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AN ANALYSIS OF THE BRAZILIAN ACCOUNTING COURT – TCU, THE NON-GOVERNMENTAL ORGANIZATIONS AND THE NATIONAL CONGRESS

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1. INTRODUCTION

Brazil is the largest economy of Latin America, but some years ago, we had very serious macroeconomic problems like inflation, lay budget deficits, and a debt moratorium. The economic situation is much better nowadays. The debt crisis problem has been solved and the country's foreign reserve situation is quite comfortable.

However, we still have other problems. Brazil is passing through many crises, including fraud, waste and embezzlement of public money. Every time this happens, the Congress installs a Parliamentary Inquiry Committee - CPI - to study the problem. Soon after, the CPIs request the Tribunal de Contas da União - TCU, the Brazilian Accounting Court, to help the Committee's work with human resources, information, studies, reports, and more audits. To solve problems like fraud, waste and embezzlement, I think we need to change the Brazilian Legal System and also improve the Brazilian Internal and External Control System.

The External Control of the Executive Power in the United States and Brazil is exerted by the Government Accountability Office (GAO) and by the Brazilian Accounting Court (TCU), respectively.

One of the most outstanding problems in Brazil is the poor quality of the use of the funds from the Federal Budget that are decentralized by the Executive Power to be used by the Non-Governmental Organizations. In the past 8 years, the Brazilian Federal Senate set up two Parliamentary Inquiry Committees (2001/2002 and 2007/2008) to analyze the issue. The non-governmental organizations receive large amounts of funds annually; however, when they are audited, many irregularities are found regarding expenditures.

This paper has the objective of analyzing how the Brazilian Accounting Court (TCU), the Brazilian Government and the American Government deal with the overseeing of the decentralized funds in their respective countries for the Non-Governmental Organizations.

While the Brazilian Accounting Court (TCU) analyzes the problems from the technical point of view, the National Congress, which has the capacity to create and change laws, analyzes the same issues from the political point of view. Hence, another subject that will be analyzed by this paper is the relationship between the Court and the National Congress. The Brazilian Federal Constitution assigns the Brazilian Accounting Court (TCU) many competencies; likewise, the Court has the duty of submitting periodical reports of its activities to the National Congress. Bearing in mind the large quantity of funds collected from society and spent by the Federal Government, audit information, studies and reports prepared by TCU with regard to the effective use of those funds are of the utmost importance to improve the State's Administration.

For one's better understanding of the issues that will be exposed, we shall present a topic in which we shall tell about the Brazilian Court of Audit, its structure, jurisdiction, budget and staff members.

2 EXTERNAL CONTROL IN BRAZIL

2.1 THE BRAZILIAN CONSTITUTION AND EXTERNAL CONTROL

The Brazilian Federal Constitution provides for the Union's accounting, financial, budgetary, operational and patrimonial overseeing, as well as for the overseeing of the direct and indirect Administration Agencies - with regard to the aspects of legality, legitimacy, economicity, use of subventions and renouncing of revenues - to be exerted by the National Congress by way of external control and by each Power's internal control.

2.2 BRAZIL'S ACCOUNTING COURT – CONSTITUTIONAL AND LEGAL COMPETENCIES

In accordance with Article 71st, caput, of Brazil's Constitution, the National Congress is in charge of external control with the help of Brazil's Accounting Court, the latter being responsible for the actions summarized in the chart below:

analyzing the President of the Republic's annual records of expenses (art. 71, I);
analyzing the records of expenses made by the Administrators and others responsible for public moneys, property and assets (art. 71, II);
analyzing the legality of acts regarding the hiring of staff and the granting of retirements and military and civilian pensions (art. 71, III);
carrying out inspections and audits by their own initiative or by request from the National Congress (art. 71, IV);
overseeing the national accounts of supra-national enterprises (art. 71, V);
overseeing the use of the Country's transferred funds to the States and to the Federal District and Local Administrations (art. 71, VI);
giving information to the National Congress on inspections carried out (art. 71, VII);
putting into practice sanctions and determining the correction of illegalities and irregularities in acts and contracts (art. 71, VIII a XI);
in the event of non-compliance, discontinuing the execution of the impugned act, informing the House of Representatives and the Senate of the decision (art. 71, X);
issuing a conclusive statement, upon request of the Permanent Joint Committee of Senators and Representatives, on the unauthorized expenditures carried out (art. 72, § 1º);
investigating denunciations brought forth by any citizen, political party, association or syndicate on irregularities or illegalities in the use of federal funds (art. 74, § 2º);
establishing the shares of the States, the Federal District, and the Local Administrations and overseeing the delivery of funds to the state governments and to the town halls (art. 161, only one paragraph).

The infra-constitutional legislation also assigns to Brazil's Accounting Court important attributions. As an illustration:

- ? The Biddings and Contracts Law (Law no. 8666/93) – enabled the submission of any irregularity and its enforcement to the Accounting Court.
- ? The Privatization Law (Law no. 9491/1997) – designated the Accounting Court to follow up the privatization procedures and the concession of public services.
- ? The Fiscal Responsibility Law (Complementary Law no. 101, of 5/4/2000) – assigned an essential role to the accounting courts with regard to the control and overseeing of the fiscal management.

It is now behooving to emphasize the importance of the Fiscal Responsibility Law (LRF) in the controlling activity, since the essential, remarkable aspect of the Law – which establishes norms for public finances with regard to responsible fiscal management – is based on holding public administrators responsible, as the name says.

In the event that a given State, Town or the Federal District does not follow the norms of the Fiscal Responsibility Law, it is subject to institutional sanctions, amongst which are the discontinued voluntary transference of funds to the nominated beneficiaries and the barring of contracts for credit operations. The main scope of these sanctions consists of imposing a commitment of a “planned and transparent action by which risks are prevented and deviations capable of affecting the balance of public accounts are corrected” (art. 1st, paragraph 1st, Complementary Law No. 101/2000).

Other specific laws have also assigned extraordinary attributions to Brazil's Accounting Court¹. In addition, the National Congress issues legislative edicts requiring the overseeing of works sponsored by federal funds, with expressed order for the physical-financial follow-up, by Brazil's Accounting Court, of the execution of contracts referring to works that are part of the Union's budget.

2.3 BRAZIL'S ACCOUNTING COURT'S JURISDICTION

Nine ministers compose Brazil's Accounting Court, six of whom are chosen by National Congress. The others are appointed by the President of the Republic, with Senate approval, two of whom are alternately nominated by the Court from among the auditors and members of the Public Ministry with the Court.

In accordance with the Federal Constitution, the choice of ministers is made from Brazilian citizens between thirty five and sixty five years of age, with acknowledged moral reputation, recognized for their juridical, accounting, economical and financial expertise, or for public administration experience, and with more than ten years of active work and effective, professional activity requiring the background knowledge referred to.

The Chairman and Deputy-Chairman of Brazil's Accounting Court are elected by their peers for the term of one year and they can be re-elected once.

A specialized public ministry functions together with the Accounting Court and is composed of an attorney-general, three sub-attorney-generals and four attorneys appointed by the President, from among Law Bachelors who entered the service by Public Service Entrance

¹ Law no. 10866/2004, which regulates the shares of the resources of the Contribution of Intervention in the Economic Domain that fall on oil imports and marketing and its by-products, natural gas and its by-products, and fuel alcohol (Cide); Public-Private Partnership Law (no. 11079/2004); Law on Contracting Public Consortiums (no. 1107/2005); annual issues of the Budgetary Guidance Law and the Budgetary Law.

Examination. The Public Ministry with the Accounting Court is subject to the institutional principles of functional unity, indivisibility and independence.

Since the Accounting Court is a collegiate body, its deliberations are made by its Plenary, its highest instance, or by one of its two Houses.

The Plenary is composed of all ministers and chaired by the Court's Chairman. The Houses are composed of four ministers. The auditors (Substitute Ministers), three of them, participate in the colleges and substitute the ministers during their leaves and legal impediments, or in the event of vacancy in a position.

To carry out its mission, the Court has a Secretarial Office whose function is to give the necessary technical and administrative support in the exercise of its constitutional and legal capacities. This Secretarial Office is made up of several units. The management of the technical-executive area of external control is with the External Control General Secretarial Office (Segecex), to which the technical-executive units of Brasilia and of the 26 States are subordinated. Among many tasks, they are in charge of overseeing the use of federal funds transferred to the States and Towns by agreement, as well as other forms of transferring federal funds (Brazil's Accounting Court. Getting to Know the Court- 2006).

. In accordance with the Federal Constitution of Brazil, any public or private individual or juridical person that makes use, gathers, saves, manages, invests or administrates public, federal moneys, assets and valuables (or goods that the Union is responsible for) is under the Accounting Court's jurisdiction. Likewise, whoever takes on pecuniary duties on behalf of the Union is also under the Court's jurisdiction. That includes whoever gives cause to loss of any nature to the Public Money.

The Accounting Court's jurisdiction encompasses those responsible for private juridical entities that receive para-fiscal contributions and render service of public or social interest, as well as all those that should answer to it and whose acts are subject to its overseeing, by expressed provision in the Law. It also includes those responsible for the use of any financial resources transferred by the Union to a State of the Federation (26), the Federal District or a Township (5,564), by agreement, adjustment or other similar tools. The Brazilian Government has more than 2,500 direct and indirect administration units (the TCU Annual Report Fiscal Year 2002).

2.4 BRAZIL'S ACCOUNTING COURT'S OFFICIALS AND BUDGET

The staff of the Accounting Court's Secretarial Office includes 2,515 permanent positions, 2,354 of which were occupied at the end of 2007. The manner to join the career is by Public Entrance Examination.

The Court's budget for 2007 was allocated in the amount of R\$1.069 Billion (US\$ 603.92 Million)².

2.5 BRAZIL'S ACCOUNTING COURT'S ACTION

In view of the constitutional and legal attributions of the Federal Accounting Court, and for the purpose of achieving increasingly more effective results in the benefit of society, the Court has drawn a strategic reference encompassing, essentially, the Institution's definition of business, mission, and its view of the future, as follows:

² R\$ 1.069 Billion = US\$ 603.92Million; Exchange Rate 1.7713 R\$/US\$, on 12.31.2007.

Business:	External control of public administration and of the management of federal public funds.
Mission:	Ensuring the effective and regular management of public funds for the benefit of society.
Vision:	Being an institution of excellence in the control function and contributing to the improvement of public administration.

Along this line of strategy, the performance of the Court has generated expressive financial benefits for the Nation, both measurable and non-measurable.

Therefore, in 2007, the direct benefits to the Treasury and to the Brazilian population, resulting from the work carried out by the Court, reached over R\$5.5 billion (US\$ 3.105 Billion). That is to say that, for every real spent with the Accounting Court, the Union saved R\$5.50. Notwithstanding the advanced action of the Court by way of precaution measures, with the objective of preventing great loss of public funds or damage to the rights of others, which involved the amount of R\$7.9 billion (US\$ 4.46 Billion).

The table below describes the results and benefits for the citizens and for the Treasury originating from the action of the Accounting Court in 2007.

TOTAL POTENTIAL BENEFIT OF THE CONTROL ACTIONS	R\$ 5.60 billion
Precaution measures taken	116
Losses and damages prevented by the precaution measures	R\$ 7.9 billion
Convicted in debt and/or fined	1,889
Amount of convictions	R\$ 521 million
Suits forwarded to the Public Ministry of the Union for ruling of due civil and penal action	950
Overseen works	235
Volume of overseen funds in public works	R\$ 23.9 billion
Potential benefits of the overseeing actions in public works	R\$ 950 million
Formal executive charging procedures	1.747
Value involved in the executive charging procedures	R\$ 600 million

Number of people declared ineligible to hold office in commission or position of trust in the Federal Public Administration	130
Enterprises declared incapable to participate in public biddings with the Federal Public Administration	47
Precaution suspension of biddings and contracts	90
Biddings and contracts determined to be annulled/suspended/adjusted	72
Denouncing actions received by the Accounting Court's Hearing Official with regard to evidence of irregularity in the use of public funds	2,105
Conclusively ruled suits	6,715
Agreements settled	9,816
Appeals ruled	1,548
Personnel acts ruled	111,039 (3,754 illegal)
Completed overseeing procedures	723

Exchange rate = 1.7713 R\$/US\$, on 12.31.2007.

The Accounting Court's major actions in 2007 (Brazil's Accounting Court - Rendering of Accounts and Management Report – 2007) were:

- ? **Authorization of the publication of the Santo Antonio Mill auction (Hydroelectric)**, at the **Rio Madeira**, with recommendations that resulted in the reduction of about 13% of the top price in the auction maximum fee. The Accounting Court also examined economic-financial assessment studies with regard to the granting of authorization for the use of the mill's public assets. The total economy to be generated in the cash flow of the enterprise is over **R\$30 billion**.
- ? **Diagnostic assessment of the governmental actions to fight “dengue disease”³**, in nine States and 26 towns, has proven that nearly 50% of the overseen realm (12 towns) does not comply with the goals of the Integrated Health Vigilance Programmed Pact. It was also proved that 42% of the audited towns do not rely on a contingency plan, or do so precariously, in the event that there is a “dengue” epidemic. Such findings have motivated recommendations from the Accounting Court

³ dengue = an infectious disease, produced by virus, transmitted to man by a mosquito bite, especially by the *Aedes aegypti* mosquito

to the Senate, the House of Representatives, the Ministry of Health and the Cabinet of the Presidency of the Republic, for an improvement of the existing legal norms and tools with the objective of foreseeing sanctions to the public agents responsible for the unjustified non-compliance with duties taken in the scope of the Health System, specially those related to the control of transmissible diseases.

- ? Delivery to the National Congress of the results reached from **235 overseeing procedures of public works** paid for with federal funds and that, in 2007, added up to an amount greater than R\$23.9 billion in budget allocation. The overseeing procedures brought back unquestionable benefits to the Treasury and to the Brazilian society by making it possible for the enterprises to be completed in accordance with the required standards of costs, schedule and quality. During the overseeing of the works, flaws and irregularities were identified that should be corrected in a timely fashion in order to protect the interests of society. The correction of the problems will provide an **economy** of around **R\$950 million** in public funds.
- ? **Action in the construction bidding for seven highway sections**, part of the federal roads and highways utility concession program, with an **economy** of **R\$19.6 billion** for the 25 years of the contract. The adjustments established reduced the average value of the fees in approximately 28%.
- ? Checking of the sound practice used in Public Administration **as a result of the Court's determination**, which will bring about an **average economy** of **R\$300 million** in the **process of acquiring medications** for the public health system. Resolution no. 4/2006 of the Regulation Chamber of the Medications Market (CMED) has determined a discount of nearly 25% on the factory price of the products, which

should be given by the laboratories and dealers in the procurement of medical drugs by the Public Power (the Union, the States and the Towns).

- ? **Examination of the Accounts of the Republic's Administration**, sent to the National Congress for approval. The accounts were approved with 27 recommendations for correction, for different reasons.
- ? **Economy of R\$1.17 billion in the next five years** for the Treasury with the implementation of a new systematic procedure of transference of funds to third parties – **after determination from the Accounts Court** – put into practice by the Welfare Revenue Secretariat.

Taking into account only the decisions subject to quantification, during the first quarter of 2008, the potential financial benefit was greater than R\$2.75 billion, which allows for an inference that for every *real* allocated to the Court more than R\$12,16 *reais* were returned to the country (Brazil's Accounting Court – Activities Report – 1º/2008).

To conclude on this topic of the paper, it is important to emphasize that the essential rights of the Brazilian citizen, as clearly described in articles 5th, 6th and 7th of the Country's Constitution (rights and duties of individual and collective; and social rights) are closely connected to public finances. For their preservation and defense, those basic rights are actually dependent on the good, balanced, effective, actual and regular use of public funds in behalf of the collectivity.

The system of external control set up in Brazil, whose responsibility lies with the National Congress, originates from the need to join the Parliament's political action and

democratic legitimacy with the impartiality of the technical body that performs the overseeing activity based on objective standards of technical-judicial nature.

3. EXTERNAL CONTROL OF PUBLIC FUNDS TRANSFERRED TO NON-GOVERNMENTAL ORGANIZATIONS IN BRAZIL

3.1 THE FINANCIAL RESOURCES

The main sources of revenue for the Non-Governmental Organizations (NGOs) are the contributions and donations made by entrepreneurs and private individuals, subsidies from the government and, once given requirements are met with, by the State's fiscal renouncing. In accordance with the origin of the financial and material resources that sponsor the functioning of the NGOs, they can be placed in two categories: those that do not depend on governmental subsidies and those that depend fundamentally on that kind of support to carry out their activities.

In Brazil, the NGOs that depend on government subventions are usually those of charitable, philanthropic, beneficent nature, for health and education assistance, and so on, which seek juridical titles granted by the Public Power (Public Utility, Oscip - Civil Society Organization of Public Entities) to make this form of funding viable.

As an illustration, from January 2003 to May 2007, the Federal Government transferred funds to about 7,700 non-profit private institutions (Brazil's Accounting Court – Acórdão n ° 1331/2008- TCU – Plenário).

In accordance with the data presented by the Minister of State for Control and Transparency - Dr. Jorge Hage - to the Parliamentary Inquiry Committee created in 2007 by the Federal Senate to examine the transference of public funds to NGOs and to OSCIPs, between 2003 and 2006 nearly 20 billion reais was transferred to these entities from federal resources. Based on the data found in the federal budget, about 32 billion reais was allocated to those

organizations in 2007 (Brazil's Accounting Court – Report, First Opinions and Statements of Vote presented on the Administration's Accounts. Fiscal year 2007).

3.2 OVERSEEING OF FINANCIAL RESOURCES TRANSFERRED

With regard to the public funds transferred to NGOs, the respective accounting, financial, budgetary, operational and patrimonial overseeing concerning the aspects of legality, legitimacy, economicity, use of subventions and renouncing of revenues is carried out by the National Congress – with the help of Brazil's Accounting Court – and by each Power's system of internal control, as established in Brazil's Constitution (articles 70 to 71, caput).

As concerns the confirmation of the regular use of the funds and the results reached, the NGOs report mainly to the agency or entity that transferred the resources to them, as well as to the internal control system's central agency, and in the event that those responsible for it perceive any irregularity or illegality, they will report it to the Accounting Court, lest they may be charged with solidarity. In the scope of the Federal Executive Power, the Union's General Controlling Agency (CGU) is in charge of the internal control activities.

The Brazilian Constitution provides for a social control of the resources transferred to ensure that *“as provided by the law, any citizen, political party, association or syndicate can legitimately denounce to the Union's Accounting Court irregularities or illegalities.”* (article 74, paragraph 2).

It must be emphasized that the action of the fund-transferring agency or entity, or that of the Union's General Controlling Agency, does not impede concomitant action by any other federal controlling agency, i.e. the Accounting Court or the Public Ministry, or any other legally competent entity. The Accounting Court can perform direct overseeing – and does so quite

frequently – of the resources transferred to the NGOs, independent of overseeing having occurred by the transferring agency or by the Union’s General Controlling Agency.

The chart below shows the institution primarily responsible for the overseeing of the use of the respective funds for each juridical tool used in the transference of budget resources. As a rule, this is the responsibility of the institution that transfers the funds, to which the rendering of accounts will be submitted.

Systematic rendering of accounts to the Accounting Court does not apply – except in the case of a management contract, as will be seen later. However, both the Accounting Court and the Controlling Agency have competence to carry out direct overseeing (Carvalho Neto-2007).

Agreement	The overseeing managerial function will be performed by the granting agency/entity, within the usual time frame for carrying out/rendering accounts on an agreement, its qualified agents’ being ensured discretionary power for reorientation of actions and acceptance of justifications, or not, with regard to dysfunctions that may have occurred in the execution of the contract. (IN STN 1/97, art. 23)
Transference Contract	The transference of funds by those responsible for it will be done by means of a transference contract, which will include the rights and duties of the parts, even whereas the mandatory rendering of accounts to the competent Ministry for the execution of the program or project. (Decree 1,819/96, art. 3rd)
Management Contract	The execution of the management contract by a social organization will be overseen by the supervising agency or entity of the area corresponding to the activity promoted. (Law 9,637/98, art. 8th)
Term of Partnership	The execution of the Term of Partnership’s contract will be followed-up and overseen by the Public Power agency of the area corresponding to the activity promoted and by the Public Policies’ Councils of the existing areas corresponding to each government level. (Law 9,790/99, art. 11)

With regard to the management contract, signed with the entities qualified as Social Organizations, the Accounting Court has established an understanding, by way of Plenary

Decision no. 592/1998, that the entities' annual accounts will have to be submitted for evaluation by the Court. Therefore, this is the only case in which a private organization has its ordinary accounts systematically submitted to direct examination by the Accounting Court.

It so happens that the control structures of the transferring agencies/entities are unequipped in terms of material, human and technology resources and inappropriately prepared to perform their duties in all phases of the transference operational cycle, i.e. from the assessment and approval of requests to the concurrent follow-up of the execution and the account-rendering analysis (Brazil's Accounting Court – Report, First Opinions and Statements of Vote presented on the Administration's Accounts. Fiscal year 2007).

Several of the overseeing works by the Accounting Court on the public funds transferred to the third sector have indicated serious negligence, beginning with the procedures during the preliminary phase of technical evaluation of the proposals and technical and operational conditions of the covenant entities to execute them. Added to the lack of follow-up, overseeing and transparency in the execution, these facts diminish even more the low expectations of control from the covenant entities and impede the adoption of timely measures to correct the series of ensuing detrimental consequences, such as the risk of non-fulfillment of contract due to non-executions, partial or imperfect executions and mismanagement or waste of the transferred resources.

The Accounting Court's audits can also point out that the respective account-rendering analyses are superficial, even deficient, in disagreement with the data and elements present in the proceedings, revealing that the opinions are merely *pro forma*, just to comply with the legal requirements, and that there are no evaluation procedures of the results reached in terms of benefits, economic or social impacts, or even as concerns the target-audience satisfaction

regarding the implemented objects. Hence, the analyses of results, which should be part of the opinions on the account-rendering do not allow for a clear idea to be formed as to the effectiveness and actuality of the executed actions.

In addition to the considerable number of agreements and similar tools approved by the fund-transferring institutions, in which the Accounting Court's audits found serious irregularities, there are also cases in which the account-rendering was not analyzed at all, whether because the entity did not comply with the obligation of rendering accounts or because, due to the deficiencies already mentioned, the granting agencies/entities did not proceed with the analysis of the submitted accounts.

3.3 IMPROVEMENTS BEING IMPLEMENTED IN BRAZIL

In addition to the determinations to solve the problems pointed out above, the Accounting Court tried a case (Brazil's Accounting Court - Acórdão 2066/2006 – Plenário) in 2006 that dealt with an audit carried out with the objective of checking the regularity of the use of financial resources spread out among 28 agreements with NGOs. In the trial of this case, the Court determined that, within a period of 180 days, the Ministry of Planning, Budget and Management was to submit to the Court a technical study for the implementation of a web platform computer system that will enable the online follow-up of all agreements and other juridical tools used to transfer federal funds to other agencies/entities, federate institutions and private sector organizations that can be accessed by any citizen via the computer world net, with information about the agreement - specially the data related to the covenant party, its representative in Congress and the budget amendment that allocated the resources, the object of the pact, the detailed work plan, the foreseen costs, in detail, at the level of item/stage/phase, the

biddings held with all related data and the bids offered, the status of the physical execution of the contract with the assets acquired, and the timetable, services and works performed, the name of the person in charge, and the location of the direct beneficiaries - if it is the case - the funds transferred and to be transferred, the financial execution with the executed expenditures analytically discriminated by supplier, and a form to collect denunciations.

The Brazilian Government already had a site on the Internet, called Transparency Gateway, with information about the decentralized, allocated values for the states, towns and non-profit organizations. It has good quality but it is not enough to prevent fraud, waste and embezzlement of public funds.

On October 2nd, 2007, the Accounting Court approved the Project presented by the Executive Power (Sentence no. 2048/2007 – Accounting Court Plenary) called “Covenants System – Sincov” in compliance with the determination mentioned above.

This system has started working recently and it will rely on the data of agreements made after September 1st, 2008, making a stricter, computerized control possible, with the stages of agreement execution shown in detail and the account-rendering done in real time (<https://www.convenios.gov.br>). Hence, any citizen will be able to access the gateway and check the execution of the works, the hiring of services and the account-rendering of the resources used.

In July, 2008, the Accounting Court tried another suit (Brazil’s Accounting Court - Acórdão TCU nº 1331/2008 - Plenário) that dealt with the audit carried out with the objective of checking the regularity of the use of the decentralized financial resources for 26 NGOs by means of 167 agreements. At the trial, the Accounting Court recommended to the Ministry of Planning, Budget and Management of the Executive Power that it should give orientation to the other Administration agencies to publish their own norms guidebooks with the objective of establishing

the obligatory task of: a) instituting public edict and selection before making agreements with NGOs in all situations deemed feasible and appropriate to the nature of the actions; b) carrying out in loco overseeing of the physical execution from a given financial amount involved to ensure concomitant control actions. Immediately after that, the Ministry published norms instructing all government institutions to follow the Court's orientation.

Hence, although the problems are many, many are the results reached from the efforts that are being carried out for better utilization of public funds.

3.4 THE US SINGLE AUDIT ACT

In accordance with the US Office of Management and Budget (Government Accountability Office – Testimony- GAO-02-877T), federal awards for fiscal year 2001 totaled about \$325 billion of the \$1.8 trillion federal budget. These awards include grants, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, food commodities, and direct appropriations and federal cost reimbursements. The Single Audit Act, passed in 1984 and amended in 1996, is intended to, among other things, promote sound financial management, including effective internal controls, with respect to federal awards administered by state and local governments and nonprofit Organizations. Under OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, those governments or organizations that expend \$300,000 or more in federal awards during the fiscal year shall (1) maintain internal control for federal programs, (2) comply with laws, regulations, and the provisions of contracts or grant agreements, (3) prepare appropriate financial statements, including the Schedule of Expenditures of Federal Awards, (4) ensure that the required single audits are properly performed and submitted when due, and (5) follow up and take corrective actions on audit findings.

Each audit shall be conducted by an independent auditor in accordance with generally accepted government auditing standards. The 'independent auditor' means an external State or local government auditor who meets the independence standards included in generally accepted government auditing standards; or a public accountant who meets such independence standards;

Audit requirements. Non-Federal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

Audit costs. Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

The non-Federal entity shall transmit the reporting package, which shall include the non-Federal entity's financial statements, schedule of expenditures of Federal awards, corrective action plan defined and auditor's reports developed to a Federal clearinghouse designated by the Director, and make it available for public inspection.

In accordance with GAO's Testimony (GAO-02-877T), The Federal Audit Clearinghouse, the organization the Office of Management and Budget (OMB) designated to receive single audit reports from federal award recipients, received about 34,000 single audit reports during calendar year 2000. About 5,500 of these reports contained audit findings.

3.5 PROPOSALS

The allocation of financial resources by the American Government to contract independent audits to check the correct use of the decentralized funds by the Executive Power, included in the agreement, is a significant demonstration of the Federal Government's strong will and interest that the resources will be used correctly by the receiving end. Hence, Brazil could include norms in its legislation that will authorize this kind of expense. The certainty that the recipients will be overseen would greatly improve the management of public funds.

In Brazil, the new Covenants Gateway will make important information available on the decentralized resources, so that the citizen will be able to oversee the correct use of resources, himself. Hence, Brazil's Accounting Court should adopt a supporting policy of non-profit organizations whose mission it is to promote open government, accountability and citizen participation. It is the society that, united, will help check the correct utilization of the resources decentralized by the Federal Government. The overseeing by society does not substitute that of the government, but it helps to detect irregularities.

Recommending to the Ministry of Planning, Budget and Management of the Executive Power that the other agencies of government be instructed to publish their own norms books for the purpose of establishing indicators (financial and non-financial) to monitor and follow-up the efficiency of the government programs that are carried out by non-profit organizations.

Performing audits systematically to check whether the agencies that decentralize financial resources to other levels of government or non-profit organizations are complying with the pre-established criteria and parameters. The objective is to diminish the possibility that irregularities will happen or that they will prevent the expected results from being achieved, by using preventive measures.

4. THE BRAZILIAN ACCOUNTING COURT AND THE NATIONAL CONGRESS

4.1 THE INTERACTION BETWEEN THE BRAZILIAN ACCOUNTING COURT AND THE CONGRESS

The interaction between the Federal Accounting Court and the National Congress is clearly established in several provisions of the Brazilian Federal Constitution (CF/1988).

More specifically, items IV, VII and X and paragraph 4 of article 71 describe the activities that most emphasize the Accounting Court's action in collaboration with the National Congress:

- ? to perform, on its own initiative or upon request by the House of Representatives, by the Senate, or by a technical or inquiry committee, accounting, financial, budgetary, operational and patrimonial inspections and audits of the Legislative, Executive and Judiciary Power's Administrative units;
- ? to provide the information requested by either of the Houses in Congress (the House of Representatives or the Senate), or by any of the respective Committees, on the accounting, financial, budgetary, operational and patrimonial overseeing, and on the results of audits and inspections performed;
- ? to halt the execution of the impugned act, if the requirements are not met with, communicating the House of Representatives and the Senate of the decision;
- ? to send a quarterly and annual report of its activities to Congress.

An important link of collaboration is established in Article 72 of the Constitution, paragraphs 1 and 2, with one of the collegiate bodies of greater relevance in Congress - the Permanent Joint Committee of Senators and Deputies called "Plans, Public Budgets and Overseeing Joint Committee"- which was deferred prerogatives of the highest significance in the analysis of governmental functions and goals.

In view of evidence of unauthorized expenditures, even if in the form of non-programmed investments or unapproved subsidies, this Committee can solicit the necessary clarifications from the responsible governmental authority within a period of five days. If the

clarifications are not provided or in the event that they are considered insufficient, the Committee shall request that the Accounting Court issue a conclusive statement on the matter within a thirty-day period. If the Accounting Court deems the expenditure irregular, the Committee will propose to the National Congress that it be discontinued if it judges that the expenditure may cause irreparable or severe damage to public economy.

Another example of the interaction between the Brazilian Accounting Court and the National Congress arises from the dispositions of the budgetary laws and guidelines and legislative decrees that assign to the Accounting Court the task of informing Congress of the ongoing works with evidence of serious irregularities, for the purpose of the development of the Annual Budget Law.

The joint work carried out by the National Congress and the Accounting Court is of great importance in the overseeing of public works. The Accounting Court acts on the technical scope, oversees the works and points out the existence of severe irregularities. The National Congress acts on the political sphere and assesses the convenience and opportunity of allocating budget funds to the overseen works.

As an illustration, it is behooving to remember the several requests made by Congress to the Accounting Court regarding consultations, testimonies and audit requests. The proceedings that deal with such solicitations are urgent and preferential in the Accounting Court's scope.

In truth, the National Congress and the Brazilian Federal Accounting Court represent distinct instances, sharing the activities of External Control of public accounts, not necessarily with the same functions. Their attributions are unmistakable, even though they harmonize in their greater objective, i.e. the search for the correct use of public funds.

Therefore, the relationship of the Federal Accounting Court and the National Congress is a natural consequence of the juridical-constitutional affinity that unites Congress and the Court that provides support to it to perform its External Control function.

This relationship is not based on hierarchical or functional submission of the Court to Congress. But the functional independence granted the Accounting Court by the Constitution does not exclude strong interaction with Congress. Very much the other way around, the Accounting Court has increasingly sought to make the connection with the House of

Representatives and the Senate closer and to intensify its cooperative integration with both Houses and their Committees.

4.2 INITIATIVES TO IMPROVE COMMUNICATION WITH CONGRESS

Bearing in mind the State's and society's greatest interests and having the objective of filling in the existing gaps between the current Federal Accounting Court's performance and the desired situation of excellence in institutional performance, the Court has been implementing several initiatives with the objective of expanding and improving communication with the National Congress and to better meet the needs of timeliness and quality of the response to Congress.

Amongst such initiatives, the following three essential factors stand out:

- ? **Knowing the “client well”**: to improve the relationship between the Accounting Court and Congress, the Court needs to present “products” that will meet the needs of the Congressmen. For that to happen, a “mapping” of the Congressmen is necessary by theme/area of interest.
- ? **Defining the systematic of a timely dissemination of notes and summaries on the Court's actions** - related to important themes addressed by the media - to the Committees and leaderships in the National Congress. To manufacture a wonderful product but not to be able to make it known to the client will be useless.
- ? **Setting up routines for interaction**, especially with Congress Committees dealing with themes related to the Court's areas of action/interest. With regard to that, the Accounting Court's Parliamentary Assistance Office acts as a catalyst, as a link between the Committees and the technical units of the Court. In practice, there is an actual mirror between the Committees and the Court units, for their attributions are shared per governmental function, per theme/area. The Parliamentary Assistance Office is the agent that connects the client (Congressmen) to the supplier (technical units).

The Parliamentary Assistance Office already carried out a systematic follow-up of the bills-of-law, petitions and overseeing and control proposals, but the data were not shared with the technical units. Currently, the Parliamentary Assistance Office gives advanced information to

the Court's units of the ongoing propositions at the Committees, calling their attention so that they may, for example, make suggestions before the voting on the bills-of-law and proposals for overseeing and control take place, sometimes seeking "negotiation" of the time frames and the scope of the request made by Congress, so that the expectations of the Congressmen can be met with more quickly and efficiently.

In addition, adjustments are being made to the Court's proceedings and documents management system (called "Processus") in order that all units will be able to follow-up the transit of the National Congress Solicitation proceedings.

By the way, one of the main forms of relationship between the Accounting Court and the National Congress is the attention given to the proceedings on the requests made as a National Congress Solicitation. It just happens that, for a series of factors, this type of proceeding was not always dealt with as quickly as was desired. The fault occurred because, for example, by internal rules, a National Congress Solicitation could become another type of proceeding or it could be annexed to another proceeding that followed the regular time frame for transit, which resulted in the loss of the characteristics of urgency and priority given to those types of Solicitation.

In view of the need to solve problems related to answer time and to the quality of the service provided to the National Congress in response to the Congressmen's solicitations, a Parliamentary Project was instituted and implemented.

The above mentioned Project developed the following products:

- ? diagnostic on the relationship between the Accounting Court and the National Congress, with the objective of obtaining, analyzing and consolidating the data referring to the perception of the Court's image in Congress in addition to the expectations with regard to the Accounting Court's action;
- ? diagnostic on the norms, practices and jurisprudence of the Accounting Court with regard to the treatment given to request proceedings of interest to the National Congress in the scope of the Court;
- ? proposal for perfecting the Court's computerized systems, with the objective of implementing improvements as concerns the registration and the follow-up of request proceedings of interest to the National Congress;
- ? proposal of norms containing the specific proceedings to respond to the National Congress Solicitations.

Some of these measures have already been implemented. The Court has increased the participation of the Accounting Court's members at public hearings held by Congress Committees. In the first semester of 2008, Court officials participated in 13 hearings held in the National Congress.

In addition, the Accounting Court has developed products (handbooks, Court newsletters, summary reports of the overseen works) to bring more frequent, updated information to the National Congress. As of 2007, the Accounting Court has sent copies of its Deliberations to all Congressmen (513 federal Representatives and 81 Senators) in accordance with the Federation Unit they represent. Soon, the Accounting Court will begin to forward those Deliberations to each Congressman, not only by geographic region but also by subject, by area of interest.

The Court plans to produce programs about the works performed by its members to be shown in the Senate's and the House's TV channels. A program on the Court's audit performance about the *dengue* disease⁴ has already been presented at the Senate TV channel.

Another measure implemented was the issuing of Resolution no. 191/2006, which established procedures for reception, initial charging and transit of proceedings and documents related to the area of external control, thus disciplining, in general, the requests submitted to the Accounting Court. However, that Resolution does not encompass the procedural part of reception, processing and forwarding of responses to Congress solicitations. Hence, in order to solve the problems pointed out in the diagnostic drafted in the scope of the Parliamentary Project, the Court issued a new Resolution in 2008 – no. 215.

Resolution no. 215/2008 brought about innovations related to the meeting of National Congress needs, aiming at eliminating the occurrence of the following faults: delay of Court response to Congress; lack of mention to the requests (expedients) in the Deliberations forwarded to Congress that originated the work carried out by the Court; lack of formally expressed time frames to meet the request submitted by Congress; occasional jurisdiction conflicts among *rapporteurs*; undue annexation of the Congress proceeding to another proceeding in transit at the Court; lack of a clear definition of the meaning of the response to the National Congress

⁴ dengue = an infectious disease, produced by virus, transmitted to man by a mosquito bite, especially by the *Aedes aegypti* mosquito

Solicitation (if it was fully responded to or only partially); meeting of the need by a different proceeding than the specific initial charge, this resulting in unclear, elaborate responses in several proceedings; communication of the Court's deliberations to the Congressman-author of the request and not to the collegiate body that approved the solicitation and caused the Court's action.

The Parliamentary Project team had also detected cases in which the National Congress Solicitation was met with and closed by mere determination of an overseeing action, without the result of the overseeing action determined in the sentence being forwarded to Congress. Now, after the issuing of Resolution no. 215/2008, it is forbidden to close the Solicitation proceeding before fully meeting the respective request.

Still regarding National Congress Solicitations proceedings, Resolution no. 215/2008 also prohibits: their annexation to another proceeding, by any means, even if they are related and dependent, connected or restricted; direct conversion of the solicitation into another type of proceeding; and the breaking up of the Solicitation into smaller ones.

4.3 MEETING WITH NATIONAL CONGRESS SOLICITATIONS

In accordance with the provisions of Resolution no. 215/2008, a National Congress Solicitation is considered fully met with when the requesting collegiate body is communicated of the Court's Deliberation that determines:

- ? in the event of request for information, the forwarding of pieces of information and documents required and, if it is the case, of the first opinion by the Court before occasional appeals;
- ? in the case of an overseeing request, the forwarding of the result of overseeing works carried out and other pieces deemed pertinent, as well as the Court's first opinion before occasional appeals or its conversion into a special account rendering;
- ? in the case of a request for a conclusive statement, the forwarding of the conclusive manifestation to the Accounting Court.

It is also considered that the solicitation was met with, in any event, when there is communication to the soliciting party of the Accounting Court's Deliberation with regard to:

- ? impossibility of meeting the request, due to its being out of the Court's constitutional or legal jurisdiction; or
- ? technical or juridical unfeasibility to meet the request.

The soliciting collegiate body should also be communicated of:

- ? a Deliberation on a proceeding of interest to the National Congress that was granted after the solicitation was met with;
- ? an appeal against the Deliberation on a National Congress Solicitation or on a proceeding of interest to the National Congress;
- ? a Deliberation on the appeal to which the previous item refers.

The *rapporteur* of the proceeding can meet the National Congress Solicitation partially, when its being fully met depends on the carrying out of several overseeing works to be finalized at distinct times. In the event of a partial meeting of needs, *the rapporteur* should inform the soliciting collegiate body of the progress of the other overseeing works to be finalized in order for the solicitation to be fully met with.

Hence, until the Court delivers the "final product" to the soliciting collegiate body (committee or subcommittee), the respective National Congress Solicitation proceeding cannot be filed. It will remain open in the system of following-up proceedings.

4.4. THE RELATIONSHIP BETWEEN GAO AND THE AMERICAN NATIONAL CONGRESS

The GAO has a close relationship with the American Congress, which is clear in the text that describes the institution's mission: "The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability."

In order to discipline the above mentioned relationship, GAO issued the GAO's Congressional Protocols in 2004. The form by which the GAO deals with five important aspects is highlighted below.

4.4.1 REQUEST FOR TESTIMONY

In fiscal year 2007 GAO testified at 276 hearings on the Senate and House of Representative committees or subcommittees. Requests for GAO testimony should be made by a committee or subcommittee Chair in writing. GAO will strive to respond to all congressional requests for testimony. However, GAO will decline an invitation to testify when (1) it cannot produce a testimony that conforms to its core values and professional standards or (2) the substance of the GAO testimony would be new information developed for another requester who wants to restrict the information until its public release. In cases of multiple requests for testimony involving the same subject matter, GAO will testify on the date of the first hearing held and will be available to testify at any subsequent hearings. For testimony based on new work, regardless of whether it is a preliminary or final product, GAO will, consistent with professional auditing standards, obtain the views of agency officials before the written testimony is completed to (1) validate the accuracy of data gathered and (2) discuss the implications that flow from the data. GAO will distribute its written testimony in accordance with the rules of the Senate or House, including the committees' rules, and be available to brief the majority and the minority on material facts, major findings, and recommendations included in the testimony.

4.4.2 CONGRESS MANDATES

GAO treats work that is directed by congressional mandates differently from congressional requests. Because congressional mandates are established by either the Congress or one or more committees, it is GAO's policy that products prepared in response to congressional mandates are immediately available to the Congress and the public. When mandates direct GAO to report to a specific committee, GAO will work with the majority and minority of the designated committee to clarify the scope of work, reporting objectives, and time frames. While the work is ongoing, GAO will provide the committees (1) periodic status briefings, (2) briefings

on the preliminary and final results of the work, and (3) notification before the draft product is sent to the agency for comment.

4.4.3 COMMITMENT TO CONGRESSIONAL REQUESTERS

GAO will provide to all Members who request work, generally within 10 business days of receipt, a letter acknowledging the receipt of the request and either accepting or declining it. This letter may be augmented by a verbal communication. When a request is accepted, GAO will provide the requester an estimate of when the job is likely to be staffed (e.g., immediately, within a few weeks, within several months, or at a future date to be determined). When a request is declined, GAO will provide the requester the rationale for declining the work (e.g., the requested work is outside GAO's scope of authority, GAO already has ongoing work requested by another Member addressing the issue, or resource constraints limit its ability to respond to a Member's request). GAO will, where appropriate, suggest alternatives to meet the requester's needs. In consideration of its past practice for requests from GAO's oversight committees—Senate Governmental Affairs and House Government Reform—GAO will send a copy of the acknowledgement letter to either the Chair (if the Ranking Minority Member submitted the request), or the Ranking Minority Member (if the Chair submitted the request), of those committees.

After accepting the request, GAO will initiate a meeting with the requester's staff generally within 20 business days to gain a better understanding of the requester's need for information and the nature of the research questions. During this meeting, GAO will (1) discuss its ability to respond within the desired time frame; (2) provide a verbal estimate of the level of GAO resources required; and (3) advise the requester that, as the original requester, only he or she can approve co-requesters. If this option is exercised, GAO will send a letter to the original requester and each co-requester documenting this agreement. Once the requester and GAO have agreed to proceed with the request, GAO will provide the following to the requester:

- A letter confirming the agreements reached generally within 10 business days after GAO and the requester agree on the terms, including the need for a job design phase or a preliminary expected completion date.

- Periodic status briefings; notification of any significant changed circumstances affecting the scope of work or related time frames for completing the work (e.g., availability, reliability, or access to records, data, or sources of information); and briefing(s) on the preliminary and final results of the work. GAO officials will make every effort to schedule its briefings to accommodate the schedules of both majority and minority Members of Congress and their staff. GAO prefers, but does not require, bipartisan briefings, whenever possible and practicable.

4.4.4 COMMENTS ON LEGISLATIVE BILLS

GAO provides comments on legislative bills when (1) requested to do so by a committee or Member of Congress, (2) GAO's authority or responsibilities would be affected by the bill's passage, or (3) GAO has information that would be useful to committees or members in considering or modifying the bill. In commenting on proposed legislation, GAO's objective is to identify likely program changes, if the bill is enacted, and the impact of such changes on a specific program. When GAO receives a request that covers a legislative proposal introduced by other Members, it may notify the key bill sponsors that it has been asked to comment on the bill. GAO may meet with the key sponsors during the fact-finding phase to obtain a better understanding of the purpose and objectives of the bill.

In limited circumstances, GAO may be unable to do the requested work solely on behalf of a single congressional requester. These circumstances involve situations in which the request addresses an important issue that has broad interest to multiple committees or the Congress as a whole.

4.4.5 PRESS POLICY

In response to media inquiries about ongoing work, GAO will provide information only about the objectives, scope, and methodology of an assignment; the names of the requesters; and the expected completion date. GAO will refer inquiries for any additional information to the requesters. As a professional courtesy, GAO will inform requesters of substantive media inquiries during an ongoing assignment. Once a product is publicly released, GAO staff with expertise in the subject matter will answer questions from the media. On-camera interviews for television

news programs are done only on request and only when GAO deems them appropriate for public understanding of the facts, findings, conclusions, and recommendations of GAO products. GAO's policy is that senior executives with the broadest knowledge of a completed assignment do such interviews. Before GAO agrees to do an on-camera interview, GAO will advise the requesters of the media source and the expected date and time. If asked to participate in press briefings sponsored by requesters, GAO will provide support if the press briefing is held in Washington, D.C. In such instances, GAO will provide knowledgeable staff with the understanding that they are present only to answer questions about the specifics of released GAO products. Although GAO does not generally hold press conferences or issue press releases about products, it does advise the media and the public of the release of GAO products via the World Wide Web and other venues.

4.5 PROPOSALS

The 276 hearings carried out by GAO in fiscal year 2007 on the Senate and House of Representatives Committees or Subcommittees show how much stronger the relationship between the American National Congress and the GAO is.

Every American Public Administrator knows that many of the works carried out by the GAO are submitted to the American Congress. Hence, all the institutions involved pay great attention and give emphasis to them because they recognize their significance and the likely administrative, political and financial consequences (reduction in or expansion of the institution's annual budget) that a negative GAO report can cause not only among the Congressmen but also in the media (television, newspapers and magazines) that follow the matters being discussed in Congress.

The media coverage is very important because it values the work of GAO, transfers information about the Administration to all the society and, together with Congress, demands the necessary actions from those responsible for them to solve the problems found or to improve the ongoing government programs.

Hence, one of the objectives that the Brazilian Accounting Court can have is to increase the number of hearings held in the Brazilian National Congress.

The GAO's methodology and systematics about works with the majority and minority of the designated Committees to clarify the scope of work, reporting objectives, time frames, periodic status briefings, comments on legislative bills and the relationship with the press are also examples to be followed by the other institutions of External Control to perfect their relationship with the National Congress and the media.

It is unarguable that better knowledge of the Congressmen's expectations, added to a timely, quality meeting of the needs of the National Congress result in greater speed, accuracy, uniformity and effectiveness of the responses to the members of Congress.

The implementation of the measures referred to in this section will certainly result in the strengthening of External Control and propitiate greater integration between the National Congress and the Federal Accounting Court in their pursuit of the same objective: to ensure that the Brazilian population will receive the maximum benefit for the use of public funds.

5. CONCLUSION

The corruption practiced by those whom society trusted should find in the accounting courts, in the general accountability institutions and in other similar organizations a constant, efficient obstacle.

From the comparisons made between the two countries' controlling systems, we have detected many differences in action or distinct focuses in the performance of the activities carried out by the two institutions of External Control.

We offer a few propositions to be taken up in Brazil. Some depend on a change in the country's legislation, others depend on a change in the culture of the society, even, but sooner or later those changes will be carried out. The sooner these changes come to pass, the better it will be for Brazil.

As the institution in charge of External Control, the National Congress and society – the beneficiary of the governmental actions – play a fundamental role for the success of the control actions. Hence, interacting with society and having a closer relationship with Congress are crucial initiatives for the ongoing improvement of the Court of Accounting's action and the strengthening and actuality of the External Control.

In this globalized world where all countries try to attract international capital to foster national development, combating fraud, corruption and waste of the public funds collected by the federal government is, no doubt, one of the aspects that international investors check before investing their money in any country. And the Court of Accounting is an important tool to provide and induce improvement in the management of the correct utilization of Brazilian federal public funds.

For Brazil, which wishes to be on the list of countries considered developed, international investment and a management improvement in the use and return of the funds collected by the Federal Government will create an environment more conducive to development, favoring all the Brazilian population, especially the poorer people who depend on the services rendered by the Federal Government and that wish to construct a better future with more citizenship and dignity.

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