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ANTI-CORRUPTION AGENCIES: SOLUTION OR MODERN PANACEA? LESSONS FROM ONGOING EXPERIENCES

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INTRODUCTION

The aim of this paper is to stimulate a debate on the present Brazilian anti-corruption policies, from the perspective of a controversial solution represented by the anti-corruption agencies.

The first Chapter addresses how institutions were set in different kinds of colonization and the impact of inclusive and extractive institutions to the development of countries and their current levels of corruption.

In the second Chapter, the corruption phenomena are contextualized in face of the global economic crisis. What are the effects of the income retraction in the fight against corruption and why the values of governance should be prioritized in times of scarce resources.

The third Chapter describes the types of anti-corruption agencies, according to one of the existing criteria, adopted by Prof. John Heilbrunn. The cases of United States and Brazil are highlighted and compared as examples of the Multi-Agency Model.

In the fourth Chapter, the subject is corruption in Brazil: what social turbulences are demanding, the present anti-corruption framework and the hypothesis of a Brazilian Anti-Corruption Agency; which outcomes could be expected, premises and hindrances to be removed.

At the conclusion, we analyze pros and cons for Brazil to either continuing on relying on the same anti-corruption structure placed nowadays or changing to a "dedicated body-model", exclusively focused on fighting corruption.

It should be duly assumed that the analysis of this paper are solely restricted to the federal levels of government. This option was made because a more comprehensive approach, including state and local levels of government, would generate some redundancies, since the situations verified in the federal level can be easily thought and understood either as state and local challenges. Besides, a comparison between subnational governments of different countries would lead to an enlarged margin of error for any kind of assumption that can eventually be taken.

1. INCLUSIVE AND EXTRACTIVE INSTITUTIONS AND THEIR ROLE IN THE DEVELOPMENT OF A COUNTRY

1.1 The New World

The history of modern civilization is very didactic when it comes to explain the reasons of worldwide inequality in 21st century. The engines that moved the main European powers towards the great navigations in 15th and 16th centuries, were, basically, money and power. First, to find another route to the Indians that could serve as an alternative for the Mediterranean Sea, controlled by the Italians. Second, the need for new lands, that meant new territories, new markets and new raw materials. Both tasks, if accomplished, were expected to improve the commerce and generate, consequently, more taxes collected, more money and, at the end, more power for the dominant empires.

The goals were reached. Portugal found a new route to the Indians, coasting African continent until the Pacific Ocean. The genoese tradesman Christopher Columbus, sponsored by Spanish crown, had chosen the opposite direction and discovered America, although believing he was reaching Asia. Portugal immediately followed the west direction too and discovered Brazil. Both, the Portuguese and the Spanish, installed predatory colonies, aimed to slave, explore and kill the natives, while extracting all wealth they could from the recent found lands.

Although being one of the most powerful countries in the 15th and 16th centuries, Spain was dived into debts. Eduardo Galeano, in his "The Open Veins of Latin America", richly described the situation:

> *The Crown was mortgaged. It owed nearly all of the silver shipments, before they arrived, to German, Genoese, Flemish, and Spanish bankers. The same fate befell most of the duty collected in Spain itself: in 1543, 65 percent of all the royal revenues went to paying annuities on debts. Only in a minimal way did Latin American silver enter the Spanish economy; although formally*

> *registered in Seville, it ended in the hands of the Fuggers, the powerful bankers who had advanced to the Pope the funds needed to finish St. Peter's, and of other big moneylenders of the period, such as the Welsers, the Shetzes, and the Grimaldis. The silver also went to paying for the export of non-Spanish merchandise to the New World.*
>
> (Galeano, Eduardo. Open Veins of Latin America, Editora Siglo Xxi – Argentina, 2009, pg.23)

The roots of the "open veins" of Latin America, as properly referred by Galeano, were tortuously designed by the kind of colonization Spain and Portugal had chosen for the continent, five centuries ago. Once discovering the New World, both countries focused on establishing institutional arrangements that could better serve to their aims: explore, extract and destroy. There was no interest at all in developing societies and sharing knowledge, technologies and wealth. Even the occupation of the new lands was not a concern at the beginning, since the demographic distribution in Europe at that time was far from a real problem.

1.2 Extractive Institutions

After the devastation of the first European expeditions, the colonies started to be occupied. Following the purpose of keeping "heavy hands" on their new lands, crown´s strategies were based on what Acemoglu and Robinson (Why Nations Fail; Acemoglu, Daron; Robinson, James A. – Crown Business 2012) called "extractive political and economic institutions":

> *Extractive political institutions concentrate power in the hands of a narrow elite and place few constraints on the exercise of this power. Economic institutions are then often structured by this elite to extract resources from the rest of the society. Extractive economic institutions thus naturally accompany extractive political institutions. In fact, they must inherently depend on extractive political institutions for their survival. Inclusive political institutions, vesting power broadly, would tend to uproot economic*

> *institutions that expropriate the resources of the many, erect entry barriers, and suppress the functioning of markets so that only a few benefit.*
>
> (Acemoglu, Daron; Robinson, James A. Why Nations Fail, Crown Business 2012, pg.81)

Despite the clear targets of colonists, whose main concern was to withdraw all the wealth they could from colonies, societies in Latin America flourished; independencies came; nations were built; development and progress were reached with more or less intensity along the centuries. But still today, the continent carries the cross of backwardness represented by extractive institutions established at the beginning of European colonization. Today´s poorest Latin-American countries have it engraved in their DNA. It has been also a heavy hindrance even for the most powerful economies of the region, such as Brazil and Mexico, always seen as future leading nations, but forced to deal with the paradox represented by the abundance of natural resources and thriving economic environment, side by side with harmful political arrangements and practices that delay their progress.

In a framework of extractive political institutions, lagging economies usually develop extractive economic institutions, which will be settled exclusively to enrich the minority at the expense of the whole society. In this connection, national income remains concentrated in the group (political party, family, dynasty, oligarchy or clan) that retains power, while spreading poverty and hopelessness for those kept outside the system. The accumulated resources will then be used to control the army (or even build private ones), buy judges and rig elections, keeping the elite in power and completing the "vicious cycle" referred by Acemoglu and Robinson. Each stage of this cycle is essentially accomplished with generous portions of bribery, influence peddling, favors exchange, cronyism and low political agreements. That means, extractive institutions have corruption greasing all their gears, in order to guarantee power and resources concentration in a very few hands.

1.3 Something different happened elsewhere

The British colonization of America started late in comparison to Portugal and Spain, as a consequence of the devastation caused by the civil war (War of the Roses). United Kingdom was weak and could not compete, at a first moment, for the exploitation of America. But the "Spanish Armada", in 1588, a frustrated Spanish attempt to invade England, put the British back to the scenario as an important player. England, anyway, was delayed. And paid a price for the late coming. As Acemoglu and Robinson described, *"they were already latecomers. They choose North America not because it was attractive, but because it was all that was available. The desirable parts of the Americas, where the indigenous population to exploit was plentiful and where the gold and silver mines were located, had already been occupied. The English got the leftovers."* (Acemoglu, Daron; Robinson, James A. Why Nations Fail, Crown Business 2012, pg.19)

Since the beginning, however, Spanish and Portuguese recipes for America, which compounded, at that time, a kind of "manual of colonization" of the great powers, hadn´t worked well for the British. Natives became resistant and suspicious after the first contact with colonists. During some period, British insisted in following "the manual", but natives had their own strategies and organization and would not be easy prey for the newcomers. The people living in the settlement of Jamestown, that marks the beginning of English occupancy in America, started to fight for surviving. Again Acemoglu and Robinson give literalness to the situation:

> *There were no gold or precious metals, and the indigenous people could not be forced to work or provide food. Smith (colonist Captain John Smith) realized that if there were going to be a viable colony, it was the colonists who would have to work. He therefore pleaded with the directors (of the Virginia Company) to send the right sort of people: 'When you send again I entreat you rather to send some thirty carpenters, husbandmen, gardeners, fishermen, blacksmiths, masons, and diggers up of trees, roots, well provided, then a thousand of such as we have'.*
>
> *(...)*
>
> *It took Virginia Company 12 years to learn its first lesson that what had worked for the Spanish in Mexico and in Central and South*

> *America would not work in the north. The rest of the 17th century saw a long series of struggles over the second lesson: that the only option for an economically viable colony was to create institutions that gave the colonists incentives to invest and work hard."*(Acemoglu, Daron; Robinson, James A. Why Nations Fail, Crown Business 2012, pgs. 23, 26)

The above two sections give the very exact notion of the principles that, not by choice but by necessity, headed the north-american colonization. Instead of mere exploitation of natives, they had to occupy the lands to work hard and produce for their own (colonists) and for the British Crown. The seeds of inclusive institutions, created to work, circulate money, generate wealth and that, later, helped to turn the poor British colony, devoid of gold and silver, into the greatest economic power of the world, were definitely sown.

2 – CORRUPTION: THE GLOBAL CHALLENGE IN TIMES OF SCARCE RESOURCES

2.1 Restablishing priorities

The global economic crisis that was initiated in 2007/2008 further deepened the wounds of the poorest nations, still challenges the developing world, and frightens the financial system of the most developed countries. It has definitely changed the way governments think, plan and execute their economic policies. The inconsequent abundance, the easy credit, the stock exchange records, the card castles, like the one of the U.S. mortgage market, the dot-com bubble, the illusions of the European common market, all of them belongs to the past. Today, economists are expected to give their tight budget the best possible application, facing tough questions like unemployment, public deficits, social convulsions and a dramatic and mandatory need for growing in the midst of such a fierce and inhospitable economic environment.

Therefore, how much priority should governments grant to their corruption combat policies towards the aforementioned scenario? Fighting corruption has its costs and, obviously, they´re not disregardable. Would it be fair to keep anti-corruption

structures and budget untouched while cutting resources from sensible areas, like health and education? The answers, of course, depend on each case and each reality but, thinking within short-term basis, the majority would tend to prioritize the social areas´ budget, where the human lives are more directly affected. Anyway, from mid and long-term points of view, would we be really preserving human lives by cutting the anti-corruption budget? The answer is, undoubtedly, no. Or better, the answer was given by Jim Yong Kim, president of the World Bank Group, at his speech at the Center for Strategic and International Studies, on January 2013:

> *Public institutions deliver vital services such as health and education, upon which the poor are particularly dependent. Corruption subverts and undermines all these functions and as such serves as a major impediment to development.*

2.2 Strengthening transparency, accountability and the fight against corruption: governance as an investment

When issues like development and growth are discussed, the harmful role played by corruption is so evident that there´s almost a common sense on the fact that any country facing the consequences of the current global economic crisis should increase its investments in transparency, accountability and anti-corruption strategies. Theoretically, transparency brings a healthier economic environment. Taxpayers have the right to know how the State spends their money and monitor which are the priorities, who is contracting with government and the hiring policy of the administration. More transparency tends to lead to a more accountable system. An administration that has its steps easily followed by the citizens is expected to report and explain those steps and to be prepared to justify and assume responsibilities for possible misconducts.

A solid governance is completed by a correct approach of anti-corruption strategies. This definition will depend on each corruption framework, its particularities, how institutions were built and developed along the history and, as well, the present level of development of the country or region studied.

Governance budget cannot be considered a disbursement. On the contrary, the governance tripod – transparency, accountability and anti-corruption strategies – is a valuable tool for optimizing the quality of public expenditures, which should be an absolute priority in times of global crisis. A country that knows where the government allocates money, has the public expenditures publicized and accounted, and counts on effective constraints for any kind of misconduct, is certainly more prepared to face and overcome economic adversities.

The challenge is to what extent governance is understood as a bunch of indicators that compound an abstract concept of "the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services" (World Bank, 2007) or, according to Kaufmann, "their implementation on the ground". Sometimes, the gap between the theory (or existent legal framework) and practice (the real observed outcomes) are so large that the cold figures of perception surveys are useless. The subject was perfectly addressed by Kaufmann again, as follows:

> *"Another example of the gap between rules and implementation (documented in more detail in Kaufmann, Kraay, and Mastruzzi 2005) compares the statutory ease of establishing a business with a survey-based measure of firms' perceptions of the ease of starting a business across a large sample of countries. In industrial countries, where 'de jure' rules are often implemented as intended, the two measures correspond quite closely. In contrast, in developing economies, where there are often gaps between de jure rules and their 'de facto' implementation, the correlation between the two is very weak; the 'de jure' codification of the rules and regulations required to start a business is not a good predictor of the actual constraints reported by firms. Unsurprisingly, much of the difference between the 'de jure' and 'de facto' measures could be statistically explained by 'de facto' measures of corruption, which subverts the fair application of rules on the books."*

(Kaufmann, Daniel and Kraay, Aart. Governance Indicators: where are we, where should we be going? The World Bank Research Observer, vol.23, nº1, pg.9)

Although explaining, very didactically, the effects that a corrupted environment may bring to *de facto* outputs, Kaufmann´s assertion should be accepted with reservations. Even the so called "rules on the books" can often reflect a momentary political arrangement that does not meet the best public interest.

3.1 No single remedy for different diseases

A wide range of anti-corruption approaches was already tested throughout the world. Some have reached great success while others have failed. Countries from the whole economic spectrum have, in a given moment, addressed anti-corruption strategies to combat malfunctions of their public administrations, such as bribery, embezzlement, cronyism, public resources malfeasance and influence peddling. It´s important to make clear that, whenever a reference is made to an anti-corruption approach, it doesn´t mean, necessarily, a real strategy behind administration movements to combat corruption but, as well, even a lack of it.

This wide range of anti-corruption approaches has been generating kinds of models that have been adopted as "ready solutions". But, as pointed out by de Sousa (de Sousa, Luiz; Anti-Corruption Agencies: Between Empowerment and Irrelevance; Robert Schuman Centre for Advanced Studies; European University Institute, 2009), "governments have often fallen into the temptation of copying 'successful models' without paying sufficient attention to the specificities of the institutional and cultural context in which the new bodies will operate."

The prudence is shared by Alan Doig and Williams R., who highlights the following:

> *To misquote President John F. Kennedy, donors should ask not what ACCs can do for them but what, if anything, can an ACC do at all? Given the organizational immaturity of many ACCs, the answer may be 'very little'. Because the problems of corruption in many*

developing countries are so serious and because of the apparent success of ACCs in Hong Kong, and perhaps Botswana, too great a weight of expectation is loaded onto poorly designed and mal-functioning ACCs in more hostile political and economic environments.

To make matters worse, ACCs are commonly given a vague and broad remit covering investigations/ prosecution, prevention and education. ACCs usually lack the capacity and resources to perform any one of these roles well, but mission overload and diversification makes failure almost inevitable.

Donors need to review their support for ACCs with a realistic assessment of the organizational maturity and capacity of the ACC and its environmental constraints.

(Alain Doig and Williams, R. Measuring Success in Five African Anti-Corruption Comissions: the cases of Ghana, Malawi, Tanzania, Uganda and Zambia; U4 Research Report. Bergen: Chr. Michelsen Institute, 2008, pg.3)

Once the necessary safeguards are made and proposing that we focus our analysis in one of the possible strategies to fight corruption, which are the anti-corruption agencies (ACA), there are some widely recognized models for categorizing these bodies, according to the adopted criteria. For example, the Organization for Economic and Co-operation Development (OECD) proposes that the ACA can be divided in three kinds: multi-purpose agencies, the law enforcement institutions, and the corruption prevention agencies. The United Nations Convention Against Corruption (UNCAC) suggests that institutions should be grouped according to their adherence to articles 6 and 36 of the convention, that means: Category 1) Article 6 (Prevention Agencies); Category 2) Article 36 (Law Enforcement Agencies); Category 3) Articles 6 and 36 Combined (Prevention and Law Enforcement Agencies), where both articles are addressed in the same institution (Prevention and Law Enforcement).

Another perspective is offered by scholar John Heilbrunn, who believes it´s more useful to classify anti-corruption commissions according to two variables: the scope of their mandate and the branch of government to which they are responsible.

We align ourselves to this third model of classification, since the differences between categories are more tangible and agencies´ overall characteristics are more coherent inside each category. According to Professor Heilbrunn, anti-corruption agencies around the world are divided in four models: Universal Model, Investigative Model, Parliamentary Model and Multi-Agency Model. Each one is detailed below.

3.2 Universal Model agencies

When the subject of anti-corruption commissions is debated, it is mandatory to mention the most famous, prestigious, powerful and, as far as worldwide researches are concerned, effective anti-corruption agency of the world: the Hong-Kong´s Independent Commission Against Corruption (ICAC).

Born in 1974 as a result of a public claim against the systematic corruption spread over public bodies, specially local police, ICAC has its final impulse to be established when the ex-Police Chief Superintendent Peter Godber, who was to be prosecuted under the recent (at that time) Prevention of Bribery Ordinance (PBO), escaped to London (June 1973). Godber was being investigated by the former Anti-Corruption Office (ACO), a police force agency that got great autonomy when corruption scandals in the administration arose and that was, in fact, the rudiments of the future ICAC.

Governor MacLehose, who had assumed office the year before, named Alastair Blair-Kerr to compound a commission of inquiry (Blair-Kerr Commission) to investigate what should have been done to reduce corruption in Hong-Kong and also to address the circumstances under which Godber escaped from prosecution.

Blair-Kerr Commission concluded that corruption in Hong-Kong was systemic. High level officials, as well as police in the streets were accepting bribes. The commission recommended the establishment of a special agency with powers to:

investigate allegations of corruption, prevent bribery in business and government and educate citizens about corruption through outreach programs. In 1974, ICAC commenced operations.

Invited to face the challenge of commanding the new agency, Commissioner Jack Cater played a significant role in gaining people´s approval and reliability towards ICAC along the very beginning of its trajectory. Among other relevant goals, Cater, together with the attorney general and Governor MacLehose, succeeded in persuading the United Kingdom to extradite former Chief Superintendent Godber, who was prosecuted and sentenced in early 1975 to four years in prison for corruption charges.

An aspect that somehow was basic for the further success of ICAC was the legal framework upon which the agency was established and started its activities. Besides the before mentioned Prevention of Bribery Ordinance – PBO, and the so-called Basic Law, which is HK´s mini-constitution, the government has issued also the Elections (Corrupt and Illegal Conduct) Ordinance. These three statutes, together, have guaranteed ICAC´s specific legal powers and tasks. And, as described by Robert Klitgaard, those powers were tremendous:

> *Jack Cater´s new organization was given sweeping powers. All the ICAC needed to arrest someone suspected of corruption was to say that the commissioner had reasons to believe that the suspect had committed an offense. For exceptional cases, ICAC officers had powers of search and seizure without need of a warrant. The ICAC could require any person to provide any information that the commissioner deemed necessary. This last step, plus the right to seize travel documents, would ensure that no more big fish escaped with their Hong-Kong loot.*
>
> *But increases in legal powers had not previously been enough to deter corruption. In the past the office in charge of fighting corruption turned out to be ineffective and corrupt; Cater had to ensure this never happened to the ICAC. A key issue in its creation was ICAC´s independence. To ensure this*

> *independence, the governor and Cater arranged that the ICAC would report directly to the governor, not through any legislative or executive agencies. Its employees would be entirely outside the civil service.*
>
> (Klitgaard, Robert. Controlling Corruption, Berkley, University of California Press, 1998, pgs.108, 109)

It is quite evident that this kind of arrangement suited very specific conditions, at a very specific moment. A public agency with such a wide power is not even imaginable at the majority of democratic countries governed by the rule of law. But this was what the Hong-Kong of the middle 70´s needed to start defeating corruption, mainly as a response to successive scandals that got the peak with Godber´s affair. Today, the Independent Commission Against Corruption of Hong-Kong is broadly known as the best example of a successful case of an Universal Model agency, according to the classification proposed by Heilbrunn.

The agency is divided in three functional departments: Operations Department; Corruption Prevention Department; and Community Relations Department.

The Operations Department, by far the largest one of ICAC, is responsible to receive and investigate complaints alleging corrupt practices. Yearly, it means the receipt of some 4.000 allegations that deserve some kind of investigation to confirm they are substantiated. In order to fulfill its task, the Operations Department uses "pro-active investigation techniques to identify instances of corruption that might otherwise go unreported." They include undercover operations and a massive use of intelligence and information technology tools. The department counts on a staff of, approximately, 950 agents, that corresponds to over 70% of the overall ICAC´s personnel.

The Corruption Prevention Department offers a differential approach that consists in constantly mapping the administration practices and procedures in order to identify situations where there´s a gap for corruption to occur. The department also offers corruption prevention advices to private organizations upon request. Approximately 60 agents are allocated in the CPD.

The Community Relations Department acts to spread the values of honesty, integrity and good governance amongst the whole society, (specially youth), by educating citizens against the evils of corruption. As to reach its goal, the department is responsible to conducting tailormade education campaigns, most of them at schools. The department employs 177 people.

As far as accountability is concerned, ICAC is responsible to four independent advisory committees, whose components are indicated by the Chief Executive of the Hong-Kong Special Administrative Region: Advisory Committee on Corruption; Operations Review Committee; Corruption Prevention Advisory Committee; and Citizens Advisory Committee on Community Relations. As the names suggest, all committees work as counseling boards, checking ICAC´s overall policies, proposing improvements and balancing the performance of the three functional departments. Just to have an idea on how powerful the committees are and, as a consequence, how ICAC´s accountability is treated, the Operations Review Committee reviews each and every report of investigation, as to guarantee all complaints are being verified and properly addressed by the commission. This is a principle of checks and balances absolutely required to bound the extraordinary power granted to ICAC.

The Hong-Kong´s ICAC has an annual budget of around US$ 112 million, which means, approximately, US$ 15 per capital (Hong-Kong has a population of 7.153.519 people). These figures make ICAC one of the most powerful anti-corruption commissions of the world in a relative budgetary comparison. It is, in fact, a reflection of the strong popular support the commission has reached along almost 40 years of relevant results delivered to Hong Kong´s society: from one of the most corrupt places of the world, in the early 70´s, Hong-Kong keeps, today, corruption controlled and reduced to very acceptable levels; bribery, instead of a wide disseminated practice, became a highly secretive and non-tolerated crime; the political process, before perceived as a completely compromised terrain, is now able to provide clean elections, although Hong-Kong is still far from an authentic democracy.

3.3 Investigative model agencies

One of the oldest anti-corruption commissions of the world and, besides, a classical example of an Investigative Model agency is the Corrupt Practices Investigation Bureau – CPIB, from Singapore.

Established in 1952, still before the independence from United Kingdom, CPIB started activities by facing huge problems due to weak anti-corruption laws, as well as chronic lack of resources. As a consequence, the agency did not succeeded in getting citizen´s confidence, compromising the effectiveness of its first actions.

The situation began to change by the end of 1950´s. The government has strengthened legislation against corruption and revamped CPIB. The agency´s new design reforced its vocation to the investigation of corrupt practices and preparation of evidences for prosecution. In june 1960, the Prevention of Corruption Act was enacted. It brought additional investigation powers to CPIB and is, today, the legal framework that support CPIB´s fight against corruption in Singapore.

The scope of the agency is, indeed, quite narrow. It is expected that CPIB receives and investigates complaints alleging corrupt practices, provided it involves bribery. This also applies to malpractices and misconducts of civil servants. Any other corrupt practices, such as embezzlement, cronyism and influence peddling, are subject of jurisdiction of the Commercial Affairs Department of Singapore Police Force.

In the course of an investigation of corruption foreseen in the Prevention of Corruption Act, CPIB is also empowered to investigate any other criminal offence discovered as a result of the primary investigation.

As far as corruption prevention is concerned, CPIB performs educational activities and, in a similar approach developed by Hong-Kong´s ICAC, maps practices and procedures in the public service, as to detect gaps and minimize the chances of corruption occurrence.

CPIB is headed by a director, who reports directly to the Prime Minister (Chief Executive). The permanent staff of the agency reaches around 90 people. As a matter of comparison, ICAC counts on 1.300 employees. The annual budget is of US$

20 million, that means some US$ 4,25 per capital (Singapore has a population of 4.700.000).

CPIB´s outcomes are unquestionable. The 2012 Annual Report of Transparency International regarding the "corruption perception index" puts Singapore in 5th position, rivaling with Scandinavian countries among the least corrupted places of the world.

3.4 Parliamentary Model

Once independence became, more than ever, a pillar point in the settlement of an anti-corruption agency, it is expected that only a few of them follow the parliamentary model. This is due to the fact that this kind of arrangement gets the commission quite close to political parties, a situation that may jeopardize the necessary autonomy of the body. Coincidence or not, there are much less parliamentary anti-corruption agencies than the ones that follow other models. The most popular example of the parliamentary model is the sub-national New South Wales ICAC, from Australia. It must be pointed out that NSW´s is widely recognized as an agency with a high level of independence, accountable to the parliament but, on the other hand, positioned at a safe distance from the Executive branch. However, as to keep the analysis among national anti-corruption authorities, we bring to the study the case of Serbia´s Anti-Corruption Agency.

A brand new ACA, established in 2010, Serbia´s agency arise as a result of a new anti-corruption strategy launched in 2005, as well as the Strategy´s 2006 Action Plan. The commission came to life exactly in order to be the core body responsible for coordination and implementation of the strategy and action plan.

The agency is commanded by a Director and a Board of nine members. The Board members are elected by the congress from nominees of several official bodies. None of them, however, can be affiliated to a political party, which is a trial to avoid undesirable political influence. The Board, among other tasks, appoints the Director, from a list of applicants that take part in a public call selection process. The Board also

performs some relevant accountability duties, such as appellation against Director´s decisions and supervision of his/her work.

Therefore, more than being responsible to the National Assembly, Serbia´s ACA already counts on a "checks and balances" system within his own structure, by the power division established between Director and Board.

Serbia´s agency has a focus on corruption prevention, supervision of conflict of interest cases and funding of political parties. The agency keeps registers of public officials, as well as their properties and incomes. It also gives assistance in the field of fight against corruption, education programs concerning corruption and initiatives for amending and enacting regulations in the field of fighting against corruption.

Serbia´s ACA has a small structure: the permanent staff reaches 60 people, as well as two on a temporary basis. The recruitment of prepared and qualified staff is one of the main challenges of the agency, since the specific career is not yet sufficiently developed and, as a consequence, unable to attract skilled staff. Its annual budget amounts to US$ 1,9 million, that means US$ 0,26 per capital.

3.5 Multi-agency Model

The multi-agency model is, as the definition says, a national anti-corruption framework compounded by several public bodies that have one or more duties in the fight against corruption.

The ideal situation is the one where each agency plays a defined and specific role, that should not overlap other agencies´ tasks. Besides, there should be a massive contribution among agencies, both in information´s exchange and data crossing, in order to strengthen the effectiveness of each body´s performance. The result is a powerful state web that, provided it has no political interferences, is able to keep or reduce corruption occurrence down to minimum and acceptable levels.

The reality, however, depending on the studied case, can be far different from the "state of art" described above. Specially because some of the countries that adopted the multi-agency solution have never took a real decision on that direction but, on the contrary, were simply moved by the succeeding events that have been building their anti-corruption mosaic.

Although adopted by some protagonists of the developing world, such as India and Brazil, the multi-agency model is the most common solution to fight corruption shared among Western developed democracies.

This can be explained by the fact that those stable western democracies count on solid institutional frameworks that have been responding to the challenges imposed by modern administration, such as governance, transparency and an efficient anti-corruption system, with reasonable and acceptable outcomes. None of these countries have ever dealt with a situation where government was hardly pressured to deliver a "one great solution" to the society in response to an institutional crisis caused by a corruption scandal. Maybe Watergate can be considered an exception, when United States has really made a clear choice of addressing corruption in many fronts, instead of creating one central and powerful body.

In this connection, such "great solutions", as for example, the creation of an anti-corruption agency to centralize the fight against corruption, have been frequently neglected or, better say, ignored by those countries when facing their worse institutional crisis. This also can be credited to the fact that institutional settlements in these countries have being built for centuries and, as well, anti-corruption functions/bodies were being defined and distributed along the way, as a result of the maturity of the process. In other words, when an institutional crisis comes, solid institutions are supposed to deliver satisfactory outcomes to the society.

3.5.1 North-american framework

United States is one of the western democracies that follow the multi-agency model of anti-corruption agencies.

The country combats corruption through many agencies and instances but, basically, these are the three main public bodies engaged in this task:

- The Office of Government Ethics – OGE;
- The Offices of the Inspectors General – OIG; and
- The Government Accountability Office – GAO

The Office of Government Ethics - OGE

OGE is responsible for establishing the standards of ethical conduct for the executive branch, basically in order to prevent the occurrence of situations of conflicts of interests. Until 1989, each public agency was responsible for its own regulation. An Executive Order of the President, signed in april 1989, determined the principles of ethical conduct of the Executive Branch, and appointed OGE to fix and publish the Standards of Ethical Conduct for Employees of the Executive Branch, which became effective starting from February 1993.

It is a very large, comprehensive and detailed compendium of rules, but still there are gaps. One important criticism addressed to those standards is that they do not reach government contractor´s personnel, which is one of the most opaque aspects of the conflicts of interests. Specially along the crisis of 2008, when some critical situations arose involving huge corporations, the existence of the above mentioned gaps had led government to bailout AIG insurance company, having as a key advisor the Treasury official Dan Jester (as a contractor, not government employee), who owned a huge quantity of Goldman Sachs stocks at that moment. As it is widely known, Goldman Sachs had strategic interest in AIG´s bailout, since the company had sold US$ 500 billion on Credit Default Swaps by the end of 2007, some of which were purchased by Goldman. In face of its imminent insolvency, government decided to bailout AIG, under the allegation that its debacle would contaminate the whole economy. This decision represented an expenditure of over US$ 100 billion for US Treasury, from which almost US$ 13 billion went to Goldman Sachs of investor Dan Jester. Since then, OGE has been trying to improve the reach of the Standards of Conduct, fiercely increasing contractor´s responsabilities over private personnel´s interests, but it is still a matter of hard approach.

Besides its main task of addressing cases of conflicts of interests, OGE also requires financial disclosure of some of their employees. From those high-level senior officials (some 24,000 people only within the Executive branch), the Standards demand a public financial disclosure. In the other hand, those who occupy strategic positions regarding corruption risks (around 275,000 employees), such as contracting, procurement and grants of licensees, are subject to confidential financial disclosure.

It´s interesting to point out that, although having access to the financial disclosures of such a large quantity of employees, which is indeed a quite valuable data, OGE does not perform any check regarding assets evolution of the civil servants, neither has any interaction with Internal Revenue Service - IRS for crossing-data procedures.

Besides preventing situations of conflicts of interests, which is, in fact, its core business, OGE also keeps educational and training programs, not only for its own personnel, but to the employees of other agencies and, even, other branches. As a matter of fact, counting on a reduced workforce of only 80 people, educating and training other civil servants in ethics is a real need for OGE, so that the agency can multiply its knowledge and expertise among the 5,000 ethics officials spread over all government agencies.

The Offices of the Inspectors General - OIG

The Offices of the Inspectors General play an important role in the fight against corruption in United States. Claimed to be one of the most independent entities in the country, the chain of 74 IG´s are, as a matter of fact, a high-standard group of public officials who has jurisdiction over government bodies in order to detect and investigate allegations of bribery, waste, fraud, civil right violations, as well as assist management in promoting integrity, economy, efficiency and effectiveness. As far as government controls are concerned, the OIG´s may be considered the internal control of government agencies, both addressing criminal and administrative offences committed against public interests.

The head officials of the OIG´s shall be appointed by the President and submitted to Senate approval. Each Inspector General should report to the head of the agency/department involved, although even the head of the agency cannot prevent or prohibit the OIG from initiating, carrying out or completing any audit or investigation. Only the President can remove or transfer an IG, but shall send before a written justification to the Senate and to the House of Representatives.

Complementary to the jurisdiction of the OGE, whose Standards of Ethics do not reach contractor´s personnel, OIG´s have power to investigate not only employees of their own agencies, but also contractors or any organization receiving grant money from the government.

Government Accountability Office – GAO

GAO is a large agency, employing more than 3,000 people, mostly in its headquarters in Washington DC, but also with branches in 11 other strategic cities. Its 2012 budget reached US$ 533.6 million, but their records indicate a return of US$ 105 on every dollar invested in the agency. The head of the agency is the Comptroller General of the United States and has a 15-year mandate, which means a great dose of independence, both towards Executive and Legislative branches.

GAO is an agency that performs, from the point of view of the Executive branch, the external control. Founded in 1921, GAO is a congressional agency that oversees how the Executive branch spending the budget and how government programs and public policies are being developed. Its reports supply both legislative houses of technical subsidies for monitoring the proper spending of taxpayers money and, eventually, pushing the Executive for adjustments.

GAO still withdraws its legal framework from the 1921 Budget and Accounting Act, although new legislations have been passed throughout the decades to update the original Act. Besides its legal duties, however, most of the GAO´s activities are performed under requests of congressional committees or subcommittees.

The ***Table 1*** below brings an overview of the three pillars of the north-american anti-corruption framework:

AGENCY	CHARACTERISTICS / MAIN DUTIES	BRANCH	TYPE OF CONTROL
GEO	- Prevent Conflicts of Interests; - Financial Disclosure; - Pursue and enforce Standards of Ethics; - Training and education on ethics.	EXECUTIVE	INTERNAL
OIG	- Investigate allegations of bribery, fraud and waste of public funds; - Assist public managements; - Forward both criminal and administrative prosecutions.	EXECUTIVE	INTERNAL
GAO	- Oversees how Executive spends the budget; - Evaluation of government programs; - Reports to the legislative houses	LEGISLATIVE	EXTERNAL

Notwithstanding, several other important bodies compound the framework, each of them with very specific roles and that may, in one point or another, interface with above mentioned ones in anti-corruption actions or policies. However, they cannot be considered as part of the US anti-corruption strategy, since none of them has the corruption combat as a core task.

That´s the case, for example, of the Internal Revenue Service – IRS, which is the public agency responsible for collecting tax payments. The organization is clearly devoted to deal with taxpayers´ money, but within its structure there is a Criminal Investigation division that may join other agencies in the course a corruption investigation, specially when the corrupt practice is financed by money laundering or

similar financial crime, when some financial investigative skills, such as forensic technology, are necessary to reveal a criminal scheme.

Another important agency that helps combating corruption is the Office of Special Counsel – OSC, mainly through its Disclosure Unit, which is an important channel for whistleblower´s reports on corrupt practices.

As far as law enforcement is concerned, the Federal Bureau of Investigation – FBI is the police force in charge of covering large-scale anti-corruption operations in federal level.

3.5.2 Multi-agency Model – brazilian framework

As already mentioned in the introduction of subchapter 3.5, Brazil and India, as developing countries, have adopted the same solution of the majority of Western democracies as far as anti-corruption strategies are concerned, that means, both of them run the multi-agency model. Once the Brazilian case has a particular interest for this paper, we´ll narrow our analysis to Brazil, as an example of developing country that has structured its corruption combat through a multi-agency model.

Although sharing the same multi-agency model, United States and Brazil have pretty less in common when it comes to learn the reasons why that model was adopted by both. Differently from US and the developed Western countries, Brazil is still consolidating its democratic institutions after a long period of economic, social and political instabilities. It´s in fact a new democracy, counting now only 24 years since the first presidential elections came out after more than 20 under a military dictatorship. The present Federal Constitution, that depicts the moment when Brazil became back a rule of law State, is completing 25 years. Free press and the end of censorship were achieved in the meantime, as well as the inflation control, which irrational rates at the end of 80´s launched the country in successive social disturbs.

This brief digest lets clear that the engines are running, the gears are all moving, but the Brazilian democratic institutions are still too new to be thought on terms of fighting, in a successful way, a dangerous, resilient, cunning and multifaced

enemy as corruption. The official end of censorship (one may argue it is not vanished at all), that came with the redemocratization process, brought, together, a watchful press, that started exposing the real low politics, with successive corruption scandals, embezzlement schemes, a President impeached by corruption, bribe offers recorded and exhibited in national broadcast, as well as huge deviation system operated inside the government in order to "buy" congressmen to make them vote according to the government interests.

Although the real political will would tend to shift on the contrary direction, civil governments that took place after redemocratization were forced to take minimum steps to empower the State structure with control/enforcement bodies, in order to deliver reasonable responses to a society gradually getting more and more acquainted with ground notions of citizenship.

This movement were largely boosted after the 1988 Constitution (so-called "Citizen Constitution"), the starting point for the building of the present Brazilian anti-corruption framework. Within a period of 15 years since the supreme law was enacted, the four main anti-corruption bodies presently active in Brazil were created or had their duties improved or modified until reaching the current frame. The agencies are the following:

- Public Prosecutor´s Office - MPF;
- Federal Police Department - DPF;
- National Court of Accounts - TCU; and
- Office of the Comptroller General – CGU

Public Prosecutor´s Office (Ministério Público Federal – MPF):

Frequently referred as the fourth branch of the Republic, the Public Prosecutor´s Office is an agency in the sense that its members belong to the same career and have the same duties. The "coincidences" may stop here. Due to the independence of the public prosecutors, there isn´t a general policy or a superior level to whom they should report (except for administrative purposes). Actually, apart from being independent towards the three government branches, the public prosecutors are indeed

functionally independent, which means, it´s up to each of them decide what to investigate, as well as when and how an investigation procedure may commence.

Besides functional independence of its members, the Public Prosecutor´s Office is a highly autonomous body. Among other prerogatives, the MP (as called in Brazil) has the constitutional guarantee of not being extinguished and not to have its duties performed by another agency. Its high level of autonomy also includes the right to have its own budget, which in Brazil means too much, since there´s no need to undergo bargain process towards Congress.

As far as the fight against corruption in Brazil is concerned, the Prosecutor´s Office has been playing an important role. Due to their recognized autonomy and capillarity across the country, public prosecutors very frequently start investigations on alleged corruption practices that turn into national scandals, most of the times counting on the full support of other actors to dismantle crime organizations, as it will be seen forward.

Federal Police Department (Departamento de Polícia Federal – DPF):

The Federal Police Department is the Brazilian judiciary police force at the federal level. This agency has, among many other duties, the combat to terrorism, drug traffic, smuggling, environmental crimes and, coming to the subject addressed in this paper, malfeasance of public funds. It is called judiciary police because their agents conduct inquiries that, through the collection of evidences or even coming to the proof of a crime, subsidize the prosecution. However, together with its judiciary duties, DPF also cumulates ostensive activities, such as boarder surveillance and maritime police, as well as some preventive actions, as far as visiting foreign authorities' safety are concerned.

Although being created in 1960 and received its present denomination and basic structure by the Constitution of 1967, the Federal Police in Brazil gained great visibility and respectfulness specially from 2003 on, when the former President Lula took place for his first mandate and rearranged the anti-corruption framework of the country, charging the Federal Police (together with at that time recently created Office

of the Comptroller General) to be in the frontline of the corruption combat in Brazil from the perspective of the Executive branch.

Since then and until 2012, an outstanding number of 1,777 operations were triggered, from what approximately 25% were done to dismantle and arrest criminal organizations for malfeasance of public resources, including bribery, fraud, deviation, embezzlement, extorsion, collusion and waste. The great majority of these operations counted on the participation of the Office of the Comptroller General and Office of Public Prosecutors and, eventually, the Court of Accounts, local police forces, national environment agency (IBAMA), etc. Along the so-called Operacao Caixa de Pandora (Pandora´s box Operation), for example, even the Governor of the Federal District (where the capital Brasilia is placed) was arrested, being the first state governor of the Brazilian history imprisoned (for two months).

Facing the very impressive figures of the Federal Police in a single decade, one could imagine that corruption in Brazil is about to be defeated. The reality, however, is pretty far from this, as we will discuss in the next Chapter, where the perverse effects of inefficiency and obsolescence of Brazilian criminal procedure laws will be addressed.

National Court of Accounts (Tribunal de Contas da União – TCU):

The National Court of Accounts – TCU performs a similar role to what Government Accountability Office – GAO plays in United States. The Court of Accounts, although not being part of the Legislative branch, is the Brazilian legislative watchdog, since it´s in charge of judging the accounts of the federal public bodies, as well as performing audits and inspections on financial and budgetary performances, as well as public assets and government programs expenditures, also overseeing legality, legitimacy and economy accomplishments.

As an advisory agency of the Congress, TCU performs, from the Executive branch perspective, the so-called "external control". The Court, due to the mandatory profile of its decisions, is an important counterpart on the "checks and balances" system in the Brazilian federal level.

Although being a very traditional institution in Brazil (created in 1891), TCU, following the majority of Brazilian anti-corruption bodies, has had its current duties and prerogatives defined only in 1988, by the present Constitution.

Office of the Comptroller General (Controladoria-Geral da União – CGU):

The Office of the Comptroller General is the Brazilian internal control of the Executive branch. Before former President Lula taking place for his first mandate – 2003/2006, the internal control was already structured, but in secretariats sparsely placed throughout the different government departments, reporting to Ministry of Finance.

In 2001, former President Cardoso created the Federal Disciplinary Board (Corregedoria-Geral da Uniao), which was, in fact, a first movement to provide to the Executive branch an agency to oversee and punish misconducts of federal civil servants. An year later, the internal control secretariats came to integrate the structure of the recent created Disciplinary Board, largely broaden the scope of the agency.

In 2003, President Lula finally created the Office of the Comptroller General with its basic functions as it is nowadays. The last great change came in 2006, when another Secretariat was created, dealing with Prevention of Corruption and Strategic Information, compounding CGU with four finalistic areas, which are: i) Internal Control; ii) Disciplinary Board; iii) Transparency and Prevention of Corruption; and iv) Federal Ombudsman.

Although not being a typical anti-corruption agency, due to its large scope and wide variety of duties, CGU is the Brazilian public agency pretty closer to the existent ACA´s around the world. It can be said that the corruption combat is in the core of CGU´s activities. As internal control instance, the agency is the first responsible for checking legality, accuracy, economy and effectiveness of the government programs. Once the strategic level positions on government departments are mostly chosen according to political criteria, instead of technical capabilities, the internal control performed by CGU means dealing with a wide spectrum of irregularities, from the most

simple and formal ones, to real corruption practices, such as bribery, collusion, embezzlement and fraud.

The Disciplinary Board, as well, by the nature of its duties, is constantly addressing corruption practices involving federal civil servants. Going through a range of disciplinary procedures that always guarantee contradictory and full defense opportunities to the investigated agents, the Board has a record of almost 4,000 civil servants expelled from the administration since 2004.

There are two other areas in CGU, below Secretariat levels, which play important roles on the fight against corruption in Brazil. One is the Special Operations Division, that is placed in the Internal Control Secretariat. This unit is the one responsible, from CGU side, for the joint operations performed with Federal Police and Public Prosecutors. The other one is the Public Spending Observatory (Observatorio da Despesa Publica – ODP), placed in the Executive Secretariat, which is an intelligence-led unit devoted to detect corruption cases in administration agencies. The ODP is divided in two teams: one works with mass crossing data and management information; the other one is dedicated to detect, analyze, report and diffuse (to the proper decision-taker, both internal or external, according to the case) corruption practice cases. ODP has won the United Nations Public Service Award in 2011 competing in the category "Public Knowledge Management Progress".

Finally, the more recently created Transparency and Prevention of Corruption Secretariat has assumed a leading role in promoting the transparency (the Transparency Portal – www.portaltransparencia.gov.br, created in 2004 and maintained by the Secretariat, is actually an international benchmark in government accountability), integrity and social control, as well as being in charge of all international treatments, mechanisms and protocols regarding the fight against corruption, regionally and worldwide. Additionally, the Secretariat is responsible, together with Federal Ombudsman Office, for the guidelines and enforcement of the Information Access Law, passed in 2012.

See below Table 2 with a resume of the main Brazilian anti-corruption bodies:

AGENCY	CHARACTERISTICS / MAIN DUTIES	BRANCH	TYPE OF CONTROL
MPF	- High levels of independence and autonomy; - Capillarity; - Own budget; - Very pro-active regarding anti-corruption operations;	INDEPENDENT	EXTERNAL
DPF	- Both judiciary and ostensive activities; - Besides corruption, DPF combats terrorism, drug traffic, smuggling and environmental crimes; - More than 1,700 special operations in 10 years, most of them related to corruption combat.	EXECUTIVE	NON APPLICABLE (*)
TCU	- Judges the accounts of public bodies towards legality, economy and effectiveness; - Performs audits and inspections in government programs, from the outside perspective (external control);	LEGISLATIVE	EXTERNAL
CGU	- The natural anti-corruption agency in Brazil; - Addresses corruption as part of its duties as internal control, but also through Disciplinary Board, joining activities with Federal Police and counting on an intelligence-led unit that performs massive cross data and corruption detection; - Innovative corruption and governance approaches: Public Spending Observatory and Transparency Portal;	EXECUTIVE	INTERNAL

	- In charge of all international treatments, mechanisms and protocols regarding the fight against corruption.		

Table 2

*** The concept of internal or external control does not apply to Federal Police activities. A possible classification of type of control would refer to the moment of control, which is *ex-post* in the vast majority of the cases.**

4 – BRAZILIAN ANTI-CORRUPTION AGENCY: DOES IT MAKE SENSE?

4.1. Corruption in Brazil

The corruption phenomena in Brazil is closely connected to the criteria upon the public goods and incentives are distributed in the country. Mungiu-Pippidi 2006 (Mungiu-Pippidi, Alina, 2006, Corruption: Diagnosis and Treatment, National Endowment for Democracy and the Johns Hopkins University Press) brings a very interesting table (Table 3, below), that classifies corruption according to its tipology and, based on what´s likely to be the expected answers, a country is more or less defined to be in a stage of pure patrimonialism/particularism, competitive particularism or universalism. Maíra Martini (Martini, Maíra, Changing the Rules of the Game: a Diagnosis of Corruption in Brazil, 2011, European Research Centre for Anti-Corruption and State-Building) has made some adaptations and the result is the following:

A Tipology of Corruption (Mungiu-Pippidi 2006 / Martini, Maíra 2011)

I. REGIME	II. POWER DISTRIBUTION	III. "OWNERSHIP" OF THE STATE	IV. DISTRIBUTION OF PUBLIC GOODS	V. SOCIAL ACCEPTABILITY OF CORRUPTION	VI. PUBLIC/PRIVATE DISTINCTION
Patrimonialism/ Pure particularism	Power monopoly /closed access	One or few owners	Unfair but predictable	Moderate	No
Competitive Particularism	Privileged access disputed among groups, which still remain unrepresentative for the society as a whole	Up for capture by various groups to great extent	Unfair and unpredictable	Low	Poor
Universalism	Open access	State autonomous from private interests	Fair and predictable	Very Low	Sharp

Table 3

Following the above criteria, Brazil can be easily classified as a "competitive particularistic state", as described by Martini, in the definition below:

> *"(...)the public/private distinction in Brazil remains really poor, and the country has been marked by an oligarchic conception of politics where private interests have taken precedence over public interests throughout its history.*
> *Rents and 'ownership' of the state are up for capture by various groups to great extent.(...)Despite recent improvements, the country still faces challenges to provide an equal and fair distribution of public goods."*

Continuing on her analysis, Martini endorses the so-called "corruption formula" proposed by Robert Klitgaard in 1998, with some variations (Rose-Ackerman 1999), according to what "corruption results from en equilibrium between resources and constraints." Klitgaard proposed the following:

$$\mathbf{C = R + D - A}$$

Where "C" (corruption) equals to "R" (rents) plus "D" (discretion) minus "A" (accountability). The equation is very close to what Ackerman proposed:

$$\mathbf{C = (PD + MR) - CO}$$

Where "PD" is power discretion and "MR", material resources. "CO" (constraints) includes legal and normative ones. Since the level of constraints can be partially measured by the level of accountability, the formulas are very similar, although we should actually consider that accountability is one of the possible existing constraints.

Applying those formulas to Brazil of 2013, some incoherence calls the attention. Mostly at the federal level, Brazil has been advancing in some key aspects regarding its anti-corruption approach in a very consistent and continuous way, as it can be seen from the Table 4 below. In fact, the country has one of the most advanced anti-

corruption frameworks of the developing countries (even comparable to some developed countries), with solid and well-addressed constraints, as follows:

Brazilian anti-corruption legal framework – improvements over the last 20 years

Year	President	Normative	Abstract
1992	Fernando Collor	Federal Law 8429 - Improbity Administrative Law	Addresses several penalties for public agents that incur in situations of illicit enrichment while in the office.
2000	Fernando H. Cardoso	LC 101/2000 - Fiscal Responsibility Law	Establishes ceilings on personnel spending as well as penalties for non-compliance, applied to all State levels.
2003	Lula	Federal Law 10.683/2003	Creates the Office of the Comptroller General, with its today´s basic duties.
2004	Lula	Enactment 5482/2005	Gives legal support to the Transparency Portal, launched in 2004.
2006	Lula	Enactment 5683/2006	Creates the Prevention of Corruption and Strategic Information Secretariat within the Office of the Comptroller General. In the following step, it was created the Public Spending Observatory.
2008	Lula	Enactment 6170/2007	Creates the Federal Administrative Agreements Management System (SICONV), which is the most advanced tool for monitoring and detecting corruption in this kind of expenditure.
2009	Lula	Federal Law 131/2009 - Transparency Law	Establishes the obligation of expanding budget execution transparency.
2011	Dilma Rousseff	Federal Law 12527/2011 - Information Access Law	Grants the right to the citizens to disclosure government information formerly protected. Equivalent to the U.S. FOIA.
2012	Dilma Rousseff	Federal Law 12683/2012 - Money Laundering Law	Improves the penal prosecution process of money laundering crimes.
2013	Dilma Rousseff	Federal Law 12846/2013 - Anticorruption Law	Establishes the civil and administrative responsibilization of companies for corrupt practices.

Table 4

Although counting on such a powerful legal framework to fight corruption, Brazil ranks poorly in the most used corruption measurement tools, such as the Corruption Perception Index, by Transparency International, according to Table 5 below:

2013 Corruption Perception Index – Transparency International

Country Rank	Country / Territory	CPI 2013 Score	Surveys Used	Standard Error	90% Confidence interval		Scores range	
					Lower	Upper	MIN	MAX
1	Denmark	91	7	2,2	87	95	83	98
1	New Zealand	91	7	2,3	87	95	83	98
3	Finland	89	7	1,7	86	92	83	98
3	Sweden	89	7	2,3	85	93	83	98
5	Norway	86	7	2,3	82	90	80	98
5	Singapore	86	9	2,3	82	90	75	99
7	Switzerland	85	6	2,5	81	89	73	89
8	Netherlands	83	7	2	80	86	73	89
9	Australia	81	8	1,5	79	83	74	88
9	Canada	81	7	2,4	77	85	72	89
11	Luxembourg	80	6	2,9	75	85	71	89
12	Germany	78	8	2,4	74	82	73	89
12	Iceland	78	6	2,8	73	83	71	89
14	United Kingdom	76	8	1,3	74	78	71	81
15	Barbados	75	3	7,1	63	87	64	88
15	Belgium	75	7	2,3	71	79	71	89
15	Hong Kong	75	8	2,4	71	79	65	83
18	Japan	74	9	2,4	70	78	57	81
19	Uruguay	73	6	1,4	71	75	69	79
19	United States	73	9	4	66	80	50	89
21	Ireland	72	6	4,2	65	79	54	83
22	Bahamas	71	3	1	69	73	69	73
22	Chile	71	9	1,8	68	74	63	79
22	France	71	8	2,4	67	75	57	79
22	Saint Lucia	71	3	0,8	70	72	70	73
26	Austria	69	8	3,2	64	74	54	81
26	United Arab Emirates	69	7	4,7	61	77	54	87
28	Estonia	68	9	2,7	64	72	54	81
28	Qatar	68	6	7,2	56	80	45	92
30	Botswana	64	7	1,6	61	67	60	71
31	Bhutan	63	4	2,6	59	67	57	70
31	Cyprus	63	5	3,9	57	69	49	71
33	Portugal	62	7	3	57	67	54	73
33	Puerto Rico	62	3	6	52	72	51	71
33	Saint Vincent and the Grenadines	62	3	5,6	53	71	54	73
36	Israel	61	6	1,6	58	64	54	65
36	Taiwan	61	7	4,3	54	68	49	79
38	Brunei	60	3	10,4	43	77	41	76
38	Poland	60	10	2,3	56	64	50	73
40	Spain	59	7	4,9	51	67	41	73
41	Cape Verde	58	4	4,8	50	66	49	70

41	Dominica	58	3	2,3	54	62	54	63
43	Lithuania	57	8	3,8	51	63	41	71
43	Slovenia	57	9	3,6	51	63	36	73
45	Malta	56	5	2,4	52	60	49	63
46	Korea (South)	55	10	2,4	51	59	44	67
47	Hungary	54	10	3,6	48	60	35	71
47	Seychelles	54	4	8,2	41	67	32	71
49	Costa Rica	53	5	4,1	46	60	41	66
49	Latvia	53	8	3,6	47	59	41	73
49	Rwanda	53	5	5,7	44	62	40	74
52	Mauritius	52	5	1,1	50	54	49	55
53	Malaysia	50	9	3,4	44	56	31	62
53	Turkey	50	9	2,4	46	54	38	58
55	Georgia	49	6	6,9	38	60	22	70
55	Lesotho	49	5	3,6	43	55	42	63
57	Bahrain	48	5	5,4	39	57	36	65
57	Croatia	48	9	3,3	43	53	31	66
57	Czech Republic	48	10	3	43	53	34	62
57	Namibia	48	6	3,4	42	54	38	63
61	Oman	47	5	7,8	34	60	28	69
61	Slovakia	47	8	4,7	39	55	26	62
63	Cuba	46	4	4,5	39	53	36	54
63	Ghana	46	9	3,3	41	51	28	58
63	Saudi Arabia	46	5	6,7	35	57	36	72
66	Jordan	45	7	2,4	41	49	36	54
67	Macedonia	44	6	5	36	52	21	55
67	Montenegro	44	4	2,2	40	48	39	49
69	Italy	43	7	2,5	39	47	38	55
69	Kuwait	43	5	3,9	37	49	32	52
69	Romania	43	9	3	38	48	31	57
72	Bosnia and Herzegovina	42	7	2,9	37	47	35	59
72	Brazil	42	8	3,7	36	48	30	62
72	Sao Tome and Principe	42	3	5	34	50	32	47
72	Serbia	42	7	3,4	36	48	31	53
72	South Africa	42	9	2,8	37	47	32	55
77	Bulgaria	41	9	3,3	36	46	26	58
77	Senegal	41	9	1,5	39	43	33	47
77	Tunisia	41	7	1,9	38	44	32	46
80	China	40	9	2,9	35	45	28	55
80	Greece	40	7	4,5	33	47	21	57
82	Swaziland	39	4	1,8	36	42	35	42
83	Burkina Faso	38	7	3,9	32	44	20	50
83	El Salvador	38	6	2	35	41	31	45
83	Jamaica	38	6	1,8	35	41	31	44
83	Liberia	38	7	3,3	33	43	28	52
83	Mongolia	38	7	2,2	34	42	31	47
83	Peru	38	7	2,5	34	42	29	49
83	Trinidad and Tobago	38	4	5,1	30	46	31	52
83	Zambia	38	8	2,1	35	41	32	50
91	Malawi	37	8	1,7	34	40	31	45
91	Morocco	37	8	2,9	32	42	25	47

91	Sri Lanka	37	7	2,1	34	40	28	44
94	Algeria	36	6	2,8	31	41	25	42
94	Armenia	36	6	3,5	30	42	21	47
94	Benin	36	6	3,4	30	42	25	47
94	Colombia	36	7	2	33	39	28	45
94	Djibouti	36	3	8,6	22	50	23	52
94	India	36	10	2,2	32	40	24	47
94	Philippines	36	9	2,5	32	40	21	45
94	Suriname	36	3	3,2	31	41	31	42
102	Ecuador	35	6	3,6	29	41	21	46
102	Moldova	35	8	2,8	30	40	25	47
102	Panama	35	6	2,2	31	39	28	42
102	Thailand	35	8	1,2	33	37	31	40
106	Argentina	34	8	2,4	30	38	20	40
106	Bolivia	34	7	3,7	28	40	17	47
106	Gabon	34	5	1,5	32	36	31	38
106	Mexico	34	9	1,8	31	37	27	42
106	Niger	34	5	3,7	28	40	21	42
111	Ethiopia	33	8	2,5	29	37	21	42
111	Kosovo	33	3	2,3	29	37	29	36
111	Tanzania	33	8	2,7	29	37	22	47
114	Egypt	32	7	3,1	27	37	17	44
114	Indonesia	32	9	3,5	26	38	21	50
116	Albania	31	7	2,1	28	34	23	38
116	Nepal	31	5	1,4	29	33	28	35
116	Vietnam	31	8	2,6	27	35	21	41
119	Mauritania	30	5	4,1	23	37	21	42
119	Mozambique	30	7	2	27	33	23	38
119	Sierra Leone	30	8	2,4	26	34	21	40
119	Timor-Leste	30	3	3,2	25	35	23	34
123	Belarus	29	5	4	22	36	21	43
123	Dominican Republic	29	6	3,5	23	35	21	42
123	Guatemala	29	6	2,6	25	33	21	36
123	Togo	29	5	3,7	23	35	21	42
127	Azerbaijan	28	6	3,5	22	34	21	40
127	Comoros	28	3	7,5	16	40	17	42
127	Gambia	28	5	6,7	17	39	12	50
127	Lebanon	28	6	3,3	23	33	17	38
127	Madagascar	28	8	1,9	25	31	22	38
127	Mali	28	6	3,3	23	33	20	40
127	Nicaragua	28	7	2,4	24	32	21	37
127	Pakistan	28	8	3	23	33	19	42
127	Russia	28	9	2,3	24	32	21	43
136	Bangladesh	27	7	4,1	20	34	21	50
136	Côte d´Ivoire	27	8	2,3	23	31	19	38
136	Guyana	27	4	2,9	22	32	21	33
136	Kenya	27	8	2,7	23	31	19	37
140	Honduras	26	6	2,5	22	30	21	35
140	Kazakhstan	26	8	3,3	21	31	11	39
140	Laos	26	4	5	18	34	19	41
140	Uganda	26	8	3,3	21	31	12	38

144	Cameroon	25	8	2,9	20	30	12	40
144	Central African Republic	25	4	5,4	16	34	11	37
144	Iran	25	6	3,9	19	31	15	41
144	Nigeria	25	9	3,1	20	30	14	40
144	Papua New Guinea	25	5	4,2	18	32	11	35
144	Ukraine	25	8	1,7	22	28	18	32
150	Guinea	24	7	3,6	18	30	12	40
150	Kyrgyzstan	24	6	2,3	20	28	18	35
150	Paraguay	24	5	3,1	19	29	19	36
153	Angola	23	7	2,8	18	28	19	40
154	Congo Republic	22	6	3,8	16	28	12	40
154	Democratic Republic of the Congo	22	5	4,2	15	29	12	37
154	Tajikistan	22	5	3,8	16	28	11	32
157	Burundi	21	5	2,6	17	25	12	27
157	Myanmar	21	6	3,9	15	27	11	39
157	Zimbabwe	21	8	4,3	14	28	0	38
160	Cambodia	20	7	3	15	25	11	30
160	Eritrea	20	4	11	2	38	5	52
160	Venezuela	20	7	2,3	16	24	12	29
163	Chad	19	5	3,8	13	25	9	30
163	Equatorial Guinea	19	3	2,2	15	23	15	22
163	Guinea-Bissau	19	4	2,4	15	23	12	22
163	Haiti	19	5	3,1	14	24	11	26
167	Yemen	18	6	2,6	14	22	11	28
168	Syria	17	4	3,8	11	23	6	22
168	Turkmenistan	17	3	2,9	12	22	11	21
168	Uzbekistan	17	6	2	14	20	11	22
171	Iraq	16	4	2,4	12	20	11	21
172	Libya	15	6	3,3	10	20	2	24
173	South Sudan	14	3	1,6	11	17	12	17
174	Sudan	11	6	3,5	5	17	0	21
175	Afghanistan	8	3	3,3	3	13	1	12
175	Korea (North)	8	3	3,4	2	14	1	12
175	Somalia	8	4	1,9	5	11	5	12

Table 5

Table 6 – Brazil´s relative performance in CPI/TI along the last 5 years (2009/2013)

	2009	2010	2011	2012	2013
Ranked	**75º**	**69º**	**73º**	**69º**	**72º**
Scored	**37**	**37**	**38**	**43**	**42**

Table 6

Table 6 above reinforces the idea that Brazil´s performance in TI ranking along the last five years (of course CPI is not a scientific outcome and corresponds to a subjective sensation of the inhabitants) definitely does not reflect the improvements in its legal framework (constraints) against corruption. In fact, the country´s performance is clearly jammed between 69ª and 75ª position. This outcome plays a dramatic contrast

if compared to the increasing regulation and standardization as part of the efforts of Brazilian public bodies to curbing corruption. Moreover, five years would be enough lapse of time for an anti-corruption policy to show results. If they´re not coming, maybe the adopted strategies are not the most suitable ones for the country.

So, what is the point? If Brazil is doing so well in the second part of "corruption equation", which refers to the constraints for corruption, why the country is still not collecting better results?

The first part of the equation (power discretion + material resources) plays an important role on country´s performance. In average, a Brazilian public agent, specially the ones occupying strategic positions that, "by coincidence", are chosen under political criteria, counts on excessive power discretion and undesired access to large amounts of material resources, as we will see in following sub-chapters. Nevertheless, this bad performance in the first part of the equation would likely to be neutralized by the severe legal constraints the country has created along the last two decades, as shown in Table 4. Therefore, the question remains open: why Brazil is perceived as such a corrupt country? The answer, that seems so complex at a first sight, is being repeatedly yelled by the rough "voice of the streets", in the middle of protests and riots that is being taken place in the country since june 2013: impunity!

The judiciary system in Brazil is old, lagging, confused, overwhelmed and backward. The penal process code lacks an urgent reform, something that has been stressed out by the Ministry Jorge Hage, the head of the Office of the Comptroller General, in a tireless campaign since he took office at CGU. The problem is that the number of possible appeals during a lawsuit can lead it to take some 15 or 20 years to be concluded, which practically guarantee no punishment for corrupts. This inefficiency performs a harmful pedagogical effect to the whole Brazilian society, which means, balancing punishment risks and possible dividends, corruption worth in Brazil.

Due to this peculiarity of the Brazilian system that, at the end, should reflect other countries´ realities, we propose a new balanced anti-corruption formula, that takes into consideration the fact that effective punishment for corruption plays a decisive role

for discouraging or incentivating bad practices or, as a direct consequence, strengthen or weaken the constraints, as follows:

$$C = (PD + MR) – (CT – LEP)$$

Where “C” is corruption; “PD” is the power discretion; “MR” are material resources; “CT” is the legal and normative constraints; and “LEP” equals to lack of effective punishment. LEP enters the equation diminishing CT value, following the idea that a strong legal anti-corruption framework can be severely weakened by the lack of effective punishment. Keeping “PD” and “MR” values constant, the corruption gap “C” will increase proportionally to “LEP" value. Therefore, for a given reality, higher “LEP” would necessarily mean higher corruption gap, no matter how powerful and comprehensive are the legal and normative constraints available to that society.

4.1.1. – Economic strength: an “opportunity window” wasted.

Needless to go through the cold figures of statistics, Brazil is, today, one of the most important developing countries of the world. For the purposes of the present worldwide geopolitics discussions, the country is referred and recognized as a protagonist, integrating the so-called BRICS (Brazil/Russia/India/China/South Africa), which is a group of economies with a growing weight in the global scenario that, despite some natural competition among them, has been negotiating as a block several top controversial subjects that affect global economy.

Nonetheless, a GDP of US$ 2,4 trillion (2012), that corresponds to the 7th place in the world, is too huge to be negleted. Such an economic performance (although with not so positive nuances) has called the attention of the international community. The question is: is Brazil doing its homework? Or, in other words, is the country using its prosperity to reduce inequality and build a better future for generations yet to come?

The answers for the double question go in opposite directions. Yes, through social public policies, specially the ones involving money transfer under

conditionalities, Brazil has been reducing poverty and launching some 25 million people, who were under poverty line before, into the consumer market. But, on the other hand, the country is not being adequately prepared for the challenges of the future. The lack of infrastructure in the country plays an unacceptable dichotomy to the largest Latin-America economy that aspires to be one of the leading powers of the new century. Although having undergone the global crisis with small scratches hitherto, Brazil must grow, must take the next step, must generate enough wealth for that same mass of people that were removed from the poverty and that now ascended to the consumer market. As widely known, infrastructure works are the ones that most absorb workforce and they should be done all over the country. Roads, ports, airports, railways, energy plants, oil platforms, all are there to be built, improved or reformed.

A rapid analysis lead to an evident need of fitting both demands. From one side, there´s a tremendous, but unqualified workforce emerging from the deep poverty due to the social programs. On the other side, a stuck country practically impelled to keep its growth at minimum levels in face of its decrepit infrastructure. A possible way out would be mass technical qualifying training programs, to prepare, in very short terms, the workforce for the gigantic infrastructure works, needed to put the country back on the track. This mass qualification program should be even included in the social programs of money transfer, such as a complementary stage, in order to create the highest possible incentives to disrupting the dependency from the State money.

However, even counting on the best scenario, which would be the government taking the necessary steps to fostering the development, Brazil will perforce to face another huge historical hindrance for its growth and development: corruption in bidding and contracting, especially when billions of dollars of the infrastructure works come to the agenda. As to better understand the dimension of the challenge that awaits the country, it should be firstly comprehended the brotherly connections between corruption and the Brazilian political framework.

4.1.2. – Brazilian political framework: the “coalition presidentialism” and the State capture

As it´s widely known, Brazil is a presidentialist republic, with bicameral legislative (Senate and Chamber of Deputies) and four years mandate for president (with possible reelection). Since the impeachment of former President Collor de Mello (back in 1992), who was elected in 1989 with far minority at both legislative houses and who reduced the number of Ministries from 21 to 10, all his successors, in an exponential manner, followed the opposite way, under the general accepted argument that, in face of the peculiarities of legislative process defined by 1988 Constitution, it´s not possible to govern without counting on the majority of the Congress.

In this connection, former Presidents Franco (1992-1994), Cardoso (1995-2002), Lula (2003-2010), and current President Rousseff (2011- today), taking for granted the above mentioned "truth", moved in the very same direction. As to compound majorities that would "allow" them to govern, the adopted formula was the so-called "coalition presidentialism", which is an hybrid system that combines a very strong and powerful President (indeed with some important legislative tools), with a "fisiologic" Congress, always ready to negotiate votes for strategic positions within a government agency or even to have an allied party controlling entire Ministries, under threats of not approving some bill of government´s interest. Therefore, the number of Ministries jumped from 10 at the beginning of Collor´s mandate to the present 39 Ministries or equivalent Secretariats, from which at least half were created or splitted with the unique intention of expanding the allied base.

The only exception in statistics was Cardoso, that inherited 22 Ministries and delivered 21 to his successor. The sole figures, however, don´t exempt Cardoso of being kept the same fisiologic relation with legislative houses during his two mandates, specially when he worked hard to pass the reelection amendment in 1997, the same that allows his own reconduction in the following year. The "trading" for votes had happened in such an open and large scale that made from Cardoso a hostage of his own "charity" along the whole second mandate (1999-2002), making social-democrats loose the presidential election of 2002 to Lula.

Another great bargain tool available to the Executive and Legislative branches in the Brazilian coalition presidentialism is the budget amendments proposed

by the congressmen. This situation is, as a matter of fact, an emblematic case of how discretion power, when used in an inappropriate way, may lead to corruption practices.

Everything starts with the issuing of the annual budget law. Senators and deputies have, each of 594 congressmen, the right to appoint how (which program or specific activity) government will spend a share of US$ 6 million from the federal budget. Moreover, the legislators can also indicate who will benefit from the resources, not only public entities, like state and local governments, but even non-profit private organizations. For the purposes of such transferences, the amendments, when released, turn into "administrative agreements", under which the federal government, through the agency involved, and the beneficiary (public or private entity) of the resources "agree" to execute a given public policy (program, activity), using the money transferred for that purpose.

Theoretically, in the case of private entities, the indication is supposed to be made under technical criteria, that means, the chosen organization should be able to execute the program or activity by itself, counting on its own structure and human resources. What happens pretty often, instead, is that the private organization contracts private companies to execute the agreement. Sometimes the entire funds are spent in contracting "third" parts.

The worse, however, is that the controlling bodies (CGU, MPF, TCU or DPF) are able to reasonably monitoring and tracking those transactions until the money reaches the contractor. From this moment on, it´s practically impossible (unless in the course of a running investigation) to check if the aim of the agreement was really executed or reached. Corruption schemes in Brazil frequently open fake companies, running by fake managers, only to simulate commercial activities in order to receive and divert federal funds transferred in this kind of triangulations.

Such an incredible amount of discretion in the hands of politicians is an open door for all kinds of frauds with public resources. But the problem goes far beyond. Although being part of the annual budget law, the release of the amendments (to become administrative agreements and having the correspondent funds effectively transferred) is, again, a discretionary decision. But then, it is the Executive branch "who

calls the shots", that means, the President has the power to impound the budget, impelling a constraint line that, in theory, would not allow the release of the majority of the amendments, unless authorized by the Executive branch.

4.1.3. NGO´s: The third sector of corruption

Initially linked to popular social movements and to the "green cause" (early 90´s), the Non-Governmental Organizations – NGO´s have significantly spread their playing fields in Brazil over the last 20 years. Comparing the predominant characteristics of the first organizations to the most frequently activities developed by the NGO´s in Brazil today, it´s easy to detect that, although thought and created to perform "public activities" that the State, for one reason or another, is not able to do (due to budget, personnel or operational/logistic constraints) – named as the third sector, to differentiate from the government sector and private enterprises sector - NGO´s have been clearly getting closer and closer to the government and, to a great extent, to the public funds.

This movement was accepted and even encouraged by the government, to whom a shorter distance to these organizations could mean, in a certain way, a better chance of neutralizing them, specially the ones operating with large ability to mobilize citizens against government. In a second moment, this proximity led the government to start funding NGO´s, first for very specific activities and short budgets, but, afterwards, for a wide variety of purposes and almost unlimited budgets.

At this moment, the NGO´s business started to call the attention of criminal organizations willing to find a channel with easier access to public funding with less effective controls. As already seen, by the middle of last decade, Brazil already had a legal framework comprehensive enough to curbing corruption, specially regarding public biddings and procurements. But the most common way of transferring money to NGO´s was still a fertile terrain for fraud and deviations: the administrative agreements.

As it can be seen from Table 7 below, federal money transferences exclusively to NGO´s in Brazil has reached almost US$ 10 billion between 2005 and 2012, when new rules were issued to stop the successive corruption scandals involving

NGO´s and, most of the times, politicians. Several ministries were fired, public officials arrested and even stolen assets were recovered.

year	US$	R$
2004	821.815.576,28	2.281.392.613,08
2005	955.105.104,85	2.228.216.703,24
2006	1.331.024.930,05	2.887.452.975,59
2007	1.195.354.696,73	2.319.748.716,92
2008	1.268.206.189,96	2.513.766.769,57
2009	1.462.940.486,29	2.787.186.811,30
2010	947.495.099,23	1.675.704.927,98
2011	591.120.723,65	996.943.171,47
2012	802.024.793,51	1.538.605.003,41
total	9.375.087.600,55	19.229.017.692,56

Table 7 (source: SIAFI)

From the above table, it becomes clear the large increase of the transferences from 2004 until 2009 (78%). Precisely between 2009 and 2010 most of the corruption scandals arose and got the headlines of newspapers, weekly magazines and TV news programs.

4.2. Brazilian Anti-corruption Agency (Agencia Brasileira Anti-Corrupcao)

As mentioned in the previous Chapter 3, Brazil has a multi-agency approach to fight corruption. The chapter has deepen the role played by the main Brazilian agencies that have core activities related to the corruption combat, highlighting the kind of control they perform, to which branch they belong and the principal duties developed by each body.

In this chapter, we will address, in an abstraction mode, how a Brazilian Anti-corruption Agency could emerge from the current political and institutional frameworks and which would be the possible (and probable) outcomes from having a specific public body dedicated to the fight against corruption.

4.2.1. – What are Brazilian streets saying?

The aforementioned poor Brazil´s perform on the last 2012 Global Perception Index from Transparency International – 69th position among 174 countries shows, theoretically, how far the country is perceived as corrupted (no distinguish between public and private sectors is made) by its own inhabitants. Since june 2013, however, Brazilians are ratifying the theory on the streets of practically all State capitals and big cities of the country. Started as a simple students claim for free public transportation in the city of Sao Paulo, the movement had become the spillway for all kinds of popular frustrations, disillusions and revolts, specially against corruption, the super over-budget stadiums built (or being built) for the mega sporting events, politicians and political parties, as well as the lack of punishment for famous convicted corrupts that are still not in the jail. Millions of people had joined the demonstrations in very impressive crowds and many of the events had turned into violent riots, with bloody battles between protesters and local police forces.

Although following recent huge popular movements, such as the "Arab Spring" and the "Occupy", the Brazilian journeys have little to do with those precedent happenings and their motivations. The main message that can be read in the ongoing movement is an outspread feeling of lack of representativeness of the current Brazilian partisan structure. People simply don´t recognize themselves in their congressmen. Due to so many corruption scandals being arising (which, on the other hand, is a clear sign that institutions are functioning) in recent years, most of them involving politicians, they definitely threw away the rest of credibility the class was keeping with its constituencies.

4.2.2. – Governance, accountability and a structured and powerful legal framework to combat corruption: that´s enough?

The end of Chapter 2 suggests that there can be found great inconsistencies between governance theories and the outcomes of implemented policies. Not by coincidence, the same subject is addressed again, now. Because it´s crucial to start fixing both theories and outcomes, as it is clear this correlation is unsteady.

Brazil, which is the main case analyzed in this paper, is a perfect example of the present dissociation between *"de jure rules"* and *"the facto measures and results"*.

Just for didactic purposes, in a hypothetical comparison with United States, we will apply, first, the corruption formula as suggested by scholars. In a second moment, we will apply the "corruption gap formula" offered in Subchapter 4.1.

Case: two civil servants, occupying strategic positions in federal government, one in Unites States, the other one in Brazil. Applying the "scholars formula" (C = (PD + MR) – CO), we´ll have the following:

Obs: let´s assume both civil servants have great and equal PD and MR, given values 70 and 80, respectively)

United States

C = (PD + MR) – CO

C = (70 + 80) – 50

C = 150 – 50 = 100

Brazil

C = (PD + MR) – CO

C = (70 + 80) – 70

C = 150 – 70 = 80

Based on the "scholars formula", Brazil, due to its powerful and comprehensive legal framework aimed for combating corruption, would have a gap for corruption of 80 units, while United States, that counts on a more "auto-regulated" public sector, would have a gap for corruption of 100 units. This means that the likely outcomes Brazil would reach would be better than the ones of United States. This is flatly denied by indexes like Corruption Perception Index, from TI, that ranks U.S. in the 19ª position, while Brazil comes in the 72ª position.

Now, applying the formula offered by this paper (C = (PD +MR) – (CT – LEP), we´ll have the following:

United States

C = (PD + MR) – (CO – LEP)

C = (70 + 80) – (50 – 10)

C = 150 – (+40)

C = 150 – 40 = 110

Brazil

C = (PD + MR) – (CO – LEP)

C = (70 + 80) – (70 – 80)

C = 150 – (-10)

C = 150 + 10 = 160

Based on the proposed formula, Brazil, due to its very high rate of LEP (lack of effective punishment), reaches a negative value in the second part of the equation, which, at the end, increases in 10 units the result of the first part, so that the overall value for gap of corruption in Brazil, in the given example, comes to 160. United States, with a disregardable LEP rate of 10, reaches a positive balance of 40 in the second part of the equation, still diminishing the overall balance down to 110 units for gap of corruption.

Therefore, the equation of the corruption gap proposed by this paper seems to meet, more coherently, what both countries´ inhabitants perceive about their own nations than when the "scholars' corruption formula" is applied. This is easily explained because, in the case of Brazil, the lack of effective punishment – LEP – plays a decisive role to weaken the powerful constraints the country has built in the last 20 years. The same does not happen in United States, which public and private sectors are not so deeply regulated as Brazil (little less constraints), but where corrupts usually go to jail.

Much more than an equation, however, this paper speaks much about the need to revising the governance model that is being spread as the ultimate solution for developing countries. In a metaphoric basis, it´s like the pills that the doctor prescribes to a patient. The pills (of governance), contain three substances (transparency, accountability, anti-corruption structure). After taking his pills for more than a year, the patient is still sick. If the doctor doesn´t go beyond his patient´s more evident symptoms and figure out that, despite the first diagnosis, there is a secondary disease undermining the curative substances and that its treatment must be considered for patient´s overall improvement, the patient will continue sick and maybe die. What happens here is a

general diagnosis that is not truly connected to reality and this is somehow what is being happening with international funding to fight corruption.

4.2.3. Current anti-corruption structure in Brazil

As mentioned sometimes before in this paper, Brazil counts, today, with a powerful legal framework aimed to fight corruption. The bidding and procurement law (Federal Law 8.666/93) has very detailed and restrictive rules and, actually, lacks an urgent updating in order to unlock public machine, granting the administration more agility and efficiency when contracting without losing essential controlling tools. The creation of Office of the Comptroller General (CGU), in 2003, the launching of the Transparency Portal in 2004 and the recent passed laws of transparency, information access, anti-corruption and money-laundering, in the last four years, lifted Brazil to the same threshold of the most developed countries in terms of transparency, accountability and legal constraints, as well as an embodied organic structure, to approach corruption practices.

As seen in Chapter 3, besides CGU that, today, concentrates most of the duties of an authentic anti-corruption agency, Brazil has other three agencies/bodies with core activities related to the fight against corruption, such as Public Prosecutor´s Office, the National Court of Accounts and the Federal Police Department.

Notwithstanding, some several other agencies complete the comprehensive Brazilian public bodies´network against corruption, such as the Office of the Attorney General (Advocacia-Geral da União – AGU); Financial Activities Controlling Counseling (Conselho de Controle de Atividades Financeiras – COAF); Central Bank (Banco Central do Brasil - BACEN); Brazilian Inteligence Agency (Agencia Brasileira de Inteligencia – ABIN); Federal Revenue Secretariat (Secretaria da Receita Federal); and State Court of Accounts (Tribunais de Contas estaduais – TCE´s), among others.

The lack of effective punishment for corruption practices in Brazil, as well as for all kinds of criminal behaviors in fact, was already appointed in this paper as a diminishing factor of the weight of legal constraints in the so-called “corruption gap” equation. Nevertheless, considering its legal framework and comprehensive organic

anti-corruption network, Brazil should be performing much better in combating corruption. The reasons for this gap are many, but we dare to appoint the main four: the predominance of an organic view; the high cost of control; the non-existence of a focused body; and insulated knowledge. Below, the intuition behind each item is detailed:

a) ORGANIC VIEW: Despite the already mentioned special operations frequently joint by Federal Police, CGU and Public Prosecutors, Brazilian anti-corruption public bodies don´t work in real coordination. The tasks are often developed in parallel approaches and different methodologies, leading to re-work or doubled-work. There´s some competition within the agencies for society´s recognition and government´s appreciation, which is not bad for itself, but leads to lack of interaction, information sharing and human capital maximization. At the end, there´s a predominance of an organic view over a State view, that compromises the general outcomes.

b) HIGH COST OF CONTROL: In a structural point of view, there are too many agencies somehow involved in the fight against corruption in Brazil, although none of them happens to be dedicated bodies. This increases the cost of control, generates a misperception from the society (who´s responsible for what) and, finally, spoils secrecy and confidence of the operations. There is, in fact, a vicious cycle, where too many agencies lead to lack of secrecy and confidence. This situation, by its turn, harms articulated works and information sharing among the bodies.

c) NON-EXISTENCE OF A FOCUSED BODY: The Brazilian peculiar political sustainability framework, a coalition presidentialism, that fosters a distorted "checks and balances" system between Executive and Legislative branches, demands, as a compensation, high levels of functional autonomy and independence from the agencies, in order to properly address corruption practices. The Office of the Comptroller General (CGU), as already mentioned along this paper, is the public body that performs, in Brazil, the most of the duties that could be addressed by a dedicated anti-corruption agency, in case it would be created. CGU has been tackling corruption in a

very pro-active and innovative way. The Public Spending Observatory (ODP) had brought different perspectives for data mining and data-base exchanges developed to detect corruption practices. The leadership of the agency in building an anti-corruption legal framework comparable to the ones of the most developed countries is unequivocal. CGU, however, is highly committed on performing the internal control of the Executive branch (almost 70% of its workforce is allocated in the Internal Control Secretariat), an activity that, besides naturally curbing corruption (and it does), speaks much more to the general improvement of the public management. Moreover, the internal control performed by the Office of the Comptroller General is a constitutional duty and, besides, no other Brazilian public body has the expertise to accomplish with that task. The recent news (November 2013) informing about the fierce budgetary constraints imposed to the agency by the federal government, that led CGU to temporarily close its Disciplinary Board installations, depict the most cruel picture that prevents the agency from being the independent and autonomous anti-corruption body the country needs.

d) INSULATED KNOWLEDGE: The lack of information sharing, a problem mentioned in item "a" as an aspect of the defective coordination and confidentiality among agencies, actually deserves specific comments. One of the most important movements towards the integration and articulation among government bodies in Brazil was the creation of the Corruption Combat and Money Laundering National Strategy (Estrategia Nacional de Combate a Corrupção e Lavagem de Ativos – ENCCLA) in 2003. Under the coordination of National Justice Secretariat, of the Ministry of Justice, ENCCLA was the most significant initiative of the Brazilian government in searching for a more rational and efficient tackling against corruption and money laundering, through integration of approaches, information sharing and discussions around bills of new rules for any particular situation identified as possible threats against the State. Although being well succeeded in joining a very large and comprehensive number of government agencies engaged in the project, the results achieve were, hitherto, not so encouraging vis-à-vis the mobilization it has been demanding in terms of

human and material resources spent. A large number of proposals was built, but the rampant difficulties in their implementation resulted in very few bills becoming laws. Besides, articulated activities are frequently jeopardized by the mentioned "organic view", that hampers information sharing and data crossing, insulating each agency`s knowledge, so that the outcomes are never maximized.

4.2.4. - Abstractions: a Brazilian ACA and its possible outcomes

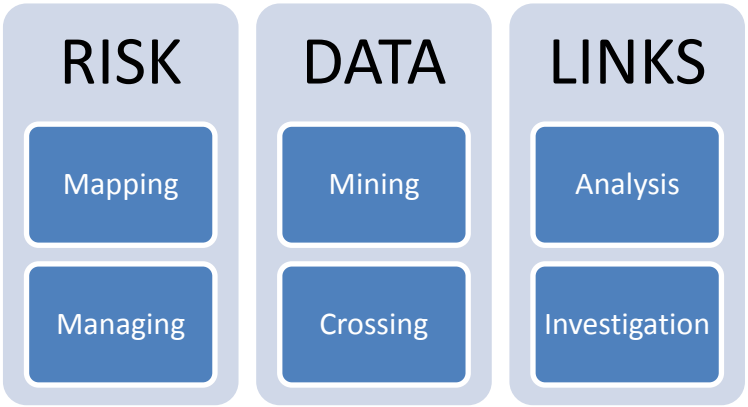
As already approached in Chapter 3, dedicated to the models of anti-corruption agencies around the world, there are some indispensable premises that must be accomplished in order to have an agency with reasonable chances of success in tackling corruption. As an abstraction, we will try to propose how a Brazilian ACA could be created, it´s functioning and possible outcomes, as well as how such a body could be inserted in the present scenario.

As far as the institutional framework is concerned, a Brazilian anti-corruption agency could assume some of the legal characteristics of the regulatory agencies currently in operation in the country. This means: created by law (in the Brazilian case, it would necessarily demand a constitutional amendment), under the format of a special autarchy and ruled by public law.

The higher authority of the agency (Director-General) would be appointed by an Advisory Committee, compounded, for example, by members of MPF, CGU, TCU, AGU, Supreme Court (Supremo Tribunal Federal – STF), National Council of Justice (Conselho Nacional de Justica – CNJ) and General Prosecutor´s Office (Procuradoria-Geral da Republica – PGR). This committee would act either as a counseling board, more or less in the same accountability function developed by the advisory committees that oversees the activities of ICAC – Independent Commission Against Corruption, from Hong-Kong (see Chapter 3). The head of the agency would have a 4-year mandate, preferably unlinked from the Brazilian elections calendar and could only be removed by a collegial decision of the Advisory Committee, for example, the vote of 3/5 of its members.

The Brazilian ACA would have its own budget and it would not be subject of any kind of budgetary constraints, neither from the congress nor from the Executive. Its workforce would rely on an own and paid well career (equivalent to the highest levels of Brazilian public administration), admittance to be made through public contests. Ideally, the ACA workforce would be a mix of fresh civil servants with the best experts from most of the agencies that, today, develop anti-corruption activities. Continued and high-level training programs would be absolute priority of the human resources policy. All knowledge, technology and methodologies acquired by Brazilian public administration in combating corruption, now dispersed and disconnected, would be totally concentrated in the new agency, building a kind of "excellence island" specialized in curbing corruption.

The Brazilian ACA would be an intelligence-led unit, which means that it would preferably work on an intensive approach rather than an extensive approach. This means, work with selected cases, based on material and strategic criteria, massive use of information technology, such as risk mapping and risk management, mass data mining, data-crossing, link maps, analysis and investigation. In a graphic way, these below would be the basic steps the agency would follow to find a case and start an investigation:



The boxes above suggest possible operational inputs of the agency, provided the premises of last paragraph are followed. As far as the operational structure is concerned, the ACA workforce could be divided, at least, in four finalistic areas: i) Information Technology, that would handle with all technological demands, such as data mining and data crossing; ii) Analysis and Investigation, that would work on risk management, link analysis and investigative procedures; iii) Field Operations, that

would be responsible for external activities needed for confirming or disregarding an information; and; iv) A direct channel with society, aimed to receive denounces, allegations and complaints of corruption practices, through phone and internet. It could be structured as a classic Ombudsman or, taking advantage of the new technological devices available, it could be created a Wiki-Corruption Page (both solutions are not mutually exclusive, by the way), managed by the agency, opened for public in general to build, in a collaborative way, its own "cases" or allegations of corrupt practices. This would be a permanent information input for the ACA, maintained at a very low cost and with a wide potential to foster the social control.

There could be several different outputs generated from ACA activities, but most of them would never cross its boarders since it would be information generated within the agency to serve as input for other cycles of investigation. The external outcome, however, would be an official report, to be addressed, depending on the case, to the Public Prosecutor´s Office, CGU, TCU, the General Prosecutor´s Office or Federal Police, for the necessary arrangements each case requires.

Based on the tripod:

1. Functional independence and autonomy;
2. IT based and intelligence-led operations (intensive approach); and
3. High qualified and well trained personnel

There are good reasons to believe that a Brazilian ACA could achieve outstanding outcomes, once created. The country has never counted on such a body, with the above premises, operating against corruption. The target, of course, could not be defeating corruption. Brazil is a very large country, with a huge population, still lacking minimum health and education levels and, most of all, with a very backward political framework. Corruption will not be defeated at all, but definitely could be reduced at civilized levels, could become non-systemic and exogenous, could be the exception, not the rule.

A Brazilian ACA could represent the possibility of join the best Brazil counts on technics, human resources and political will to fight corruption. Valuable assets that are, now, spread over dozens of agencies. Provided all the assumptions made

in this paper are confirmed, the country could finally rely the corruption combat to a unique body, with the necessary independence and autonomy to promote a revolution in the Brazilian public management.

5 – CONCLUSION

The fight against corruption is a challenging task for every country in the modern world, no matter if it is a developed, developing or poor developed economy. For very different realities, as mentioned in this paper, there´s no single remedy. Maybe this is the main difficulty in combating corruption nowadays. The more ideas and experiences are changed, and they should be, the more countries learn what definitely does not work in their own realities. The perfect remedy for each "disease" will depend on a large number of circumstances. So, responding to the question that is placed in the title of this article, panaceas won´t defeat corruption anywhere, but only "handmade" policies, capable of addressing specific hindrances that affect this or that country and, most of all, political will to remove institutional barriers and implement those "handmade" policies.

Anti-corruption agencies, here understood as specific bodies dedicated to fight corruption, is just one of the possible approaches to the matter. As mentioned in the chapter dedicated to the models of anti-corruption bodies, there are very encouraging and tested outcomes from the implementation of ACA around the world. Therefore, the answer is yes, ACA can eventually be a solution for defeating or reducing corruption practices to acceptable levels in any country. In our opinion, what will determine the failure or success of an anti-corruption agency in a given country is the political will to carry out the right approach. This is also a matter of choosing the correct timing for launching the projects. An aspect that can rather smooth the political impacts is the society pressure for reforms. And this leads us to the Brazilian case.

Brazil is crossing a very peculiar moment. The country was appointed to host the next two worldwide greatest sporting events, World Cup 2014 and Olympic Games 2016. Its increasing prominence in the present geopolitical framework is undisputed: taking the GDP as a parameter, Brazil ranks 7th among the largest economies of the world and, joining the "BRICS", it has played a leading role in the

multilateral discussions on international trade, as a heavyweight counterbalance to the G-8 positions. Besides, Brazil seems to have crossed the peak of the economic crisis with a good performance, supported by its powerful internal market, the success of inclusive social policies and a solid level of foreign reserves of more than US$ 370 billion. In the meantime, however, the country has deeply plunged a period of social turbulence that lasts five months now and still counting. The levels of consciousness and citizenship acquired along the maturity process of democracy, still very poor among Brazilian population, seem already sufficient to mobilizing people to demand from the authorities much more than *panem et circenses* (bread and circuses), but real improvements on the most sensible fields, such as health and education, as well a minimum of decency in the use of public funds and effective punishment for the most notorious corruption cases.

Even considering that the federal government (the current or the next) will still have to deal with the so-called coalition presidentialism and the distorted "checks and balances" system between Executive and Legislative branches, maybe there will never be more propitious moment to curbing corruption in Brazil with ambitious proposals, such as the creation of an anti-corruption agency and a deep reform of the penal and civil process codes. If correctly addressed, these proposals tend to gain immediate popular support, letting the Legislative under high pressure. This hypothetical situation is, perhaps, the only possibility for the corresponding bills to pass.

As a final thought, Brazil can eventually adopt the solution of an anti-corruption agency. The outcomes, aforementioned premises followed, are likely to be quite effective.

In the other hand, although still not achieving reasonable results, the country may keep the current "multi-agency model". But some "homeworks" should be done, such as the enhancement of ENCCLA, which is the best tool to promote articulation and integration among agencies, avoid the waste of efforts in parallel tasks and foster the information sharing practice. Of course, the implementation of ENCCLA´s proposals should be taken rather seriously, otherwise this privileged forum, in view of its cost/benefit relation, tend to extinction. Besides, government should strengthen, as a management policy, the "State view", instead of the "organic view" and try to make its

agencies work in the interest of the nation and not for themselves. Finally, a better definition of each agency´s role in the fighting against corruption is a mandatory task, as to improve the accountability and allow each citizen to know exactly who is responsible for what. Even continuing on working with several agencies tackling corruption, the official definition of a main body as the Brazilian anti-corruption agency to head and coordinate the strategies to fight the "common enemy" is desirable. In this case, the Office of the Comptroller General (CGU) is more likely to assume the duty, in face of its comprehensive approach, as well as a remarkable and innovative role played since its creation, back in 2003.

It´s a plain understanding that the choice of which anti-corruption strategy better suits the country will have broad consequences for generations. Brazil can play either with one strategy or another. But the country definitely does not have a choice when the subject is its process laws. As far as the Lack of Effective Punishment –LEP is kept high valued, the gap for corruption will be equally high, signaling for the society that corruption still worth.

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