution. All Permanent Commissions (one per government area) hold the power to submit the administration to monitoring, call public hearings, receive complaints, submitting ministers and other officials to depositions concerning their administrative responsibilities. All this happens only occasionally. Only rarely do the Commissions require from the supreme audit authority (the Audit Court, which is an auxiliary Legislative organism) information, support to conduct investigations and other checking activities.²⁵

Congress is more active in investigating some wrongdoings revealed by others. Since the investigations that led to Collor de Mello's impeachment in 1992, not a single year have passed without Congress having established one or more Special Investigation Commission to

²² Nicknamed "Budgetary Midgets", because, together with a small moral stature, many of them were also of small physical stature.

²³ National Congress: *Relatório Final da Comissão Parlamentar Mista de Inquérito, criada através do Requerimento no. 151/93-CN, destinada a apurar fatos contidos nas denúncias do Sr. José Carlos Alves dos Santos, referentes às atividades parlamentares, membros do Governo e representantes de empresas envolvidas na destinação de recursos do Orçamento da União*. Brasília: Centro Gráfico do Senado Federal, January 1994.

²⁴ The scandal came to light following the release of a clandestine recording of a phone conversation between representatives Ronivon Santiago and João Maia. They confessed having being paid US\$ 100 thousand each for their favourable vote. These two implicated three other members of the lower house. All five belonged to the government coalition (*Istoé*, May 21, 1997, "Deputados de aluguel").

²⁵ In 1998 Congress asked for 28 Accounts Court investigations. During the same year, the Court conducted 714 special investigations. Compare with the US: the US Congress initiates 90% of all investigations conducted by its auxiliary agency, the General Accounting Office (see Speck, op. cit., pp. 170-171).

examine corruption scandals.²⁶ Those occasions are subjected to wide press coverage, thus helping the investigations and making impossible to simply leave the issues to rest and fall into oblivion. However, as those Commissions put parliamentarians in the limelight, they can, and are, used by many of them as a political podium. Nevertheless, Special Commissions have been an efficient tool to expose corruption schemes, to politically punish those involved and at least partially to suggest changes in legislation. Criminal and civil proceedings are the Judiciary's task.

Political party funding

Party and electoral financing are important tools in controlling corruption, because private moneys inserted into the political process can (a) distort the will of the people in the elections and (b) stimulate dangerous relationships between elected officials and their financiers. In Brazil, both concerns are joined by the fact that elections signify an exchange occasion, during which relations between the elector and a part of the political class are renovated by means of the mechanism of buying votes.

In Brazil there is a nuclear difference between party and election funding. Political parties have scant resources when compared to financing directed to individual candidates.²⁷ The latter is of course more prone to corruption attacks. The concern regarding the relationship between contributors and elected officials came suddenly to the front in the beginning of the 1990s, when it was revealed that ex-President Fernando Collor de Mello's chief fund-raiser assembled a national scheme to intermediate the relationship between contributors and the government. Since then, party and candidates funding has been discussed in Brazil.

As in other countries, the Brazilian legislation reflects a mixture of three different approaches to reduce risks incumbent to political financing: the definition of maximum amounts for private support to candidates, inspired by the equal opportunity principle; disclosure of contributions, a mechanism that relies on the electors' insight concerning the contributor-candidate relationship; and substituting public for private financing, based on the recognition that political campaigns are expensive and should be financed in such a way as to reduce the vulnerabilities created by *liaisons dangereuses*.

The first approach is present in a weakened form. There are no limitations to party funding.²⁸ Contributions to candidates are limited to certain percentages of contributors' income (see the questionnaire), but not to absolute or relative amounts.²⁹ Thus, there is not a ceiling limiting private influence; nor the rules are designed to equalise such influence, correcting inequalities created by powerful economic interests acting on behalf of some candidates.

On the other hand, such a liberal legislation should facilitate the second orientation, which relies in transparency. This in fact is formally the case. However, specialists believe that electoral costs far exceed declared amounts. The reasons for that seem to stem more from contributors than from candidates. The speculation is that private contributions often come from unofficial funds many firms hold in order to evade taxes. There are also suspicions that

²⁶ Among the more important ones there were Commissions to investigate: the Budget Commission (1993/94); the Social Security system (1995); licensing of tombola houses (1995); irregular issuance of public bonds by states and municipalities (1996/1997); banks (1999); Justice (1999); cargo stealing (2000); Football (2000).

²⁷ Maria Dálva Gil Kinzo: "Funding Parties and Elections in Brazil", in Peter Burnell, Alan Ware (orgs.): *Funding Democratization*. Manchester and New York: Manchester University Press, 1998, pp. 116-136.

²⁸ Party private financing comes from contributions from elected party members, calculated as percentages of earnings (Kinzo, op. cit.).

²⁹ There is an unusual restriction: labour and professional organisations cannot finance parties or candidates (Law # 9096/1995, Art. 31). According to Kinzo, the limitation affects parties closely linked to labour unions, whereas there is tolerance concerning financing by business associations (Kinzo, op. cit.). Distortions give rise to "informal" solutions and consequent vulnerabilities concerning corruption.

organised crime pours significant amounts of money in political campaigns. Be it as it may, the fact remains that the same legislation that renounces to ceilings is unable to guarantee transparency, as expected. There is ample space for improper commitments, which remain hidden and, therefore, are not evaluated by the elector.

The law provides for different mechanisms to substitute public for private financing (see the questionnaire). Certain political and party activities are exempt from taxation,³⁰ but the legislation does not provide for exemption of donations to parties and candidates.

Public financing through the Parties' Fund covers only a fraction of campaign costs. Each party gets about 35 US\$ cents per vote per year (calculated from the last election to the federal lower chamber, in 1998). But campaigns for a representative mandate are estimated at US\$ 5 per elector; as there are 100 million voters in Brazil, total costs are estimated in the vicinity of US\$ 500 million. The Parties' Fund correspond to about US\$ 25 million per year, and this to be applied not only in federal representatives campaigns, but in all seven different elected offices that come to the vote in each four-year period.³¹

Supreme audit institution

Each of the three government levels has audit institutions: thus, there is a Federal Accounts Court (FAC) and Regional Accounts Courts (RAC) in each state and the capital district (Brasilia). The latter are responsible for states' and municipalities' accounts. Rio de Janeiro and São Paulo municipalities, with budgets in excess of many states, have Municipal Accounts Courts (MAC). ACs are responsible for external control. FAC is supported by the Federal Control Secretary, responsible for internal control. The latter belongs to the Finance Ministry and is not yet completely structured by law. Nevertheless, it enjoys a measure of constitutionally guaranteed autonomy, since detected irregularities must be communicated to the FAC.³²

Despite not constitutionally defined as courts, ACs are in practice administrative courts. In order to fulfil its task, FAC has 2,000 clerks and a budget of US\$ 180 million [Budgetary Execution, 2000], which correspond to about 0.05% of the total federal budget.

ACs can charge public administrators who have their accounts rejected. The penalties range from devolution of losses caused to the administration to fines (of up to US\$ 5,000). Additionally, guilty parties can lose the right to be appointed to trust positions (5 to 8 years) or running for office (5 years).

Thus, appreciation of accounts can catch administrators involved in corruption schemes – provided that a paper trail can be detected. This can happen, but in more elaborate schemes it is improbable. Thus, auditing of accounts is not the ideal occasion to detect corruption. Nevertheless, the existence of external auditing do inhibits corruption.

Potentially, the most powerful instrument ACs have at their disposal is their power to conduct independent revisions and audits. This potential is hampered, however, by other obligations, which leaves little room for conducting such investigations. When they do happen, originating from an annually programmed set of investigations, they are more thorough than ordinary, routine, auditing. But unlike other countries, there are no special programs to investigate and detect corruption. In practice, ACs depend on external stimuli. Thus, the ACs' role in curbing corruption is limited to reactive occasional instances. Besides investigations ordered by their respective Legislative, scandals reported in the media may prompt them to conduct ad hoc

³⁰ The Constitution, Art. 150.

³¹ Mayors and city representatives; state governors and state representatives; president, senators and federal representatives. All for four-year terms, excepting senators, which serve for eight years. Elections are always national-wide and occur alternately obeying to a two-year cycle.

³² The Constitution, Art. 74.

auditing. Any citizen, political party, association or union can denounce corruption cases to the ACs.

Upon detecting wrongdoings, ACs may order corrections. Also, if deemed important to the investigation, they can rule on temporarily stripping culprits from office and sequestering their assets. Thus, ACs punitive powers are considerable, but as they are not part of the Judiciary, their decisions are open to contest in regular courts. And, in fact, less than 1% of fines defined by ACs are actually collected. This voids efforts from ACs to organising the auditing process as a due process mechanism.

Judiciary

The Judiciary is in the middle of an array of interrelated crises, directly related to corruption. It is widely believed that one of the main causes for the dissemination of corruption is non-enforcement of laws, even in those cases that are prosecuted. The incumbent impunity functions as a stimulus to corruption. It is also believed that impunity is unequally distributed. Members of the elite are able to avoid being condemned, something that happens less frequently with “peanut thieves”.³³

The Judiciary’s problems have been steadily aggravating. During the second half of the 1990s, the number of cases presented to the courts almost doubled. The result is a non-ruling justice.³⁴ Between 1995 and 1999, 32.2 million processes entered the Judiciary, but during the same period only 22.6 million were actually judged. The gap is getting bigger, thus drastically aggravating impunity.

However, a sizable amount of responsibility for the judicial inefficiency originates outside the system itself. During the last two decades the political agenda concentrated on problems related to democracy consolidation, economic reforms and social problems. Concerns about citizenship, rule of law and other related matters only recently got to the front. Thus, diagnoses are still limited to particular aspects and reform discussions didn’t progress much.

Among Justice’s problems there are lack of sufficient human resources, outdated organisation and procedures, inadequate criminal legislation.³⁵ Lack of sufficient judges can be assessed by comparing Brazilian to other countries’ numbers. In Brazil there is one judge per 23 thousand inhabitants. In contrast, in Germany there is one judge per 3.5 thousand, in Argentina one per 9 thousand. And the bottleneck does not reside only in a lack of openings: 25% of existing positions are not filled following public contests.

An important factor is the Courts’ administrative backwardness. Processes are manually processed, thus forcing judges to dedicate more time to bureaucratic tasks than to their main activity: studying cases, hearing plaintiffs and defendants and formulating a sentence. Besides consuming an inordinate amount of time and delaying rulings, the excessive weight of administrative mechanisms leaves space for attacks directed to the system itself. There are very few documented cases of direct sentence-buying (an open question is whether this is an indication of proper behaviour or a consequence of lack of investigation; fear of retaliation is widespread, even within the press), but there are clear indications of corruption in the administrative level: clerks can be bought to delay processes, disappearing with documents and other interferences. Corruption is suspected as one of the main reasons why persons are

³³ These correspond to perceptions among specialists and the public opinion, which only partially can be evidenced. There are no aggregated statistics pertaining to the Judiciary, and *a fortiori* this also applies to corruption cases.

³⁴ Other law-enforcement agents, as the police, prosecutors and lawyers are co-responsible, as they originate defects on investigation, process instruction and presentation of appeals.

³⁵ Series published by *O Globo* newspaper from August 13 to 23, 2000, under the title “A justiça que não julga” (“The unruling Justice”), by Chico Otávio, Rubens Valente and Vannildo Mendes. The series won the 2000 Cláudio Abramo award, the most important journalism award in the country.

not located by the Judiciary, thus remaining beyond its reach. The absence of expeditious times for judgements, the administrative discretionary power can be used, by a pique, to artificially delay proceedings. Process distribution, which is the privilege of each court's president, creates dangerous areas of manoeuvrability.

Lately, especially among business circles, perceived corruption within the Judiciary have prompted an increasing concern, which reflects on recourse to private arbitration. The latter, in turn, is subjected to controversy. If, on the one hand, private arbitration can expedite solutions whenever the public interest is not directly involved, on the other hand it is argued that it tends to weaken the republican judicial institution and, therefore, the rule of law.

There are many proposals to reform the system, including external control of the Judiciary, almost all essentially concerned with administrative issues.

There also criticism targeted at the criminal and process legislation. One of the main problematic areas is the right to ample defence, provided to accused persons. As affluent persons accused of corruption can hire expensive lawyers, these use all possible means to postpone rulings. According to specialists, even in simple cases, one can interpose up to 80 different appeals along the process. Ninety per cent of processes are judged up to 8 times till the initial ruling is finally confirmed. A fatal mixture is deliberate process delaying in order to pursue the proscribing of penalties. In many electoral cases, the crimes proscribe before sentences are passed.

It must be remarked, however, that a number of judges energetically fight corruption and organised crime. A famous instance is judge Leopoldino Marques do Amaral, murdered in 1999 as a result of his denouncing of widespread corruption practices by judges belonging to the state of Mato Grosso courts, involving from sentence-selling to frauds in public contests, irregular retirements and even complicity with drug trafficking.³⁶ Another example is judge Denise Frossard. In 1993, she ordered the inprisoning of the entire direction of Rio de Janeiro's "jogo do bicho" (an illegal but popular number gamble), a notorious source of corruption of police officers, politicians, part of the media and even social organisations (as "escolas de samba", that is, societies that organise Rio's world-famous Carnival parades, a huge source of tourist income to both the city and the state). Judge Frossard was subjected to pressures from both the political establishment and the Judiciary itself.

Civil service

Using civil service to employ friends and relatives contributed, in the past, to reduce the efficiency of many public institutions. The situation cannot be significantly solved in the short run, due to stability rights provided to civil servants. And unproductive officials weight on the system even after retirement, as public retirement plans are more generous than their private counterparts.

In recent times, many governments tried to reduce the civil service contingent using voluntary dismissal programs. However, those tend to favour the higher echelons: those who adhere are typically highly skilled technicians (which easily find employment in the private sector and deplete civil service) and officials who are in the brink of retirement. Those reap the advantages of such programs and, at the same time, retain retirement rights, albeit slightly reduced.

Law prohibits directly hiring relatives, but there are many loopholes. The administration (not only the Executive's, but also the Legislative's and the Judiciary's) enjoys an excessive latitude to appoint persons to hold "positions of trust", said appointments being subjected by ineffectual limitations. Appointment of aids charged with ill-defined duties or even with no specific duties at all is a mean to pay for electoral favours and employ relatives. The problem

³⁶ *Istoé* magazine, September 15, 1999, "Morte na CPI".

is especially serious at the municipal level, where nepotism in “positions of trust” can reach almost unbelievable heights. On the other hand, public opinion is increasingly concerned with the problem. Fear of losing the public’s trust acts ever more as a constraint.

“Ghost officials”, listed in payrolls but absent from service, frequently furnish reason for scandals. Lending officials to other institutions is a way to create such “ghosts”: as they are not to be found in the original place of work, albeit paid there, they don’t show up in the other place. Lack of proper administrative communication is to blame. Administrators bent on eliminating such abuses use modern management mechanisms, but they are not widespread.

Public official training is deficient. The federal government maintains a school of finance administration and a school of government. The state of São Paulo is the only one that also maintains such a school. In all cases, training programs are limited to some areas and are attended by medium-level officials. There are no courses to prepare them to high management. No course is targeted to the higher echelons. As high officials rarely come from the permanent staff, being politically appointed, the result is an administration that tends to be more competent at the medium level than at the higher. This is obviously an incentive to corruption, as chain of command can be effectively broken by lack of knowledge affecting the higher levels of administration.

Positive incentives are used only timidly. Excepting for the recent and limited initiatives by the Presidential Public Ethics Commission, there are practically no integrity programs with clear and realistic rules concerning gifts and hospitality, maintaining economic activities parallel to civil service, private and commercial relations with subordinates, formation and information mechanisms, monitoring and punishment. In practice, many intended programs are limited to establishing formal rules, many of them unenforceable and usually left unenforced. This, in turn, leaves space to casuistic enforcement, used to persecute political or personal adversaries. Regarding this, *Ouvidorias* (see below, Ombudsman) have brought some limited progress.

The impact of the public service managerial revolution is yet an open question in Brazil. The federal, as well as some states, government, has been pursuing administrative reforms along the lines of New Public Management doctrines, translated by augmenting officials’ discretionary powers and stimulating a results-oriented behaviour. Critics point out that this supposes a well-trained professional civil service, protection from political influence and strong moral enforcement, all of which are currently absent.

Police and prosecutors

Corruption is a crime of investigation. Usually, offended rights are collective; damages caused by corruption are not immediately recognised (for instance, bribes paid to supervising personnel hide environment pollution); there is even complicity between criminal and victim, as in vote buying in elections. Processes are not naturally prompted, as it happens in homicides or robberies, but only following investigation.

Brazilian police is structured in segments. There exist both a federal Police and State Polices. In the latter case there are the Military Police (prevention and repression) and the Civil Police (criminal investigation); in many municipalities there are Town Guards (guarding municipal property and other limited police activities). Corruption is only investigated by the Federal and state Civil Polices. There is no national authority encompassing all polices.

Investigation skills and resources are not developed. In some sectors, the police is more a target to corruption than a means to control it. The main reason for that is obvious and universal: being in the front line against crime, it is especially subjected to corruption attempts by crime to protect itself. This happens in all forms of organised crimes, as “jogo do bicho” (see above), drug dealing, arms dealing, cargo robbery and so on.

A specificity of Brazilian police is the wide discretion police commissars have in conducting investigations. In some types of crimes, it is the commissar’s privilege to decide if a case will

be investigated or not. In practice, this discretion is even wider. It includes irregular interruption of investigations and deliberately instructing investigations with improper or insufficient evidence. The latter jeopardises subsequent procedures and, therefore, is especially targeted by corruption schemes.

Moreover, Brazilian police officials are frequently suspected of direct involvement with criminal activities. Many cases of cargo robbery, kidnapping and extortion involve police officials as active accomplices. Reasons range from low wages, to lack of resources, to an ingrained culture of abuse of power and to low commitment to the institution's objectives, among others.

As happens in all problematic institutions, there are also cases of documented homicides against investigators bent on clarifying criminal cases in which police officials are suspect of involvement.

As the police, public prosecution in Brazil is likewise layered according to the federal and the state levels. The 1988 Constitution freed prosecutors from subordination to the Executive and gave them independence, with its own budget and self-government. There is also provision for auxiliary staff. As well as fulfilling traditional functions (penal and civil), prosecutors act in all spheres involving the public interest. Unlike Italy, for instance, prosecutors are not magistrates.

Formally, prosecutors hold wide investigative discretion, including the subpoena of documents, temporary assets sequestering, phone tapping and supervision of police activities. A judge, however, must order bank disclosure.

In some cases, prosecutors work with specialised teams. Examples are fighting organised crime, drug dealing and other types of crimes that require specialised knowledge, access and managing of large amounts of information. When investigating big corruption scandals, centralising all procedures in one single unit increases efficiency.

There are no special teams devoted exclusively to curbing administrative corruption. This depends mainly on individual prosecutors' efforts. Prosecutors have been increasingly active, unearthing and pursuing some exemplary cases. However, in the absence of an institutional commitment, reflected on specific resources allocation, in the long run such isolated efforts may tend to abate.

Lastly, there are huge deficiencies in penal execution. The law is not fully applied by lack of material resources and adequate penal institutions. Many common prisoners³⁷ are kept jailed in police precincts for lack of space in penitentiaries.

Public procurement

Brazilian public procurement is regulated by federal Law # 8666 (1993), with amendments. The law also regulates public contracts. Obedience to it is mandatory to all public organisms, irrespective of belonging to the federal, state or municipal spheres. Public enterprises and mixed-economy firms must also obey to this law. In all cases there is limited room for particular regulations not incompatible with federal law.

Law 8666 was a landmark in Brazilian public procurement. Previously, seven firms (the so-called "Seven Sisters") controlled about 70% of public works contracts held by the country's 150 biggest contractors. After the law was sanctioned, the market share distribution became much more flat.

Brazilian procurement rules are thorough (the document has 21,355 words). The text was prepared by the Legislative with close collaboration from representatives of medium- and small-sized firms that deal with the state, especially public works contractors. Its backbone

³⁷ Prisoners that hold college diplomas hold the right to be sent to "special" prisons.

consists in framing public procurements against a free market framework and, at the same time, guaranteeing that the public interest is not harmed by unbridled free market practices.

The backbone of Law 8666 is constitutional principles. In its Article 37, the Brazilian Constitution states the following (paraphrase):

- Public administration must follow the principles of legality, impersonality, morality and publicity.
- Public works, services, purchases and alienations will be contracted following public procurement procedures in such a way as to guarantee equality of conditions to all bidders, and in which the only admissible technical and economic conditions stated shall be those indispensable for the fulfilment of contractual obligations.

Accordingly, these are Law 8666 main features:

Rules are uniform for the whole market. The same market is subjected to the same general legal norms. Thus, rules for procurements and contracts are uniform in the whole country. The formal uniformity increases the system's efficiency, alleviating interested firms from the need to acquaint themselves with different purchasers' details. This reduces entry barriers. On the other hand, uniformity allows for a better social control, therefore reducing the vulnerability to corruption.

The administrator's decision power is reduced. In every case and without exceptions, what allows corruption in procurements and public contracts are administrators' decisions that: exclude firms from the possibility of participating in the bidding; establish arbitrary criteria for judgement; establish privileges in contract management and payments due. Brazilian law restricts such manoeuvrability.

The administrator is responsible for exhaustively defining the procurement's object. It is not permitted to bidding firms to define features or conditions not originally present in the procurement's formal call. The reason is that this would leave room for indefinities subjected to the administrator's "judgement".

Economic qualification rules are designed to avoid favouring of big firms. Thus, capital requirements are reasonable (maximum of 10%).

The least offered price is, in principle, the only decision criterion to determine the winner. As the procurement object was already defined and being the participation open to all economically qualified interested parties, there's nothing more to compare among proposals than their prices.³⁸

Technical qualification is restricted to persons. Following methodological individualism, in almost all cases the Brazilian law allows for technical qualification from persons, but not firms. Therefore, in order to show qualification, firms must show they have qualified people.³⁹ Qualification of firms is possible in some special cases.

Failure to provide the contract's object in the contractual time periods subject firms to stiff financial penalties. This repels mavericks.

Publicity. From the procurement to the execution, all process is widely published. Any citizen can require access to information about contracts. Any interested party can contest decisions both administratively and in a court of law.

³⁸ As a matter of fact, there are some exceptions to this, as when a procurement for a project contest (architectural, cultural etc.) is called. In these cases there is provision for a judgement based both on technique and price. However, the amounts involved are typically small.

³⁹ But see below.



Contract amendments. Contracts can be amended only up to small limits. This avoids extensions beyond the original procurement object.

Payments. Payments are made in strict chronological order. This eliminated the administrator's power to "sell" to firms the right to be duly paid.

Criminal punishment. Both the public administrator and the private provider guilty of law violations are criminally punishable.

Auditing. All procurement and contract procedures are subjected to internal and external auditing.

There is one important exception to the law's applicability: it concerns procurements involving projects with multilateral agencies financing. Brazil usually takes financing from the World Bank and the Inter-American Development Bank. These agencies use standard procurement procedures, intended to protect the financing from misuse – as it would happen in many countries that lack adequate procurement laws. Procurement in Brazil must obey these rules.

However, it so happens that some provisions from the WB and IDB are more lax than the corresponding Brazilian rules. The main example regards firms' technical qualification, which is not contemplated in Brazilian law but is possible according to these agencies' rules. As a result, procurements under WB and IDB rules tend to be more vulnerable to corruption than normal procurements. Restrictive "technical" requirements frequently occur in such procurements, without substantial justification and with transparent intent to favour one bidder in detriment of the others. Whereas such procurements are frequently contested, due to the agencies' attitude the outcome is not always in the best public interest.

Since its inception, law 8666 has been periodically subjected to attempts to modify it. The justification for such proposals is always the same: The law is too complicated, encases the public administrator in a straight jacket and is therefore inefficient. Such attempts, the last one in 1996 from the Administration Ministry, have so far failed, due to resistance from civil organisations.

At the very day this was being written, the press announced a further attempt, this time from the President's office itself. The justification is the same: the law is presented as too complicated and inefficient. And, as before, the allegation of inefficiency is not based on empirical surveys or on objective measures of administrative practices, such as medium times elapsed, economic wastes etc.

There is one allegation, however, that have a root in reality, albeit not as the usual critics (mainly big contractors) put it. Application of Law 8666 has faced difficulties in some quarters, due to disinformation and lack of adequate training. From elected officials to firms to state functionaries to lawyers to the courts, there remains a contingent of stakeholders not properly acquainted with the law. As a result, wrong decisions do happen, including those emanating from the courts.

The remedy to this is neither swift nor easy, because it entails a long-term process of familiarisation, not only with the law's letter, but also with its spirit.

Ombudsman

Ouvidorias correspond to a preventive mechanism against corruption. It allows for increased transparency over services and complaints from citizens. Administrative opacity and slowness create a favourable environment to kickbacks and intermediaries. *Ouvidorias* help to attack these problems. This is done either in a case-by-case or systematically.

Since de 1980s, when Brazil's military regime ended, *ouvidorias* have been introduced sporadically in various agencies and levels. The first experience happened in 1986 in the southern city of Curitiba, capital of the state of Paraná. The first federal experiences happened

in the environment agency (1989) and in social security (1991). During the 1990s, *ouvidorias* became increasingly frequent. The states Paraná (1991), Ceará, in the northeastern region (1997), and São Paulo (1995) introduced networks of *ouvidorias* spread over many public organisms. Today, in each of these states more than 100 *ouvidores* mediate between citizens and government.

It is too early to judge if *ouvidorias* have become established in Brazilian officialdom. They remain too dependent on specific political agendas. And in all mentioned states, the respective dominant political coalitions didn't change since the introduction of *ouvidorias*.

Consensual consolidation and political acceptance of *ouvidorias* are ahead of their institutional establishment. There's no constitutional provision for them, either in the federal or in the state and municipal levels. Only in some cases there exist ordinary or complementary legislation to support them.⁴⁰ In most cases, *ouvidorias* and the appointment mechanism, were introduced by decree (Paraná, Decree 22/1991), being wholly dependent on the Executive.⁴¹

However, it is worth repeating that *ouvidorias* seem to be increasingly accepted, with a good chance of becoming *de facto* irreversible. Consumers rights awareness, enhanced by a growing number of private firms, also plays a role in that.

Media

Brazilian media has been very active in denouncing corruption cases. For instance, it was the press that conducted all the process that led to the world-famous impeachment of President Fernando Collor de Mello in 1992.⁴²

Brazilian Constitution prohibits media licensing, there is no central registry from which to extract exact numbers concerning media spread throughout the country. According to private sources, there are in Brazil about 2,247 news publications, 467 of them dailies, the rest ranging from weekly to monthly and other periodicities.⁴³ Distribution, however, is very unequal: about 50% of these vehicles are limited to the states of Rio de Janeiro and São Paulo. The rest is probably concentrated within the richer southeastern states. There are also in Brazil 1452 radio and 182 TV commercial stations.⁴⁴

Prestigious newspapers and weekly newsmagazines are much less, of course. "National" newspapers ones are located in two southeastern states, São Paulo and Rio de Janeiro. As a result of fierce competition in a smallish market, there are only three of these. They are fairly independent, both politically and regarding other economic interests. Their penetration

⁴⁰ São Paulo state police *Ouvidoria* was established by State Law 826/1997; in Ceará, it was State Law 12,686/1997; and in São Paulo state as a whole, by State Law 10,294/1999.

⁴¹ The São Paulo state police *Ouvidoria* innovated by requiring that appointments are made by a council made up of a majority of civil society representatives. The council draws a three-persons list and the governor choses the *ouvidor* (to a two-year mandate) among them. The states of Minas Gerais and Espírito Santo followed the same model, while in Pará, Rio de Janeiro and Rio Grande do Sul the governor or the Justice secretary are solely responsible for designating the *ouvidor*. *Ouvidoria da Polícia do Estado de São Paulo: Relatório Anual de Prestação de Contas*. São Paulo: Imprensa Oficial, 1999.

⁴² But it must not be forgotten that the press got the virtual totality of its information from disgruntled businessmen, uncomfortable with the high bribes asked for by the then President's entourage. These businessmen didn't react from moral outrage, but because under Collor the bribes became higher than the "accepted" level.

In fact, although there were overwhelming indications that Collor took part of the corruption mechanism or even lead it, the case against him was juridically weak (he was never found guilty in a court of law). Congress ousted him more by the (amply justified) political outrage than by hard evidence of malfeasance.

⁴³ Brazilian Newspaper Association; Brazilian Association of Media Representatives.

⁴⁴ Brazilian Radio and Television Stations Association.

outside their home states is very small, excepting Brasilia, the national capital. It also must be mentioned as relevant a Brasilia-based newspaper that, due the fact that it reaches readers before the others and is strong in local news, has influence in the political circles. There exists a prestigious business and economy daily newspaper (based in São Paulo). There is a number of business magazines, none of them influential. Internet journalism is not relevant.

The remaining states (including the federal capital, Brasilia) have sometimes strong and independent local, but not nationally read, newspapers.

Big media standards and independence cannot be uncritically extended to the whole media. Even statewide media in more backward states are not always independent. Often, local media is intimately linked, even confused, with economic and political interests, and so cannot be trusted to report on the powerful.

Brazilian law doesn't limit the type of vehicles that can be controlled by the same group. Thus, TV networks are allowed to own newspapers. This is particularly harmful in some states, in which one single conglomerate owns all relevant media vehicles.

Of much concern is the concentration observed in the electronic media. There are only two truly national-wide TV networks (one or two others claim to be national but in fact aren't), of which one (Globo) controls around 53% of audience (the second-ranked gets 25%). Revenues are not generally informed, but TV advertising corresponds to 50% of the total, which corresponded to about US\$ 2,5 billion in 2000. Due to its higher ad concentration and higher prices, Globo gets a much bigger piece of the TV US\$ 1,25 billion than its audience numbers would suggest.

To many observers, the overwhelming dominance of the open TV market by a single network is disquieting. It is argued that this does not serve diversity, and that Globo's hold makes it a significant political player. Globo is not famous for being objective concerning the federal government.

Significantly, Globo was one the last media organisations to abandon Collor de Mello in 1992. Until the last weeks of a year-long process, Globo never covered in an impartial manner the increasingly united popular and political movement against Collor – something that strikes as particularly noteworthy as such an unanimity was, till then, unheard-of in Brazil. The theme was unmistakably prime journalistic material, but even then Globo treated it as non-existent.

As a result of Brazilian income distribution (Gini index 60), its newspapers are not widely read. Individual daily circulation turns around 300,000 to 400,000. The leading weekly newsmagazine has about 1 million subscribers. According to UNESCO,⁴⁵ in 1996 Brazil issued 40 daily newspaper copies per 1,000 inhabitants.

This contrast vividly with the 40 million persons per day who watch Globo's prime-time news.⁴⁶ Globo is also owner of *O Globo*, one of the three leading daily newspapers. The conglomerate's newspaper is more independent than its TV news operation.

By and large, Brazilian printed journalism follow the American model; beginning some years ago, marketing considerations have increasingly dictated editorial policies, therefore reducing hard information content.

It is usually the press that first brings to light misuses of public money. More often than not, investigations are initiated by press reports.

*A case in point*⁴⁷

⁴⁵ *World Education Report 2000*, p. 133.

⁴⁶ Grupo de Mídia (www.gm.org.br).

⁴⁷ *A Tarde* newspaper, a number of stories.

The state of Bahia is the northeastern's region richest. It is the home state of the Senate President at the time of this writing, Antonio Carlos Magalhães (replaced Feb 2001). Magalhães has been the most powerful person in Bahia since the 1964-1984 military dictatorship and was one of the foremost players in President Fernando Henrique Cardoso's coalition. It is common knowledge that virtually nothing of substance is done in Bahia without his approval. The state's governor, the vast majority of mayors (including the capital's) and the Legislative are strict followers of Magalhães' rule. Those who stray from the fold are excluded. Even Bahia's Judiciary is held as being in his hands.

Five years ago, there were five statewide daily newspapers in Bahia. One of them belongs to the Senator's family (along with radio and TV networks). Four of them were independent or opposed to Magalhães. According to allegations from the leading Bahia newspaper (*A Tarde*), during the last five years, economic pressures (withdrawal of official publicity, harassment of advertisers by state tax investigators, indirect private pressures) caused two of them to fold and a third to align itself with the status quo. As a result, the Senator's newspaper jumped from the fifth to the second circulation rank.

Again according to *A Tarde*, in 1999 the state spent about US\$ 33 million in official advertising (it was Brazil's biggest expenditure), almost exclusively directed to the Senator family's media group.

In the last 10 years in Bahia, 10 journalists were assassinated and 12 other were beaten, kidnapped or were targets of threats against their lives.

Civil society

Corruption scandals marked both the end of the military regime and the re-democratisation period, beginning in 1984. As happened previously, corruption was highlighted in the political agenda. However, in contrast with previous periods, freedom to investigate and denounce, together with the high expectations incumbent to civil rule enhanced civil society's awareness during the last decade.

Civil society has been playing an important role in contemporary Brazilian political process. Civil society organisations have been participating in formulating public policies in many fields, and the political elite is increasingly aware of their significance. Although corruption has been always present in the political debate, classically it is not mobilising. One of the reasons is the apolitical approach to the phenomenon, which preponderated in the past.

In the past, the debate about corruption suffered two strong influences: the individual and the cultural approaches. Corruption used to be seen as a personal failure, notably political adversaries'. This used to facilitate the political use of the problem. Alternatively, corruption was seen as a cultural inheritance from the past, thus somewhat blocking constructive reflection. Control measures would be hampered by ingrained past behaviours. These would be intimately connected to national identity, identifiable by expressions such as *jeitinho brasileiro* ("the Brazilian way to solve problems"), "Gerson's Law" ("Brazilians like to gain advantages from everything"),⁴⁸ or "to friends, everything, to enemies, the law".

Such mixture between personification and fatalism is still present in popular reactions to corruption cases. However, there are signs that a different outlook begins to compete. Much more clearly than in the past, corruption is seen as a problem. In the past, there was an ambivalent appreciation of corruption, as expressed in semi-official slogans like "he steals, but he makes things happen".⁴⁹

⁴⁸ This first appeared as a cigarette TV ad depicting a famous football player named Gerson.

⁴⁹ This particular slogan, used (!) by ex-São Paulo governor Adhemar de Barros, is from the 1950-60s, but some present-day politicians still present themselves to electors saying "I'm not a saint, but I am a doer".

Today, corruption's high economic, social and political costs are unanimously recognised. In certain cases, corruption even became the bogeyman responsible for each and every economic and social ill.⁵⁰ As a consequence, searching for structural causes became more important than looking for individual culprits. As a result of this change in attitude, political actors begin to develop suggestions to put in place anti-corruption policies.

Many anti-corruption initiatives springing from civil society still follow the old paradigms. They rely on appeals to morals and pinpointing individuals. The "Ethics in Politics" movement, created during the Collor de Mello's crisis, used to follow this type of guideline. However, practical attacks on the structural causes for corruption are increasingly gaining the upper hand. An example is the Forum on Electronic Voting. For years now the Forum (conducted in the internet) have been pointing to vulnerabilities in the electronic voting process, which is universal in Brazil. The Forum never accused persons nor used the "inheritance" fallback. On the contrary, as a result of the Forum's discussions, a proposed legislation change was drawn and presented to parliamentarians.

It must not be forgotten that civil society initiatives against corruption suffer from the same weaknesses than all other civil institutions. They are not strongly established, are prone to co-optation and instrumentalisation by the state and are often short-lived. Taxpayers' associations devoted to monitor public spending or associations of users of public services and facilities hardly exist. Civil society organisations tend to prefer debating public policies than to execute and evaluate their efficacy.

A last issue to be recalled is the incipient debate on the need for transparency, ethic behaviour and monitoring of civil organisations themselves. Those also create public functions, manage sizeable material resources, enjoy ample discretion but are not subjected to monitoring. Cases involving members of civil organisations show that they are as much subjected to corruption seduction as state institutions' officials are.

⁵⁰ Carvalhosa, Modesto (org.): *O Livro negro da corrupção*. São Paulo: Paz e Terra, 1995.



Summary

Executive

- Some government agencies are often accused of harbouring corruption schemes.
- Transfers to states and municipalities are prone to wrongdoings, although they are being addressed at the federal level. Spending of these moneys at the local level, however, is not properly monitored.
- The federal government is gradually tightening its control mechanisms, but not within a comprehensive anti-corruption program.

Legislative

- At all levels the Legislative is formally independent, but in practice maintains a favour-swapping relationship with the Executive.
- At all levels, Legislatives are subjected to a 50% turnover at each election. Representatives change party allegiances at will, always following winds blown by the Executive.
- Parliamentary immunity is broadly defined, making it possible to criminally suspect persons to seek, and get, protection from prosecution during term.
- Budget execution is not properly monitored.
- As a rule, special investigations are initiated by outside whistle-blowing reported by the press.

Political party funding

- There is in place a mixed model of political funding that allows for individual contributions to candidates and, at the same time, allocates free radio and TV time for parties according to previous electoral performance.
- Campaign spendings are widely perceived as exceeding by far declared amounts. This is (circumstantial) evidence of money-laundering and the establishment of shady relationships between contributors and elected officials.

Supreme audit institution

- Audit Courts (federal and state) have a broad mandate to exercising a supervising role over administrators. According to the Constitution, they are also Legislative auxiliary offices, but this role is scantily performed.
- Their primary role is *post festum*, so that their role in curbing corruption is usually dependent on the existence of improbable paper trails.
- Special investigations are done, but in a small scale.
- AC rulings are not final, being subjected by endless judicial revision (see the Judiciary section). Less than 1% of applied fines are actually collected.
- Although formally independent (supreme auditors hold office for life), appointments are mainly political.



Judiciary

- The Judiciary inefficiency reinforces impunity and is perceived as a stimulus to corruption.
- Justice is not equally distributed across social strata, making hard to convict members of the economic and political elite accused of corruption.
- The Judicial process is outdated, allowing for endless delays.
- Corruption within the Judiciary is perceived as a grave problem, whose clarification is made difficult by fear of retaliation.

Civil Service

- There are few disincentives to corruption.
- Nepotism and political appointments to “positions of trust” effectively block professional careers.
- Clear and enforceable rules are lacking.
- Training is deficient.
- Programs in some islands pursue more efficient and transparent administrative processes.

Police and prosecutors

- Police have little familiarity with real investigation.
- Corruption crimes are seldom investigated.
- The police is perceived as widely corrupt.
- There are no special prosecutors to pursue corruption crimes. Nevertheless, individual prosecutors have been increasingly active in combating corruption.

Procurements

- Brazilian law is very advanced. It is based on guaranteeing competition and severely curtailing the administrator’s discretion.
- One vulnerability arises from required use of multilateral agencies’ rules whenever their money is involved. As these rules are less rigorous than Brazilian law, corruption is correspondingly more probable when lent money is in play.
- Albeit promulgated in 1993, juridical and administrative knowledge about it leaves to be desired. Lack of specific training affect administrators, lawyers and judges.

Ombudsman

- There are no ombudsman appointed by the Legislative, but *ouvidores* appointed by the Executive.
- They are limited mainly to the state level. There is a few *ouvidores* in federal agencies.
- In most cases, *ouvidores* have a good deal of independence, being very difficult to governors to simply dismiss them.



- *Ouvidorias'* primary clients are the Executives branches, not the Legislative or the public.

Media

- There are few “national” (not really) newspapers. TV networks are incomparably more influential regarding the general public.
- Readership is minuscule, while TV audiences are massive.
- In more backward states, the media is almost entirely owned by the same economic elites that dominate politics, and thus usually cannot be trusted.
- In terms of ownership, “big” media is highly concentrated. There’s a huge dominance of one TV network over all others took together.
- 50% of parliamentarians own radio and/or TV stations.
- Nevertheless, the media has been very active in denouncing corruption cases.

Civil Society

- The attitude concerning corruption is increasingly changing from fatalism and predominantly moral concerns to searching for structural causes and remedies.
- Civil organisations tend to be weak, poorly structured and short-lived.
- They tend to pursue policy-making and refrain from actual monitoring.
- Even then, their role is increasingly relevant.

Conclusions

One of the ways to examine a National Integrity System starts with distinguishing between three different control modalities. Firstly, vertical controls exercised by society over the political system (elections and parties, media, NGOs). Next, horizontal controls encompassing external controls each branch applies to the others (Legislative and audit organisms, the Judiciary, ombudsman). Finally, internal controls, intimately associated with day-to-day management (e-government, inspectors, hotlines etc.).

Vertical controls

In Brazil there are no legal-formal impediments to vertical controls. The re-democratisation process, starting in 1974 and extending for about a decade and a half, was completed in the 1989 presidential election. Today, the press works freely, citizens are free to associate and the political élite is free to form political parties. In practice, however, there remain a few obstacles for external controls to attain an efficient performance.

One of them is the state's opaqueness and the incumbent difficulties to access information. Civil society's organised movements tend to request participation in decision processes and not to monitor honesty and efficiency of policy implementation. The changing potential of transparency and honesty, which apparently are less radical objectives than participation in decisions, remains to be discovered by most civil organisations.

A few state administrations (Bahia, São Paulo) have launched interesting initiatives to enhance the administration's transparency and to facilitate public access, thus eliminating the need for professional go-betweens. Others are beginning to experiment using information technologies, providing services by means of electronic terminals (Paraná, São Paulo, Ceará). Both allow for a better control of the administration by citizens.

Corruption has been prime news material during the last decade. The media's role has been central in turning corruption into an important issue in the country's political agenda. Many cases of corruption make their debut in the press. Whereas the other internal and external control channels are frequently subjected to the logic of political loyalties and rivalries, printed media became a powerful and independent vehicle for airing corruption scams. However, the journalistic imperative of "getting there first" often supplants care in verifying facts and allegations. In confirmed cases, the press limits itself to didactically present corruption schemes, which are frequently complex. A strong tradition of investigative journalism is lacking.

The electoral system and the political parties are formally free, but have been the target of intense criticism. The present electoral model gives rise to difficulties in implementing democratic accountability; the number of candidates to Legislative seats far exceeds a reasonable limit to voters' intelligibility. During Brazilian elections, the voter is left virtually unable to absorb and compare different candidates' proposals and does not truly exert rejection of candidates running for re-election. To the extent that the majority of electors are unable to recall the names of those candidates they voted for, even shortly after elections. Loyalty to one's party is fragile, and representatives are used to swap allegiances, making even more difficult for accountability to get hold. Debates on electoral and party reforms do happen, but this is a terrain most difficult to change, as it has immediate and direct consequences on the political class interests.

External controls

Vertical controls cannot superimpose or replace internal and external controls. Only those enjoy the political legitimacy, the technical qualification and the resources needed to exert a constant and institutional monitoring.

Political external control, originating in the Legislative, suffers from lack of regularity from the part of Permanent Congressional Commissions (i.e. Commissions dedicated to each broad area, as Health, Education etc.), as well as from overemphasising Special Investigative Commissions.

External controls exercised by Audit Courts lack independence and are ineffectual to pinpoint corruption schemes.

The Judiciary is probably the weakest link in the control chain, since it is unable to convey to society the message that crimes of corruption are actually punished. The individual institutions charged with mounting cases – police, public prosecutors and courts – don't work in an integrated fashion. The police suffers from political interference and is vulnerable to organised crime take-over; furthermore, is ill prepared to conduct investigations. Public prosecutors, whose powers were significantly enhanced under the 1988 Constitution, are yet finding their new identity and run the risk of becoming entangled in political considerations. The latter comes from what is perceived by some as a hyper-militant attitude from some young prosecutors. The courts are affected by opacity and slowness and can't adequately respond to the growing number of cases that reaches the Judiciary. Reforms of the penal process and in administrative procedures could change the image that, in Brazil, corruption crimes remain unpunished.

Internal controls

Internal controls are the main mechanisms to guarantee that public affairs are properly managed. Opaque management systems, lacking of a clear definition of responsibilities, evaluation and monitoring, are prone to develop corruption schemes. Although some progress was achieved in the last few years, control enhancement has not been able to avoid multimillion-dollar scandals (such as a US\$ 300 million scam in the Roads Office).

In some states, interesting experiments with control systems were able to enhance the degree of information available to the public manager. Information technology is used to make resource management more transparent to the administrator, who is able to compare costs and avoid unrecoverable losses. New institutional models, like *ouvidorias*, are used to allow both the public and functionaries to monitor the administration's performance. They are also channels to formulate accusations of corruption. It is obvious that the internal control efficiency depends on the manager's willingness in creating more transparent and honest procedures.

Judiciary and public prosecutor's offices, even if dealing with less money, are equally precarious, being responsible for a number of recent scandals (see the introduction).

Lastly, Legislative internal controls, meant to monitor the representatives' behaviour, are in principle an important element to preserve the institution's legitimacy. Again in principle, such controls are charged with great responsibility, as external judiciary controls are constitutionally limited. However, actual control of the Legislative over its members is asystematic, ambiguous, prone to error and strongly influenced by political calculations. Although individual sanctions have increased in recent times, it still frequently happens that parliamentary mandates are used to interfere with administration, that unfounded accusations are thrown about, that representatives threaten each other with never-released dossiers, that charges of vote-buying pass uninvestigated, and that accused parliamentarians remain outside the Justice's reach by his colleagues' secret vote.

Recovering the Legislative credibility depends on reforms of the selection (electoral) process and the party system, as well as on strengthening internal and external controls over the parliamentarians' activities.



Co-operation and integration

Evaluating the different control modalities is difficult in a country where political and administrative subsystems are so heterogeneous. The case of the Regional Labour Court building referred to in the introduction is paradigmatic – not due to the amounts involved (about US\$ 80 million), but because they were duly authorised and traversed practically all control systems: internal (the Labour Courts don't have such a control), external (supplementary moneys were repeatedly approved by the Legislative and the supreme audit institution failed to blow the whistle in face of irregularities it found) and social (press, political parties and civil society organisations didn't play a role in investigating and denouncing the scandal during the years it went on).

Individual loopholes in each modality of control are varied. They show that at this moment in Brazil, a national integrity system committed with curbing and punishing corruption doesn't exist.

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